BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Satellite Delivery of Network Signals	)	
To Unserved Households for Purposes	)	CS Docket No. 98-201
of the Satellite Home Viewer Act	)	RM No. 9335
	)	RM No. 9345
Part 73 Definition and Measurement of	)	
Signals of Grade B Intensity	)	

COMMENTS OF GRANT BROADCASTING GROUP

Grant Broadcasting Group ("GBG"), by its attorneys, hereby submits its comments on the Commission's *Notice of Proposed Rule Making* ("*NPRM*") in the above-captioned proceeding.[1]

At the outset, it should be emphasized that this proceeding is, in effect, the offspring of illegal actions taken by PrimeTime 24, a direct-to-home ("DTH") satellite distributor of network programming. In *two* separate cases, PrimeTime 24 was found to have violated the Satellite Home Viewer Act by distributing network programming to subscribers in "served"

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[1] GBG is the umbrella name for eight companies under the common control of broadcaster Milton Grant. The Grant companies are licensees of eight UHF television stations located in the eastern and midwestern regions of the United States. They are: WZDX(TV), Huntsville, Alabama, licensed to Huntsville Television Acquisition Corp.; KJMH(TV), Burlington, Iowa, licensed to Burlington Television Acquisition Corp.; KLJB-TV, Davenport, Iowa, licensed to Quad Cities Television Acquisition Corp.; WFXR-TV, Roanoke, Virginia and WJPR(TV), Lynchburg, Virginia, licensed to Grant Broadcasting System II, Inc.; WNYO-TV, Buffalo, New York, licensed to Grant Television, Inc.; and WLAX(TV), La Crosse, Wisconsin, and WEUX(TV), Chippewa Falls, Wisconsin, licensed to Grant Media, Inc.

areas, *i.e.*, those that reside within the Grade B contour of a local network affiliate.[2] Significantly, in one case a federal district court stated that "PrimeTime [24] has ignored or turned a blind eye to the necessity of objective signal strength testing and thus *willfully* or *repeatedly* provides network programming to subscribers under [the] SVHA."[3] Nonetheless, by virtue of a misleading public relations campaign, PrimeTime 24 has recast its unlawful conduct as a pro-consumer crusade and now stands to benefit from proposed changes to a law it has not hesitated to break at the expense of local network affiliates and their viewers. GBG respectfully submits that if there were ever a case of "unclean hands," this is it.[4]

There are a number of reasons why the Commission should not amend its current definition of "Grade B" coverage for purposes of identifying "served" versus "unserved" households under the SVHA. The core of the DTH industry's position is that the Commission's objective benchmarks for Grade B coverage do not take all terrain factors into

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2 *CBS, Inc. et al. v. PrimeTime 24 Joint Venture*, 9 F.Supp.2d 1333 (S.D. Fl., May 13, 1998); *ABC, Inc. v. PrimeTime 24, Joint Venture*, ___ F.Supp ___, 1998 WL 544286 (M.D.N.C., July 16, 1998) (Case No. Civ. A. 1:97CV00090) ("*ABC, Inc.*").

3 *NPRM* at para. 8, *quoting ABC, Inc.*, 1998 WL 544297, *2 (emphasis added).

4 Accordingly, the DTH industry's claim that millions of viewers are at risk of losing network service must be taken with a very large grain of salt. The FCC itself has stated that "[t]he evidence in the Miami and Raleigh court cases strongly suggests that many, if not most, of those subscribers do not live in 'unserved households' under *any* interpretation of that term." *NPRM* at para. 15 (emphasis added) (footnote omitted). Simply put, those DTH subscribers who receive a Grade B quality signal will continue to have access to free over-the-air programming from their local network affiliates. While DTH providers may be unhappy about the possibility that this will reduce DTH subscribership, that is of no relevance here.

account and thus inaccurately identify certain households as "served" within terrain-shielded areas. This argument, however, only tells half of the story.

Because the FCC's propagation curves only consider the effects of terrain along a few radials relatively close to a station's transmitter site, a station's height above average terrain ("HAAT") can skew lower as well as higher.[5] In addition, the FCC's current definition of Grade B coverage does not account for any signal propagation beyond the radio horizon, nor does it account for rising terrain at or beyond the horizon. As a result, there are many instances where the predicted Grade B contour *understates* a station's actual Grade B coverage, since it does not account for viewers outside the predicted Grade B contour who in fact receive a Grade B quality signal.[6] In such cases, the predicted Grade B contour incorrectly *increases* the number of "unserved" homes that are eligible to receive distant network signals from PrimeTime 24 and other DTH providers. For stations in this situation, any further reduction of the Grade B contour for purposes of the SVHA will only worsen the problem.

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5 *See also NPRM* at para. 33 ("The traditional Grade B methodology predicts a signal's strength by using radial lines extending ten miles from a television station's transmitter. This methodology does not accurately reflect topographic differences in a station's transmission area . . . .").

6 The FCC acknowledged as much in its use of the Longley-Rice prediction model to evaluate DTV interference. In that case, though the FCC limited an NTSC station's protected coverage area in accordance with f(50,50) signal propagation curves, interfering signals were calculated in accordance with f(50,10) signal propagation curves, in recognition of the fact that significant signal strength may exist beyond the f(50, 90) curves currently used to predict Grade B coverage under Section 73.683 of the FCC's rules. *Advanced Television Systems and Their Impact Upon The Existing Television Broadcast Service*, 12 FCC Rcd 14588, 14694 (1997) ("*Sixth Report and Order*").

Equally suspect is the suggestion that the FCC should adopt a predictive model that requires 99% or 100% certainty of a Grade B quality signal at any given location.[7] These proposals reflect a fundamental misunderstanding of terrestrial prediction methodology. Signal propagation formulas rely on variables that are dynamic and thus subject to change (*e.g.*, absorption, signal refraction, ground conductivity, etc.). Thus, as noted in the *NPRM*, signal strength varies randomly over location and time, and for that reason it is impossible to develop a methodology that can accurately predict every location where a Grade B quality signal will be delivered 99% or 100% of the time.[8] While such a high level of certainty may be achievable when predicting coverage from a satellite to a home receive dish (the variables related to surface anomalies being relatively insignificant in that context), the simple fact is that no such certainty is achievable where terrestrial delivery is concerned unless actual measurements are substituted for predictive models.[9]

The FCC should also resist any proposal to shrink the Grade B contour by raising the required signal intensity levels set forth in Section 73.683 of the FCC's rules. If anything, those levels should be *reduced* to reflect dramatic improvements in television reception

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7 *See NPRM* at para. 9.

8 It is worth noting that notwithstanding the "cliff" effect unique to DTV signals (*i.e.*, the viewer receives an acceptable picture or no picture at all), the FCC retained the f(50,90) statistical model in establishing the desired signal level for DTV stations, implicitly recognizing that a greater of level of certainty would be unnecessarily restrictive. *See Sixth Report and Order*, 12 FCC Rcd at 14696.

9 There is little dispute that actual measurements would be a costly and highly inefficient solution to the problem. *See, e.g., NPRM* at para. 31 ("The difference in taking actual measurements at individual households and using predictive models is significant, because measurement requires time, money and other resources that often outweigh the benefits.").

equipment since the existing levels were established in 1951. At that time, vacuum tube technology was "state of the art," receive antennas were fairly primitive, downlead losses were high, and television transmission technology was in its infancy. Since then, however, solid state technology, SAW filters, microprocessors, application specific integrated circuits (ASICs), ghost canceling techniques and other technologies have dramatically improved the picture performance of NTSC broadcasts. In the overwhelming majority of cases, the combination of increased receiver selectivity and reductions in receive and transmission system noise floors far outweighs the effect of any localized interference. Indeed, the FCC has already acknowledged the effect of improved technologies by utilizing far more aggressive receive noise floors to establish predicted coverage areas for DTV stations.[10]

In light of the above, GBG submits that the voluntary agreement between certain broadcasters and DTH providers Primestar and Netlink represents the fairest and most efficient model for resolving signal coverage disputes arising under the SVHA.[11] Because the agreement requires responsible application of propagation prediction techniques based largely on the Longley-Rice model, the Primestar/Netlink agreement reduces the number of cases where actual measurements are necessary to verify the presence or absence of a Grade B signal. Moreover, in those relatively small number of cases where actual measurements are required, the agreement establishes an objective measurement standard that properly incorporates antenna height differences that apply to single family homes and multiple

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[10] *Sixth Report and Order*, 12 FCC Rcd at 14690.

[11] *See NPRM* at para. 24 n.53.

dwelling units (MDUs).[12] The Primestar/Netlink agreement thus represents an extremely cost-efficient and expedient solution when viewed against the time and expense of evaluating signal strength at the exact location of every home in the United States using a new predictive model that incorporates all possible environmental and man-made factors that might affect signal propagation. The unavoidable fact is that it is far less expensive and time-consuming to make objective field strength measurements at the relatively small number of homes where *existing* prediction methods cannot clearly resolve the dispute.

In sum, GBG submits that the touchstone principle of localism must be given the highest priority in this proceeding. No less an authority than Congress has declared that "[b]roadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate,"[13] and that "[t]here is a substantial governmental interest in promoting the continued availability of . . . free television programming, especially for viewers who are unable to

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12 Regardless of which vehicle for dispute resolution is ultimately adopted in this proceeding, the FCC's standards for actual measurements should at a minimum require use of an outdoor antenna of reasonable height and performance. Here it should be noted that the FCC has based its DTV allotments and service areas on the assumption that outdoor antennas will be used to receive DTV signals. If the FCC reverses its position on outdoor reception, DTV will likely fail, since the FCC's DTV coverage areas cannot be sustained with indoor reception. Furthermore, the FCC should reject the DTH industry's claim that directional receive antennas should not be considered when predicting Grade B coverage. In most areas of the country, antenna arrays are available with directional elements that allow reception on multiple vectors. These antenna arrays do not require motorized reorientation when switching between local channels. Ironically, a DTH system requires a viewer to purchase a highly directional but more costly receive dish in order to receive network signals already available over the air at no cost.

13 1992 Cable Act, Section 2(a)(11).

afford other means of receiving programming."[14] The very same local programming that is so highly valued by Congress will be put at serious risk if the FCC takes any action which gives DTH providers more opportunities to deliver distant network signals into areas already served by local network affiliates. Given the DTH industry's track record of noncompliance with the *existing* regulatory scheme, there is little question that DTV providers will stretch or even go beyond the limits imposed by any new rules adopted in this proceeding, thus accelerating the erosion of local network audiences caused by PrimeTime 24's illegal conduct. The public interest demands that the FCC do whatever is necessary to avoid that result.

Respectfully submitted,

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[14] *Id.*, Section 2(a)(12).