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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Definition of an	)	**RM** _____
Over-the-Air Signal of	)	
Grade B Intensity for Purposes	)	
of the Satellite Home Viewer Act	)	
	)	
To: The Commission	)	

EMERGENCY PETITION FOR RULEMAKING
OF THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

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SUMMARY

As a result of pending litigation, millions of rural consumers will likely be disenfranchised in the near future by a court's interpretation of the "unserved household" and "Grade B" restrictions contained in the Satellite Home Viewer Act ("SHVA") governing the retransmission of network signals by satellite. As Multichannel Video Programming Distributors ("MVPDs") marketing and distributing cable and broadcast programming to nearly 900,000 rural households via Direct Broadcast Satellite ("DBS") and C-Band satellite technology, the National Rural Telecommunications Cooperative ("NRTC"), its members and affiliates are unable, as a result of the SHVA, to serve the public and compete fully against cable operators and other MVPDs.

Under the SHVA, satellite carriers may retransmit superstation signals to home dish owner subscribers located anywhere in the United States, but they may retransmit network signals only to "unserved households" (i.e., households that, among other things, "cannot receive through the use of a conventional rooftop receiving antenna, an over-the-air signal of Grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network".)[1] The FCC, however, has never defined "unserved households" and "Grade B" specifically for purposes of the SHVA.

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[1] 17 U.S.C. §119(a)(2)(B).

These statutory restrictions in the SHVA, as currently interpreted, are incomprehensible to consumers, immeasurable as a practical matter, and anticompetitive. They have the effect of preventing at least 50% of the households at the "Grade B" contour from receiving network signals by satellite even though these households cannot receive an acceptable over-the-air picture from their local affiliates. They frustrate the ability of the satellite industry to compete effectively against the cable industry and unnecessarily restrict consumer choice in selecting video programming providers.

The Copyright Office ("CRO"), the agency responsible for administering the SHVA, has recognized this problem but has been limited in its statutory authority to address the competitive disadvantages created by the "unserved household" and "Grade B" restrictions of the SHVA. The FCC, however, as the expert regulatory authority in telecommunications matters, has been empowered by Congress to rectify this problem by explicitly defining the "Grade B" concept for purposes of the "unserved household" definition in the SHVA. By defining "Grade B" under the SHVA, the FCC can authorize satellite carriers and distributors to serve truly unserved households with distant network signals.

Literally millions of satellite consumers are threatened with termination of network service as a result of one court's interpretation of the "unserved household" restrictions of the SHVA. Massive court-ordered disconnections will be hugely disruptive to consumers, who may not even receive an acceptable picture over-the-air

from their local affiliates, and crippling to the satellite industry as a competitive force. Once disconnected from network service, many subscribers may drop satellite service altogether. They are unlikely to re-connect even if it is determined at a later date that their disrupted network reception is permissible under the law.

Many of these soon to be disconnected subscribers have been receiving network satellite service for years with the full knowledge and acquiescence of the local broadcast affiliates, who are best able to determine the extent of their coverage area. In many instances, the time for objection by local broadcasters should have expired long ago.

To remedy this serious anticompetitive situation, the FCC should seize this opportunity to eliminate this existing barrier to competition in the MVPD market by adopting a pro-consumer definition of "Grade B" for purposes of the "unserved household" definition in the SHVA. The Commission should define "Grade B," exclusively for purposes of interpreting the SHVA, as a contour encompassing a geographic area in which 100 percent of the population, using readily available, affordable equipment, receives over-the-air coverage by network affiliates 100 percent of the time. With that definition, only those consumers who in fact receive local network signals over-the-air would be prevented from receiving distant network signals by satellite. Failure of the Commission to act promptly to define "Grade B" for purposes of the SHVA will lead to the disenfranchisement of countless rural satellite subscribers and will undercut satellite technology as a competitive force to cable.

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EMERGENCY PETITION FOR RULEMAKING OF THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

Pursuant to Section 1.401 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits this *Emergency Petition for Rulemaking* requesting the FCC to establish unique definitions of Grade B contour and Grade B signal strength for the single purpose of applying the "unserved household" restriction of the Satellite Home Viewer Act ("SHVA"), 17 U.S.C. §119. To date, the Commission has not adopted definitions of these terms exclusively for purposes of the SHVA.

As a result of pending litigation, literally millions of rural consumers may soon be disenfranchised by one court's interpretation of the "unserved household" and "Grade B" restrictions contained in the SHVA governing the retransmission of network signals by satellite. NRTC has in good faith attempted to comply with the SHVA and has already

terminated network satellite service to more than 40,000 subscribers upon request by local affiliates. The uncertainty surrounding the retransmission of network signals via satellite is preventing the emergence of true competition in the multichannel video programming distribution ("MVPD") market. Millions of consumers, many of them residing in rural areas served by NRTC, its members and affiliates, may soon be disenfranchised from receiving programming of their choice as a result of these ambiguous and anticompetitive statutory restrictions.

To promote competition in the provision of video programming services, and to maximize consumer choice, NRTC urges the Commission to define the Grade B contour for purposes of the SHVA to include only the geographic area where all households, using readily available, affordable receiving equipment, receive an over-the-air signal of Grade B strength from the local affiliate all of the time.[2] Inasmuch as this matter currently is pending judicial review and has formed the basis for an injunction prohibiting

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[2] By this Petition, NRTC does not change its position expressed in its Comments and Reply Comments filed on April 28, 1997 and June 20, 1997, respectively, with the Copyright Office *In the Matter of Revision of the Cable and Satellite Carrier Compulsory Licenses*, Docket No. 97-1. In that proceeding, NRTC argued that the Grade B standard should be abandoned as a statutory standard and replaced with the same type of straightforward geographic test that is used to establish network-affiliate exclusivity. NRTC continues to argue this position before Congress. However, unless and until Congress amends its standard for authorizing the receipt of distant network signals by satellite, NRTC urges the FCC to establish a new definition of the Grade B contour for purposes of the SHVA so that the current law (albeit convoluted) is administered fairly and justly.

satellite reception of network signals by rural subscribers across the country, NRTC urges the Commission to act on an expedited, emergency basis.

I. INTRODUCTION

1. NRTC is a non-profit cooperative association comprised of 550 rural electric cooperatives, 279 rural telephone systems and several non-member affiliate organizations located throughout 48 states. NRTC's mission is to assist its members and affiliates in meeting the telecommunications needs of more than 60 million American consumers living in rural areas. Through the use of satellite distribution technology, NRTC is committed to extending the benefits of information, education and entertainment programming to rural America, on an affordable basis and in an easy and convenient manner, just as those services are available over cable in more populated areas of the country. In short, NRTC seeks to ensure that rural Americans receive the same benefits of the modern information age as their urban counterparts.

2. In 1992, NRTC entered into an agreement with Hughes Communications Galaxy, Inc., the predecessor in interest to DIRECTV, Inc. ("DIRECTV"), to launch the first high-powered DBS service offered in the United States. NRTC members and affiliates invested more than $100 million to capitalize the first DBS launch, and in return received distribution rights for DIRECTV programming ("DIRECTV®") in specific regions of the country. NRTC, its members and affiliated companies currently market

and distribute up to 185 channels of popular cable and broadcast programming -- including network signals -- to nearly 900,000 rural households through DBS and C-Band technology. With only 2% of its customer base residing in areas served by cable, NRTC's ability to provide these services is crucial to maintaining information access and a quality of life for rural America.

3. During the 12 years since its inception, NRTC has participated extensively in Congressional hearings and Commission and Copyright Office proceedings to ensure that rural America receives the same access to programming as is available in urban areas. As satellite technology has developed and flourished, NRTC has decried the slow development of competition in providing rural consumers with choices in video program delivery. The SHVA, in particular, has created unfair and anticompetitive hurdles blocking the delivery of network signals by satellite to millions of rural consumers. NRTC files this *Emergency Petition for Rulemaking* to request the Commission's prompt exercise of its discretion under the SHVA to rectify this situation.

II. THE SHVA AND THE FCC's REGULATIONS

4. The SHVA is the statutory copyright licensing scheme whereby copyrighted work (*i.e.* broadcast programming) is licensed to users, in this case satellite

carriers, at a government fixed-price and under government set terms and conditions.[3] According to the terms of the SHVA, satellite carriers may retransmit superstation (i.e., non-network) signals to home dish owner subscribers located anywhere in the United States[4], but they may retransmit network signals only to "unserved households."[5] Determining which households are unserved has been a tremendous source of controversy within the broadcasting and satellite communities. Because the SHVA does not provide clear guidance on which households may lawfully receive network signals by satellite, and no straightforward testing mechanism exists to ascertain which households are "served," millions of consumers are unfortunately caught in the middle.

5. The SHVA's defines "unserved household" as:

> (10) Unserved household. The term "unserved household", with respect to a particular television network, means a household that --
>
> > (A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

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[3] *A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals*, U.S. Copyright Office, p. i, August 1, 1997. ("CRO Report").

[4] 17 U.S.C. §119(a)(1).

[5] 17 U.S.C. §119(a)(2)(B).

> (B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

17 U.S.C. §119(d)(10)(emphasis added).

6. The Commission's rules defining "Grade B intensity" are woefully inadequate for purposes of applying the "unserved household" restriction of the SHVA. Section 73.683(a) provides a chart depicting the requisite field strength for the Grade A and Grade B contours of television stations transmitting on Channels 2-5, Channels 7-13 and Channels 14-69. These rules, however, are outdated and were not intended to be used for purposes of identifying "unserved households" under the SHVA.

7. As the Commission recently noted,[6] when the Grade A and Grade B contours were conceived in 1951, the Grade A contour was meant to define the location in an urban environment where a picture of acceptable quality would be expected to be received at 70 percent of locations, 90 percent of the time. The Grade B contour was meant to define the location in a rural environment where a picture of acceptable quality

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[6] *See* Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Memorandum Opinion and Order on Reconsideration, ¶¶37-42, May 21, 1998.

would be expected to be received at 50 percent of the locations, 50 percent of the time.[7] Use of this Grade B contour to determine which households receive "an over-the-air signal of grade B intensity" for purposes of the SHVA would have the effect of preventing at least 50 percent of the households at the Grade B contour from receiving network signals by satellite even though they cannot receive an acceptable over-the-air picture from their local affiliates. Such a result would force subscribers to cable (assuming it is available, which is usually not the case in many rural areas) and clearly be anticompetitive and unfair to countless consumers who are unable to receive a picture of acceptable quality through the use of a conventional antenna. Rural Americans, who often reside at the perimeter of the Grade B contour, would be disproportionately impacted.

8. Moreover, within Section 73.683 of the Rules, the FCC expressly recognized the gross shortcomings of the Grade A and Grade B contours. The Commission noted that the field strength contours will be considered only for the following purposes: (1) in the estimation of coverage resulting from the selection of a particular site by an applicant for a TV station; (2) in connection with problems of

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[7] *Id.* As detailed in the FCC's Third Notice of Further Proposed Rulemaking in the Television Broadcast Service proceeding 16 Fed. Reg. 3072, 3075, Docket Nos. 8736, 8975, 8976, 9175 (April 7, 1951), while the FCC provided a means to measure the Grade B contour where 50 percent of the households could receive a signal of Grade B field strength 50 percent of the time, it expected that 50 percent of the households at the contour would receive an acceptable picture 90 percent of the time.

coverage arising out of application of §73.3555[8]; and (3) in determining compliance with the minimum field strength to be provided over the principal community to be served.[9] Significantly, nothing in Section 73.683 was ever intended by the Commission to define "Grade B intensity" for purposes of identifying "unserved households" under the SHVA.

9. By the FCC's own admission, the prescribed field strengths for the Grade B contours do not equate to "true coverage" under actual conditions, and "true coverage may vary greatly from these estimates . . ."[10] As to the field strength contours, the FCC's rules make clear that the "predicted field strength contours give no assurance of service to any specific percentage of receiver locations within the distances indicated."[11] As a result, these contours as currently defined cannot legitimately be used as an indicator of whether a household is actually "unserved" by the local affiliate.

10. Based upon the FCC's own regulations and related history, the field strength measurements for a Grade B contour were never intended to define an "over-the-air signal of grade B intensity" for purposes of the SHVA. Rather, the Commission developed its rules regarding field strength contour measurements to predict mileage

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[8] Section 73.3555 contains the television duopoly and one-to-a-market rules which restrict the ownership of broadcast (radio and video) stations within certain markets.

[9] 47 C.F.R. § 73.683(c).

[10] *See* 47 C.F.R. §73.683(a).

[11] 47 C.F.R. § 73.683(b).

spacing between television broadcast stations operating on the same and adjacent channels so as to prevent interference between stations as they were initially licensed by the Commission.[12] These rules were intended to measure a geographic area where viewers are more or less likely to receive coverage — not to predict which households can actually receive an acceptable broadcast picture from their network affiliate station through the use of a conventional rooftop antenna.

III. THE "GRADE B SIGNAL INTENSITY" STANDARD OF THE SHVA IS DISENFRANCHISING MILLIONS OF CONSUMERS, IS IMMEASURABLE AND IS ANTICOMPETITIVE.

11. The inability of satellite carriers to provide network programming to consumers -- even those that cannot receive acceptable reception most of the time from their local affiliate through a rooftop antenna -- has stalled the pace of competition in the MVPD market. Unfortunately, pending Federal Court decisions interpreting the SHVA have compounded the problem and will soon result in the loss of network service by satellite to huge numbers of satellite subscribers.

12. The provision in the SHVA restricting retransmission by satellite of network signals to unserved households was included in the original statute adopted by Congress in 1988. In 1988, the satellite industry was just emerging, home satellite dishes were offering service to some consumers, but DBS service was years away. The satellite

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[12] 16 Fed Reg 3072 (Apr. 7, 1951).

industry was relatively unregulated, and as Congress considered creating the satellite copyright license, the network broadcasters expressed concern that local network affiliates would lose viewers if satellite carriers imported distant network stations. Because no FCC regulation existed to prevent the importation of distant network signals by satellite carriers, Congress adopted the unserved household restriction.[13]

13. The restriction was modeled after the FCC's network nonduplication rules applicable to the cable industry.[14] The network nonduplication rules are intended to allow affiliate broadcasters to negotiate network programming exclusivity rights with their respective networks so that the network affiliate stations are the only ones authorized to broadcast network programming in their areas. The affiliate's area of protection is determined by the terms of its programming contract with its network, but the area of protection cannot exceed an area more than 35 miles from the broadcast station.[15] Rather than using a set mileage criterion, however, Congress adopted a definition of unserved household in the SHVA based on the FCC's discretion in defining Grade B signal strength.

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[13] CRO Report at pp. 103-104.

[14] The network nonduplication rules are found at 47 C.F.R. §§76.92 - 76.97.

[15] If the station is located in a smaller television market, an additional 20 miles of protection is added for a total of 55 miles.

14. Congress revisited the satellite carrier compulsory copyright license in 1994. At that time, Congress established a temporary enforcement mechanism to permit a network affiliate to challenge a satellite carrier's provision of network signals to subscribers it believed were "served." Upon receipt of a challenge, the satellite carrier had the option of terminating the network signal to the subscriber or conducting a signal intensity measurement at the household in question to determine if it was receiving a signal of Grade B intensity at its rooftop antenna.[16] The CRO, in its Report to Congress, concluded that the temporary enforcement mechanism was unsuccessful because it did not provide a well defined, cost efficient testing regime.[17] Satellite carriers were faced with thousands of challenges from broadcasters. Unable to front the initial costs of testing thousands of individual households, satellite carriers were forced to terminate network service to those households. Uproar ensued, because consumers could not understand why they were unable legally to receive network signals, even if they were willing to pay for the service.[18]

15. NRTC has acted in good faith and already has terminated network satellite service to some 40,000 subscribers upon receipt of challenges from local network

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[16] *See* CRO Report referring to 17 U.S.C. §119(a)(8). This section expired on December 31, 1996.

[17] CRO Report at p. 123.

[18] The CRO noted that consumer confusion and complaints of their ineligibility to receive network service by satellite prompted Congress to order the CRO to review the SHVA. CRO Report at p. 108.

affiliates.[19] NRTC has diligently complied with the terms of the SHVA, which require satellite carriers, within 90 days after commencing the provision of network service by satellite to subscribers, to notify networks of subscribers to whom it is providing the network signals. Many NRTC subscribers receiving network service by satellite may be located within the so-called Grade B contour, but may not be receiving an over-the-air signal of Grade B intensity from the local affiliates.[20] It would be patently unfair, at this late date, to terminate service across-the-board to all subscribers within the Grade B contour who have for years been receiving network signals by satellite with the full knowledge and implied consent of the local affiliates.

16. While the temporary enforcement mechanism was in place, Congress expected satellite carriers and broadcasters to reach a compromise on a mechanism to measure which homes were unserved.[21] No compromise was reached. Broadcasters now

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[19] NRTC complied with all instructions of satellite carriers in "pre-qualifying" subscribers to receive network satellite service. NRTC followed the temporary enforcement mechanism requirements by immediately terminating service upon receipt of a challenge from the network. See 17 U.S.C. §119(a)(8). Although the temporary enforcement mechanism in the SHVA has expired, NRTC has continued to terminate service to households when a local network affiliate objects to a subscriber receiving network signals by satellite.

[20] Many NRTC subscribers within the Grade B contour have been receiving service for up to three to four years with the implied consent of their respective local affiliates, who are in the best position to determine the extent of their coverage area. By not objecting to service to these households, the affiliates have tacitly acknowledged their "unserved" status.

[21] CRO Report at p. 122.

have challenged satellite carriers' service to particular households by bringing copyright infringement suits against a satellite carrier.[22] There are several pending copyright infringement suits against a satellite carrier alleged to be in violation of the unserved household restriction.

17. The copyright infringement suit brought by CBS and Fox against PrimeTime 24 ("PT24") in the United States District Court for the Southern District of Florida ("District Court") is at the forefront of the pending copyright infringement suits because of the national impact the case will have and because it appears that the District Court will in a matter of days finalize a preliminary injunction against PT24.[23] On May 13, 1998, the District Court released an Order affirming in part and reversing in part the Magistrate Judge's Report and Recommendation that a Preliminary Injunction be entered against PT24 in this case.[24] The exact terms of the injunction are unclear at this point.

18. Of primary concern to NRTC is the standard the District Court will impose to measure which households are unserved. CBS and Fox have urged the Court to order the termination of network service to households within the Grade B contour

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[22] CRO Report at p. 107.

[23] A copy of the District Court Order, *CBS, Inc., et al. v. PrimeTime 24 Joint Venture*, Order Affirming in Part and Reversing in Part Magistrate Judge Johnson's Report and Recommendation, Civil Action No. 96-3650-CIV-NESBITT (S.D. Fla. May 13, 1998), is attached.

[24] *Id.*

depicted in what are known as the *Longley-Rice* maps. Use of the *Longley-Rice* maps is problematic because the Grade B contours they depict are derived through the calculation of numerous variables, many of which are not set by the FCC Rules.[25] Millions of satellite subscribers could be disconnected if the District Court determines that only subscribers residing outside the Grade B contour, as depicted in the *Longley-Rice* maps, may receive satellite retransmissions of CBS and Fox affiliates.[26]

19. Grade B contours and *Longley-Rice* maps are neither recognized in nor sanctioned by the SHVA. Massive court-ordered disconnections based on these standards will frustrate satellite consumers across the country and cripple the satellite industry as a competitive force. Once disconnected from network service, many subscribers may drop satellite service altogether and convert to cable, if available, or to other MVPD technologies. They will be unlikely to re-connect to satellite, even if it is determined at a later date that their disrupted network reception is permissible. The damage to the satellite industry will be irreparable.

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[25] Motion for Clarification of "Order Affirming in Part and Reversing in Part Magistrate Judge Johnson's Report and Recommendation," and Request for Hearing Prior to the Entry of Any Preliminary Injunction, filed by PrimeTime 24, pp. 5-6, May 28, 1998.

[26] Another practical concern particular to rural areas raised by the use of the *Longley-Rice* maps, or any other maps, is that satellite carriers cannot easily correlate street addresses with the maps.

20. To date, the FCC has not provided adequate guidelines for use in applying the "unserved household" restriction in the SHVA. The FCC should not allow a Florida District Court to usurp its authority as the expert agency in national telecommunications matters. The FCC -- not a Florida District Court -- should set national telecommunications policy. The FCC -- not a Florida District Court -- should define Grade B for purposes of the SHVA. The FCC -- not a Florida District Court -- should establish applicable maps and other criteria before consumers across the country are disenfranchised en masse from receiving network service by satellite.

21. As discussed above, NRTC, its members and affiliated companies have acted in good faith to comply with the terms of the SHVA. Nevertheless, many of NRTC's subscribers will automatically be disconnected if the Florida District Court orders the termination of service to all subscribers within the Grade B contours depicted in the *Longley-Rice* maps even though the local network affiliate has not objected to these subscribers' "unserved" status.

22. The CRO, in its Report to Congress issued in August, 1997, recognized that "[s]atellite subscriber eligibility of network signals is a problematic issue without a clear-cut solution."[27] The CRO further concluded that the Grade B standard is "less than

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[27] CRO Report at p. 131.

precise and [is] costly when applied to individual household determinations."[28] Clearly, the time has come for the FCC to address this problem as a national telecommunications issue with broad public impact, by exercising its authority to define Grade B for purposes of the SHVA.

IV. FOR PURPOSES OF THE SHVA, THE COMMISSION SHOULD DEFINE "AN OVER-THE-AIR SIGNAL OF GRADE B INTENSITY"AS THE LEVEL OF COVERAGE PROVIDED WITHIN A GRADE B CONTOUR ENCOMPASSING A GEOGRAPHIC AREA IN WHICH 100% OF THE POPULATION, USING READILY AVAILABLE AND AFFORDABLE EQUIPMENT, RECEIVES OVER-THE-AIR COVERAGE BY NETWORK AFFILIATES 100% OF THE TIME.

23. NRTC agrees with the CRO that Congress should limit retransmission of network signals based on each station's exclusive local market, rather than through the Grade B signal strength approach. Even though Congress may well extend the SHVA beyond its scheduled expiration date at the end of 1999, however, it may choose not to change the Act's basic terms, conditions and definitions. Accordingly, satellite carriers must expect to continue basing the retransmission of network signals on whether the

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[28] *Id.* at p. 132. The CRO also rejected the use of a picture quality standard because it would be too subjective, legally insufficient, and administratively unworkable. *Id.* at p. 131. Instead, the CRO recommended to Congress use of a "red zone/green zone" approach, based on local markets rather than Grade B contours and signal strength. The CRO proposed defining local markets based on each station's Area of Dominant Influence ("ADI") as used by the FCC. *Id.* ADIs are calculated by Arbitron and published in the Arbitron 1991-1992 Television ADI Market Guide. *See* 47 C.F.R. §76.55(e). The CRO reasoned that such an approach would clearly delineate geographically those subscribers who are eligible for network service and those that are not. CRO Report at p. 132.

consumer can receive "an over-the-air signal of (G)rade B intensity." Within the context of the SHVA, Congress deferred to the FCC's expertise in defining this Grade B measurement. NRTC urges the Commission to eradicate the confusion plaguing the satellite industry over the definition of unserved households, which has slowed the pace of competition in the MVPD market and resulted in consumer disillusionment with satellite service and with the local network affiliates.

24. The FCC should seize this opportunity to eliminate this existing barrier to competition in the MVPD market by adopting, well in advance of the scheduled expiration of the SHVA, a workable, consumer-friendly definition of unserved households exclusively for purposes of the SHVA. At present, predictive models are being used, regardless of whether expressly authorized in the SHVA or approved by the FCC, to determine whether a household is served. As currently defined by the Commission, however, at least half of the households at the Grade B contour of any particular station cannot receive a signal of Grade B intensity from that station yet they remain ineligible to receive network service by satellite.

25. To promote competition by satellite against cable, to maximize consumer choice in the selection of MVPD providers, and to clarify a situation that threatens to result in the termination of satellite service to millions of subscribers, NRTC recommends that the Commission initiate a rulemaking proceeding on an expedited basis to adopt a definition of Grade B signal intensity exclusively for purposes of interpreting the SHVA.

The new definition should recognize as "unserved" all households located outside a Grade B contour encompassing a geographic area in which 100 percent of the population receives over-the-air coverage by network affiliates 100 percent of the time using readily available, affordable receiving equipment. This approach would ensure that the core service area of network affiliates is protected within the SHVA Grade B contour while authorizing satellite reception by all households which in fact are unable to receive an acceptable over-the-air picture.

V. CONCLUSION

26. Within a matter of days, a Federal District Court in Miami is expected to usurp the FCC's authority by ordering the termination of network satellite service to millions of satellite subscribers across the country. The basis for the Court's order is an unduly restrictive and unreasonable interpretation of the "unserved household" and "Grade B" provisions of the SHVA.

27. The FCC should not expect or allow the Florida District Court to establish national telecommunications policy. As the expert regulatory agency in telecommunications matters, the FCC was specifically authorized by Congress to define "Grade B" for purposes of the SHVA. In accordance with that statutory authorization, the Commission must act on an expedited basis to prevent the imminent disenfranchisement of millions of satellite consumers. Massive court-ordered disconnections will be hugely

disruptive to consumers and crippling to the satellite industry. Once disconnected from network service, many subscribers may drop satellite service altogether. They are unlikely to re-connect to satellite even if it is determined at a later date that their disrupted network reception was permissible under the law. The damage to the satellite industry will be irreparable.

28. The FCC should promote competition between satellite, cable and other MVPDs, maximize consumer choice in selecting video programming providers and eliminate the confusion that has plagued this area for years by adopting a "Grade B" definition for purposes of the SHVA. At a minimum, the Commission should define "an over-the-air signal of Grade B intensity" as the level of coverage provided within a Grade B contour encompassing a geographic area in which 100 percent of the population, using readily available, affordable receiving equipment, receives over-the-air coverage by network affiliates 100 percent of the time.

WHEREFORE, THE PREMISES CONSIDERED, the National Rural Telecommunications Cooperative respectfully urges the Commission to assert its authority as the expert regulatory agency in telecommunications matters and prevent the massive disenfranchisement of millions of satellite consumers, by adopting a definition of "Grade B" for purposes of the Satellite Home Viewer Act that promotes competition by satellite against cable and maximizes consumer choice in the selection of video program providers.

Respectfully submitted,

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