

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 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)
)
To: The Commission)

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

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**REPLY OF
THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE
TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's Rules and Regulations, the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits this Reply to the Oppositions filed by the National Association of Broadcasters ("NAB"), the Affiliated Associations, NBC Television Stations and Entravision Holdings LLC ("Entravision") to the Petitions for Reconsideration filed by DIRECTV, Inc. ("DIRECTV") and EchoStar Communications Corporation ("EchoStar") of the Commission's Report and Order ("Order" or "Grade B Order") in the above-captioned proceeding.^{1/} These Oppositions are simply further attempts by the broadcasting industry to prevent the Commission from developing reasonable rules and mechanisms to facilitate

^{1/} Public Notice of DIRECTV and EchoStar Petitions, 64 Fed. Reg. 15755 (April 1, 1999). The DIRECTV and EchoStar Petitions seek reconsideration 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, Report and Order (rel. Feb. 2, 1999).

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the delivery of satellite network service to all consumers eligible to receive distant network service under the criteria set forth in the Satellite Home Viewer Act (“SHVA”). NRTC urges the Commission to incorporate land use and land cover (“LULC”) information into the Individual Location Longley-Rice (“ILLR”) predictive model, to develop a more realistic confidence factor to be used in the ILLR predictive model, to simplify its individual household testing mechanism and to take into account other factors such as ghosting in its Grade B signal strength standard. Further, the Commission should modernize its Grade B rules by defining SHVA-specific Grade B values so that they more accurately reflect signal strength actually required to receive an acceptable over-the-air picture.

REPLY

1. As a distributor of satellite broadcast services to more than 1,000,000 subscribers located mostly in rural areas, NRTC is concerned that the Commission’s Grade B Order does not take into account the reality of television reception in rural America. Millions of satellite subscribers remain in danger of unfairly losing distant network satellite service as a result of the Commission’s Grade B Order and broadcasters’ efforts to enforce the “unserved household” provision of the Satellite Home Viewer Act (“SHVA”).

2. NRTC believes the Commission currently has ample statutory authority to establish new Grade B values specifically for purposes of the SHVA that more accurately reflect signal strength actually required to receive an acceptable over-the-air picture, and to adopt prediction models and measurement techniques which will more accurately determine which households can receive a Grade B signal from the local network affiliate. These changes would have a significant, positive impact on consumers who have been deemed “ineligible” to receive distant network service by the Miami District Court. The recommendations made by DIRECTV and EchoStar are within the Commission’s authority and will more accurately determine consumers’ eligibility for satellite network service under the SHVA.

1. **The FCC Should Adopt Grade B Values For Purposes Of The SHVA’s Unserved Household Restriction.**

3. The broadcasters argue in their Opposition that the Commission should not continue its effort to accurately define the Grade B standard for purposes of the SHVA. The NAB and the Affiliated Associations argue that there is no basis for the FCC to adopt SHVA-specific Grade B values. NAB Opposition at pp. 6-7; Affiliated Associations at p. 1. Entravision argues that SHVA-specific Grade B values are contrary to Congressional intent and unnecessary because, “[t]he present definition of Grade B intensity serves the Commission’s stated goal of identifying ‘truly unserved’ households.” Entravision at p. 5.

4. NRTC believes that the Commission has authority to -- and should -- promulgate rules providing for SHVA-specific Grade B signal strength values as described in NRTC's Comments in this proceeding.^{2/} The Commission has recognized that its current Grade B standard has not been modified since it was introduced in the black-and-white television age of the 1950's. While the Commission has periodically reviewed the Grade A and Grade B signal standards in different proceedings, it has never performed a comprehensive review to determine whether a Grade B intensity signal produces an acceptable over-the-air picture for current viewers using modern equipment in today's operational environment. Accordingly, NRTC urges the Commission to modernize its Grade B rules by defining SHVA-specific Grade B values so that they more accurately reflect signal strength actually required to receive an acceptable over-the-air picture.

2. The FCC Should Incorporate LULC Data Into The ILLR Model.

5. The NAB and the Affiliated Associations essentially argue that it is premature to incorporate into the SHVA predictive model the LULC data from the U.S. Geological Survey's GLIS database. NAB Opposition at pp. 2-4; Affiliated Associations Opposition at pp. 5-7. The Affiliated Association claims that the ILLR model already incorporates empirical assumptions about how LULC will affect signal strength and that

^{2/} See NRTC Comments in CS Docket 98-201 at pp. 14-15 (Dec. 11, 1998). See also Aquarius Marine Co. v. Pena, 64 F.3d 82, 88 (1st Cir. 1995); Third Report and Order on Reconsideration, CC Docket No. 92-297, 13 FCC Rcd 4856, 4884 (1998); Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd. 7988, 8095, n. 434 (1994).

these assumptions would have to be “subtracted” from the ILLR model before the LULC data from the U.S. Geological Survey’s GLIS database could be “added”. Affiliated Associations Opposition at p. 6. Both the NAB and the Affiliated Associations urge the Commission not to incorporate the LULC data into the ILLR model as proposed by DIRECTV, because DIRECTV has not provided the Commission or made public a particular algorithm or method to incorporate the LULC data into the ILLR model. NAB Opposition at p. 3; Affiliated Associations Opposition at p. 6.

6. The U.S. Geological Survey’s GLIS database contains widely accepted, currently available LULC data. As the Affiliated Associations point out, the ILLR model does contain some empirical assumptions to account for land cover or land use. LULC data, however, clearly is not fully incorporated into the ILLR model. NRTC urges the Commission to correct this deficiency in the current ILLR model, so that assumptions on land use and land cover are replaced by actual LULC data from the U.S. Geological Survey’s GLIS database.

3. The FCC Should Adopt a More Realistic Confidence Factor.

7. The Affiliated Associations argue that EchoStar should be estopped from arguing for a higher confidence factor because EchoStar has supported a 50% confidence factor with respect to the TIREM model. Affiliated Associations Opposition at p. 5. The NAB urges the Commission to reject EchoStar’s request to change the 50% confidence

factor because no new reasons have been provided to change the confidence factor. NAB Opposition at p. 11.

8. In its Petition, EchoStar has made a new proposal to the Commission. EchoStar suggests that instead of using the 50% confidence factor, the Commission should not permit a household to qualify as unserved unless it meets *two* conditions: (1) the household *cannot* be predicted with 90% confidence as receiving 47 dBu *or more*; (2) it *can* be predicted with 90% confidence as receiving 70.75 dBu (for low-band VHF) *or less*. The second condition would cut off from eligibility for satellite service households that cannot be confidently predicted as receiving 70.75 dBu or less. EchoStar Petition at p. 18.

9. NRTC agrees with EchoStar that the 50% confidence factor penalizes consumers, and that the Commission should consider use of a 90% confidence factor with a cap to make its predictive model more realistic. Use of the 50% confidence factor results in subscribers initially being deemed by the ILLR predictive model as ineligible for satellite network services, even if they cannot receive a local affiliate's over-the-air Grade B signal most of the time. Consequently, these consumers are "pigeon-holed" as ineligible unless an expensive, individual household measurement proves otherwise. A predictive model with a higher confidence factor and a cap, to prevent over counting of unserved households, will reduce the need for individual household testing, which delays service to truly unserved households and may preclude service altogether to truly unserved

households if the underlying satellite carrier is not able to meet the financial burden of performing individual household measurements.

4. The FCC Should Simplify Its Individual Household Testing Procedure.

10. NAB argues that EchoStar's proposals for simplifying the testing process are not valid, because most of its proposals were rejected in the Commission's Grade B Order and use of a fixed-length dipole antenna, as proposed by EchoStar, would not provide reliable results. NAB Opposition at pp. 9-10. The Affiliated Associations urge the FCC to reject EchoStar's proposal to simplify the testing methodology, because the ILLR model is accurate and should be used to cut back on the need for testing. Affiliated Associations Opposition at pp. 3-4.

11. NRTC disagrees with the NAB and the Affiliated Association. As previously noted, the ILLR predictive model will never be an absolutely accurate indicator of acceptable reception at a particular household. The testing mechanism adopted by the Commission should be simplified and made more realistic so that the high-cost of testing does not frustrate Congressional intent of making individual household determinations when necessary. NRTC urges the Commission to reexamine steps to reduce testing costs and supports the cost reduction proposals made by EchoStar.

5. **The FCC Must Take Ghosting Into Consideration.**

12. The NAB and the Affiliated Associations oppose any consideration of “ghosting” in the “unserved household” determination as proposed by EchoStar. NAB Opposition at pp. 7-8; Affiliated Associations Opposition at pp. 2-3. The Affiliated Associations argue that the FCC should not incorporate multipath interference, or “ghosting,” into the unserved household determination, because ghosting has nothing to do with signal strength determination and the FCC does not have authority to take ghosting into consideration in developing its Grade B signal strength rules for purposes of the SHVA. Affiliated Associations Opposition at p. 2. Similarly, the NAB argues that EchoStar’s proposal for the Commission to determine how to best account for the effects of ghosting in the context of the SHVA’s “unserved household” restriction is pointless, because the only way to take into account ghosting would be to adopt a subjective picture quality standard, which the Commission is not authorized to do. NAB Opposition at p. 8.

13. NRTC believes that the Commission must consider the effects of ghosting on signal reception. Consumers are not concerned whether, as a technical matter, ghosting is a factor in the FCC’s Grade B equation. Consumers want and deserve the best quality television picture available, and if ghosting or other environmental factors degrade picture quality available through an over-the-air signal, the Commission should recognize and incorporate these factors into the predictive model and testing methodology adopted in its Grade B Order and in any other SHVA-specific rule it may adopt. Otherwise, the

stated Congressional intent of the SHVA of ensuring that all consumers, no matter where they live, be able to receive broadcast network service will be frustrated.^{3/}

WHEREFORE, THE PREMISES CONSIDERED, the National Rural Telecommunications Cooperative urges the Commission to reconsider its Order in CS Docket No. 98-201 pursuant to suggestions made by DIRECTV and EchoStar and to make meaningful changes to the Grade B dBu values for purposes of the SHVA and to its recommendation for predicting Grade B signal reception and its rules to measure Grade B signal strength.

Respectfully submitted,

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^{3/} See H.R. Rep. No. 100-887, pt. I, at 15 reprinted in U.S.C.C.A.N 5618 (1988).

CERTIFICATE OF SERVICE

I, Brenna Newman, a legal secretary at the law firm of Keller & Heckman LLP, hereby certify that on this 26th day of April 1999, copies of the foregoing Reply of the National Rural Telecommunications Cooperative to Oppositions to Petitions for Reconsideration were sent, unless otherwise indicated, U.S. Mail, first class postage prepaid to the following:

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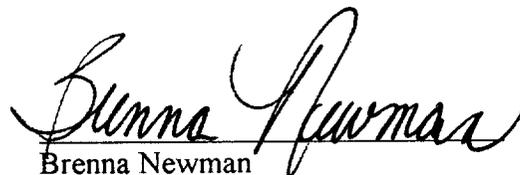
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