

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

In the Matter of:)	
)	
Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004)	MB Docket No. 05-49
)	
Implementation of Section 340 of the Communications Act)	
)	

**REPLY COMMENTS OF THE
MOTION PICTURE ASSOCIATION OF AMERICA, INC.**

The Motion Picture Association of America, Inc. (“MPAA”), in accordance with the Notice of Proposed Rulemaking (“Notice”) released February 7, 2005 in the above referenced docket, submits these Reply Comments concerning the Commission’s proposed rules implementing Section 340 of the Communications Act, 47 U.S.C. § 340, as created by the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”). Section 340 provides satellite carriers with the authority to offer significantly viewed signals of out-of-market broadcast stations to subscribers. MPAA is a trade association of entities who, among other things, are major suppliers of programming aired on broadcast stations retransmitted by cable operators and satellite carriers.

I. Definition of a “Satellite Community”

MPAA opposes the 10% rule proposed by EchoStar Satellite, L.L.C. (“EchoStar”) because it would artificially expand satellite communities and discourage parity between cable operators and satellite carriers. In its comments, EchoStar proposes extending the boundaries of

a community on the significantly viewed list (“SV List”) to encompass an entire zip code when “10% or more of the zip code’s population is included in the community.” EchoStar Comments at 10. As support, EchoStar points out that the Commission has deemed 10% a “significant overlap” in the context of commercial mobile radio service (“CMRS”) spectrum aggregation limits. *See id.*; *see also* 47 C.F.R. § 20.6(c)(1). However, defining significant overlap for the purpose of spectrum aggregation limits is vastly different from -- and thus not analogous to -- determining communities where signals are significantly viewed. Moreover, determining that a signal is significantly viewed by an entire zip code, where a mere 10% of the zip code population is within the boundaries of the qualified community, artificially expands the community.¹

As MPAA articulated in its initial comments, the Commission should adopt a definition of satellite community that will both (1) foster a consistent interpretation of significantly viewed satellite communities, both existing and future, and (2) promote parity between cable operators and satellite carriers. EchoStar’s suggested 10% rule would artificially enlarge the boundaries of satellite communities with a small percentage of qualified viewers to the nearest zip code line, while cable operators in the same area would be forced to limit their coverage to geopolitical boundaries of the communities on the SV List. The Commission should refrain from creating a requirement that imposes disparate treatment on satellite carriers and cable operators.

II. Definition of a “Network Station.”

MPAA does not support comments advocating redefining “network station” as defined in the Commission’s regulations. The National Association of Broadcasters and the ABC, CBS, FBC, and NBC Television Affiliate Associations (collectively, “NAB”) suggest that the Commission modify its definitions of “full network station,” “partial network station,” and

¹ EchoStar does not explain how the Commission would go about measuring the percentage of the zip code that falls within a particular community.

“independent station,” 47 C.F.R. § 76.5 (j)-(l), to “harmonize” them with the copyright definitions of “network station” and “superstation” in 17 U.S.C. § 119(d)(2) and (9). NAB Comments at 4-7. However, as the Commission recognizes in its Notice, the Commission’s existing regulatory definitions of full and partial network station, “[are] expressly relied upon in the standard for determining whether a station is significantly viewed for placement on the SV List.” Notice at ¶ 21. MPAA agrees with the Commission that SHVERA limits the rules for designating significantly viewed signals to the Commission’s rules in effect on April 15, 1976, and that this precludes the Commission from altering the regulatory provisions underpinning these rules as a part of these proceedings. Notice at ¶ 23. NAB’s proposed regulatory changes are inconsistent with this requirement. The Commission’s proposed compromise approach, *see* Notice at ¶ 23, would utilize the existing regulatory definitions in 47 C.F.R. § 76.5(j)-(l) for purposes of determining whether a station is eligible for inclusion on the SV List, and employ the copyright definitions of network station and superstation for purposes of subscriber eligibility and other applications of the significantly viewed provisions. MPAA agrees that the Commission’s proposal is an appropriate resolution, as it effectively harmonizes the different provisions while implementing both the language and intent of SHVERA.

III. Accuracy of the Existing SV List.

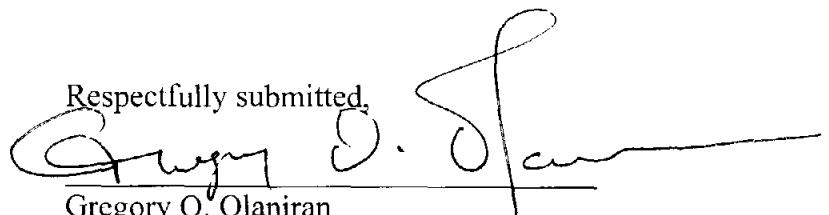
MPAA shares the general concern voiced about the accuracy of the SV List and urges great care in maintaining it. Numerous comments were filed in this docket articulating concerns over the accuracy of the existing SV List. *See* Comments of Saga Quad States Communications, L.L.C. at 4 (identifying stations in Missouri and Oklahoma that it believes were erroneously included in the existing SV List); Comments of Withers Broadcasting Company of West Virginia at 1 (citing communities in New York that it believes were erroneously included in the

existing SV List for WNEW-TV in New York City, and communities in West Virginia that it believes were erroneously excluded for WDTV, despite significant viewership); Comments of Sinclair Broadcast Group, L.L.C. at 2 (referencing a station in Baltimore, Maryland that it believes was incorrectly omitted from the existing SV List). MPAA again urges the Commission to scrutinize the existing SV List to ensure that it accurately reflects communities where a signal is significantly viewed, and is not over-inclusive. As noted in MPAA's initial comments, a station designated as significantly viewed is not considered a distant signal, and is therefore not compensable under the copyright compulsory license provisions. *See* MPAA Comments at 3; 47 C.F.R. § 76.54 (1975); 17 U.S.C. § 119(a)(3)(A) and (b)(1)(B); 17 U.S.C. § 111(f). Thus, the SV List affects the eligibility of programming on particular stations for royalties under Sections 111 and 119. MPAA urges the Commission to make every possible effort to verify the accuracy of the existing SV List, and revise the list, if necessary, before applying it to satellite carriers. Likewise, any new communities that may be added to the existing SV List in the course of these proceedings must be examined for accuracy and over-inclusiveness.

IV. Conclusion.

MPAA urges the Commission to take these comments into account as it promulgates rules implementing Section 340 of the Communications Act, as enacted in SHVERA § 202.

Dated: April 29, 2005

Respectfully submitted,


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