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

DOCKET NO. 00-11
FEDERAL

In the Matter of)

Establishment of an Improved Model)
for Predicting the Broadcast Television)
Field Strength Received at)
Individual Locations)

ET Docket No. 00-11

To the Commission:

OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, EchoStar Satellite Corporation ("EchoStar") hereby submits its opposition to the petition for reconsideration the National Association of Broadcasters ("NAB") filed in response to the Commission's *First Report and Order* in the above-captioned proceeding.¹ The technical challenge concerning clutter losses raised by NAB is unsupported and inconsistent with the standard required by the Commission. Further, NAB's position regarding the process of choosing an independent entity to conduct signal measurements is misguided and needlessly restrictive.

¹ *In the Matter of Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations*, ET Docket No. 00-11, First Report and Order, 65 Fed. Reg. 36,639 (June 9, 2000) ("*First Report and Order*").

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List A B C D E

First, NAB asserts that there should be no clutter factor at all for areas that are classified as “open land” by the U.S. Geological Survey’s Land Use & Land Clutter (“LULC”) database.² It argues that it is inappropriate to do so in areas where there is “bare ground,” “dry salt flats,” and “beaches,” which NAB claims “by definition have no clutter.”³ However, NAB offers no demonstration that its assertion is correct.⁴ Indeed, NAB’s assertion is belied by the only type of evidence viewed as determinative by the Commission – “statistical study of actual measurements in the specific LULC environment to which they are to be applied.” Nor should the conclusions of this study surprise NAB – signal losses along open land are entirely possible due to the influence of clutter in nearby land areas. In short, absent technical analysis and statistical study of actual measurements, there can be no reduction of the clutter losses contained in the *First Report and Order*.

Second, NAB argues that for purposes of the Satellite Home Viewer Improvement Act (“SHVIA”) satellite installers are not “independent,” “even if they would satisfy the separate an distinct statutory requirement of being ‘qualified.’”⁵ NAB asks the Commission to rule that a tester can be considered independent “only if he or she is not employed by, and does not have a

² NAB Petition at 2.

³ *Id.*

⁴ For that matter, there was no analysis submitted by NAB or any other party demonstrating that particular reductions in the Rubinstein clutter factors were appropriate in any particular LULC categories.

⁵ NAB Petition at 3.

business relationship with, any satellite carrier.”⁶ Such a requirement is unnecessary and inconsistent with the requirements of the Commission’s Rules and the statute.

As the Commission explained in its *Report and Order*, the SHVIA relies on the ILLR model to determine presumptively whether a subscriber is served unserved for purposes of eligibility to receive satellite retransmission of distant network signals.⁷ Subscribers who are denied retransmission of distant signals based on the predictive model may request that the satellite carrier seek a waiver of the denial from the network station that is asserting that retransmission is prohibited. If the network station rejects the waiver request, the subscriber may submit to the carrier “a request for a test verifying the subscriber’s inability to receive a signal that meets the signal intensity standard . . .”⁸ Under these circumstances, “the satellite carrier and the network station or stations asserting that retransmission is prohibited shall select a qualified and independent person to conduct a test . . .”⁹

The Commission went to great lengths to find a reputable organization that could be relied upon to serve as the independent and neutral entity to designate the person or organization to conduct measurements if the satellite carrier and the network station are unable to agree on the selection of a tester. The ARRL, which has an undisputed reputation for public

⁶ *Id.* at 4.

⁷ 17 U.S.C. § 119(a)(2)(B)(ii)(I)(*as amended* by § 1005 of the SHVIA).

⁸ 47 U.S.C. § 339(d)(4)(A).

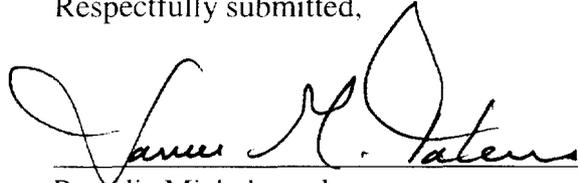
⁹ *Id.* at § 339(c)(4)(B). As EchoStar has pointed out, this process may be short-circuited by a test at an earlier stage – when a subscriber is predicted or served, subject to the same safeguards.

service and integrity since the earliest days of radio, is the last party that would choose an independent tester who in any way would be biased. Indeed, the Commission specifically selected the ARRL to avoid promulgating qualification criteria for persons wishing or available to conduct signal strength measurements in the field. NAB's suggestion that satellite installers always be excluded from the testing process is unfair and is certainly excessively broad in its baseless questioning of the ability of the ARRL to make its own, independent assessment of testers. EchoStar favors the Commission's decision to accept the ARRL's offer to designate the person or organization to conduct measurements because, as the Commission correctly found, "[the ARRL] has no commercial connection with delivery of television services, its field offices cover the United States, and its members are actively engaged in activities related to the measurement of radio field intensity."¹⁰ Should any bias in the selection process ever become apparent, the Commission may review its decision. Until then, NAB's fear of bias by the ARRL is speculative, premature, unfair and simply incorrect.

¹⁰ *First Report and Order* at ¶ 23.

For the foregoing reasons, EchoStar urges the Commission to deny NAB's petition for reconsideration as discussed herein.

Respectfully submitted,



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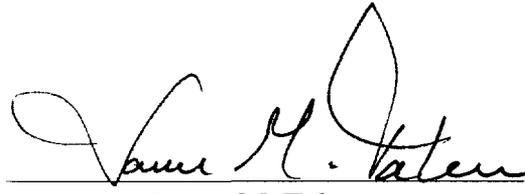
Counsel for EchoStar Satellite Corporation

Date: August 15, 2000

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2000, a copy of the foregoing Opposition was sent via first class mail, postage prepaid, to:

Henry L. Baumann
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A handwritten signature in cursive script, reading "James M. Talens", written over a horizontal line.

James M. Talens