

ACC Satellite TV

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RECEIVED

DEC 30 1998

FCC BUREAU

December 24, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

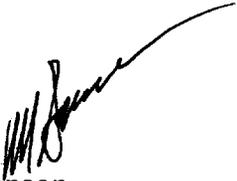
Re: My Comments Re: RM9335 (98-201) Delivered 12/11/98

Dear Ms. Roman Salas

According to UPS proof of delivery, my 13 page comments (original, plus 9 copies) were delivered to the Office of the Secretary of the FCC on 12/11/98. I do not see those comments posted on the ECFS (Electronic Comment Filing System) with other comments of the same proceeding. I have searched both by RM9335 and Proceeding 98-201. I would like to be sure that those comments were in fact properly delivered to the Commission. And if they were delivered, I wonder why those comments are not posted (or why I can not find them) on the ECFS.

My Reply Comments delivered much later (12/21/98) are found on the ECFS.

Sincerely



Mark Sorensen

ATTACHED:

- UPS PROOF OF DELIVERY
- MY COMMENTS OF 12-10-98 DELIVERED TO THE COMMISSION 12-11-98



No. of Copies rec'd 0
List ABOVE

Advanced Communications Company
Contractors License #639103 - Bureau of Electronic And Appliance Repair #E29257



United Parcel Service

DELIVERY NOTIFICATION

December 24, 1998

Dear Customer,

This is in response to your request for delivery information concerning the shipment listed below.

To : WASHINGTON, DC US

Tracking Number	1Z20W1040140751242
Service Level	NEXT DAY AIR
Origination Date	12/10/98

According to our records, this parcel was:

Delivered on	12/11/98 at 8:16AM
Left at	MAIL ROOM
Received by	HAWKES

Receiver's Signature :

Thank you for giving us the opportunity to serve you.

Sincerely,

United Parcel Service

RECEIVED

DEC 30 1998

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

~~FCC FILE ROOM~~

In the Matter Of)
)
Definition of an Over-the-Air Signal of) RM 9335
Grade B Intensity For Purposes Of The)
Satellite Home Viewers Act)

Comments of Mark F. Sorensen, General Partner, ACC Satellite TV

ACC Satellite TV is a retailer, installer and servicer of DBS, TVRO and VSAT satellite systems, as well as a retailer, installer and servicer of conventional broadcast antenna receiving equipment and systems. Among other items we actively sell, install and service DISH Network (EchoStar), DirecTV/USSB, and Primestar DBS satellite systems. Additionally we provide the installation and service of DBS systems for various major retailers serving our area. The majority of our service area is within the Chico-Redding (California) television DMA. In the matter of the "Delivery of Network Channels via Satellite" we are clearly "on the front lines" with consumers. On a daily basis our job is to meet customer expectations with regard to the performance of satellite TV systems, consumer electronics, and local broadcast antenna receiving equipment, or to change those customer expectations (when possible) to match reality. I have personally been in the consumer electronics business for over 20 years, and have been a licensed Amateur Radio Operator for over 22 years.

There is no question in my mind that the single largest barrier to DBS system sales, and by far the largest area of customer confusion, misconception and dissatisfaction is with the terms of the Satellite Home Viewers Act (SHVA) that restrict the delivery of network channels via satellite.

COMMENTS ON THE SATELLITE HOME VIEWERS ACT ("SHVA")

If the terms of the SHVA were applied to other items: Citizens of the United States of America who lived (for example) in Washington DC would be prohibited from subscribing to the New York Times Newspaper, thus protecting the local Washington newspapers from "out of market" competition and protecting (prop-up) their advertising revenue, and would maintain a paper with "local" focus. Or further, Ford Motor Company could prohibit me from purchasing a Ford car from a dealer in a distant town, insisting that I purchase from my *local* Ford Dealer. Next, are we individual "households" to be "assigned" to a particular grocery store that "serves our area"? I believe that all rational ordinary reasonable people would agree that each of these analogies are reasonably applicable, and that none of the above restrictions on the delivery of newspapers, vehicles or groceries would ever be tolerated by the American people. Why are such restrictions placed upon the delivery of television channels?

The terms of the SHVA that restrict the delivery of network channels are merely protectionism for the broadcast industry, they do not serve the public, and place Satellite TV at an obvious disadvantage to Cable TV. In deed Cable TV openly advertises and laughs about the unworkable situation placed upon Satellite Industry, it's dealers, and it's customers. Cable TV could not have realistically hoped for a better SHVA. Some would argue that "must carry" regulations, SHVA regulations and the like serve to preserve local broadcasters, when in fact this type of socialist activity is nothing more than simple protectionism for the broadcasters at the expense of consumers, the satellite TV industry, and clearly reduces competition in the video delivery marketplace.

The very definition of a "network affiliate station" is itself purely arbitrary. Why are "Network Affiliate Stations" singled out for protection? When in fact network originated programming consists of a minority of an individual station's programming as a whole. The restriction effectively censors

network and non-network programming and effectively prevents citizens from receiving even the non-network programming offered by “distant” network affiliate stations. Even “distant” seems arbitrary as in my Chico-Redding, CA DMA area many consumers view nearby Sacramento or San Francisco as very near. Even if someone in California wants to watch New York network stations – why is this activity prohibited? Honestly, the SHVA restrictions are restrictions that I would expect in China, Iraq, etc, but not in the US. Consumers have many valid reasons¹ for wanting both local and distant network channels available to them. Satellite technology offers this diversity, but Federal law prohibits a citizen and the marketplace from making any choice in the matter.

At all levels, the public, The Federal Government, Congress, the FCC, et al roundly criticize Cable TV and the lack of competition in video delivery market place, yet in many ways it is Federal laws and regulations that serve to protect the status quo, the SHVA is a perfect example.

I firmly believe that the copyright license for satellite TV should contain no restrictions with regard to “served” and “unserved” homes. I see no legitimate reason to censor the American public in this way. The Federal Government can not possibly demonstrate a desired “end” to justify these improper “means”. I firmly believe that the SHVA restrictions are a breach of the freedoms granted in the Constitution of the United States of America.

The SHVA restriction “Has not subscribed to cable TV in the past 90 days” is a restriction that any impartial ordinary reasonable person would properly evaluate as pure 100% protectionism for broadcasters and Cable TV operators. Congress should be fully embarrassed with this provision.

The effects of the SHVA restrictions clearly place satellite TV at a distinct and severe disadvantage to Cable TV. Satellite TV has the technical ability to better serve its customers, but Federal laws including the SHVA serve as an artificial barrier to that ability.

No one is suggesting that the owners of intellectual properties be cheated in some manner. It

appears that the copyright royalty collection and dispersion process could fulfill its intended role.

Satellite carriers of "Network" channels pay royalty fees to the US Copyright office, and those funds are dispersed to the copyright owners. I can not accept that the intentions of any copyright law would be to commit outright censorship, restraint of trade, prohibition of interstate commerce, and the like.

Realizing that the Commission is unlikely to completely preempt the SHVA restrictions on the delivery of network channels via satellite, I offer the following comments:

THE CURRENT DEFINITION OF "GRADE B" IS INAPPROPRIATE FOR USE WITH THE SHVA.

While Grade B signal intensity may serve its intended use to minimize overlapping radiation patterns of TV stations, it serves no useful purpose in the SHVA. Any signal intensity reading says nothing about whether or not an individual home can receive it's local network affiliate station and that it can ultimately produce a CUSTOMER ACCEPTABLE PICTURE at the customer's television. Current Grade B is completely irrelevant for use under the SHVA as it completely fails to qualify or quantify the desired end result of "picture quality" and "reliability". If some sort of measurement standard is to be used for the SHVA it ought to be one that satisfies consumer requirements. Consumers have no interest in any signal strength standard, dB μ V/Meter readings and the like. Consumers are merely interested in results, such as perfect picture and sound quality 99% of the time.

Consumer's today request, in deed demand near perfection with regard to TV performance. Today, even customers well within the "Grade A" complain about noise, ghosting, and the like. In deed we have customers in the small community of Cohasset (Chico), CA who are fully within the Grade A contour of KHSL-CBS and KCVU-Fox who can not produce a picture that any reasonable person would call "Acceptable". Pictures from these stations are full of ghosting despite any efforts at

attenuation, amplification or antenna orientation. Attachment 1 is a waiver issued to one such resident of this area who we verified has far above a Grade B intensity for KHSL-CBS, yet correctly was granted a waiver by KHSL-CBS, because the consumer can not produce an acceptable picture. I assure you that I could identify hundreds of residential homes in my small area that are improperly represented by any of the predictive methods put forth so far. I guarantee that these citizens and thousands of others would be misrepresented nationwide by the best of predictive methods. The current "zip code restrictions" put forth by the NAB and used by Netlink and Primestar improperly prevent the citizens of Cohasset, CA (95973) and many other locations from receiving any network channels via satellite. Meanwhile the public is fully confused over this issue that has been intentionally misrepresented by Cable TV efforts (negative advertising), and even when the situation is accurately described it leaves the ordinary person confused with it's complexity and lack of logic.

Today's environment is far more hostile to TV signals than was the case in the 1950's when "Grade B" was defined. By a factor of millions, more sources of interference exist today in the form of electrical transmission lines, electric motors, and various electric and electronic appliances that produce "noise". Additionally humidity, weather and other environmental and atmospheric conditions cause picture quality and signal strength to change during the course of a day, and during the course of a year, and cause changes in the intensity and effects of noise and interference.

A television receiver in the 1950's was incapable of displaying the video detail of today's TV sets. While this improvement is self evident, it serves to make any interference much more noticeable and objectionable to the viewer. Additionally, consumers expectations for the performance of their TV is far higher today than it was in 1960 when they were amazed to see any picture, with or without color.

At this moment the Commission should not consider that DTV may eventually solve some reception problems. Much of the US will not see HDTV broadcasts for years, and it is completely

unknown as to when DTV sets will be found in significant numbers of homes. The Commission should assume that analog broadcasting is the primary means by which households will receive "local" network affiliate stations now, and for the foreseeable future. Any predictive methods and signal measurement standards should reflect this fact. If and when DTV serves significantly all of the US homes then the Commission should change the predictive and measurement standards to reflect the technology and marketplace at that time.

SIGNAL MEASUREMENT METHODS

There can be no question that the Commission's current method of measuring the field strength of over-the-air signals in a station service area¹ is in fact a burdensome, uneconomical, impractical method of measurement for the SHVA and the thousands of locations where it would need to be employed. That method completely fails to represent signal levels at the consumer's television and fails to use a consumer acceptable antenna mounted in a consumer acceptable manner. In deed Congress showed some wisdom in that while early drafts of the SHVA specifically contained reference to Section 73.683², specific reference to Section 73.683 was not part of the final legislation. The Commission should assume that the reference was removed intentionally. Thus inviting the Commission to define and update (whenever required) "Grade B" and it's measurement standard as technology and the marketplace change. The marketplace is begging for a change.

It would appear that even the network stations themselves have disregarded the measurement methods of Section 73.683. Conversations that I have had with local affiliate station personnel indicates that they either have no signal measurement equipment, or old, antiquated, uncalibrated signal measurement equipment. Additionally it appears that no local station has recorded any land based

¹ 47 C.F.R §73.683

signal measurements recently, if ever. Any maps that they use for the “sales department” are of unknown origin. In one such discussion with a station Chief Engineer where I expressed surprise at their claimed territory (knowing that terrain was a problem) the Chief Engineer explained that the map was based on aerial signal measurements. Yes, measurements from an airplane in flight. Apparently “challenges” to network channel eligibility are done so by a “wet finger in the wind” method whereby station personnel merely guess at a customer’s eligibility based upon an address, or perhaps drive to or merely drive by the residence in question and look at the picture on a portable television to decide if the picture is “acceptable” to the station personnel viewing the picture³, without the benefit of a signal measurement, and certainly not the measurement method outlined in Section 73.683. Despite my efforts at discovery I know of no signal measurement ever taking place in accordance with Section 73.683 by anyone anywhere. Despite what the NAB filings, lawyers, and lobbyists may say, it certainly appears that the broadcast industry itself regards Section 73.683 as burdensome, uneconomical and unnecessary. And at least in my arguably small sample, the industry does not use that method at all.

One local affiliate station refuses to take any action on a waiver request until the consumer supplies the station with a letter from an “antenna or satellite dealer” vouching for the fact that the customer “does not receive a viewable picture using an outdoor antenna”. No signal test needs to be conducted. While I fully appreciate this simple, results based, low cost approach, it seems to be in sharp contrast to the methods requested by the NAB and certain court decisions. And again it appears that real world application differs greatly from the formal procedures.

² 47 C.F.R §73.683

ANTENNAS

Most customers do not want, and many will not tolerate a “conventional rooftop antenna”. This relic from the 1950’s is doomed to die. While the sales of antennas may have recently increased, it is merely the result of the revolt against cable TV, where angry consumers will do anything to dump their cable company. And in most areas consumers have no choice but to yield to an antenna (or cable) if they want “Network Channels” at all. Consumers demand an alternative to the outdated technology described as a “conventional rooftop antenna”. While DTV may eventually deliver improved performance of off-air antennas, the aesthetics of a conventional rooftop antenna are not well accepted by the average consumer, and will be avoided by consumers when any reasonable alternative exists.

When possible, consumer’s request attic mounted antennas, small omni-directional antennas and the like. Consumers do not want antennas on the peaks of their roofs visible from all angles, and I would completely reject a “30 feet from ground level” requirement as most homes are not 30 feet tall, and concern for aesthetics prevent such an installation. A 30-foot standard completely contradicts what the market place wants.

The definition of an antenna ought to be one no larger than 18” in diameter located at the TV, or in the attic. And that is the antenna that should be used in any predictive models, and signal strength measurements. It is unconscionable that a Federal law would force a satellite TV customer to accept an ugly objectionable off-air antenna solution when technology offers new solutions that offer the performance demanded by the marketplace (distant, and local-into-local channel delivery via satellite). This off-air antenna requirement for “network channels” effectively discourages satellite system purchases, and serves as a very sore point of dissatisfaction with satellite TV ownership.

³ See Attachment 2

My particular TV DMA market adds interest to this question. KHSL-CBS (VHF) & KCVU-Fox (UHF) have transmitters roughly 15 miles Northeast of my location. KNVN-NBC (UHF) is approx 45 miles North. KRCR-ABC (VHF) and KIXE-PBS (VHF) are Northwest approx. 100 miles. Not only are consumers unenthusiastic about antennas, but add a rotor and now you have a product that no one really wants. In a multi TV situation the rotor control is unavailable to some viewers and causes obvious conflicts for it's desired setting. As we move throughout our service area (the entire DMA, plus) we need many different options to deliver any local signals, further complicating the situation. This situation and many like it around the country strengthen the position that any measurement standards and predictive methods should use omni-directional antennas, mounted in a consumer acceptable manner.

PREDICTIVE METHODS

Currently, and for the foreseeable future I can not tell a caller (potential customer) if and specifically which network affiliate stations they can expect to receive without conducting a detailed question and answer session with the caller. Even then I frequently can not offer a "straight answer" because a signal test would need to be conducted. Using some of the (seriously flawed²) zip code lists I may be able to offer a "current" answer as to what channels are available via satellite⁴, but any verbal description of off-air picture quality is purely subjective. Any marketplace demands that the seller give strait conclusive answers as to what the buyer will receive, with network channels that is not possible today.

⁴ Even the current "zip code lists" "red light, green light" lists do not offer a permanent answer. Just because a consumer qualifies today, I can not assure them they will qualify after March 01, 1998, or after the next time the legal wind blows.

EchoStar's recommendation is certainly closest to what the market demands. As I would agree that any predictive method must ensure that a perfect picture is delivered to 99% of households, 99% of the time, with a 99% confidence factor. However, I have zero faith that any predictive method could achieve this level of accuracy or any acceptable level of accuracy while truly representing the effects of terrain, buildings, water towers, etc. And no faith that a predictive method could be developed that would also be economical, technically feasible, orderly, and most importantly "user friendly", and understandable by the average consumer who just wants to watch TV without being bothered by all of this. Consumers will revolt against the "complex" in favor of the "simple" every time. To place the burden of any predicative method that fails to meet the 99%/99%/99% threshold upon the satellite industry would be a burden indeed, a "win" for Cable TV, and a defeat of competition in the video delivery marketplace.

LOCAL-INTO-LOCAL⁵

Directly related to this proceeding is the question of local-into-local. It is important to request that the FCC adopt rules that would directly, or at least the Commission should vigorously support congressional action that would forever clearly define the "local-into-local" delivery of all broadcast channels (network and non-network) as a perfectly legitimate delivery of TV services. Such a delivery of local-into-local should have a specified copyright fee of \$0.00 per subscriber. And such a delivery of local-into-local should be completely without "must carry" regulations – the marketplace should decide what channels are and are not carried.

⁵ Local-Into-Local is where "local" channels are delivered to their natural local market. EG: the delivery of Los Angeles local channels to households in Los Angeles is "local-into-local", and is not clearly defined as a legal activity.

CONCLUSION / RECOMMENDATION

The Commission should preempt the provisions of the SHVA that place any restrictions on the delivery of network channels by satellite carriers. No restrictions should be placed upon the delivery of "Network" or other television channels. The American consumer should be able to purchase whatever channels they choose from whatever source they choose without restraint. The current law is repressive censorship. A breach of the freedoms granted by the Constitution of the United States of America.

(Alternatively, believing that the above request will not be fulfilled): The Commission should immediately define an "Acceptable Picture" "Grade B" standard for use with the SHVA. Any predictive method should be one where a "served" area is one where a perfect picture can be produced in 99% of households, 99% of the time, with a 99% confidence factor from all affiliate stations using an omni directional antenna no larger than 18" in diameter, when placed at the TV receiver or in the attic.

The Commission should immediately define a simple, economical testing procedure when verification is required. Such a measurement standard should be one that would predict with a 99% certainty factor, that the household in question can produce an acceptable picture at their TV from all local affiliate stations 99% of time using an omni directional antenna no larger than 18" in diameter, when placed at the TV receiver or in the attic.

In the above 2 paragraphs, please note the phrase "from all local affiliate stations". This is intended to specify that a "served area" be one where 99% of the households can receive all (100%) of the local network affiliates 99% of the time, with a 99% confidence factor. If an area is without an "acceptable picture" from one single network affiliate station (even the absence of an affiliate), it should be deemed as "unserved". We need to have a simple "yes" or "no", "served" or "unserved" (period) designation for each area. Not "served" and "unserved" by each network independently creating 4 different answers for one area. Please – no more 'partially pregnant' area lists.

The NAB should be required to pay for and produce any predictive methods, maps, and pay for any verification testing, as it is they who request it.

Satellite Broadcasters should be immediately granted permissions to deliver local channels to local homes, without restrictions. With a clearly defined copyright fee of \$0.00 per household. Without "Must Carry" regulations. Allow the marketplace to decide which stations will be carried, and which markets will be served by "local-into-local" TV transmissions. In deed I consistently believe that "must carry" regulation should never be applied to satellite TV, Cable TV, Digital TV, or any other delivery. The Commission, the Federal Government, et al should never micromanage content in such a way.

The US Copyright Office should be forever barred from forcing one video delivery method to pay a different copyright fee than another video delivery method for the same signal. And grant all forms of video delivery permanent licenses. (Currently Cable TV has a permanent license, Satellite TV must fight for one every few years.)

Strengthen program access rules. Disallow predatory pricing where cable pays less for a channel than satellite. Disallow the predatory delay tactics and games that Cable TV owned channels play with DBS companies. Please do not allow the vertically integrated cable companies to choke off programming/channels/content from their competitors.

Respectfully submitted,

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Addendum A

Here are a few examples and common reasons that consumers express to us, as to why they want distant channels (network & non-network) via satellite:

My local affiliate does not carry a program that I want to watch.

My local affiliate does not carry sports events that I want to watch.

I enjoy receiving network programming from another time zone.

I want digital stereo and surround sound encryption, not available from my local affiliate.

I am from Los Angeles and would like to watch that NBC affiliate

I do not want a "roof top antenna".

I do not want to watch my local affiliate.

I am willing to pay to watch a different network affiliate station.

I watch my local affiliate, but I also want to pay to sometimes watch a different affiliate.

I live in Chico, but I work in Sacramento – I want to watch Sacramento stations.

The picture and sound quality from my local affiliate is not as good as my satellite picture and sound quality.

All "Network Affiliate Stations" do not carry the same programming. One station may carry programs (network and non-network originated) that are not found on another station with the same network affiliation.³

Under the current law, none of the above "excuses" are valid. If a "household" can, or if "someone" thinks (predicts) that a "household" can receive a local affiliate they must watch that local affiliate station, regardless of any reasons that they may have to do otherwise.

Addendum 1

An entire zip code may be deemed to be "served" when in fact 49% of its residents can not receive a Grade B intensity signal from local affiliates.