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BY ELECTRONIC FILING

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Re: Establishment of a Model for Predicting Digital Broadcast Television Field Strength Received at Individual Locations, ET Docket No. 10-152; Measurement Standards for Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004, ET Docket No. 06-94

Dear Ms. Dortch:

Representatives of DIRECTV, Inc. (“DIRECTV”) and DISH Network LLC (“DISH Network”) met yesterday with Commission staff to discuss issues related to the STELA implementation proceeding captioned above. Present on behalf of the satellite carriers were Alison Minea of DISH Network and Stacy Fuller and Andrew Reinsdorf on behalf of DIRECTV, accompanied by DIRECTV’s outside counsel Michael Nilsson. Present on behalf of the Commission were Julius Knapp, Chief, and Alan Stillwell, Deputy Chief, of the Office of Engineering and Technology. DIRECTV and DISH Network raised points consistent with their earlier submissions in this proceeding, as reflected in the attached talking points.

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,

/s/
Michael Nilsson

Attachment

cc: Julius Knapp
Alan Stillwell

Unserved Household Talking Points

I. THE COMMISSION SHOULD NOT IGNORE CONGRESS'S EXPLICIT AND DELIBERATE CHANGES TO THE ANTENNA STANDARD.

- A. People have known for years that the model is inaccurate.
- B. NAB's *own* website stated that 40 percent of those predicted *ineligible* for distant signals could not receive local signals using any antenna.
- C. Responding to this, Congress changed the key language *twice*.
 - 1. In the Copyright Act, a household used to be "unserved" if it could receive a local signal "through the use of a conventional, stationary, outdoor rooftop receiving antenna." Now it is unserved if it cannot receive a local signal "through the use of an antenna."
 - 2. In the Communications Act, the original bill language had "conventional, stationary, outdoor rooftop receiving antenna." The final bill has "through the use of an antenna."
 - 3. As the Supreme Court has made clear, "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." Thus, the one thing Congress could *not* have meant is for distant signal eligibility to continue to be based on the use of a "conventional, stationary, outdoor rooftop receiving antenna."
- D. The Commerce Committee expects the Commission to consider the types of antennas that are *readily available for purchase* by consumers.

II. THE BROADCASTERS' ARGUMENTS IN FAVOR OF IGNORING CONGRESS ARE MISPLACED.

- A. Broadcasters urge the Commission to ignore the Copyright Act's changes because they (allegedly) do not appear in the Communications Act. But the Commission has not and cannot ignore the Copyright Act – which is incorporated by reference in the Communications Act in any event.
- B. The Communications Act does not contradict the Copyright Act.
 - 1. Section 339 explicitly incorporates the definition of unserved household from Section 119; this, in turn, is the definition changed by STELA.
 - 2. Congress used the same "antenna" phrase in the Communications Act.

3. Reference to receiving signals “in accordance with the signal intensity standard in section 73.622(e)(1)” does not require rooftop outdoor antenna.
 - i. “Signal intensity standard” is just a number. Even if the number was derived for other purposes with assumptions about height and location, nothing in *the number itself* says anything about antenna height and location.
 - ii. Nothing in that section says anything about height and antenna location in any event.
4. Requirement that, “in prescribing such model, the Commission shall rely on” prior ILLR model does not mean “use a rooftop antenna.”
 - i. “Such” model means model predicting receipt of signal through use of antenna.
 - ii. “Rely on” does not mean “use without changes.” It means simply to “rely on as a starting point.”
 - iii. Congress changed “antenna” language precisely because of the FCC report expressing concerns that changing “noise limited” standard itself would have unwanted effects.

III. THE COMMISSION SHOULD PRESCRIBE A CONSUMER-FRIENDLY PREDICTIVE MODEL AS REQUIRED BY THE STATUTE

- A. Indoor antennas can be easily incorporated into the predictive model.
 1. The variations of the indoor environment are actually less extensive than the variations observed in the outdoors.
- B. Time variability should be set at 99%.
 1. Time variability of 99% is equivalent to the 99.7% that STELA’s Section 342 demands for satellite local-into-local service to new DMAs.
 2. It is all the more appropriate here because the accuracy of the prediction is already mitigated by the 50% confidence factor (there is only 50% confidence that the household is served and only 50% confidence that it is unserved).
- C. The predictive model should be adjusted for various obstruction factors.
 1. Co-channel interference can easily be accounted for in the model.

2. Land use and land cover. Contrary to the broadcasters' assertion, the satellite carriers have offered concrete, immediately executable suggestions for improving the recognition of land use and land cover losses.

IV. THE COMMISSION SHOULD PRESCRIBE A CONSUMER-FRIENDLY MEASUREMENT METHODOLOGY AS REQUIRED BY THE STATUTE

A. Must be focused on minimizing consumer burden.

1. STELA requires that the focus of on-location testing be minimizing the burden to consumers.
2. Indoor antennas are easier to install.
3. Indoor antennas are less expensive.
4. For these reasons, consumers deploy them overwhelmingly more often than outdoor antennas.

B. Indoor testing does not raise the risk of manipulation.

1. The testers would need to satisfy the requirement of independence. A tester whose compensation does not depend on test results does not have an incentive to manipulate the results.
2. The supposed problems arising from the possibility of many television sets and other variables are also easily resolved through the protocol recommended by Mr. Kurby, which would require the agent that measures the area for TV reception to submit a report describing the building, the rooms in general, the room measured, the locations measured, the measured and calculated results, and the equipment used. This would provide a sufficient recordkeeping and audit device to help ensure and measure the integrity of the measurement standards.

V. RECEPTION TESTING IS ALLOWED AND INDEED REQUIRED UNDER THE STATUTE

- A.** The statute does not only say “signal” and “intensity.” It also says “receive.” Reception of a watchable signal is an explicit statutory prerequisite to a household being disqualified from receiving distant service. It should also be an obvious one. If a consumer cannot receive a viewable signal over-the-air, no matter that its intensity is high, her plight is as exactly as serious as that of her neighbor who cannot receive it because the signal intensity is low. Congress did not intend either category of consumer to be disenfranchised.

- B. The question of whether a signal is received may have been a subjective one for analog television; with the zeroes and ones of digital television, however, a consumer that does not receive a picture cannot be said to receive anything.

Appendix
Redline of Key Provisions

17 U.S.C. § 119(d)

(10) Unserved household. The term "unserved household", with respect to a particular television network, means a household that--

(A) cannot receive, through the use of ~~an~~**unconventional, stationary, outdoor rooftop receiving** antenna, an over-the-air signal ~~of at~~**the primary stream, or on or after the qualifying date, the multicast stream, originating in that household's local market and network station** affiliated with that network of

- (i) **if the signal originates as an analog signal**, Grade B intensity as defined by the Federal Communications Commission under section 73.683(a) of title 47, ~~of the~~ Code of Federal Regulations, as in effect on January 1, 1999; **or**
- (ii) **if the signal originates as a digital signal, intensity defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission (section 73.622(e) of title 47, Code of Federal Regulations), as such regulations may be amended from time to time;**

47 U.S.C. § 339(c)(3)

(A) Predictive model.—Within 180 days after the date of the enactment of the Satellite ~~Television Extension and Localism Act of 2010~~**Home Viewer Improvement Act of 1999** [~~enacted Nov. 29, 1999~~], the Commission shall ~~take all actions necessary, including any reconsideration, to~~ develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, **through the use of an antenna**, to receive signals in accordance with the signal intensity standard in **section 73.622(e)(1) of title 47, Code of Federal Regulations, or a successor regulation, including to account for the continuing operation of translator stations and low power television stations**~~effect under section 119(d)(10)(A) of title 17, United States Code~~. In prescribing such model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the ~~Federal Communications~~ Commission in CS Docket No. 98-201, **as previously revised with respect to analog signals, and as recommended by the Commission with respect to digital signals in its Report to Congress in ET Docket No. 05-182,**

FCC 05-199 (released December 9, 2005). and ensure that such model takes into account terrain, building structures, and other land cover variations.

The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available.

(B) On-location testing.—The Commission shall issue an order completing its rule-making proceeding in ET Docket No. 06-94 within 180 days after the date of enactment of the Satellite Television Extension and Localism Act of 2010. In conducting such rulemaking, the Commission shall seek ways to minimize consumer burdens associated with on-location testing.