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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
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In the matter of)
)
Annual Assessment of the Status of)
Competition in the Market for the)
Delivery of Video Programming)
)

CS Docket No. 96-133

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REPLY COMMENTS OF THE NETWORK AFFILIATED STATIONS ALLIANCE

The NBC Television Affiliates Association, the CBS Television Affiliates Association and the ABC Television Affiliates Association (together, the "Network Affiliated Stations Alliance" or "NASA") hereby submit their reply comments in response to the Notice of Inquiry in the above-referenced proceeding.^{1/} These reply comments are filed for the limited purpose of responding to the comments submitted by The National Rural Telecommunications Cooperative (the "NRTC").

In its comments, the NRTC asks the Commission to recommend that Congress modify the Satellite Home Viewer Act (the "SHVA"), codified at 17 U.S.C. § 119, alleging that the SHVA unreasonably limits the competitive opportunities of the satellite industry by denying satellite programming providers a compulsory copyright license so that "[satellite] entities can offer network signals to all households [a satellite entity] is capable of serving." NRTC Comments at 14. As described below, there is no basis for the Commission to make such a recommendation. Indeed, while the NRTC's proposal might benefit certain competitors, it will not benefit either consumers or the development of competition.

^{1/} *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, CS Docket No. 96-133, FCC 96-265 (rel. June 13, 1996).

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The NRTC entirely misunderstands the explicitly-stated goals of the SHVA: ensuring availability of broadcast network programming to those homes that cannot receive that network from a local broadcast station and preserving the primary transmission licenses held by the affiliates. Moreover, modifying the SHVA as the NRTC urges would irreparably damage the viability of free local over-the-air broadcast television and derogate the value of the primary transmission license held by each network affiliate.

The SHVA was enacted to provide two primary benefits. First, Congress sought to ensure the availability of network programming to residents of rural areas who could not receive a Grade B network signal from traditional local over-the-air network affiliates and who did not subscribe to cable. This goal is confirmed by the SHVA's legislative history. The House Report stresses that:

[u]nder the bill, satellite carriers are provided a limited interim compulsory license *for the sole purpose of facilitating the transmission of each network's programming to "white areas"* which are unserved by that network. The Committee believes that this approach will satisfy the public interest in making available network programming in these (typically rural) areas, while also respecting the public interest in protecting the network-affiliate distribution system.

H. Rep. No. 100-887 (I & II), 100th Cong., 2d Sess. (1988) (emphasis added), *reprinted in* 1988 U.S.C.C.A.N. 5577, 5648 ("House Report").

Second, Congress sought to protect the network-affiliate relationship and the integrity of the copyright acquired by local affiliates in a free market.^{2/} This secondary goal also is manifested repeatedly throughout the legislative history of the SHVA:

This television network-affiliate distribution system involves a unique combination of national and local elements, which has evolved over a period of decades. The network provides the advantages of program acquisition or production and the sale of advertising on a national scale, as well as the special advantages flowing from the fact that its service covers a wide range of programs throughout the broadcast day which can be scheduled so as to maximize the attractiveness of the overall product. . . . [T]he affiliate also decides which network programs are locally broadcast; produces local news and other programs of special interest to its local audience, and creates an overall program schedule containing network, local and syndicated programming.

The Committee believes that historically and currently the network-affiliate partnership serves the broad public interest.

House Report, 1988 U.S.C.C.A.N. at 5648-49.

The SHVA embodies these twin principles by providing satellite programmers with a narrow exception from the traditional rule that retransmission licenses must be negotiated on the open market, much as the 1976 revisions to the copyright statute had provided an exception for cable system operators. Consequently, satellite programming providers may retransmit distant network programming under a compulsory copyright license in the marketplace so long as the homes receiving their transmissions are incapable of receiving a local over-the-air network signal and the home has not subscribed to cable within the past 90 days. 47 U.S.C. § 119(a)(2)(B), (d)(10).

The NRTC claims that this exception is insufficient to foster competition and that satellite programming distributors should be allowed to broadcast distant network programming signals into

^{2/} The legislative history also notes that, "[t]he bill balances the rights of copyright owners by ensuring payment for the use of their property rights, with the rights of satellite dish owners Moreover, the bill respects the network/affiliate relationship and promotes localism." House Report, 1988 U.S.C.C.A.N. at 5617.

the Grade B service area of local network affiliates. NRTC Comments at 12-13. In effect, the NRTC would like for the "limited interim" exception to become the permanent rule. While the NRTC argues that it is seeking parity with cable operators, the change it proposes would give satellite distributors rights that far exceed those granted to cable operators today.^{3/}

The Commission should reject this proposal. Amending the SHVA as the NRTC suggests would destroy the network-affiliate system by abrogating the value of the exclusive primary transmission rights held by the local affiliates. The networks would be stripped of their fundamental power under copyright law to determine which entity or entities should receive the right to broadcast network programming. Network affiliates would be thrown into direct competition with their own programming delivered through satellite programming providers.^{4/} Moreover, there would be little or no consumer benefit from this arrangement because all consumers already can receive network

^{3/} Although NRTC claims that satellite programmers are incapable of competing with cable systems under the present statutory scheme, this is not true. The SHVA does not prohibit satellite programmers from negotiating with the networks for a secondary retransmission license; it just does not provide for a compulsory license for such transmissions. *See* House Report, 1988 U.S.C.C.A.N. at 5630. Thus, the copyright and regulatory scheme is neutral, not tilted towards any technology. The only difference is that network affiliates have acquired the copyright for distribution of broadcast network programming in the open market; satellite programmers have not. The cable compulsory license, when applied in conjunction with the FCC's network non-duplication and syndicated exclusivity rules, protects the integrity of the copyrights acquired by local stations by requiring of duplicating broadcast programming from a distant station. If satellite programmers propose to uplink only local network affiliated programming and provide that programming only to local markets, then a different argument would be presented.

^{4/} Congress, in passing the SHVA, did not intend for local over-the-air broadcasters to compete directly with satellite programming providers. Rather, Congress sought to "establish a level playing field between the cable television and earth station industries," thereby fostering competition between the two industries. House Report, 1988 U.S.C.C.A.N. at 5631. The NRTC provides no basis to alter this original Congressional intent.

programming, either from free local over-the-air television stations or from cable operators or satellite programmers benefitting from the existing compulsory license.^{5/}

Abrogating the primary retransmission licenses held by affiliates also would jeopardize the future of free local over-the-air television. Network affiliates are, at the most fundamental level, local television stations. The affiliates provide local news and weather to their viewers, produce local public interest programming and address concerns of their immediate local communities. Without the power to maintain their licenses to transmit network programming locally, the affiliates would lose local advertising and the connection with a local audience that is vital to their existence. As the legislative history of the SHVA explains, "[d]epriving local stations of the ability to enforce their program contracts could cause an erosion of audiences for such local stations because their programming would no longer be unique and distinctive." House Report, 1988 U.S.C.C.A.N. at 5655. Quite simply, under the NRTC's theory, local television and the entire network-affiliate system would be sacrificed — against the express will of Congress — for no meaningful benefit to consumers.

In sum, the SHVA created a "limited interim" exception to the copyright laws by which Congress intended to ensure the availability of network programming to homes that could not receive such programming over-the-air. The NRTC's proposal would unnecessarily broaden that exception, abrogating basic copyright principles and seriously damaging local broadcasters in the

^{5/} There is, in any event, no evidence that the current terms of the SHVA confer any advantage on cable operators. Any advantage cable operators may have from their ability to carry network signals into white areas is addressed by the existing compulsory license.

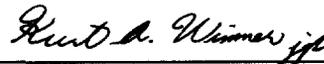
process. Because the NRTC proposal would do much more harm than good, the Commission should reject it and should not recommend any changes to the Satellite Home Viewer Act.

Respectfully submitted,

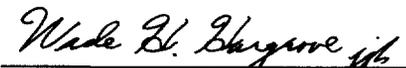
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August 19, 1996

CERTIFICATE OF SERVICE

I, Lynne Lyttle, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 19th day of August, 1996, I caused copies of the foregoing "Reply Comments of The Network Affiliated Stations Alliance" to be served via hand-delivery to the following:

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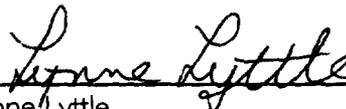
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