



# PUBLIC NOTICE

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## **MEDIA BUREAU SEEKS COMMENT FOR REPORT REQUIRED BY THE STELA REAUTHORIZATION ACT OF 2014**

**MB Docket No. 15-43**

**Comment Date: May 12, 2015**

**Reply Comment Date: June 11, 2015**

By this Public Notice, the Media Bureau seeks data, information, and comment for use in preparation of a report required by the STELA Reauthorization Act of 2014 (“STELAR”).<sup>1</sup> Section 109 of STELAR requires the Commission to submit a report on designated market areas and considerations for fostering increased localism to the appropriate congressional committees not later than 18 months after the date of enactment (*i.e.*, June 3, 2016).<sup>2</sup> Specifically, Section 109 states:

### **SEC. 109. REPORT ON DESIGNATED MARKET AREAS.**

(a) **IN GENERAL.** Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to the appropriate congressional committees a report that contains -

(1) an analysis of -

(A) the extent to which consumers in each local market have access to broadcast programming from television broadcast stations located outside their local market, including through carriage by cable operators and satellite carriers of signals that are significantly viewed (within the meaning of section 340 of the Communications Act of 1934 (47 U.S.C. 340)); and

(B) whether there are technologically and economically feasible alternatives to the use of designated market areas to define markets that would provide consumers with more programming options and the potential impact such alternatives could have on localism and on broadcast television locally, regionally, and nationally; and

(2) recommendations on how to foster increased localism in counties served by out-of-State designated market areas.

(b) **CONSIDERATIONS FOR FOSTERING INCREASED LOCALISM.** In making recommendations under subsection (a)(2), the Commission shall consider -

(1) the impact that designated market areas that cross State lines have on access to local programming;

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<sup>1</sup> STELA Reauthorization Act of 2014, Pub. L. No. 113-200 (“STELAR”), § 109, 128 Stat. 2059, 2065 (2014).

<sup>2</sup> The date of enactment was Dec. 4, 2014. Thus, the deadline for submitting the STELAR Section 109 Report is June 3, 2016.

- (2) the impact that designated market areas have on local programming in rural areas; and
- (3) the state of local programming in States served exclusively by out-of-State designated market areas.

The legislative history of Section 109 instructs the Commission to consider a number of factors in making its recommendations to foster increased localism in counties served by out-of-State designated market areas (“DMA”),<sup>3</sup> including: (1) the impact DMAs that cross State lines have on access to local programming; (2) the impact DMAs have on local programming in rural areas; and (3) the impact such alternatives to the DMA system could have on localism, as well as broadcast television locally, regionally, and nationally.<sup>4</sup> The legislative history also provides the following guidance regarding the report:

The Committee intends that the FCC’s report will interpret local programming to include not only television programming (in particular news, sports, weather, and other programming containing content relevant to a consumer’s daily life) originating from and about the DMA in which a consumer resides, but also television programming originating from and about the State in which a consumer resides.

The Committee also intends that the analysis concerning alternatives to the DMA system should explore in detail the merits and advantages to those alternatives to consumers, and not just the impact those alternatives may have on broadcast television.

To prepare the STELAR Section 109 Report, we seek comment on the appropriate methodologies and data sources, as well as the submission of data and information, to analyze the extent consumers have access to broadcast stations located outside their local markets. We ask commenters to identify technologically and economically feasible alternatives to DMAs that would provide more programming options and the potential impact of such alternatives on localism and on broadcast television locally, regionally, and nationally. We also ask commenters to provide recommendations that would foster localism in counties served by out-of-State DMAs and the impact of such recommendations as required under Section 109(b).<sup>5</sup>

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<sup>3</sup> A DMA is a geographic area defined by The Nielsen Company as a group of counties that make up a particular television market. These counties comprise the major viewing audience for the television stations located in their particular metropolitan area. For the most part, the metropolitan areas correspond to the standard metropolitan statistical areas defined by the Federal Government Office of Management and Budget. The geographic areas do not overlap, and most counties in the United States belong to only one DMA (some counties are divided by Nielsen and assigned to different DMAs). DMAs are used in the evaluation of audience data as well as in the planning and buying of television advertising. In addition, the DMA is used to define local markets for broadcast station carriage rights under must carry and retransmission consent. In the satellite context, the statute requires that DMAs be used to define local markets. See 47 U.S.C § 338 (signal carriage rights) and 17 U.S.C. § 122 (copyright).

<sup>4</sup> U.S. Senate, Committee on Commerce, Science, and Transportation. *Satellite Television Access and Viewer Rights Act* (S. Rpt. 113-322), at 15 (2014).

<sup>5</sup> Out-of-State DMAs are DMAs that include counties from more than one State.

## **Data Analysis -- Section 109(a)(1)(A)**

Section 109(a)(1)(A) requires the Commission to analyze the extent to which consumers in each local market have access to broadcast programming from television broadcast stations located outside their local markets, including through carriage by cable operators and satellite carriers of signals that are significantly viewed (within the meaning of section 340 of the Communications Act of 1934 (47 U.S.C. 340)). We interpret Section 109(a)(1)(A) to require the Commission to identify in each DMA the out-of-market broadcast stations available over-the-air or carried by DBS, cable, and telephone MVPDs, and the number of consumers that have access to each out-of-market broadcast station through any of these distribution means.<sup>6</sup> In 2011, pursuant to STELA, the Commission reported to Congress regarding the extent that consumers in a State receive broadcast signals from stations licensed to another State as well as the extent to which consumers have access to in-State broadcast programming, among other things.<sup>7</sup> While the focus of the *2011 STELA Report* differed somewhat from the requirements of Section 109, it provided information about consumer access to out-of-State and out-of-DMA broadcast stations.<sup>8</sup> We believe, however, that information at the DMA level, as contained in the *2011 STELA Report*, may not be fully responsive to Congress' directive in STELAR. We note that Section 109(a)(2) seeks recommendations to foster localism in counties served by out-of-State DMAs. Thus, we believe we should report data on out-of-market broadcast stations on a county basis within each DMA. We request comment on this belief and input on additional data and analysis that would be fully responsive.

Section 109(a)(1)(A) requires us to consider access to broadcast programming, including through DBS and cable carriage. We seek comment on the appropriate methodologies and submission of essential data for the analysis. Do data exist that would allow us to determine consumer access to out-of-market broadcast programming from one source regardless of distribution technology? In the absence of one data source, we tentatively conclude that we should consider the availability of broadcast stations over-the-air by calculating the number of housing units in each DMA reached by the predicted broadcast signal contour of each out-of-market broadcast station, as we did in the *2011 STELA Report*. We seek comment on this tentative conclusion.

We believe we have access to comprehensive data for analysis of DBS carriage and over-the-air reception of out-of-market broadcast stations.<sup>9</sup> We note that Section 108 of STELAR requires DBS carriers to provide data regarding satellite carriage of broadcast stations and that these data should be useful for this report.<sup>10</sup> We seek comment on whether the Section 108 reports DBS operators submit are sufficient for this purpose. Will these reports include the carriage of significantly viewed signals that we must take into consideration?

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<sup>6</sup> Out-of-market broadcast stations are stations not assigned to the DMA.

<sup>7</sup> See *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, 26 FCC Rcd 11919 (2011) ("*2011 STELA Report*").

<sup>8</sup> See, e.g., *2011 STELA Report*, 26 FCC Rcd at 11959-12027, Appendix B (Out-of-State Stations Receivable in Each State); *id.* at 12045-12422, Appendix D (showing the assigned DMA for each out-of-market listed broadcast station.)

<sup>9</sup> We have previously done similar analysis for over-the-air reception of in-State broadcast stations and DBS carriage of in-State broadcast stations. See *2011 STELA Report*, 26 FCC Rcd 11939-40 ¶¶ 35-36, and 11941-42, ¶¶ 38-39.

<sup>10</sup> STELAR, § 108, 128 Stat. 2064-65.

With respect to cable and telephone MVPD carriage of out-of-market broadcast stations, we seek comment on what data are available that would be adequate for such analysis and what methodology we could use to analyze the available data.<sup>11</sup> In 2011, pursuant to STELA, the Bureau was unable to provide separate data for cable and telephone MVPDs, and therefore instead the Bureau used Nielsen data to identify for each DMA the out-of-market broadcast television stations that earned a cumulative rating of at least 2.5 percent from all sources.<sup>12</sup> Are comprehensive data available that would enable us to determine for each county in each DMA the out-of-market broadcast stations carried by each cable and telephone MVPD? In the absence of such data, we seek comment on the use of Nielsen data and the methodology used for the *2011 STELA Report*. What other options are available to the Commission to analyze this question?

In this regard, we note that the Commission collects cable system data in its Annual Report of Cable Television Systems (FCC Form 325) and in its Annual Report on Cable Prices, but these data are not comprehensive. 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>13</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. Also, many rural counties of interest to the STELAR Section 109 Report may be served by cable systems not subject to the requirement.

Cable systems subject to the FCC Form 325 reporting requirement provide the Commission with a list of the broadcast stations carried by each reporting system. 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 are provided for the entire system. The data do 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>14</sup> Thus, the data cable companies provide to the Commission do 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 Commission publishes annually a cable price report, which collects a listing of broadcast stations carried by a random sample of cable operators.<sup>15</sup> According to the Bureau's most recent report, over 33,000 communities are served by cable operators.<sup>16</sup> The report, however, included information on

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<sup>11</sup> We have previously noted the difficulty of obtaining useful data for cable and telephone MVPDs. *See 2011 STELA Report*, 26 FCC Rcd 11942, ¶ 40.

<sup>12</sup> *See 2011 STELA Report*, 26 FCC Rcd 11940-41, ¶ 37. Out-of-market broadcast stations with lower cumulative ratings were not included in the Nielsen data.

<sup>13</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.

<sup>14</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>15</sup> *See Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266, 29 FCC Rcd 5280 (2014).

<sup>16</sup> *Id.* at 5283, ¶ 8.

only 800 communities.<sup>17</sup> As such, it does not provide comprehensive data and many rural counties of interest to the STELAR Section 109 Report may be served by cable operators not included in the Commission's cable price report. We seek comment on the availability of other more comprehensive data sources that might be available to the Commission to perform the required analysis.

In the absence of comprehensive data, we propose including case studies for specific counties where commenters have indicated a lack of local programming. In 2011, pursuant to STELA, the Bureau undertook a number of case studies for specific counties in which commenters indicated a lack of in-State broadcast programming.<sup>18</sup> For each case, the Bureau examined the extent to which consumers had access to in-State programming over the air, from cable operators and from DBS operators on a county basis within each relevant DMA. The Bureau described the availability of in-State broadcast stations and the carriage of in-State stations by DBS operators and cable systems. For cable system information, the Bureau identified the cable systems in the counties and communities under study using the Commission's Cable Operations and Licensing System. To determine the carriage of in-State broadcast stations, the Bureau used cable operators' 2010 FCC Form 325 submissions, to the extent they were available, and publicly available information, including the Warren Television & Cable Factbook data and the websites of individual cable systems.<sup>19</sup>

For each case study for the STELAR Section 109 Report, we propose to examine, using the best available information, the extent to which consumers have access to out-of-market broadcast programming from DBS, cable, and telephone MVPDs, and over the air. We seek comment on the use of case studies for our report. Is there a better approach to case studies? We seek data, information, and comment for the analysis of cable and telephone MVPD carriage of out-of-market broadcast stations.

Out-of-market broadcast stations may provide multiple programming streams. Should the STELAR Section 109 Report include all out-of-market broadcast programming? We seek comment on the appropriate methodologies and the availability of data for including multiple programming streams. Are there other mechanisms for carriage that we should include (*e.g.*, online access to broadcast programming)? Commenters are asked to consider these issues and to provide any additional suggestions and data for the quantitative analysis required for this Report.

### **Alternatives and Recommendations -- Sections 109(a)(1)(B), (a)(2), and (b)**

Sections 109(a)(1)(B), (a)(2), and (b) require the Commission to analyze alternatives to the use of DMAs to define markets and to make recommendations on how to foster increased localism in counties served by out-of State DMAs taking into account a number of factors. Specifically, Section 109(a)(1)(B) requires the Commission to analyze whether there are technologically and economically feasible alternatives to the use of designated market areas to define markets that would provide consumers with more programming options and the potential impact such alternatives could have on localism and on broadcast television locally, regionally, and nationally.<sup>20</sup> Section 109(a)(2) requires the Commission to

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<sup>17</sup> *Id.*

<sup>18</sup> See 2011 STELA Report, 26 FCC Rcd 11942-43, ¶¶ 41-42, and Appendix F.

<sup>19</sup> Warren Communications News, Television & Cable Factbook Online, <http://www.tvcablefactbook.com/> (visited Feb. 18, 2015).

<sup>20</sup> We have previously analyzed alternatives to DMAs to define local markets. See 2011 STELA Report, 26 FCC Rcd 11944-54, ¶¶ 45-67.

make recommendations on how to foster increased localism in counties served by out-of-State designated market areas. Section 109(b) directs the Commission to consider three enumerated factors related to the impact of DMAs on access to local programming when making its recommendations.

We ask commenters to provide suggested alternatives to the use of DMAs to define market areas, pursuant to Section 109(a)(1)(B).<sup>21</sup> For each alternative, we request that commenters explain how the alternative would provide consumers with more programming options and what the impact would be on localism and on broadcast television locally, regionally and nationally. What specific programming options should we consider in our analysis? For instance, should we consider news, sports, weather, coverage of State-level politics and government, or other content relevant to a consumers' daily life, including advertising from local businesses, and if so how should we identify and consider such content? Commenters also should address the technological and economic feasibility of each alternative proposed and provide data and information on these issues. To analyze the various alternatives, we request suggestions on how to evaluate and compare the proposed alternatives for the STELAR Section 109 Report.

Section 109(a)(2) requires the Commission to make recommendations on how to foster increased localism in counties served by out-of-State DMAs. In making recommendations, Section 109(b) instructs the Commission to consider: (1) the impact that DMAs that cross State lines have on access to local programming;<sup>22</sup> (2) the impact that DMAs have on local programming in rural areas;<sup>23</sup> and (3) the state of local programming in States served exclusively by out-of-State DMAs.<sup>24</sup> We seek recommendations that could increase television programming from and about the DMA, and television programming from and about the State, in which a consumer resides. We specifically ask commenters to address the three considerations identified in Section 109(b). In particular, how do DMAs affect access to local programming for each of the three areas of concern? To what extent do consumers in DMAs that cross State lines have access to television programming from and about their State? How will the proposed recommendations foster increased local programming for consumers residing in such locations?

To assist us in analyzing proposed recommendations that we will consider including in the STELAR Section 109 Report, we also seek comment on the effects of each recommendation on consumers, local broadcast stations, the number of stations that MVPDs would be required to carry, the advertising market, broadcast network affiliation agreements and areas of exclusivity. What would be the benefits and costs of each recommendation? How would the proposed recommendation provide consumers with increased local programming without curtailing the broadcast programming consumers currently view? Are there other criteria we should consider when evaluating recommendations to foster

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<sup>21</sup> We note that STELAR § 102 enacts the Commission's recommendation in the *2011 STELA Report* to provide a process to modify markets for satellite carriers similar to the market modifications permitted for cable systems. STELAR § 102, 128 Stat. 2060-62.

<sup>22</sup> For example, the Salt Lake City DMA includes all of Utah, three counties in Nevada, three counties in Idaho, and four counties in Wyoming.

<sup>23</sup> To define "rural areas" we propose to use the U.S. Office of Management and Budget guidelines that define a rural county. See [http://www.hrsa.gov/ruralhealth/policy/definition\\_of\\_rural.html](http://www.hrsa.gov/ruralhealth/policy/definition_of_rural.html) (visited Feb. 18, 2015). Hooker County, Nebraska is an example of a rural county assigned to an out-of-State DMA (*i.e.*, the Denver DMA). See *2011 STELA Report*, 26 FCC Rcd 12484, Appendix F, VI.A.

<sup>24</sup> For example, the counties of New Jersey are divided between the New York DMA and the Philadelphia DMA.

increased localism? We seek comment on these issues and any other comments that address the requirements of Section 109 of STELAR.

### **General Information**

*Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
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