

**BEFORE THE
LOCAL TELEVISION LOAN GUARANTEE BOARD
UNITED STATES OF AMERICA**

In the Matter of:

Launching Our Communities' Access to
Local Television Act of 2000

Comments Re:

Proposed Rules
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Comments of Pegasus Communications Corporation

Introduction

Pegasus Communications Corporation (Pegasus) is pleased to provide comments to the Local Television Loan Guarantee Board (Board) on its proposed rules. The Launching Our Communities' Access to Local Television Act of 2000 (Local TV Act) resulted from a long expressed need of rural Americans to get local TV stations, and Congress' reaction to address this need in a careful, thoughtful way.

Even before Congress passed the Local TV Act, Congress considered this issue in the context of the Satellite Home Viewer Improvement Act of 1999 (SHVIA), the provisions of which significantly enhance the opportunity for Americans in rural areas to receive all local TV stations through satellite providers. Provisions similar to the Local TV Act were considered as an amendment to SHVIA because many policy makers

believed that to ensure that rural Americans got the benefits of local TV service, Congress had to provide incentives, and a loan program, to help make sure someone would provide local TV stations to rural citizens. Although the SHVIA ultimately did not contain the rural loan provision, it was only with the agreement that Congress would take-up the issue shortly, that the SHVIA passed the Congress.

In passing the Local TV Act the next year, the Senate stated that during the conference on SHVIA the previous year, “several conferees noted that, despite the changes in copyright law [in SHVIA] many local broadcast stations nonetheless may not be retransmitted via satellite for the indefinite future. This result seems contrary to what was expected to be an important benefit of the SHVIA legislation: the transmission via satellite of local television signals to areas of the country with no access to local television signal by any means.” Senate Report 106-243, at 2. The Senate went on to state in its Committee Report for the Local TV Act that “[t]he challenge at present is to provide appropriate public policy incentives to help promote the transmission of local television signals in those areas that remain costly to serve.” Senate Report 106-243, at 4. And that “[l]oans that are not made and loans that are not repaid represent unsuccessful projects – either projects that were never initiated or that ultimately failed – and in both cases result in no service for unserved and underserved areas.” Senate Report 106-243, at 4.

Pegasus offers these comments in the spirit of helping to ensure that consistent with the Local TV Act, the Board does make loans to those who properly qualify so that people living in currently Nonserved and Underserved areas get their local TV signals.

About Pegasus

Pegasus is the only publicly traded broadcast and satellite TV services company in the United States exclusively focused on providing services to rural and underserved areas. Pegasus holds exclusive rights to provide digital multi-channel video also known as Direct-To-Home (DTH) services via the DirecTV platform to 7.5 million households in 41 states. Today, Pegasus serves approximately 1.2 million DTH subscribers. Pegasus also owns or programs several network affiliated television stations serving over 1.6 million TV households in smaller markets. The Company's 2002 revenue from all services exceeded \$800 million and it currently has approximately 1,300 employees. Pegasus is ranked as the 11th largest multi-channel video provider in the United States.

Pegasus' satellite television service has the highest penetration rate of any major DTH service provider in the U.S., reflecting its close attention to building and optimizing its rural distribution network and providing outstanding customer service. Pegasus' distribution network extends into all of the 41 states it serves. An entrepreneurial culture, a twelve year history of building value organically, a focus on underserved rural markets, strict financial discipline, and careful execution have made Pegasus one of the fastest growing media companies in North America during the last decade.

Comments

The Board has undertaken the difficult task of creating a new program from scratch. It is not easy, and Pegasus recognizes the substantial effort. Pegasus commends the Board for issuing the rules as proposed, not final, rules to ensure the Board gains the

benefit of comment from interested parties. Pegasus believes that there are a number of areas the Board should amend or clarify to meet the purposes of the Local TV Act.

The Definition of Local Television Broadcast Signals

The first comment is with respect to the definitional issue the Board describes up-front, in the Description of Proposed Rule, the proper definition of Local Television Broadcast Signals. The proposed rules have defined this as the local signals from the four major national TV broadcast networks, in an attempt, the preamble explains, to help draw clean boundaries for Nonserved and Underserved areas. Pegasus believes that this is not the right approach.

Generally

Pegasus believes the Board should define Local Television Broadcast Signals as all local television broadcast signals, not just the local signals of the four major national TV broadcast networks. Congress intended the Local TV Act to provide rural customers with all of the local TV choices that other Americans enjoy. The dominant public purpose of the Local TV Act was to maximize local broadcasting offerings, and choice, to all rural Americans.

The Board should also take notice of the fact that the Local TV Act exists in the context of the Congressionally created, and Federal Communications Commission (FCC) implemented, broadcast retransmission structure which, through SHVIA and the cable “must carry” rules, seeks to ensure that all local broadcast signals will be available to consumers. Borrowers under the Local TV Act will be subject to these rules, and they

must deliver services within this structure. It would be a curious result if the Local TV Act rules did not provide the right incentives to achieve this settled public purpose. If the rules promulgated under the Local TV Act subsidized, or required, any other result, it would be at cross-purposes with existing laws, regulations, and media policy. If the guarantee only covered the local signals of the four network stations, when under FCC rules many more must be carried, the Local TV Act would not achieve its fundamental purposes. Defining local television as only the four network signals would also create an incongruous new definition of local broadcasting in Federal law. Further, defining only a subset of local broadcast signals as qualified for the benefits of the guarantee would tend to disenfranchise non-network local stations. Clearly, this was not the intent of the Local TV Act, nor should it be the effect of the rules implementing the legislation. We urge that the definition of Local Television Broadcast Signals should be changed to include all local broadcast signals.

Specifically

The primary use of the defined term, Local Television Broadcast Signals in the proposed regulation, appears to be in Section 2201.10 (b), which creates the Guaranteed Portion of the Loan. The Guaranteed Portion is defined as 80 percent of the principal amount of the Loan made to finance the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the “means” by which the Local Television Broadcast Signals are delivered to a Nonserved or Underserved Area. It defines in effect what the guarantee will pay for. The guarantee should not be limited to support the “means” to deliver only the local broadcast signals of the four networks. The

Local TV Act was intended to deliver, and should deliver, all local TV signals, not just the local network broadcasts of the four networks.

First, the Local TV Act was conceived in relation to SHVIA, which had as its purpose making all local broadcast signals available to existing, and potential, satellite consumers. Second, rural consumers want all of their local stations, and if the government is going to provide incentives, it should ensure that the full public purpose is served by this intervention into the market. Third, the FCC, in implementing SHVIA (and cable “must carry” rules), has already created a regime for ensuring that the appropriate set of all local signals have the opportunity to be carried (See, SHVIA implementation, FCC Docket No. 99-363), and it can not be a proper interpretation of the Local TV Act to provide a guarantee to deliver only a lesser portion of these signals in a market. Fourth, the government should not pick winners and losers, and under the proposed rule, the four network stations in Nonserved and Underserved Areas are given a competitive advantage over all others in the market, in effect harming current or future stations 5,6,7, et. seq., and cementing an oligopoly. Fifth, the Local TV Act specifically requires the Board to consider the effect of the Loan on competition. Finally, any effect that tends to exclude stations five and above has an adverse impact on localism, as many of the non-network stations have significant ties to the local community.

The rules should not limit the opportunity of rural Americans to receive all local signals, and the government should not put its thumb on the scale in favor of a select group of local stations broadcasting the four network signals (to the exclusion of all other

local stations, other networks, and public broadcasting stations like PBS). The rules should ensure that the Guaranteed Portion of the Loan provides the means of delivering all local signals.

Further, to the extent that Section 2201.10, or any other provision, can be read to require that all four network stations in fact be delivered in order to get a guarantee, this puts the granting of the guarantee in the hands of a single local network station, or a single network, not the Board. If you must have all four local network signals, any one of the four local network affiliates could withhold retransmission consent, and block the Loan. Given the contractual relationships between networks and network affiliate stations, any network may also be in a position to effectively block the Loan. A competing Applicant, or even non-applicant, could therefore effectively bar the attempted service of any Applicant. In fact, one of the possible Applicants, Hughes Electronics Corporation (the parent of DIRECTV, Inc., the provider of DIRECTV services in the U.S) has entered into an agreement to merge with News Corp. which owns the FOX Network (and in its own right owns and operates many local television stations), and therefore News Corp. could be in a position to effectively bar Applicants other than DIRECTV from obtaining a guarantee under this program. This is not what the Local TV Act envisioned, and the Board must make it clear that the rules do not require all four local network signals must in fact need to be delivered to get the guarantee.

Therefore, the rule should define Local Television Broadcast Signals (Section 2201.1) as all local stations that either avail themselves of the statutory copyright license

carriage rules adopted by the FCC in implementing SHVIA, or otherwise grant retransmission consent. Pegging the Local Television Broadcast Signals definition to the recently enacted SHVIA rules is reasonable, and workable. If the Board needs a way to define “Nonserved,” or “Underserved” areas, it should find another way than through stating that Local Television Broadcast Signals are the local signals of the four network stations in an area.

The Definition of Nonserved and Underserved Areas

The Board should publish contour maps for each DMA, indicating the grade A and grade B contours. By publishing contour maps to be used in this process, the Board will ensure that all Applicants are using the same definitions and data sets, and the Board can properly evaluate, compare and understand the applications. Further, this is more efficient, and it allows greater clarity and transparency for Applicant and Board decision making, and not every Applicant has to buy or create maps.

Additionally, the Board should clarify the definitions of Nonserved Area and Underserved Area to give each the widest possible applicability and territory. Where one or more of all of the Local Television Broadcast Signals is not available in an area, the Loan should provide a guarantee covering that area, ensuring that rural residents obtain all of the Local Television Broadcast Signals. That is the purpose of the Local TV Act.

The Guarantee Percentage

The Board should make clear that the Guaranteed Portion of the Loan covers all of the fixed costs of the “means by which Local Television Broadcast Signals are delivered to a Nonserved or Underserved Area.” Section 2201.10 (b)(2) states that the Board shall determine that portion of a Loan meant to achieve such a purpose. The Board should make it clear in Section 2201.10 that the portion guaranteed relates to all of the fixed costs of the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the “means” by which the Local Television Broadcast Signals are delivered. To the extent the “means” carries additional services, such as non-Local Television Broadcast Signals, interactive services, broadband, services to non-Nonserved Areas or non-Underserved Areas, only the marginal cost to the “means” of those additional items should be deemed outside of the Guaranteed Portion of the Loan. The Board should make it clear that the Guaranteed Portion is not just a percentage of the bandwidth, channels, or other unit of measure relating to the project (i.e. that if an Applicant delivers 40 video channels, and 10 are local signal channels, the guaranteed amount is not just 25% of the cost of the project, but the full fixed cost of the “means” by which the Local Television Broadcast Signals are delivered). This is required for the guarantee to have the public policy effect described in the statute.

Although Pegasus believes that the Board should adopt Pegasus’ definition of Local Television Broadcast Signals, if it does not and the definition remains only four stations, the guarantees of any portion less than full fixed costs will not address the Senate Committee’s concern about avoiding an “unsuccessful” program (See, Senate

Report 106-243, at 4.). A guarantee for only four channels as a percentage of all channels that may be carried in a market pursuant to a Loan will not be a meaningful incentive. Further, the Local TV Act itself, Section 1004 (f) (2) specifically refers to the guarantee as covering the “requirements” of subsection (d) (2) (A) – i.e. the “requirements” of the “means” by which Local Broadcast Television Signals will be delivered to a Nonserved or Underserved Area. One can only cover this requirement through the guarantee of all of the fixed costs required to acquire, construct, launch etc. the means to deliver the signals.

Application Selection

The Board should indicate how many applications it will grant for each currently Nonserved Area to the extent that more than one applicant satisfies all objective criteria, like creditworthiness, security, engineering, etc. The Board should let applicants know if the Board will grant one application to fill the Nonserved priority, and then a second in the same area to fill the Underserved priority, until the full \$1.2 billion Loan level is reached.

Specific Comments

Section 2201.1 Definitions.

Local Television Broadcast Signals, see comment above, the definition should define Local Television Broadcast Signals (Section 2201.1) as all the local stations that either avail themselves of the statutory copyright license carriage rules adopted by the FCC in implementing SHVIA, or otherwise grant retransmission consent.

Section 2201.10 (b) (1) and (2) Guarantee percentage.

See comment above. The Board should make it clear in Section 2201.10 that the portion guaranteed relates to all of the fixed costs of the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the “means” by which the Local Television Broadcast Signals are delivered. To the extent the “means” carries additional services, such as non-Local Television Broadcast Signals, interactive services, broadband, services to non-Nonserved Areas or non-Underserved Areas, only the marginal cost to the “means” of those additional items should be deemed outside of the Guaranteed Portion of the Loan.

2201.11 (e) (5) (6) and (7) Application requirements.

These subsections relate to discussions with local television broadcasters. The Board should add a new section requiring applicants to state if they plan to carry all stations that avail themselves of carriage under SHVIA, or through cable “must carry rules,” or all stations that otherwise grant retransmission consent. The applicant should be required to show the Board how, and to what extent, they will give rural consumers the same type of channel choice that all urban and suburban consumers have – all local channels. This will also enhance localism, limit the anticompetitive effect of only carrying the current four network affiliates, and otherwise show to the Board the full scope of the proposed service offerings.

2201.11 (i) Environmental impact.

Completing an environmental impact assessment can be a lengthy and expensive process. The Board should reexamine the timing of the environmental review to ensure that it is practicable to complete the environment review and assessment at the time of application, and if it does not work in practice, to move the completion of the process to be a condition precedent to closing the guarantee.

2201.12 Applicant eligibility.

The Local TV Act does not have specific borrower or applicant eligibility requirements. It is unclear how “eligibility” fits in the application process and the Board’s deliberative process. The eligibility determination comes after the applicant has paid the fee, but the standards for eligibility appear to relate to either having supplied information in the application, or to determinations that the Local TV Act requires the Board make in writing later, at the determination phase, in Section 2201.18 (d) of the proposed regulation. The Board should state what it means to be eligible, and the rights, obligations and timing triggers this designation carries. Otherwise, the requirements in this section might be better dealt with in the application information section (applies for Section 2201.12 (b)(1)), and in the selection and determination process (applies for Section 2201.12 (b)(2)(i to vi)).

With regard to Section 2201.12 (b) (2) (iv) Documentation for Eligibility Determination, regarding documentation demonstrating that all necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions have been

received for the Loan and the Project under the Loan, the Board should make clear here, and in Section 2201.18 (d) (2) (iv), that an offer to carry all the local stations that either avail themselves of the statutory copyright license carriage rules adopted by the FCC in implementing SHVIA, or that otherwise grant retransmission consent, satisfies any requirement for approvals. By agreeing to accept all those who want carriage, an applicant has demonstrated that doing more is not necessary and required for the project. Further, retransmission approvals can not be the type intended by the Local TV Act to be completed by the time of application, because the drafters would have known that there are many hundreds of local stations, and that making any such requirement for retransmission consents before the project is funded is unworkable. Additionally, the FCC has put into place specific procedures for dealing with these issues through either SHVIA, or cable regulations, and availing oneself of these procedures obviates the need for otherwise demonstrating approvals. Also, under FCC regulations, every three years, broadcasters have to make an election for mandatory carriage under SHVIA and the cable rules, so retransmission consent will be a process that by its nature is not set for the term of the Loan. Finally, to the extent the Board leaves the four network station rule in effect, it can not be that a single network, perhaps a competitor like FOX (either as an affiliated entity of DIRECTV, Inc or not), could stop all applicants by withholding any retransmission consent one would need to either be eligible, or to receive a guarantee. In any case, any of these issues can properly be addressed in Section 2201.25, Performance Agreement, which requires milestones. These comments apply as well for Sections 2201.18(d)(2)(iv) and 2201.22 (a)(1).

With regard to Section 2201.12 (b) (2) (v) Loan not available on reasonable terms and conditions without a guarantee, something more than a letter should be required. If an Affiliate of an Applicant has billions in cash, or could otherwise provide a credit enhancement, the Board should be able to exercise its statutory duty required in the Local TV Act itself, Section 1004 (d)(3)(B)(v), and find that the Loan would have been available to such Applicant on reasonable terms without this guarantee. A letter by a single bank should not override the considered judgment and common sense of the Presidential appointees on this Board. At a minimum, the Board should remove the language in this subsection that the submission of a letter will “satisfy” the “not available on reasonable terms” statutory requirement. The Board under all circumstances should specifically address this in its considered deliberations for granting priorities and guarantees in Section 2201.18.

Section 2201.15 (c) Ineligible Loan Purposes, Competition.

This subsection deals with the Board determination that the Project will not likely have a substantial adverse impact on competition that outweighs the benefits of access to signals. This is a statutory requirement for actual Board deliberation, in consultation with the NTIA. It is a serious undertaking and goes to the heart of Board Member Gramlich’s comments about the proper application of Federal government guarantee determinations, as expressed in his April 24, 2003 speech to the National Economists Club. This statutory requirement should be moved to Section 2201.18 (d) or (e) or be a new (f). Congress did not intend to create, enhance, extend, or even maintain barriers to entry or market power through the granting of these guarantees, and the Board is charged with

deliberately undertaking this determination. If this provision is not moved from this subsection, a new finding in Section 2201.18 should be added, this is a statutory requirement for deliberation and consultation with the NTIA.

2201.18 (b)(1) Additional Considerations, High speed Internet.

With regard to high speed Internet, the statute says that “additional” consideration should be given to such Projects, and the proposed regulation says “higher” consideration. The statute has many factors to be given consideration, serving remote areas, low cost per household, sufficient security, and others. The primary focus of the Local TV Act is the provision of local television. The statutory “additional” consideration should be preserved.

2201.20 Collateral

Given the very substantial requirements for collateral, the Board should specifically allow the intangible assets of the Applicant to be included in the form of the collateral, and the value of the intangible assets should be included when determining the value of the collateral.

2201.27 (a) (b) Assignment or Transfer of Loans, Modifications, Assignment

In the normal course of a lender-borrower relationship, loan terms are modified in non-material ways on a regular basis. Section 2201.27(a) should be modified to say that only significant material provisions, such as the term, payment schedule, pricing, etc., shall require prior written approval of the Board. The Board need not have to pre-

approve all changes, it would be administratively burdensome, and not be consistent with commercial practice.

With regard to the assignment or transfers of interests in a Loan, the regulation should be modified to make clear that to the extent there is a group of Lenders who agree to hold a participation interest in a Loan under Section 2201.28, within that group of participating Lenders, the Agent can effect transfers of percentages of interest without the prior written approval of the Board. Lenders need the flexibility to manage their loan portfolios. Then Agent should also have the ability to add and delete participants who otherwise meet the qualified lender requirements in Section 2201.28 (b). Further, with regard to assignments in general, the Board should give the Agent and participating lenders the comfort that the Board's approval of a proposed assignment of the Loan, or any portion thereof, shall not be unreasonably withheld. This will help ensure that commercial practice is followed, and that there will be lenders willing to participate in the program.

Section 2201.33 (c) Defaults

The proposed regulation requires a set of plans, assumptions, and documents to be produced by Lenders in the event of a default. The reporting requirements demand a lot of detailed information. The Board should make it clear that failure to meet all these requirements will not void the guarantee. Although it is in the interest of both the Board and the Lender to have a good, solid, work-out plan, if prospective lenders believe that the rules are too rigid or risky, they will balk at engaging with the Board. The rules

should reflect commercial practice, and be clear that all it requires is the Lenders good faith efforts to work with the Board on a plan.

Conclusion

Pegasus commends the Board for its considered work implementing this new program. The decision to issue proposed instead of final rules indicates that the Board wants to get it right, and create a functional program that meets the statutory intent. Pegasus urges the Board to adopt the changes Pegasus has outlined in these comments, changes that will ensure that rural Americans get the benefit of meaningful local television in their homes.

Dated this 15th day of September, 2003.

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