



PUBLIC NOTICE

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DA 10-2227
Released: November 23, 2010

MEDIA BUREAU SEEKS COMMENT FOR REPORT REQUIRED BY THE SATELLITE TELEVISION EXTENSION AND LOCALISM ACT ON IN-STATE BROADCAST PROGRAMMING

MB Docket No. 10-238

Comment Date: [45 days after Federal Register publication]
Reply Comment Date: [75 days after Federal Register publication]

By this Public Notice, the Media Bureau seeks comment and data for use in preparation of a report required by the Satellite Television Extension and Localism Act of 2010 (STELA).¹ Section 304 of STELA requires the Commission to submit a report on in-state broadcast programming to the appropriate Congressional committees no later than 18 months after its enactment (*i.e.*, August 27, 2011).² Specifically, Section 304 states:

SEC. 304. REPORT ON IN-STATE BROADCAST PROGRAMMING.

Not later than 18 months after the date of the enactment of this Act, the Federal Communications Commission shall submit to the appropriate Congressional committees a report containing an analysis of--

- (1) the number of households in a State that receive the signals of local broadcast stations assigned to a community of license that is located in a different State;
- (2) the extent to which consumers in each local market have access to in-state broadcast programming over the air or from a multichannel video programming distributor; and
- (3) whether there are alternatives to the use of designated market areas, as defined in section 122 of title 17, United States Code, to define local markets that would provide more consumers with in-state broadcast programming.

To analyze the issues relating to the availability of in-state broadcast stations for consumers, we seek comment generally regarding the appropriate methodologies, metrics, data sources, and level of granularity we should use for our report to Congress required under Section 304. We also seek comment regarding our interpretation of and metrics appropriate for each of the specific subsections of Section 304. In addition, we request data for use in preparation of the report.

¹ See Satellite Television Extension and Localism Act of 2010, Title V of the “American Workers, State, and Business Relief Act of 2010,” Pub. L. 111-175, 124 Stat. 1218 (2010).

² Section 307 of STELA specifies that the “date of enactment” is February 27, 2010. Thus, the deadline under STELA for submitting this report is August 27, 2011.

We believe the intent of Section 304 of STELA is to identify counties and associated populations within specific states that have limited access to in-state broadcast programming.³ These counties typically are referred to as “underserved” or “orphaned” counties.⁴ Specifically, Section 304 directs the Commission to submit this report to analyze the extent to which consumers have access to in-state programming.⁵

Section 304(1)

Section 304(1) requires the Commission to estimate the number of households in a state that receive the signals of local broadcast stations assigned to a community of license that is located in a different state. To measure whether a broadcast station is “received” within the meaning of this subsection, we believe our analysis should focus on households in a state that fall within the predicted service areas of out-of-state television stations. We recognize that not all households within a station’s predicted service area may be able to receive the station’s signal and, conversely, some households outside a station’s predicted service area may be able to receive the station’s signal. At the same time, however, it is not feasible to determine on a household-by-household basis which stations are being received and under what circumstances. Therefore, for purposes of this report, we will assume that all households within a broadcast station’s predicted service area receive the station’s signal and all households outside the predicted service area do not receive the station’s signal. We seek comment on our proposed approach for implementing Section 304(1) for purposes of this report.

In order to determine the predicted service area for purposes of our analysis, one approach would be to use OET Bulletin No. 69 (OET 69) methodology to estimate the number of households in each broadcast television station’s service area.⁶ We seek comment on the use of OET 69. Does OET 69 present a reasonable approach for purposes of implementing Section 304(1)? Are there other

³ See Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Hearing before the Subcommittee on Communications, Technology, and the Internet of the Committee on Commerce, Science, and Transportation, United States Senate, 111th Congress, Senate Hearing 111-506, October 7, 2009; Ensuring Television Carriage in the Digital Age, Hearing before the Committee on the Judiciary, United States Senate, 111th Congress, Senate Hearing 111-193, February 25, 2009; The Satellite Television Modernization Act of 2009, Report to accompany S.1670, 111th Congress, Senate Report 111-98, November 10, 2009; Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act, Hearing before the Subcommittee on Communications, Technology, and the Internet, Committee on Energy and Commerce, House of Representatives, February 24, 2009; Report to Accompany H.R. 4501, 108th Congress, H.R. Report 108-634, July 22, 2004 (expressions of concern from various members of Congress regarding constituents’ lack of access to stations licensed in their states).

⁴ See Congressman Ross, *Ross TV Freedom Provision Passes Senate, House: Study will be ‘Critical First Step’ to Local Channel Access* (Press Release), May 13, 2010, available at <http://ross.house.gov/News/DocumentSingle.aspx?DocumentID=185448> (visited Sept. 22, 2010). Congressman Ross had previously introduced H.R. 3216 on July 14, 2009, “to amend the Communications Act of 1934 to permit the retransmission of signals of local television broadcast stations in an adjacent underserved county.”

⁵ Statements by Congressman Mike Ross and Senator Russell Feingold suggest that the purpose of Section 304(2) is to help identify counties that receive little or no in-state broadcast programming. See U.S. Representative Mike Ross, *Ross TV Freedom Provision Passes Senate, House: Study will be ‘Critical First Step’ to Local Channel Access* (press release), May 13, 2010, available at <http://ross.house.gov/News/DocumentSingle.aspx?DocumentID=185448> (visited Sept. 22, 2010). See also U.S. Senator Russell Feingold, *Feingold Continues Work to Help Wisconsinites Receive Wisconsin-Related TV* (press release), July 28, 2010, available at <http://feingold.senate.gov/record.cfm?id=326769&> (visited Oct. 20, 2010).

⁶ OET Bulletin No. 69 (Feb. 6, 2004) provides guidance on the use of the Longley-Rice propagation model and US census blocks to evaluate TV service coverage and interference. The bulletin is available at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

methodologies and sources of data that would provide more reliable estimates of a television station's predicted service area and the number of households within the predicted service area? We request that commenters inform us of other data or methodologies that might be used, and to the extent data are available, submit such information into the record of this proceeding. We also seek comment on which stations to include in our analysis (*i.e.*, commercial, noncommercial educational, Class A, translators, satellite, and/or low-power).

Section 304(2)

Section 304(2) requires the Commission to estimate the extent to which consumers in each local market have access to in-state broadcast programming over-the-air or from a multichannel video programming distributor (MVPD).⁷ We believe the term "consumers" is synonymous with households and propose to estimate households for purposes of this subsection. In addition, we believe the term "local market" should be interpreted as the designated market area (DMA)⁸ and the term "access" should refer to the ability to obtain a television station's broadcast programming. Under our proposed interpretation of the term "access," a household that relies on over-the-air service and is outside a television station's predicted service area would nonetheless be counted as having "access" to the station if an MVPD carrying the station offers service to the household. When making determinations regarding the ability to obtain broadcast programming, we recognize that it is not feasible to determine on a household-by-household basis which stations or MVPD services are available. We seek comment on the interpretation of the terms "consumers," "local market," and "access" in Section 304(2) and the reasonableness of our proposed interpretation.

We seek comment on whether the intent of the Section 304(2) analysis is to identify geographic areas (*e.g.*, counties) and associated populations within specific states that have limited access to in-state broadcast programming and whether analysis based on DMAs will identify these geographic areas and populations.⁹ Should we report the data on a county basis instead? We also seek comment on whether we should consider other criteria, such as network affiliation or whether the stations offer local news, for purposes of this section of the report.

To measure the "extent" to which consumers in each local market have access to in-state broadcast programming, we intend to collect, aggregate, and compare data based on geographic areas. Because local television markets and DMAs typically are regarded as synonymous for regulatory and commercial purposes, we will collect, aggregate, and compare data based on DMAs. As such, we request data on a DMA basis. We recognize, however, that although DMAs are defined by television viewing in individual counties, an analysis based on DMAs may fail in some cases to adequately identify counties and associated populations within specific states that have limited access to in-state broadcast

⁷ Section 602 (13) of the Communications Act of 1934, as amended, defines a multichannel video programming distributor as a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming. *See also* 47 C.F.R. § 76.64(d).

⁸ A DMA is a geographic area defined by The Nielsen Company as a group of counties that make up a particular television market. These counties comprise the major viewing audience for the television stations located in their particular metropolitan area. For the most part, the metropolitan areas correspond to the standard metropolitan statistical areas defined by the Federal Government Office of Management and Budget. The geographic areas do not overlap, and most counties in the United States belong to only one DMA (some counties are divided by Nielsen and assigned to different DMAs). DMAs are used in the evaluation of audience data as well as in the planning and buying of television advertising. In addition, the DMA also is used to define local markets for broadcast station carriage rights under must carry and retransmission consent. In the satellite context, the statute requires that DMAs be used to define local markets. *See* 47 U.S.C § 338 (signal carriage rights) and 17 U.S.C. § 122 (copyright).

⁹ *See supra* n.5.

programming.¹⁰ To identify these counties and associated populations, and thereby be more responsive to the intent of Section 304, we intend to collect, aggregate, and compare data based on counties. Therefore, we ask commenters to provide data on a county basis. Commenters also are invited to suggest and provide data for other geographic areas that would be responsive to the directive of Section 304(2). Commenters are asked to submit any other data that they believe will assist the Commission in preparing the report.

To measure the “extent” of access to in-state broadcast programming, one approach would be to estimate how many households in a local market have access to a specific number of in-state broadcast stations (*e.g.*, 0, 1, 2, 3). Another approach would be to establish intervals and estimate how many households in a local market have access to a specific range of in-state broadcast stations (*e.g.*, fewer than 3, between 4 and 6, between 7 and 10). Because many households have access to both in-state and out-of-state stations, another approach would be to estimate the number of households that get some percentage (*e.g.*, at least 50 percent) of their broadcast programming from in-state broadcast stations. Because there are some broadcast stations operating in every state, an alternative approach would be to estimate the number of households in a local market that have access to some percentage (*e.g.*, 25 percent) of the broadcast stations licensed to communities in their state. We are aware that this approach may need to be adapted to take into consideration the difference in geographic size among the states. We also recognize that each of the approaches listed above may provide a wide range of estimates. We seek comment on the appropriate approach for measuring the extent of access to in-state broadcast programming and ask commenting parties to provide data associated with the approach recommended, or to direct the Commission to any outside data sources where such specific data may be available.

For the Section 304(2) analysis, we propose to use the Longley-Rice methodology to estimate access to broadcast programming over the air.¹¹ We propose using our Annual Report of Cable Television Systems, FCC Form 325, to estimate access to broadcast programming carried by some, but not all, cable systems. As such, we request that cable operators tell us the broadcast stations they carry on their systems and whether they carry the same broadcast stations throughout the DMA, county or other geographic area. We do not collect data on broadcast programming for DBS and, therefore, also request that DBS operators tell us the broadcast stations they carry in each market, including significantly viewed stations, and whether they carry the same broadcast stations throughout the market area. For all other MVPDs, we similarly request information regarding the broadcast stations they carry and whether they carry the same broadcast stations throughout the DMA, county or other geographic area. We seek comment on our proposed sources of data for estimating over-the-air and MVPD access to broadcast programming.¹² Are there other sources of data that would provide more reliable estimates? We also seek comment on the appropriate methodology for combining broadcast and MVPD data that may be collected from different sources using different geographic bases.¹³ What common geographic area (*e.g.*,

¹⁰ The following example suggests that an analysis based on DMAs may not illuminate the lack of in-state programming facing some counties within the DMA: Assume that a DMA includes households from two states A and B, 90 percent of households are in state A and 10 percent of households are in state B, and all the households have access to the programming of 10 broadcast stations in state A and no programming from broadcast stations in state B. An analysis based on DMAs would conclude that 90 percent of households in the DMA have access to programming from 10 in-state broadcast stations. This approach, however, fails to illuminate the fact that 10 percent of the households in the DMA (all from state B) have access to no in-state broadcast programming.

¹¹ The Longley-Rice methodology allows us to measure access to over-the-air broadcast programming on a census block basis, which can then be aggregated to determine access to over-the-air programming for each county and each DMA.

¹² Because Section 304 is focused on access to broadcast programming over the air or from an MVPD, we do not plan to include access to broadcast programming over the Internet in this report.

¹³ To be aggregated and to determine areas of overlap, data from broadcasters and MVPDs need to be estimated based on a common geographic area.

census block, zip code, county) is most appropriate for aggregating data from broadcast, cable, DBS, and other MVPDs? Commenters are requested to provide relevant data or data sources associated with the methodology they recommend.

We seek comment on whether and how to include information for the United States Virgin Islands, Puerto Rico, and Guam in this report. These three geographic areas are not assigned to DMAs by Nielsen. Therefore, they do not appear to be covered by the satellite carriage statute or copyright license,¹⁴ unlike cable where the statute provides for the FCC creation of local markets (*i.e.*, specific geographic areas) for cable carriage of broadcast stations.¹⁵ We seek comment on the appropriate methodology for estimating the extent of access to broadcast programming provided by stations assigned to a community of license on the United States Virgin Islands, Puerto Rico, and Guam. We request that MVPDs provide us data to measure the extent of access to in-state broadcast programming in these three geographic areas.

Section 304(3)

Section 304(3) requires the Commission to consider alternatives to the use of DMAs to define local markets that would provide more consumers with in-state broadcast programming. DMAs are defined by The Nielsen Company to identify an exclusive geographic area of counties in which the home market television stations hold a dominance of total hours viewed. There are currently 210 DMAs in the United States. DMAs are used in the planning and purchase of television advertising. In addition, DMAs are referenced in FCC regulations regarding the carriage of broadcast television stations on cable and DBS systems and in our media ownership rules.¹⁶ As such, we recognize that redefining the local market to replace DMAs with alternative geographic areas would likely affect viewers, the advertising market, the number of stations carried by MVPDs in the redefined local markets, and ownership of broadcast television stations.

One possible alternative to the use of DMAs might be to define geographic markets in terms of the 50 states plus the District of Columbia. Carriage of broadcast programming by MVPDs could then apply to all in-state broadcast television stations. This approach has the potential of significantly expanding access of households to in-state broadcast programming. Another possible approach is to divide states into multiple markets based on the stations covering different portions of a particular state. Another possible alternative which could retain 210 DMAs might be to modify DMAs so that they do not cross state lines by reassigning counties from one state currently included in the DMA of another state to a neighboring DMA in their home state.

We seek comment on other alternatives to the use of DMAs. What are the effects of alternatives to the use of DMAs on viewers, the advertising market, the number of stations carried by MVPDs, and ownership of broadcast television stations? We also seek comment on the effects of alternatives to the use of DMAs on broadcast network affiliation agreements and areas of exclusivity. What would be the benefits and costs of employing alternative geographic market areas? Are there alternatives that would provide more households with in-state broadcast programming without curtailing the out-of-state broadcast programming households currently view? If we consider reassigning certain counties to other DMAs, what criteria should be used to determine reassignments? For purposes of cable carriage, we note that the Commission has authority to include additional communities within a broadcast television station's local market or exclude communities from a station's local market.¹⁷ We seek comment on

¹⁴ See 47 U.S.C. § 338 (k) (signal carriage rights) and 17 U.S.C. § 122 (j) (copyright).

¹⁵ See 47 U.S.C. § 534 (a broadcast station's local market shall be determined by the Commission by regulation or order). See also 47 C.F.R. § 76.55 (e).

¹⁶ See, e.g., 47 C.F.R. §§ 76.56 & 76.64 (signal carriage obligations), 47 C.F.R. § 73.3555 (multiple ownership).

¹⁷ Section 614(h)(1)(C)(i) of the Communications Act of 1934, as amended, provides in relevant part: "Following a written request, the Commission may, with respect to a particular television broadcast station, include additional

whether and how our market modification rules could be used to provide more households with in-state broadcast programming.

General Information

Ex Parte Information. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

Comment Information. 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. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 10-XX.

1. **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>.
2. **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours 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 must be addressed to 445 12th Street, SW, Washington DC 20554.
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communities within its television market or exclude communities from such station's television market..." See 47 U.S.C. § 534(h)(1)(C)(i). The authority to modify markets for broadcast television stations applies to cable carriage, not to satellite carriage.