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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

**Satellite Delivery of Network Signals
to Unserved Households for
Purposes of the Satellite Home
Viewer Act**

**Part 73 Definition and Measurement
of Signals of Grade B Intensity**

**CS Docket No. 98-201
RM No. 9335
RM No. 9345**

COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Clear Channel Communications, Inc. ("Clear Channel"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding. Clear Channel, through a wholly-owned subsidiary, holds licenses for 12 television stations.¹ These comments oppose any change in the definition of Grade B intensity that would affect stations' ability to provide local television programming to members of their communities.

¹ Clear Channel Television Licenses, Inc. ("CCTL") is the licensee of WPML-TV, Mobile, Alabama; KTTU-TV, Tucson, Arizona; KLRT-TV, Little Rock, Arkansas; WAWS-TV, Jacksonville, Florida; KAAS-TV, Salina, Kansas; KSAS-TV, Wichita, Kansas; WFTC-TV, Minneapolis, Minnesota; WXXA-TV, Albany, New York; KOKI-TV, Tulsa, Oklahoma; WHP-TV, Harrisburg, Pennsylvania; WPRI-TV, Providence, Rhode Island; and WPTY-TV, Memphis, Tennessee. CCTL is also the permittee of KBDK-TV, Hoisington, Kansas.

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Clear Channel urges the Commission not to change its current definition of Grade B signal intensity. As set forth in greater detail below, revision of the Grade B standard at this time would: (a) go beyond the Commission's authority under the SHVA; (b) reward DBS providers that misled consumers and ignored applicable provisions of the law; (c) interfere with stations' ability to serve their local markets and undermine the economic basis of the network-affiliate relationship; and (d) impede Congressional efforts to craft effective and long-lasting measures to address distribution of network programming by different technologies.

1. The Proposed Modification Of Grade B Signal Intensity Goes Beyond The Commission's Intended Authority Under SHVA.

Clear Channel agrees with the position of the National Association of Broadcasters (NAB) and other commenters in response to the petitions that prompted the Commission to launch this proceeding—that the Commission lacks legal authority to modify the Grade B signal intensity standard which is the basis for identifying unserved households.² Thus, Clear Channel disagrees with the *Notice's* tentative conclusion that the definition of Grade B is not frozen. There are serious legal questions as to whether the Commission can use a copyright statute, enacted by Congress for the limited purpose of creating a compulsory license to enable truly unserved households to obtain network programming via DBS, to advance another policy goal cited in the *Notice*: to

² See e.g. Comments of the National Association of Broadcasters 21-26; Further Comments of the National Association of Broadcasters 6; Comments of the Network Affiliated Stations Alliance 4, 17, 21, 24-26; Comments of the Small Cable Business Association 1-7.

promote competition among multichannel video programming distributors.³ While this goal is a worthy one, Clear Channel submits that it is for the Congress, rather than the FCC, to revise the SHVA for such a purpose.

Even though Clear Channel has fundamental differences with the Commission's view of its authority, the company notes with approbation the Commission's view, as expressed in the *Notice*, that its jurisdiction in this area is, at best, extremely limited. Specifically, if the Commission proceeds with its proposal to alter the Grade B standard, Clear Channel urges it to adhere to its apparent inclination to limit any changes to the SHVA context only, to avoid unleashing unintended and disruptive changes in other regulatory areas that are based on the definition of Grade B.⁴ In addition, Clear Channel supports the Commission's conclusion that the SHVA limits the Grade B-related proposals it can make and, in particular, that the Commission does not appear to have statutory authority, in effect, to reverse judicial rulings against unlawful DBS distribution of network signals.⁵ Finally, the Commission views its current Grade A standard as a constraint on the extent to which it can amend the more comprehensive Grade B.⁶ All of these limits on the Commission's authority to act, together with the policy reasons set forth below, lead to the conclusion that the Commission should defer to Congress in formulating a solution to a "crisis" of the DBS industry's own making.

³ *Notice*, at para. 15.

⁴ *Id.*, at para. 22.

⁵ *Id.*, at para. 15.

⁶ *Id.*, at para. 28.

2. The Proposed Changes Would Produce Harmful and Unintended Consequences.

a. The Proposal Would Reward Misleading Practices and Violations of Law.

As noted above, the Commission is well aware of judicial findings that DBS carriers have engaged in widespread violations of the SHVA's prohibition on delivery of network signals to households that receive over-the-air network service. Accordingly, the petitions which requested this proceeding should be viewed as nothing more than an attempt to cure deliberate violations of the law by arguing that the current FCC definition of Grade B signal—and not certain providers' own misleading and illegal practices—will force some satellite consumers to lose access to network television broadcasts.

Instead of complying with the SHVA, satellite providers have attempted to create the need for a new definition of a Grade B signal by intentionally making the current definition infeasible. Satellite providers have been subscribing households to receive distant network signals not because of the residents' actual inability to receive an adequate Grade B signal as prescribed by the SHVA, but based on consumers' unverified, self-reported inability to receive an adequate over-the-air network signal.⁷ In these circumstances, it is patently unfair to change the law to conform to satellite providers' actions rather than expecting satellite providers to conform their actions to the law.

⁷ See *CBS, Inc. v. Primetime 24 Joint Venture*, 9 F.Supp.2d 1333, 1337 (S.D. Fla. 1998)

Like its colleagues in the broadcasting industry, Clear Channel is concerned with the plight of DBS subscribers who face the prospect of having their network signals cut off. Further, Clear Channel supports television stations' efforts to work with the Commission, Congress and individual unserved subscribers to avoid unnecessary disruptions of service. Should the Commission accede to DBS providers' requests, however, the Commission would establish the dangerous precedent that agency "bail outs" are available to shield industries engaged in illegal activities. The Commission instead should make every effort to facilitate a regime that would allow the consumer to receive local broadcast signals and not permit satellite providers to benefit from their illegal actions.

b. The Proposal Would Interfere With Local Stations' Ability to Serve Their Markets.

It is clear that Congress did not intend for the distant network feeds that DBS providers currently offer subscribers to become a widely available substitute for local television service. Rather, Congress created a limited compulsory license for DBS retransmission of distant network signals only in very limited circumstances where no local service is available.⁸ The Commission, too, has recognized "the important role

⁸ Two separate House Committee Reports pertaining to the 1988 SHVA expressly state that the "white area exception" was enacted "in recognition of the fact that *a small percentage of television households* cannot now receive clear signals embodying the programming of the three national television networks." House Judiciary Committee Report, H.R. Rep. No. 100-887, pt. 1, at 18 (emphasis added), *reprinted in* 1988 U.S.C.C.A.N. 5611, 5621; *accord* House Energy and Commerce Committee Report, H.R. Rep. No. 100-887, pt. 2, at 19 (1988) (emphasis added), *reprinted in* 1988 U.S.C.C.A.N. 5638, 5648. Further, the House Energy and Commerce Committee expressly characterized these unserved white areas as "typically rural." *Id.* Congress repeated this characterization in enacting the Satellite Home Viewer Act of

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that local broadcast stations play in their communities.” *Notice*, at para. 15. Should the Commission, through a modified Grade B standard, accept a more expansive definition of unserved households under the SHVA and allow DBS providers to transmit distant network signals to households that can receive local signals with the proper antenna, local programming and information available to all households in many communities will be reduced as audiences in those communities are eroded. With the loss of audience mass and the corresponding loss of advertising revenues, not only will the households that subscribe to satellite delivery systems be deprived of the local service, but local service for all households in the redefined communities will be reduced.

c. The Proposal Would Jeopardize The Integrity Of The Network/Affiliate Relationship.

A system of broadcasting based on local stations serving as outlets for national network programming has served the country well for many years. Over the years, the Commission has adopted a number of rules in furtherance of the integrity of this system. In addition to territorial limits on exclusivity of syndicated programming, existing rules applicable to cable TV also are designed to foster a network affiliation system that assumes exclusivity within the source area. *See, e.g.* 47 C.F.R. § 73.658(m) (territorial limit rules), 47 C.F.R. § 76.92 (1997) (cable system must delete duplicative non-local network programming upon request of the local affiliate with

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1994 [the “1994 SHVA”], Pub. L. No. 103-369 § 2, 108 Stat. 3477 (1994). At that time, the Senate Judiciary Committee reported that it “is especially aware of the importance of home satellite viewing to households in *rural areas*.” S. Rep. No. 103-407, at 8 (1994) (emphasis added).

network non-duplication rights); 47 C.F.R. §§ 76.151, 76.153 (1997) (cable system must delete duplicative non-local syndicated programming upon request of a program supplier or a local station with exclusive rights). A modification of the Grade B standard that would dramatically shrink the existing service areas of local stations—even if limited to the SHVA context—would undermine the carefully developed economic relationship between affiliates and their networks.

3. The Commission Should Avoid Taking Actions That Would Impede Congressional Efforts To Craft Effective, Long-lasting Measures To Insure Distribution of Network Programming.

As a result of recent technological advances, “local-into-local” distribution of network signals affords a more effective, fairer means of incorporating broadcast network programming into the service packages being received by DBS subscribers. While legislation to provide “local-into-local” service failed to come to a full vote in 1998,⁹ House Commerce Committee Chairman Bliley (R-Va) and Senate Commerce Committee Chairman McCain (R-Ariz.) are committed to reintroducing this legislation in the next session.¹⁰

However, to DBS providers’ apparent dissatisfaction, these legislative proposals would require satellite providers to carry, upon request, all non-duplicative broadcast signals located within the relevant local market in order to qualify for such a compulsory

⁹ See H.R. 2921 (1998); S. 2494 (1998).

¹⁰ See 144 Cong. Rec. E1999 (Sept 10, 1998) (“I [Bliley] just would like to state for the record, my firm commitment to revisiting and resolving these issues in a comprehensive manner early next year...”); *Statement of Senator John McCain Chairman, Senate Committee on Commerce, Science, and Transportation: Full Committee Hearing on S. 2494, The Multichannel Video Competition Act of 1998* (October 1, 1998)

license. This solution represents the current equilibrium point in a delicate legislative process which must balance the interests of broadcasters, satellite carriers, cable providers, and the public. While it is unclear at the present time exactly where the ultimate balance will be struck, the Commission should refrain from taking any action now that would tend to compromise Congress' ultimate ability to craft a solution.

"Local-into-local" is the most promising solution to the problem of network programming availability. It would make broadcasters' local programming available to DBS subscribers and would preserve the economic integrity of the network/affiliate relationship. Clear Channel strongly supports this legislation to amend the SHVA to provide for "local-into-local" distribution, with appropriate must-carry and retransmission consent rights for local stations. Indeed, it is only fair that in exchange for their valuable copyright license DBS providers should be willing to accept obligations to which their competing distribution media are subject. Rather than advancing the interests of consumers in the long run, precipitous adoption of Grade B signal redefinition proposals could have the unfortunate effect of destroying the momentum building for a legislative effort that promises ultimately to provide a more effective solution.

4. Conclusion

Efforts are underway to provide a fair, workable and effective means of insuring availability of network programming that employs the most appropriate distribution technologies for each situation. In light of this impending resolution, it would be inadvisable for the Commission to tamper with a standard that has been central to broadcast regulatory policy for years, that is familiar, that provides certainty and that

has worked well. To do so at this time would only encourage would-be violators of the Commission's rules to ignore the rules and then seek a "bail out." In addition, it would unnecessarily jeopardize broadcasters' ability to serve their customary local audiences and would strain the integrity of the network/affiliate system of broadcasting. Accordingly, Clear Channel urges the Commission to refrain from modifying the definition of Grade B signal intensity and, instead, to throw its support behind Congressional efforts to enact a more comprehensive and promising "local-into-local" provision.

Respectfully submitted,

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