

Before the
 UNITED STATES COPYRIGHT OFFICE
 LIBRARY OF CONGRESS
 Washington, D.C.

DOCKET NO
 RM 2007 1
 COMMENT NO 14

In the Matter of

Notice of Inquiry Regarding the)
 Section 109 Report to Congress)
 With Respect to Issues Related to the)
 Operation of, and Continued Necessity for,)
 the Cable and Satellite Statutory Licenses)
 under the Copyright Act)

Docket No. 2007-1

COMMENTS

Introduction

National Programming Service, LLC (NPS) submits these comments in response to the Notice of Inquiry (NOI) dated April 16, 2007, concerning Sections 111, 119 and 122 of the Copyright Act. We analyze the rates, terms, and conditions found in the three licenses at issue; we also examine how multichannel video competition has been affected by the licenses; whether cable and satellite subscribers have benefited from them; explore the application of the licenses to new digital video technologies; and comment on whether the licenses should be maintained, modified, expanded, or eliminated.

I. Company Profile.

1. NPS has been providing quality C-Band satellite programming as a third-party packager since 1985. NPS obtains licenses from satellite programming networks for the right to redistribute the programming to subscribers with C-Band satellite dishes. Our Indianapolis-based call center has a capacity of 175 agents and we serve over 40,000 C-Band subscribers through our own proprietary Subscriber Management System (SMS). While many C-Band subscribers have migrated to smaller reception dish Direct Broadcast Satellite (DBS) systems, there continues to be high demand among the remaining C-Band customers for the services we provide.

2. NPS began uplinking satellite network TV channels in 2004 when certain satellite program networks discontinued direct transmission to C-Band subscribers. NPS stepped in and leased transponder capacity to ensure that C-Band consumers could continue to receive the TV networks they desired.

3. Additionally, commencing in 2006, NPS began providing distant network television signals to DBS subscribers. Today we service more than 100,000 customers for this service and we qualify these subscribers through DecisionMark, a TV broadcast approved technology and independent (though owned by broadcasters), validating entity for determining potential subscriber eligibility for copyright compulsory license compliance purposes. We believe we are fully in compliance with all statutory requirements for unserved household eligibility.

4. As of today, NPS uplinks 21 satellite program channels primarily on satellite Galaxy 3, transponders 1 and 7. We do the actual uplinking through subcontractors; primarily Crawford Communications, located in Atlanta, Georgia. In addition we use ABC-CBN International d/b/a SFIG in Redwood City, California. The transponder space for these channels is leased from Intelsat, located in Washington, DC and EchoStar Operating Corporation. A complete listing of the services which are uplinked by NPS, as well as services for which a copyright fee is paid, is noted below.¹

II. Summary of NPS Comments

1. The current compulsory license system works well. After 30 years of experience with the cable compulsory license and ten years for the satellite license, no entity has suffered from this system. On the contrary, consumers have benefited from increased competition in the delivery of television programming and continued access to critical news, educational and informational programming; content owners have been compensated for the use of their programs without having to pay substantial sums to receive those royalty payments. The compulsory license system allows for a rational leveling of competitive ability to provide service rightfully expected and

¹ Uplinked Services: KTVU, WAGA, KGO, WSB, KPIX, WGCL, KNTV, WXIA, Hallmark Channel, Lifetime, CMT, VH-1, A&E, TV Land, MSNBC, CNBC, WPIX, MTV, AMC, Court and USA Network. Stations for which NPS pays copyrights: KTVU, WAGA, KGO, WSB, KPIX, WGCL, KNTV, WXIA, WPIX, KCNC (R. M. 8), KWGN (R. M. 8), KMGH (R. M. 8), KUSA (R. M. 8), KBDI (R. M. 8), KRMA (R. M. 8), KTVD (R. M. 8) and KDVR (R. M. 8).

demanded by American TV viewers. NPS believes that marketplace negotiations or retransmission consent simply will not work. Indeed, this is why the compulsory license was introduced in the first place.

2. The license has benefited unserved households, which include not only rural America but also television consumers working/living on remote military bases, ships and recreational vehicles. The license should be extended/made easier to implement so as to cover all military bases, ships and recreational boats reachable by domestic satellites.

3. The satellite compulsory license will be more important in the future when the full impact of the digital transition is understood. The shift from analog to digital transmission of broadcast signals will result in many unanticipated technological changes including reduced signal availability and increased interference, both of which will dramatically affect a television viewer's ability to receive a "viewable" signal. We will not know the full extent of the reduced signal availability or the interference issues the American viewing public will face until all have experienced the full impact of converting reception from analog to digital signals. Therefore, the copyright compulsory licenses should remain the same until the full effects of the digital transition are understood and evaluated. At a minimum, the US Copyright Office, the Congress and the Federal Communications Commission (FCC) should work to adjust the criteria for determining "unserved" households.

4. NPS therefore firmly believes the Copyright Office should move cautiously before making wholesale changes to the current in-place compulsory license regime, including not allowing the license to expire, until we know the full impact the digital transition will have on satellite subscribers, particularly those in unserved households.

5. Congress, the US Copyright Office and the FCC should concentrate on three major areas as they consider the compulsory licensing regime for satellite and cable operators:

a. The satellite compulsory license must be renewed and made permanent. Thousands of rural consumers will be left without access to important network programming unless the license is renewed. To help satellite providers plan for a fully digital era, NPS believes the satellite compulsory license should be made permanent to give satellite carriers more certainty as they make business decisions

b. The satellite compulsory license must be improved to ensure that all consumers receive the benefits of the transition to digital television.

Unless regulatory adjustments to the current rules for unserved households are made, thousands more rural consumers will not have access to network television programming once the digital transition is complete. The digital transition requires improvement and simplification of the eligibility criteria if all Americans are to enjoy equal access to HDTV.

c. The satellite compulsory license should not result in competitive disadvantages for the satellite industry vis-à-vis other multichannel video program distributors (MVPDs).

d. All parties of interest should agree that the overriding public interest and public policy should insure that all American households have access to digital/HDTV network TV signals.

III. The Satellite Compulsory License Must Be Retained

1. The Satellite Home Viewer Act (SHVA) of 1988, renewed in 1994, 1999 and 2004, codified at 17 U.S.C. §119, has been enormously beneficial to consumers who do not have access to the broadcast TV networks through regular over-the-air transmission devices. Moreover, the SHVA has fostered competition between cable, satellite and other MVPD; while at the same time providing hundreds of millions of dollars in copyright payments to all qualifying copyright holders. Without the compulsory copyright license it would be virtually impossible to identify and clear all of the necessary rights from the potentially hundreds of copyright holders whose programming make up a broadcast day.

2. Maintaining the license is even **more important** today than it has been in the past. As we move into digital transmissions, hundreds of thousands of rural consumers will not be able to receive the benefit of broadcast digital (“HDTV”) signals without the compulsory license. NPS predicts that many households will not receive an HDTV signal for the following reasons: 1) subscribers who live in small television markets may still be years away from receiving local television signals via satellite; and 2) the transition to digital television signals will not eliminate the “unserved” household problem--there will still be households unable to receive a viewable picture of local network signals. This situation, if allowed to happen, would make these rural consumers second class citizens and result in technology “haves” and “have-nots.” It would be very similar to forcing all rural consumers to continue to

receive a television signal only in black and white while denying them access to television signals in color. In addition, due to the so-called "cliff effect" of digital versus analog signals, which results in either the over the air receiver having a high quality digital picture or no picture at all, the number of consumers not able to receive an over the air network signal undoubtedly will be much greater. 3) It is not logical that DirecTV and EchoStar will ever provide local into local HDTV signals in all markets due to the tremendous amount of bandwidth which would be required.

3. The Copyright Office's suggestion that the satellite compulsory license is no longer necessary in light of the increased availability of the Internet is misguided. Households which must rely on satellite providers to receive access to network stations are in rural and remote areas. It is well documented that rural America suffers from a lack of Internet access (certainly high speed internet services that would be needed to stream video effectively), thus further necessitating the need for a compulsory license until this disparity is resolved. The Copyright Office cannot assume all America has Internet service as it is not the case for rural and poor America and will probably not change for years to come.

4. There is no justification for repeal of the satellite compulsory license at this time. NPS believes it would be premature to let the license expire. NPS agrees with the Copyright Office that some adjustments in response to technological and changed market conditions may be necessary to fulfill the goal of continuing to ensure that all Americans have access to network digital/HDTV signals. However, there should be no significant changes in the current compulsory license's scope or provisions.

Once HDTV/digital television is actually in place, all interested parties can address the technical realities of service (or lack thereof), in the context of the satellite compulsory license. Regulatory agencies should have the flexibility to make those changes when necessary to ensure the American public's continued access to television networks without having to completely rewrite the Copyright Act.

IV. The Satellite Compulsory License Must Be Made Permanent

1. Although intended to provide the same function; i.e., to ease the administrative burden and cost of clearing copyright programming for rebroadcast to consumers, the satellite and cable compulsory license are very

different. As the Copyright Office notes the cable and satellite licenses were enacted by Congress at different points in history and in response to very different technological developments. Because the legislation creating the satellite compulsory license has included a sunset provision, Congress has had the opportunity every few years to modify the satellite license to reflect current marketplace and legal developments. While this has provided the industry with opportunities to update the satellite license to better reflect consumer demand and account for technological change, on balance, it has been a tremendous burden to the satellite industry.

2. NPS strongly recommends extension of the compulsory license without a current sunset/renewal period. As technology changes and we move toward a digital world, regulatory agencies should be allowed the flexibility to respond appropriately. Most agencies have taken a progressive “let the market place control” approach unless there is such a disparity in negotiating power (such as Congress saw in adopting the compulsory license). Clearly, nothing has changed so dramatically over the last 5 years to warrant wholesale evisceration of the compulsory license. Further, NPS believes that copyright holders/owners are receiving fair compensation for their creative works/programming.

V. The Satellite Compulsory License Must Be Modified to Eliminate Anti-Competitive Disadvantages

1. While the cable and satellite industries are technologically and functionally very different, these differences do not justify the disparate treatment under the satellite compulsory license which currently exists. Indeed, because one of the primary objectives of the satellite compulsory license was to ensure that consumers had a choice in MVPD providers, the current imbalances in the licensing scheme should be eliminated so that satellite is better able to compete in the marketplace.

2. Satellite’s national footprint positions NPS to provide service to those in rural America who otherwise could not receive network signals. Many of these rural Americans would not have access to or benefit from the new digital world without access to satellite.

3. The permanence of the cable compulsory license, the ability of cable to

serve their subscribers with distant signals without qualifying them for eligibility, and to provide distant radio signals also gives the cable industry a huge competitive advantage in all but the most rural areas of America.

4. Although the license has been of tremendous benefit to consumers, content owners and MVPDs, there are several provisions which significantly disadvantage the satellite industry, an industry encouraged by Congress and federal regulatory bodies. For example, the compulsory license available to cable systems is permanent while the satellite compulsory license sunsets by statute and must be renewed. With every renewal (typically every five years), the satellite industry is faced with uncertainty and the possibility that the compulsory license will not be extended. To give satellite companies the business certainty they need to make plans more than five years out, NPS supports making the satellite compulsory license permanent.

5. Additionally, at every reauthorization the satellite industry has been saddled with even greater burdens to conduct its few members' legitimate business. Under SHVA, the satellite industry must ensure the consumer is legally entitled to receive the signal, There is only one reliable company we can use to qualify households for distant network signals. This company, DecisionMark, is now owned by broadcasters. The fact that this company has a virtual monopoly on the process for determining whether subscribers are eligible to receive distant network signals contributes significantly to our costs. By contrast, in many markets the cable operator may distribute both local network affiliates and distant network signals to its subscribers without a comparable verification process and is thus able to avoid these costs. The SHVA sets up a waiver system that continues to deny consumers access to distant network signals in some geographic locations due to multiple overlapping DMAs and the resulting confusion created when waivers from all networks involved are required, even though only one is directly affected. (Examples of this continuing confusion can be made available in the form of documented requests, several typical ones of which are attached hereto as Exhibit 1.)

6. The Copyright Office asks whether the satellite industry is placed at a competitive disadvantage due to the unserved household limitation included in the satellite compulsory license and whether Congress should correct this imbalance? NPS believes the answer to that question is unequivocally "Yes."

7. Satellite carriers are disadvantaged, not just because of the cost of

administration, but also the limit on the distant subscriber market placed on the satellite carrier. This is an obvious disadvantage to satellite. Cable can import distant signals without incurring any cost to qualify its subscribers. There is a substantial cost to the satellite carrier to determine which subscribers are eligible (less than 3% of all television households qualify to receive distant network signals), to receive the maximum two distant signals, from the same TV network, currently allowed. As mentioned previously, NPS is forced to rely on one confirmation source with a virtual monopoly on the technology to evaluate whether a subscriber is eligible to receive a distant network signal. This company was recently acquired by broadcasters, raising the specter of a possible conflict-of-interest, since it is in the interests of broadcasters to qualify as few households to receive distant network signals as possible.

8. The process itself results in much consumer dissatisfaction particularly when the consumer disagrees with the decision not to qualify them for distant network signals. Consumers are then left to pursue the time-consuming and frustrating process of obtaining a waiver from the local broadcaster to receive a distant network signal, with obstinacy of some broadcasters evident.

VI. Increases in Satellite Royalty Rates Are Unnecessary and Not Warranted

1. The facts show that royalty rates assessed pursuant to the satellite compulsory license have continued to rise over the years and have never decreased. **Since 1988, the satellite industry has paid hundreds of millions of dollars in royalties to the Copyright Office, which royalties have been distributed to copyright owners.** The content owners pay none of the administrative costs for distributing the royalties. By virtue of their geographic location, thousands of consumers must pay to receive what the rest of the American public gets for free. To these households, there is no such thing as “free over-the-air” TV. The more the unserved household consumer must pay becomes yet another barrier to access. When one takes into consideration the cost of providing the signal, backhaul, uplink, authorization and other costs with the rising royalty fees, these costs become more and more difficult for the consumer to accept. It’s no wonder consumers are looking for a rollback – certainly not an increase – in royalty rates.

2. Moreover, NPS makes only pennies per subscriber by providing this distant TV network service under the current compulsory licensing scheme in place. The cost to provide unserved households with distant network signals is very high on a per subscriber basis since our subscriber base is small and we sell

only four distant TV network signals. This is in contrast to cable companies which may defer and spread costs over millions of subscribers and hundreds of channels in large packages. Satellite carriers like NPS have fewer customers because unlike cable, satellite subscribers are not required by law to purchase a package of local or distant station signals. This circumstance means fewer customers for the satellite provider. NPS strongly suspects there are no comparable costs/profit impingements based on the compulsory licenses for these other companies/industries.

3. Since NPS sells only the four distant TV networks a la carte, it could not be in this business if it did not pass the copyright royalties on to subscribers, thereby limiting our ability to hold down consumers' costs.

VII. Limits on Distant Network Signals are Anti-Consumer

1. Consumers without access to a local, over-the-air network station should not be restricted as to the number of distant network signals permitted to be received. NPS selects which particular TV network signals to offer subscribers by first taking into account consumer demand and blending this demand with cost-effective practicality. There are unserved consumers for all television networks; therefore NPS provides all four TV networks. Consumers generally want network feeds from their own time zone, so NPS compromises and provides them with both an East and a West coast signal for each TV network. (To cover all time zones is cost prohibitive.) Finally NPS tries to use stations from desirable markets to which our customers also can relate.

2. Current law limits consumers to receiving only two distant signals per TV network. This restriction was the product of heated negotiations during the last SHVA reauthorization. NPS opposes any efforts to place further limits on the number of distant network signals a consumer may receive.

VIII. Digital Transition is the Biggest Issue Facing Satellite

1. In the future, the biggest factor affecting distant network signal distribution will be the digital transition, in particular for the expansion of HDTV. Rural unserved consumers are as entitled to access HDTV signals as their urban counterparts. Yet, because of signal strength and propagation issues, the number of rural unserved households is likely to increase with respect to HDTV over-the-air availability. The royalty structure must take into account the additional cost of providing HDTV signals or the American public will

have to bear an uneven and exorbitant burden to receive TV signals to which they are entitled. It takes about four times as much bandwidth to provide an HDTV signal as a standard analog signal. As a company leasing satellite transponder space, NPS knows it is very costly. If satellite providers cannot justify carrying HDTV service because of the cost, unserved households will be denied access to HDTV and possibly very important network programming.

2. No one knows exactly what the impact of digital transmission will be on today's unserved households, let alone how many potential new unserved households may result after the transition to digital. For this reason, the Copyright Office should recommend extending the license until, at a minimum, well past the completion of the transition to digital signals.

3. In this proceeding the Copyright Office asks whether there digital television signals are worth more or less in the marketplace. NPS submits there is an increased value in HD signals, but the value is not extended to consumers as much as it is to the broadcaster, cable operator and satellite distributor in the form of increased market share and subscribers. This has the effect of making the total service package more cost effective for all subscribers and holding down rate increases, if any. The battles going on between cable and satellite over who offers the most HDTV and best quality are an example of the competitive aspect of the digital signal dynamic. NPS does not believe higher royalty rates for any distant network signal, including HD signals, are appropriate or justified.

IX. No Single Channel Should be a Surrogate for Determining Royalty Rates

1. The Copyright Office seeks comment on what the marketplace rate for distant signals would be if a basic cable network was used as a surrogate. NPS believes the Copyright Office simply should not use one basic network as a surrogate for determining royalty rates for all distant network signals. Should this methodology be used, several if not all basic networks should be used, not just one network. Each network has its own audience, and the costs do not always reflect the value of the service.

2. While the Copyright Office suggests the licensing fees paid by the former superstation TBS may be an appropriate proxy for determining the royalty rates for all distant network signals, NPS cautions against this approach. TBS or any one broadcast TV station should not be the sole basis for an appropriate

comparison. While not a perfect alternative, several if not all basic TV networks should be used. No single basic cable program can be the determinant as to market value of another programming service (TV network broadcasts), which has totally different content and carries substantially less targeted programming.

X. Communications Regulations Not Relevant to Distant Network Signals

1. NPS believes it is unnecessary and inappropriate to apply communications law-related requirements such as syndicated exclusivity, sports blackout, and network non-duplication rules to the retransmission of network station signals to unserved households or that these provisions should have any relevance to the royalty rates
2. Generally speaking, many distant signal subscribers are not the consumers to whom the rules pertain. For example, blackout rules were created to insure that professional sports teams would fill their stadiums during home games and not opt to view on over the air television. Most distant signal subscribers are not in a position to attend due to the rural nature of the subscriber and that they live far away from the game venue for the teams which are being carried.
3. The mere fact a distant network satellite signal subscriber can not get the local network which the distant network is providing eliminates the need for further rules to protect against duplication. If a rural viewer is watching primetime shows on the ABC distant network station, then he can not be watching those same shows on local ABC because by definition he does not receive the local station. For example, if the consumer lives in Montana and is watching an Atlanta Falcons NFL game on the NBC distant network, it is because he/she can not get any other NBC channel which carries the NFL games.

XI. Impact of Distant Network Signal Litigation

1. NPS is uniquely qualified to comment on the effect that the most recent court's injunction has had on satellite subscribers. The court's injunction has taken EchoStar out of the Distant Network business. NPS, a totally independent company, has leased a transponder on an EchoStar satellite as a common carrier-like customer and is currently serving just over 100,000 subscribers. NPS provides these subscribers, who own or rent Dish Network systems, with distant television networks from San Francisco and Atlanta.

NPS provides both signals to every customer because we feel it is important for a subscriber to be able to get a network feed from a time zone as close to their own as possible or at worst one time zone removed from their own. NPS subscribers primarily are rural homeowners, with a small percentage being RV owners.

2. NPS and its customers are exactly the type of people the compulsory license was created to protect. We are one of only two satellite companies selling distant networks signals and due to our low subscriber numbers we have little or no market power. EchoStar is no longer in the distant TV network business and by court order can not be. NPS believes the number of subscribers no longer receiving distant network signals is totally irrelevant to the debate over whether the compulsory license permitting the retransmission of distant network signals to unserved households should be extended.

3. As explained above, NPS, a totally separate company (as the U.S. District Court has found in two court rulings *CBS Broadcasting, Inc., et al. v. EchoStar Communications Corporation, et al.* (Case No. 98-02651-CV-WPD, U.S. Dist. Ct. So. Dist. Fla., 2007; Magistrate's Order Denying Motion for Clarification December 18, 2006; Order Adopting Report of Magistrate December 21, 2006; and Order Denying Motion for Issuance of Order to Show Cause January 4, 2007), currently provides distant network signals to subscribers of Dish TV. It is important to note these subscribers are separately billed for different services/signals on totally separate billing statements sent independently by each company. As detailed previously, NPS independently ensures whether individual subscribers are eligible under the statute to receive distant network signals and pays the full compulsory royalty rates in timely fashion.

4. We believe many former EchoStar distant network subscribers are eligible to receive distant network signals but are not aware of the availability of distant TV signals from another provider due to restrictions stemming from the injunction. These rural unserved citizens are the ultimate losers in this dispute since there is no easy access to subscriber information which would allow NPS to directly contact them concerning the continued alternative source availability of these distant signals.

5. The impact on consumers could have been mitigated had the broadcasters been satisfied by just taking action against EchoStar. Unfortunately, the negative impact continued because the broadcasters also went against NPS, an

independent company who is merely leasing transponders from EchoStar on a common carrier/customer basis in order to serve those consumers who lost their only access to distant TV network signals. NPS has provided distant signals for 20 years with few problems and complete adherence to the law, including full copyright compulsory license payments. The result of the broadcasters' actions has been to make the transition difficult for the consumer, some of whom are still unaware of the availability of distant signals to which they are entitled.

XII. Transmission of Radio Signals

The Copyright Office notes satellite carriers are unable to carry radio station signals while cable companies may retransmit such signals and asks whether this difference disadvantages satellite carriers. NPS believes it would be appropriate for Congress to establish a satellite carrier statutory license for the retransmission of terrestrial radio station signals. NPS can not see any company/industry which would be impacted by this except possibly the satellite radio carriers who would have to coexist with another competitor. In light of the pending merger application between the country's two largest – and only – satellite radio providers, permitting another industry to enter the business could provide desirable competition and benefit consumers.

XIII. Necessity of the Satellite Compulsory License

1. As NPS has noted throughout these comments, there continues to be an important need for access to network programming in many parts of the country which are unserved by a local TV network station. Accordingly, the satellite compulsory license needs to be extended so consumers will have access to important news, educational, public safety and information programming provided over the national broadcast networks. The continuation of the satellite compulsory license is vital to Congressional policy to promote competition in the MVPD marketplace and provide the American public with as many choices as possible. Without access to the distant network signal compulsory license, satellite carriers will not be able to compete for customers in those markets where local network stations are not yet available via satellite. Small entrepreneurial companies like NPS are providing an important public service by ensuring no American is disenfranchised. NPS anticipates extending the important digital transition to rural America by retransmitting HDTV network signals to unserved households, in furtherance of the FCC's goal and independent statutory mandate to provide all

Americans, including those on military bases/ships, recreational vehicles and boats, with access to digital television signals.

2. Unless the satellite compulsory license is permanently renewed, over one million consumers will be disenfranchised; businesses will be disrupted; and competition with cable TV will be reduced – the antithesis of what the compulsory license was designed to address. This will tremendously hinder the satellite industry and it may well cease to be a viable competitor/supplier of alternate TV services.

3. Furthermore, these rural/remote households and their residents will become second class citizens without access to the benefits of HDTV network broadcast unless there is a compulsory license in place and economic incentives through sufficient market opportunities and reasonable copyright compulsory royalty fees for satellite and cable TV providers to continue providing service.

4. As the Copyright Office recognizes, there is no rights clearing mechanism (other than this critical satellite compulsory license), to minimize the administrative burden of getting the necessary rights to retransmit TV network programming. The Copyright Office seeks comment on whether the fact there is no rights clearing mechanism for broadcast networks is relevant to the consideration of royalty rates. NPS believes it is. Because there is no clearinghouse for copyrighted programming on network broadcast signals, “free marketplace negotiations” are for all practical purposes impossible to conduct. Each network carries thousands of copyright holders’ content; each would have to be identified and contracted in order to receive the proper clearances necessary to provide the signal to rural America. Neither the broadcasters or the rights holders have moved to establish a blanket licensing regime or rights clearing house in the thirty-plus years compulsory licenses have been in existence. It is precisely for this reason it is so important the copyright compulsory license be continued.

5. The Copyright Office’s reliance upon the number of total subscribers to DBS services to justify “market power” and thus the ability to negotiate royalty rates through private negotiations is misplaced, particularly in the case of distant network signals. Only a fraction of total DBS subscribers are even eligible to receive distant network signals. NPS has only some 100,000 customers and clearly does not enjoy market power. Without the compulsory license, NPS’s distant network signal subscribers would simply lose access to

important news, educational, public safety and informational programming. Consumers would lose the convenience of being able to stay connected by obtaining access to distant network signals in Recreational Vehicles (RVs). Additionally our men and women in uniform located on remote bases and other military installations would likewise lose access to network programming via satellite. To ensure all of the American public has access to HDTV signals, NPS as one of only two companies providing distant network signals, urges Section 119 to be made permanent and revised -- not phased out.

6. NPS strongly rejects the suggestion that retransmission consent is a suitable substitute for cable and satellite compulsory licenses. While broadcasters may have the right to permit or deny retransmission of their signals in some contexts, even when retransmission is granted they do not have the right under Copyright law to redistribute all of the programming airing on their stations. Therefore, satellite carriers such as NPS would still be required to negotiate with potentially thousands of copyright holders in order to secure rights to network signals and thus provide unserved households with access to network programming. As outlined earlier, this would be close to impossible given there is no blanket licensing system or rights clearing house to reduce the administrative costs of clearance. Furthermore, there is no movement to eliminate the compulsory license for audio/music copyright holders; why should video/TV be different?

7. Retransmission consent will not work for distant TV network signals and it would give too much power to the networks, who have increased their number of challenges to unserved viewers and who clearly do not want to provide service without charging a very high fee.

8. TV broadcast stations which are carried as distant signals may only have a very small portion of subscribers in their DMA. The present system allows payment to the Copyright Office which then distributes the revenue based on ownership rights. Otherwise, viewing rights would have to be obtained from thousands of copyright holders, making it impossible to negotiate an agreement for carriage worth considering.

XIV. Local-into-Local Is Not a Complete Solution or Alternative to Continued Delivery/Reception for Distant Network Signals

1. Despite the tremendous progress the satellite industry has made in making local network signals available to subscribers via satellite under the Section

122 license, there are still many markets where local stations are not yet available. For this reason, extension of the distant network signal license is critically necessary.

2. The Section 122 license has been instrumental in strengthening the satellite industry's competitive and hence viable position in the marketplace. The license continues to be an important part of the industry's strategy/goal to meet consumer demand for local TV broadcast channels. However, a more important consideration is the number of American households which would lose access to network broadcasts and in the near future will not receive HDTV broadcasts if the satellite compulsory license were allowed to expire. To end the license at this time would deprive these American households access to important news, educational, public safety and informational programming. The considerable damage to the public interest which would occur if the license was not reauthorized outweighs the negligible impact to broadcasters from renewal and clearly dictates that the license should be extended. (Remember, all copyright holders are being compensated under this license.) Until all networks are available in acceptable quality HDTV to all American consumers over the air, there will be a need for distant TV network signals' delivery by satellite.

3. Remote military bases and ships, as well as recreational vehicle and boating industries, are in all practicality outside the ambit of domestic satellites' spot beams. Indeed, "local into local" is a misnomer and should not be applied to these particular recipients.

XV. Summary.

NPS urges that the copyright compulsory license remains essentially the same but with provisions to allow flexibility for regulatory agencies to meet the new requirements due to the transition to a digital age. The license must be renewed and made permanent, in part because digital signals differ significantly from current analog signals. New technical criteria will determine whether any given consumer/subscriber qualifies or not for distant TV network signals. The Copyright Office has a duty and mandate to ensure that HDTV is available to rural consumers and the primary public policy priority is to ensure all Americans have the ability to access HDTV in the new digital world on a reasonable cost basis. Raising the rate for the compulsory license will doom this goal to failure. Finally, service providers who have and continue to invest millions of dollars in delivering these services have a right to continue their

legitimate businesses unfettered as much as possible, as the provision of service to millions of unserved persons in America will serve the public interest.

NPS looks forward to further addressing these issues at the upcoming July, 2007 hearing, answering questions of the Copyright Office, and amplifying on the need for

some extension/expansion of the compulsory license to cover military bases, ships, and recreational boats.

Respectfully submitted,

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Dated: July 2, 2007

Exhibit 1

Waiver Requests re: Inability to Receive "Local" TV Network Signal(s)

National Programming Service, LLC
Comments in response to Copyright Office NOI
Docket No. 2007-1

July 2, 2007

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> >From: Robert Teston [mailto:dteston@msn.com]
> >Sent: Wednesday, January 24, 2007 2:49 PM
> >To: Modisett, Dan
> >Subject: plea for a waiver
> >
> >Dear Mr. Dan,
> >
> > I am writing to plea for a waiver for the NBC network. I am unable
> >to
> >get ANY PROGRAMMING from your station's signal. I live in a low lying
> >area,
> >with lots of trees. I have bought and attempted to use outside antennas
> >to
> >get a signal but due to my location, I have not been successful. I hate
> >to
> >bother you about this and I feel I am not serviced by your area, but I
> >need
> >a waiver stating this. I would love to get locals, but they are not
> >offered
> >by our satellite provider. I miss my NBC programs so much! I
> >appreicate
> >your help and kindness with this! If you could help me out by sending
> >a
> >waiver to:
> >
> >All American Direct
> >Attn: Delanie Smiley
> >Fax #: 317-558-3838
> >
> >My account is listed:
> >Dale and Margie Teston
> >84 Bullock Road
> >Foxworth, MS 39483
> >601-736-9033

> >From: "Modisett, Dan" <dmodisett@wlbt.net>
> >To: "Robert Teston" <dteston@msn.com>
> >Subject: RE: plea for a waiver
> >Date: Wed, 24 Jan 2007 15:07:00 -0600
> >
> >>We have had a number of requests from subscribers of All American Direct
> >>for waivers. Unfortunately they are misinformed. WLBT can't, by law,
> >>grant waivers to anyone outside our 24 county viewing area. You have to
> >>get a waiver from the NBC station that covers your county. Foxworth is
> >>in Marion County and that is WDAM. All American has wasted a lot of
> >>your and my time by not knowing the rules.

From: Robert Teston [mailto:dteston@msn.com]
> Sent: Fri 1/26/2007 9:49 AM
> To: Questions
> Cc:
> Subject: FW: RE: plea for a waiver
>

Page 2 of 2

>
>
> Ms. Smiley,
> Please review this e-mail and see if you can provide some assistance!
> Please advise at dteston@msn.com or phone numbers: 601-736-9033 or
> 601441-9033. I would greatly appreciate your help. I have made many
> attempts to leave you a message.
> Margie Teston

From: Robert Teston [mailto:dteston@msn.com]
Sent: Wed 2/14/2007 9:54 AM
To: Questions
Cc:
Subject: RE: RE: plea for a waiver

Please forward this letter to Delanie Smiley so that the denial of the waiver for NBC can be lifted. My account is listed as:
Dale and Margie Teston
84 Bullock Road
Foxworth, MS 39483
601-736-9033

>From: "Questions" <questions@mydistantnetworks.com>
>To: "Robert Teston" <dteston@msn.com>
>Subject: RE: RE: plea for a waiver
>Date: Tue, 30 Jan 2007 13:26:19 -0500
>
>please call 800-909-9677

From: William Iseminger
Sent: Thursday, February 15, 2007 4:34 PM
To: 'dteston@msn.com'
Subject: RE: RE: plea for a waiver

Thanks for your interest in the NBC – Distant Network from All American Direct. Unfortunately, we are not able to provide you this signal without approval from WDAM. The eligibility status is based on your physical location as compared to signal strength of the local network affiliates.

We compare your physical address against the nationwide database.

When we run you address it does list WDAM as B-Grade signal strength.

WDAM denied (D) your status on 2-13-07.

If WDAM will not approve eligibility status – then we can not and will not provide this service.

As you can see below WLBT has granted (G) your status in the database.

Here is a snapshot from the system that shows the responses:

Customer	300150569			
Network Status	Request Date	Station	Status	Response Date
NBC	D	01/13/07 13:38	WDAM	(D) 02/13/07 01:13

Page 1 of 1

From: William Iseminger [mailto:wiseminger@allamericandirect.com]
Sent: Thursday, January 25, 2007 11:57 AM
To: Margi Newman
Cc: Greg Hartman
Subject: Distant Network Waivers

Hi Margi,

We received a fax from WALB-TV (Jim Wilcox V.P. / General Manager)

We need some advice on this please. Can I fax it over to you to look at and what is your fax number?

They are saying that any county listed under "significantly viewed" but not in their DMA is granted NBC signal permission.

There are about 28 counties on this list.

Thanks,

William Iseminger
Telephony & Resource Mgt.
NPS - All American Direct.com
317-558-3844

From: Margi Newman [mailto:margi.newman@titantv.com]
Sent: Thursday, January 25, 2007 1:10 PM
To: William Iseminger
Cc: Greg Hartman; Dave Cechota
Subject: RE: Distant Network Waivers

I think there's some confusion about Significantly Viewed vs. Distant Network Signals here. The counties outside of their DMA where they are significantly viewed (according to a listing maintained by the FCC), can receive the station as an imported local into local signal--which you guys don't even do, right? I don't know if he really means he wants to grant permission for the people residing in those counties who might be covered by his Grade B signal area to receive a DNS east coast or west coast feed. You might want to clarify that with him that you are only offering distant NBC signals from NY or LA (or whatever cities you uplink), you aren't carrying any stations local-into-local.

Page 1 of 5

From: Windy Winder [mailto:windy.winder@eurekatelevision.tv]
Sent: Wednesday, January 17, 2007 1:29 PM
To: Delanie Smiley
Cc: Mike Mountford
Subject: Waivers

Morning Delanie, I have a problem. A couple weeks ago I had emailed you and Mike Mountford that some of my Del Norte County "viewers" waivers are being sent to the Medford stations. Now they are being denied (rightfully) from the Medford stations. I need your systems to say that Crescent City and below demographics to say KBVU and KVIQ for waivers. Please forward me to someone that can help me. This is taking up a lot of my time. And my primary job is not to deal with waivers all day! Please help me with this so that I don't have to keep repeating the waiver process.

Thank you!!!!

Windy Winder
National Sales Assistant
Eureka Television Group
707-442-2999
Fax-707-441-0111
FOX 29 - UPN 33 - CBS 6

From: Mike Mountford
To: Windy Winder ; Delanie Smiley
Cc: Dave Cechota
Sent: Wednesday, January 17, 2007 12:09 PM
Subject: RE: Waivers

Windy, We can only follow the law and the rulings that Decisionmark has on a coverage area that effects a consumer wavier. Maybe Dave Cechota can explain why this is happening in your area.

I am sorry this is taking up so much of your time, I am sure that will go down substantially in the near future. As you probably know we need to get new waivers for every customer. Don't blame us for this. We wish we could have just used the previous granted waivers. It would have saved us much time and hassle also, however Congress did not allow for that.

Page 2 of 5

Thank you for your help on those customers you have granted waivers.

MM

AllAmericanDirect.com
DISH Network | HD Televisions | Sirius | HughesNet

Mike Mountford
CEO
AllAmericanDirect.com
317.558.3806
mmountford@allamericandirect.com

Save up to 40% off the price of a high definition television. Get DISH Network satellite tv for just \$19.99/Month. Visit AllAmericanDirect.com today.

From: Windy Winder [<mailto:windy.winder@eurekatelevision.tv>]
Sent: Wednesday, January 17, 2007 3:18 PM
To: Mike Mountford
Subject: Re: Waivers

Mike, I do appreciate your help. But Crescent City is our market not Medfords. Thats what I am trying to say. The waivers are going to Medford and they shouldn't be. From Brookings on up is Medford's market. But not Crescent City. We haven't ever had this problem before.

Windy Winder
National Sales Assistant
Eureka Television Group
707-442-2999
Fax-707-441-0111
FOX 29 - UPN 33 - CBS 6

From: Mike Mountford [<mailto:mmountford@allamericandirect.com>]
Sent: Wednesday, January 17, 2007 2:29 PM
To: Windy Winder
Cc: Dave Cechota; Delanie Smiley
Subject: RE: Waivers

Page 3 of 5

Windy, Decisionmark handles all that for us. We never touch a waiver request, so I am at a loss to tell you how or why this is happening, but Decisionmark is very good at responding so I think we will hear from Dave, or an associate of his, shortly. MM

AllAmericanDirect.com
DISH Network | HD Televisions | Sirius | HughesNet

Mike Mountford
CEO
AllAmericanDirect.com
317.558.3806
mmountford@allamericandirect.com

Save up to 40% off the price of a high definition television. Get DISH Network satellite tv for just \$19.99/Month. Visit AllAmericanDirect.com today.

From: [Dave Cechota](#)
To: [Mike Mountford](#) ; [Windy Winder](#)
Cc: [Delanie Smiley](#)
Sent: Wednesday, January 17, 2007 2:48 PM
Subject: RE: Waivers

Windy,

According to the SHVERA legislation, the stations that serve an address with an over-the-air signal are the stations that a consumer has to request waivers from. This means that it's not unlikely for a consumer to be covered by both an in-market signal as well as an out-of-market signal. The coverage area is determined by using the FCC's Longley-Rice propagation model (specified by law) and takes into account your antenna's technical specifications as well as terrain and land use/land cover.

Since you're raising questions about coverage, I would suggest that you run this by your chief engineer to ensure that Decisionmark has the correct specifications for your station's antenna. We have an on-line app called Antenna TechSpecs, that houses all of this information and is available through www.ProximityTV.com

. If there is an issue with them, please give me a call at 319-365-5597.

Regards,

Dave Cechota

Director of Data Product Development

[Decisionmark Corp.](#)

Page 4 of 5

From: Windy Winder [mailto:windy.winder@eurekatelevision.tv]
Sent: Wednesday, January 17, 2007 4:42 PM
To: M Dare
Subject: Fw: Waivers

I need your help with this please. Crescent City people are having their waivers sent to the Medford station. And if I am reading this right its because of the specs we have in their system. I really have no idea. But just the crescent city people are taking up lots of my time. I don't know what all the sudden changed because I surely didn't do anything and we didn't used to have a problem. But we do now!!!

HELP ME!!!

Windy Winder
National Sales Assistant
Eureka Television Group
707-442-2999
Fax-707-441-0111
FOX 29 - UPN 33 - CBS 6

From: M Dare [mailto:mark.dare@eurekatelevision.tv]
Sent: Wednesday, January 17, 2007 8:32 PM
To: dcechota@decisionmark.com; Mike Mountford; Delanie Smiley
Cc: Paul Johnson; Windy Winder; Don Smullin
Subject: RE: Waivers

Hi folks,

I have been asked for my input on this discussion, hopefully I can help clear and not muddy the waters any more than they already are, so here goes:
Neither Medford nor Eureka adequately covers the Crescent City area with over the air broadcast. In the past waiver requests Oregon and North went to Medford and everything in Northern California went to us in Eureka. What Windy is telling you is that something has changed that is sending waiver requests from Northern California to the Medford station. Since CBS and Fox say that Northern California is our market they rightly cannot grant those people waivers so they are being denied. If they had been submitted to us they would have been granted, since they are in our market and are not covered by our signal. Since the customers have been denied by Medford they are calling our station on the phone asking for letters to grant the waivers. We have no staff to take care of the volume of letters and calls that are coming in any sort of reasonable or timely manner. The customers in question would be served better if things went back to the way they were before when Crescent City and other Northern California areas were directed to Eureka. There is no question that they are not being covered. The question is that waiver requests are suddenly being sent to stations for areas that are not in there market, and the Networks have not granted them authority to give waivers to areas not in there market. Hopefully someone can sort this out or forward it to someone who can because our staff has to take care of its normal duties that have had to be set aside recently for this and these requests will take longer and longer to process. We happily will grant waivers for customers who cannot receive our signal and are in our market area when you send them to us.

Page 5 of 5

Thank you for your help in this matter,

Mark A Dare
Chief Engineer
Eureka Television Group
(707)442.2999

Page 1 of 2

From: "William Iseminger"
 To: icegator@usa.com
 Subject: NBC - Distant Network Channel
 Date: Tue, 24 Apr 2007 16:26:27 -0400

Kyle Jones
 154 Acadian Dr.
 Lafayette, LA 70503
 Customer # 300119298

Mr. Jones,

We received your fax today regarding the NBC feeds.
 Hopefully I can shed some light on your eligibility status for NBC.

On December 1, 2006 – All American Direct began providing Distant Networks to Dish Network
 Subscribers that are eligible.
 AA-Direct is required to re-establish each customer's eligibility for each service we sale.
 Therefore any waivers or eligibility process determined prior to 12-1-06 is invalid for AA-Direct.

We ran an eligibility test and waiver request on your location in January 06 and this is the result:
 The affiliates in Red came back as denied.

=====

Customer 300119298

Network	Status	Request Date	Station	Status	Response Date
ABC	D	12/22/06 21:18	KATC	D	01/22/07 08:22
ABC	D	12/22/06 21:18	WBRZ	G	01/22/07 08:22
CBS	D	12/22/06 21:18	KLFY	D	01/05/07 16:46
CBS	D	12/22/06 21:18	WAFB	G	01/05/07 16:46
FOX	G	12/22/06 21:18	KADN	G	01/22/07 09:50
FOX	G	12/22/06 21:18	WGMB	G	01/22/07 09:50
NBC	D	12/22/06 21:18	KALB	D	01/22/07 12:23
NBC	D	12/22/06 21:18	KPLC	G	01/22/07 12:23
NBC	D	12/22/06 21:18	WVLA	G	01/22/07 12:23

=====

If you wish to purchase NBC – then KALB is the affiliate that would need to approve a waiver to
 AA-Direct to provide the distant networks to your residence,
 KPLC has indeed granted your status.

Thanks, Bill Iseminger – All American Direct

From: K Jones [mailto:icegator@usa.com]
Sent: Wednesday, June 06, 2007 1:13 PM
To: William Iseminger

Page 2 of 2

Subject: Re: NBC - Distant Network Channel

Bill,

my request for a waiver was rejected by KALB.

I am not sure why a station that is over a 100 miles away, and has no presence in our market, gets to decide if I am worthy of receiving NBC. KPLC out of Lake Charles, about 80 miles west of my city, is our "local" NBC feed through our cable provider Cox Communications. They also pipe in WVLA out of Baton Rouge, about 75 miles east of me.

my only alternative is to cancel Dish Network and start receiving Direct TV, who has WLBT out of Jackson, MS as our "local" NBC.

Dish has refused to address this problem of coverage for the Lafayette market.

I know I am paid up for several months to receive the FOX stations. Would this balance carry over to Direct TV, or would I be issued a refund?

sorry to rant about our NBC problem, I know it is not your company who decides my NBC fate. It has been very frustrating to have to beg for something that most people get with no issues at all.

thank you,
Kyle Jones

Page 1 of 2

From: wiseminger@allamericandirect.com
 To: pula8@aol.com
 Sent: Thu, 17 May 2007 7:11 PM
 Subject: ABC status

The information below shows your account status for ABC:
 I suggest forwarding this to WKBW and asking that they reconsider approving your address for ABC over your satellite system.
 If WKBW does not object – they can reply to the email or fax a waiver to 317-558-3838 stating the following:

“They have no objection to you receiving a distant ABC signal provided by All American Direct to your address”.

Note - If they were to decide to fax an approval – it would need to include your name and demographics on the waiver form.

Cst #300194924

Name First: CHRIS Last: SLITER
 Mail Zip: 148079319 Phone: (607)295-7069
 Mail Address: 9394 COUNTY ROAD 48
 Mail City: ARKPORT Mail St: NY Mail Country: USA

Waiver Requests

Customer 300194924

Network	Status	Request Date	Station	Status	Response
ABC	D	04/19/07 16:04	WENY	Granted	05/16/07 15:54
ABC	D	04/19/07 16:04	WHAM	Pending	04/30/07 15:54
ABC	D	04/19/07 16:04	WKBW	Denied	04/30/07 15:54

Thanks,

William Iseminger
 NPS - All American Direct.com

From: pula8@aol.com [<mailto:pula8@aol.com>]
Sent: Monday, May 21, 2007 9:26 AM
To: Debbie Nolan
Subject: Fwd: ABC status

From: Debbie Nolan

Page 2 of 2

To: pula8@aol.com
Sent: Mon, 21 May 2007 6:36 pm
Subject: RE: ABC status

Dear Paula,

I spoke with my General Manager and verified that All American is giving you the wrong information. As long as you have a waiver from one station, they can connect you. You do not need a waiver from more than one station.

In regard to the question from them "why did they bother denying it if it's not in their market?"; once the request shows up in the software, I have no choice but to grant or deny it. There is no other option.

I'm sorry for the aggravation and frustration you are feeling regarding this situation.

Debbie Nolan
WKBW-TV
7 Broadcast Plaza
Buffalo, NY 14202
716-840-7842

From: pula8@aol.com [mailto:pula8@aol.com]
Sent: Tuesday, May 22, 2007 9:53 AM
To: William Iseminger
Subject: Fwd: ABC status

This is what WKBW has sent me Please resolve this ASAP!!!

Law Offices of

JOHN D. PELLEGRIN, P.C.

10515 Dominion Valley Drive
Fairfax Station, Virginia 22039

703.250.1595
703.250.1597 (fax)
Admitted: VA, DC, NY



E-mail: jp@lawpell.com
www.lawpell.com

July 2, 2007

Office of the General Counsel
U.S. Copyright Office
LM 430
James Madison Building
101 Independence Avenue, SE
Washington, DC 20559

Re: Docket No. 2007-1
Notice of Inquiry re: Section 109 Report to Congress
Cable & Satellite Statutory Licenses under the
Copyright Act

Comments of National Programming Service, LLC

Tanya M. Sandros, Esq.
Acting General Counsel
Ben Golant, Esq.
Senior Attorney

Dear Ms. Sandros & Mr. Golant:

On behalf of National Programming Service, LLC transmitted herewith is an original and five (5) copies of its initial Comments in response to the Copyright Office's Notice of Inquiry in the above-captioned proceeding (Docket No. 2007-1), public notice of which was given in the Federal Register under date of April 16, 2007.

Should you have any questions concerning these Comments, please contact undersigned counsel directly.

Very truly yours,

John D. Pellegrin
Counsel for National Programming Service, LLC

Original & five (5) copies: By Courier Hand Delivery

Of Counsel to Moran Monfort, P.L.C.

Page 1 of 1

From: William Iseminger [mailto:wiseminger@allamericandirect.com]
Sent: Monday, June 04, 2007 11:31 AM
To: Margi Newman; Angela Hoppe
Subject: RE: Distant Network Waivers

Hey Margie – we were contacted by John Finkbohner at KRNV – NBC.
(775-336-6235 Ph. J.finkbohner@krnv.com – operation manager)

In regards to our process of qualifying customers via signal strength, he states we are breaking federal law by not determining qualification via DMA.
He said he was filing a complaint with the FCC against All American Direct.

Is there something you can do to help set them straight or point us in the right direction?

Thanks,

William Iseminger
Telephony & Resource Mgt.
NPS - All American Direct.com
317-558-3844

From: Margi Newman [mailto:margi.newman@titantv.com]
Sent: Monday, June 04, 2007 1:20 PM
To: William Iseminger; Angela Hoppe
Subject: RE: Distant Network Waivers

He's probably confused about the SHVERA sections that state that if a station is carried Local-into-Local then the DNS qualification process is based on both the station's signal area and on the DMA. Since you don't offer any local-into-local service, the process is based on Grade B. I'll forward this on to others here to see what might be possible to do.