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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Implementation of the	)	
Cable Television Consumer	)	MM Docket No. 92-259
Protection Act of 1992	)	
	)	
Broadcast Signal Carriage Issues	)	

TO: The Commission

REPLY COMMENTS OF SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

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January 20, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
The Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Reply Comments
MM Docket No. 92-259
Broadcast Signal Carriage Issues

Dear Ms. Searcy:

The Satellite Broadcasting and Communications Association (SBCA) submits to the Commission its reply comments in the above-referenced docket in response to certain issues raised by the National Association of Broadcasters (NAB) in its original comments. We regret the late filing of these reply comments however it was unavoidable given the fact that the reply period coincided with the SBCA Winter Trade Show in San Diego. We trust that the Commission will understand the situation and excuse the timing of this filing.

The proposal of the NAB entitled "Implementing Exceptions to Retransmission Consent" (p. 41), insofar as it makes reference to the 1988 Satellite Home Viewers Act and the satellite license under Sec. 119 of the Act, has no place in this proceeding. The NAB has overstepped its bounds in attempting to put restrictions on the Home Satellite Dish (HSD) delivery of network signals to "unserved households" beyond what is called for in the Act and is trying to entice the Commission into entering an area of copyright law where it simply has no jurisdiction. Appendix A to the NAB's comments which outlines an adjudicatory remedy for complaints involving the distribution of network

signals to HSD consumers should be rejected out of hand.

It is apparent from NAB's comments that it is not content with the provisions of the SHVA as it relates to the reception of network signals by "unserved households." We are surprised by NAB's dissatisfaction because the networks were an active party in the formulation of the Sec. 119 satellite license and the provisions governing network signal distribution. Disputes, if any, arising from the delivery of network signals to HSD "unserved households" should be settled between the networks and the respective parties subject to the Sec. 119 license. Any disputes whereby networks can show a clear violation of the provisions regarding "unserved households" are enforceable under the violations provisions of Sec. 119, and the Act contains ample remedies to which the networks can turn in order to rectify any proven violations. In this regard, the Congress foresaw the possibility of territorial violations and, in its wisdom, included appropriate remedies in the SHVA. NAB's proposal is a redundant attempt to supersede the SHVA and the Copyright Act.

Beyond the policy and jurisdictional questions which the NAB proposal raises, it also contains certain technical issues relating to implementation of the "unserved household" definition. Specifically it raises a new "twist" to the Grade B signal strength criterion which deviates from that contained in the Act and would allow a complaint to be filed by a network station "within whose Grade B contour" there is signal duplication. The Act, however, does not refer to Grade B <u>contour</u>. Instead, it judges the eligibility of an

"unserved household" to receive a network signal by HSD if that household,

> "(**A**) cannot receive, through the use of a conventional outdoor antenna, an over-the-air signal of Grade B <u>intensity</u> (as defined by the Federal Communications Commission) of a primary network station affiliated with that network. . . ." 17 USCA 119(a)(10) (emphasis supplied)

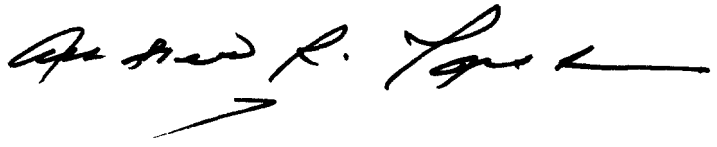
Congress purposely wrote the Act in this fashion in order to account for those households which are within the Grade B contour of a network station but are nonetheless unable to receive the signal at a Grade B intensity. It is a fine but critical distinction, and one that because of its necessity, must not be allowed to be blurred.

PrimeTime 24 and Netlink USA, both SBCA-member satellite carriers who deliver network signals to HSD "unserved households," have addressed their reply comments to a more detailed discussion of the Grade B and other issues raised by the NAB comments. SBCA wholeheartedly endorses and supports the reply comments of the carriers. They are well thought out and to the point. It is unfortunate however that they have been required to file simply because of a proposal which is well beyond the FCC's jurisdiction.

The provisions of the SHVA, as is appropriate, regulate the distribution of network signals by satellite carriers. The strong copyright application of the "unserved household" concept, as well as its territorial implications, were conceived as more than enough to allay any concerns of the NAB, particularly since it had a hand in formulating and agreeing to the provisions governing network signals in the first place.

The controversy raised by the NAB was already presaged by the authors of the SHVA and wisely inserted into the Act. It has never been, and is not now, an issue for consideration by the Commission.

Respectfully submitted,



Andrew R. Paul
Senior Vice President

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