

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of:</b>	)	
	)	
<b>Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming</b>	)	<b>CS Docket No. 00-132</b>
	)	
	)	

**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)<sup>1</sup> hereby submits its reply comments in response to the Commission’s Notice of Inquiry in the above-referenced docket. The purpose of these Reply Comments is to correct a distorted presentation of the relevant facts -- and of Congress’ policy objectives -- in the initial Comments by the Satellite Broadcasting & Communications Association (“SBCA”) about the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”).

**Introduction and Summary**

The SHVIA, enacted largely at the behest of the satellite industry, has already delivered enormous dividends to that industry. As the SBCA’s own comments recognize, the satellite industry has enjoyed unprecedented subscriber growth since the SHVIA was signed into law in late November 1999. That growth “is primarily the result of [the SHVIA’s provisions] allowing

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<sup>1</sup> NAB is a nonprofit incorporated association that serves and represents America’s radio and television broadcast stations and networks.

. . . DBS operators to offer local broadcast channels in markets of their choice.” SBCA Comments at 9 (quoting Merrill Lynch report).

Instead of expressing gratitude for Congress’ largesse in granting satellite carriers the statutory right to deliver local stations -- with no copyright payments whatsoever -- the SBCA instead bitterly criticizes Congress for its efforts to create a balanced regime that *both* promotes competition to cable *and* encourages the preservation of free, over-the-air broadcasting. *See* SBCA Comments at 3, 9-15. In SBCA’s wholly self-interested view, Congress (and the Commission) are obligated to give satellite every conceivable advantage in its efforts to compete with cable, regardless of the damage that would be done to other vital communications policy objectives.

In particular, the SBCA condemns Congress for (a) seeking to protect competition in local markets by making a compulsory license available (starting in January 2002) only for carriage of *all* local stations, and not simply for stations cherrypicked by the carrier, and (b) seeking to preserve free, local, over-the-air television by limiting importation of distant network stations to households that cannot receive local stations over the air.

But while SBCA conveniently ignores them, Congress had powerful and compelling reasons for creating the balanced regime that it did. In creating the new local-to-local compulsory license, for example, Congress recognized that satellite carriers who cherrypick certain local stations for carriage in a given market will effectively act as a bottleneck between their customers -- who are likely to rely solely on the satellite carrier as their source of television programming -- and local stations excluded from the satellite carrier’s service. For that reason, Congress elected to provide the satellite industry with a special local-to-local compulsory license only for carriage of all of the stations in a given market, rather than for carriage of individual

stations. By doing so, Congress sensibly sought to create a (strictly voluntary) incentive to encourage satellite carriers to preserve intramarket competition in those markets in which the satellite carriers choose to offer local-to-local service. Congress, of course, did not ban “cherrypicking” or *require* carriage of any stations whatsoever. To the contrary, Congress left intact the option for satellite carriers to carry individual TV stations by doing the same thing they do every day for all of their other programming -- namely, negotiating in the free marketplace for the necessary rights. That is how DIRECTV and EchoStar obtain the rights to scores of nonbroadcast channels such as ESPN, USA Network, Nickelodeon, and HBO, and to major league sports events such as NFL and NBA games. All that Congress did in the SHVIA was to offer an administrative convenience to those carriers that wish to carry all of the stations in a local market.

In enacting the SHVIA, Congress also sensibly rejected the satellite industry’s demand to abolish the “unserved household” limitation that has long been at the heart of the distant-signal compulsory license in Section 119 of the Copyright Act. Nevertheless, SBCA now suggests that the Commission ignore this congressional determination by considering allowing satellite carriers to offer duplicative network programming (from New York and Los Angeles) in every market in which local-to-local is not available. SBCA Comments at 15.<sup>2</sup> In effect, SBCA seeks the FCC’s imprimatur to employ a “solution” that would be essentially costless to satellite industry -- since the New York and Los Angeles stations are on their satellites anyway -- but would be crushing to local stations in the more than 150 markets in which local-to-local is not available. With satellite penetration growing rapidly -- on the verge of exceeding 40% in some states, according to SBCA (Comments at 6) -- the radical change demanded by SBCA would

have a devastating impact on the ability of local network stations in small and mid-sized markets to continue serving their local viewers. It would also drastically undercut incentives to *expand* local-to-local to new markets, since it would allow satellite carriers to provide a more lucrative (indeed, nearly zero-cost) surrogate for local-to-local service in smaller and mid-sized markets.

To the extent the satellite industry finds fault with the way in which the “unserved household” regime is being administered, it has only itself to blame. Problems with the waiver process, for example, have been created by some satellite carriers’ encouraging every subscriber to request a waiver, no matter how little justification there might be for doing so. (For example, some satellite carriers routinely urge viewers to request waivers to allow receipt of distant network stations *even though the viewers can obtain their own local network stations from their satellite carrier.*) In addition, some satellite carriers routinely forward waiver requests to stations with no information whatsoever about why the subscriber contends a waiver is necessary. To the extent there have been problems with the waiver process, they have been created by the satellite industry, not by broadcasters.

Finally, the SBCA contends that broadcasters are somehow to blame for shortcomings in the process of testing signal intensity at the homes of individual viewers. But once again, it is the satellite industry’s failure to fulfill its statutory obligations that has created these problems. Under the SHVIA, it is the carrier’s obligation to contact stations and seek to reach agreement about conducting tests in the manner prescribed by the SHVIA. With rare exceptions, satellite carriers have simply not even begun to perform this function. And in their comments to the Commission, broadcasters have simply insisted that the requirements of the SHVIA be met by

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<sup>2</sup> Notably, SBCA does not endorse the logical corollary, that the distant-signal compulsory license should be abolished in all markets in which local-to-local service is available.

having tests performed by personnel who are both *competent* and *unbiased*. Whether or not satellite installers would be competent to perform signal intensity tests, they are far from unbiased -- since their business objective is to please their customers (who are hoping to be found to be “unserved”) and since the installers reap large commissions when they sign up new customers for DBS service. Broadcasters stand ready, however, to do their part in the SHVIA testing process as soon as satellite carriers propose competent and unbiased personnel to perform the tests.

**I. Congress’ Decision to Protect Local Broadcast Markets Through the “Carry One, Carry All” Regime Enhances Competition in Delivery of Video Programming**

In its Comments, the SBCA attacks the “carry one, carry all” regime adopted by Congress as “wasteful of spectrum” and “contradict[ing] public policy objectives.” SBCA Comments at 9. The SBCA’s attack on this regime completely ignores the powerful benefits that will flow from the “carry one, carry all” principle.

**A. The “Carry One, Carry All” Principle Preserves Competition and Diversity in Local Television Markets and the Continued Viability of Over-the-Air Television as a Delivery Mechanism**

In the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”), Congress crafted a new compulsory license in Section 122 of the Copyright Act to permit satellite carriers to retransmit local TV stations within their local markets -- with no need to negotiate with, or to pay a penny to, the copyright owners of the station’s programming. 17 U.S.C. § 122. Congress recognized, however, that creating a station-by-station compulsory license would be likely to lead to cherrypicking, *i.e.*, carriage of only selected stations in a particular market. SHVIA Conference Report, 145 Cong. Rec. 11795 (daily ed. Nov. 9, 1999). If so, the results would be

predictable: local over-the-air television stations that were *not* carried by the satellite carrier would effectively be shut out from access to local satellite subscribers, since few subscribers would go to the trouble of setting up a separate outdoor antenna to receive only noncarried local stations. Since TV stations generate revenues based on local audiences, over-the-air local stations that were left off the satellite carrier's roster would be substantially harmed by being effectively blocked from reaching substantial numbers of local viewers -- indeed, as many as 40% of local viewers, according to the SBCA. *See* SHVIA Conf. Report, 145 Cong. Rec. at H11795 (describing harm to local stations); SBCA Comments at 6 (satellite penetration will soon pass 40% in some areas).

Noncarriage by a bottleneck MVPD service such as DIRECTV or EchoStar would result in at least three adverse public policy consequences about which Congress has legitimate concern:

- reducing competition among stations in local markets;
- diminishing the quality and diversity of program offerings, including local news, sports, public affairs programming that a station economically debilitated by noncarriage would find difficult to provide;
- diminishing the viability of free, over-the-air television as a viable alternative to pay services such as cable and satellite.

While Congress gave the satellite industry tools to compete more effectively with cable systems, it also sought to preserve competition, diversity, and the alternative of free, over-the-air television in the *existing* marketplace in which television stations today provide programming in more than 200 television markets across the country. (The satellite industry, by contrast, would

no doubt prefer that *everyone* find it necessary to pay a costly multichannel video programming service if they wish to watch television.) By making the local-to-local compulsory license available (starting in January 2002) only for carriage of *all* local stations in a market, Congress ensured that its gift to the satellite industry would not undermine its longstanding goal of encouraging competition, diversity, and over-the-air delivery of free television in communities throughout the nation. Congress also sought to ensure that its creation of a special compulsory license for satellite carriers would not harm the tens of millions of Americans who still rely on free, over-the-air television as their primary source of television programming. Congress recognized that a station-by-station compulsory license -- as opposed to a package license for all the stations in a market -- would be likely to reduce the viewing options available to these viewers as satellite carriers continue the aggressive expansion of their business.

In our national parks, visitors are encouraged to enjoy the scenery, but to leave the park undisturbed, just as they found it. Congress has done the same thing in its new local-to-local compulsory license: it has provided a shortcut method for carriers to obtain the rights needed to carry local stations, but made that shortcut available only to carriers that do not damage the landscape of television markets that they enter. The Commission should not criticize Congress for making this sound public policy judgment.

**B. The Satellite Industry's Rantings About Supposed Lack of Capacity to Carry Local Stations Are Unsubstantiated and Inconsistent with the Evidence**

In the late 1980s, the cable industry painted a bleak picture of its ability to comply with the then-contemplated syndicated exclusivity and network nonduplication rules. Similarly, in the early 1990s, the cable industry confidently predicted that it would be unable to carry analog local TV stations in the manner required by the Commission's must-carry rules. Today, the satellite

industry has now taken up the same refrain, with the new twist that satellite interests claim that they will never be able to serve smaller markets if they need to carry all stations in larger markets. *See* SBCA Comments at 9. But just as the cable industry has met the challenge of complying with syndex and network nonduplication, and of carrying local stations while also offering a wide range of other programming, the satellite industry will do the same.

Contrary to the satellite industry's doom-and-gloom portrayal of its ability to comply with must carry requirements,<sup>3</sup> technology now available to the satellite industry -- or that will become available in coming months -- will permit satellite carriers to offer very large numbers of local stations. At present, the satellite industry's local-to-local delivery relies principally on "CONUS" (continental U.S.) satellites that transmit local stations not just within their local markets but across the entire country. The satellite industry is already moving, however, to a much more efficient solution: "spot-beam" satellites, currently in the portion of the spectrum (Ku-band) that the carriers today use. For example, EchoStar has announced plans to expand its local station delivery by, among other things, launching two new Ku-band satellites -- EchoStar VII and VIII -- that "will include spot-beam technology that will allow DISH Network to offer local channels in as many as 60 or more markets across the United States."<sup>4</sup>

In addition to their Ku-band options, both the incumbent carriers and third parties can readily exploit available Ka-band capacity to deliver far more local signals. Local TV on Satellite, for example, expects to "use 'spot beam' satellite technology" in the Ka-band to offer

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<sup>3</sup> *See, e.g.*, SBCA Comments at 2, 9-10; DirecTV Comments, at 7; NRTC Comments at 11-12.

<sup>4</sup> Press Release, "EchoStar Announces Construction Plans for Three New Satellites to Serve DISH Network's Fast Growing Satellite TV Service," <<http://www.corporate->

“quality digital transmission of every local television station within each local TV market served.”<sup>5</sup> As one commenter pointed out in another pending proceeding: “By 2002, with the advent of Ku-band spot-beam technology, improved compression technology, and the addition of more transponder space and more spot beams at Ka-band, satellite capacity is expected to be more than ten times what it is today.”<sup>6</sup>

Finally, both the House and the Senate have passed (differing versions of) legislation to authorize federally guaranteed loans to encourage the development of local-to-local service in smaller markets and rural areas. If Congress reaches agreements on this legislation -- as seems likely -- the resulting programs are likely to increase still further the channel capacity available for carriage of local stations to local viewers.

## **II. The Satellite Industry is Enjoying Unprecedented Success Thanks to The New Compulsory License for Local-to-Local Retransmissions**

As the Commission recently recognized in its last Annual Assessment report (released during January 2000), the satellite industry was *already* thriving -- and offering potent

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[ir.net/ireye/ir\\_site.zhtml?ticker=dish&script=410&layout=-6&item\\_id=76216](http://ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=76216) (visited June 16, 2000).

<sup>5</sup> Local TV on Satellite web site, <<http://www.localtv-satellite.com/index1.html>> (visited June 23, 2000).

<sup>6</sup> Joint Reply Comments of the Association of America’s Public Television Stations, The Public Broadcasting Service, and the Corporation for Public Broadcasting, filed in CS Docket 00-96 (Aug. 4, 2000), at 8. *See also* Reply Comments of Local TV on Satellite, LLC, filed in CS Docket 00-96 (Aug. 4, 2000), at 2-3 (“The use of spot beams on satellites permits a provider to efficiently re-use spectrum for carrying local signals, rather than wasting valuable spectrum on a channel reserved nationwide, with the programming intended for reception in only a select market area. . . . With the use of spot-beams, providers have more capability to carry multiple signals in numerous markets. Ka-band satellites can use smaller antennas because of the higher frequency and the Ka-band has approximately 46% more frequency allocated than the Ku-band, both adding to the capability of the Ka-band to carry more channels. Thus, Ka-spot beaming can be more spectrum-efficient than Ku spot-beaming.”).

competition to the cable industry -- *before* Congress authorized satellite carriers to deliver local TV stations within their local markets. Thanks to local-to-local, the satellite industry has experienced even more explosive growth since the SHVIA was signed into law at the end of November 1999. The Comments filed by the satellite industry in this proceeding confirm the point:

- As DIRECTV acknowledges, "the most dramatic change in the status of MVPD competition has been Congress' enactment of the Satellite Home Viewer Improvement Act of 1999, which, for the first time, explicitly permits DBS operators to offer consumers local broadcast channels in their local markets." DIRECTV Comments at 2.
- "More than 40% [of] DIRECTV subscribers in [local-to-local] markets subscribe to the local broadcast channel service at \$5.99 per month. Among newer customers who have subscribed to DIRECTV since local broadcast channel service became available, the subscription rate is 57%. . . . DBS subscription levels have increased as a result of local broadcast channel service . . . ." *Id.* at 13.
- SBCA concurs about the "positive impact [of local-to-local] . . . on subscriber growth since the inception of local-into-local in November 1999," citing "impressive subscriber gains in the 9-month period that local-into-local has been available." SBCA Comments at 5.
- Industry analysts cited by SBCA agree that local-to-local has been the engine driving satellite subscriber growth. *See id.* at 9 ("[A]s one Merrill Lynch analyst stated in a July 31, 2000 report: 'The 40% subscriber addition growth in 2000 is primarily the result of

legislation passed in November 1999 allowing the DBS operators to offer local broadcast channels in markets of their choice.”).

- The SBCA also boasts about satellite’s growing dominance in many markets, thanks in part to local-to-local: “24 states show a [satellite] penetration of more than 20 percent, compared to 10 states last year; and 3 states now boast more than 30 percent DTH penetration, with Montana set to cross the 40 percent mark.” *Id.* at 6.
- “For the first six months of 2000, DIRECTV U.S. had revenue of \$2,188 million -- a 74% increase over 1999 revenues for this period.” DirectTV Comments at 11.

These data show that local-to-local has been a tremendous asset for the satellite industry -- and that it ill behooves the industry to complain about Congress’ decision to preserve the local broadcast marketplace even as it gave the satellite industry new tools to compete more successfully with cable.

### **III. The “Unserved Household” Limitation Promotes Competition in Delivery of Video Programming**

The “unserved household” limitation in the SHVA promotes a longstanding communications policy of protecting local network affiliates -- which provide free video programming and local news to virtually all Americans -- against importation of duplicative network programming. And the existing definition of “unserved household” -- namely, as one that cannot receive a signal of Grade B intensity with a rooftop antenna -- continues to be sound both as a matter of engineering and as a matter of communications policy.

NAB has addressed these matters in great detail in its Comments and Reply Comments in the Commission’s current proceeding in which it is developing recommendations to Congress

about whether to change the current Grade B intensity standard (ET Docket No. 00-90). NAB incorporates those comments -- which are available on the Commission's web site -- by reference here.

The Commission addressed the issue of how to define "Grade B intensity" only a little more than a year ago, based on an exhaustive factual record and hundreds of filings by interested parties. See Report & Order, *In Re Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act*, CS Docket No. 98-201 (Feb. 1, 1999); Order on Reconsideration (Oct. 7, 1999). In its filings in the FCC's current proceeding, the SBCA has made no effort to offer any fresh data or arguments, instead simply resubmitting materials that the Commission correctly concluded in 1999 did not support any change in the current definition. As NAB has explained in detail in its filings in the Commission's current Grade B proceeding, the Commission should reaffirm the appropriateness of the Grade B intensity standard as the proper method of determining which households are eligible to receive distant signals.

The SBCA proposes, in effect, that local network stations in small and mid-sized markets across the country be sacrificed on the altar of the satellite industry's relentless drive to gain competitive advantages over the cable industry.<sup>7</sup> Stunningly, SBCA suggests that the "unserved household" limitation be *abandoned* in all markets in which local-to-local is not available -- currently more than 150 markets. SBCA Comments at 15 ("households in markets where local-

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<sup>7</sup> Citing a nonpublic study that it has not provided to the Commission, the SBCA contends that 14 percent of DBS households reported receiving no network signals at all. SBCA Comments at 13. Because SBCA has not provided the Commission with a copy of this report, it is difficult to evaluate its methodology or conclusions. What is clear, however, is that there is *not* any substantial problem with households being unable to receive ABC, CBS, Fox, and NBC programming: Nielsen data show that more than 99% of TV households are able to receive each network. See Nielsen Television Index, Program Report for Primetime Monday-Sunday (Sept. 20, 1999 through May 24, 2000).

into-local is not available [should have] the right to receive distant network signals whether or not they are ‘unserved.’”). This proposal would, of course, give the satellite industry a huge leg up over cable systems in these markets, since cable systems are effectively barred from delivering duplicative network programming to their viewers.<sup>8</sup>

SBCA’s ruthless proposal would be toxic to over-the-air network stations in small and mid-sized markets around the country. It would tell the CBS station in Presque Isle, Maine, for example, that even though it must try to make a business out of delivering CBS programming in a market with only 28,000 television households, it must accept having local satellite dish owners watch CBS programming from stations imported from New York or Los Angeles rather than from the local CBS station.<sup>9</sup> Similarly devastated would be stations in Montana, where, by SBCA’s own reckoning, satellite penetration has reached 40% of local viewers. Depriving a station of 40% of its local audiences would mean death.

When Congress extended the distant-signal compulsory license with the enactment of the SHVIA in 1999, it strongly endorsed the need for an “unserved household” limitation to preserve free, local, over-the-air television. For example, the SHVIA Conference Report says this:

*“[T]he Conference Committee reasserts the importance of protecting and fostering the system of television networks as they*

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<sup>8</sup> SBCA falsely states that satellite carriers “are bound by . . . regulations governing signal protection that cable operators do not have to observe.” SBCA Comments at 15. In fact, cable systems are required to comply with network nonduplication rules that, as a practical matter, provide DMA-wide protection against importation of distant network stations. Satellite carriers, by contrast, can deliver distant signals to any household that does not receive a Grade B signal, wherever the household is located.

<sup>9</sup> Because carriers can choose in which markets they will offer local-to-local, SBCA’s proposal would allow satellite carriers to decide which local television markets to destroy by withholding local-to-local service and thereby opening up unlimited importation of network programming from New York and Los Angeles.

*relate to the concept of localism. . . . [T]elevision broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities. To that end, the Committee has structured the copyright licensing regime for satellite to encourage and promote retransmissions by satellite of local television broadcast stations to subscribers who reside in the local markets of those stations.”*

SHVIA Conference Report, 145 Cong. Rec. H11792 (daily ed. Nov. 9, 1999) (emphasis added).

Congress also emphasized that “the specific goal of the 119 license, which is to allow for *a life-line network television service to those homes beyond the reach of their local television stations*, must be met by *only* allowing distant network service to those homes which cannot receive the local network television stations. Hence, the ‘unserved household’ limitation that has been in the license since its inception.” *Id.* (emphasis added).

The Commission should similarly resist the SBCA’s call to dump Congress’ sensible and carefully considered policy decision to retain the “unserved household” limitation on delivery of distant network signals.

#### **IV. Any Perceived Problems With the Waiver and Testing Process Are of the Satellite Industry’s Own Making**

Although it offers not a shred of actual evidence in support of its claims, the SBCA attempts to create the myth that (a) broadcasters are to blame for the lack of signal intensity tests being conducted at individual households, and (b) broadcasters are somehow abusing the waiver process by “denying waivers to DBS households . . . even when they are well aware that the consumer cannot receive a viewable picture.” SBCA Comments at 14.

The reality is very different. As to the testing process: *first*, the *truth* is that satellite carriers have no desire to carry out honest signal intensity tests, because they know that the overwhelming majority of households *do* receive Grade B intensity signals -- and that the carriers would therefore “lose” in almost all tests, which they might then be required to pay for. *Second*, as to who is qualified to conduct tests, broadcasters have rejected the satellite industry’s jury-rigged proposals that satellite installers -- who have multiple finance incentives to declare *every* household to be “unserved” -- are the appropriate persons to conduct tests. Broadcasters have simply insisted that the requirements of the SHVIA be respected -- including the requirement that testers must be not only qualified but “independent.” 38 U.S.C. § 339(c)(4). A satellite installer is obviously not an “independent” (*i.e.*, unbiased) third party: installers want to please their customers by telling them what they want to hear, in this case that the customer is “unserved” and hence eligible to receive distant network stations. Moreover, installers earn large, long-term commissions when they sign up subscribers.<sup>10</sup> Elementary principles of good science dictate that technical measurements *not* be made by persons with a financial bias in favor of a particular result -- a point that Congress recognized by requiring that testers be “independent.”

*Third*, broadcasters have also reasonably opposed *secret* tests by satellite carriers, in response to a proposal by EchoStar to do just that. *Ex parte* tests by any party would be troubling, but secret tests by EchoStar are particularly so, given its past history of encouraging dealers to generate phony test results by such techniques as pointing the test antenna only

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<sup>10</sup> See, e.g., EchoStar 1999 Form 10-K at 5 (filed with Securities & Exchange Commission on March 13, 2000) (“We offer our distributors and retailers a competitive residual, or commission, program. The program pays qualified distributors and retailers an activation bonus, along with a fixed monthly residual for programming services while the respective DISH Network subscriber remains active.”)

towards stations from a distant city. Again, the broadcasters' opposition to *ex parte* tests is so obviously sound that it is difficult to see how the satellite industry could seriously quarrel with it.

As to the waiver process: *first*, the truth is that some satellite carriers (particularly EchoStar) encourage *everyone* to apply for waivers, whether or not they have any justification for doing so. As a result, stations are burdened with processing huge volumes of waiver requests, most of which have no merit whatsoever. *Second*, satellite carriers in most cases provide *no* information that would support a station's decision to grant a waiver request. For most subscribers, all that the station is told is the subscriber's name, address, and predicted signal strength level -- in all cases, a level *above* Grade B intensity, since viewers with below-Grade-B predicted dBu levels may be signed up without a waiver. When stations are given no reason why a waiver should be granted, it is scarcely surprising that some may decline simply to grant waivers on a "blind" basis. *Finally*, in those rare cases in which satellite carriers do provide some form of explanation of why the customer believes the waiver should be granted, the explanations are often non-credible boilerplate. To take just one recent example, a viewer in *Iowa* claimed that he was unable to receive local signals because he "lives in [a] valley surrounded by mountains."<sup>11</sup>

### **Conclusion**

The satellite industry is enjoying by far its most successful year ever, based in large part on the generosity of Congress in creating a special compulsory license that provides satellite carriers the option of delivering local TV stations without negotiating with copyright owners or

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<sup>11</sup> Waiver request from viewer in Montour, Iowa (Aug. 26, 2000).

paying a penny in royalties. To preserve robust competition, diverse programming, and the free over-the-air delivery mechanism in local markets, the local-to-local compulsory license will, starting in 2002, be limited to carriage of all of the stations in a given market, rather than to individual stations. The satellite industry's complaints about that provision reflect the industry's tunnel vision: a failure to recognize that Congress sought *not* simply to make the satellite industry as wealthy as possible, but to encourage many forms of delivery of video programming, including through the nation's carefully constructed system of free, local television service. The unserved household limitation likewise serves the nation's longstanding goal of encouraging local, and not just national, television voices. As Congress recognized less than a year ago, that vital limitation must be preserved.

The satellite industry's efforts to blame broadcasters for problems that have arisen in connection with signal intensity testing and the waiver process likewise get it exactly backward. Even though the SHVIA requires that signal intensity tests be conducted by qualified and "independent" personnel on notice to both sides, satellite carriers have improperly insisted on using grossly biased persons (satellite installers) as the testers. Indeed, the fact is that satellite carriers themselves have no desire to conduct genuine signal intensity tests, because they know that the results will show that almost all viewers in fact do receive Grade B signals (thereby leaving the carriers to foot the bill for the tests). As to waivers, any problems have been created by the practices of the satellite industry in encouraging the submission of massive numbers of waiver requests, without regard to merit, and in most cases with no information about why the customer contends a waiver might be warranted. There is no reason to change the rules that Congress carefully constructed in the SHVIA for any of these reasons.

Respectfully submitted,

NATIONAL ASSOCIATION OF  
BROADCASTERS

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