



Federal Communications Commission
Washington, D.C. 20554

December 20, 2004

DA 04-3989

Released: December 21, 2004

Secular Coalition for America
Attn: David A. Niose, Esq.
510 Main Street
P.O. Box 7611
Fitchburg, MA 01420

Re: Complaint against DIRECTV re Public Interest Obligations

Dear Mr. Niose:

The Secular Coalition for America ("Coalition") has filed a complaint against DIRECTV that raises two issues under the rules pursuant to which direct broadcast satellite (DBS) providers must reserve four percent of their channel capacity exclusively for use by qualified programmers for noncommercial programming of an educational or informational nature.¹ First, the complaint alleges that DIRECTV is violating the rules by affording reserved channel access to religious programmers. Second, the complaint alleges that DIRECTV is violating its public file obligation because it does not disclose why it is granting capacity to religious programmers rather than to other qualified programmers. We herein deny the complaint.

The rules in question implement Section 25 of the Cable Television Consumer Protection and Competition Act of 1992.² In part, these rules require DBS providers to reserve four percent of their channels for access by noncommercial, educational programmers at reduced rates. In order to qualify for carriage on the reserved channels, an entity must be a noncommercial programmer with an educational mission,³ and programming on qualified public interest channels cannot include advertisements.⁴ No other qualification criteria apply.

We reject the Coalition's argument that programmers that carry religious programming do not meet the definition of "qualified programmers." The Commission's rules and *Order*, and the underlying statute, do not suggest or provide that a programmer offering programming of a religious nature should be disqualified from access to reserved channels if it otherwise meets the set-aside qualifications.⁵ Further, the Commission's rules do not require that reserved capacity be allocated among different genres of programming; the rules specifically leave to the discretion of DBS providers the choice of which programs better suit their subscribers' viewing preferences. DIRECTV is not, therefore, violating Commission rules by carrying religious programmers in satisfaction of its public interest obligations.

¹ 47 C.F.R. § 25.701.

² *Implementation of Section 25 of the Cable Television and Consumer Protection and Competition Act of 1992* ("Order"), 13 FCC Rcd 23254 (1998).

³ *Id.* at 23290.

⁴ *Id.* at 23294.

⁵ *See* 47 U.S.C. § 335(b).

Your complaint further alleges that allowing religious programmers access to the reserved channels has potential Constitutional implications because the public interest channels are publically subsidized.⁶ The rules, however, do not provide for a direct public subsidy, nor do they establish a governmental bias in favor of or against programming that is religious in nature. Within the parameters established by the Commission, DBS providers are explicitly given discretion to choose programmers for their reserved channels. Accordingly, DIRECTV's choice of programmers for its reserved channels raises no substantial Constitutional issue.

Finally, your complaint alleges that DIRECTV is not complying with the Commission's requirement to indicate in its public file why requests for access to the public interest reserved channels have been denied. Specifically, your Complaint urges that DIRECTV should be required to disclose why it chose religious programmers over other types of programmers. The Commission's rules require DBS providers to include notations of why a request for access to the public interest channels is denied; the Commission contemplated that such descriptions should be brief.⁷ Your complaint does not dispute that DIRECTV maintains such a file, which provides the reason "capacity full" for denying access requests. A detailed discussion of why certain programmers were chosen over other programmers is not required.

Because your Petition fails to allege conduct that violates Commission rules, it is unnecessary to seek response or comment from DIRECTV.⁸ For the reasons discussed above, and pursuant to delegated authority,⁹ the Petition filed by the Secular Coalition of America is denied.

Sincerely,

W. Kenneth Ferree
Chief, Media Bureau

cc: William M. Wiltshire
Harris, Wiltshire & Grannis
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⁶ The Complaint alleges violation of the Establishment Clause of the First Amendment as well as the Equal Protection Clause of the Fourteenth Amendment.

⁷ 47 C.F.R. § 25.701; *Order* at 23203.

⁸ We note that your complaint includes the response you received from DIRECTV, which is largely consistent with the discussion herein. We also received letters from a number of individuals supporting the petition, however none of these letters compel a different result in this matter.

⁹ 47 C.F.R. § 0.283.