Before the
Federal Communications Commission
Washington, D.C. 20554

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

NOTICE OF PROPOSED RULE MAKING

Adopted: February 4, 2005 **Released: February 7, 2005**

Comment date: April 8, 2005
Reply Comment date: April 29, 2005

By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking ("NPRM" or "Notice"), we propose rules to implement Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA").[1] Section 202 of the SHVERA creates Section 340 of the Communications Act of 1934, as amended ("Communications Act" or "Act"), which provides satellite carriers with the authority to offer Commission-determined "significantly viewed" signals of out-of-market (or "distant") broadcast stations to subscribers. The SHVERA imposes strict statutory deadlines, directing the Commission to (1) publish and maintain a list of stations eligible for "significantly viewed" status and the related communities (as determined by the Commission),[2] and (2) commence a rulemaking proceeding to implement Section 340, both within 60 days, thus enabling satellite carriage of such "significantly viewed" signals.[3] The SHVERA also requires that the Commission adopt rules implementing Section 340 within one year of the statute's enactment.[4]

[1] The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Pub. L. No. 108-447, § 202, 118 Stat 2809, 3393 (2004) (to be codified at 47 U.S.C. § 340). The SHVERA was enacted on December 8, 2004 as title IX of the "Consolidated Appropriations Act, 2005." This proceeding to implement Section 202 of the SHVERA (entitled "Significantly Viewed Signals Permitted To Be Carried") is one of a number of Commission proceedings that will be required to implement the SHVERA. The other proceedings will follow according to the timeframes set forth in the SHVERA, to be undertaken and largely completely in 2005. *See* Sections 202, 204, 205, 207, 208, 209 and 210 of the SHVERA; s*ee also* Public Notice, "Media Bureau Seeks Comment For Inquiry Required By the on Rules Affecting Competition In the Television Marketplace," MB Docket No. 05-28, DA 05-169 (rel. Jan. 25, 2005) (Public Notice regarding Inquiry required by Section 208 of the SHVERA concerning the impact of certain rules and statutory provisions on competition in the television marketplace; comments to MB Docket No. 05-28 are due March 1, 2005, and replies are due March 16, 2005.).

[2] *See* 47 U.S.C. § 340(c)(1)(A)(i).

[3] *See* 47 U.S.C. § 340(c)(1)(A)(ii). The SHVERA was enacted by Presidential signature on December 8, 2004.

[4] *See* 47 U.S.C. § 340(c)(1)(B). Section 340(h) directs the Commission to make specific revisions to 47 C.F.R. § 76.66 with respect to carriage elections, retransmission consent negotiations and notifications to stations in local- (continued….)

2. With the SHVERA, Congress takes another step toward "moderniz[ing] satellite television policy and enhanc[ing] competition between satellite and cable operators."[5] The SHVERA adopts for satellite carriers and subscribers the concept of "significantly viewed," which has applied in the cable context for more than 30 years. In 1972, the Commission adopted the concept of "significantly viewed" signals to differentiate between out-of-market television stations "that have sufficient audience to be considered local and those that do not."[6] The Commission concluded at that time that it would not be reasonable if choices on cable were more limited than choices over the air, and gave cable carriage rights to stations in communities where they had significant over-the-air non-cable viewing.[7] The designation is salient because it has enabled stations assigned to one market to be treated as "local" stations with respect to a particular cable community in another market.

3. The copyright provisions that apply to cable systems have recognized the Commission's designation of stations as "significantly viewed" and treated them, for copyright purposes, as "local," and therefore subject to reduced copyright payment obligations.[8] The copyright provisions governing satellite

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into-local markets no later than October 30, 2005. These revisions will be addressed in a separate proceeding. *See* 47 U.S.C. § 340(h).

[5] *See* House Commerce Committee Report dated July 22, 2004, accompanying House Bill, H.R. 4501, 108th Cong. (2004), H.R. Rep. No. 108-634, at 2 (2004) ("*House Commerce Committee Report*"). There was no final Report issued to accompany the bill as it was enacted. *See* House Bill, H.R. 4818, 108th Cong. (2004) (enacted). Therefore, we look to the House Commerce Committee Report accompanying the House Bill, H.R. 4501, for the relevant legislative history for Section 202 of the SHVERA. Although certain changes were made to H.R. 4501 before it was enacted, the House Commerce Committee Report language remains relevant with respect to those provisions that were unchanged. Also relevant in terms of the SHVERA legislative history, particularly as it relates to the changes in the copyright laws in 17 U.S.C. § 119, is the House Judiciary Committee Report dated September 7, 2004, accompanying House Bill, H.R. 4518, 108th Cong. (2004), H.R. Rep. No. 108-660 (2004) ("*House Judiciary Committee Report*"). Finally, also relevant are certain remarks made in "floor statements" by Rep. Joe Barton (Chairman, House Energy and Commerce Committee) and Rep. Fred Upton, (Chairman, House Subcommittee on Telecommunications and the Internet) to H.R. 4518, 108th Cong. (2004). H.R. 4518 was amended to combine its copyright provisions with the Communications Act provisions of H.R. 4501, pursuant to a compromise between the House Energy and Commerce Committee and the House Judiciary Committee. *See* The Honorable Joe Barton, Chairman, House Energy and Commerce Committee, "Floor Statement" (dated Oct. 6, 2004) to H.R. 4518 (The Satellite Home Viewer Extension and Reauthorization Act of 2004) ("*Barton Floor Statement*"); and The Honorable Fred Upton, Chairman, House Subcommittee on Telecommunications and the Internet, "Floor Statement" (dated Oct. 6, 2004) to H.R. 4518 (The Satellite Home Viewer Extension and Reauthorization Act of 2004) ("*Upton Floor Statement*").

[6] *Cable Television Report and Order*, 36 FCC 2d 143, 174, ¶ 83 (1972) ("*1972 R&O*").

[7] At the time the Commission adopted the significantly viewed rules, the cable television carriage rules were generally based on mileage zones from the relevant stations. A television station was generally considered "local" for cable carriage purposes if the relevant community served was within 35 miles of the station's city of license or within its Grade B contour but not within the 35 mile zone of another market. Cable system carriage of significantly viewed stations, however, was based on audience viewership levels in the relevant communities rather than by strict mileage zones. This afforded significantly viewed stations carriage when they otherwise would have been considered distant stations. *See 1972 R&O*, 36 FCC 2d 143; *and Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326 (1972) ("*1972 Recon Order*"); *see also* 47 C.F.R. § 76.5(i), which defines "significantly viewed" as "Viewed in other than cable television households as follows: (1) For a full or partial network station – a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent; and (2) for an independent station – a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent;" *see also* 47 C.F.R. § 76.54.

[8] *See* 17 U.S.C. § 111(a), (c), and (f).

carriers did not, however, provide a statutory copyright license for significantly viewed signals, and as a consequence such signals are not, as a practical matter, generally available for carriage for satellite distribution outside of their Designated Market Areas ("DMAs").[9] Recognizing that the reach of a station's over-the-air signal is not constrained by the boundary of a DMA,[10] the SHVERA now will allow a satellite carrier to treat an otherwise distant signal as "local" in a community where such signal is "significantly viewed" by consumers in that community.[11] In this way, the statutory provisions governing satellite carriage of broadcast stations move closer to the provisions that have long governed cable carriage.

II. BACKGROUND

A. Satellite Home Viewer Act (SHVA)

4. In 1988, Congress passed the Satellite Home Viewer Act ("1988 SHVA"),[12] which established a statutory copyright license for satellite carriers to offer subscribers who could not receive the signal of a broadcast station over the air access to broadcast programming via satellite. The 1988 SHVA reflected Congress' intent to protect the role of local broadcasters in providing over-the-air television by limiting satellite delivery of network broadcast programming to subscribers who were "unserved" by over-the-air signals. The 1988 SHVA, however, did permit satellite carriers to offer distant "superstations" to subscribers.[13]

B. Satellite Home Viewer Improvement Act of 1999 (SHVIA)

5. In the Satellite Home Viewer Improvement Act ("SHVIA"),[14] Congress expanded on the 1988 SHVA by amending both the 1988 copyright laws[15] and the Communications Act[16] to permit satellite carriers to retransmit local broadcast television signals directly to consumers. Generally, the SHVIA sought to level the competitive playing field between satellite and cable operators, thereby providing consumers with more and better choices when selecting a multichannel video programming distributor ("MVPD"). The Commission undertook a number of rulemakings to implement the SHVIA,

[9] *See* 17 U.S.C. § 119 (statutory copyright license for satellite carriage of "distant" network stations, limited to "unserved households") and § 122 (statutory copyright license for satellite carriage of "local" stations, defined as stations and subscribers in the same Designated Market Area).

[10] A DMA generally identifies a television station's "local market." *See* 17 U.S.C. § 122(j)(2)(A).

[11] *House Commerce Committee Report* at 10.

[12] The Satellite Home Viewer Act of 1988, Pub. L. No. 100-667, 102 Stat. 3935, Title II (1988) (codified at 17 U.S.C. §§ 111, 119). The 1988 SHVA was enacted on November 16, 1988, as an amendment to the copyright laws. The 1988 SHVA gave satellite carriers a statutory copyright license to offer distant signals to "unserved" households. 17 U.S.C. § 119(a).

[13] *See id*. § 119(a)(1). "Superstations" are not considered "network stations" for copyright purposes.

[14] The Satellite Home Viewer Improvement Act of 1999, Pub.L. No 106-113, 113 Stat. 1501 (1999) (codified in scattered sections of 17 and 47 U.S.C.). The SHVIA was enacted on November 29, 1999, as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 ("IPACORA") (relating to copyright licensing and carriage of broadcast signals by satellite carriers).

[15] 17 U.S.C. §§ 119 and 122.

[16] *See* 47 U.S.C. §§ 325, 338 and 339.

adopting rules for satellite companies with regard to mandatory carriage of broadcast signals, retransmission consent, and program exclusivity that closely paralleled the requirements for cable service.[17]

6. A key element of the SHVIA was to provide satellite carriers with a statutory copyright license to facilitate the retransmission of local broadcast programming, or "local-into-local" service, to subscribers. A satellite carrier provides "local-into-local" service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.[18] Generally, a television station's "local market" is the DMA in which it is located.[19] DMAs, which describe each television market in terms of a unique geographic area, are established by Nielsen Media Research based on measured viewing patterns.[20] Each satellite carrier providing local-into-local service pursuant to the statutory copyright license is generally obligated to carry any qualified local television station in the particular DMA that has made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA or the station does not provide a good quality signal to the carrier's local receive facility.[21] This is commonly referred to as the "carry one, carry all" requirement.[22]

C. Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA)

7. In December 2004, Congress passed and the President signed the Satellite Home Viewer Extension and Reauthorization Act of 2004,[23] which again amends the 1988 copyright laws[24] and the

[17] *See* Implementation of the Satellite Home Viewer Improvement Act 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues, 16 FCC Rcd 1918 (2000) ("*SHVIA Signal Carriage Order*"); Technical Standards for Determining Eligibility For Satellite-Delivered Network Signals Pursuant To the Satellite Home Viewer Improvement Act, 15 FCC Rcd 24321 (2000); Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules To Satellite Retransmissions of Broadcast Signals, 15 FCC Rcd 21688 (2000) ("*Satellite Exclusivity Order*"); Implementation of the Satellite Home Viewer Improvement Act of 1999, Enforcement Procedures for Retransmission Consent Violations, 15 FCC Rcd 2522 (2000); Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, 15 FCC Rcd 5445 (2000).

[18] 47 C.F.R. § 76.66(a)(6).

[19] Section 340(i)(1), as established by the SHVERA, defines the term "local market" using the definition contained in 17 U.S.C. §122(j)(2) ("The term 'local market', in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and – (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station." 17 U.S.C. §122(j)(2)(A)); *see* 47 U.S.C. § 340(i)(1).

[20] *See* 17 U.S.C. § 122(j)(2)(A)-(C).

[21] *See* 47 U.S.C. § 338.

[22] Section 338 of the Communications Act, adopted as part of the 1999 SHVIA, requires satellite carriers, by January 1, 2002, "to carry upon request all local television broadcast stations' signals in local markets in which the satellite carriers carry at least one television broadcast station signal," subject to the other carriage provisions contained in the Act. 47 U.S.C. § 338.

[23] The Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447, 118 Stat 2809, 3393 (2004) (codified in scattered sections of 17 and 47 U.S.C.); *see also, supra*, n. 1.

Communications Act[25] to further aid the competitiveness of satellite carriers and expand program offerings for satellite subscribers. The 1999 SHVIA opened the door for satellite carriers to offer local broadcast programming to subscribers, but the SHVIA copyright license for satellite carriers was still more limited than the statutory copyright license for cable operators. Specifically, for satellite purposes, "local," though out-of-market (*i.e.,* "significantly viewed") signals were treated the same as truly "distant" (*e.g.*, hundreds of miles away) signals for purposes of the SHVIA's statutory copyright licenses in 17 U.S.C. §§ 119 and 122. The SHVERA is intended to correct this particular inconsistency by giving satellite carriers the option to offer Commission-determined "significantly viewed" signals to subscribers.[26]

III. DISCUSSION

8. The SHVERA creates Section 340 of the Communications Act and expands the statutory copyright license for satellite carriers contained in 17 U.S.C. § 119 to establish the framework for satellite carriage of Commission-determined "significantly viewed" signals.[27] As required by the SHVERA, we open this rulemaking proceeding, publish the existing list of significantly viewed stations, and seek comment on implementation of Section 340 and on the specific rule proposals[28] and tentative conclusions contained herein.[29]

A. Station Eligibility For Satellite Carriage As "Significantly Viewed"

9. In this section, we will consider which stations are eligible for "significantly viewed" status in which communities pursuant to the statutory copyright license contained in 17 U.S.C. § 119(a). We will also consider how stations and the related communities can become eligible for such status. Such examination requires discussion of the interplay of the Section 340 requirements with the Commission's network nonduplication and syndicated exclusivity rules. We must also consider how to define a satellite community in this context.

1. "Significantly Viewed" Status

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[24] Section 102 of the SHVERA creates a new 17 U.S.C. § 119(a)(3) to provide satellite carriers with a statutory copyright license to offer "significantly viewed" signals as part of their local service subscribers. 17 U.S.C. § 119(a)(3).

[25] *See* 47 U.S.C. §§ 325, 338, 339 and 340.

[26] Section 102 of the SHVERA extends the statutory copyright license contained in 17 U.S.C. § 119(a) to "apply to the secondary transmission of the primary transmission of a network station or a superstation to a subscriber who resides outside the station's local market … but within a community in which the signal has been determined by the Federal Communications Commission, to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community." 17 U.S.C. § 119(a)(3)(A).

[27] Section 102 of the SHVERA amends 17 U.S.C. § 119(a) to create new subsection (a)(3), entitled "secondary transmissions of significantly viewed signals." 17 U.S.C. § 119(a)(3). Section 202 of the SHVERA amends the Communications Act to create a new Section 340, entitled "Significantly Viewed Signals Permitted To Be Carried." 47 U.S.C. § 340.

[28] Our proposed rules to implement the SHVERA are found in Appendix A to this Notice.

[29] *See* 47 U.S.C. § 340(c)(1).

10. The SHVERA specifies two ways for a station to be eligible for "significantly viewed" status. Section 340(a) of the Act, as created by the SHVERA, authorizes a satellite carrier "to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal –

> (1) has, before the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules; or
>
> (2) is, after such date of enactment, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community."[30]

Therefore, to obtain "significantly viewed" status, a station must either (1) be determined by the Commission to be "significantly viewed," as of December 7, 2004 (*i.e.*, must be on the Commission's "Significantly Viewed List" or "SV List"), or (2) obtain a "significantly viewed" determination by the Commission (*i.e.*, must be added to the "Significantly Viewed List"). There is no statutory limit on the number of significantly viewed signals a satellite carrier may carry.[31]

2. List of Significantly Viewed Stations and Communities

11. Section 340(c) of the Act directs the Commission to publish and maintain a unified list of significantly viewed stations, and the communities containing such stations, that will apply to both cable operators and satellite carriers.[32] The provision also requires that the Commission make this list of significantly viewed stations with related communities available to the public on our website, and update this list within 10 business days after taking an action to modify the list.[33]

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[30] 47 U.S.C. § 340(a).

[31] See 47 U.S.C. § 340(a), which states that satellite carriers may retransmit such signals "[i]n addition to the broadcast signals that subscribers may receive under Section 338 [governing carriage of local signals] and 339 [governing carriage of distant signals]." The exemption for significantly viewed signals is necessary because Section 339 of the Communications Act (47 U.S.C. § 339) prohibits a satellite carrier from providing a household with the signals of more than two distant affiliates of a particular network per day. *House Commerce Committee Report* at 10.

[32] Section 340(c)(1) requires that the Commission "(A) within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 – (i) publish a list of the stations that are eligible for retransmission under subsection (a) (1) and the communities in which such stations are eligible for such retransmission; and (ii) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking; (B) adopt rules pursuant to such rulemaking within one year after such date of enactment." 47 U.S.C. § 340(c)(1).

[33] Section 340(c)(2) of the Act requires that the Commission "make readily available to the public in electronic form, on the Internet website of the Commission or other comparable facility, a list of the stations that are eligible for retransmission under subsection (a) and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities." 47 U.S.C. § 340(c)(2). (continued….)

12. In accordance with the SHVERA, we have compiled a list of stations that have been granted significantly viewed status pursuant to the Commission's cable television rules.[34] This list ("SV List"), attached as Appendix B, is a list of significantly viewed stations and the communities containing such stations combining the Commission's original 1972 list of significantly viewed stations granted on a county-wide basis with stations added on a county or community-wide basis over the intervening years.[35] When the Commission initiated the cable carriage rules in 1972, the goal was to be broadly inclusive in order to provide a wide range of programming choices for cable viewers by designating significantly viewed stations on a county-wide basis.[36] The Commission provided that, after this initial period, stations can be added to the list on the basis of community surveys that focus on the area in which the station is significantly viewed. In addition, stations beginning operation after the initial survey period can use the county-wide methodology comparable to that used by Arbitron for the initial survey in lieu of a community-based survey.

13. As explained below, some stations on the SV List have been the subject of waivers and program deletions based on network nonduplication or syndicated exclusivity. The SV List indicates by a pound sign (#) the stations and related communities thus subjected to programming deletions.[37] Cable operators and satellite carriers must be aware of these required programming deletions ("blackouts") and abide by them in their carriage of these stations in the communities so indicated.

14. Based on the short time frame mandated by the SHVERA for publication of the SV List, as well as the legislative history, we believe that Congress intends for satellite carriers to make use of the SV List to expand their carriage offerings so that their subscribers can begin to experience the benefits of the SHVERA as soon as possible.[38] We are confident that the SV List appended to this Notice has a high degree of accuracy and, therefore, believe that both cable and satellite carriers may rely on its validity to commence service, consistent with the other requirements set out in the SHVERA and this proceeding, prior to the adoption of a final list. Nevertheless, in light of the length and age of the SV List, we are

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At the completion of this rulemaking proceeding, the final list will be published on the Commission's website at http://www.fcc.gov/mb, and, as further required by SHVERA, we will update the list as it appears on the website within 10 days of any modifications.

[34] Section 76.54 of our rules describes the basis for deeming a station's signal "significantly viewed." *See* 47 C.F.R. § 76.54; *see also* 47 C.F.R. 76.5(i).

[35] The Commission's initial list of significantly viewed stations was released in 1972. S*ee* Appendix B of the *1972 Recon Order*, 36 FCC 2d 326 (1972). The SV List also includes stations granted significantly viewed status subsequent to 1972. These latter stations and communities have not been previously published by the Commission, but have been included in a list maintained and published annually in Warren Publishing's Cable & Station Coverage Atlas (Warren Publishing Inc., Washington D.C.) The most recent version of Warren Communications News' significantly viewed list can be found at: Cable and Station Coverage Atlas, Warren Communications News' (Appendix B) (2004). The SV List indicates by a plus sign (+) those that have been added to the 1972 list after its publication to distinguish them from those stations and communities derived from the original 1972 list. We do not believe that this distinction is meaningful for the future and intend to eliminate this designation from the final SV List to be published at the conclusion of this proceeding.

[36] *1972 R&O*, 36 FCC 2d at 175-6, ¶ 85.

[37] The exclusivity rules prohibit a cable operator from carrying any network or syndicated programming from another station if such programming has been purchased exclusively by a local station. *See* 47 C.F.R. §§ 76.92 and 76.101; *see also KCST Petition for Special Relief,* 103 FCC 2d 407 (1986) ("*KCST*").

[38] *See House Commerce Committee Report* at 15; *Barton Floor Statement* at 2 (satellite carriers authorized to carry significantly viewed signals "upon enactment").

asking all interested parties to review the SV List to confirm its accuracy. We seek comment here only about whether the SV List accurately reflects such existing significantly viewed determinations, and not about whether the SV List should be modified because of a change in a station's circumstances subsequent to its placement on the SV List.[39] As discussed below in Section III.A.3, the SHVERA provides for a mechanism for parties to subsequently seek modification of the SV List. Requests to modify the SV List based on changed circumstances must follow this process. Parties may file comments in response to this Notice describing the nature and basis of any error, including changes in call sign or community. Such comments must include documentary evidence supporting the requested correction. If we find that a station or community has been listed in error, carriage of such signals in such communities will no longer be permitted pursuant to the significantly viewed provisions pertaining to satellite carriers. We believe, however, that carriage instituted in reliance on the SV List, and otherwise in compliance with the SHVERA and the Commission's rules, should not be treated as a "bad faith" violation, notwithstanding a subsequent conclusion that the SV List was in error.[40]

15. With respect to the SV List, we seek specific comment on how to treat communities listed as "unincorporated areas," as well as how to treat communities that have grown or changed over time, either through annexation or other means. We tentatively conclude that community listings or descriptions should generally be interpreted to encompass the area of natural growth of the community, such that we would apply the community description on the SV List to the community so denominated today. We recognize, however, that unincorporated areas present a somewhat more difficult problem because they may not be as clearly defined as are incorporated areas. We seek comment on how best to resolve treatment of unincorporated areas.

3. Procedures for Determining or Modifying Significantly Viewed Status

16. Section 340(c) provides a procedure for modifying the SV List, either to add eligible stations or communities, or restrict use of eligible stations through application of the Commission's network nonduplication or syndicated exclusivity rules.[41] This provision permits a satellite carrier or station to petition the Commission to include a particular station and related community on the significantly viewed list. Section 119(a)(3) of the copyright provisions in title 17 requires that the Commission use the same rules in considering such petitions that were in effect as of April 15, 1976.[42] Therefore, it is necessary to

[39] We are publishing the SV List in accordance with the SHVERA's mandate in new Section 340(c)(1)(A)(i). 47 U.S.C. § 340(c)(1)(A)(i). The purpose of this SV List is to identify "the stations that are eligible" for significantly viewed status, meaning those stations already determined to be significantly viewed by the Commission. *Id.* The House Commerce Committee intended that the Commission publish the SV List within 180 days of enactment, and provided for "interim eligibility" for stations on the list. The intent was for satellite carriers to "start carrying the signals on the list pending adoption of the rules." *House Commerce Committee Report* at 13. Although the "interim eligibility" language did not survive, the enacted provision required even faster publication of the SV List (*i.e.*, within 60 days). We believe this indicates Congress' interest in permitting immediate use of the SV List upon publication.

[40] *See infra* Section III.D.1. (discussion of enforcement provisions of SHVERA).

[41] 47 U.S.C. § 340(c)(3) requires that the Commission "permit a satellite carrier to petition for decisions and orders – (A) by which stations may be added to those that are eligible for retransmission under subsection (a), and by which communities may be added in which such stations are eligible for such retransmission; and (B) by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e)."

[42] 17 U.S.C. § 119(a)(3).

describe the existing rules and propose how they will be amended to implement the requirements of the SHVERA.

17. The Commission adopted the significantly viewed standard in 1972.[43] The rules that set the standard also established the definition of "full network," "partial network," and "independent" station.[44] The standard applies only to over the air viewing and only to commercial stations.[45] As discussed below, these definitions differ from the copyright definition of "network station" and must be harmonized for our implementation of the SHVERA requirements.[46] The Commission's rules provide that an out-of-market network affiliate should be considered to be significantly viewed if it obtains at least a three percent share of viewing hours in television homes in the community and has a net weekly circulation share of at least 25 percent.[47] For independent stations, the test is a share of at least two percent viewing hours and a net weekly circulation of at least five percent.[48] In 1972, the Commission used 1971 American Research Bureau (ARB) information to establish a baseline list of significantly viewed signals.[49] This data provided audience statistics on a county basis. Although the Commission recognized some drawbacks in using this information, it concluded that county audience statistics could be used to indicate over-the-air viewing in all communities within a county. This list of significantly viewed signals is referred to as the "1972 Appendix B" list.[50] To avoid disruption and uncertainty, the Commission stated that the stations deemed significantly viewed based on the ARB survey are not subject to deletion on the basis of some special showing or later survey.[51]

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[43] *1972 R&O*, 36 FCC 2d at 174, ¶ 83.

[44] *See* 47 C.F.R. §§ 76.5(i), (j), (k), and (l)

[45] *See* 47 C.F.R. §§ 76.5(i)-(l) (definitions of significantly viewed stations limited to "commercial"); *1972 R&O*, 36 FCC 2d at 180; *1972 Recon Order*, 36 FCC 2d at 330 (educational stations were given mandatory carriage throughout their Grade B signal contour but were not given significantly viewed status because the low ratings for NCE stations made it difficult to develop a significantly viewed standard for them and to avoid "an unwarranted profusion of educational signals" to which the educational stations objected due to possible erosion or dilution of local subscriber support); *see also* 17 U.S.C. § 119(a)(3)(A) (limits significantly viewed to the Commission's rules in effect on April 15, 1976).

[46] *See infra* Section III.A.4. (definition of "network station").

[47] *1972 R&O*, 36 FCC 2d at ¶ 84. Three percent share of weekly viewing hours is a measure of the total hours all television households in the community viewed a station during the week, expressed as a percentage of the total hours these households viewed all stations during the period surveyed. Twenty-five percent of the net weekly circulation means that 25 percent of the total television households in the community viewed the station for five minutes or more during an entire week. *Id.* at n.43.

[48] *Id*. at ¶ 84.

[49] *Id*. at ¶ 85.

[50] *Id*. The original list was appended to the 1972 R&O. That list was replaced by a revised list in the *1972 Recon Order* to improve the accuracy of the data. *1972 Recon Order,* 36 FCC 2d at 346-7, ¶¶ 54-57.

[51] *1972 R&O*, 36 FCC 2d at n. 45. The Commission affirmed this decision on reconsideration. *1972 Recon Order,* 36 FCC 2d at 349-50, ¶ 63. As noted in the SHVERA legislative history, if a signal loses viewership such that it no longer qualifies as significantly viewed, the Commission does not remove the signal from the list, but parties can petition to re-impose blackout obligations. *House Commerce Committee Report* at 15.

18. In the *1972 Order*, the Commission also established procedures for qualifying new signals for significantly viewed status. Under Section 76.54 of the rules, parties may submit surveys conducted by a disinterested professional organization that is independent from the cable systems or television stations ordering the surveys.[52] The surveys must include the results of two weekly periods separated by at least 30 days, and one of the weeks must be outside the summer viewing period (*i.e.*, April – September). The Commission recognized that the results of sample surveys can only be determinative within a given probability. Therefore, to assure that the survey errs on the side of excluding stations that are not actually significantly viewed, the Commission decided to require that the sample results exceed the significantly viewed standard, currently specified in Section 76.5(i), by at least one standard error.[53] Initially, the Commission required separate surveys for each cable community, but the rule was revised to allow a single survey where a cable system served multiple communities. Thus, if a cable system serves more than one community, a single survey may be taken, provided that the sample includes noncable television homes from each community that are proportional to the population.[54]

19. Section 76.54(d), adopted in 1975, amended the rules to permit television stations that were not on the air at the time the ARB surveys were used to create the 1972 Appendix B list to demonstrate their significantly viewed status using county-wide audience surveys in lieu of the more burdensome community-by-community method.[55] For such stations, significantly viewed status may be demonstrated on a county-wide basis using independent professional audience surveys which cover three separate, consecutive four-week periods and are otherwise comparable to the surveys used to compile the 1972 Appendix B list. Under this rule, a demonstration that a station is significantly viewed must be based on audience survey data from the station's first three years of operation. Where surveys are conducted pursuant to Section 76.54(d), the Commission concluded that the potential for an unrepresentative sample was considerably lessened by the adoption of a longer survey period. Accordingly, the Commission decided not to require that the results be subject to the standard error requirement and the survey results must simply meet the significantly viewed standard for the station type specified in Section 76.5(i).[56]

20. The SHVERA requires the Commission to use the rules "applicable to determining with respect to a cable system whether signals are significantly viewed in a community" as "in effect on April

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[52] *See* 47 C.F.R. § 76.54(b). Initially, the Commission suggested that parties undertaking surveys under this provision inform other interested parties regarding the survey and its methodology. On reconsideration, the Commission adopted Section 76.54(c) requiring such prior notification. *See 1972 R&O,* 36 FCC 2d at 176, ¶ 86; *1972 Recon Order,* 36 FCC 2d at 349, ¶ 62.

[53] A "standard error" is a statistical measure used to assess, at a specified probability, that the sample estimate reflects the actual result had the entire universe been surveyed. Using one standard error, we can be approximately 70 percent certain that the actual audience statistic is the reported statistic plus or minus one standard error. The calculation of the standard error takes into account the sampling procedure, the sample size and the sample result.

[54] *See* 47 C.F.R. § 76.54(b).

[55] *Amendment of Part 76 of the Commission's Rules and Regulations to Permit Showings that Certain Television Broadcast Stations are Significantly Viewed Based on County-Wide Surveys*, 56 FCC 2d 265, ¶ 1 (1975) ("*1975 R&O*").

[56] *1975 R&O*, 56 FCC 2d at 270, ¶ 12. This was intended to place the survey methodology for newer stations on a par with the methodology used in the original Commission surveys. *See* 47 C.F.R. § 76.54(b). Moreover, the rules do require that the survey be undertaken by an independent professional audience survey organization and be subject to Commission review.

15, 1976."[57] It is clear from the SHVERA that Congress intends for the Commission to use the same rules and process for making significantly viewed determinations for satellite carriage as we have used for such determinations in the cable carriage context.[58] We thus tentatively conclude to apply Section 76.54 of our rules to satellite carriage. Consistent with Section 340 of the Communications Act and Section 119(c)(3) of title 17, we propose to amend Section 76.54 to include application to satellite carriers.[59] We do not believe that the SHVERA prevents us from making the very amendments that are needed to implement the statutory provisions. Our proposed Section 76.54 does not alter the procedures as in effect on April 15, 1976, but is simply amended to make reference to satellite carriers and the new SV List.[60] We also propose to amend Section 76.54 to update the existing reference to "Grade B contour," which applies to analog stations, to add "noise limited service contour," the service contour relevant for a station's digital signal.[61] We note that the Commission has previously decided that the digital signal of a television broadcast station will be accorded the same significantly viewed status as that of the analog signal, except that where the station is broadcasting only a digital signal, the station must petition for significantly viewed status using the analog requirements in Section 76.54.[62] We further propose to amend Section 76.54 to eliminate an outdated reference and correct a typographical error, neither of which changes in any way the substance or the process of the rule.[63] In light of the statutory restriction to use rules in effect on April 15, 1976, we seek comment on our proposed amendments to Section 76.54. Additionally, we propose to require satellite carriers or broadcast stations seeking satellite carriage to follow the same petition process now in place for cable operators, as required by Sections 76.5, 76.7 and 76.54 of our rules.[64] We believe, however, that it is not necessary to amend Sections 76.5 and 76.7 in order to permit the filing of such petitions for significantly viewed status by satellite carriers or broadcast stations seeking satellite carriage.[65] A station or cable operator that wishes to have a station/community

[57] *See* 17 U.S.C. § 119(a)(3)(A), which requires the Commission to use the rules in effect as of April 15, 1976 when evaluating demonstrations of eligibility for "significantly viewed" status.

[58] *See* 17 U.S.C. § 119(a)(3); *see also House Commerce Committee Report* at 1 (Purpose of the SHVERA includes "increasing regulatory parity by extending to satellite carriers the same type of authority cable operators already have to carry 'significantly viewed' signals into a market").

[59] *See* Appendix A proposed Section 76.54 (revising subsections (a)-(d) and adding subsections (e)-(h)).

[60] *See* Appendix A proposed Section 76.54(a) (referencing the new SV List), (b), and (c) (referencing a satellite community).

[61] *See* Appendix A proposed Section 76.54(c).

[62] *See Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd 2598, 2642, ¶ 100 (2001) ("[W]e believe that the public interest is best served by according the digital signal of a television broadcast station the same significantly viewed status accorded the analog signal. We note, however, that DTV-only television stations must petition the Commission for significantly viewed status under the same requirements for analog stations in Section 76.54 of the Commission's rules.")

[63] Section 76.54(a) refers to "Appendix A" when it should refer to "Appendix B" of the *1972 Recon Order*. Section 76.54(c) contains an out-of date reference to Section "76.33(a)(2)(i)" of the rules. Our proposed Section 76.54 corrects these issues; s*ee* Appendix A proposed Section 76.54(a), (c).

[64] *See* 47 C.F.R. §§ 76.5, 76.7, 76.54. A fee may be required for the filing of certain petitions to change a station's significantly viewed status; *see* 47 C.F.R. §§ 1.1104, 1.1117, 76.7.

[65] We propose to amend Section 76.5 in another context. *See* Appendix A proposed Section 76.5. Because Section 76.7 of our rules currently provides for the filing of special relief petitions by multichannel video programming distributors, such as satellite carriers, we are not proposing an amendment to our rule; *see* 47 C.F.R. § 76.7.

designated significantly viewed would file a petition pursuant to the pleading requirements in Section 76.7(a)(1) and use the method described in Section 76.54 to demonstrate that the station is significantly viewed as defined in Section 76.5(i). We seek comment on our proposal and tentative conclusion.

4. Definition of "Network Station"

21. As mentioned above, our rules define network station as one of the "three major national networks."[66] This definition is expressly relied upon in the standard for determining whether a station is significantly viewed for placement on the SV List.[67] The SHVERA, however, relies on the definition of "network station" that is used in the copyright provisions of title 17,[68] which provides that a "network station" is:

> "(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or (B) a "noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934 [47 U.S.C. § 397])."[69]

22. The Commission's rules define three types of commercial stations for which significantly viewed status may be recognized: full, partial, and independent.[70] The SHVERA, however, relies on the copyright definitions of "network" and "superstation."[71]

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[66] *See* 47 C.F.R. § 76.5(j) and (k).

[67] *See* 47 C.F.R. § 76.5(i) (the "share" required to achieve significantly viewed status depends upon whether the station in question is a network station or an independent station); *see also* 47 C.F.R. § 76.5(j) (full network station is: "A commercial television broadcast station that generally carries in weekly prime time hours 85 percent of the hours of programming offered by one of the three major national television networks with which it has a primary affiliation (*i.e.*, right of first refusal or first call)"; 47 C.F.R. § 76.5(k) (partial network station is: "A commercial television broadcast station that generally carries in prime time more than 10 hours of programming per week offered by the three major national television networks, but less than the amount specified in paragraph (j) of this section"; 47 C.F.R. § 76.5(l) (independent station is: "A commercial television broadcast station that generally carries in prime time not more than 10 hours of programming per week offered by the three major national television networks.").

[68] *See* 47 U.S.C. § 340(i)(2); 47 U.S.C. § 339(d)(3) and 17 U.S.C. §119(d)(2).

[69] 17 U.S.C. §119(d)(2). The SHVERA also relies on Section 339(d) for the definition of "television network," which is slightly different from the "network" definition in title 17. *See* 47 U.S.C. § 340(i)(2); 47 U.S.C. § 339(d)(5); *see also* 47 C.F.R. § 76.66(a)(5) (defining television network in the context of satellite broadcast signal carriage). Section 339(d)(5) provides: "a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States." 47 U.S.C. § 339(d)(5). We note the difference in language between "affiliated television licensees" in title 17 compared with "affiliated broadcast stations" in Section 339 of the Communications Act, but we do not find the difference significant. We nonetheless request comment on this conclusion.

[70] *See* 47 C.F.R. § 76.5(j) and (k).

23. Our significantly viewed rules for satellite carriers must follow SHVERA's requirement that we retain the standard we have used since April 15, 1976, which prevents us from updating these rule provisions for this purpose.[72] Therefore, we propose to harmonize the apparent inconsistencies by continuing to use the definition of network and independent station in our rules for purposes of determining whether a station is significantly viewed for placement on the SV List, which thereby excludes noncommercial stations from eligibility for the SV List. However, as also required by the SHVERA, we will use the copyright definition of network station and superstation for purposes of subscriber eligibility and the other applications of the significantly viewed provisions. We seek comment on these tentative conclusions.

5. Limitations on Carriage of Significantly Viewed Stations Based on Network Nonduplication and Syndicated Exclusivity

24. Section 340(a)(1) limits satellite carriage of stations included on the SV List "to the extent such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules."[73] In the cable context, a commercial television station may assert "network nonduplication rights" to prevent a cable system within the geographic zone specified in the Commission's rules from carrying programming that duplicates the network programming for which the station has exclusive rights based upon its affiliate agreement with the network.[74] Similarly, a television station or distributor may prevent a cable system within the geographic zone specified in the Commission's rules from carrying programming broadcast by any other television station if the exclusive rights to that programming are held by the station or distributor.[75] Assertion of these rights, collectively known as the "cable exclusivity" rules, generally results in the blacking out of the programming in question. The cable system may continue to carry the station's signal, provided the duplicating programming is blacked out, or it may decide to cease carriage of the station's signal entirely. However, the rules further provide that a station whose programming is subjected to an assertion of either of the exclusivity rules is exempt if it is "significantly viewed" in the relevant cable community.[76] The significantly viewed exception to the Commission's exclusivity rules is

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[71] *See* 17 U.S.C. § 119(d)(9), as amended by Section 105 of the SHVERA (defining superstation as a television station licensed by the Commission that is retransmitted by a satellite carrier other than a network station). We believe that "superstation" and "independent" station are similar. *See also* 47 U.S.C. § 340(i)(1) (definition of "television broadcast station" by reference to 47 U.S.C. § 338(k), which in turn refers to 47 U.S.C. § 325(b)(7): "an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station."); *but see* 47 C.F.R. § 76.5(j), (k), and (l) (defining network and independent stations in terms of programming hours); *see also, infra,* n. 100.

[72] *See* 17 U.S.C. § 119(a)(3)(A), as amended by Section 102 of the SHVERA (the statutory copyright license applies to retransmission of significantly viewed network station or superstation to a subscriber in a community on the Commission's list and limits significantly viewed to the Commission's rules in effect on April 15, 1976).

[73] Section 340(a)(1) as enacted by Section 202 of the SHVERA.

[74] *See* 47 C.F.R. §§ 76.92 and 76.93. The Commission's rules provide stations such protection within a 35-mile geographic zone (or 55 miles in smaller markets), which extends from the reference point of the community of license of the television station. *See* 47 C.F.R. §§ 73.658(m), 76.53, and 76.92 Note.

[75] *See* 47 C.F.R. §§ 76.101 and 76.103. The Commission's rules provide such protection within a station's 35-mile geographic zone, which extends from the reference point of the community of license of the television station. *See* 47 C.F.R. §§ 73.658(m), 76.53, and 76.101 Note.

[76] *See* 47 C.F.R. §§ 76.92(f) and 76.106(a).

based on an otherwise distant station establishing that it receives a "significant" level of over-the-air viewership in a subject community. If this viewership level is met, the station is no longer considered distant for purposes of the application of the Commission's exclusivity rules because it has established that it can be received over-the-air in the subject communities. Thus, a cable system is not required to black out the duplicating programming of a significantly viewed station.

25. Notwithstanding the significantly viewed exemption to the cable exclusivity rules, the station or distributor asserting exclusivity protection may petition the Commission to waive the significantly viewed exception to permit a reassertion of exclusivity protection against a station claiming "significantly viewed" status.[77] If the station or distributor asserting exclusivity demonstrates that the station claiming the significantly viewed exemption no longer merits significantly viewed status, the waiver is granted, and the duplicating programming must be blacked out.[78] Thus, as described above, the Commission's SV List includes all stations deemed to be significantly viewed but indicates by a pound sign (#) those communities in which a waiver has been granted to permit assertion of the exclusivity rules.[79]

26. The satellite context is somewhat more complicated. The exclusivity rules do not apply to satellite carriage of network stations but only to carriage of "national distributed superstations," as provided by Section 339(b)(1)(A), which was enacted by the SHVIA in 1999.[80] Section 340(e) maintains the status quo by providing that the exclusivity rules shall not apply to distant network stations.[81] Section 340(e)(1), however, allows the Commission to adopt rules to permit assertion of the exclusivity rules by stations and distributors with respect to stations carried by satellite carriers pursuant to the new significantly viewed provisions.[82] This provision requires us, therefore, to (1) create a limited right for a

[77] *See KCST,* 103 FCC 2d 407. In *KCST*, the Commission held that in order to obtain a waiver of Section 76.92(f), 47 C.F.R. § 76. 92(f), petitioners would be required to demonstrate for two consecutive years that a station was no longer significantly viewed, based either on community-specific or system-specific, noncable viewing data, to one standard error. For each year, the data must be obtained as a result of independent professional surveys taken during two one-week periods that are separated by at least 30 days and, if the survey covers more than one community, the sample must be proportionately distributed among the relevant communities, as described in Section 76.54(b), 47 C.F.R. § 76.54(b). Not more than one of the surveys may be taken between April and September of each year.

[78] *Id; see* Benedek License Corporation, 17 FCC Rcd 25232 (2002) (granting waiver of significantly viewed exception with respect to assertion of network nonduplication and syndicated exclusivity).

[79] *See supra* Section III.A.2., and Appendix B, SV List.

[80] *See* 47 U.S.C. § 339(b)(1)(A); *see also Satellite Exclusivity Order,* 15 FCC Rcd 21688 (2000); *Order on Reconsideration*, 17 FCC Rcd 27875, (2002). The existing satellite exclusivity rules provide for an exception to their application in the event that the nationally distributed superstation is also a station that is significantly viewed in the area in which the satellite carrier is offering them. *See* 47 C.F.R. §§ 76.122(j)(ii) and 76.123(k)(2); *see also Satellite Exclusivity Order,* 15 FCC Rcd at 21716-7, ¶¶ 56-7.

[81] *See* 47 U.S.C. § 340(e)(2), enacted by Section 202 of the SHVERA:"(2) LIMITATION. Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclusivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under Section 119(a)(2)(A) or (B) of title 17, United States Code, with respect to persons who reside in unserved households, under Section 119(a)(4)(A), or under Section 119(a)(12), of such title."

[82] *See* Section 340(e)(1), enacted by Section 202 of the SHVERA: "(1) NOT APPLICABLE EXCEPT AS PROVIDED BY COMMISSION REGULATIONS. Signals eligible to be carried under this section are not subject to the Commission's regulations concerning network nonduplication or syndicated exclusivity unless, (continued….)

station or distributor to assert exclusivity with respect to a station carried by a satellite carrier as significantly viewed; (2) allow that significantly viewed station to assert the significantly viewed exception, just as a station would with respect to cable carriage; and (3) allow the station or distributor asserting exclusivity to petition us for a waiver from the exception. Thus, Congress directs the Commission to ensure parity between cable operators and satellite carriers so that a station's programming that is subject to blackout deletions with respect to a cable system serving a cable community would also be subject to deletions for a satellite carrier's subscribers within the same cable community or within a satellite community.[83]

27. We will implement these SHVERA requirements first by denoting on the SV List which stations in which communities have been subjected to deletions such that duplicating programming must be blacked out by cable operators.[84] Satellite carriers using the SV List may carry these stations but are subject to the same programming deletions that apply to cable systems. Second, we will amend our rules so that stations and distributors may assert exclusivity rights with respect to satellite carriage of significantly viewed stations but only insofar as they can prove that the conditions supporting a waiver of the significantly viewed exception from the exclusivity rules would apply.[85] We seek comment on this approach to effectuate Congressional provisions and intent.

6. Definition of "Satellite Community"

28. The SHVERA requires the Commission to define "community" in the satellite context. Under the SHVERA, a "community" is either (1) a county or a cable community under the Commission's rules (applicable to significantly viewed signals), or (2) a satellite community as defined by the Commission in implementing the statute.[86] The concept of a "community" is important in the SHVERA because the term describes the geographic area where subscribers will be permitted to receive significantly viewed signals.

29. Because the Commission's rules have previously only applied to cable carriage of significantly viewed signals, significantly viewed determinations currently are limited to cable communities. In the cable context, the Commission defined a community unit in terms of a "distinct community or municipal entity" where a cable system operates or will operate.[87] Due to the localized

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pursuant to regulations adopted by the Commission, the Commission determines to permit network nonduplication or syndicated exclusivity to apply within the appropriate zone of protection." 47 U.S.C. § 340(e)(1).

[83] *See House Commerce Committee Report* at 14-15 (noting that stations are not removed from the SV List but rather that blackout deletions are re-imposed).

[84] *See* Appendix B, SV List. A pound sign (#) is used to indicate the stations and communities subjected to programming deletions pursuant to the Commission's exclusivity rules.

[85] *See* Appendix A proposed Sections 76.122 and 76.123.

[86] 47 U.S.C. § 340(i)(3) states that "[t]he term 'community' means – (A) a county or a cable community, as determined under the rules, regulations, and authorizations of the Commission applicable to determining with respect to a cable system whether signals are significantly viewed; or (B) a satellite community, as determined under such rules, regulations, and authorizations (or revisions thereof) as the Commission may prescribe in implementing the requirements of this section."

[87] 47 C.F.R. § 76.5(dd) defines "community unit" as: "A cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas)." *See also Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a* (continued….)

nature of cable systems, cable communities were easily defined by the geographic boundaries of a given cable system, which are often, but not always, coincident with a municipal boundary and may vary as determined on a case-by-case basis.[88]

30. The concept of a cable community is largely inapplicable to the satellite context. Unlike cable service which reaches subscribers via local franchises across the country, satellite carriers offer service on a national basis, with no connection to a particular local community or municipality. Moreover, satellite service is offered in areas of the country that do not have cable service, and thus are not cable communities. Nevertheless, based upon the statutory language that the satellite carriers should use the existing list, we believe that, where a cable community is already defined, the statute requires a satellite carrier to use that defined "community."[89] We seek comment on this interpretation. We also seek comment on whether satellite carriers will be able to determine which of their subscribers are in existing communities and, if not, how best to apply existing cable communities to the satellite context.

31. In the context of adding future "communities" to the SV List, we seek to establish a definition of "satellite community" that will be appropriate for the nature of satellite service, including the opportunity to offer significantly viewed signals in a community where no cable system exists. The definition of satellite community will apply where a satellite carrier seeks to define a community not currently served by cable. We are proposing two alternative approaches and seek comment on these alternatives as well as invite comment on other possible definitions. One option would permit a carrier to seek significantly viewed status for a given station with respect to one or more specified five-digit zip code areas.[90] For example, a satellite carrier or station could petition the Commission for a significantly viewed designation pursuant to Section 76.54 by listing one or more zip codes and demonstrating that the signal is significantly viewed in these zip codes collectively. If zip codes are aggregated to define a single community, we propose to require satellite carriers to demonstrate significantly viewed status by taking a survey that includes a sample of noncable television homes from each zip code included in the "community" which is proportional to the population. This proportional sampling is consistent with the existing cable rules that require the use of proportional surveys where more than one community is involved.[91] We believe that zip code based communities can be appropriate for this purpose because they capture all areas of the country, including areas now unserved by cable, and provide a practical and efficient approach for satellite carriers to utilize the significantly viewed carriage option offered in the

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Cable Television System and the Creation of Classes of Cable Systems, 63 FCC 2d 956, 966 (1977) (defining "community unit" for, *inter alia*, the significantly viewed rules, as that part of a cable system that is located within a single community).

[88] *See id.* at n. 5, citing *Amendment of Parts 21, 74, and 91 to Adopt Rules and Regulations Relating to the Distribution of Television Broadcast Signals By Community Antenna Television Systems, and Related Matters, Docket 15971*, 2 FCC 2d 725, 785-6, ¶ 149 (1966) ("community" as used in the rules must be determined case-by-case depending on the circumstances involved); *Telerama, Inc.*, 3 FCC 2d 585 (1966), *Mission Cable TV Inc.,* 4 FCC 2d 236 (1966), *Calvert Telecommunications Corp.*, 49 FCC 2d 200 (1974), and *St. Louis Telecast, Inc.*, 12 RR 1289, 1369 (1957).

[89] *See* 47 U.S.C. §§ 340(c)(2), (i)(3)(A); *see also House Commerce Committee Report* at 12 ("Section 340(c)(2) provides for significantly viewed determinations in areas without cable service.").

[90] We propose to use the five-digit zip codes, as determined by the U.S. Postal Service. *See* Appendix A proposed Section 76.5(gg)[option one].

[91] *See* 47 C.F.R. § 76.54(b) ("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.").

SHVERA. We note that the Commission has previously used zip codes in the satellite context; *e.g.*, to define the various zones of protection afforded under the satellite exclusivity rules.[92] We further propose that a satellite community defined by one or more such zip codes is subject to any subsequent changes made to the listed zip codes by the U.S. Postal Service. Ideally, we would forecast for an area without cable what the franchise area would be were a cable operator to establish cable service. However, in areas currently unserved by cable, this forecasting may not be feasible.[93] In this regard, if a cable operator subsequently offers cable service in a community after it has been defined as a "satellite community," we seek comment on whether we should continue to use the zip code-defined satellite community or, instead, redefine the community to the extent it overlaps with the franchise area of the new cable community.

32. We recognize that the first proposal, use of one or more zip codes to define a satellite community, may ignore an existing town, village, municipality or other geopolitical entity that constitutes a "community" in the more traditional sense. Using one or more zip codes could create an artificial "community" with no minimum or maximum size, except as bounded by a postal zip code map. The alternative proposal would define a satellite "community" as a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). The boundaries of the incorporated areas would be the existing geopolitical boundaries, while the unincorporated community would be defined by one or more five-digit zip code areas.[94] We think that this approach may make it more likely that a cable system subsequently built in such an area would serve a "community" similar to the satellite community, thus making the SV List more easily used by both cable and satellite providers. We seek comment on both alternatives and invite additional variations on these or other proposals.

7. Significantly Viewed Carriage Not Mandatory; Retransmission Consent Rights Not Affected

33. The SHVERA does not require satellite carriers to carry significantly viewed stations.[95] The SHVERA also does not change the retransmission consent requirements. Cable operators must obtain retransmission consent to carry significantly viewed signals, and the SHVERA requires the same of satellite carriers.[96] The SHVERA provides, however, that retransmission consent is not necessary if the satellite carrier is exempt from having to obtain retransmission consent for other reasons. For example, a satellite carrier is exempt under Section 325(b) of the Act from having to obtain retransmission consent when providing a distant signal of a network to an unserved subscriber who cannot receive an over-the-air signal from an affiliate of the same network.[97] Thus, under the SHVERA, the satellite carrier would still

[92] *See Satellite Exclusivity Order*, 15 FCC Rcd at 21702, ¶¶ 27-28.

[93] Satellite serves many rural areas in which there is no cable service available now or in the foreseeable future. Cable availability was estimated to be approximately 97.8 percent of TV households at year-end 2003. *See* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Eleventh Annual Report*, FCC 05-13, ¶ 19 (rel. Feb. 4, 2005) ("*2005 Cable Competition Report*").

[94] *See* Appendix A proposed Section 76.5(gg)[option two].

[95] *See* 47 U.S.C. § 340(d)(1) ("any right of a station licensee to have the signal of such station carried under section 338 is not affected by the eligibility of such station to be carried under this section."). This provision also makes clear that any right of a station to have its signal carried in a local market under the "carry-one, carry-all" satellite must carry requirement is not affected by the significantly viewed status of the signal in another market.

[96] 47 U.S.C. § 340(d)(2) ("The eligibility of the signal of a station to be carried under this section does not affect any right of the licensee of such station to grant (or withhold) retransmission consent under section 325(b)(1).").

[97] 47 U.S.C. § 325(b).

be exempt from having to negotiate retransmission consent when providing a significantly viewed signal if it was providing it as a distant signal to an unserved household.[98]

34. We note that the SHVERA requires that local stations must be carried on a single dish.[99] Does this requirement with respect to local stations apply to out-of-market significantly viewed signals? If so, does the statute necessarily require that out of market significantly viewed signals be carried such that the subscriber would receive them on the same antenna and equipment as the local signals? We seek comment on these questions.

8. Definition of "Satellite Carrier"

35. The SHVERA defines the term "satellite carrier" in new Section 338(k) by reference to the definition in the copyright title 17.[100] This definition includes entities providing services as described in 17 U.S.C. § 119(d)(6) using the facilities of a satellite or satellite service licensed under Part 25 of the Commission's rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies.[101] As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.[102] We believe that the definition of "satellite carrier" would include all three types of entities described above but we nevertheless seek comment on this issue.

B. Subscriber Eligibility to Receive "Significantly Viewed" Signals

36. In addition to the statutory requirements concerning station eligibility, the SHVERA also limits the subscribers who are eligible to receive the signals of significantly viewed stations. In general, subscribers are not eligible to receive out-of-market significantly viewed signals of a network station unless they are already receiving the local signal of an affiliate of the same network via satellite.[103] Application of this general principle differs, however, depending on whether the significantly viewed signal is analog or digital, with additional restrictions imposed on digital signals. The subscriber eligibility limitations also provide for an exception where there is no local network station present in the

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[98] *See House Commerce Committee Report* at 13. *See also* 17 U.S.C. § 119(2) and 47 U.S.C. § 325(b)(2).

[99] *See* 47 U.S.C. § 338(g)(1), as amended by Section 203 of the SHVERA (analog local television stations in a market must be carried by means of a single reception antenna and associated equipment).

[100] *See* 47 U.S.C. § 340(i)(1); 47 U.S.C. § 338(k)(3), as amended by the SHVERA, and 17 U.S.C. §119(d)(6).

[101] Part 100 of the Commission's rules was eliminated in 2002 and now both FSS and DBS satellite facilities are licensed pursuant to Part 25 of the rules. *Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd 11331 (2002); 47 C.F.R. § 25.148.

[102] *See, e.g., Application Of DirecTV Enterprises, LLC, Request For Special Temporary Authority for the DirecTV 5 Satellite; Application Of DirecTV Enterprises, LLC, Request for Blanket Authorization for 1,000,000 Receive Only Earth Stations to Provide Direct Broadcast Satellite Service in the U.S. using the Canadian Authorized DirecTV 5 Satellite at the 72.5° W.L. Broadcast Satellite Service Location,* 19 FCC Rcd. 15529 (Sat. Div. 2004).

[103] *See* 47 U.S.C. § 340(b) and 17 U.S.C. § 119(a)(3)(B).

relevant market or when a local network station waives the subscriber eligibility requirements. But first, we will consider the definition of "subscriber."

1. Definition of "Subscriber"

37. The SHVERA defines the term "subscriber" in new Section 338(k) by reference to the definition in 17 U.S.C. § 122(j)(4), which provides that a subscriber is "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."[104] Notably, the definition used by SHVERA differs slightly from the definition of subscriber currently contained in 17 U.S.C. § 119, which establishes the significantly viewed compulsory copyright license for satellite carriers. The definition in 17 U.S.C. §119 limits "subscribers" to individuals in private homes.[105] We believe use of the broader definition in 17 U.S.C. § 122(j)(4) was intentional because Congress sought to treat satellite subscribers to significantly viewed stations in the same manner as satellite subscribers to local-into-local service. The 17 U.S.C. § 119 definition applies to "distant" signals, to which significantly viewed signals represent an exception. We believe the statute is clear on this point but seek comment on this tentative conclusion. Subscriber in the more general sense, including a cable subscriber, is defined in our rules and amended here to include subscribers to satellite service.[106]

2. Analog Service Limitations; Receipt of Local Analog Service Required

38. The SHVERA requires that a subscriber "receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338" to be eligible to receive an out-of-market network station's significantly viewed analog signal.[107] We believe this means that subscribers receiving "local-into-local" service from their satellite carrier are eligible to also receive significantly viewed signals, and that the fundamental intention is to assure that a subscriber is receiving the local affiliate of the same network as the significantly viewed station.[108] We base this interpretation of Section 340 on the limitation of this eligibility requirement only to significantly viewed "network" stations, as well as language in the House Commerce Committee Report.[109] However, the statutory copyright license in Section 119(a)(3) of title 17 provides that the limitation applies to both

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[104] *See* 47 U.S.C. § 340(i)(1); 47 U.S.C. § 338(k)(3), as amended by the SHVERA, and 17 U.S.C. §119(d)(4).

[105] 17 U.S.C. §119(d)(8) (a subscriber is "an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.").

[106] *See* Appendix A proposed Section 76.5(ee).

[107] New Section 340(b)(1), entitled "Analog Service Limited To Subscribers Taking Local-Into-Local Service," states: "With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338." 47 U.S.C. § 340(b)(1); *see also* 17 U.S.C. § 119(a)(3)(B) (statutory copyright license for significantly viewed stations limited to "subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122"). According to the House Judiciary Committee Report, Section 102 of the SHVERA "permits satellite carriers to retransmit ''significantly viewed'' signals to subscribers who receive retransmissions of their local signals from their satellite carrier under the § 122 license." *House Judiciary Committee Report* at 16.

[108] Notably, Section 340(b)(1) is designated as "Analog Service Limited To Subscribers Taking Local-Into-Local Service." *See Barton Floor Statement* at 2.

[109] *See* 47 U.S.C. § 340(b)(1); *House Judiciary Committee Report* at 12.

superstations and network stations.[110] Thus, it appears that a satellite carrier must be offering local-into-local service and a subscriber must be receiving this service as a pre-condition to offering an out-of-market significantly viewed station's signal to that subscriber (subject to the exception described below). We seek comment on our tentative conclusion.

39. Because the statute specifically applies to the receipt of local service "pursuant to Section 338," we believe that subscribers would not qualify for satellite retransmission of out-of-market significantly viewed signals if they are obtaining local stations via an over-the-air TV antenna, including one that is integrated with a satellite dish.[111] It is not clear what the result would be if a subscriber is receiving local-into-local service but the local affiliate of the network with which the significantly viewed station is affiliated is not carried by the satellite carrier. Such situation could arise if the local station failed to request carriage, refused to grant retransmission consent, or otherwise did not qualify for carriage pursuant to Section 338.[112] We tentatively conclude that a subscriber receiving local-into-local service in a market is eligible for out-of-market significantly viewed stations even if the local stations retransmitted by the satellite carrier exclude an affiliate of the network with which a significantly viewed station is affiliated. We do not think that a subscriber should be deprived of access to a significantly viewed station because the local station refused to grant retransmission consent or is otherwise ineligible for local carriage, but we seek comment on this tentative conclusion.

40. Although Section 340 does not specifically restrict application of this subscriber eligibility requirement to markets in which satellite carriers are offering "local-into-local" service to subscribers, Section 119(a)(3)(B) of title 17 limits application of the statutory copyright license to the retransmission of significantly viewed stations to subscribers who receive local service pursuant to Section 122 of title 17.[113] Therefore, we believe that the SHVERA, as a whole, contemplates that subscribers in a market in which "local-into-local" service is not being offered are not eligible for significantly viewed stations retransmitted by such carriers, except in the situations described in Section III.B.4., *infra*, in which there is no affiliate of a given network in the market.[114] We seek comment on our tentative conclusions.[115]

3. Digital Service Limitations; Receipt of Local Digital Service Required; Definitions of "Equivalent Bandwidth" and "Entire Bandwidth"

41. Similarly, to be eligible to receive an out-of-market network station's significantly viewed digital signal, a satellite subscriber must be receiving a digital signal from a local affiliate of the station's same network via satellite.[116] We note that most of the issues raised in our previous section about analog

[110] *See* 17 U.S.C. § 119(a)(3)(B).

[111] Section 338 applies only to local stations retransmitted by satellite and delivered to the subscriber via the satellite antenna. 47 U.S.C. § 338. Coincidental receipt of local signals over-the-air does not constitute satellite carriage of local signals pursuant to Section 338. *Id*.

[112] *See id*.

[113] *See* 17 U.S.C. § 119(a)(3)(B), which provides: "LIMITATION. Subparagraph (A) shall apply only to secondary transmissions of the primary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122."

[114] *See House Commerce Committee Report* at 10-12.

[115] *See* Appendix A proposed Section 76.54(g).

[116] New Section 340(b)(2), entitled "Digital Service Limitations," states: "With respect to a signal that originates as a digital signal of a network station, this section shall apply only if – (A) the subscriber receives from the (continued….)

subscriber eligibility are also relevant to our discussion here regarding the general digital subscriber eligibility requirement. So as not to duplicate discussion of these issues, we seek comment on these issues as they relate to digital subscriber eligibility. Moreover, we tentatively conclude that these issues should be treated similarly with respect to the digital subscriber eligibility requirement. We seek comment on these issues and tentative conclusions.

42. In addition, the SHVERA specifies certain "bandwidth" requirements for the retransmission of the local network station's digital signal when a satellite carrier opts to retransmit the significantly viewed digital signal of an applicable affiliate station. Specifically, a satellite carrier's retransmission of a local network station's digital signal must either (1) occupy "at least the equivalent bandwidth as the digital signal retransmitted" or (2) comprise "the entire bandwidth of the digital signal broadcast by such local network station."[117]

43. The SHVERA directs the Commission to define the terms "equivalent bandwidth" and "entire bandwidth."[118] In formulating definitions for these terms, the Commission is required to ensure that a satellite carrier is not: (1) prevented from using compression technology; (2) required to use the exact bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting; or (3) required to use the exact bandwidth or bit rate for a local broadcaster as it does for a distant broadcaster.[119]

44. The concepts of "equivalent bandwidth" and "entire bandwidth" were created by Congress to prevent satellite carriage of a local network station's digital signal "in a less robust format" than the significantly viewed digital signal of an out-of-market network affiliate, such as by down-converting the local network station's digital signal from high-definition (HD) digital format to standard definition (SD) digital format while retaining the HD digital format for the affiliate's significantly viewed signal.[120] The SHVERA, however, recognizes that not all local network stations will be broadcasting in HD or multicast format. Therefore, the SHVERA permits satellite carriage of an out-of-market network affiliate's significantly viewed digital signal in HD or multicast format while only carrying the local network station's signal in a single SD format when the local network station is only broadcasting in that single SD format.[121] For example, if the local network station is broadcasting in multicast format, and the

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satellite carrier pursuant to section 338 the retransmission of the digital signal of a network station in the subscriber's local market that is affiliated with the same television network; and (B) either – (i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or (ii) the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station." 47 U.S.C. § 340(b)(2); *see House Commerce Committee Report* at 12.

[117] 47 U.S.C. § 340(b)(2)(B).

[118] *See* 47 U.S.C. § 340(i)(4).

[119] *See* 47 U.S.C. § 340(i)(4)(A), (B) and (C) ("[T]his paragraph shall not be construed – (A) to prevent a satellite carrier from using compression technology; (B) to require a satellite carrier to use the identical bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting; (C) to require a satellite carrier to use the identical bandwidth or bit rate for a local network station as it does for a distant network station."); *see also House Commerce Committee Report* at 12.

[120] *House Commerce Committee Report* at 12.

[121] *See* 47 U.S.C. § 340(b)(2)(B)(ii) (permits satellite carriage where "the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station").

significantly viewed network affiliate is broadcasting in HD format, the satellite carrier may carry the HD signal of the significantly viewed network affiliate under the "equivalent bandwidth" requirement, provided that it carries the local network station's multicast signals.[122] Another example is if the local network station is broadcasting in a single SD format, while the significantly viewed network affiliate is broadcasting in HD or multicast format. The "entire bandwidth" provision[123] does not prevent carriage of the significantly viewed network affiliate in HD format. A satellite carrier may carry the HD or multicast signal of the significantly viewed network affiliate under the "entire bandwidth" requirement, provided that the satellite carrier carries the local network station's original SD format.[124] We seek comment on these tentative conclusions.

45. We seek comment generally on the concepts of "equivalent bandwidth" and "entire bandwidth." While we believe the final order adopted pursuant to this Notice will define these concepts as required by the statute, we do not believe it is necessary at this time to include definitions of these terms in our rules because they will, to some extent, depend upon specific circumstances in each case. The rules we propose provide that satellite carriers must abide by the "equivalent bandwidth" and "entire bandwidth" requirements.[125] We believe that the choice of format by a satellite carrier in delivering the signal of the significantly viewed network affiliate will determine the format required for the signal of the local network station in order to be permitted to retransmit the significantly viewed signal in the relevant local community. We believe this may afford satellite carriers some flexibility with respect to the broadcast of multicast streams. For example, if a satellite carrier chooses to retransmit only a portion of the multicast signal of the significantly viewed network affiliate, it need only retransmit the local network station using the same amount of bandwidth. We seek comment on these issues and tentative conclusions.

46. We also seek comment on whether satellite carriers must use the same compression techniques for both the local network station and the significantly viewed network affiliate. We note that doing so may result in differences in real bandwidth and bit rate, depending on the programming content carried by the signal. For example, a significantly viewed network affiliate broadcasting a sporting event would use more bandwidth than a local network station broadcasting an interview (*i.e.*, talking head). In this example, should we apply the same compression standard to both stations, thereby precluding the significantly viewed sporting event? Instead, should only comparable content that uses a comparable bit rate be afforded equivalent bandwidth? Should we require only that the same amount of bandwidth be

[122] The House Commerce Committee Report states that Section 340(b)(2)(B)(i)'s reference to "equivalent bandwidth" seeks "to ensure that the local affiliate's choice to multicast does not prevent the satellite carrier from retransmitting a significantly viewed signal of a distant affiliate of the network that chooses to broadcast in high-definition." *House Commerce Committee Report* at 12.

[123] 47 U.S.C. § 340 (b)(2)(B)(ii) ("the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station").

[124] According to the House Commerce Committee Report, Section 340(b)(2)(B)(ii)'s reference to "entire bandwidth" was intended "to ensure that a satellite carrier could still retransmit a significantly viewed distant digital signal of a network affiliate in a more robust format than a digital signal of a local broadcaster of the same network so long as the satellite carrier is carrying the digital signal of the local affiliate in its original format." *House Commerce Committee Report* at 12.

[125] *See* Appendix A proposed Section 76.54(h).

made available to the local network station, allowing the local station to choose the amount of bandwidth it needs? We seek comment on these issues.[126]

47. We note that the SHVERA expressly provides that the significantly viewed provisions pertaining to equivalent or entire bandwidth do not mandate carriage in the context of Section 338's "carry-one, carry-all" provisions.[127] To avoid any ambiguity in this regard, the SHVERA requires that the Commission's definitions of equivalent and entire bandwidth do not affect (1) the definitions of "program related" and "primary video,"[128] or (2) a satellite carrier's carry-one, carry-all obligations.[129] As discussed above, there is no requirement for a satellite carrier to carry the signal of a significantly viewed station. Thus, the provisions concerning the carriage of the bandwidth of a local station's signal only come into play if and when a satellite carrier opts to carry a significantly viewed signal. Indeed, Section 340(d)(1) does not require carriage of a local network digital station at all, or in any particular format.[130]

4. Exception to Subscriber Eligibility Limitations; Rule Not Applicable Where No Local Network Affiliates

48. The subscriber eligibility requirements in Section 340(b)(1) and (2) do not apply to the receipt of the signal of a significantly viewed network station for which there is no local network affiliate broadcasting in the relevant local market.[131] This is meant as an exception to the requirement that subscribers must receive local service via satellite to be eligible to obtain significantly viewed stations. This exception permits a satellite carrier to carry a significantly viewed network affiliate where there is no local network station in a market. Should we require that local-into-local service be offered to subscribers in a market as a pre-condition to offering the signal of a significantly viewed station affiliated with a network that has no affiliate in the market in question? We seek comment on this question. We note that the statutory copyright license for significantly viewed carriage does not include language comparable to the exception in Section 340(b)(3).[132] We seek comment on the effect of this difference between the copyright and Communications Act provisions on subscriber eligibility for significantly viewed signals.

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[126] The SHVERA provides that the "equivalent bandwidth" definition developed pursuant to new Section 340(h)(4), 47 U.S.C. § 340(h)(4), will also apply to the provisions concerning "distant digital signals" of network stations in new Section 339(a)(2)(D)(iii)(II); *see* 47 U.S.C. § 339(a)(2)(D)(iii)(II), as amended by Section 204 of the SHVERA.

[127] 47 U.S.C. § 340(d)(1).

[128] *See* 47 U.S.C. § 340(i)(4)(D) and (E) ("[T]his paragraph shall not be construed – (D) to affect a satellite carrier's obligations under subsection (a)(1); or (E) to affect the definitions of 'program related' and 'primary video'").

[129] 47 U.S.C. § 340(i)(4)(D) provides that the terms "equivalent bandwidth" and "entire bandwidth" "shall not be construed" "to affect a satellite carrier's obligations under subsection (a)(1)." We believe the reference to subsection (a)(1) refers to the satellite mandatory carriage provision in 47 U.S.C. § 338(a)(1). We note the House Commerce Committee Report: "Nor does the Committee intend section 340(b)(2)(B) to affect a satellite carrier's carry-one, carry-all obligations…." *House Commerce Committee Report* at 13.

[130] *See* 47 U.S.C. § 340(d)(1); *see also House Commerce Committee Report* at 12.

[131] New Section 340(b)(3), entitled "Limitation Not Applicable Where No Network Affiliates," states: "The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section." 47 U.S.C. § 340(b)(3).

[132] 17 U.S.C. § 119(a)(3)(C).

49. We also consider the situation where a local network station is present in the market but is not broadcasting in digital format. In this case, subscribers would not have the opportunity to receive local digital service from the local network station. The station, however, may have a legitimate reason for not broadcasting in digital format. Because the station is present in the market, we believe the statute would prohibit subscribers from receiving significantly viewed stations in this situation. The legislative history suggests an intention to treat differently stations whose reason for failing to broadcast in digital is not excused by the Commission.[133] We seek comment on these issues.

5. Privately Negotiated Waivers

50. Section 340(b)(4) permits a satellite carrier to privately negotiate with the local network station to obtain a waiver of the subscriber eligibility restrictions in Section 340(b).[134] If such negotiations are successful, a satellite subscriber who is not receiving the local network affiliate via satellite may nevertheless receive the signal of a significantly viewed station affiliated with that network. It would seem from the statute that such a waiver could be as broad or as narrow as desired by the local network affiliate. According to the House Commerce Committee Report, pursuant to Section 340(b)(4), a local network affiliate would be able to waive the application of Sections 340(b)(1) or 340(b)(2) to one or more consumers in the local market, and with respect to one or more specific distant affiliates of the same network. It may do so as part of a negotiated agreement and for any reason, including common ownership among the stations.[135]

51. In addition, the statutory copyright provisions, as amended by the SHVERA, describe the waiver process in greater detail.[136] Subscribers may seek a waiver from the relevant local station through

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[133] Notably, the House Commerce Committee Report: states: "Section 340(b)(3) does not allow provision of an out-of-market significantly viewed digital signal of a network broadcast station if a local affiliate from the same network is present in the market but not yet broadcasting a digital signal. Section 340(b)(3) operates in this fashion to ensure that a satellite carrier may not retransmit the out-of-market significantly viewed digital signal of a network broadcast station if an affiliate of that network is present in the local market but has never begun to offer a digital signal for a reason excused by the FCC." *House Commerce Committee Report* at 12.

[134] New Section 340(b)(4), entitled "Authority To Grant Station-Specific Waivers," states: "Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber." 47 U.S.C. § 340(b)(4); *see also* 17 U.S.C. § 119(a)(3)(C), as amended by Section 102 of the SHVERA.

[135] *House Commerce Committee Report* at 13.

[136] Section 102 of the SHVERA provides: "(C) WAIVER.

> (i) IN GENERAL. A subscriber who is denied the secondary transmission of the primary transmission of a network station under subparagraph (B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

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their satellite carrier. The statutory copyright license waiver is considered granted unless the local broadcaster acts within 30 days of receipt to reject the request. The statutory copyright license waiver provision sunsets on December 31, 2008, on which date no further waivers will be granted and those then in effect will terminate.[137] We seek comment on the effect, if any, of this statutory copyright license waiver provision, in particular the sunset provision, on waivers granted pursuant to Section 340(b)(4).

52. We do not believe that Congress intended for the Commission to grant these waivers or preside over the waiver process of either provision.[138] According to the House Commerce Committee Report, whether to grant a waiver is a decision to be made solely based on the broadcaster's own business judgment, and there is no requirement for stations to execute any particular document as part of the waiver process.[139] Because such waivers are voluntary and expressly outside the Commission's purview,[140] we tentatively conclude that there is no need for rules or procedures concerning waiver arrangements between stations and satellite carriers. We note, however, that the presence or absence of waivers could be relevant in an enforcement proceeding concerning significantly viewed carriage. In addition, based on the House Commerce Committee Report, we tentatively conclude that such waivers or agreements are not subject to the Section 325 good-faith negotiation requirement.[141]

C. Certain Stations Deemed Significantly Viewed in an Eligible County

53. New Section 341(a), as established by Section 211 of the SHVERA, authorizes the retransmission of certain stations deemed to be significantly viewed, in accordance with Section 76.54 of our rules, "to subscribers in an eligible county."[142] This provision limits an "eligible county" to very

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> (ii) SUNSET. The authority under clause (i) to grant waivers shall terminate on December 31, 2008, and any such waiver in effect shall terminate on that date." 17 U.S.C. § 119(a)(3)(C).

See House Judiciary Committee Report at 17.

[137] 17 U.S.C. § 119(a)(3)(C)(ii).

[138] *House Commerce Committee Report* at 13.

[139] *Id*.

[140] *Id*.

[141] *Id*. at 13-14.

[142] 47 U.S.C. § 341(a) ("Carriage of television signals to certain subscribers") provides:

> (1) In General- A cable operator or satellite carrier may elect to retransmit, to subscribers in an eligible county –
>
> > (A) any television broadcast stations that are located in the State in which the county is located and that any cable operator or satellite carrier was retransmitting to subscribers in the county on January 1, 2004; or
> >
> > (B) up to 2 television broadcast stations located in the State in which the county is located, if the number of television broadcast stations that the cable operator or satellite carrier is authorized to carry under paragraph (1) is less than 3.
>
> (2) Deemed Significantly Viewed. Any station described in subsection (a) is deemed to be significantly viewed in the eligible county within the meaning of section 76.54 of the Commission's regulations (47 C.F.R. 76.54).

(continued….)

narrow circumstances, which we believe to be limited to the State of Oregon, based upon the specific reference to "41,340 television households according to the U.S. Television Household Estimates by Nielsen Media Research for 2003-2004."[143] This provision specifies that these stations be "deemed significantly viewed" and thereby requires us to add stations in these eligible counties to the SV list. Because we do not know at this time which stations and counties might qualify, we are not including them now in the SV List in Appendix B, but we seek comment to identify and confirm the stations and counties that would meet this definition.

54. New Section 341(b) prevents a satellite carrier from carrying "the signal of a television station into an adjacent local market that is comprised of only a portion of a county, other than to unserved households located in that county."[144] We believe this provision precludes the retransmission of a significantly viewed signal to a subscriber in an adjacent market if the adjacent market consists of only a part of one county. We believe that this provision applies only to the DMAs of Palm Springs and Bakersfield, because they are the only DMAs that appear to satisfy the definition. We seek comment on this interpretation of the scope and meaning of this provision.

D. Enforcement and Notice Provisions

1. Enforcement of Section 340

55. Section 340(f) creates an enforcement mechanism for the new provisions regarding satellite delivery of significantly viewed signals.[145] Section 340(f)(1) contemplates that the Commission will respond to a complaint by issuing a "cease and desist order" and may provide for damages if requested and proven by the station filing the complaint.[146] The SHVERA provides for monetary penalties up to

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> (3) Definition of Eligible County. For purposes of this section, the term `eligible county' means any 1 of 4 counties that –
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> (A) are in a single State;
>
> (B) on January 1, 2004, were each in designated market areas in which the majority of counties were located in another State or States; and
>
> (C) as a group had a combined total of 41,340 television households according to the U.S. Television Household Estimates by Nielsen Media Research for 2003-2004.
>
> (4) Limitation. Carriage of a station under this section shall be at the option of the cable operator or satellite carrier.'.

[143] *See id.* § 341(a)(3); *see also* 17 USC 119(a)(1)(C)(iii).

[144] 47 U.S.C. § 341(b) ("Certain Markets") provides: "Notwithstanding any other provision of law, a satellite carrier may not carry the signal of a television station into an adjacent local market that is comprised of only a portion of a county, other than to unserved households located in that county."

[145] 47 U.S.C. § 340(f), as added by Section 202 of the SHVERA; *see* 47 U.S.C. § 339(a)(3), as amended by Section 204 of the SHVERA (requires Commission enforcement of the new provisions concerning distant digital signal carriage pursuant to the provisions of Section 340(f)).

[146] 47 U.S.C. § 340(f)(1) provides:

> "(1) ORDERS AND DAMAGES. Upon complaint, the Commission shall issue a cease and desist order to any satellite carrier found to have violated this section in carrying any television broadcast station. Such order may, if a complaining station requests damages –

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$50 per subscriber, per station, per day if the station establishes that the satellite carrier committed the violation in bad faith, and provides that the Commission may impose similar damages on the complaining station if the Commission determines that the complaint was frivolous.[147] The statute does not define "bad faith" or "frivolous," but there is some guidance in a floor statement by Subcommittee Chairman Upton. He explains that a satellite carrier that lacks a good faith belief that the carriage of the challenged signal was lawful or a broadcaster who seeks damages in bad faith would warrant a Commission finding of damages.[148] He further notes that if the broadcaster filing the complaint does not seek damages, then a finding of damages against either party by the Commission would not be appropriate.[149]

56. We are inclined to address allegations of bad faith or frivolousness on a case-by-case basis, but we seek comment on identifying particular circumstances that would generally warrant such a finding. For example, if the only violation of Section 340 were the failure to notify all broadcast stations in a market 60 days prior to commencing carriage of the significantly viewed stations, would such conduct constitute bad faith by the satellite carrier? Would seeking damages for failure to notify one station constitute a frivolous complaint by a broadcaster? In addition, as noted above with respect to the SV List appended to this Notice, we do not believe it would constitute bad faith for a satellite carrier to carry a station listed as significantly viewed in a community on the SV List while this proceeding is pending, even if the listing is later shown to be incorrect, provided the carrier follows the other statutory and regulatory requirements.

57. Section 340(f)(2) requires the Commission to issue final determinations within 180 days of the filing of a complaint concerning Section 340.[150] The statute permits but does not require the Commission to hold hearings to resolve genuine disputes over material facts.[151] In light of the short time frame for resolving these complaints, the statutory specification of a "cease and desist" order as a remedy, and the express grant of discretion to the Commission to issue a final ruling based on written pleadings, we tentatively conclude that we will use our existing procedures for Petitions for Special Relief as the procedural framework for complaints concerning significantly viewed status.[152] Because Section 340(f)

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> (A) provide for the award of damages to a complaining station that establishes that the violation was committed in bad faith, in an amount up to $50 per subscriber, per station, per day of the violation; and
>
> (B) provide for the award of damages to a prevailing satellite carrier if the Commission determines that the complaint was frivolous, in an amount up to $50 per subscriber alleged to be in violation, per station alleged, per day of the alleged violation.

[147] *Id.*

[148] *See Upton Floor Statement* at 1.

[149] *Id.*

[150] 47 U.S.C. 340(f)(2) provides:

> (2) COMMISSION DECISION. The Commission shall issue a final determination resolving a complaint brought under this subsection not later than 180 days after the submission of a complaint under this subsection. The Commission may hear witnesses if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

[151] *Id.*

[152] *See* 47 C.F.R. § 76.7.

expressly provides for issuance of a cease and desist order to remedy violations of the significantly viewed provisions but does not require a hearing, we conclude that we are not required to follow the provisions in Section 312(c) of the Communications Act.[153] The procedures for Petitions for Special Relief, which the Commission uses to process cable and satellite carriage complaints, as well as complaints concerning the exclusivity rules and other cable and satellite regulations, will afford the parties ample opportunity to raise and respond to allegations while ensuring that the Commission can complete action within the 180 day statutory deadline. We propose to require that parties follow the pleading requirements in Section 76.7(a)(1) and (b)(1) for petitions, which will permit us to issue a ruling on complaints.[154] We seek comment on this tentative conclusion.

58. Section 340(f)(3) and (4) provide that remedial action at the Commission pursuant to Section 340 are in addition to and have no effect upon actions taken pursuant to title 17, the copyright provisions.[155] The meaning of these provisions is clear that neither action nor inaction by the Commission will have any effect on the filing of a copyright infringement or other action under title 17, nor on the remedies ordered by the appropriate forum thereunder.

2. Notice Concerning Retransmission of Significantly Viewed Stations

59. Section 340(g) of the Act requires satellite carriers to provide written notice to any television broadcast station in the relevant local market at least 60 days before retransmitting a significantly viewed signal into that local market pursuant to Section 340.[156] The provision also requires satellite carriers to list on their websites all significantly viewed signals carried pursuant to Section 340.[157]

60. Although the statute does not specify the manner of notice required in these circumstances, we tentatively conclude that these written notices must be sent to the station's principal place of business, as listed in the Commission's database, by certified mail, return receipt requested. We believe reliance on

[153] 47 U.S.C. § 312(c) (requires service of an order to show cause and a hearing before revoking a license or issuing a cease and desist order pursuant to 47 U.S.C. § 312(b)).

[154] 47 C.F.R. § 76.7(a)(1), (b)(1).

[155] 47 U.S.C. § 340(f)(3) and (4) provide:

> (3) REMEDIES IN ADDITION. The remedies under this subsection are in addition to any remedies available under title 17, United States Code.
>
> (4) NO EFFECT ON COPYRIGHT PROCEEDINGS. Any determination, action, or failure to act of the Commission under this subsection shall have no effect on any proceeding under title 17, United States Code, and shall not be introduced in evidence in any proceeding under that title. In no instance shall a Commission enforcement proceeding under this subsection be required as a predicate to the pursuit of a remedy available under title 17.

[156] New Section 340(g), entitled "Notices Concerning Significantly Viewed Stations" states that "[e]ach satellite carrier that proposes to commence the retransmission of a station pursuant to this section in any local market shall – (1) not less than 60 days before commencing such retransmission, provide a written notice to any television broadcast station in such local market of such proposal; and (2) designate on such carrier's website all significantly viewed signals carried pursuant to section 340 and the communities in which the signals are carried." 47 U.S.C. § 340(g).

[157] 47 U.S.C. § 340(g)(2).

the information in the Commission's database is consistent with other provisions of the SHVERA.[158] We believe that requiring that the notices be sent via certified mail, return receipt requested is consistent with our rules.[159] We also propose to require satellite carriers to publish a list on their websites that will identify all of the significantly viewed signals they are carrying, by market and community. We seek comment on our proposed rules.[160]

61. The SHVERA states that notice must be afforded to "any television broadcast station in such local market of such proposal."[161] Given the breadth of this language, we tentatively conclude that this provision requires notice to stations in the relevant local market even if they are not affiliated with the same network of the significantly viewed station whose signal is being carried, regardless of whether they are carried by the satellite carrier as local stations pursuant to Section 338. We recognize that stations seemingly unaffected by the significantly viewed status of unaffiliated stations would nonetheless be entitled to receive such notice under our rules. We seek comment on our tentative conclusion.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

62. The Initial Regulatory Flexibility Analysis is attached to this Notice as Appendix C.

B. Initial Paperwork Reduction Act of 1995 Analysis

63. This Notice has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA"),[162] and contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in this Notice, as required by the PRA.

64. Written comments on the PRA proposed information collection requirements must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business

[158] *See*, *e.g.*, 47 U.S.C. § 338(h)(2)(c), as amended by SHVERA (requires the Commission to amend its rules to specifically require use of the Commission's consolidated database system for a television station licensee's address) .

[159] *See*, *e.g.*, 47 C.F.R. § 76.66(d) (Commission rule with respect to notices for mandatory carriage requests.).

[160] *See* Appendix A proposed Section 76.54(e), (f).

[161] 47 U.S.C. § 340(g)(1).

[162] The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

Paperwork Relief Act of 2002,[163] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

65. In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, S.W., Room 1-C823, Washington, D.C., 20554, or via the Internet to Cathy.Williams@fcc.gov; and also to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via Internet to Kristy_L._LaLonde@omb.eop.gov, or via fax at 202-395-5167.

66. *Further Information.* For additional information concerning the PRA proposed information collection requirements contained in this Notice, contact Cathy Williams at 202-418-2918, or via the Internet to Cathy.Williams@fcc.gov.

C. Ex Parte Rules

67. *Permit-But-Disclose.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules.[164] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[165] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

D. Filing Requirements

68. *Comments and Replies*. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,[166] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.[167]

69. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the

[163] The Small Business Paperwork Relief Act of 2002 ("SBPRA"), Pub. L. No. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

[164] *See* 47 C.F.R. § 1.1206(b); *see also* 47 C.F.R. §§ 1.1202, 1.1203.

[165] *See id.* § 1.1206(b)(2).

[166] *See id*. §§ 1.415, 1419.

[167] *See Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

following words in the body of the message, "get form." A sample form and directions will be sent in response.

70. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

71. *Availability of Documents*. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

72. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: http://www.fcc.gov.

73. *Additional Information*. For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov, or Eloise Gore, Eloise.Gore@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

V. ORDERING CLAUSES

74. Accordingly, IT IS ORDERED that pursuant to Sections 202 and 204 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, and Sections 1, 4(i) and (j), and 340 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), and 340, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

75. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary