

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

In the Matter of
In-State Broadcast Programming:
Report to Congress
Pursuant To Section 304 of the
Satellite Television Extension and
Localism Act of 2010
MB Docket No. 10-238

REPORT

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By the Chief, Media Bureau:

TABLE OF CONTENTS

Table with 2 columns: Heading and Paragraph #. Includes sections like I. INTRODUCTION, II. BACKGROUND REGARDING CONSUMER ACCESS TO IN-STATE BROADCAST TELEVISION SIGNALS, III. STELA SECTION 304 FINDINGS, and IV. CONCLUSION.

## I. INTRODUCTION

1. The Satellite Television Extension and Localism Act (STELA)<sup>1</sup> amends the 1988 copyright laws and the Communications Act of 1934, as amended (Communications Act) to “modernize, improve and simplify the compulsory copyright licenses governing the retransmission of distant and local television signals by cable and satellite television operators.”<sup>2</sup> STELA is intended to, among other things, increase competition for and service to satellite and cable consumers and update the law to reflect the completion of the digital television (DTV) transition.<sup>3</sup>

2. Section 304 of STELA requires the Federal Communications Commission (Commission) to submit a report to the appropriate Congressional committees containing an analysis of the following:

- (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.<sup>4</sup>

3. Pursuant to this Congressional mandate, the Commission’s Media Bureau (Bureau) issued a public notice (Public Notice) soliciting comment on a range of issues, including the appropriate methodologies, metrics, and data sources for the required report.<sup>5</sup> In response to the Public Notice, the Bureau received hundreds of comments from consumers who reside in areas where they do not receive in-state broadcast television stations, either via over-the-air transmission or via a multichannel video programming distributor (MVPD) (e.g., a cable system or direct broadcast satellite (DBS) service, such as

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<sup>1</sup> The Satellite Television Extension and Localism Act of 2010 (STELA), Pub. L. No. 111-175, 124 Stat. 1218 (2010). STELA was signed by President Barack Obama on May 27, 2010 (S. 3333, 111<sup>th</sup> Cong.). However, pursuant to Section 307 of STELA, unless specifically provided otherwise, all amendments took effect on February 27, 2010, and the date of enactment of STELA is considered to be February 27, 2010.

<sup>2</sup> House Judiciary Committee Report dated Oct. 28, 2009, H.R. Rep. No. 111-319, at 4, accompanying House Bill, H.R. 3570, 111<sup>th</sup> Cong. (2009); *see also* House Energy and Commerce Committee Report dated Dec. 2, 2009, H.R. Rep. No. 111-349, at 16, accompanying House Bill, H.R. 2994, 111<sup>th</sup> Cong. (2009); and Senate Judiciary Committee Report dated Nov. 10, 2009, H.R. Rep. No. 111-98, at 5, accompanying Senate Bill, S. 1670, 111<sup>th</sup> Cong. (2009).

<sup>3</sup> As of the June 12, 2009, statutory DTV transition deadline, all full-power television stations stopped broadcasting in analog and are broadcasting only digital signals. 47 U.S.C. § 309(j)(14)(A). STELA is the fourth in a series of statutes that addresses satellite carriage of television broadcast stations. The previous statutes include the Satellite Home Viewer Act of 1988 (SHVA), Pub. L. No. 100-667, 102 Stat. 3935, Title II (1988); 17 U.S.C. §§ 111, 119, 122; Satellite Home Viewer Improvement Act of 1999 (“SHVIA”), Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (1999); 47 U.S.C. § 338; Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Pub. L. No. 108-477, §202, 118 Stat. 2809 (2004); 47 U.S.C. § 340.

<sup>4</sup> Section 307 of STELA specifies that the date of enactment is February 27, 2010. *See* n.1, *supra*. This Report is due no later than 18 months after the date of enactment of STELA; thus, our Report is due no later than August 27, 2011. This report is authored and submitted by the Media Bureau.

<sup>5</sup> *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, Public Notice, 25 FCC Rcd 16220 (2010) (Public Notice). Comments and reply comments were filed on January 24, 2011, and February 22, 2011, respectively. *See Media Bureau Announces Comment Deadlines for Report on In-State Broadcast Programming*, MB Docket No. 10-238, Public Notice (DA 10-2340), 25 FCC Rcd 17151 (2010).

DISH Network (DISH) or DIRECTV).<sup>6</sup> Additionally, federal and state legislators representing these geographic areas commented that their constituents are underserved because they lack access to local news, public affairs, political information, and emergency information, including severe weather alerts, road closures and other breaking news. Industry participants commented on the use of The Nielsen Company's (Nielsen) designated market areas (DMAs) to determine which broadcast television stations cable and satellite companies carry within certain areas. Several of these commenters also provided data to the Commission.

4. In this Report, the Media Bureau analyzes the issues raised in Section 304 of STELA concerning the availability of in-state broadcast stations for consumers. In order to properly assess the full range of issues that impact access to in-state broadcast stations, we briefly describe below the statutory and regulatory provisions governing cable and DBS carriage of broadcast stations. Many commenters raise concerns about the impact of these laws on the availability of in-state broadcast stations; thus, an examination of the statutory and regulatory provisions that govern the distribution of broadcast stations is appropriate in the context of this Report. Following that discussion, we present an overview of congressional and consumer concerns regarding access to in-state broadcast stations and the lack of access to state-focused public affairs and informational programming.<sup>7</sup> Next, we present the results of the Bureau staff's data analysis pursuant to the direction in Sections 304(1) and 304(2) of STELA.<sup>8</sup> We then discuss certain comments and data submitted to the Commission related to issues raised in the Section 304(1) and 304(2) reports. Finally, we provide an analysis of alternatives to DMAs for defining local television markets pursuant to the direction in Section 304(3) of STELA.

## II. BACKGROUND REGARDING CONSUMER ACCESS TO IN-STATE BROADCAST TELEVISION SIGNALS

5. Congress has expressed concern that individuals residing in certain geographic areas do not have access to in-state television broadcast stations.<sup>9</sup> Congress has questioned whether and, if so, to what extent, the use of DMAs to define local television markets affects consumers' access to local or in-state broadcast television stations. A DMA is a Nielsen-defined television market comprised of a unique group of counties. The United States is divided into 210 DMA markets.<sup>10</sup> The counties included in a DMA

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<sup>6</sup> For purposes of this Report, unless otherwise noted, we use the term MVPD to refer to cable and DBS operators only.

<sup>7</sup> We note that the U.S. Copyright Office is also examining a range of copyright issues pertinent to access to in-state broadcast programming and will issue a separate report. See Library of Congress, Section 302 Report (Notice of Inquiry), 76 Fed. Reg. 11816 (2011) (<http://www.copyright.gov/fedreg/2011/76fr11816.pdf>).

<sup>8</sup> In addition to these findings, Appendix F contains Case Studies that closely examine access to in-state broadcast stations in 34 counties that commenters expressly identified as problematic in the record of this proceeding.

<sup>9</sup> See, e.g., Letter from Sen. Michael F. Bennet, Colorado, to Julius Genachowski, Chairman, FCC (Jan. 21, 2011) (Bennet Jan. 21, 2011 *Ex Parte* Letter); Letter from Sen. Michael B. Enzi, Wyoming, Sen. John Barasso, M.D., Wyoming, and Rep. Cynthia M. Lummis, Wyoming, to Julius Genachowski, Chairman, FCC (Dec. 1, 2010 (Enzi *et al.* Dec. 1, 2010 *Ex Parte* Letter); Letter from Sen. Benjamin Cardin, Maryland, and Sen. Barbara Mikulski, Maryland, to Julius Genachowski, Chairman, FCC (Mar. 4, 2011) (Cardin *et al.* Mar. 4, 2011 *Ex Parte* Letter); see also U.S. Congressman Mike Ross, Ross TV Freedom Provision Passes Senate, House (press release), May 13, 2010, at (<https://ross.house.gov/News/DocumentSingle.aspx?DocumentID=185448>).

<sup>10</sup> Nielsen delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to one market based on measured viewing patterns both off-air and by MVPD distribution. Generally, each U.S. county is assigned to only one market based on the market whose stations receive the preponderance of the audience in that county. However, in a few cases where a county is large and viewing patterns differ significantly between parts of the county, a portion of the county is assigned to one television market and another portion of the county is assigned to another market. Several counties in Alaska are not assigned to any DMA. *Retransmission Consent and* (continued....)

generally are geographically clustered around the principal city or cities in that DMA, where the market's television stations are often located. DMAs frequently cross state lines and may include counties from multiple states. In some instances, the counties that are in a different state from the principal city of the DMA (out-of-state counties) are geographically distant from the principal city. Under the Communications Act and the Commission's rules, we use DMAs to define local markets.<sup>11</sup> MVPDs generally carry the television stations assigned by Nielsen to their local markets.<sup>12</sup> As a result, sometimes the residents of certain out-of-state counties within a DMA are unable to receive in-state broadcast television stations by means of either over-the-air reception or an MVPD. Although there is no specific definition for the term "orphan county" and it is sometimes defined narrowly and sometimes broadly, it generally refers to a county that cannot receive some or cannot receive any broadcast stations that originate in-state.

**A. Statutory and Regulatory Provisions Governing Cable and DBS Carriage of Broadcast Stations**

6. Our assessment of the issues regarding the lack of in-state broadcast stations in various communities across the country begins with a presentation of the regulations and statutes that govern the carriage of broadcast television stations by MVPDs. Those statutory or regulatory provisions inform an understanding of why certain stations may not be available in certain locations. Comments in this record propose potential modification to various aspects of these provisions. Thus, we set forth these provisions to facilitate a more comprehensive examination of these matters. Specifically, we briefly describe below the copyright, retransmission consent, and mandatory carriage statutory provisions, as well as Commission rules regarding cable carriage of broadcast television station signals and how that process differs in several respects from the process related to DBS carriage.

7. *Cable Carriage of Local Broadcast Stations.* Before 1992, cable operators were not required to seek the permission of a broadcaster before carrying its signal nor were they required to compensate the broadcaster for the value of its signal.<sup>13</sup> In the 1992 Cable Act, Congress established a regime for carriage of broadcast television stations on cable systems.<sup>14</sup> Congress gave broadcasters control over the use of their signals and permitted them to seek compensation from cable operators and other MVPDs for

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*Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, (Sept. 8, 2005) (SHVERA Report) at 28, n.177; see also Nielsen Media Research, Glossary of Media Terms, at <http://www.nielsenmedia.com/glossary/>.*

<sup>11</sup> Section 614 of the Communications Act of 1934 was amended by Section 301 of the Telecommunications Act of 1996 to provide that for purposes of applying the cable mandatory carriage provisions, a broadcast station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. 47 U.S.C. § 534; *see also Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules, CS Docket No. 95-178, Implementation of Section 301(d) of the Telecommunications Act of 1996, Market Determinations*, 11 FCC Rcd 6201 (1996) (defining local markets using Nielsen DMAs after Arbitron ceased publication of television data).

<sup>12</sup> *See* 47 U.S.C. § 338 (signal carriage rights) and 17 U.S.C. § 122 (copyright). *See generally SHVERA Report* (describing history of carriage rights issues).

<sup>13</sup> Congress found that this created a "distortion in the video marketplace which threatens the future of over-the-air broadcasting." S. Rep. No. 92, 102d Cong., 1<sup>st</sup> Sess. 1 (1991) (*Senate Report*), at 35.

<sup>14</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (1992 Cable Act or 1992 Act); H. Rep. No. 628, 102d Cong., 2d Sess. (1992) (*House Report*); *Senate Report*. *See also* 47 U.S.C. § 534 (carriage of commercial television stations); 47 U.S.C. § 535 (carriage of noncommercial television stations); 47 U.S.C. § 325 (retransmission consent).

carriage of their signals. This system is referred to as retransmission consent.<sup>15</sup> The 1992 Cable Act also established mandatory carriage rights for local broadcast television stations referred to as must-carry requirements. In adopting the mandatory carriage provisions, Congress recognized the importance of local television broadcast stations as providers of local news and public affairs programming.<sup>16</sup> Congress observed that broadcast television stations rely on advertising dollars to provide free over-the-air local service and that competition from cable television in attracting advertisers posed a threat to the economic viability of television broadcast stations. Thus, it mandated cable carriage to ensure the continued economic viability of free local broadcast television.<sup>17</sup>

8. The Communications Act and Commission rules govern the process whereby cable operators carry local broadcast stations in local television markets.<sup>18</sup> Within their local television markets, defined as DMAs,<sup>19</sup> commercial television stations may elect cable carriage under either must-carry or retransmission consent requirements.<sup>20</sup> Generally, under the must-carry regime, a local commercial broadcast television station is entitled to carriage if, among other things, it serves the same market as the cable system, delivers a good quality signal to the cable system's headend, and indemnifies the cable system against copyright infringement.<sup>21</sup> If a local broadcast station elects retransmission consent, the cable operator and broadcaster negotiate the terms of a retransmission consent agreement, which may include monetary or other compensation for carriage of the broadcast signal. In addition, cable operators may negotiate for retransmission consent with any other broadcast television station they seek to carry regardless of the station's television market.<sup>22</sup>

9. Qualified local noncommercial educational (NCE) broadcast television stations have a right to mandatory carriage under the 1992 Act, but do not have statutory retransmission consent rights.<sup>23</sup> Among other things, the NCE broadcast television station must serve the same must-carry market as the

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<sup>15</sup> Congress noted that some broadcasters might find that carriage itself was sufficient compensation for the use of their signal while other broadcasters might seek monetary compensation and still others might negotiate for in-kind consideration such as joint marketing efforts, the opportunity to provide news inserts on cable channels, or the right to program an additional channel on a cable system. *Senate Report* at 36. Congress emphasized that it intended "to establish a marketplace for the disposition of the rights to retransmit broadcast signals" but did not intend "to dictate the outcome of the ensuing marketplace negotiations." *Id.* On March 3, 2011, the Commission released a Notice of Proposed Rulemaking to solicit comment on a series of proposals to streamline and clarify its rules concerning or affecting retransmission consent negotiations. The rulemaking will also examine ways to minimize video programming service disruptions to consumers and will further assess the effectiveness of the Commission's rules that are intended to ensure that market-based mechanisms govern retransmission consent negotiations. *See Amendment of the Commission's Rules Related to Retransmission Consent*, 25 FCC Rcd 2718 (2011)(*Retransmission Consent NPRM*).

<sup>16</sup> House Committee on Energy and Commerce, H.R. Conf. Rep. No. 102-862, 102d Cong., 2d Sess. (1992), reprinted at 138 Cong. Rec. H8308, at 2 (Sept. 14, 1992) (*Conference Report*).

<sup>17</sup> *Conference Report* at 3.

<sup>18</sup> Cable operators that are subject to rate regulation are required to provide subscribers with a basic service tier and to carry local broadcast stations on that tier. 47 U.S.C. § 543(b)(7); *see also* 47 C.F.R. § 76.901.

<sup>19</sup> *See* n. 9, *supra*.

<sup>20</sup> *See* 47 C.F.R. § 76.64.

<sup>21</sup> *See* 47 C.F.R. § 76.55(c)(3); 47 C.F.R. § 76.56(b)(5).

<sup>22</sup> 47 U.S.C. § 325; *see also* 47 C.F.R. § 76.64 (retransmission consent). However, such carriage arrangements may be limited by other contractual restrictions, such as network affiliation agreements.

<sup>23</sup> 47 U.S.C. § 325(b)(2)(A).



cable system on which it seeks carriage, deliver a good quality signal, and not air duplicative programming.<sup>24</sup> Under specifically enumerated criteria, qualified low-power broadcast television stations may also be eligible for mandatory carriage on cable systems.<sup>25</sup>

10. Pursuant to the Communications Act, Commission rules also permit, upon request from a broadcast station or a cable system, a modification of the local television market to include additional communities or to exclude certain communities.<sup>26</sup> This process, known as market modification, may result in communities being added to a local television market or removed from a DMA for purposes of

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<sup>24</sup> Pursuant to Commission rules, a qualified NCE station is one that is: (1) licensed to a community whose reference point, as defined in § 76.53, is within 80.45Km (or 50 miles) of the principal headend (as defined in § 76.5) of the cable system; and (2) whose Grade B service contour encompasses the principal headend (as defined in § 76.5) of the cable system. Further, a cable operator is not required to carry the signal of a qualified local NCE if the station's signal would be considered a distant signal for copyright purposes unless the station agrees to indemnify the cable operator for any increased copyright liability resulting from carriage of its station signal. 47 C.F.R. § 76.55(b). We note that this rule has not been amended since the digital transition.

<sup>25</sup> 47 C.F.R. § 76.55(d); 47 C.F.R. § 76.56(b)(4). In 2000, the Commission established the Class A television service to implement the Community Broadcasters Protection Act of 1999. *See* Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I, at 501A-594 - 1501A-598 (1999), codified at 47 U.S.C. § 336(f) (CBPA). Thus, certain qualifying low-power television (LPTV) stations are accorded Class A status which indicates that these stations have "primary" status as television broadcasters and have a measure of interference protection from full service television stations. Pursuant to Commission rules, stations eligible for this status must provide locally originated programming, often to rural and certain urban communities that have little or no access to such programming. *See Establishment of a Class A Television Service*, 15 FCC Rcd 6355 (2000). Created by the Commission in 1982, low-power television service has been a secondary spectrum priority. *See Report and Order in BC Docket No. 78-253*, 51 R.R. 2d 476, 486. These stations must yield to facility increases of existing full-power stations or to new full-power stations where interference occurs. LPTV stations must operate at reduced power levels. LPTV programming can include satellite-delivered programming services, syndicated programs, movies, a wide range of locally-produced programs, and, in some instances, network programming. They serve a much smaller geographic region than full service stations and can be licensed to a location where a full-power station cannot be accommodated in the broadcast Table of Allotments. *Establishment of a Class A Television Service*, 15 FCC Rcd at 6357. LPTV and Class A television ownership is generally considered an entry to broadcast ownership for women and minorities. The Commission has also recognized that such stations, even in some well-served markets, may provide the "only local service to residents of discrete geographical communities" within those markets, often airing local news, weather, public affairs and programming in foreign languages. *Establishment of a Class A Television Service*, 15 FCC at 6357-58. A TV translator station rebroadcasts the programs of a full-power TV broadcast station. TV translator stations typically serve communities that cannot receive the signals of free over-the-air TV stations because they are too far away from a full-power TV station or because of geography (such as uneven terrain or mountains). Many TV translator stations operate in mountainous or more remote areas of the country. *See* FCC Consumer Advisory: The DTV Transition and LPTV/Class A and Translator Stations (<http://www.fcc.gov/cgb/consumerfacts/DTVandLPTV.html>); *see also* DTV.gov – What You Need to Know About the Digital Transition (<http://www.dtv.gov/lptv.html>).

<sup>26</sup> 47 C.F.R. § 76.59; *see also* 47 U.S.C. § 614. In determining whether to grant a request to modify a local market, the Commission must, pursuant to the statute, give particular attention to localism by its consideration of several factors, including (1) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; (2) whether the television station provides coverage or other local service to such community; (3) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and (4) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community. 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(IV).

broadcast station carriage rights.<sup>27</sup> In addition, under the rules, certain stations are considered “significantly viewed” based on over-the-air viewing, even if they are licensed outside the DMA. These stations are treated as local stations for broadcast signal carriage purposes.<sup>28</sup> The Commission grants significantly viewed status to commercial stations based on petitions from broadcasters, cable operators, or DBS operators that show that a station satisfies viewing criteria on a community-wide or county-wide basis.<sup>29</sup> These petitions must follow statistical requirements in Commission rules that were later codified in the U.S. Copyright Act with respect to satellite carriers.<sup>30</sup> Retransmission consent is required for the carriage of out-of-market significantly viewed signals.<sup>31</sup>

11. Pursuant to amendments of the Copyright Act, unlicensed retransmission of the copyrighted material in a broadcast signal constitutes copyright infringement.<sup>32</sup> The Copyright Act grants cable systems a statutory or compulsory license for the retransmission of all local broadcast signals and distant signals that the Commission has permitted them to carry.<sup>33</sup> The compulsory licensing regime established by the 1976 amendments to the Copyright Act took into consideration the Commission’s rules that: (1) defined the term “local broadcast station;” (2) limited the number of distant signals that a cable operator could import (the distant signal rule);<sup>34</sup> (3) permitted a local broadcaster to require a cable operator to delete duplicative programming for which the station had obtained exclusive rights (the network non-duplication and syndicated exclusivity rules); and (4) required the carriage of certain signals.<sup>35</sup>

12. *Satellite Carriage of Local Broadcast Stations.* The first satellite compulsory copyright law was enacted in 1988. The Satellite Home Viewer Act (SHVA) granted direct-to-home (DTH) satellite providers a compulsory copyright license<sup>36</sup> to retransmit television signals of distant network

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<sup>27</sup> *Id.*

<sup>28</sup> See SHVERA Report at 10-11, ¶¶ 15-16; see also *Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA) (STELA Significantly Viewed Report and Order)*, MB Docket No. 10-148, Report and Order and Order on Reconsideration, 25 FCC Rcd 16383, 16389-90, ¶¶ 7-8 (2010).

<sup>29</sup> 47 C.F.R. § 76.54(b), (d). 47 C.F.R. § 76.5(i)(1)-(2). All stations that have been declared significantly viewed are included in the publicly available significantly viewed list. The local television market is considered to be the DMA and, as such, not all stations on the list are out-of-market stations. The current significantly viewed list is available on the Media Bureau’s website at <http://www.fcc.gov/mb/>. The vast majority of stations identified on the significantly viewed list are already considered local in their markets. As a result, the utility of using the significantly viewed to supplement the stations carried in local markets is somewhat limited.

<sup>30</sup> See ¶ 15, *infra*.

<sup>31</sup> 47 U.S.C. § 340 (d)(2).

<sup>32</sup> See 17 U.S.C. § 111(b).

<sup>33</sup> 17 U.S.C. § 111(c). Under the compulsory license, cable systems are not required to obtain the consent of the copyright owners of copyrighted material contained in the broadcast signal being retransmitted or negotiate license fees for the use of such copyrighted material, but, instead, must pay government-established fees for the right to retransmit copyrighted material contained in broadcast programming. 17 U.S.C. § 111(d). The 1976 amendments established that fees payable to copyright owners for compulsory licenses would be based on a percentage of each cable system’s gross revenues and would be adjusted periodically by the newly formed Copyright Royalty Tribunal. *Id.* See also 17 U.S.C. § 801(b).

<sup>34</sup> 47 C.F.R. §§ 76.59(b); 76.61(b); 17 U.S.C. § 111.

<sup>35</sup> 47 C.F.R. §§ 76.92 (cable network non-duplication), 76.101 (cable syndicated program exclusivity); 17 U.S.C. § 111(d) (limitations on exclusive rights; secondary transmissions of broadcast programming by cable).

<sup>36</sup> The Satellite Home Viewer Act of 1988, Pub. L. No. 100-667, 102 Stat 3935, Title II (SHVA) (1988); 17 U.S.C. § 119.

stations<sup>37</sup> to “unserved households” and superstations (non-network stations) to any household.<sup>38</sup> This license generally applies to the signals of superstations and network stations that satellite carriers retransmit to the public for private home viewing.<sup>39</sup>

13. Under the 1999 Satellite Home Viewer Improvement Act (SHVIA), satellite carriers have a statutory copyright license for carriage of stations to any subscriber within a station’s local market, without distinction between network and non-network signals or served or unserved households.<sup>40</sup> Prior to such carriage, DBS operators must obtain consent from broadcast licensees to retransmit their stations’ signals to subscriber households.<sup>41</sup> This carriage arrangement is commonly referred to as “local-into-local” carriage. Unlike cable operators, DBS operators are not required to carry local broadcast television stations. However, if a DBS operator chooses to carry a local station in a particular DMA, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage.<sup>42</sup> This is commonly referred to as the “carry one, carry all” requirement. If a broadcaster elects retransmission consent, the satellite carrier and broadcaster negotiate the terms of a retransmission consent agreement. In contrast to cable “must carry” requirements, satellite carriers are not required to carry television stations if they do not rely on the statutory license but instead privately negotiate for the copyright license.<sup>43</sup> Satellite carriers are not required to carry a station if its programming is duplicative of the programming of another station carried by the DBS operator in the

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<sup>37</sup> Network stations are generally television broadcast stations owned or operated by, or affiliated with, one or more of the television networks. *See* 47 U.S.C. § 339(d)(3) (stating that a “network station” for purposes of this section is defined by the Copyright Act); 17 U.S.C. § 119(d)(2) (“The term ‘network station’ means – (A) a television broadcast station, including any translator station or terrestrial satellite stations 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 . . .”).

<sup>38</sup> The Copyright Act defined an unserved household as a “household that cannot receive, through use of a conventional stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network television station affiliated with that network of Grade B intensity as defined by the Federal Communications Commission under Section 73.683(a) of Title 47 of the Code of Federal Regulations, as in effect on January 1, 1999.” 17 U.S.C. § 119(d)(10)(A). An unserved household can also be one that is subject to one of four statutory waivers or exemptions. 17 U.S.C. § 119(d)(10)(B)-(E); *see also* 47 U.S.C. § 325(b)(2)(C) (providing an exemption from retransmission consent requirements for satellite carriage of network stations to unserved households), as amended by Section 202 of STELA (extending exemption through December 31, 2014). Section 119(d)(9) of the Copyright Act defines “superstation” as a television station, other than a network station, licensed by the Federal Communications Commission, that is secondarily transmitted by a satellite carrier.”

<sup>39</sup> 17 U.S.C. § 119.

<sup>40</sup> The Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (SHVIA) (1999). *See also* 17 U.S.C. § 122(j) (the term “local market” means the designated market area in which the station is located).

<sup>41</sup> 47 U.S.C. § 325.

<sup>42</sup> 47 U.S.C. § 338.

<sup>43</sup> *Id.* *But see* SHVERA § 210, creating § 338(a)(4) (mandatory carriage in Alaska and Hawaii). Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Pub. L. No. 108-477, 118 Stat. 2809 (2004). *See also Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, MB Docket No. 05-181, 20 FCC Rcd 14242 (2005) (Section 338(a)(4) supersedes carry-one, carry-all by mandating analog and digital carriage in Alaska and Hawaii).



DMA unless the duplicating stations are licensed to communities in different states.<sup>44</sup> Carriage is also not required if the station fails to provide a good quality signal to the DBS operator's local receive facility.<sup>45</sup>

14. Unlike cable operators, the "distant" (*i.e.*, out-of-market) signals that DBS operators can provide to their subscribers are limited.<sup>46</sup> The carriage of broadcast signals from both distant and local broadcast stations is subject to royalty fees at a rate set forth by statute and collected by the U.S. Copyright Office.<sup>47</sup> The retransmission of distant and local television broadcast station signals is controlled by separate statutory license provisions in the Copyright Act. Section 119 of the Copyright Act permits a satellite carrier to provide distant broadcast television station signals to its subscribers only if local stations are unavailable to them as part of a local-into-local satellite package or over the air.<sup>48</sup> NAB states that Section 122 allows satellite carriers to retransmit under certain conditions the local television station signals into the stations' local markets on a royalty-free basis.<sup>49</sup>

15. The 2004 Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA)<sup>50</sup> expanded the statutory copyright license to allow satellite carriers to carry significantly viewed stations,<sup>51</sup> which are treated as local stations with respect to a particular satellite community<sup>52</sup> in another market, thus, allowing them to be carried by the satellite carrier in that community in the other market.<sup>53</sup> Satellite

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<sup>44</sup> 47 U.S.C. § 338(c)(1).

<sup>45</sup> 47 U.S.C. § 338.

<sup>46</sup> See ¶ 15, *infra*.

<sup>47</sup> Satellite carriers pay royalties on a per subscriber, per signal, per month basis; and must report periodically to the Copyright Office on which broadcast signals they have retransmitted.

<sup>48</sup> See 17 U.S.C. § 119 and 47 U.S.C. § 339. In general, satellite operators may not offer distant stations when the local satellite package is available or if the subscriber is "served" by local stations over the air. *Id.* See also *Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA)*, 25 FCC Rcd 16383 (2010); *Establishment of a Model for Predicting Digital Broadcast Television Field Strength Received at Individual Locations*, 25 FCC Rcd 16246 (2010).

<sup>49</sup> National Association of Broadcasters (NAB) Comments at 31-32, citing 17 U.S.C. §§ 119, 122. NAB reports that pursuant to the distant signal copyright license, satellite carriers may pay the royalty fee to retransmit local signals that include local news, weather and public affairs programming in communities outside the DBS provider's local market and in areas in which the station is not significantly viewed.

<sup>50</sup> Section 202 of SHVERA created Section 340 of the Communications Act, 47 U.S.C. § 340, which authorized satellite carriage of significantly viewed stations. See also *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act (SHVERA Significantly Viewed Report and Order)*, MB Docket No. 05-49, Report and Order, 20 FCC Rcd 17278 (2005).

<sup>51</sup> Regarding the term "significantly viewed," Section 102 of 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.

<sup>52</sup> See 47 C.F.R. §§ 76.5(dd) (defining cable "community unit") and 76.5 (gg) (defining a "satellite community").

<sup>53</sup> For copyright purposes, significantly viewed status means that cable and satellite providers may carry the out-of-market but significantly viewed station with the reduced copyright payment obligations applicable to local (in-market) stations. See 17 U.S.C. §§ 111(a), (c), (d), and (f), as amended by STELA § 104 (relating to cable statutory copyright license) and 122(a)(2), as amended by STELA § 103 (relating to satellite statutory copyright license).

carriers are not required to carry out-of-market significantly viewed stations. If they do carry such significantly viewed stations, retransmission consent is required.<sup>54</sup> STELA reauthorizes the statutory copyright license for satellite carriage of significantly viewed stations and moves that license from the distant signal statutory copyright license provisions in 17 U.S.C. Section 119(a)(3) to the local signal statutory copyright license provisions in 17 U.S.C. Section 122(a)(2).<sup>55</sup> By so doing, Congress now defines significantly viewed signals as another type of local signal, rather than as an exception to distant signals, and consequently, the significantly viewed signal license does not expire on December 31, 2014, when the distant signal license is set to expire.<sup>56</sup> Section 122(a)(2) explicitly limits significantly viewed to the rules as adopted by the Commission as of April 15, 1976. Satellite carriers are required to provide notice to local stations before they commence carriage of significantly viewed stations. This notice requirement does not apply to cable systems carriage of significantly viewed stations. There are no market modification provisions regarding satellite carriers similar to those for cable operators.

16. *Program Exclusivity and Sports Blackout Rules.* A broadcaster can carry network and syndicated programming on its local television station(s) only with the permission of the networks or syndicators that own or hold the rights to that programming. Broadcast stations negotiate to be the

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<sup>54</sup> See 47 U.S.C. § 340(d). The statute requires that the significantly viewed station grant consent in order for its signal to be carried. Pursuant to SHVERA, DBS operators were granted the right to retransmit out-of-market significantly viewed commercial broadcast stations to subscribers in the community in which the station is deemed significantly viewed, provided the local station affiliated with the same network as the significantly viewed station is offered to subscribers. SHVERA permits a satellite carrier to privately negotiate with a local network station to obtain a waiver of the requirement that the local station be offered. 47 U.S.C. § 340(b)(4). SHVERA provides that, as in the cable context, satellite carriers pay reduced copyright fees for retransmission of significantly viewed stations. 17 U.S.C. § 119(a).

<sup>55</sup> See STELA § 103.

<sup>56</sup> *STELA Significantly Viewed Report and Order*, 25 FCC Rcd 16383, 16387, ¶ 4 n.23. In the *STELA Significantly Viewed Report and Order*, the Commission revised its satellite television significantly viewed rules to facilitate satellite carriage of significantly viewed stations and thereby provide satellite subscribers with greater choice of programming and to improve parity and competition between satellite and cable carriage of broadcast stations. *Id.* at 16411, ¶ 55. Among other things, the Commission: (1) eliminated a previous requirement that satellite subscribers receive via satellite the local in-market station affiliated with a particular network in order to be eligible to receive an out-of-market significantly viewed station affiliated with the same network and now only requires that satellite subscribers receive their carrier's local-into-local service package; (2) eliminated the requirement that satellite carriers devote "equivalent bandwidth" to the carriage of the local in-market station as compared with the bandwidth of the out-of-market significantly viewed station and now allow a satellite carrier to retransmit a significantly viewed station in High Definition (HD) format as long as the satellite carrier also retransmits the local station affiliated with the same network in HD if the local station makes the HD format available to the satellite carrier (the HD format requirement); and (3) modified its 2005 interpretation of the Section 340(b)(3) exception, finding that, in the context of the amendments to Sections 340(b)(1) and (2), this exception permits a satellite carrier to offer a significantly viewed network station to a subscriber when there is no local affiliate of the same network present in the local market, even if the subscriber does not receive local-into-local service. For purposes of the HD format requirement, the corresponding local (in-market) station will be considered "available" to the satellite carrier when the station: (a) elects mandatory carriage or grants retransmission consent; (b) provides a good quality signal to the satellite carrier as required by Section 76.66(g) of the rules; and (c) is otherwise in compliance with the "good faith negotiation" and carriage provisions set forth in Sections 76.65 and 76.66 of the rules. The Commission also determined that the HD format requirement would (1) apply only where a satellite carrier retransmits to a subscriber the significantly viewed station in HD format and not to restrict a satellite carrier from retransmitting to a subscriber the significantly viewed station in standard definition (SD) format; and (2) require satellite carriage of a secondary stream of a local station's multicast signal if that stream is in HD and is affiliated with the same network as an significantly viewed station retransmitted in HD to subscribers in the local market by the satellite carrier. *Id.* at 16386-87, 16411, ¶¶ 3, 53-54.

exclusive distributor of specific programming in a local market. Where an MVPD carries more than one station with the rights to a program, the Commission's exclusivity and blackout rules, along with provisions in network and syndication programming contracts, protect the rights of stations to be the exclusive distributor.<sup>57</sup> The network non-duplication rules protect a local commercial or noncommercial broadcast television station's right to be the exclusive distributor of network programming within a specified zone, and require programming subject to the rules to be blacked out when carried on another station's signal imported by an MVPD into the local station's zone of protection.<sup>58</sup> Similarly, the syndicated exclusivity rules protect the exclusive distribution rights of a commercial broadcast television station or a distributor of syndicated programming within a 35-mile geographic zone surrounding a television station's city of license. In addition, the sports blackout rule protects a sports team's or sports league's distribution rights to a live sporting event taking place in a local market, and is intended to ensure the continued general availability of sports programming to the public.<sup>59</sup>

## **B. Inability to Receive In-State Broadcast Stations**

17. As the data amassed in this proceeding demonstrate, the vast majority of U.S. households are predicted to have access to some in-state programming.<sup>60</sup> Specifically, the Bureau found that, based on Commission data, about 99.98 percent of the 117.2 million total U.S. households have access to in-state programming (*i.e.*, at least one in-state station) either over the air or via an MVPD. In addition, we found that about 99.92 percent of all U.S. households can receive at least one in-state station via over-the-air reception. About 98.4 percent of U.S. households have access to at least one in-state television station via DBS.

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<sup>57</sup> See generally *SHVERA Report* (description and history of the network non-duplication, syndicated exclusivity, and sports blackout rules).

<sup>58</sup> See 47 C.F.R. §§ 76.92, 76.93 and 76.122. The Commission is seeking comment on whether to eliminate these rules as part of its ongoing proceeding examining the retransmission rules. See *Retransmission Consent NPRM*, n.13, *supra*.

<sup>59</sup> See 47 C.F.R. §§ 76.101, 76.120 and 76.123-125. Stations deemed significantly viewed are exempt from deletion under the syndicated exclusivity rules.

<sup>60</sup> In order to determine the predicted service area for purposes of the analysis required by the statute, we have chosen to use OET Bulletin No. 69 methodology (Longley-Rice propagation model). Although this approach estimates the number of households that reside in each television station's service area, it does not tell us whether each household within a particular service area actually can receive that station's signal. Thus, the data set forth in this Report are based on a *predictive* model regarding the availability of broadcast television stations via over the air transmission. We believe that this approach yields the most accurate data for our assessment of the questions posed by Sections 304(1) and 304(2) of STELA. Accordingly, in this Report, with respect to over-the-air broadcasting, in our responses to Sections 304(1) and (2), we use the terms "receive" and "have access to" interchangeably. We define these terms to mean that households fall within the *predicted* over-the-air service area of in-state broadcast stations. Nonetheless, we recognize that certain households may not be able to access a station for various reasons, including signal interference or the lack of a suitable antenna or other equipment. Moreover, a household's ability to "receive" or "have access to" the signal of a broadcast television station via over-the-air transmission may be impacted by a range of other factors that we cannot determine and assess for the purposes of this Report. The Longley-Rice propagation model cannot account for these situations. Therefore, the data set forth in this Report and the Appendices are predictions of the over-the-air broadcast service that should be available in certain markets and to certain households. We also note that our data analyses in response to Sections 304(1) and (2) include full-power stations, Class A stations, low-power stations, and translators. For additional definitions and explanations of our methodology, see Section III.

18. Nonetheless, the record in this proceeding also reflects examples of counties in which commenters have no access, or have limited access, to in-state broadcast stations.<sup>61</sup> As described above, local markets are defined by DMA for purposes of MVPD carriage. Because the DMA may include one or more counties located in a different state from that of the DMA's principal city or cities where most of the local television stations originate, some consumers<sup>62</sup> through their MVPD, may receive only out-of-state stations and thereby lack access to in-state programming, including political and election coverage, public affairs programming, and weather and other emergency information. Consumers from disparate areas throughout the nation comment that they are deprived of vital information that is overwhelmingly available to other households across the country.<sup>63</sup> Consumers in affected areas typically do not have access to programming content from in-state local television stations that cover the issues emanating from their state capitals and, as a result, believe they are less well served by the broadcast programming they are able to receive.<sup>64</sup> Without such state-focused information and programming content, consumers express frustration at their inability to make informed election and other civic decisions.<sup>65</sup> Additionally, some consumers indicate that they would prefer television advertising that supports their state economies rather than the out-of-state advertisements that air on the in-market stations they receive.<sup>66</sup> Commenters

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<sup>61</sup> See Appendix F, which provides Case Studies of 34 counties commenters identified in the record that have no access or limited access to in-state stations. The Case Studies detail the broadcast stations available in those counties both over the air and from MVPDs. See also ¶¶ 41-42, *infra*.

<sup>62</sup> For instance, many commenters raised the in-state broadcast station signal access problems in Garrett County, Maryland which is included in the Pittsburgh DMA. Letter from Sen. Benjamin L. Cardin, Maryland to Julius Genachowski, Chairman, FCC (Mar. 4, 2011) at 1 (Cardin advocates “action to address the situation currently affecting the people of Garrett County”); Letter from Rep. Roscoe G. Barlett to Julius Genachowski, Chairman, FCC (Feb. 16, 2011) at 1 (stating that his constituents in Garrett County cannot receive Washington, D.C., Baltimore or Maryland area television stations). He supports solutions that would give all Maryland residents the ability to view in-state broadcasts. Rep. Barlett subsequently wrote to FCC Chairman Genachowski to indicate that cable providers and broadcasters were making progress on devising new approaches to deliver more in-state locally-oriented programming to Garrett County residents. Letter from Rep. Roscoe G. Barlett to Julius Genachowski, Chairman, FCC (May 3, 2011); Board of County Commissioners of Garrett County, Maryland (Garrett County Commissioners) Reply Comments at 1; see also, generally, Garretts for Maryland TV Reply Comments.

<sup>63</sup> Colorado residents David and Nancy Smith contend that the “essential task” of the media is to keep people informed, but the broadcast stations they receive from Albuquerque have no relevance to them. Comments of David and Nancy Smith (Jan. 23, 2011) at 1. In addition, Vicki and Seab Helms, DBS subscribers in La Plata County, Colorado credit a lack of local advertising for job losses in the local economy. Comments of Vicki and Seab Helms (filed Jan. 23, 2011) at 1.

<sup>64</sup> For example, Mary Gillam indicates that in her 15 years as a resident of La Plata County, Colorado she has never seen any of the state's governors or other elected representatives on television. Comments of Mary Gilliam (Jan. 24, 2011) at 1. She also asserts that regulators should not presume that the Internet is a substitute for local television in the provision of local news in orphan counties. *Id.*

<sup>65</sup> Colorado resident Kim Rabick states that during a recent state election she felt very well informed to vote in New Mexico but not in Colorado. Thus, she seeks better access to news from Denver, her state capital, rather than Albuquerque-Santa Fe, which is the DMA to which her household is assigned. Comments of Kim Rabick (Jan. 24, 2011) at 1. She also states that she drives seven hours from her home county to Denver because she feels culturally, economically and politically linked to Colorado, not New Mexico. *Id.*

<sup>66</sup> Jennifer Mankins of Bayfield, Colorado, finds it “inconceivable” that because of where she lives in the state she is unable to get Colorado news, sports and politics and instead receives Albuquerque news coverage and advertisements from commercial areas where she does not shop. Comments of Jennifer Mankins (Jan. 24, 2011) at 1.



opine that their inability to access in-state advertising has a continuing negative impact on their communities through the loss of revenue.<sup>67</sup>

19. Elected officials echo the concerns expressed by their constituents about the lack of access to in-state broadcast content.<sup>68</sup> They note that the disparities between state boundaries and DMAs have caused residents in these underserved areas to be deprived of the cultural, sports, political and local news relevant to the state in which they reside.<sup>69</sup> Additionally, these officials may have trouble communicating effectively with their constituents in these areas, because television advertising for elections may not be placed on the out-of-state, in-market broadcast stations that are available to those constituents. If politicians do elect to purchase advertising on these out-of-state stations to reach all of their constituents, they will likely incur additional advertising fees. Moreover, commenters complain that out-of-state, in-market households are subjected to political advertisements that are of no value to the advertiser or the viewer.<sup>70</sup>

20. Lack of access to in-state broadcast stations is not limited to commercial stations. NCE broadcasters report receiving numerous complaints from “disgruntled” consumers unable to view their in-state public broadcast station.<sup>71</sup> NCE commenters note the importance of their role as emergency alert providers and contend that their inability to attain carriage on DBS systems endangers citizens because local and emergency announcements are not carried on out-of-state satellite channels.<sup>72</sup>

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<sup>67</sup> See, e.g., Comments of Vicki and Seab Helms (Jan. 23, 2011) at 1.

<sup>68</sup> Wyoming elected officials raise concerns that households in Wyoming do not have access to Wyoming-based television broadcast programming. The officials explain that there are seven DMAs within the state’s boundaries, five of which are based on out-of-state principal cities and station communities of license, including one northern county that is part of Denver’s DMA although Denver is almost 400 miles away and the in-state market area originates from the next county. In total 16 of Wyoming’s 23 counties are assigned to out-of-state DMAs, thus, nearly 55 percent of all of the state’s television households cannot receive Wyoming-based news, weather, sports or emergency alerts from DBS services. Enzi *et al.* Dec. 1, 2010 *Ex Parte* Letter at 1. Wyoming officials believe consumers should have the ability to access and the option of viewing either in-state or in-market stations. *Id.* See also Letter from Sen. Mark Udall, Sen. Michael Bennet, Rep. Diana DeGette, Rep. Doug Lamborn, Rep. Ed Perlmutter, Rep. Mike Coffman, Rep. Jared Polis, Rep. Cory Gardner, and Rep. Scott R. Tipton, Colorado Delegation, to Julius Genachowski, Chairman, FCC (Feb. 16, 2011) at 1 (attribute the lack of access to in-state broadcast programming to the “inflexibility” of the DMA system).

<sup>69</sup> Sen. Michael F. Bennet of Colorado asserts that residents of several of that state’s counties (e.g., La Plata and Montezuma) are “much better informed about the laws, issues and candidates of New Mexico than they are about the laws, issues and candidates of Colorado.” Bennet Jan. 21 *Ex Parte* Letter at 1. Sen. Bennet also opined that the DMA system as it is currently employed by the Commission “does not have the required flexibility” to address the problems experienced by many of his constituents who are unable to view their preferred in-state broadcast stations because the county in which they reside is included in a DMA which is comprised largely of geographic areas in a neighboring state. *Id.*

<sup>70</sup> See, e.g., Bennet Jan. 21 *Ex Parte* at 1; see also Garrett County Commissioners Reply Comments at 1-2.

<sup>71</sup> See Oregon Public Broadcasting Comments at 2; Wyoming PBS Comments at 2. Many of the complaints apparently emanate from DBS subscribers. In Wyoming, for example, DISH’s spot beam for the Casper-Riverton DMA covers the central and western counties in the state, but does not cover portions of eastern Converse County which are located in the Casper-Riverton DMA. Wyoming PBS Comments at 1. Also, DIRECTV customers in Wyoming receive PBS programming from stations in Utah (the Salt Lake City DMA) or Colorado (the Denver DMA) depending on whether they reside in eastern or western Wyoming. *Id.*

<sup>72</sup> Wyoming PBS Comments at 2. Additionally, Oregon Public Broadcasting states that according to the 2009 Census, 111,000 rural Oregon residents do not have access to DBS service that includes their state’s public broadcast signal. Oregon Public Broadcasting Comments at 3. OPB states that its television signal is carried in all (continued....)



### III. STELA SECTION 304 FINDINGS

21. Section 304(1) of STELA 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 perform this analysis, the Bureau used the Commission's Office of Engineering and Technology (OET) Bulletin No. 69 methodology to predict the service area of each broadcast station and to estimate the number of households in its service area.<sup>73</sup> This OET bulletin provides guidance on the use of the Longley-Rice propagation model and U.S. census blocks to evaluate television service coverage and interference.<sup>74</sup> We included commercial, noncommercial educational, Class A, translator, satellite, and low-power stations in our analysis.<sup>75</sup>

22. Section 304(2) of STELA requires the Commission to analyze the extent to which consumers in each local market have access to in-state broadcast programming over the air or from an MVPD. To perform this analysis, the Bureau defined "consumers" to mean households, "local market" to mean Nielsen DMA,<sup>76</sup> and "in-state broadcast programming" to mean the programming carried by television stations licensed to the state where the consumer resides.<sup>77</sup> As noted above, DMAs frequently cross state lines and may include counties from multiple states. To address that situation, we analyze DMAs by "state segments," disaggregating the data by populations within different states.<sup>78</sup> We use the Longley-Rice methodology to estimate access to over-the-air broadcast programming by households living within

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three state counties on cable systems, and that state residents suffer an "illogical disparity" in terms of access to in-state broadcast stations based on whether they have access to and whether they choose DBS or cable. *Id.* at 2.

<sup>73</sup> The American Cable Association (ACA) disagrees with the Bureau's decision to measure the number of households that "receive" an out-of-state broadcast station signal by only including those households within a broadcast station's predicted service area. ACA contends that to accurately measure the number of households that receive out-of-state broadcast stations' signals, the Commission's report must include households outside a broadcast station's predicted service area receiving out-of-state broadcast stations' signals from an MVPD. We disagree. We focus our analysis in Section 304(1) to estimating the number of households that can receive out-of-state broadcast television stations via over-the-air reception, excluding MVPDs. Congress instructed us to analyze the extent to which consumers have access to in-state programming from MVPDs in Section 304(2) of STELA, but did not specify that we include MVPDs in our analysis of Section 304(1).

<sup>74</sup> Public Notice at 2. OET Bulletin No. 69 was released on February 6, 2004, and is available at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

<sup>75</sup> Public Notice at 2-3.

<sup>76</sup> See ¶ 5, *supra*, for the definition of the Nielsen DMA. We use Nielsen's DMAs as of the 2010-2011 television season.

<sup>77</sup> Although we are aware that some broadcast television stations located in one state may provide programming that addresses the concerns of some households located in neighboring states, we have no way of documenting this systematically. Therefore, in this Report we are using "state of license" as a proxy for measuring "in-state programming." See Section. III. C. We also are unable to ascertain for purposes of this Report what type of programming is routinely transmitted by translators or low-power television stations.

<sup>78</sup> We identify 349 state segments within the 210 DMAs. For example, the Albany-Schenectady-Troy DMA includes counties from three states: one Massachusetts county, 12 New York counties, and one Vermont county. We therefore divide the Albany-Schenectady-Troy DMA into three state segments: Massachusetts, New York, and Vermont. We report on the number of DMA households in each state segment and the percent of the total number of DMA households that those households represent. For DMAs that are comprised solely of counties from one state, *e.g.*, Abilene-Sweetwater, the Texas state segment is synonymous with the entire DMA.

each of these state segments. We also report on access to broadcast programming via cable systems, via DBS operators, or via other MVPDs combined.<sup>79</sup>

23. Section 304(3) of STELA 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.<sup>80</sup> To perform this analysis, the Bureau discusses below a few alternatives for defining local markets, including defining geographic markets in terms of the 50 states plus the District of Columbia, or, alternatively, eliminating the out-of-state portions of DMAs so that the DMAs no longer cross state lines.<sup>81</sup> We also examine a range of other methods that could potentially increase consumers' access to additional in-state broadcast programming.

24. Based on our Section 304(1) analysis, the Bureau found that in all but two states, Alaska and Hawaii, at least some households receive one or more out-of-state broadcast stations. In four states, fewer than ten percent of households receive out-of-state stations. They are: California (one percent, representing 131,153 of California households), Montana (3.80 percent, representing 15,645 Montana households), Utah (5.3 percent, representing 46,884 Utah households), and Arizona (5.6 percent, representing 132,654 Arizona households). In the District of Columbia as well as three states – Delaware, New Jersey, and Rhode Island – 100 percent of households receive at least one of out-of-state broadcast station. In an additional five states, more than 90 percent of households receive such stations. They are: Maryland (99.9 percent, representing 2,154,739 Maryland households), Massachusetts (99.4 percent, representing 2,532,875 households), Connecticut (97.7 percent, representing 1,338,897 households), New Hampshire (96.4 percent, representing 500,394 households), and Illinois (92.2 percent, representing 4,458,123 households).

25. To provide a more complete analysis, we also estimated the extent to which households receive *only* out-of-state broadcast stations. We found that in all 50 states and the District of Columbia, such households represent a small percentage of the population. The state of Minnesota has the highest number of households that receive only out-of-state stations: 41,419 out of a statewide total of 2,087,227 households, or about 2.0 percent of Minnesota households. Five other states: Pennsylvania, New Hampshire, Tennessee, Washington and Kansas have more than 10,000 households who receive no in-state signals. Wyoming and New Hampshire have the highest percentage of households who receive no in-state programming – 3.5 percent, representing 7,952 and 18,341 households, respectively. In addition to Minnesota, Wyoming, and New Hampshire, there are two other states that have greater than one percent of households that receive no in-state programming: Vermont (2.1 percent), and Kansas (1.20 percent).

26. With respect to the Section 304(2) analysis, the Bureau found that, based on Commission data, about 99.98 percent of the 117.2 million total U.S. households<sup>82</sup> have access to at least one in-state station either over the air or via an MVPD.<sup>83</sup> Regarding over-the-air reception of in-state programming, we found ten state segments (out of the 349 total state segments that we examined)<sup>84</sup> containing some

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<sup>79</sup> For a more detailed discussion of our definitions, see Section III. B.

<sup>80</sup> Public Notice at 5.

<sup>81</sup> *Id.*

<sup>82</sup> Nielsen household estimate as of January 2011.

<sup>83</sup> See Section III. B.

<sup>84</sup> These segments are: the Vermont county in the Albany-Schenectady-Troy DMA, the Arizona county in the Albuquerque-Santa Fe DMA, the Oregon county in the Boise DMA, the two Pennsylvania counties in the Buffalo DMA, the West Virginia county in the Harrisonburg DMA, the four Kansas counties in the Lincoln & Hastings-Kearny DMA, the Nevada county in the Los Angeles DMA, the six Montana counties in the Minot-Bismarck- (continued....)

households that receive fewer than one in-state station.<sup>85</sup> The number of affected households ranged from 300 Nevada households in the Los Angeles DMA to 23,500 Pennsylvania households in the Buffalo DMA. Of those, nine state segments are comprised of households that likewise cannot access in-state programming through an MVPD.<sup>86</sup> Nationwide, households within each state segment receive on average about nine in-state broadcast stations over the air, including low-power stations, Class A stations, full-power stations, and translators. Considering full-power stations only, the average is about 6.5 in-state broadcast signals over the air.

27. To provide a more complete analysis of Section 304(2), we used data from Nielsen to examine in-state stations that households are watching, either via cable, DBS, or over-the-air, that meets Nielsen's minimum reporting requirements (*i.e.*, in-state stations that attract a viewing audience comprised of at least 2.5 percent of the DMA's households).<sup>87</sup> We found that about 99.4 percent of U.S. television households watch at least one in-state station.

28. With respect to DBS carriage of in-state signals, we found that about 98.4 percent of U.S. households are able to receive at least one in-state broadcast station. We found 78 state segments in which neither DISH nor DIRECTV carried any in-state stations, *i.e.*, households located in these state segments are unable to receive any in-state stations via DBS. These state segments contain a total of about 1.87 million households, representing 1.6 percent of all U.S. households.

#### **A. Section 304(1) Findings: Data Analysis of the Number of Households Receiving a Local Broadcast Station Signal From a Different State**

29. The Bureau's analyses of the number of households that receive out-of-state broadcast television signals are contained in aggregate form for each state in Appendix A.<sup>88</sup> The appendix provides the following information for each state:

- The number of households in the state;<sup>89</sup>

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Dickson (Williston) DMA, the Missouri county in the Omaha DMA, and the West Virginia county in the Roanoke-Lynchburg DMA. We include translators, low-power stations and Class A stations in this analysis.

<sup>85</sup> Because we report the household-weighted average of the number of stations received across the census blocks that make up each state segment, the resulting number of stations can be less than one or contain a fraction of a station. For example, if a state segment consists of two census blocks and the first census block has 100 households and receives one broadcast station and the second census block also has 100 households but receives no broadcast stations, then the household-weighted average for this state segment is 0.5 (*i.e.*,  $[(100 \times 1) + (100 \times 0)]/200 = 0.5$ ), signifying that some households in the state segment do not receive any broadcast stations while others do. *See also* n. 116, *infra*.

<sup>86</sup> Oregon households located within the Boise DMA, while unable to receive Oregon stations via DBS or over the air, are watching a station licensed to Oregon through an MVPD. When analyzing access to in-state programming via MVPDs, we include digital multicast signals. Multicasting allows broadcast stations to offer digital streams or channels (*i.e.*, digital multicast signals) of programming simultaneously, using the same amount of spectrum previously required for analog programming. *See* Federal Communications Commission, *DTV.gov: What is DTV?* <http://www.dtv.gov/whatisdvtv.html>. *See also* Section III. B.

<sup>87</sup> For a more detailed discussion of how we used Nielsen data, *see* Section III. B.

<sup>88</sup> To clarify the content of Appendix A, we explain how to read the table, using Alabama as an example, as follows: The state of Alabama has 1,883,791 households. Of those, 882,316, or 46.80 percent, can receive at least one out-of-state broadcast station. In addition, 2,118 Alabama households, or 0.10 percent, receive only out-of state broadcast stations.

<sup>89</sup> Estimates are from 2010 Bureau of Census data.

- The number of households in the state that receive the signal of at least one out-of-state broadcast station;<sup>90</sup>
- The percentage of the state's households that receive the signal of at least one out-of-state broadcast station;<sup>91</sup>
- The number of households in the state that receive the signal of only out-of-state broadcast stations;<sup>92</sup> and
- The percentage of households in the state that receive the signals of only out-of-state broadcast stations.<sup>93</sup>

The attached Appendix B provides the granular information that we used to compile the aggregate values contained in Appendix A. For each state, Appendix B presents a complete list of out-of-state broadcast television stations received in at least one census block in the state. For each out-of-state broadcast television station, Appendix B shows the:

- State where households receive a broadcast station;
- Call sign of the broadcast station;
- Network affiliation (if known);
- Type of service (*i.e.*, full-power, low-power, Class A, translator);<sup>94</sup>
- State of license of the broadcast station;
- Community of license of the broadcast station;
- The number of households in the state that receive the signal of that broadcast station;
- The percentage of households in the state that receive the signal of that broadcast station; and
- Total number of households in the state.

30. To calculate the values contained in this portion of the Report, Bureau staff estimated which broadcast television stations are received in each census block and used 2010 Census Bureau data to estimate the number of households in each census block.<sup>95</sup> First, we estimated the households served by

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<sup>90</sup> The estimate is derived by summing all the households in all the census blocks that receive at least one out-of-state broadcast station. Our estimate includes households that only receive stations licensed to a different state and households that receive stations from their own state as well as from a different state.

<sup>91</sup> The estimate is derived by dividing the number of households that receive at least one out-of-state broadcast station by the total number of households in the state.

<sup>92</sup> The estimate includes households that receive at least one out-of-state broadcast station but no in-state broadcast stations.

<sup>93</sup> The estimate is derived by dividing the households that receive only out-of-state broadcast stations by the total number of households in the state.

<sup>94</sup> The station types are identified in Appendix B as follows: CL-A = digital or analog Class A station, LPTV = digital or analog low-power television station, MAIN = full-power station, PUB = full-power educational or public television station, SAT = full-power satellite station and TRLT = analog or digital translator.

<sup>95</sup> Census blocks are statistical areas bounded by visible features, such as streets, roads, streams and railroad tracks, and by non-visible boundaries, such as selected property lines and city, township, school district and county limits, and short line-of-sight extensions of streets and roads. Generally, census blocks are small in area; for example, a block in a city bounded on all sides by streets. Census blocks in suburban and rural areas may be large, irregular, and bounded by a variety of features, such as roads, streams, and transmission lines. In remote areas, census blocks may encompass hundreds of square miles. Census blocks do not cross state lines. Census blocks cover the entire territory of the United States, Puerto Rico, and the Island Areas. Census blocks nest within all other tabulated (continued....)

every broadcast television station. For all operational full-power broadcast stations as of June 10, 2011, we predicted signal strength at the internal point<sup>96</sup> of each census block using a Longley-Rice based computer model similar to that described in OET Bulletin No. 69<sup>97</sup> and utilized by the DTV Mapping Tool.<sup>98</sup> We did not calculate interference between broadcast stations. If the predicted signal level of a broadcast station exceeded the defining field strength at the internal point, we estimated that all of the households in that census block received the broadcast station.<sup>99</sup> For low-power broadcast stations operational as of June 21, 2011, we predicted service using the contours available on the Commission's website.<sup>100</sup> If the internal point of a census block fell within the contour of a broadcast station, we estimated that all of the households in that census block received the broadcast station. Our approach matches a predicted broadcast signal contour with the internal point of a census block to determine whether a census block receives, or does not receive, a broadcast station. In this Report, we do not use a predicted broadcast signal contour to decide whether an individual household receives, or does not receive, a broadcast station.

31. To estimate the number of households in a state that receive broadcast stations licensed to a different state, Bureau staff aggregated all the households in all the census blocks that receive one or more out-of-state broadcast station(s) and calculated the percent of all households in the state that this total represents. Our estimate includes full-power, low-power, Class A, and translator broadcast stations. Although Section 304(1) only requires us to estimate the number of households that receive out-of-state broadcast stations, we also used the same methodology described above to estimate the number and percent of households in each state that are only able to receive out-of-state broadcast stations and do not receive the signals of any in-state broadcast stations. We believe that this additional information, which is beyond what was required by the statute, provides another useful means to assess the extent to which households in each state are unable to receive any in-state broadcast stations.

#### **B. Section 304(2) Findings: Data Analysis of Consumer Access to In-State Broadcast Programming**

32. The Bureau's analysis of the extent to which consumers in each local market have access to in-state broadcast programming over the air or from an MVPD is contained in aggregate form in

(Continued from previous page) \_\_\_\_\_

census geographic entities and are the basis for all tabulated data. See 2010 Census Geographic Terms and Concepts (2010), [http://www.census.gov/geo/www/2010census/GTC\\_10.pdf](http://www.census.gov/geo/www/2010census/GTC_10.pdf).

<sup>96</sup> The internal point of a census block is a set of geographic coordinates (latitude and longitude) that is located within a census block. Specifically, a single point is identified for each census block. For many census blocks this point represents the approximate geographic center of the census block. If the shape of the census block causes this point to be located outside the boundary of the census block or in a water body, it is relocated to land area within the census block. See [http://www.census.gov/geo/www/geo\\_defn.html#InternalPoint](http://www.census.gov/geo/www/geo_defn.html#InternalPoint).

<sup>97</sup> OET Bulletin No. 69 (Feb. 6, 2004) provides guidance on the use of the Longley-Rice propagation model and U.S. census blocks to evaluate TV service coverage and interference. The bulletin is available at <http://www.fcc.gov/oet/info/documents/bulletins/#69>. The computer model used for this Report is similar to the OET-69 model but was custom written for the efficiency of the DTV mapping tool. Most of the same assumptions were used for the planning factors. The differences are mainly in service area boundaries, the terrain sampling algorithm and how interference is handled. The results of our model and the OET-69 model have been validated to be very similar.

<sup>98</sup> See <http://www.dtv.gov/maps>. Our analysis was based on the Longley-Rice propagation model, not the Individual Location Longley Rice (ILLR) methodology used to determine "served" and "unserved" households pursuant to 17 U.S.C. § 119.

<sup>99</sup> The defining field strength comes from OET Bulletin No. 69.

<sup>100</sup> See [http://transition.fcc.gov/Bureaus/MB/Databases/tv\\_service\\_contour\\_data/readme.html](http://transition.fcc.gov/Bureaus/MB/Databases/tv_service_contour_data/readme.html).



Appendix C.<sup>101</sup> Although we define a local market as the DMA, our analysis for Section 304(2) takes account of the fact that many DMAs cross state boundaries and estimates access to in-state broadcast programming on a more granular level – specifically state segments.<sup>102</sup> The appendix provides the following information for each DMA:

- The DMA name in which households have access to broadcast stations;
- The DMA’s rank as of the 2010-2011 television season;<sup>103</sup>
- The DMA state segment;<sup>104</sup>
- The number of households in each DMA state segment;<sup>105</sup>

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<sup>101</sup> To clarify the content of Appendix C, we explain how to read the table, using the Abilene-Sweetwater DMA as an example, as follows: There are 116,200 households in the Texas state segment which represent all of this DMA’s households. Nielsen data indicate that at least 2.5 percent of the households within this state segment watched each of 15 Texas stations during February 2011. On average, households in the Texas state segment receive 3.99 full-power stations and 6.47 stations when full-power and low-power stations are included. In addition, DISH and DIRECTV carry seven and six Texas broadcast stations, respectively, in the Abilene-Sweetwater DMA.

<sup>102</sup> To clarify the content of Appendix C, we explain how to read the table, using the Albany-Schenectady-Troy DMA as an example, as follows: There are 55,800 households in the Massachusetts state segment, representing 9.92 percent of this DMA’s households. Nielsen data indicate that at least 2.5 percent of the households within the Albany-Schenectady-Troy DMA watched each of three Massachusetts stations during February 2011. On average, households in the Massachusetts state segment receive 2.51 full-power stations and 4.13 stations when full-power and low-power stations are included. In addition, DISH and DIRECTV each carry one Massachusetts broadcast station in the Albany-Schenectady-Troy DMA. There are 491,500 households in the New York state segment, representing 87.39 percent of this DMA’s households. Nielsen data indicate that at least 2.5 percent of the households within the Albany-Schenectady-Troy DMA watched each of 13 New York stations during February 2011. On average, households in the New York state segment receive 7.65 full-power stations and 10.45 stations, when full-power and low-power stations are included. In addition, DISH and DIRECTV each carry six New York broadcast stations in the Albany-Schenectady-Troy DMA. There are 15,100 households in the Vermont state segment, representing 2.68 percent of this DMA’s households. Nielsen data indicate that no Vermont stations were watched by at least 2.5 percent of the households within the Albany-Schenectady-Troy DMA during February 2011. On average, households in the Vermont state segment receive 0.29 full-power stations and 0.94 stations when full-power and low-power stations are included. In addition, neither DISH nor DIRECTV carried any Vermont broadcast stations in the Albany-Schenectady-Troy DMA. In this regard, there are three legal exceptions in the copyright rules that permit DBS operators, if they desire, to offer in-state, out-of-market stations in Vermont, New Hampshire, Oregon and Mississippi. *See* 47 U.S.C. § 122(a)(4). Based on the information in the record, including the Section 305 reports submitted by DIRECTV and DISH, it does not appear that either satellite carrier is offering in-state stations pursuant to these voluntary provisions at this time.

<sup>103</sup> Nielsen ranks DMAs every television season based on the total number of television households.

<sup>104</sup> For DMAs that do not cross state borders, this is the state where all of the counties assigned to the DMA are located. For DMAs that cross state borders, this is the state where all of the counties in the state segment of the DMA are located.

<sup>105</sup> In contrast to Appendix A, which uses estimates directly from the Census Bureau, these state segment estimates are based on Media Bureau staff analysis of data from Nielsen. In some cases, Nielsen splits counties between different DMAs (*e.g.*, the northern portion of Apache County in Arizona is assigned to the Albuquerque-Santa Fe DMA, while the southern portion is assigned to the Phoenix (Prescott) DMA. Because we are evaluating data on a DMA basis and DMAs are a creation of Nielsen, we believe that Nielsen’s internal estimates are the best source of data for Section 304(2). For DMAs that are located in a single state, the total number of households in the local market is the same as the total number of households in the DMA. For a DMA that crosses state boundaries, the total number of households in a state segment will be less than the total number of households in the DMA but the total number of households in the combined state segments of the DMA will be the same as the total number of households in the DMA.

- The percentage of DMA households in the DMA state segment;<sup>106</sup>
- The number of in-state broadcast stations, whether received in a television household over the air, from a cable system, from a DBS operator, or from another MVPD, as measured by Nielsen within each DMA, by DMA state segment;<sup>107</sup>
- The household-weighted average number of in-state full-power broadcast stations received over the air;<sup>108</sup>
- The household-weighted average number of all in-state broadcast stations received over the air by households living within each state segment;<sup>109</sup>
- The number of in-state broadcast stations carried by DISH; and
- The number of in-state broadcast stations carried by DIRECTV.<sup>110</sup>

33. The attached Appendices D and E provide the granular information that we used to compile the aggregate values contained in Appendix B.<sup>111</sup> For each DMA state segment, Appendix D provides information on all in-state broadcast television stations received over the air in at least one census block within that state segment. For each in-state broadcast station, Appendix D provides the following:

- DMA name in which households can receive a station's signal;
- DMA state segment and station's state of license;
- Call sign of the broadcast station;
- The broadcast station's type of service (*e.g.*, full-power, low-power, Class A, translator);<sup>112</sup>
- Broadcast station's community of license;
- The number of households within each DMA state segment that receive the broadcast station;
- The percentage of households within each DMA state segment that receive the broadcast station;
- The number of households in the DMA state segment;<sup>113</sup> and
- The station's DMA as assigned by Nielsen for the 2010-2011 television season.

34. For each DMA state segment, Appendix E provides information on all in-state broadcast stations carried by DISH and DIRECTV. We include each station that is carried by at least one of the DBS operators. For each in-state broadcast station, Appendix E provides the following:

<sup>106</sup> For DMAs that are located in a single state, the percent of households in the DMA is 100 percent. For a DMA that crosses a state's boundaries, the percent of households in the local market is less than 100 percent but the percent of households in the combined state sections of the DMA is 100 percent.

<sup>107</sup> This number includes multicast signals. *See n. 86, supra.*

<sup>108</sup> The estimates include only full-power in-state broadcast stations.

<sup>109</sup> The estimates include all in-state broadcast television stations (*i.e.*, full-power, low-power, Class A, and translator stations).

<sup>110</sup> The DBS numbers include multicast signals. *See n. 86, supra.*

<sup>111</sup> Our sources include BIA/Kelsey, Nielsen, DISH, DIRECTV and individual broadcast stations' websites.

<sup>112</sup> The stations' types of service are identified in Appendix D are as follows: CA = analog Class A station, DC = digital Class A station, DT = full-power digital station, LD = low-power digital station or low-power digital translator, TV = full-power station, and TX = analog translator or analog low-power station.

<sup>113</sup> When measuring the number of households that could receive a broadcast station over the air, the Media Bureau was unable to divide counties based on Nielsen's internal methodology. Thus, for example, while Nielsen assigns portions of Apache County in Arizona to both the Albuquerque-Santa Fe DMA and the Phoenix (Prescott) DMA, for the purpose of this analysis we assigned the entire county to the Albuquerque-Santa Fe DMA. In this chart, we use 2010 Census data, rather than Nielsen's household estimates as of the 2010-2011 television season.

- Name of the DMA in which households can receive a broadcast station from DISH and/or DIRECTV;
- DMA state segment and station's state of license;
- Call sign of the broadcast station;
- Network affiliation of the station;
- The broadcast station's type of service (*e.g.*, full-power, low-power, Class A, translator, digital multicast);<sup>114</sup>
- Broadcast station's community of license;
- Whether the station's signal is carried by DISH;
- Whether the station's signal is carried by DIRECTV; and
- The station's DMA as assigned by Nielsen for the 2010-2011 television season.

35. *Access to In-State Broadcast Programming Over the Air.* For access to in-state broadcast stations over the air, we consider all licensed in-state broadcast stations in our analysis, not just the "Big Four" broadcast network affiliates as proposed by some commenters.<sup>115</sup> We use the same methodology in Section 304(2) that we used in Section 304(1) above to estimate which in-state broadcast stations are predicted to be received in each census block. We aggregated census block data to estimate access to in-state broadcast stations by DMA state segment. Since the households in different census blocks of a DMA state segment may not receive the same number of in-state broadcast stations, we calculated a household-weighted average for each DMA state segment, weighing the number of in-state stations in a census block against the number of households in the census block.<sup>116</sup>

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<sup>114</sup> The stations' types of service are identified in Appendix E are as follows: CL-A = digital or analog Class A station, LPTV = digital or analog low-power television station, MAIN = full-power station, PUB = full-power educational or public television station, SAT = full-power satellite station, and TRLT = analog or digital translator.

<sup>115</sup> In Appendix C of this Report, we include all in-state broadcast television stations that can be received in each state segment, including broadcast stations that are owned and operated or affiliated with ABC, CBS, NBC and Fox, the Big Four broadcast networks. Several commenters advocate that the Commission break out and separately analyze the stations affiliated with the Big Four networks. ACA Comments at 3-4. DISH argues that the definition of orphan county should include those counties in which citizens cannot receive a substantially complete package of local broadcast stations from Big Four broadcasters. DISH Reply at 4. They reason that these are the local stations that produce and carry more of the type of programming of concern to Congress. ACA Comments at 3; DISH Comments at 2. Specifically, DIRECTV recommends that the Commission only consider stations that actually provide the news and informational programming at issue here. DIRECTV Reply Comments at 2. Other commenters disagree that access to the Big Four network affiliates should be the focus of this Report. Association of Public Television Stations Reply Comments (APTS) at 2 (noting that public television stations provide in-state programming and the public deserves to receive such programming). Because we believe that stations not affiliated with the Big Four broadcast networks provide in-state programming, we have not limited our analysis to those stations. We note that all broadcasters, not just those affiliated with the Big Four networks, have the option to offer that programming which best serves their viewers, including local programming and that those choices may change over time. For example, we note that local newscasts are broadcast by KXLN, the Univision station in Houston and WPIX, the My Network Television affiliate in New York. See <http://www.bizjournals.com/houston/news/2011/05/27/univision-newscasts-top-houston-market.html>; <http://affiliate.zap2it.com/tv/pix-news-at-ten/EP01114885>. As such, our analysis regarding access to in-state broadcast programming considers all licensed in-state broadcast stations. We do not believe that Section 304(2) requires an analysis of the specific programs offered by individual stations.

<sup>116</sup> For example, if a DMA state segment consists of two census blocks and the first census block has 100 households and receives one broadcast station and the second census block also has 100 households but receives two broadcast stations, the household-weighted average of number of broadcast stations for the DMA or state segment of the DMA would be 1.5 broadcast stations  $[(100 \times 1) + (100 \times 2)]/200 = 300/200 = 1.5$ .

36. We calculated two household-weighted averages to provide a range of estimates of the in-state broadcast programming available over the air because we have no systematic method to determine the extent to which stations are broadcasting programming that was originated in-state. The first household-weighted average includes full-power stations only.<sup>117</sup> The second household-weighted average includes all types of stations (*i.e.*, full-power, low-power, Class A, and translators). Because some low-power broadcast stations and Class A broadcast stations originate in-state broadcast programming, and translators extend the geographic reach of broadcast programming, estimates based only on full-power broadcast stations may understate the extent to which in-state broadcast programming is available over the air. Some low-power television stations, Class A stations and translators, however, may carry programming that originates from out-of-state broadcast stations and, therefore, estimates that include all broadcast stations may overstate the extent to which in-state broadcast programming is available over the air.<sup>118</sup> Likewise, full-power satellite stations may carry programming that originates from out-of-state broadcast stations. Because we have no systematic way to track the parent-satellite relationships of all full-power satellite stations, for the purpose of this Report we used the satellite stations' state of license as a proxy for "in-state programming." The two weighted averages create a low and high benchmark to estimate the extent of in-state broadcast programming available over the air.

37. *Access to In-State Broadcast Programming From an MVPD.* Section 304(2) also requires us to analyze consumers' access to in-state broadcast programming from an MVPD. In responding to this question we used Nielsen data. That data identify broadcast television stations received by households in each DMA, whether the particular household receives the station from an over-the-air broadcast, from a cable system, from a DBS operator, or another type of MVPD.<sup>119</sup> The stations included in the data, however, are only those that earned a cumulative rating, referred to as a cume, of at least 2.5 percent during a specific time period.<sup>120</sup> Specifically, for each DMA, during an average quarter-hour from Sunday through Saturday, 7:00 am through 1:00 am, a minimum of 2.5 percent non-duplicated households within that DMA watched the specified television station. The data include stations assigned to the specified DMA as well as stations assigned to other DMAs. For this reason, the number of in-state stations measured by Nielsen may exceed the number of in-state stations received by households over the air or carried by a particular MVPD.<sup>121</sup> For each DMA state segment, we summed the number of stations

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<sup>117</sup> Our analysis does not count digital multicast streams. This method measures the availability of in-state broadcast stations based on their signal strength and not their programming. In addition, we note that some satellite stations retransmit programming from a parent station licensed to a different state, but we have no systematic method to evaluate the extent to which this occurs and count satellite stations in their state of license.

<sup>118</sup> For example, translators account for most of the stations in the Nevada section of the Salt Lake City DMA. If these translators carry programming that originates from broadcast stations in Nevada, then households in the Nevada segment of the Salt Lake City DMA have significant access to in-state broadcast programming. We suspect, however, that many of the translators providing service to households in the Nevada segment of the Salt Lake City DMA carry programming that originates from broadcast stations in Utah and that our estimate for all broadcast stations overstates the extent to which in-state broadcast programming is available over the air to these households.

<sup>119</sup> In addition to cable and DBS, the Nielsen data include viewing of broadcast stations via C-band satellite dishes, satellite master antenna systems (also called SMATV systems or private cable operator (PCO) systems), and wireless cable systems (multichannel, multipoint distribution or MMDS systems). *See* <http://nielsenmedia.com/glossary/>.

<sup>120</sup> Four times a year (*i.e.*, February, May, July, and November, known as ratings "sweep" periods) Nielsen measures audiences for television stations assigned to all 210 DMAs and publishes this information in its Viewers in Profile Reports. This is the source for the information provided by Nielsen. The data presented herein is for the month of February 2011.

<sup>121</sup> That is, people can watch stations over the air from beyond the DMA and MVPDs carry many stations whose signals are not received over the air. Thus, the Nielsen data is a useful measure of what households can and do (continued....)

that met Nielsen's minimum cume threshold within each DMA according to each station's originating state of license. In addition to full-power stations, the totals may include translators, Class A stations, low-power stations, and digital multicast channels.<sup>122</sup> Each station is counted separately.

38. Pursuant to the direction in Section 304(2), we also provide specific information describing the in-state broadcast programming available to DBS subscribers.<sup>123</sup> DISH and DIRECTV submitted data to the Commission relevant to this analysis pursuant to Section 305(a)(1)(A) of STELA.<sup>124</sup> In their reports, for each DMA, DISH and DIRECTV identified the local broadcast television stations they carry along with each station's network affiliation.<sup>125</sup> In addition to full-power stations, the totals may include translators, Class A stations, low-power stations, and multicast signals, if DISH and DIRECTV carry them. We updated the information provided in companies' submissions to reflect their carriage of local broadcast stations as of June 2011 using Commission and public sources.<sup>126</sup> In addition, DISH and DIRECTV supplied Bureau staff with information on distant signals that they import into "short markets" pursuant to a distant signal license in Section 119 of Title 17.<sup>127</sup> They also supplied information on significantly viewed and in-state signals provided to subscribers not residing in the relevant station's DMA pursuant to Sections 122(a)(2) and 122(a)(4) of the Copyright Act.

39. For each DMA state segment, we aggregated the number of stations that DISH and DIRECTV carry according to each station's originating state of license. In addition to carrying full-power stations, DISH and DIRECTV carry some translators, Class A stations, low-power stations, and digital multicast channels. We counted each of these stations separately. In contrast to our over-the-air

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actually watch. We note, however, that Nielsen's statistical criteria exclude stations that get less than 2.5 percent cume. As a result, although less popular, stations offering in-state programming may be available and watched but not reflected in Appendix C.

<sup>122</sup> Nielsen's measurement of television stations' audiences includes multicast signals that meet its minimum reporting requirements.

<sup>123</sup> In the case of DBS carriage, the analysis includes statewide networks, *e.g.*, "University of North Carolina Television," because these networks provide in-state programming.

<sup>124</sup> See STELA § 305. Section 305(a)(1) requires each satellite carrier to submit an annual report to the Commission setting forth:

- A. each local market in which it—
  - (i) retransmits signals of 1 or more television broadcast stations with a community of license in that market;
  - (ii) has commenced providing such signals in the preceding 1-year period; and
  - (iii) has ceased to provide such signals in the preceding 1-year period; and detailed information regarding the use and potential use of satellite capacity for the retransmission of local signals in each local market.

<sup>125</sup> Letter from Michael Nilsson, Counsel for DIRECTV, Inc., to Marlene H. Dortch, Secretary, FCC (regarding *Satellite Television Extension and Localism Act of 2010, Section 305 Report* (revised)) (Jan. 3, 2011) (DIRECTV Section 305 Report Jan. 3, 2011 Letter); Letter from Alison A. Minea, Counsel for DISH Network L.L.C., to Marlene H. Dortch, Secretary, FCC (regarding *Satellite Television Extension and Localism Act of 2010, Section 305 Report* (revised)) (Dec. 28, 2011) (DISH Section 305 Report).

<sup>126</sup> Bureau sources include CDBS and the Media Access Pro Television database from BIA Advisory Services. In addition, Bureau staff reviewed the websites of DISH and DIRECTV (to confirm which stations they carried in which markets), television networks (to confirm network affiliation), and stations (to confirm multicast signals, affiliations and call signs).

<sup>127</sup> 17 U.S.C. § 119.



analysis, in this portion of the Report we assumed that each household within each DMA state segment is equally able to receive all signals carried by DISH or DIRECTV.<sup>128</sup>

40. Section 304(2) directs us to analyze the extent to which consumers have access to in-state broadcast programming from MVPDs. Specifically, segregated data regarding access to in-state broadcast stations carried by cable systems in a DMA or DMA state segment beyond what is described in the Nielsen data is not available to the Commission on a systematic basis. The Commission collects cable system data in its Annual Report of Cable Television Systems (FCC Form 325). Cable systems subject to the reporting requirement provide the Commission with a list of the broadcast stations carried by each reporting system. However, the data cable companies provide to the Commission does not permit analysis on a comparable geographic basis to data available for over-the-air broadcast stations, DBS carriage of broadcast stations, or the Bureau of the Census household data. The geographic configuration of a cable system is determined by its physical system, which consists of a cable system technically integrated to a principal headend. Cable system data is provided for the entire system. It does not correspond to census blocks, counties, DMAs, or other common geographic units and, therefore, cannot be aggregated or disaggregated to provide estimates for those geographic units or households.<sup>129</sup> Moreover, only a limited number of cable systems must file FCC Form 325. All cable systems with more than 20,000 subscribers are subject to the reporting requirement as are a sample of cable systems with fewer than 20,000 subscribers.<sup>130</sup> Other than on a sample basis, cable systems with fewer than 20,000 subscribers, however, are not required to report information to the Commission. Many of the geographic areas where orphan counties are located are not served by cable systems subject to the requirement.<sup>131</sup>

41. To supplement our analysis in response to Section 304(2) of STELA, we have undertaken a number of case studies for the specific counties in which commenters have indicated a lack of in-state broadcast programming. For each case, we examine the extent to which consumers have access to in-state programming over the air, from cable operators, and from DBS operators on a county basis within each relevant DMA, rather than on a state segment basis. For this analysis, we describe the availability of in-state broadcast stations and the carriage of in-state stations by DBS operators and cable systems. These case studies are contained in the attached Appendix F.

42. In the case studies, to determine the access to in-state broadcast stations over the air and from DBS operators, we used the same methodology as we employed for Appendix C. For cable system information, we identified the cable systems in the counties and communities under study using the

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<sup>128</sup> DIRECTV carries each local station throughout that portion of the local market covered by the spot beam on which it is carried. In many cases, the spot beam covers the entire local market, but in some cases the spot beam does not cover relatively small and less populated portions of a market. DIRECTV Comments at 9. In this Report, we assume that every household in a state segment has access to the broadcast television stations carried by DIRECTV and DISH. As such, our approach may overstate the extent of access to in-state broadcast programming from DBS.

<sup>129</sup> We also have no reliable method for converting the geographic area of a cable system to census blocks, counties, or other common geographic units.

<sup>130</sup> The Commission's reporting requirement collects additional information on a random sample of cable systems with between 5,000 and 20,000 subscribers and a random sample of cable systems with fewer than 5,000 subscribers. Specifically for the filing year 2010, the FCC Form 325 collects data from all 613 cable systems with more than 20,000 subscribers, 279 of the 499 cable systems with 5,000 to 20,000 subscribers, and 170 of the 4,427 cable systems with less than 5,000 subscribers.

<sup>131</sup> For example, none of the six cable systems in La Plata County, Colorado are included in the 2010 FCC Form 325 sample. See Federal Communications Commission, Cable Operations and Licensing System (COALS) database, located at <http://fjallfoss.fcc.gov/coals7/> (list of all cable systems) and FCC List of PSIDs to File Year 2010 FCC Form 325, located at [http://transition.fcc.gov/mb/engineering/2010\\_PSIDs\\_fcc\\_form325.xls](http://transition.fcc.gov/mb/engineering/2010_PSIDs_fcc_form325.xls).

Commission's Cable Operations and Licensing System.<sup>132</sup> To determine the carriage of in-state broadcast stations, we used cable operators' 2010 FCC Form 325 submissions, to the extent they are available, and publicly available information, including the Warren Television & Cable Factbook data and the websites of individual cable systems.<sup>133</sup> As the data presented in Appendix F demonstrate, in many cases where cable systems exist in underserved areas, those systems offer subscribers some in-state stations even when the subscribers are located in counties assigned to out-of-state DMAs. On the basis of the case studies, it appears that DBS operators are less likely to include in-state stations in their channel line-ups even if in-state stations, such as significantly viewed stations, may be included in their local-into-local service under existing rules and law. However, a limitation of the available data is that, to the extent a cable system exists in a particular county, we cannot determine how many households, if any, are actually passed by the cable system. Thus, for certain households, DBS could be the only MVPD option.

### C. Additional Data From Commenters Regarding Section 304(1) and Section 304(2) Analysis

43. NAB included a study responsive to Sections 304(1) and 304(2) in its comments in this proceeding. While we do not rely on the NAB study for purposes of this Report, the NAB data appear to be consistent with and confirm the overall analysis otherwise contained in this Report. Specifically, NAB's comments include a study performed by BIA/Kelsey which provides data on a county and television market basis describing the: (1) over-the-air reach of full-power broadcast stations on a county and DMA level; (2) numbers of in-state and out-of-state full-power stations available to consumers via over-the-air transmission on a county and DMA basis; (3) numbers of in-state and out-of-state stations carried across all cable reporting units and television markets; (4) percentages of cable and satellite subscribers who can receive at least one in-state television station; and (5) number of in-state and out-of-state stations received by subscribers of DISH and DIRECTV.<sup>134</sup> NAB's data, which is available in the record of this proceeding, provide useful estimates of the availability of in-state and out-of-state broadcast stations.<sup>135</sup> As noted above, we are unable to compile separate data regarding access to in-state stations from cable operators consistent with the geographic units for which we report over-the-air and DBS access. The data on cable access provided by NAB also cannot be compared to the data for over-the-air broadcast stations that we provide on a census block basis or the DBS data reported on a state segment basis. It is based on cable systems' semi-annual Statements of Accounts filed with the Copyright Office.<sup>136</sup> Cable systems report to the Copyright Office on a reporting unit basis that identifies a principal

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<sup>132</sup> See n.131, *supra*.

<sup>133</sup> Warren Communications News, Television & Cable Factbook Online, <http://www.tvcablefactbook.com/>.

<sup>134</sup> NAB Comments at 15, citing NAB Comments at Attachment A, Analysis of In-State and Out-of-State Reach by Local Television Stations, Dr. Mark R. Fratrick, BIA/Kelsey (Jan. 24, 2011). NAB supplemented this study in its reply comments to demonstrate that over-the-air access to in-state broadcast television station signals is even higher than previously noted in their comments when TV translators, Class A stations and low-power TV stations are included. NAB Reply Comments at 2, citing NAB Reply Comments at Attachment A, Further Analysis of In-State and Out-of-State Reach by Local Television Stations, Dr. Mark Fratrick, BIA/Kelsey (Feb. 22, 2011).

<sup>135</sup> While we are not using the data submitted by NAB for our findings in this Report, we note that we used several procedures similar to those used in NAB's separate data set, including the method of counting in-state stations and weighting by census block populations. However, our analysis differs from NAB's in a few respects and, we believe, more accurately reflects the questions contained in Section 304. Specifically, we used the recently available 2010 household information, as opposed to the 2000 population data used in the materials submitted by NAB. We also used state segment data, rather than the county data submitted by NAB, because it allowed us to better identify the geographic areas within DMAs that may lack access to in-state stations.

<sup>136</sup> The data were for the first report period (January-July) of calendar year 2009. See NAB Comments, BIA/Kelsey Study at 9-10.

city. NAB assigns stations based on the location of the principal city, although reporting units can cross multiple counties, state boundaries, and television markets, and the actual location of the cable subscribers cannot be ascertained. Recognizing the limits of our analysis, which does not provide separate data for access to in-state broadcast stations from cable systems, we believe that using the Nielsen data to estimate in-state broadcast station availability on a DMA state segment basis reveals which geographic areas have little or no access to in-state broadcast programming in response to the directive of Section 304(2).

44. In support of its contention that there is ample access across the country to in-state broadcast outlets, NAB asserts that, on a weighted basis, consumers across all counties nationwide receive over the air an average of 12.2 in-state full-power television stations and an average of 3.8 out-of-state full-power stations.<sup>137</sup> When multicast stations are considered, according to NAB, on average, consumers can receive over the air a total of 18.8 “program streams” from commercial in-state full-power television stations and 6.1 program streams from non-commercial in-state stations.<sup>138</sup> In its reply comments, NAB includes data regarding consumers’ additional access to television translators, Class A stations and low-power television stations to supplement previous BIA/Kelsey study and concludes that, when these broadcast facilities are factored in, 99.24 percent of the total U.S. population has access to at least one in-state television station over the air.<sup>139</sup> Moreover, when local low-power television stations are considered, consumers across all counties nationwide, on a weighted basis, receive over-the-air 17.6 in-state television stations on average.<sup>140</sup> The BIA/Kelsey study further estimates that 99.9 percent of cable subscribers receive at least one in-state television station; 97.8 percent of DISH subscribers receive at least one in-state television station; and 93.9 percent of DIRECTV subscribers receive at least one in-state TV station.<sup>141</sup>

#### **D. Section 304(3) Report: Alternatives to DMAs for Defining Local Television Markets**

45. Section 304(3) of STELA requires the Commission to analyze “whether there are alternatives to the use of [DMAs] . . . to define local markets that would provide more consumers with in-state broadcast programming.”<sup>142</sup> In the Public Notice, the Bureau sought comment on three possible alternatives to the current use of DMAs: (1) define geographic viewing markets in terms of the 50 states plus the District of Columbia; (2) divide states into multiple markets based on the stations covering different portions of a particular state; or (3) modify DMAs so that they do not cross state lines by

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<sup>137</sup> NAB Comments at 2.

<sup>138</sup> NAB calculates these data on a weighted basis. NAB Comments at 2; NAB Reply Comments at 1-2.

<sup>139</sup> *Id.* at 1.

<sup>140</sup> *Id.* at 4. Commenters state that many counties receive only in-state translator, satellite, religious, or other independent stations that do not offer the in-state news, weather, emergency alerts, civic and cultural information, or sports programming that is the focus of this proceeding. These commenters contend that NAB seeks to minimize the problem of these counties by asserting that over-the-air reception by at least one in-state full power television station reaches 3,067 counties (out of 3,141 total counties nationwide). These commenters also fault NAB for failing to concede that not every broadcaster provides local programming, and that translator, national religious or foreign language stations generally do not provide viewers with the relevant local news, weather, civic, or sports coverage local consumers desire. *See, e.g.*, DIRECTV Reply Comments at 2, 4.

<sup>141</sup> NAB Comments at 3.

<sup>142</sup> STELA § 304(3). Title 17 of the U. S. Code, which delineates the scope of satellite copyright limitations on exclusive rights and secondary transmissions of local television programming by satellite providers, indicates that the term designated market area means “a designated market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.”

reassigning counties from one state currently included in the DMA of another state to a neighboring DMA in their home state.<sup>143</sup> We also sought comment on other alternatives to the current practices and procedures that might address the problems faced by underserved areas.<sup>144</sup>

46. In this Report, we examine a range of issues impacting the classification of geographic markets. As an initial matter, we discuss the advantages and disadvantages of retaining the existing DMA system. Next, we examine the alternatives to DMAs set forth in the Public Notice that propose the use of state boundaries to define local markets. While the record of this proceeding does not reflect any other proposals for alternatives to DMAs for defining local markets, the record does contain suggestions that could increase access to in-state broadcast stations. Accordingly, as a final matter, we explore these additional recommendations.

47. *Advantages and Disadvantages of the Existing DMA System.* Many commenters in this proceeding cite the positive attributes of the current DMA system. For example, some commenters point out that, under the existing system, television markets are geographic areas in which there is a close and natural nexus between television stations and their service areas; between population centers and their housing, labor, and economic patterns; between advertisers and their potential customers; and between consumers and their television viewing habits.<sup>145</sup> Thus, according to these commenters, redefining markets has the potential to disrupt television advertising markets, long-standing program exclusivity arrangements, carriage obligations of cable and satellite carriers, and local television station ownership structures, and to reduce the amount of locally relevant broadcast programming, including in-state programming.<sup>146</sup>

48. Specifically, commercial broadcasters opine that access to in-state or locally-oriented programming is not limited by consumers' access to the signals of television stations located in their home states.<sup>147</sup> Broadcasters contend that the Commission should take account of the availability of

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<sup>143</sup> Public Notice at 5. Under this approach, carriage of broadcast programming would apply to all in-state broadcast television stations and potentially expand the number of stations in a market, making many more television stations potentially eligible for mandatory carriage than are currently required to be carried. *Id.* The Bureau noted that this approach could significantly expand access of households to all in-state broadcast television stations. *Id.*

<sup>144</sup> *Id.* at 5.

<sup>145</sup> NAB Comments at 5; Local Television Broadcasters at ii, and 1-2 (urging the Bureau to reject the “false premise” that local service depends on state lines). Local Television Broadcasters includes Barrington Broadcasting Group, LLC, Belo Corporation, Bonten Media Group, LLC, Gannett Company, Inc., Gray Television, Inc., Meredith Corporation, Post-Newsweek Stations, Inc., and Raycom Media, Inc. These eight broadcast television station groups collectively operate 160 full power television stations in 107 markets nationwide. Joint Affiliates note that for purposes of the Census, the Office of Management and Budget appropriately recognizes that Metropolitan Statistical Areas can and do cross state lines. Joint Affiliates Comments at 4. *See also, generally,* Letter from Wade H. Hargrove, Counsel for the ABC Television Affiliates Association and Jonathan D. Blake, Counsel for the CBS Television Network Affiliates Association and the NBC Television Affiliates, to Marlene H. Dortch, Secretary, FCC (May 3, 2011) (Hargrove *et al.* May 3, 2011 *Ex Parte*).

<sup>146</sup> NAB Comments at 5; LIN Television Corporation Comments at 1-2, 3; Washington Association of Broadcasters Reply Comments at 6-8; Joint Television Network Affiliates Reply at 2 (Joint Affiliates Reply). Joint Affiliates further assert that undermining the free-market DMA system would imperil local television stations' advertising revenues which provide essential support for the production of local news, public affairs, weather and emergency information. *Id.*

<sup>147</sup> NAB Comments at 14-15. Washington State Association of Broadcasters agree, stating that simply because a television station is located in the same state as a particular viewer does not mean that the station is best suited to serve the needs and interests of that viewer, or that an in-state station is capable of delivering the programming most relevant to that viewer. Washington State Association of Broadcasters Reply Comments at 3-4. Local Television (continued....)



broadcast programming provided by out-of-state, but in-market stations.<sup>148</sup> They point to the example of out-of-state counties that they claim are best served by the content of stations in the DMA. For instance, they assert the stations in the Washington, D.C. (Hagerstown) DMA, which is comprised mainly of television stations that are licensed in Washington, D.C., routinely air programming that serves the needs and interests of Virginia and Maryland residents.<sup>149</sup> They also highlight Station WQOW in Omaha, Nebraska, which they say provides local news, weather and public affairs programming in a market that includes 14 Nebraska counties and nine Iowa counties.<sup>150</sup> Broadcasters conclude that Station WQOW's coverage is reflective of life in the greater market area, and stations in Des Moines, Iowa do not provide comparable coverage of local political, community, and school events for those areas in Iowa included in the Omaha DMA.<sup>151</sup> These commenters maintain that modifying the current DMA regime would cause consumers to lose access to out-of-state broadcast stations that are more responsive to the concerns of their local community than the programming content carried on in-state stations.<sup>152</sup>

49. MVPD commenters recommend policies that balance the desire for more in-state local programming with the reality that MVPDs have developed their businesses and delivery of video

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Broadcasters assert that inasmuch as 98 of the nation's 210 DMAs cross state boundaries, the Media Bureau should reject the false premise that local service depends on state lines. Local Television Broadcasters Comments at ii.

<sup>148</sup> NAB Comments at 22; *see also* Washington State Broadcasters Association Reply Comments at 3 ("in-market television stations are best able to serve the needs of the DMA, including any counties or communities that may fall in an adjacent state").

<sup>149</sup> NAB Comments at 20. As noted above, in this Report we used "state of license" as a proxy for measuring "in-state programming" because there is no systematic means to assess the extent to which out-of-state, but in-market stations provide programming that addresses cross-state-border issues although we are aware that some broadcast stations located in one state may provide programming that addresses the concerns of consumers in a neighboring state. In the Washington, D.C. (Hagerstown) DMA, approximately 40 percent, 45 percent, and 11 percent of the DMA households are in the Maryland, Virginia, and District of Columbia state segments, respectively. However, we note that about 4.25 percent of the DMA's households are within West Virginia, and 0.26 percent are in Pennsylvania. *See* Appendix C. *See also* Hargrove *et al.* May 3, 2011 *Ex Parte*.

<sup>150</sup> Local Television Broadcasters Comments at 6.

<sup>151</sup> *Id.* at 6. The association offers several examples they believe demonstrate that the programming provided by local stations is more relevant and responsive to viewers' needs than that provided by distant but in-state stations. Some of the markets they discuss include Amarillo, Texas; Cincinnati, Ohio; Augusta, Georgia; and Memphis, Tennessee. Local Television Broadcasters Comments at 4-7. NAB agrees with these observations about the local relevance of in-market, but out-of-state broadcasters, noting that although these stations may be physically located in another state, they provide significant local coverage and such coverage is more relevant and responsive than the coverage provided by more distantly located stations in the same state. NAB Reply Comments at 6-7. *See also* Hargrove *et al.* May 3, 2011 *Ex Parte* at 3-18 (examples of out-of-state stations that provide local coverage).

<sup>152</sup> Joint Television Network Affiliates Reply Comments at 3, citing comments of National Cable and Telecommunications Association at 5-6. For example, Station KGW, Portland, Oregon is located in the Portland DMA which, in part, is comprised of five Washington counties which the Joint Television Network Affiliates claim collectively represent 17.4 percent of the total television households in the DMA. Station KGW has expended considerable news resources to cover emergency situations, including a major wildfire and related evacuations in the Columbia River Gorge near Lyle, Washington in 2010. Because the fire occurred hundreds of miles from the television stations in Seattle and Yakima, Washington, it would have been difficult for the Washington stations, which are located out of the Portland DMA, to respond and cover the breaking news event as quickly as Station KGW was able to do. *See* Local Television Broadcasters Comments at 8. We note that based on our internal estimates of data from Nielsen, households in the five Washington Counties comprise 17.75 percent of the households (not necessarily television households) within the Portland, OR DMA, as shown on Appendix C. National Cable and Telecommunications Association (NCTA) Comments at 6.



programming on the existing DMA regime.<sup>153</sup> Given those realities, they are concerned that replacing the DMA system would change the locations in which each broadcast station could – and in some cases must – be carried. Commenters express concern that wholesale changes to the current methodology for determining how television broadcast channels are delivered to consumers would upset the legitimate expectations of millions of viewers.<sup>154</sup>

50. Other commenters mentioned that Nielsen reevaluates its DMA assignments to accommodate changes in viewing patterns over time. Specifically, Nielsen tests geographic areas for retention and tests individual counties for DMA assignments and, subsequently, updates its DMA assignments annually.<sup>155</sup> Thus, in light of Nielsen’s assessments of changes in viewing patterns based on its audience surveys and other data, several commenters contend that Nielsen DMAs represent the most accurate system for determining the areas served by local stations.<sup>156</sup>

51. At the same time, some consumers express frustration with what they perceive as the limitations of the current DMA system, including Nielsen’s periodic evaluations of viewing preferences. In particular, one commenter stated that areas which need better access to in-state broadcast service tend to be smaller cities and towns, whereas DMAs incorporate large geographic areas because they are comprised of numerous counties.<sup>157</sup> Other commenters, such as David and Nancy Smith of La Plata County, Colorado, fault Nielsen audience surveys that attempt to discern viewer preferences.<sup>158</sup> They state that, although Nielsen routinely reports that viewers in La Plata County watch New Mexico broadcast stations, the term “preference” in Nielsen’s audience survey is misleading, because it presumes viewers have a choice, which they do not.<sup>159</sup> Mary Gilliam suggests that rather than using Nielsen’s surveys to determine viewing preferences, the Commission should allow consumers residing in counties assigned to an out-of-state DMA to inform their locally elected representatives about their preferences for local broadcast stations.<sup>160</sup>

52. *Using State Boundaries to Define Local Markets.* We solicited comment on three alternative proposals for using state boundaries to define local markets.<sup>161</sup> No commenters provided feedback on any specific advantages of realigning geographic areas along state boundaries.<sup>162</sup> Nonetheless, several

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<sup>153</sup> DIRECTV Comments at 1.

<sup>154</sup> DIRECTV Comments at 7.

<sup>155</sup> LIN Television Corporation Comments at 3.

<sup>156</sup> NAB Comments at 6; Washington State Association of Broadcasters Reply at 3, 5.

<sup>157</sup> Comments of C.M. Vogelsong (Mar. 7, 2011) at 1. Vogelsong, who resides in Riggins, Idaho, suggests that the Commission mandate that DBS services cover designated zip code areas without regard to DMA designations in order to serve residents in these smaller towns. *See also* n.172, *infra*.

<sup>158</sup> Comments of David and Nancy Smith (Jan. 23, 2011) at 1.

<sup>159</sup> Comments of David and Nancy Smith (Jan. 23, 2011) at 1.

<sup>160</sup> Comments of Mary Gilliam (Jan. 24, 2011) at 1-2.

<sup>161</sup> *See* ¶ 45, *supra*.

<sup>162</sup> Other commenters did generally address the concept of a state-based approach. For example, the League of Women Voters in La Plata County, Colorado express support both for defining geographic areas by state boundaries and for modifying DMAs so that they do not cross state lines. Letter from Stephanie Huss, President, League of Women Voters of La Plata County, Durango, Colorado, to Marlene H. Dortch, Secretary, FCC (Jan. 20, 2011) at 1. Huss states that her organization would support any alternative that allows La Plata citizens the right to choose their DMA so they can watch programming on in-state issues and local weather. *Id.* The comments indicate that the organization’s mission to encourage local civic engagement is made more difficult because the county is assigned to (continued....)

comments advocate use of a geographic market that reflects the importance of accessibility of in-state broadcast stations. In support of those concerns, commenters maintain that local television markets should be in-state and proximate to a local station's community, rather than far-flung areas hundreds of miles across state lines.<sup>163</sup>

53. Commenters opposed to state-based alternatives indicate that such approaches would simply "exchange one problem for another."<sup>164</sup> Specifically, DBS commenters indicate that defining markets by state boundaries may result in additional carriage obligations that may overburden satellite capacity.<sup>165</sup> Other commenters contend that governmental efforts to impose a new market structure on the television industry would result in a less efficient market and lead to a loss of in-state programming as well as a loss of local broadcast television programming.<sup>166</sup> They opine that government cannot increase the amount of in-state programming available to viewers by attempting to re-structure the television business along state lines because no other aspect of the television industry is organized that way. Changing established market definitions would pull apart the existing market areas, disproportionately impacting viewers in small, rural communities.<sup>167</sup> Moreover, commenters contend that the public interest would not be served by substituting state-based geographic areas for DMAs because DMAs are "intertwined" with the Communications and Copyright Acts, making any such change highly disruptive.<sup>168</sup> Commenters generally demonstrate support for private market approaches that permit, rather than require, MVPDs to

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the Albuquerque-Santa Fe DMA, and their broadcast stations only carry news on the New Mexico statehouse. *Id.* at 1; *see also* Comments of C.M. Vogelsong (Mar. 7, 2011); Board of County Commissioners of Garrett County, Maryland, Reply Comments at 2 (referring to the use of DMAs as a "one size fits all" approach).

<sup>163</sup> Letter from Benjamin L. Cardin, U.S. Senator (Maryland) and Barbara A. Mikulski, U.S. Senator (Maryland) to Julius Genachowski, Chairman, FCC (Mar. 4, 2011); *see also* Letter from Jeff Hoelsing, Superintendent, Mullen, Nebraska Public Schools, to Marlene H. Dortch, Secretary, FCC (May 23, 2011) at 1.

<sup>164</sup> DIRECTV Comments at 8. Commenters add that even if DMAs were changed to include in-state broadcast stations, there are various other regulatory provisions, including non-duplication and other exclusivity rules that may frustrate these attempts to design a geographic market based on state boundaries. For example, a cable operator might be unable to obtain consent from an in-state broadcast station to retransmit its signal, and presuming it could gain such consent, an out-of-state station located closer to the cable headend might exercise non-duplication rights that would make importation of that in-state, but more distant, station signal impossible. NCTA Comments at 6. Broadcasters agree stating that there is no public interest justification and no demonstrated need for a cable operator or satellite carrier to import a distant station's duplicative national network programming when a local station already broadcasts the very same programming. The network non-duplication rules require operators to black out network programming that duplicates network programming already available from the local affiliate. Joint Affiliates Reply Comments at 10.

<sup>165</sup> DIRECTV Comments at 7-8.

<sup>166</sup> LIN Television Corporation Comments at 3. *See also* Letter from Steven Lanzano, President and CEO of TVB (formerly the Television Bureau of Advertising) to Julius Genachowski, Chairman, FCC (Feb. 22, 2011) (Lanzano Feb. 22, 2011 *Ex Parte* Letter). Lanzano states that if the Commission implements either of the state-based proposals it would "throw the economic life of television advertising into disarray and harm local economies." *Id.* at 2. Lanzano adds that under proposed state boundary alternatives advertising costs would "soar" and merchants would have to buy ads in at least two different modified markets in order to reach the same households that advertisers can reach today in a single market- and viewer-driven cross-border DMA. *Id.*

<sup>167</sup> Local Television Broadcasters Comments at 1-2.

<sup>168</sup> Washington State Association of Broadcasters indicate that redefining the local market to replace DMAs with alternative geographic areas would be highly disruptive as it would affect viewers, the advertising market, the number of stations carried by MVPDs in the redefined local markets and compliance with the Commission's broadcast television ownership rules. Washington State Association of Broadcasters Reply Comments at 4.

carry additional in-state broadcast signals, and adopting flexible approaches to defining geographic markets.<sup>169</sup>

54. Further, commenters are concerned that any state-based proposal that allows cable operators and satellite carriers to import a distant affiliates' duplicative national network and syndicated programming would undermine the service that local broadcasters provide to the public and undermine their ability to make investments in programming.<sup>170</sup> They note that local stations invest substantial resources establishing weather and news bureaus that cover the out-of-state counties in their markets to provide viewers with critical local television service, including emergency alerts and local political information.<sup>171</sup>

55. *Expanded Individual Market Definition Modifications.* Several commenters urge the Commission to use its existing market modification process as a means for increasing access to in-state broadcast station signals in underserved areas and provide suggestions for ways to enhance that process.<sup>172</sup> Section 614(h)(1)(c) of the Communications Act provides that the Commission may add communities to or subtract communities from a station's television market to better reflect marketplace conditions for purposes of the cable carriage of local broadcast stations.<sup>173</sup> In doing so, the Communication Act directs the Commission to consider several enumerated factors: (1) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; (2) whether the television station provides coverage or other local service to such community; (3) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and (4) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>174</sup> The Commission's rules, adopted to implement Section 614 of the Act, incorporate the enumerated factors and permit television broadcasters and cable operators to file petitions to modify their local markets on a case-by-case and community basis to better serve local communities and reflect historical patterns of broadcast signal carriage.<sup>175</sup> Under the Copyright Act, when the Commission modifies a station's market for purposes of cable carriage rights, the station is considered local and is covered by the compulsory license.<sup>176</sup>

56. Since the market modification process was initiated pursuant to the Act in 1993, the Commission has granted a significant number of market modifications, successfully modifying the market

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<sup>169</sup> See, e.g., DIRECTV Comments at 8.

<sup>170</sup> Local Television Broadcasters Comments at ii, 12. Local Television Broadcasters consists of Barrington Broadcasting Group, LLC, Belo Corp., Bonten Media Group, LLC, Gannett Co., Inc., Gray Television, Inc., Meredith Corporation, Post-Newsweek Stations, Inc., and Raycom Media, Inc. Local Television Broadcasters Comments at ii.

<sup>171</sup> *Id.*

<sup>172</sup> See, e.g., NCTA Comments at 3 (noting that, under the cable compulsory copyright license, the area in which a television station is considered local includes any modifications made by the Commission). See 17 U.S.C. § 111(f)

<sup>173</sup> 47 U.S.C. § 534(h)(1)(c). This section was added to the Act by the 1992 Cable Act as part of the must-carry/retransmission consent regime for carriage of local television stations.

<sup>174</sup> 47 U.S.C. § 534(h)(1)ii (I)-(IV). Market modification may result in communities being considered part of more than one television market. 47 C.F.R. § 76.59.

<sup>175</sup> See 47 C.F.R. § 76.59; see also LIN Television Comments at 5, 6; NCTA Comments at 3; NAB Comments at 7-8.

<sup>176</sup> See ¶ 10, *supra*.

definition for cable operators and broadcasters in specific jurisdictions. Several commenters indicate that the Commission's market modification proceedings reflect actual conditions in the marketplace, making corrections to market definitions, as warranted, and should be used to increase access to in-state broadcast stations.<sup>177</sup> Further, broadcasters indicate that, when viewers alter their viewing preferences in a "statistically significant" way, mechanisms are available to reflect those preferences in the Commission's market modification processes as well as Nielsen's DMA designations.<sup>178</sup>

57. Commenters suggest that amendments to the Communications and Copyright Acts could expand the reach of the market modification process to increase access to in-state broadcast stations in additional underserved areas.<sup>179</sup> Specifically, the provisions described above for market modifications exist only for cable operators and broadcasters and no similar provision for market modification exists for DBS operators.<sup>180</sup> Creating regulatory parity by including DBS operators among the entities that can apply for a modification would require Congress to adopt amendments to the Communications and Copyright Acts. As noted above, pursuant to the Copyright Act, if the Commission modifies a station's market, that station is considered to be a local station in the new market and is covered by the compulsory license. As such, this process could potentially expand the number of local stations available to consumers via their DBS operator.

58. Commenters also suggest that elected officials should play a role in market modifications to increase access to in-state programming.<sup>181</sup> As stated above, however, currently only broadcast stations and cable operators can petition for market modification. Thus, these commenters suggest that the Communications and Copyright Acts could be amended permit consumer concerns to be addressed more directly by including governmental bodies, such as municipalities, to petition for market modifications on behalf of their citizens. Moreover, under the current market modification process, only community-by-community market modifications are permitted. A revised process might allow for consideration of county-based modifications. Further amendments could facilitate increased market modification by, for example, including separate criteria to promote the availability of in-state broadcast television stations and programming that the Commission could consider in addition to the four factors enumerated above.

59. We recognize that should a statutory amendment allow municipalities and any other entities to file, they might find the process of petitioning for market modifications to be burdensome given the evidentiary and other requirements of the administrative process. We also recognize that DBS carriage of certain stations within a geographic area may include technical challenges given its limitations as a national service. Nonetheless, on a case-by-case basis, market modifications could potentially address special situations in underserved areas and facilitate greater access to local information.<sup>182</sup>

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<sup>177</sup> NAB Comments at 7.

<sup>178</sup> *Id.* at 7-8.

<sup>179</sup> DISH Comments at 6-7. DISH also notes that satellite carriers are generally "well-positioned" to provide in-state broadcast local stations because the satellite spot beam, loaded with in-state local broadcast stations, can also be seen by residents of "orphan counties." It is only the restrictive DMA definition and the local-into-local statutory license, according to DISH, that prohibits these consumers from accessing in-state broadcast station signals. DISH Comments at 4-5. *See also* 17 U.S.C. §§ 122(a)(1); 119(d)(11) (allowing the retransmission of local programming "into the station's local market" and defining "local market" by reference to the Nielsen-designated DMA).

<sup>180</sup> 47 C.F.R. § 76.59.

<sup>181</sup> *See, e.g.*, Comments of Mary Gilliam (Jan. 24, 2011) at 1-2 (suggesting that elected representatives could play a larger role in advocating for modifications in market determinations).

<sup>182</sup> LIN Television Comments at 6.

60. *Expanded License for DBS Carriage of Out-of-Market, In-State Broadcast Stations.* Satellite carriers in this proceeding have advocated a flexible regulatory approach that would not further increase their mandatory carriage obligations but permit carriage of additional, out-of-market but in-state stations.<sup>183</sup> Specifically, DBS commenters propose implementation of a statewide copyright license as a further option for increasing the distribution of important local programming for underserved areas. They maintain that an additional statewide copyright license would permit satellite carriers to retransmit in-state local broadcast stations to residents of orphan counties without triggering carriage requirements beyond the current DMA-based scope of Section 338 of the Communications Act.<sup>184</sup> Proponents of this approach contend that a statewide copyright license would constitute an incremental adjustment to the DMA system and address consumer grievances without upsetting the established expectations of the marketplace.<sup>185</sup> They state that this approach is also regarded as consumer-friendly because in-state broadcast stations would be available regardless of the MVPD service the consumer chooses.<sup>186</sup> However, since the existing Copyright Act does not cover such a statewide copyright license, a change to the statute would be needed to implement this proposal.

61. On the other hand, broadcast station commenters contend that such an approach could be used to circumvent the Commission's retransmission policies and, thereby, retransmit duplicative national programming from in-state stations to viewers that reside in another station's DMA.<sup>187</sup> Broadcasters assert that those outcomes would frustrate the Commission's non-duplication and exclusivity rules that are necessary to foster competition.<sup>188</sup> Further, broadcasters express concern that any solution that permits, but does not require, carriage of additional in-state broadcast stations will not ultimately ensure that DBS operators in fact carry such signals; thus, reducing the overall benefit to consumers.

62. *Carriage of In-State News Programming.* Broadcast commenters contend that MVPDs, particularly DBS operators, should utilize existing law to carry non-duplicating local programming from in-state stations to out-of-market, in-state viewers.<sup>189</sup> Under this approach MVPDs would carry non-duplicating local programming. According to broadcasters, MVPDs could carry such "news-only" stations or signals on a low tier public access channel thereby avoiding the need to supplant an existing channel.<sup>190</sup> Commenters maintain that the advantage of this "news-only" station approach is that broadcast stations would be amenable to granting MVPDs the right to retransmit the portion of their broadcast signal that contains only the local programming. A further benefit of this approach, according

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<sup>183</sup> DIRECTV Comments at 6, 7 (use of a statewide license to bring in-state local broadcast stations to an "orphan county" should be optional and should not expand mandatory carriage rights under the "carry one, carry all" rule).

<sup>184</sup> DISH Comments at 2-3, 7 ("any new statewide license for orphan counties should not impose additional obligations on MVPDs"). *Id.* at 6. Also, public broadcasters recommend that the Commission consider "adjuncts" to DMAs in defining local markets in order to provide underserved viewers with in-state public television programming. Oregon Public Broadcasting Comments at 3-4; APTS Reply Comments at 1.

<sup>185</sup> DIRECTV Reply Comments at 5.

<sup>186</sup> *Id.* at 4.

<sup>187</sup> Joint Television Network Reply Comments at 9. Broadcasters assert that the loss by local stations of program exclusivity for national programming will undermine the economics of local television service as well as the expensive local program service that these stations provide to their communities. *Id.* at 7.

<sup>188</sup> *Id.* at 9.

<sup>189</sup> *Id.*

<sup>190</sup> NAB Comments at 34-35. Only cable providers are required to establish channel capacity for public, educational or governmental use. *See* 47 U.S.C. § 531.



to proponents, is that such remedies may be reached without any change in communications law.<sup>191</sup> Commenters contend that broadcast stations may be incentivized to reach such private copyright arrangements and, indeed, many have struck such agreements with cable firms.<sup>192</sup> Broadcasters assert that MVPDs, including satellite carriers, may wish to examine these types of private carriage deals more closely to determine whether they have the same ability to retransmit local programming from in-state, out-of-market broadcast stations by obtaining a copyright license and retransmission consent from the distant station.<sup>193</sup>

63. DBS operators express skepticism regarding broadcasters' proposal that they pursue carriage of the local or news-only portion of the broadcast station signal as a way to increase locally-responsive programming.<sup>194</sup> First, DBS commenters assert that this approach would challenge their satellite capacity and require that they set-aside a separate channel and make that channel available throughout the spot beam serving the entire DMA in which the orphan county is located.<sup>195</sup> Second, broadcasters may not have the rights to license these feeds.<sup>196</sup> Even if broadcasters have the rights to license the news-only portion of their signals, DBS operators contend that this type of limited license would deprive consumers of the emergency warnings that are often scrolled during the transmission of entertainment programming – thereby undercutting one of the prime motivations for providing consumers in-state local broadcast stations – or broadcast programming that is contained outside of the nightly news.<sup>197</sup> Commenters assert that a further disadvantage of this “news-only” approach is that most content carried by local broadcast stations is either national or syndicated programming.<sup>198</sup> Thus, a new, dedicated “news-only” channel to provide local programming would be “dark” 80 to 90 percent of the day.<sup>199</sup> Commenters contend that

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<sup>191</sup> NAB Comments at 32.

<sup>192</sup> *Id.* at 32-33 (“Comcast, Time Warner Cable and Charter Cable . . . import local news and weather programming so that viewers can have access to in-state, out-of-market television signals”).

<sup>193</sup> *Id.* at 34.

<sup>194</sup> DISH Reply Comments at 7-8 (“[a]ny solution proposed by the Commission in its report to Congress should be consumer-friendly and not cause greater consumer frustration than the current state of affairs.”); DIRECTV Reply Comments at 5 (“This is no real solution, and the Broadcasters know it; the “news only” channel proposed by Broadcasters would likely not allow orphan county residents to view weather alerts shown during a football game.”).

<sup>195</sup> DIRECTV Comments at 5; DISH Reply Comments at 6-7.

<sup>196</sup> We note that DIRECTV offers certain news programming from Little Rock in several Arkansas counties under a private copyright agreement brokered during congressional consideration of STELA. In each of these counties, DIRECTV offers a unique channel, referred to as ARKNEWS (Arkansas News Channel) that airs local news programming from KATV, Little Rock. DIRECTV Comments at 2 n.3. We are unaware of any other similar types of private agreements involving satellite operators.

<sup>197</sup> *Id.* at 5. DISH contends that DBS systems do not have the means to track and react real-time to broadcaster schedule changes such as an NFL football game running late and cutting into the local news time slot. DISH Reply Comments 7-8. However, cable operators may have fewer difficulties carrying the local or news-only portions of in-state broadcast stations and could use their public access or local origination channels for such programming. We recognize that a number of cable operators currently offer in-state, local programming. Local Television Broadcasters Comments at 11-12 n.3; Joint Network Affiliates Reply Comments at 7-8. *See also* Case Studies at Appendix F to this Report.

<sup>198</sup> DISH Reply at 6-7. DISH further notes that satellite carriers do not have the capability to substitute programming in place of the blacked-out programming. *Id.*

<sup>199</sup> *Id.* at 6-7; DIRECTV Reply Comments at 6 (noting that DIRECTV’s subscribers want full-time channels).

consumers would find such blacked-out programming frustrating to watch and, moreover, it is impractical for a national DBS operator to block programming on a station-by-station basis.<sup>200</sup>

64. *Modified “Significantly Viewed” Process.* Several commenters suggest that the Commission modify the significantly viewed process to increase access to in-state broadcast stations.<sup>201</sup> 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.”<sup>202</sup> 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 the station had significant over-the-air non-cable viewing. The designation of a station as significantly viewed allows a station assigned to one market to be treated as a “local” station with respect to a particular cable community in another market. Stations that the Commission determines to be significantly viewed also are considered local for copyright purposes.<sup>203</sup>

65. SHVERA extended the significantly viewed process to satellite carriers, pursuant to the rules that were in effect on April 15, 1976.<sup>204</sup> Thus, any changes to the Commission’s existing rules for determining significantly viewed status would be inconsistent with the statute’s requirement that we use the same rules for making significantly viewed determinations for DBS as were in effect for cable operators on that date. Accordingly, as the Commission observed in the *STELA Significantly Viewed Report and Order*, a statutory change would be necessary to modify the existing significantly viewed process to implement these proposals.<sup>205</sup> We note that any changes in the significantly viewed rules would not be covered by Section 122 of the significantly viewed copyright license; thus, rendering such waiver or rule changes unusable by DBS unless they can privatize negotiated copyright permission.

66. DBS commenters recommend that the Commission use its waiver authority to designate all in-state local broadcast stations as significantly viewed in orphan counties based on all television households, not just those households receiving the relevant signal over the air.<sup>206</sup> These commenters propose that the Commission shift the evidentiary burden to create a presumption that in-state stations are significantly viewed in orphan counties pursuant to the Commission’s rules.<sup>207</sup> They further contend that

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<sup>200</sup> *Id.* at 6-7. DIRECTV further contends that satellite carriers do not have the capability to substitute programming in place of the blacked out programming. *Id.*

<sup>201</sup> A determination that a station is significantly viewed is based on the Commission’s grant of a petition that includes a statistical showing that the audience of the station in the relevant communities satisfies the criteria set forth in Sections 76.5(i) and 76.54 of the rules. See 47 C.F.R. §§ 76.5(i), 76.54.

<sup>202</sup> *Cable Television Report and Order*, 36 FCC 2d 143, 174 ¶ 83 (1972).

<sup>203</sup> See ¶ 15, *supra*.

<sup>204</sup> 17 U.S.C. § 122. See *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of the Communications Act*, MB Docket No. 05-49, 20 FCC Rcd 2983, 2985-86, ¶¶ 2-3 (2005).

<sup>205</sup> *STELA Significantly Viewed Report and Order*, 25 FCC Rcd at 16410, ¶ 48 (declining to consider a DISH proposal to modify the significantly viewed rules to address the orphan county issue in that proceeding).

<sup>206</sup> DISH Comments at 2-3. We observe that DIRECTV currently carries very few significantly viewed stations as part of its local-into-local service, and that DISH does not carry any significantly viewed stations at this time. See DIRECTV Comments at Appendix A.

<sup>207</sup> DISH Comments at 2. Section 203 of STELA amends Section 340 of the Communications Act that gives satellite carriers the authority, as previously discussed, to offer out-of-market but significantly viewed commercial broadcast television stations as part of their local service to subscribers. 47 U.S.C. § 340.

the Commission could act “well within” existing statutory boundaries to help MVPD subscribers to access in-state local broadcast stations.<sup>208</sup>

67. In contrast, broadcast commenters point out that DBS’s recommendation is contrary to the governing statutory provisions because SHVERA requires the Commission to apply the 1976 significantly viewed rules to DBS.<sup>209</sup> Thus, without a statutory amendment, the Commission could not implement the changes sought by DBS. Further, broadcasters contend that adoption of DBS’s recommendation would be inconsistent with the original purpose of the Commission’s rules. Specifically, they state that a fundamental principle of the significantly viewed rules as originally adopted is that it is unreasonable to deny a cable subscriber access to a broadcast station that a non-cable neighbor in the same location can view over the air. Accordingly, the rules were never intended to apply to far-flung locations that are simply within the same state.<sup>210</sup> Moreover, commenters maintain that the question of a specific station’s over-the-air viewership level is a factual question that cannot be presumed.<sup>211</sup> Opponents also assert that implementing such a presumption could be an administratively burdensome process. Stations would be required to file petitions to oppose a significantly viewed presumption, thus, diverting much needed financial resources away from the provision of local programming.<sup>212</sup> Finally, broadcasters contend that DBS operators seek through this proposal to greatly expand the importation of out-of-market broadcast signals that contain duplicative national and syndicated programming,<sup>213</sup> including entertainment and sports programming by attempting to modify what it means to be significantly viewed.<sup>214</sup>

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<sup>208</sup> DISH Comments at 2-3, 7.

<sup>209</sup> Joint Television Affiliates Reply at 12.

<sup>210</sup> NAB Reply Comments at 15. NAB adds that the Commission has recently affirmed that the significantly viewed rules apply only to households that receive broadcast signals via an over-the-air antenna. *Id.*

<sup>211</sup> Joint Television Affiliates Reply at 12.

<sup>212</sup> NAB Reply Commenters at 14.

<sup>213</sup> Significantly viewed stations are exempt from the Commission’s network non-duplication and syndicated exclusivity rules. *See* 47 C.F.R. §§ 76.92(f), 76.106(a), 76.122(j)(2), 76.123(k)(2).

<sup>214</sup> NAB Reply Comments at 17-18. Commenters assert that cable operators are finding ways to deliver the in-state broadcast station signals that consumers desire. As an example, broadcasters point to the current channel line-up of Cablevision’s unit in Durango, Colorado (La Plata County), recently acquired from Bresnan Communications. Although La Plata County is located in the Albuquerque-Santa Fe, New Mexico DMA, the cable unit imports local in-state news from Denver broadcast stations. NAB Comments at 33-34; NAB Reply Comments at 18-19. Commenters stress that this example illustrates that MVPDs can import out-of-market, in-state news and public affairs programming absent drastic remedies, including modifying the rules for “significantly viewed” and other administratively cumbersome alternatives. *Id.*

**IV. CONCLUSION**

68. With this Report, the Commission satisfies the obligation pursuant to Section 304 of STELA to submit a report to Congress examining the issues that affect consumers' access to in-state broadcast stations.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

## APPENDIX A

## Over-the-Air Reception of Out-of-State Broadcast Stations

State	Total Number of HHs in State	Number of State's HHs That Can Receive at Least One Out-of-State Broadcast Station	% of State's HHs That Can Receive At Least One Out-of-State Broadcast Station	Number of State's HHs That Receive Only Out-of-State Broadcast Stations	% of State's HHs That Receive Only Out-of-State Broadcast Stations
AK	258,058	0	0.00%	0	0.00%
AL	1,883,791	882,316	46.80%	2,118	0.10%
AR	1,147,084	511,232	44.60%	9,795	0.90%
AZ	2,380,990	132,654	5.60%	3,940	0.20%
CA	12,577,498	131,153	1.00%	8,197	0.10%
CO	1,972,868	1,322,367	67.00%	3,965	0.20%
CT	1,371,087	1,338,897	97.70%	1,702	0.10%
DC	266,707	266,707	100.00%	0	0.00%
DE	342,297	342,297	100.00%	8	0.00%
FL	7,420,802	1,144,952	15.40%	0	0.00%
GA	3,585,584	2,145,490	59.80%	2,066	0.10%
HI	455,338	0	0.00%	0	0.00%
IA	1,221,576	759,933	62.20%	263	0.00%
ID	579,408	143,800	24.80%	3,250	0.60%
IL	4,836,972	4,458,123	92.20%	352	0.00%
IN	2,502,154	1,570,690	62.80%	1,115	0.00%
KS	1,112,096	575,712	51.80%	13,188	1.20%
KY	1,719,965	1,495,832	87.00%	8,973	0.50%
LA	1,728,360	1,059,255	61.30%	271	0.00%
MA	2,547,075	2,532,875	99.40%	184	0.00%
MD	2,156,411	2,154,739	99.90%	1,962	0.10%
ME	557,219	165,580	29.70%	442	0.10%
MI	3,872,508	2,004,167	51.80%	1,189	0.00%
MN	2,087,227	1,192,823	57.10%	41,419	2.00%
MO	2,375,611	2,028,579	85.40%	7,533	0.30%
MS	1,115,768	626,318	56.10%	0	0.00%
MT	409,607	15,645	3.80%	3,889	0.90%
NC	3,745,155	2,586,194	69.10%	0	0.00%
ND	281,192	47,763	17.00%	307	0.10%
NE	721,130	438,420	60.80%	510	0.10%
NH	518,973	500,394	96.40%	18,341	3.50%
NJ	3,214,360	3,214,301	100.00%	895	0.00%
NM	791,395	170,918	21.60%	741	0.10%
NV	1,006,250	237,918	23.60%	1,865	0.20%



State	Total Number of HHs in State	Number of State's HHs That Can Receive at Least One Out-of-State Broadcast Station	% of State's HHs That Can Receive At Least One Out-of-State Broadcast Station	Number of State's HHs That Receive Only Out-of-State Broadcast Stations	% of State's HHs That Receive Only Out-of-State Broadcast Stations
NY	7,317,755	5,432,011	74.20%	2,703	0.00%
OH	4,603,435	2,375,654	51.60%	5,812	0.10%
OK	1,460,450	454,607	31.10%	4,431	0.30%
OR	1,518,938	960,342	63.20%	2,674	0.20%
PA	5,018,904	3,806,975	75.90%	22,454	0.40%
RI	413,600	413,600	100.00%	0	0.00%
SC	1,801,181	1,449,860	80.50%	1,195	0.10%
SD	322,282	164,154	50.90%	334	0.10%
TN	2,493,552	1,744,506	70.00%	15,564	0.60%
TX	8,922,933	1,071,883	12.00%	4,275	0.00%
UT	877,692	46,884	5.30%	394	0.00%
VA	3,056,058	2,180,793	71.40%	6,881	0.20%
VT	256,442	229,786	89.60%	5,408	2.10%
WA	2,620,076	550,429	21.00%	15,212	0.60%
WI	2,279,768	938,471	41.20%	1,734	0.10%
WV	763,831	592,558	77.60%	6,555	0.90%
WY	226,879	65,065	28.70%	7,952	3.50%

**APPENDIX B**

**Out-of-State Broadcast Stations Receivable Over the Air**

See Appendix B Excel chart attached to this document

## APPENDIX C

## Access to In-State Broadcast Stations

DMA	DMA Rank	State Segment	No. of HHs in State Segment	% DMA HHs in State Segment	Number of Broadcast Stations Licensed to State				
					Measured by Nielsen	Household-weighted Number of Stations		Carried by DBS	
						Full-Power Stations Only	All Full- and Low-Power Stations	DISH Network	DIRECTV
ABILENE-SWEETWATER	165	TX	116,200	100.00%	15	4.13	6.63	7	6
ALBANY, GA	147	GA	158,500	100.00%	14	8.72	9.18	4	5
ALBANY-SCHENECTADY-TROY	58	MA	55,800	9.92%	3	2.51	4.13	1	1
		NY	491,500	87.39%	13	7.65	10.45	6	6
		VT	15,100	2.68%	0	0.29	0.94	0	0
ALBUQUERQUE-SANTA FE	46	AZ	17,000	2.35%	0	0.11	0.46	0	0
		CO	32,000	4.43%	3	1.87	13.06	0	0
		NM	673,800	93.22%	31	9.06	15.52	12	13
ALEXANDRIA, LA	178	LA	91,600	100.00%	15	12.38	13.54	5	0
ALPENA	208	MI	17,200	100.00%	14	2.57	3.52	3	0
AMARILLO	131	NM	29,100	14.79%	4	2.28	8.78	0	0
		OK	10,400	5.29%	0	0	2.22	0	0
		TX	157,200	79.92%	13	5.38	11.98	7	7
ANCHORAGE	150	AK	159,700	100.00%	10	5.01	8.7	9	7
ATLANTA	8	AL	15,000	0.62%	0	3.17	3.54	0	0
		GA	2,410,300	99.18%	15	13.85	21.04	12	13
		NC	4,900	0.20%	0	0.04	5.32	0	0

DMA	DMA Rank	State Segment	No. of HHs in State Segment	% DMA HHs in State Segment	Number of Broadcast Stations Licensed to State				
					Measured by Nielsen	Household-weighted Number of Stations		Carried by DBS	
						Full-Power Stations Only	All Full- and Low-Power Stations	DISH Network	DIRECTV
AUGUSTA-AIKEN	114	GA	164,400	63.40%	10	5.6	8.07	5	5
		SC	94,900	36.60%	2	6.25	6.25	1	1
AUSTIN	44	TX	717,000	100.00%	23	14.8	19.96	8	9
BAKERSFIELD	125	CA	228,800	100.00%	25	7.61	19.65	7	5
BALTIMORE	26	MD	1,116,800	100.00%	11	9.44	9.7	7	7
BANGOR	154	ME	145,600	100.00%	14	4.24	5.61	6	6
BATON ROUGE	94	LA	328,400	97.36%	18	13.89	18.73	6	6
		MS	8,900	2.64%	0	3.92	3.98	0	0
BEAUMONT-PORT ARTHUR	141	TX	171,900	100.00%	11	6.91	12.26	4	5
BEND, OR	189	OR	68,300	100.00%	12	3	13.56	6	0
BILLINGS	170	MT	94,500	85.29%	10	3.15	7.48	5	0
		WY	16,300	12.75%	1	0.15	5.02	0	0
BILOXI-GULFPORT	163	MS	127,800	100.00%	5	3.58	4.34	3	3
BINGHAMTON	158	NY	138,000	100.00%	17	5.46	6.33	5	7
BIRMINGHAM (ANN AND TUSC)	40	AL	752,900	100.00%	20	13.02	15.63	8	8
BLUEFIELD-BECKLEY-OAK HILL	155	VA	19,200	13.26%	3	2.72	4.36	0	0
		WV	125,600	49.01%	12	4.52	4.81	5	6
BOISE	113	ID	256,300	96.28%	14	6.75	15.87	7	8
		OR	9,900	0.49%	1	0	0.89	0	0
BOSTON (MANCHESTER)	7	MA	2,032,600	81.88%	19	15.52	17.21	11	12
		NH	431,200	17.37%	7	4.5	4.69	4	3
		VT	18,700	0.75%	1	1.96	1.96	0	0

DMA	DMA Rank	State Segment	No. of HHs in State Segment	% DMA HHs in State Segment	Number of Broadcast Stations Licensed to State				
					Measured by Nielsen	Household-weighted Number of Stations		Carried by DBS	
						Full-Power Stations Only	All Full- and Low-Power Stations	DISH Network	DIRECTV
BOWLING GREEN	181	KY	82,500	100.00%	13	4.97	7.41	5	0
BUFFALO	51	NY	616,300	96.33%	11	9.67	10.75	8	8
		PA	23,500	3.67%	0	0.6	0.6	0	0
BURLINGTON-PLATTSBURGH	95	NH	52,500	15.60%	3	0.92	1.65	0	1
		NY	64,500	19.17%	8	1.87	2.06	2	2
		VT	219,500	65.23%	13	3.79	5.18	5	5
BUTTE-BOZEMAN	191	MT	67,800	100.00%	11	3.99	7.67	6	4
CASPER-RIVERTON	195	WY	57,600	100.00%	18	3.68	7.1	5	0
CEDAR RAPIDS-WTRLO-IWC&DUB	88	IA	348,600	100.00%	13	10.97	11.52	6	6
CHAMPAIGN&SPRNGFLD-DECATUR	84	IL	384,700	99.15%	14	10.37	11.98	9	9
		IN	3,300	0.85%	1	7.68	7.72	0	0
CHARLESTON, SC	98	SC	315,500	100.00%	9	9.5	13.35	7	6
CHARLESTON-HUNTINGTON	64	KY	123,000	24.10%	4	3.31	3.37	0	1
		OH	119,800	23.47%	4	3.53	3.79	3	2
		WV	267,600	52.43%	9	5.79	6.73	5	5
CHARLOTTE	23	NC	1,023,000	87.11%	13	15.94	17.92	9	9
		SC	151,400	12.89%	5	12.61	12.61	3	3
CHARLOTTESVILLE	183	VA	78,700	100.00%	13	6.94	10.02	6	0
CHATTANOOGA	86	GA	115,100	30.28%	5	4.25	5.11	0	1
		NC	11,800	3.10%	0	0	5.18	0	0
		TN	253,200	66.61%	7	8.29	10.92	6	6



DMA	DMA Rank	State Segment	No. of HHs in State Segment	% DMA HHs in State Segment	Number of Broadcast Stations Licensed to State				
					Measured by Nielsen	Household-weighted Number of Stations		Carried by DBS	
						Full-Power Stations Only	All Full- and Low-Power Stations	DISH Network	DIRECTV
CHEYENNE-SCOTTSBLUFF	197	NE	15,200	27.29%	3	3	3.91	2	0
		WY	40,500	72.71%	9	3.54	8.72	4	0
CHICAGO	3	IL	3,219,000	91.14%	23	12.95	17.97	13	13
		IN	313,000	8.86%	3	7.49	9.44	3	4
CHICO-REDDING	130	CA	202,500	100.00%	19	6.39	16.34	7	6
CINCINNATI	33	IN	46,900	5.04%	0	5.01	5.01	0	0
		KY	182,400	19.62%	3	5.1	5.13	2	2
		OH	700,400	75.34%	14	12.34	16.54	6	7
CLARKSBURG-WESTON	168	WV	111,700	100.00%	8	3.92	5.78	5	6
CLEVELAND-AKRON (CANTON)	18	OH	1,538,000	100.00%	17	15.28	17.34	11	11
COLORADO SPRINGS-PUEBLO	92	CO	340,300	100.00%	17	7.06	14.29	7	8
COLUMBIA, SC	78	SC	409,000	100.00%	10	11.54	12.81	7	7
COLUMBIA-JEFFERSON CITY	137	MO	180,300	100.00%	15	5.72	6.77	8	8
COLUMBUS, GA (OPELIKA, AL)	127	AL	104,000	47.00%	1	7.34	7.86	0	0
		GA	117,300	53.00%	9	7.1	8.53	5	6
COLUMBUS, OH	34	OH	921,400	100.00%	10	10.47	14.32	7	7
COLUMBUS-TUPELO-W PNT-HSTN	133	AL	5,900	3.06%	2	3.8	4.99	0	0
		MS	186,700	96.94%	9	7.03	7.6	5	5
CORPUS CHRISTI	129	TX	201,800	100.00%	16	7.01	13.7	9	10
DALLAS-FT. WORTH	5	TX	2,616,600	100.00%	18	18.24	26.06	17	16

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DAVENPORT-R.ISLAND-MOLINE	99	IA	141,100	45.31%	7	7.74	8.51	4	4
		IL	170,300	54.69%	6	6.73	7.38	3	4
DAYTON	62	IN	27,200	5.13%	3	7.46	7.46	0	0
		OH	502,600	94.87%	17	14.69	16.27	6	6
DENVER	17	CO	1,526,500	95.53%	25	16.83	24.29	15	14
		NE	24,000	1.50%	2	2.14	2.49	0	0
		WY	47,500	2.97%	3	0.83	4.67	0	0
DES MOINES-AMES	73	IA	435,200	100.00%	10	9.76	12.16	8	6
DETROIT	11	MI	1,893,600	100.00%	12	12.77	15.79	8	8
DOTHAN	169	AL	99,000	89.27%	8	7.51	9.12	3	5
		FL	7,400	6.67%	2	5.85	5.87	1	0
		GA	4,500	4.06%	2	6.65	6.65	0	0
DULUTH-SUPERIOR	139	MI	6,600	3.74%	0	0.39	1.2	0	0
		MN	127,400	72.18%	13	4.98	6.15	6	5
		WI	42,500	24.08%	3	1.43	1.83	1	1
EL PASO (LAS CRUCES)	97	NM	73,400	23.07%	4	1.85	4.06	2	2
		TX	244,700	76.93%	13	7.95	9.68	9	9
ELMIRA (CORNING)	174	NY	81,300	83.30%	22	5.31	7.39	5	0
		PA	16,300	16.70%	0	0.3	1.61	0	0
ERIE	144	PA	159,200	100.00%	6	4.5	6.48	6	6
EUGENE	118	OR	249,900	100.00%	25	5.9	14.49	8	7
EUREKA	194	CA	64,400	100.00%	15	4.17	8.9	6	0

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EVANSVILLE	103	IL	20,800	7.07%	1	2.98	2.98	0	0
		IN	155,100	52.72%	8	6.22	9.4	6	5
		KY	118,300	40.21%	3	3.79	3.85	2	2
FAIRBANKS	202	AK	38,100	100.00%	8	4.32	22.14	8	8
FARGO-VALLEY CITY	120	MN	101,100	41.43%	3	1.29	1.79	0	0
		ND	142,900	58.57%	13	4.87	5.5	6	7
FLINT-SAGINAW-BAY CITY	69	MI	458,000	100.00%	20	16.22	16.53	8	8
FRESNO-VISALIA	55	CA	588,600	100.00%	23	13.89	20.86	13	11
FT. MYERS-NAPLES	65	FL	503,700	100.00%	16	10.09	13.26	10	8
FT. SMITH-FAY-SPRNGDL-RGRS	100	AR	272,600	88.62%	16	6.26	8.7	8	7
		OK	35,000	11.38%	5	2.77	3.36	0	0
FT. WAYNE	107	IN	259,600	93.18%	15	9.74	11.73	6	6
		OH	19,000	6.82%	0	3.84	5.12	0	0
GAINESVILLE	160	FL	133,200	100.00%	13	7.22	12.14	5	5
GLENDIVE	210	MT	4,100	100.00%	8	1.02	1.67	2	0
GRAND JUNCTION-MONTROSE	184	CO	77,300	100.00%	19	5.01	13.33	6	0
GRAND RAPIDS-KALMZOO-B.CRK	41	MI	745,700	100.00%	16	12.43	15.08	9	8
GREAT FALLS	190	MT	67,000	100.00%	9	2.56	4.03	5	0
GREEN BAY-APPLETON	71	MI	10,300	2.30%	2	2.18	2.79	0	7
		WI	436,700	97.70%	11	10.57	11.2	7	0

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GREENSBORO-H.POINT-W.SALEM	47	NC	695,400	98.82%	12	17.14	17.8	9	9
		VA	8,300	1.18%	0	5.28	5.29	0	0
GREENVILLE-N.BERN-WASHNGTN	101	NC	297,000	100.00%	20	15.59	16.05	7	7
GREENVLL-SPART-ASHEVLL-AND	36	GA	36,800	4.15%	2	3.13	4.41	1	0
		NC	300,000	33.80%	6	3.41	10.55	4	4
		SC	550,700	62.05%	9	9.17	10.44	6	5
GREENWOOD-GREENVILLE	187	MS	70,500	100.00%	8	5.92	7.49	4	0
HARLINGEN-WSLCO-BRNSVL-MCA	87	TX	361,500	100.00%	13	6.92	8.72	8	8
HARRISBURG-LNCSTR-LEB-YORK	39	PA	761,000	100.00%	15	8.74	9.61	7	6
HARRISONBURG	177	VA	93,700	96.80%	12	3.29	6.65	0	4
		WV	3,100	3.20%	0	0.05	0.13	0	0
HARTFORD & NEW HAVEN	30	CT	1,027,800	100.00%	14	10.72	12.21	8	8
HATTIESBURG-LAUREL	167	MS	113,400	100.00%	11	9.11	10	4	0
HELENA	206	MT	28,500	100.00%	8	2.79	7.29	5	0
HONOLULU	72	HI	445,100	100.00%	34	10.08	12.26	11	10
HOUSTON	10	TX	2,200,500	100.00%	23	17.89	25.33	18	14
HUNTSVILLE-DECATUR (FLOR)	79	AL	388,400	96.57%	10	8.95	10.47	5	7
		TN	13,800	3.43%	0	2.91	2.91	0	0

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IDAHO FALS-POCATLLO(JCKSN)	162	ID	121,600	93.04%	9	4.33	7.35	5	6
		WY	9,100	6.96%	1	0.98	6.92	0	0
INDIANAPOLIS	27	IN	1,115,200	100.00%	23	14.43	17.13	11	8
JACKSON, MS	90	MS	342,200	100.00%	13	9.4	11.18	7	7
JACKSON, TN	182	TN	78,500	100.00%	13	6.9	7.86	3	0
JACKSONVILLE	49	FL	604,000	88.16%	11	10.62	15.77	9	7
		GA	81,100	11.84%	3	4.86	5.36	1	0
JOHNSTOWN-ALTOONA-ST COLGE	102	PA	296,800	100.00%	13	4.31	5.99	6	7
JONESBORO	180	AR	83,800	100.00%	6	3.09	3.69	3	0
JOPLIN-PITTSBURG	148	KS	55,500	35.17%	2	1.76	2.37	2	0
		MO	90,200	57.16%	8	5.39	8.86	3	3
		OK	12,100	7.67%	2	5.48	6.1	0	0
JUNEAU	207	AK	27,100	100.00%	18	0.97	2.04	6	8
KANSAS CITY	31	KS	382,800	39.00%	3	4.03	4.15	1	1
		MO	598,800	61.00%	11	9.64	11.61	7	8
KNOXVILLE	59	KY	32,400	5.76%	1	2.17	2.17	1	1
		TN	530,200	94.24%	12	11.53	14.62	9	7
LA CROSSE-EAU CLAIRE	128	MN	26,500	12.15%	7	1.4	1.87	0	0
		WI	191,600	87.85%	14	5.74	6.35	6	5
LAFAYETTE, IN	188	IN	68,600	100.00%	11	8.51	9.45	4	5
LAFAYETTE, LA	123	LA	233,400	100.00%	14	13.01	16.49	6	6



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LAKE CHARLES	175	LA	97,400	100.00%	7	8.94	12.21	2	0
LANSING	115	MI	255,100	100.00%	19	18.85	19.55	6	6
LAREDO	186	TX	71,000	100.00%	12	3.08	5.93	7	5
LAS VEGAS	42	NV	725,400	100.00%	16	9.41	25.7	11	13
LEXINGTON	63	KY	521,500	100.00%	18	9.66	9.7	6	7
LIMA	201	OH	40,300	100.00%	15	5.99	10.24	6	0
LINCOLN & HASTINGS-KRNY	106	KS	7,300	2.59%	0	0.86	0.86	0	0
		NE	274,200	97.41%	31	7.3	9.57	6	8
LITTLE ROCK-PINE BLUFF	56	AR	579,400	100.00%	16	9.02	11.22	9	8
LOS ANGELES	2	CA	5,740,200	99.99%	33	22.73	29.38	26	26
		NV	300	0.01%	0	0	0.08	0	0
LOUISVILLE	50	IN	163,900	24.12%	2	3.68	4.99	1	1
		KY	515,700	75.88%	11	9.94	12.19	8	9
LUBBOCK	142	TX	162,900	100.00%	11	6.89	15.97	9	5
MACON	121	GA	243,300	100.00%	16	10.24	11.75	7	5
MADISON	85	WI	386,100	100.00%	7	9.17	10.24	6	7
MANKATO	198	MN	53,000	100.00%	13	4.13	9.4	4	4
MARQUETTE	179	MI	86,800	97.53%	14	3.42	4.12	6	8
		WI	2,200	2.47%	4	1.87	2.87	0	0
MEDFORD-KLAMATH FALLS	140	CA	19,600	11.10%	7	0.44	5.18	0	0
		OR	157,000	88.90%	15	4.26	15.11	7	7

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MEMPHIS	48	AR	74,900	10.69%	1	3.11	3.11	0	0
		MS	159,600	22.77%	3	4.14	4.36	1	1
		TN	466,300	66.54%	10	9.17	15.31	8	8
MERIDIAN	185	AL	11,000	15.05%	3	2.3	2.3	0	0
		MS	62,100	84.95%	13	7.24	7.35	6	0
MIAMI-FT. LAUDERDALE	16	FL	1,600,600	100.00%	24	21.58	35.86	17	16
MILWAUKEE	35	WI	905,000	100.00%	19	14.95	18.51	12	12
MINNEAPOLIS-ST. PAUL	15	MN	1,652,200	93.48%	23	9.4	13.81	10	12
		WI	115,300	6.52%	1	2.75	3.2	0	0
MINOT-BSMRCK-DCKNS(WLSTON)	157	MT	11,200	8.02%	0	0.29	0.84	0	0
		ND	127,300	91.12%	21	4.25	5.58	5	4
		SD	1,200	0.86%	1	1.04	1.04	0	0
MISSOULA	166	MT	116,600	100.00%	13	3.05	6.43	6	6
MOBILE-PENSACOLA (FT WALT)	60	AL	281,800	51.77%	10	7.18	7.95	5	5
		FL	249,900	45.91%	7	8.7	10.9	5	4
		MS	12,600	2.31%	2	5.34	5.34	0	0
MONROE-EL DORADO	138	AR	25,800	14.35%	4	4.15	4.47	2	3
		LA	154,000	85.65%	11	6.86	7.24	5	3
MONTEREY-SALINAS	124	CA	236,100	100.00%	22	6.2	14.29	6	6
MONTGOMERY-SELMA	117	AL	246,900	100.00%	18	12.17	13.2	8	7
MYRTLE BEACH-FLORENCE	104	NC	59,500	20.38%	10	14.35	15.98	2	2
		SC	232,500	79.62%	16	13.21	14.26	6	6

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NASHVILLE	29	KY	75,600	7.21%	0	3.25	3.94	0	0
		TN	973,400	92.79%	12	10.28	12.87	10	8
NEW ORLEANS	52	LA	602,100	93.84%	15	14.66	16.73	11	10
		MS	39,500	6.16%	0	4.07	4.07	0	0
NEW YORK	1	CT	331,800	4.35%	2	9.14	9.63	1	2
		NJ	2,375,300	31.14%	14	10.69	11.99	8	9
		NY	4,898,000	64.21%	15	10.98	19.15	9	10
		PA	23,400	0.31%	0	5.12	5.74	0	0
NORFOLK-PORTSMTH-NEWPT NWS	43	NC	69,200	9.59%	3	3.86	4.75	3	2
		VA	652,100	90.41%	9	11.11	17.53	7	7
NORTH PLATTE	209	NE	15,500	100.00%	10	3.02	7.27	5	0
ODESSA-MIDLAND	151	NM	2,100	1.42%	0	2.92	6.5	0	0
		TX	145,900	98.58%	15	7.17	9.43	10	7
OKLAHOMA CITY	45	OK	709,800	100.00%	17	11.68	16.48	11	10
OMAHA	76	IA	77,700	18.47%	2	3.12	3.15	1	1
		MO	2,600	0.62%	0	0.59	0.59	0	0
		NE	340,300	80.91%	12	8.45	9.27	6	6
ORLANDO-DAYTONA BCH-MELBRN	19	FL	1,464,600	100.00%	19	21.06	24.16	17	16
OTTUMWA-KIRKSVILLE	199	IA	27,500	52.78%	9	4.1	7.19	1	0
		MO	24,600	47.22%	6	1.71	2.09	3	0

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PADUCAH-CAPE GIRARD-HARSBG	80	IL	136,500	33.94%	6	3.19	3.87	3	2
		KY	99,600	24.76%	5	4.33	5.06	4	4
		MO	137,500	34.19%	5	2.7	3.3	2	2
		TN	28,600	7.11%	1	3.07	4.02	0	0
PALM SPRINGS	145	CA	159,800	100.00%	22	18.62	23.87	7	6
PANAMA CITY	156	FL	141,200	100.00%	8	7.25	8.02	6	0
PARKERSBURG	193	OH	24,700	38.12%	3	2.94	3.44	0	0
		WV	40,100	61.88%	10	4.57	6.4	4	0
PEORIA-BLOOMINGTON	116	IL	254,100	100.00%	11	13.87	14.46	6	6
PHILADELPHIA	4	DE	266,300	8.77%	2	2.12	2.63	1	2
		NJ	820,500	27.02%	10	8.37	10.37	6	5
		PA	1,949,500	64.21%	13	12.68	14.46	9	13
PHOENIX (PRESCOTT)	12	AZ	1,908,800	100.00%	27	11.6	21.03	14	14
PITTSBURGH	24	MD	11,800	1.01%	1	1.24	1.24	0	0
		PA	1,106,500	94.75%	12	10.22	13.22	9	8
		WV	49,500	4.24%	0	4.38	4.54	0	0
PORTLAND, OR	22	OR	1,005,300	82.25%	13	7.56	8.59	8	8
		WA	216,900	17.75%	1	0.95	1.36	1	1
PORTLAND-AUBURN	77	ME	380,200	91.72%	10	7.9	17.43	7	7
		NH	34,300	8.28%	1	1.27	5.8	0	0
PRESQUE ISLE	205	ME	30,700	100.00%	7	1.72	2.13	5	0

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PROVIDENCE-NEW BEDFORD	53	MA	212,100	34.01%	12	16.57	16.69	2	2
		RI	411,600	65.99%	8	4.98	5.49	4	4
QUINCY-HANNIBAL-KEOKUK	172	IA	14,200	13.84%	4	2.62	4.96	0	0
		IL	59,200	57.70%	9	6.33	6.69	3	0
		MO	29,200	28.46%	8	1.96	2	2	0
RALEIGH-DURHAM (FAYETVLL)	25	NC	1,126,900	98.83%	21	19.16	21.52	11	9
		VA	13,300	1.17%	0	6.53	6.53	0	0
RAPID CITY	173	MT	500	0.50%	1	0.01	1.58	0	0
		NE	500	0.50%	2	1.77	1.88	0	0
		SD	79,500	80.06%	21	5.64	7.36	5	0
		WY	18,800	18.93%	3	0.68	2.92	0	0
RENO	108	CA	30,100	10.86%	5	0.21	3.76	0	0
		NV	247,100	89.14%	11	5.77	18.37	8	8
RICHMOND-PETERSBURG	57	VA	563,000	100.00%	12	14.15	16	7	7
ROANOKE-LYNCHBURG	66	VA	466,200	99.23%	9	8.03	9.87	7	6
		WV	3,600	0.77%	0	0.77	0.77	0	0
ROCHESTER, NY	81	NY	394,000	100.00%	8	13.28	15.57	5	5
ROCHESTR-MASON CITY-AUSTIN	153	IA	44,800	30.77%	4	4.3	4.36	1	2
		MN	100,800	69.23%	12	5.94	7.33	4	5
ROCKFORD	134	IL	189,000	100.00%	8	6.95	8.73	4	5
SACRAMNTO-STKTON-MODESTO	20	CA	1,430,600	100.00%	31	17.94	22.22	11	9



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SALISBURY	143	DE	80,500	49.88%	2	1	1.93	0	1
		MD	80,900	50.12%	8	4.54	5.67	2	5
SALT LAKE CITY	32	ID	7,600	0.79%	0	0.15	12.54	0	0
		NV	21,000	2.17%	1	0.81	10.8	0	0
		UT	902,500	93.38%	22	10.67	20.48	15	15
		WY	35,400	3.66%	0	0.6	3.78	0	0
SAN ANGELO	196	TX	55,900	100.00%	11	4.07	9.64	4	0
SAN ANTONIO	37	TX	856,600	100.00%	16	13.41	19.24	11	15
SAN DIEGO	28	CA	1,107,700	100.00%	12	9.26	14.8	8	7
SAN FRANCISCO-OAK-SAN JOSE	6	CA	2,587,300	100.00%	25	22.93	25.83	22	22
SANTABARBRA-SANMAR-SANLUOB	122	CA	245,900	100.00%	20	6.06	15.07	6	6
SAVANNAH	96	GA	253,700	76.14%	7	6.41	7.97	5	5
		SC	79,500	23.86%	5	7.33	8.57	2	2
SEATTLE-TACOMA	13	WA	1,919,400	100.00%	20	13.36	15.51	14	11
SHERMAN-ADA	161	OK	84,000	64.12%	8	2.75	4.15	3	1
		TX	47,000	35.88%	12	13.17	17.43	2	1
SHREVEPORT	83	AR	55,800	14.26%	0	1.6	2.14	0	1
		LA	210,300	53.74%	8	6.65	9.12	6	6
		OK	13,200	3.37%	0	0.06	1.7	0	0
		TX	112,000	28.62%	6	3.95	4.5	1	1

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SIOUX CITY	149	IA	110,500	70.70%	9	5.01	5.86	5	7
		NE	39,800	25.46%	6	1.47	2.88	1	1
		SD	6,000	3.84%	3	4.81	4.81	0	0
SIOUX FALLS(MITCHELL)	112	IA	6,800	2.56%	2	5.01	6.51	0	0
		MN	21,300	8.01%	2	1.46	1.72	1	1
		NE	2,300	0.86%	1	1.64	1.65	0	6
		SD	235,500	88.57%	25	5.68	7.32	6	0
SOUTH BEND-ELKHART	93	IN	255,500	75.30%	10	8.67	13.76	8	6
		MI	83,800	24.70%	0	4.76	5.71	0	0
SPOKANE	75	ID	127,200	29.30%	4	1.03	6.01	2	2
		MT	8,100	1.87%	0	0.03	1.41	0	0
		OR	3,000	0.69%	0	0.93	1.87	0	0
		WA	295,900	68.15%	14	6.23	8.86	8	7
SPRINGFIELD, MO	74	AR	61,600	14.35%	0	2.9	4.7	0	0
		MO	367,800	85.65%	9	6.14	8.64	7	7
SPRINGFIELD-HOLYOKE	110	MA	272,500	100.00%	11	4.79	6.69	3	5
ST. JOSEPH	200	KS	2,900	6.00%	3	2.02	2.02	0	0
		MO	45,400	94.00%	9	9.61	9.61	4	0
ST. LOUIS	21	IL	338,300	26.68%	3	4.26	4.42	2	1
		MO	929,600	73.32%	7	7.07	10.69	7	7
SYRACUSE	82	NY	394,000	100.00%	10	11.62	15.29	7	8
TALLAHASSEE-THOMASVILLE	105	FL	187,500	65.56%	8	5.29	8.06	4	4
		GA	98,500	34.44%	10	6.28	7.08	2	2

DMA	DMA Rank	State Segment	No. of HHs in State Segment	% DMA HHs in State Segment	Number of Broadcast Stations Licensed to State				
					Measured by Nielsen	Household-weighted Number of Stations		Carried by DBS	
						Full-Power Stations Only	All Full- and Low-Power Stations	DISH Network	DIRECTV
TAMPA-ST. PETE (SARASOTA)	14	FL	1,810,400	100.00%	19	18.57	23.89	15	14
TERRE HAUTE	152	IL	30,600	20.87%	5	2.71	2.71	2	1
		IN	116,000	79.13%	15	8.48	9.04	4	3
TOLEDO	70	MI	36,900	8.24%	4	11.85	11.85	0	0
		OH	410,700	91.76%	9	9.49	10.97	7	6
TOPEKA	136	KS	181,100	100.00%	8	4.94	6.41	5	5
TRAVERSE CITY-CADILLAC	119	MI	245,200	100.00%	19	6.33	7.11	5	5
TRI-CITIES, TN-VA	91	KY	14,900	4.37%	0	4.28	4.28	0	0
		TN	211,700	62.10%	7	5.93	7.3	4	4
		VA	114,300	33.53%	5	3.26	3.62	4	4
TUCSON (SIERRA VISTA)	67	AZ	468,900	100.00%	23	8.86	17.07	10	10
TULSA	61	KS	15,700	2.90%	0	1.5	2.24	0	0
		OK	524,900	97.10%	15	12.13	13.96	11	10
TWIN FALLS	192	ID	66,400	100.00%	20	3.24	8.25	5	0
TYLER-LONGVIEW(LFKN&NCGD)	109	TX	272,700	100.00%	27	6.21	7.77	4	6
UTICA	171	NY	105,800	100.00%	16	5.83	7.62	4	0
VICTORIA	204	TX	32,100	100.00%	14	2.4	10.87	4	0
WACO-TEMPLE-BRYAN	89	TX	347,400	100.00%	35	14.32	15.97	7	8
WASHINGTON, DC (HAGRSTWN)	9	DC	267,500	11.09%	13	8	13.9	8	9
		MD	955,600	39.60%	10	8.84	8.95	2	1
		PA	6,200	0.26%	0	0.8	1.66	0	0
		VA	1,081,100	44.80%	6	5.59	6.44	4	3
		WV	102,600	4.25%	1	0.83	2.51	0	0

DMA	DMA Rank	State Segment	No. of HHs in State Segment	% DMA HHs in State Segment	Number of Broadcast Stations Licensed to State				
					Measured by Nielsen	Household-weighted Number of Stations		Carried by DBS	
						Full-Power Stations Only	All Full- and Low-Power Stations	DISH Network	DIRECTV
WATERTOWN	176	NY	96,500	100.00%	17	4.32	5.55	5	0
WAUSAU-RHINELANDER	135	WI	187,100	100.00%	20	7.37	7.93	5	6
WEST PALM BEACH-FT. PIERCE	38	FL	782,000	100.00%	22	20.78	22.52	10	8
WHEELING-STEUBENVILLE	159	OH	68,500	51.27%	5	3.89	4.41	2	0
		WV	65,100	48.73%	4	2.21	2.86	3	3
WICHITA FALLS & LAWTON	146	OK	75,800	47.91%	7	2.6	6.04	2	1
		TX	82,400	52.09%	8	3.89	8.66	3	5
WICHITA-HUTCHINSON PLUS	68	KS	462,200	100.00%	29	6.99	9.58	9	10
WILKES BARRE-SCRANTON	54	PA	600,900	100.00%	17	6.94	9.59	7	7
WILMINGTON	132	NC	193,400	100.00%	12	9.33	10.77	6	6
YAKIMA-PASCO-RCHLND-KNNWCK	126	OR	26,200	11.41%	2	1.06	3.05	0	1
		WA	203,400	88.59%	23	4.03	10.63	9	7
YOUNGSTOWN	111	OH	224,200	83.13%	16	13.92	15.29	5	6
		PA	45,500	16.87%	5	5.3	5.86	0	0
YUMA-EL CENTRO	164	AZ	71,100	58.91%	10	1.99	3.75	3	0
		CA	49,600	41.09%	16	3.61	4.66	6	0
ZANESVILLE	203	CA	32,800	100.00%	10	3.61	8.52	4	4

**APPENDIX D**

**In-State Stations Received by Households within Each DMA**

See Appendix D Excel chart attached to this document



**APPENDIX E**

**In-State Stations Carried by DBS in Each DMA**

See Appendix E Excel chart attached to this document

## APPENDIX F

## Case Studies

1. The case studies below are part of our Section 304(2) findings. The record of this proceeding identified specific counties where commenters complained that households are unable to receive any in-state programming or unable to receive sufficient in-state programming. Herein, we provide an in-depth analysis of the extent to which households in these specific geographic areas have access to in-state programming via over-the-air reception, cable systems, and DBS operators on a county basis within each relevant DMA.<sup>1</sup>

2. To describe consumers' access to in-state broadcast stations over the air in each county, we used the Longley-Rice methodology and census block information used in Appendix C of this Report.<sup>2</sup> Each case study reports the number of in-state, full-power broadcast stations available to households in the county as a weighted average.<sup>3</sup> Each case study also reports the number of in-state stations of all types (including, full-power, low-power, Class A, and translators) available to households in the county, also as a weighted average.<sup>4</sup> In addition, each case study lists the in-state broadcast stations that the Commission has determined are significantly viewed in each county.<sup>5</sup>

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<sup>1</sup> This is distinct from other portions of the Report's Section 304(2) analysis that are presented on a state segment rather than a county basis.

<sup>2</sup> As stated in the Report at Footnote 60, in order to determine the predicted service area for purposes of the analysis required by the statute, we have chosen to use OET Bulletin No. 69 methodology (Longley-Rice propagation model). Although this approach estimates the number of households that reside in each television station's service area, it does not tell us whether each household within a particular service area actually can receive that station's signal. Thus, the data set forth in these case studies are based on a *predictive* model regarding the availability of broadcast television stations via over the air transmission. We believe that this approach yields the most accurate data for our assessment of the questions posed by Sections 304(1) and 304(2) of STELA. Accordingly, in these Case Studies as in the Report, with respect to over-the-air broadcasting, we use the terms "receive" and "have access to" interchangeably. We define these terms to mean that households fall within the *predicted* over-the-air service area of in-state broadcast stations. Nonetheless, we recognize that certain households may not be able to access a station for various reasons, including signal interference or the lack of a suitable antenna or other equipment. Moreover, a household's ability to "receive" or "have access to" the signal of a broadcast television station via over-the-air transmission may be impacted by a range of other factors that we cannot determine and assess for purposes of this Report. The Longley-Rice propagation model cannot account for these situations. Therefore, the data set forth in these case studies is predictive of the over-the-air broadcast service that should be available in certain markets and to certain households. We also note that our data analyses include full-power stations, Class A stations, low-power stations, and translators.

<sup>3</sup> As we did for Appendix C of this Report, we consider full-power satellite broadcast stations to be in-state for their state of license. There is no systematic method for determining when such stations retransmit programming from a parent station licensed in another state. We report the number of stations received in each county. More detailed information regarding specific stations is available by state segment in Appendix D.

<sup>4</sup> Some low-power and Class A broadcast stations originate in-state broadcast programming and translators extend the geographic reach of broadcast programming; thus, estimates based only on full-power broadcast stations may understate the extent to which in-state broadcast programming is available over the air. Conversely, some low-power television stations, Class A stations, and translators may carry programming that originates from out-of-state broadcast stations; and, therefore, estimates that include all broadcast stations may overstate the extent to which in-state broadcast programming is available over the air.

<sup>5</sup> See Significantly Viewed List, at <http://transition.fcc.gov/mb/significantviewedstations031011.pdf>. As described above, significantly viewed stations are available for carriage by cable and DBS operators and are treated as local (continued....)

3. To describe consumers' access to in-state broadcast stations from DBS in each county, staff estimated the number of such stations based on the information DIRECTV and DISH submitted to the Commission under Section 305 of STELA, and additional information the companies provided to Commission staff in this proceeding. Each case study also identifies the in-state broadcast stations provided as part of each DBS operator's local-into-local service.<sup>6</sup>

4. To describe consumers' access to in-state broadcast stations from cable systems, we identified the cable systems in the counties and communities in each study using the Commission's Cable Operations and Licensing System.<sup>7</sup> Where available, we used cable operators' 2010 FCC Form 325 submissions to determine the carriage of in-state broadcast stations. Because many of the cable systems in the areas included in the case studies are small, they are not included in the 2010 FCC Form 325 sample. Thus, we used Warren Television & Cable Factbook data and individual cable system websites to gather additional information.<sup>8</sup> In addition, in some counties multiple cable systems offer varying broadcast station lineups.<sup>9</sup> Rather than report on each cable system where this is the case, to get an understanding of whether in-state broadcast stations are being carried, we reviewed the available information and present an overview of the in-state stations cable systems carry.

5. As the data presented below shows, in many cases where cable systems exist in underserved areas, those systems offer subscribers some in-state stations even when the subscribers are located in counties assigned to out-of-state DMAs. On the basis of the case studies, it appears that DBS operators are less likely to include in-state stations, such as significantly viewed stations, in their channel lineups even if in-state stations may be included in their local-into-local service under existing rules and law. However, a limitation of the available data is that, to the extent a cable system exists in a particular county, we cannot determine how many households, if any, are actually passed by the cable system. Thus, for certain households, DBS could be the only MVPD option.

**I. *Albuquerque-Santa Fe DMA:*** La Plata County and Montezuma County in Colorado are assigned to the Albuquerque- Santa Fe DMA, based in New Mexico. The Albuquerque-Santa Fe DMA is also comprised of a portion of Apache County Arizona, and 28 counties in New Mexico. This case study considers La Plata and Montezuma Counties.<sup>10</sup>

(Continued from previous page) \_\_\_\_\_  
stations for copyright purposes. Cable and DBS operators must obtain retransmission consent to carry out-of-market significantly viewed stations. 47 C.F.R. § 76.54(b), (d); 47 C.F.R. § 76.5(i)(1)-(2). *See also* 17 U.S.C. § 119(a)(3)(A).

<sup>6</sup> The sources for information about broadcast stations' community of license and affiliations are Nielsen, BIA/Kelsey, DISH, DIRECTV and individual broadcast stations' websites.

<sup>7</sup> The Commission's COALS database can be located at: <http://fjallfoss.fcc.gov/coals7>.

<sup>8</sup> Warren Communications News, Television & Cable Factbook Online, <http://www.tvcablefactbook.com> (Warren Factbook). We were not able to locate complete information from publicly available sources for every cable system listed in COALS that was not in the 2010 FCC Form 325 sample. The data is not sufficient to allow us to determine the extent to which cable is available to specific households in any particular county or community; thus, the presence of a cable system does not necessarily mean that all households have access to the in-state stations offered by the included cable systems.

<sup>9</sup> The data sources list call signs for the stations carried by individual cable systems. Unless otherwise noted, the data do not allow us to determine if a cable system only carries the local programming (*i.e.*, non-network, non-syndicated programming) of an in-state station or the entire programming schedule of the station.

<sup>10</sup> Consumers residing in La Plata and Montezuma counties filed comments in this proceeding regarding their lack of Colorado programming. *See, e.g.*, Comments of Rick Campbell (Jan. 24, 2011); Comments of Elizabeth Bruen (Jan. 24, 2011); Comments of Rep. Scott Tipton (Feb. 16, 2011).

- In-State Broadcast Stations Received Over the Air
  - On average, households in La Plata County receive 2.79 in-state, full-power stations over the air and 11.77 in-state stations including full-power stations, translators, low-power stations, and Class A stations. KREZ (CBS), Durango, an in-state station that operates as a satellite of KRQE-TV, Albuquerque, is significantly viewed in La Plata County.<sup>11</sup>
  - On average, households in Montezuma County receive 0.01 in-state, full-power stations over the air, and 15.63 in-state stations including full-power stations, translators, low-power stations, and Class A stations. No in-state stations are significantly viewed in Montezuma County.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV provide local-into-local service for the Albuquerque-Santa Fe DMA. Neither provider offers Colorado stations as part of its service.
- Cable Carriage of In-State Broadcast Stations
  - According to commenters, cable companies in La Plata and Montezuma Counties import local programming from Denver stations. For example, they state that the Bresnan<sup>12</sup> cable system serving the Durango, Colorado in La Plata County, carries local programming from five Denver stations: KUSA-TV (NBC), KCNC-TV (CBS), KWGN-TV (CW), KRMA-TV (PBS), and KMGH-TV (ABC).<sup>13</sup>
  - *La Plata County.*<sup>14</sup> In La Plata County, in addition to the above, Rocky Mountain Cable<sup>15</sup> carries KWGN-TV (CW), KRMA-TV (PBS), and KMGH-TV (ABC) and KDVR (FOX). Rural Route Video and Bresnan Durango systems carry KRMJ (PBS), which is assigned to the Grand Junction-Montrose DMA. One Colorado station, KREZ-TV (CBS), which is assigned to the Albuquerque-Santa Fe DMA, is carried by several cable systems serving La Plata County: Bresnan Durango, Rocky Mountain Cable, and Rural Route Video.
  - *Montezuma County.*<sup>16</sup> In Montezuma County, the Bresnan Delores and Mancos cable systems carry the following stations from the Denver DMA: KUSA-TV (NBC), KCNC-TV (CBS), KWGN-TV (CW), and KRMA-TV (PBS). These systems also carry KRMJ (PBS), which is assigned to the Grand Junction-Montrose DMA and KREZ-TV (CBS), which is assigned to the Albuquerque-Santa Fe DMA.

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<sup>11</sup> It appears that KREZ-TV retransmits the programming of Albuquerque station KRQE-TV. See <http://www.krqe.com/subindex/news/local/northwest>.

<sup>12</sup> Bresnan Communications, [http://www.bresnan.com/support/support\\_for\\_home/channel\\_line-up](http://www.bresnan.com/support/support_for_home/channel_line-up).

<sup>13</sup> Joint Television Networks Reply Comments at 7, 9; NAB Reply Comments at 18-19; Local Television Broadcasters Comments at 11-12; NAB Comments at 33-34. Warren Factbook data confirm the carriage of these Denver stations by Bresnan. Carriage of local programming means that only non-network, non-syndicated programming is carried and that the Denver stations are not carried for most of the broadcast day, including prime time.

<sup>14</sup> Warren Factbook.

<sup>15</sup> *Id.*; Rocky Mountain Cable, [http://www.rockymtncable.com/channel\\_guides/Bayfield\\_CO%20lineup.pdf](http://www.rockymtncable.com/channel_guides/Bayfield_CO%20lineup.pdf).

<sup>16</sup> Warren Factbook.

**II. Atlanta DMA:** Randolph County Alabama is assigned to the Atlanta DMA, based in Georgia. In addition, the Atlanta DMA is comprised of 51 counties from Georgia and one county from North Carolina. This case study considers Randolph County.<sup>17</sup>

- In-State Broadcast Stations Received Over the Air
  - On average, households in Randolph County receive 2.39 in-state, full-power stations over the air and 2.55 in-state stations including full-power stations, translators, low-power stations, and Class A stations. There are no significantly viewed stations in Randolph County.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV provide local-into-local service for the Atlanta DMA. Neither provider offers Alabama stations as part of its service.
- Cable Carriage of In-State Broadcast Stations
  - James Cable is the cable operator in Randolph County where there are three systems serving four communities (Roanoke, Rock Mills, Wadley, Wedowee).<sup>18</sup> These systems carry the following stations assigned to the Birmingham (Anniston & Tuscaloosa) DMA: WBRC (FOX), WCIQ (PBS), WJSU-TV (ABC), WTTO (CW), and WIAT (CBS). In addition, they carry the following stations assigned to the Montgomery-Selma DMA: WSFA (NBC) and WAXC-LP (IND).

**III. Billings DMA:** Big Horn County and Park County in Wyoming are assigned to the Billings DMA, based in Montana. In addition, the Billings DMA is comprised of 16 Montana counties.<sup>19</sup>

- In-State Broadcast Stations Received Over the Air
  - On average, households in Big Horn receive 0.34 in-state, full-power stations over the air and 0.99 in-state stations including full-power stations, translators, low-power stations, and Class A stations. KFNE (FOX), assigned to the Casper-Riverton DMA, is significantly viewed in Big Horn County.
  - On average, households in Park County receive 0.02 in-state, full-power stations over the air and 0.99 in-state stations including full-power stations, translators, low-power stations, and Class A stations. There are no significantly viewed stations in Park County.
- DBS Carriage of In-State Broadcast Stations
  - DISH provides local-into-local service for the Billings DMA, but DIRECTV does not. DISH does not offer Wyoming stations as part of its local-into-local service.

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<sup>17</sup> Residents of Randolph County filed comments in this proceeding regarding their lack of Alabama programming. See Comments of Gary C. Vaughn (Feb. 8, 2011); Jason Bacaj, *Changing Channels: TV Viewers in Randolph County Want to Escape the Clutches of the Atlanta Market*, THE ANNISTON STAR, July 3, 2011 (indicating that consumers in nearby Cleburne County, also in the Atlanta DMA, receive Alabama stations that are significantly viewed in that county) ([http://www.annistonstar.com/pages/full\\_story/push?article=Changing+channels-+TV+viewers+in+Randolph+County+want+to+escape+the+clutches+of+the+Atlanta+market%20&id=14555996&instance=recentComments](http://www.annistonstar.com/pages/full_story/push?article=Changing+channels-+TV+viewers+in+Randolph+County+want+to+escape+the+clutches+of+the+Atlanta+market%20&id=14555996&instance=recentComments)).

<sup>18</sup> Warren Factbook.

<sup>19</sup> Representatives of the Wyoming counties filed comments in this proceeding regarding consumers' lack of access to Wyoming programming. See Letter from Sen. Michael B. Enzi, Wyoming, Sen. John Barasso, M.D., Wyoming, and Rep. Cynthia M. Lummis, Wyoming, to Julius Genachowski, Chairman, FCC (Dec. 1, 2010 (Enzi *et al.* Dec. 1, 2010 *Ex Parte* Letter) ; Wyoming PBS Comments at 1-3 (collectively, Wyoming Comments).



- Cable Carriage of In-State Broadcast Stations
  - Bresnan is the cable operator in Big Horn County where there is one system serving three communities (Basin, Big Horn County, and Greybull).<sup>20</sup> This system carries the following in-state station KCWC-TV (PBS), which is assigned to the Casper-Riverton DMA.
  - KLiP Interactive is the cable operator in Park County where there is one system serving three communities in Park County (Cody, Powell, and Meeteetse).<sup>21</sup> This system carries the following in-state stations assigned to the Casper-Riverton DMA: KCWC-TV (PBS) and KTWO (ABC).

**IV. *Boise DMA:*** Malheur County Oregon is assigned to the Boise DMA, based in Idaho. The Boise DMA is also comprised of 11 Idaho counties.<sup>22</sup>

- In-State Broadcast Stations Received Over the Air
  - On average, households in Malheur receive no in-state, full-power stations over the air and 0.89 in-state stations including full-power stations, translators, low-power stations, and Class A stations. There are no significantly viewed stations in Malheur County.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV provide local-into-local service for the Boise DMA. Neither provider offers Oregon stations as part of its service.
- Cable Carriage of In-State Broadcast Stations
  - Cable One is the cable operator in Malheur County where there is one system serving three communities (Nyssa, Ontario, and Vale).<sup>23</sup> Cable One does not offer Oregon stations as part of its service.

**V. *Columbus, GA (Opelika, AL) DMA:*** Chambers County Alabama is assigned to the Columbus, GA (Opelika, AL) DMA. The Columbus, GA (Opelika, AL) DMA is also comprised of three other Alabama counties and 12 Georgia counties. This case study considers Chambers County.<sup>24</sup>

- In-State Broadcast Stations Received Over the Air
  - On average, households in Chambers County receive 3.58 in-state, full-power stations over the air and 3.59 in-state stations including full-power stations, translators, low-power stations, and Class A stations. There are no significantly viewed stations in Chambers County.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV serve the Columbus, GA (Opelika, AL) DMA. Neither offers Alabama stations as part of their local-into-local service.

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<sup>20</sup> Warren Factbook.

<sup>21</sup> *Id.*

<sup>22</sup> Oregon Public Broadcasting commented in this proceeding regarding complaints about its lack of carriage in this area. See Oregon Public Broadcasting Comments at 2.

<sup>23</sup> 2010 FCC Form 325.

<sup>24</sup> See Comments of Gary C. Vaughn (Feb. 8, 2011).

- Cable Carriage of In-State Broadcast Stations

- In Chambers County<sup>25</sup> Marcus Cable of Alabama, LLC, serves Chambers and other communities. This system carries WBIQ (PBS), assigned to the Birmingham (Anniston & Tuscaloosa) DMA, and WAIQ (PBS) and WSFA (NBC), assigned to the Montgomery-Selma DMA.

**VI. *Denver DMA:*** Hooker County Nebraska and Albany, Campbell, Carbon, Johnson, Niobrara, and Platte Counties in Wyoming are all assigned to the Denver DMA. The Denver DMA is also comprised of 48 Colorado counties, and 13 other Nebraska counties. This case study considers Hooker and the Wyoming counties.

**A. Hooker County Nebraska.**<sup>26</sup>

- In-State Broadcast Stations Received Over the Air

- On average, households in Hooker County receive 0.93 in-state, full-power stations over the air and 0.93 in-state stations including full-power stations, translators, low-power stations, and Class A stations. This county has two significantly viewed in-state stations: KNOP-TV (NBC), assigned to the North Platte DMA, and KDUH-TV (ABC), assigned to the Cheyenne-Scottsbluff DMA.

- DBS Carriage of In-State Broadcast Stations

- Both DISH and DIRECTV serve the Denver DMA. Neither offers Nebraska stations as part of their local-into-local service.

- Cable Carriage of In-State Broadcast Stations

- Consolidated Cable Inc., the only cable system in the county, carries three Nebraska stations, each assigned to a different DMA. It carries the two significantly viewed, in-state stations KNOP-TV (NBC) and KDUH-TV (ABC) from the North Platte and Cheyenne-Scottsbluff DMAs, respectively. From the Sioux Falls (Mitchell) DMA, it carries in-state station KRNE (PBS).<sup>27</sup> This station is a satellite of KUON-TV, assigned to the Lincoln & Hastings – Kearny DMA.<sup>28</sup>

**B. Wyoming Counties**<sup>29</sup>

- In-State Broadcast Stations Received Over the Air

- On average, households in Albany County receive 1.01 in-state, full-power stations over the air and 6.53 in-state stations including full-power stations, translators, low-power stations,

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<sup>25</sup> 2010 FCC Form 325.

<sup>26</sup> Consumers from this area filed comments in this proceeding. *See, e.g.*, Comments of Lynn Nichols (May 14, 2011); Comments of Ronald D. Boyer (May 16, 2011); Comments of Dale A. Ginkens (May 13, 2011) (stating that the cable system in Mullen can no longer afford to provide service due to higher costs and sparse population).

<sup>27</sup> Warren Factbook.

<sup>28</sup> Commenters report that their local cable operator, Consolidated Cable Inc., has notified them that it will cease operation. Once the cable operator ceases operation, consumers will only have DBS as an MVPD option. *See* n.22, *supra*. *See also* Comments of Sarah Hardin (May 18, 2011) (noting that Denver is approximately 260 miles from Mullen and its stations do not provide any local news coverage for Mullen). *See also* Comments of Jeff Hoising (May 23, 2011).

<sup>29</sup> *See* Wyoming Comments n.19, *supra*.

and Class A stations. KGWN-TV (CBS), assigned to the Cheyenne-Scottsbluff DMA, is significantly viewed in Albany County.

- On average, households in Campbell County receive 0.82 in-state, full-power stations over the air and 5.42 in-state stations including full-power stations, translators, low-power stations, and Class A stations. There are no significantly viewed in-state stations in Campbell County.
- On average, households in Carbon County receive 0.84 in-state, full-power station over the air and 2.53 in-state stations including full-power stations, translators, low-power stations, and Class A stations. KGWN-TV (CBS), assigned to the Cheyenne-Scottsbluff DMA, is significantly viewed in Carbon County.
- On average, households in Johnson County receive 1.16 in-state full-power stations over the air and 2.72 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Johnson County has two significantly viewed stations: KGWN-TV (CBS) and KTWO-TV (ABC), assigned to the Cheyenne-Scottsbluff DMA and Casper-Riverton DMAs, respectively.
- On average, households in Niobrara County receive 0.01 in-state, full-power stations over the air and 0.02 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Niobrara County has two significantly viewed in-state stations: KGWN-TV (CBS) and KTWO-TV (ABC), assigned to the Cheyenne-Scottsbluff DMA and Casper-Riverton DMAs, respectively.
- On average, households in Platte County receive 0.06 in-state, full-power stations over the air and 0.47 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Niobrara County has two significantly viewed in-state stations: KGWN-TV (CBS) and KTWO-TV (ABC), assigned to the Cheyenne-Scottsbluff DMA, and Casper-Riverton DMAs respectively.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV serve the Denver DMA. Neither offers Wyoming stations as part of their local-into-local service.
- Cable Carriage of In-State Broadcast Stations
  - Bresnan is the cable operator in Albany County where there is one system serving two communities (Laramie and Albany). This system carries the following in-state stations assigned to the Casper-Riverton DMA: KCWC-TV (PBS) and KCWY (NBC).
  - Bresnan is the cable operator in Campbell County where there is one system serving two communities (Gillette and Campbell). This system carries the following in-state stations assigned to the Casper-Riverton DMA: KGWC-TV (CBS) and KTWO-TV (ABC).
  - Carbon County has three cable operators, with five systems, serving nine communities (Rawlins, Sinclair, Sarasota, Hanna, Medicine Bow, Encampment, Riverside, Old Baldy, and Carbon). These cable operators carry in-state stations assigned to the Casper-Riverton DMA. Bresnan carries four in-state stations: KTWO-TV (ABC), KCWC-TV (PBS), KCWY (NBC), and KFNR (FOX). James Cable carries one in-state station: KCWY (NBC), Medicine Bow Cable carries two in-state stations: KGWC-TV (CBS) and KTWO-TV (ABC).
  - Bresnan is the cable operator in Johnson County where there are two systems serving three communities (Buffalo, Johnson, and Kaycee). These systems carry the following in-state stations assigned to the Casper-Riverton DMA: KTWO-TV (ABC) and KCWC (NBC).

- James Cable is the cable operator in Niobrara County where there is one system serving one community (Lusk). This system carries the following in-state stations assigned to the Casper-Riverton DMA: KTWO-TV (ABC) and KCWY (NBC).
- Platte County has two cable operators, where there are two systems, serving three communities (Wheatland, Guernsey, and Hartville). James Cable carries the following in-state stations assigned to the Casper-Riverton DMA: KCWC (PBS) and KCWY (NBC). CAMS Cable carries in state station KTWO-TV (ABC), assigned to the Caspar-Riverton DMA, and in-state stations KGWN (CBS, CW) and KTNE-TV (PBS), assigned to the Cheyenne, WY-Scottsbluff, NE DMA.

**VII. *Monroe-El Dorado DMA:*** Ashley and Union Counties Arkansas are assigned to the Monroe-El Dorado DMA. This DMA includes an in-state Arkansas community, El Dorado.<sup>30</sup> The Monroe-El Dorado DMA is also comprised of 16 Louisiana counties.

- In-State Broadcast Stations Received Over the Air
  - On average, households in Ashley County receive 3.6 in-state full-power stations over the air and 3.6 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Ashley County has no significantly viewed in-state stations.
  - On average, households in Union County receive 0.82 in-state, full-power stations over the air and 5.42 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Within Union County, KATV (ABC), assigned to the Little Rock-Pine Bluff DMA, is significantly viewed.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV offer local-into-local service to the Monroe-El Dorado DMA. Both offer two Arkansas stations assigned to the Monroe-El Dorado DMA as part of their service, including KETZ (PBS) and KTVE (NBC). In addition, DIRECTV offers a unique channel, referred to as ARKNEWS (Arkansas News Channel), which consists of local news programming from KATV (ABC), assigned to the Little Rock-Pine Bluff DMA.<sup>31</sup>
- Cable Carriage of In-State Broadcast Stations
  - Ashley County has two cable systems: Cable South Media, serving Crosett, and Zoom Media, serving Hamburg.<sup>32</sup> Both systems carry in-state station KTVE (NBC), assigned to the Monroe-El Dorado DMA. Both of these systems carry in-state stations KATV (ABC) and KETS (PBS), assigned to the Little Rock-Pine Bluff DMA. In addition, Zoom Media carries in-state stations KASN (CW) and KKYK-DT (TUFF TV Network), also assigned to the Little Rock – Pine Bluff DMA.
  - Union County has two cable systems: Suddenlink, serving El Dorado and other parts of the county, and Zoom Media.<sup>33</sup> Both systems carry in-state station KTVE (NBC), assigned to the Monroe-El Dorado DMA. In addition, Suddenlink carries in-state stations KETZ (PBS) and

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<sup>30</sup> Letter from Rep. Mike Ross to Julius Genachowski, Chairman, FCC (Jan. 25, 2011) (Ross Jan. 25, 2011 *Ex Parte* Letter).

<sup>31</sup> DIRECTV offers this news programming under a private copyright agreement brokered during congressional consideration of STELA. See Ross Jan. 25, 2011 *Ex Parte* Letter. See also DIRECTV Comments at n.3.

<sup>32</sup> Warren Factbook.

<sup>33</sup> *Id.*

KLMB-LP (FOX), also assigned to the Monroe-El Dorado DMA. Both systems also carry the following in-state stations, assigned to the Little Rock – Pine Bluff DMA: KATV (ABC), KASN (CW), KETG (PBS), and KKYK-DT (TUFF TV Network).

**VIII. *Pittsburgh DMA:*** Garrett County Maryland is assigned to the Pittsburgh DMA, based in Pennsylvania. The Pittsburgh DMA is also comprised of 13 Pennsylvania counties and two West Virginia counties. This case study considers Garrett County.<sup>34</sup>

- In-State Broadcast Stations Received Over the Air
  - On average, households in Garrett County receive 1.24 in-state full-power stations over the air and 1.24 in-state stations including full-power stations, translators, low-power stations, and Class A stations. WGPT (PBS) is assigned to the Pittsburgh DMA, and licensed to Oakland, Maryland, Garrett County's seat. There are no significantly viewed stations within Garrett County.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV offer local-into-local service in the Pittsburgh DMA. Neither includes Maryland stations as part of this service.
- Cable Carriage of In-State Broadcast Stations
  - Garrett County has two cable systems: Comcast (which serves Bloomington District #4)<sup>35</sup> and Shentel,<sup>36</sup> which serves Oakland as well as several other communities.<sup>37</sup> Both Comcast and Shentel carry WHAG-TV (NBC), assigned to the Washington, D.C. (Hagerstown) DMA. They also carry WGPT (PBS), Oakland, Maryland, assigned to the Pittsburgh DMA. Comcast also carries WJAL (IND), assigned to the Washington, D.C. (Hagerstown) DMA and WJZ-TV (CBS), assigned to the Baltimore DMA.

**IX. *Rapid City DMA:*** Crook, Sheridan, and Weston Counties Wyoming are assigned to the Rapid City DMA, based in South Dakota. The Rapid City DMA is also comprised of 13 South Dakota counties, one Montana County, and one Nebraska County. This case study considers the Wyoming counties.<sup>38</sup>

- In-State Broadcast Stations Received Over the Air
  - On average, households in Crook County receive 0.01 in-state, full-power stations over the air and 0.4 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Crook County has no significantly viewed in-state stations.

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<sup>34</sup> During the pendency of this proceeding, commenters noted that cable operators in Garrett County did not carry Maryland stations. *See, e.g.*, Letter from Rep. Roscoe Bartlett, to Julius Genachowski, Chairman, FCC (Feb. 15, 2011); Reply Comments of Garretts For Maryland TV (Feb. 8, 2011); Comments of Rosita Claro-Bolt (Feb. 22, 2011). Additional information indicates that the local cable system reinstated WHAG-TV, Hagerstown, and is in discussions to carry the local, in-state news programming of WBAL-TV, Baltimore. *See* Letter from Rep. Roscoe Bartlett, to Julius Genachowski, Chairman, FCC (May 3, 2011). Congressman Bartlett does not identify which cable system, or whether all cable systems, in the county are adding in-state programming.

<sup>35</sup> 2010 FCC Form 325.

<sup>36</sup> Warren Factbook; Shentel Cable Company, <http://home.shentel.net/pages/cable/cable-programming.php>.

<sup>37</sup> Warren Factbook.

<sup>38</sup> *See* Wyoming Comments n.19, *supra*.

- On average, households in Sheridan County receive one in-state, full-power-station over the air and 4.21 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Within Sheridan County, in-state station KTWO-TV (ABC), assigned to the Casper-Riverton DMA, is significantly viewed.
- On average, households in Weston County receive no in-state, full-power stations over the air and 0.03 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Within Weston County, in-state station KTWO-TV (ABC), assigned to the Casper-Riverton DMA, is significantly viewed.
- DBS Carriage of In-State Broadcast Stations
  - DISH offers local-into-local service in the Rapid City DMA, but DIRECTV does not. DISH does not offer any Wyoming stations as part of its local-into-local service.
- Cable Carriage of In-State Broadcast Stations
  - Tongue River Communications<sup>39</sup> is the cable operator for Crook County where there are three systems serving three communities (Sundance, Pine Haven, and Hulett). These systems carry the following in-state stations assigned to the Casper-Riverton DMA: KCWC (PBS), KGWC-TV (CBS), and KTWO-TV (ABC).
  - Bresnan Communications and Tongue River Communications are the cable operators in Sheridan County where there are three systems serving four communities (Sheridan, Ranchester, Dayton, and Story). These cable operators carry the following in-state stations: KCWC (PBS), KGWC-TV (CBS) and KTWO-TV (ABC), all assigned to the Casper-Riverton DMA, and KSGW-TV (ABC), Sheridan, Wyoming, assigned to the Rapid City DMA.
  - Bresnan Communications is the cable operator in Weston County where there is one system serving one community (Newcastle). This system carries the following in-state stations assigned to the Casper-Riverton DMA. KGWC-TV (CBS) and KTWO-TV (ABC).

**X. *Salt Lake City DMA:*** Elko County Nevada and Lincoln, Sublette, Sweetwater, and Uinta Counties in Wyoming are assigned to the Salt Lake City DMA, based in Utah. The Salt Lake City DMA is also comprised of three Idaho counties, two other Nevada counties, and 29 Utah counties. This case study considers Elko County Nevada and the Wyoming counties.

**A. *Elko County Nevada.***<sup>40</sup>

- In-State Broadcast Stations Received Over the Air
  - On average, households in Elko County receive 0.81 in-state, full-power stations over the air and 9.61 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Within Elko County, in-state station KOLO-TV (ABC), assigned to the Reno DMA, is significantly viewed.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV offers local-into-local service in the Salt Lake City DMA. Neither offers any Nevada stations as part of its local-into-local service.

<sup>39</sup> Warren Factbook; Tongue River Communications, <http://tonguerivercomm.com/>.

<sup>40</sup> Commenters state that Salt Lake City is in the Mountain Time Zone, while Elko is in the Pacific Time Zone, resulting in news and weather reports being an hour behind. See Comments of Darlene Elvin (Mar. 21, 2011).



- Cable Carriage of In-State Broadcast Stations

- In Elko County, Baja Broadband serves Elko and Carlin, and Satview Broadband serves Wells. All three systems carry in-state station KENV-DT (NBC), assigned to the Salt Lake City DMA. The station is a satellite of KRNVDT, assigned to the Reno DMA. In addition, Baja Broadband (Carlin) carries translator K15EE-D (PBS), also assigned to the Salt Lake City DMA. All three systems carry in-state station KTVN (CBS), assigned to the Reno DMA. Also from the Reno DMA, Baja Broadband (Elko) carries in-state station KNPB (PBS) and Baja Broadband (Carlin) carries in-state station KOLO-TV (ABC).

**B. Wyoming Counties<sup>41</sup>**

- In-State Broadcast Stations Received Over the Air

- On average, households in Lincoln County receive 0.03 in-state, full-power stations over the air and 0.94 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Lincoln County has no significantly viewed stations.
- On average, households in Sublette County receive 0.26 in-state full-power stations over the air and 2.56 in-state stations including full-power stations, translators, low-power stations, and Class A stations. KTWO-TV (ABC), assigned to the Casper-Riverton DMA, is significantly viewed in Sublette County.
- On average, households in Sweetwater County receive 1.06 in-state, full-power stations over the air and 4.4 in-state, stations including full-power stations, translators, low-power stations, and Class A stations. Sweetwater County has no significantly viewed stations.
- On average, households in Uinta County receive 0.3 in-state, full-power stations over the air and 5.62 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Uinta County has no significantly viewed stations.

- Cable Carriage of In-State Broadcast Stations

- There are no cable systems in Lincoln County that carry in-state stations.
- There are no cable systems in Sublette County that carry in-state stations.
- Sweetwater Cable TV Co, Inc., is the cable operator in Sweetwater County where there are two systems serving five communities (Green River, Rock Springs, Sweetwater West and North portions, and Wamsutter). These systems carry the following in-state stations assigned to the Casper-Riverton DMA: KTWO-TV (ABC) and KGWR-TV (CBS).
- There are no cable systems in Uinta County that carry in-state stations.

**XI. Shreveport DMA:** Columbia, Hempstead, Howard, Lafayette, Little River, Miller, and Sevier Counties in Arkansas are assigned to the Shreveport DMA, based in Louisiana. The Shreveport DMA is also comprised of nine Louisiana counties, one Oklahoma County, and eight Texas counties. This case study considers the Arkansas counties.<sup>42</sup>

<sup>41</sup> See Wyoming Comments n.19, *supra*.

<sup>42</sup> Ross Jan. 25, 2011 *Ex Parte* Letter.

- In-State Broadcast Stations Received Over the Air
  - On average, households in Columbia County receive 3.96 in-state, full-power stations over the air and 3.96 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Columbia County has no significantly viewed in-state stations.
  - On average, households in Hempstead County receive 2.56 in-state, full-power Arkansas stations over the air and 3.59 in-state stations including full-power stations, translators, low-power stations, and Class A stations. There are no significantly viewed stations in Hempstead County.
  - On average, households in Howard County receive 1.19 in-state, full-power stations over the air and 1.91 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Howard County has no significantly viewed in-state stations.
  - On average, households in Lafayette County receive 2.75 in-state, full-power stations over – the air and 2.76 in-state stations including full-power stations, translators, low-power stations, and Class A stations. There are no significantly viewed stations in Lafayette County.
  - On average, households in Little River County receive 0.61 in-state, full-power stations over the air and 0.68 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Little River County has no significantly viewed in-state stations.
  - On average, households in Miller County receive 0.49 in-state, full-power stations over the air and 1.35 in-state stations including full-power stations, translators, low-power stations, and Class A stations. There are no significantly viewed stations in Miller County.
  - On average, households in Sevier County receive 0.13 in-state, full-power stations over the air and 0.52 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Sevier County has no significantly viewed in-state stations.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV offer local-into-local service to the Shreveport DMA. DISH does not offer any Arkansas stations as part of this service. DIRECTV offers a unique channel, referred to as ARKNEWS (Arkansas News Channel), which consists of local news programming from KATV (ABC), assigned to the Little Rock-Pine Bluff DMA.<sup>43</sup>
- Cable Carriage of In-State Broadcast Stations
  - Suddenlink Communications<sup>44</sup> is the cable operator in Columbia County where there are two systems serving five communities (Magnolia, Waldo, Columbia, Emerson, and Talley). These systems carry the following in-state stations assigned to the Shreveport DMA: KARK-TV (NBC), KATV (ABC), KETG (PBS), and KTAL-TV (NBC).
  - Hempstead County has two cable systems: Allegiance, serving Hempstead and other parts of the county, and Hope Community TV.<sup>45</sup> There are two systems serving three communities (Hope, Washington, and Fulton). Both systems carry in-state stations: KARK-TV (ABC), KETG (PBS), KTAL-TV (NBC), KTHV (CBS), and KTSS-LP (IND), assigned to the

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<sup>43</sup> DIRECTV offers this news programming under a private copyright agreement brokered during congressional consideration of STELA. See Ross Jan. 25, 2011 *Ex Parte* Letter. See also DIRECTV Comments at 2 n.3.

<sup>44</sup> Suddenlink Communications, <http://www.suddenlink.com/television/lineup.php>.

<sup>45</sup> Warren Factbook; Hope Community TV, <http://www.hopecabletv.com/content/channellistings.aspx>.

- Shreveport DMA. In addition, Hope Community TV carries in-state station KATV (ABC), also assigned to the Shreveport DMA.
- Allegiance Communications<sup>46</sup> and Suddenlink Communications are the cable operators in Howard County where there are three systems serving four communities (Nashville, Mineral Springs, Dierks, and Center Point). These cable operators provide the following in-state stations assigned to the Shreveport DMA: KARK-TV (NBC), KATV (ABC), KETG (PBS), KTAL-TV (NBC), KTHV (CBS), and KTSS-LP (IND).
  - Alliance Communications<sup>47</sup> is the cable operator in Lafayette County where there is one system serving three communities (Stamps, Lewisville, and Buckner). This system carries the following in-state stations assigned to the Shreveport DMA: KATV (ABC), KETG (PBS), and KTAL-TV (NBC).
  - New Wave Communications<sup>48</sup> is the cable operator in Little River County where there is one system serving two communities (Ashdown and Little River). This system carries the following in-state stations assigned to the Shreveport DMA: KARK-TV (NBC), KATV (ABC), KETG (PBS), and KTSS-LP (IND).
  - Miller County has two cable systems: Cable One, which serves the community of Miller and portions of the county,<sup>49</sup> and Rapid Communications, LLC, which serves Fouke.<sup>50</sup> Both systems carry in-state station KLFJ-LP, a Class A station assigned to the Shreveport DMA. In addition, both systems carry the following two in-state stations assigned to the Little Rock DMA: KATV (ABC) and KETG (PBS), a satellite of KETS (PBS) –also assigned to the Little Rock DMA.
  - Allegiance Communications is the cable operator in Sevier County where there is one system serving three communities (De Queen, Horatio, and Sevier). This system carries the following in-state stations assigned to the Shreveport DMA: KARK-TV (NBC), KATV (ABC), KETG (PBS), and KTHV (CBS).

**XII. *Spokane DMA:*** Idaho County Idaho, and Wallowa County Oregon are assigned to the Spokane DMA, based in Washington. The Spokane DMA is also comprised of nine other Idaho counties, one Montana County, and 12 Washington counties. In this case study we focus on Idaho County and Wallowa County.

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<sup>46</sup> Allegiance Communications, Inc., <http://www.allegiance.tv/index.php/>.

<sup>47</sup> Alliance Communications, <http://alliancecable.net/>.

<sup>48</sup> New Wave Communications, <http://www.newwavecom.com/cable/pdfs/ashdown.pdf>.

<sup>49</sup> 2010 FCC Form 325.

<sup>50</sup> Warren Factbook; Southwest Arkansas Telephone Cooperative, Inc., <http://www.swat.coop/lineups/expanded.htm>.

### A. Idaho County Idaho.<sup>51</sup>

- In-State Broadcast Stations Received Over the Air
  - On average, households in Idaho County receive 0.6 in-state, full-power stations over the air and 2.48 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Within Idaho County, KLEW-TV (CBS), assigned to the Yakima DMA, is significantly viewed. KLEW-TV is a satellite of KIMI-TV, a Washington station assigned to the Yakima DMA.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV offer local-into-local service to the Spokane DMA. They both offer the following two in-state stations as part of this service, KCDT (PBS), assigned to the Spokane DMA, and satellite station KLEW-TV (CBS), assigned to the Yakima DMA (as is its parent station KIMI-TV).<sup>52</sup>
- Cable Carriage of In-State Broadcast Stations
  - Idaho County has two cable systems: Elk River Cable TV Co., which serves Riggins, and Suddenlink Communications, which serves Grangeville. From the Spokane DMA, Suddenlink Communications carries KLEW-TV (CBS) (satellite of KIMI-TV in Yakima) and KUID-TV (PBS).<sup>53</sup> Elk River Cable TV Company carries the following stations assigned to the Boise DMA: KAID (PBS), KBOI-TV (CBS), KTVB (NBC), and KIVI-TV (ABC).<sup>54</sup> Commenters claim, however, that due to signal quality issues, the Idaho station signals are not watchable in Riggins even on the cable system, leaving DBS as the only option for good quality reception of Idaho stations.<sup>55</sup>

### B. Wallowa County Oregon<sup>56</sup>

- In-State Broadcast Stations Received Over the Air
  - On average, households in Wallowa County receive 0.93 in-state, full-power stations over the air and 1.87 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Wallowa County has no significantly viewed stations.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV offer local-into-local service to the Spokane DMA. Neither offers any Oregon stations as part of this service.<sup>57</sup>

<sup>51</sup> Commenters note that while the Spokane DMA is in the Pacific Time Zone, this central Idaho County is in the Mountain Time Zone. Comments of C.M. “Chuck” Vogelsong (Mar. 7, 2011); Comments of Clyde Hirst (Feb. 10, 2011). Washington State Association of Broadcasters claims that stations licensed to Spokane provide coverage of news and programming issues responsive to the counties they serve in Idaho. Washington State Association of Broadcasters Reply at 8-9.

<sup>52</sup> DISH states that there is a CBS affiliate, with a community of license in Idaho, assigned to the Spokane DMA that it is allowed to retransmit under copyright law. DISH Comments at 5 (citing 17 U.S.C. §§ 122(a)(1); 119(d)(11)). This station appears to be KLEW-TV, Lewiston, Idaho.

<sup>53</sup> Warren Factbook.

<sup>54</sup> *Id.*

<sup>55</sup> Comments of C.M. “Chuck” Vogelsong (Mar. 7, 2011).

<sup>56</sup> Oregon Public Broadcasters Comments at 2.

- Cable Carriage of In-State Broadcast Stations
  - Wallowa County is served by the Almega Cable system, which provides cable service to multiple communities within this county. It carries the following in-state stations assigned to the Bend, OR DMA: Class A station KFXO-LP (FOX), KOAB-TV (PBS), KTVZ (NBC), and digital multicast signal KTVZ-D2 (CW). Almega also carries the following in-state station assigned to the Portland DMA: KATU (ABC) and KOIN (CBS). Almega also carries in-state station KEZI (ABC), assigned to the Eugene DMA.
- XIII. *Yakima-Pasco-Richland-Kennewick DMA:*** Umatilla County Oregon is assigned to the Yakima-Pasco-Richland-Kennewick DMA, based in Washington. The Yakima-Pasco-Richland-Kennewick DMA is also comprised of five Washington counties.
- In-State Broadcast Stations Received Over the Air
  - On average, households in Umatilla County receive 1.06 in-state, full-power stations over the air and 3.05 in-state stations including full-power stations, translators, low-power stations, and Class A stations. Umatilla County has no significantly viewed stations.
- DBS Carriage of In-State Broadcast Stations
  - Both DISH and DIRECTV offer local-into-local service to the Yakima-Pasco-Richland-Kennewick DMA. DISH does not offer any Oregon stations as part of this service. DIRECTV offers in-state station KFFX-TV (FOX) as part of its service. This station, however, is a satellite of Washington station KYCU-LD, assigned to the Yakima DMA.<sup>58</sup>
- Cable Carriage of In-State Broadcast Stations
  - Umatilla County has one cable system, Falcon Community Cable L.P. This system carries one in-state station, KFFX-TV (FOX).<sup>59</sup> This station, however, is a satellite of Washington station KYCU-LD, assigned to the Yakima DMA.

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<sup>57</sup> Oregon Public Broadcasting comments that DBS subscribers in these counties do not receive the service of its stations as part of their local-into-local service and, thus, do not have access to their coverage of state-wide elections, educational and other state programming. *Id.*

<sup>58</sup> *Id.* (stating that neither DBS operator carries an Oregon noncommercial station in the Yakima DMA.) However, Washington State Association of Broadcasters asserts that the broadcast stations licensed to Yakima provide a significant amount of coverage of Umatilla County, which represents 25 percent of the households in the DMA, according to one estimate. Washington State Association of Broadcasters Reply at 6-8.

<sup>59</sup> 2010 FCC Form 325.