

APPENDIX A

Proposed Rule Changes¹

Part 76 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 76 – Multichannel Video and Cable Television Service.

1. The authority citation for Part 76 is revised to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 325, 339, **340**, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Part 76 of the Commission's Rules is amended as follows:

Revise Part 76, subpart A to read as follows:

Subpart A – General

§76.5 Definitions

(ee) *Subscribers.*

(1) Cable subscriber. A member of the general public who receives broadcast programming distributed by a cable television system and does not further distribute it.

(2) Satellite subscriber. A person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

[OPTION ONE] (gg) ~~Reserved~~ **Satellite community.** Comprised of one or more five-digit zip code areas in which one or more television broadcast stations are proposed or deemed to be significantly viewed pursuant to sections 76.5(i) and 76.54. Satellite communities apply only in areas in which there is no pre-existing cable community, as defined in 76.5(dd).

[OPTION TWO] (gg) ~~Reserved~~ **Satellite community.** A separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). The boundaries of any such unincorporated community may be defined by one or more five-digit zip code areas. Satellite communities apply only in areas in which there is no pre-existing cable community, as defined in 76.5(dd).

Revise Part 76, subpart D to read as follows:

Subpart D – Carriage of Television Broadcast Signals

¹ For ease of review, proposed revisions are shown in bold/underline (for additions) or strikethrough/underline (for deletions) text.

§ 76.54 Significantly viewed signals; method to be followed for special showings

(a) Signals that are significantly viewed in a county (and thus are deemed to be significantly viewed within all communities within the county) are those that are listed in Appendix **AB** of the memorandum opinion and order on reconsideration of the Cable Television Report and Order (Docket 18397 et al.), FCC 72-530, **and those listed in the Significantly Viewed List, Appendix B of the SHVERA Report and Order Implementing Section 340 of the Communications Act XX FCC Rcd XXXXX (2005).**

(b) Significant viewing in a cable television **or satellite** community for signals not shown as significantly viewed under paragraphs (a) or (d) of this section may be demonstrated by an independent professional audience survey of non-cable television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes non-cable television homes from each community that are proportional to the population.

(c) Notice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour **(and, with respect to a survey pertaining to a station broadcasting only a digital signal, the noise limited service contour, as defined in section 73.622(e))** the cable **or satellite** community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least (30) days prior to the initial survey period. ~~Furthermore, if a survey is undertaken pursuant to the provisions of § 76.33(a)(2)(i) of the rules, notice shall also be served on the franchising authority.~~ Such notice shall include the name of the survey organization and a description of the procedures to be used. Objections to survey organizations or procedures shall be served on the party sponsoring the survey within twenty (20) days after receipt of such notice.

(d) Signals of television broadcast stations not encompassed by the surveys (for the periods May 1970, November 1970 and February/March 1971) used in establishing Appendix B of the Memorandum Opinion and Order on Reconsideration of Cable Television Report and Order, FCC 72-530, 36 FCC 2d 326 (1972), may be demonstrated as significantly viewed on a county-wide basis by independent professional audience surveys which cover three separate, consecutive four-week periods and are otherwise comparable to the surveys used in compiling the above-referenced Appendix B: Provided, however, That such demonstration shall be based upon audience survey data for the first three years of the subject station's broadcast operations.

(e) Satellite carriers that intend to retransmit the signal of a significantly viewed television broadcast station to a subscriber located outside such station's local market, as defined by section 76.55(e), must provide written notice to all television broadcast stations that are assigned to the same local market as the intended subscriber at least 60 days before commencing retransmission of the significantly viewed station. Such written notice must be sent via certified mail, return receipt requested, to the address for such station(s) as listed in the consolidated database maintained by the Federal Communications Commission.

(f) Satellite carriers that retransmit the signal of a significantly viewed television broadcast station to a subscriber located outside such station's local market must list all such stations and the communities to which they are retransmitted on their website.

(g) Signals of significantly viewed television broadcast stations may not be retransmitted by satellite carriers to subscribers who do not subscribe to local-into-local service pursuant to section 76.66; except that a satellite carrier may retransmit a significantly viewed signal of a television broadcast station to a subscriber located in a local market in which

(1) there is no station affiliated with the same television network as the station whose signal is significantly viewed; or

(2) the station affiliated with the same television network as the station whose signal is significantly viewed does not request carriage or does not grant retransmission consent pursuant to section 76.66.

(h) In addition to the requirement of subsection (g), signals of significantly viewed network stations that originate as digital signals may not be retransmitted to subscribers unless the satellite carrier retransmits the digital signal of the local network station, which is affiliated with the same television network as the network station whose signal is significantly viewed, in either (1) at least the equivalent bandwidth of the significantly viewed station or (2) the entire bandwidth of the digital signal broadcast by such local station.

(i) For purposes of subsections (g) and (h), television network and network station are as defined in 47 U.S.C. § 339(d).

Revise Part 76, subpart F to read as follows:

Subpart F--Network Non-Duplication Protection, Syndicated Exclusivity and Sports Blackout

§ 76.122 Satellite network non-duplication.

(a) Upon receiving notification pursuant to paragraph (c) of this section, a satellite carrier shall not deliver, to subscribers within zip code areas located in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation **or on a station carried pursuant to section 76.54** when the network non-duplication rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (j), (k) or (l) of this section.

(j) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64 **or as a significantly viewed station pursuant to § 76.54**

(i1) Within the station's local market;

(i2) If the station is "significantly viewed," pursuant to § 76.54, in zip code areas included within the zone of protection **unless a waiver of the significantly viewed exception is granted pursuant to § 76.7;** or

(i3) If the zone of protection falls, in whole or in part, within that signal's grade B contour.

§ 76.123 Satellite syndicated program exclusivity.

(a) Upon receiving notification pursuant to paragraph (d) of this section, a satellite carrier shall not deliver, to subscribers located within zip code areas in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation **or on a station carried pursuant to section 76.54** when the syndicated program exclusivity

rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (k), (l) and (m) of this section.

(k) A satellite carrier is not required to delete the programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64 **or as a significantly viewed station pursuant to § 76.54:**

(1) Within the station's local market;

(2) If the station is "significantly viewed," pursuant to § 76.54, in zip code areas included within the zone of protection **unless a waiver of the significantly viewed exception is granted pursuant to § 76.7;** or

(3) If the zone of protection falls, in whole or in part, within that signal's grade B contour.