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

In the Matter of:	)	
	)	
Implementation of the Satellite Home	)	
Viewer Improvement Act of 1999:	)	
	)	
Broadcast Signal Carriage Issues	)	CS Docket No. 00-96
	)	
Retransmission Consent Issues	)	CS Docket No. 99-363

REPORT AND ORDER

Adopted: November 29, 2000 **Released: November 30, 2000**

By the Commission:

TABLE OF CONTENTS

I. INTRODUCTION

1. Section 338 of the Communications Act of 1934 ("Act"), adopted as part of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA")[1] requires satellite carriers, by January 1, 2002, "to carry upon request all local television broadcast stations' signals in local markets in which the satellite carriers carry at least one television broadcast station signal," subject to the other carriage provisions contained in the Act. Until January 1, 2002, satellite carriers are granted a royalty-free copyright license to retransmit television broadcast signals on a station-by-station basis, subject to obtaining a broadcaster's retransmission consent. This transition period is intended to provide the satellite industry with time to begin providing local television signals into local markets, otherwise known as "local-into-local" satellite service. In this *Report and Order*, we adopt rules to implement the provisions contained in Section 338.

2. In a separate proceeding, the Commission has implemented new amendments to Section 325 of the Act per the instructions set forth in the SHVIA.[2] Good faith negotiation regulations and the prohibition on retransmission consent exclusivity are among the requirements the Commission has already adopted.[3] However, the Commission deferred adopting rules concerning the satellite retransmission consent/mandatory carriage election cycle until we considered all of the rules necessary for a local broadcast station to gain carriage on a satellite carrier under both Sections 325 and 338 of the Act. Thus, we adopt herein, election cycle rules and related policies for satellite broadcast signal carriage.

[1]Pub. Law 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999). *See* Appendix F. The Commission adopted the *Notice of Proposed Rulemaking* to implement Section 338 on May 31, 2000. *See Implementation of the Satellite Home Viewer Improvement Act of 1999—Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 15 FCC Rcd 12147 (2000)(hereinafter, "*Notice*").

[2]*See Implementation of the Satellite Home Viewer Improvement Act of 1999—Retransmission Consent Issues*, Notice of Proposed Rulemaking, 14 FCC Rcd 21736 (1999); *Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445 (2000).

[3]*See* 47 C.F.R. §76.65.

II. BACKGROUND

3. In the SHVIA, Congress amended the Communications Act and Copyright Act to permit satellite carriers to provide the signals of local broadcast stations to subscribers residing in the broadcaster's market. Commencing on January 1, 2002, satellite carriers that provide local-into-local retransmission of broadcast stations pursuant to the statutory copyright license[4] must "carry upon request the signals of all television broadcast stations within that local market . . ."[5] The SHVIA requires the Commission to issue rules implementing this carriage requirement within one year of the SHVIA's enactment on November 29, 1999. In establishing such a deadline, Congress implicitly recognized that sufficient time was needed for satellite carriers to comply with the carriage requirements prior to January 1, 2002. Congress has indicated that the satellite carriage requirements should be comparable to the cable carriage requirements, noting in particular, paragraphs (3) and (4) of Section 614(b) and paragraphs (1) and (2) of Section 615(g), presently found in Title VI of the Act.[6]

4. In *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("*Broadcast Signal Carriage Order*"),[7] the Commission implemented the cable broadcast signal carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").[8] This statute amended the Act to provide television stations with certain carriage rights on local market cable television systems. Sections 614 and 615 of the Act contain the cable television "must carry" requirements for commercial and noncommercial television stations, respectively.[9] Section 325 contains retransmission consent requirements pursuant to which cable operators may be obligated to obtain the consent of commercial broadcasters before retransmitting their signals. Within local market areas, defined by Nielsen Media Research's Designated Market Areas ("DMAs"), commercial television stations may elect cable carriage under either the retransmission consent or mandatory carriage requirements. Noncommercial television stations have a right to mandatory carriage under the Act, but do not have statutory retransmission consent rights.

---

[4] *See* 17 U.S.C. §122(a) (*as amended by* §1002 of the SHVIA). Section 122 of the Copyright Act is attached as Appendix I of the *Report and Order.*

[5] 47 U.S.C. §338(a)(1) (*as amended by* §1008 of the SHVIA).

[6] 47 U.S.C. §338(g). The legislative history states that the procedural provisions applicable to Section 338 (concerning costs, avoidance of duplication, channel positioning, compensation for carriage, and complaints by broadcast stations) generally parallel to those applicable to cable systems. *See* Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong. ("Conference Report"), 145 Cong. Rec. H11795 (daily ed. Nov. 9, 1999).

[7] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues,* Report and Order, 8 FCC Rcd 2965 (1993)("Must Carry Order"). The Commission later clarified the broadcast signal carriage requirements. *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues,* Order, 8 FCC Rcd 4142 (1993) ("*Clarification Order*").

[8] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[9] 47 U.S.C. §§534 and 535; 47 C.F.R. §76.56. The Act's cable carriage provisions are found at Appendices G and H, attached to this *Report and Order.*

5. It is important to note that the satellite carriage requirement is different from the cable carriage requirement. Under Sections 614 and 615 of the Act, television stations can insist on carriage on a cable system even if the cable operator does not carry any local signals. Under Section 338 of the Act, the Commission cannot require satellite carriers to carry television stations in markets where they do not offer local-into-local service. There are other distinctions between cable operators and satellite carriers that must be noted as well. For example, a satellite carrier has a general obligation to carry all television stations in a market, if it carries one station in that market through reliance on the statutory copyright license, without a specific statutory reference to a channel capacity cap, while a cable system with more than 12 usable activated channels is required to devote no more than one-third of the aggregate number of usable activated channels to local commercial television stations that may elect mandatory carriage rights.[10] Satellite carriers also provide video programming on a national basis through a space-based delivery facility while cable operators provide video service on a local basis through a terrestrial delivery facility.

6. To understand the circumstances surrounding the implementation of Section 338, it is also necessary to discuss current satellite delivery of television broadcast stations and how subscribers access broadcast programming. We focus on DBS operators because they are currently providing local-into-local service. First, to obtain local television signals for local distribution, DBS operators receive the signals over-the-air, or have arrangements with local stations to deliver their signals by other means, to a receive facility in or near the stations' television market. Presently, a local exchange carrier's facility is used as a collection point for local television station signals.[11] Once received, the satellite carrier converts the analog television broadcast signals into digital data bitstreams. The digitized television signals are then sent, using a fiber optic line or other means, to the satellite carriers' programming facility, or group of facilities, where they are then uplinked to the appropriate satellite. These satellites, orbiting around the equator at 22,300 feet at various locations above the United States, contain transponders[12] that are used to retransmit local television station signals and other programming to subscribers' homes in a certain television market.[13]

7. Satellite television subscribers must buy or rent a small parabolic "dish" antenna, which is mounted on or near the home, to receive the satellite delivered signals. Satellite subscribers must also purchase or rent a set top box that converts the incoming digital signal to an analog format so that programming is viewable on the television receiver. Subscribers pay a subscription fee to receive both local television station signals and other programming services. While each television station carried by a satellite carrier occupies transponder capacity, a subscriber cannot purchase and view packages of non-

[10] 47 U.S.C. §534(b)(1)(B).

[11] This location is known as the point of presence ("POP").

[12] A transponder is that portion of a satellite used for reception and retransmission of a signal or signals in a certain bandwidth. Each satellite located at one of the three prime continental United States ("CONUS") orbital slots is capable of broadcasting on 32 frequencies. Through the use of digital compression technology, each frequency is currently capable of delivering approximately ten distinct channels of video programming to a subscriber's dish. Thus, each prime CONUS orbital slot is presently capable of delivering approximately 320 channels of traditional video programming. *See Satellite Broadcasting and Communications Association, et. al., v. FCC*, Complaint for Declaratory and Injunctive Relief, at 14 (filed in the context of SBCA's court challenge to the constitutionality of Section 338, noted in more detail below).

[13] DBS operators use the 12 GHz frequency band (12.2-12.7 GHz).

local television station signals. Satellite carriers package video programming, including bundles of local television station signals, into different tiers of service. Services are also available on an a la carte basis where a single channel or program is sold separately.

8. Satellite carriers organize programming according to channel neighborhoods where certain genres of programming, such as sports or music, are grouped together. Presently, local-into-local television stations carried under retransmission consent are found together in such neighborhoods.[14] As of November 27, 2000, DirecTV offers local-into-local service in 38 television markets whereas Echostar offers such service in 34 television markets.[15]

III. EXECUTIVE SUMMARY

9. This *Order* implements carriage rules for satellite carriers pursuant to Section 338. The decisions are summarized as follows:

- **Commencing Carriage.** We find that commercial television stations must make an election between retransmission consent and mandatory carriage every three years for both satellite carriers and cable operators. The first satellite election cycle, however, will be for four years, to align it with the cable election cycle beginning in 2006. Under the SHVIA, a television station, in a market with local-into-local service, must request carriage. We find that for the first cycle, commercial television stations must request carriage by making an election by July 1, 2001, for carriage to commence on January 1, 2002. We further find that commercial television stations must request carriage by making an election, for all cycles thereafter, by October 1st of the year preceding the new election cycle. Noncommercial educational television stations must request carriage on the same dates as commercial television stations, even though they are not subject to an election cycle. We establish separate timeframes for commencing carriage when a new television station begins service or when a satellite carrier commences new local-into-local service.

- **Market Determinations.** Under the SHVIA, Nielsen's 1999-2000 publications determine market areas at the commencement of the first election cycle. We find, however, that a satellite carrier may use future Nielsen publications to add counties to markets where it provides local-into-local service. A television station's local market for satellite carriage purposes is generally determined by the location of its city of license. In the cases where the station's city of license is located in a county outside the local market, but Nielsen has assigned the station to that market, it may assert carriage rights in the market to which it was assigned. We also find that the Commission cannot modify a television market under Section 338 as it is authorized to do so under Section 614(h) in the cable carriage context.

- **Receive Facilities.** The SHVIA establishes the "local receive facility" as the point in a market where a carrier collects the signals of local television stations before retransmitting them via satellite. The local receive facility, in essence, functions like a cable operator's principal headend. Under the

[14]Both Echostar and DirecTV are carrying the local ABC, NBC, CBS, and Fox network affiliates. These satellite carriers are also carrying other stations in certain markets, such as WPIX in New York and KTLA in Los Angeles.

[15]Television markets with local-into-local satellite service currently provided by DirecTV and Echostar are noted in Appendices D and E. *See* http://www.dishnetwork.com (Echostar) and http://www.directv.com (DirecTV) (as of November 27, 2000).

SHVIA, a satellite carrier determines the location of the local receive facility in each market it provides local-into-local service. We interpret the SHVIA to permit satellite carriers to construct another facility, one that may be outside the local market, if 50% of the broadcasters in the relevant market agree to the location of such a facility. It should also be noted that the SHVIA requires television stations to pay for the costs of providing a good quality signal to any receive facility. We adopt rules for defining a good quality television station signal comparable to the rules established in the cable context. Notably, a satellite carrier does not have an obligation to carry a television signal that does not meet the Commission's good quality signal standard, until the time when the television station pays to cure the signal strength deficiency.

- **Duplicating Signals.** Under the SHVIA, a satellite carrier is not required to carry duplicative signals of television stations in the same market unless the stations at issue are network affiliates licensed to communities in different states. We adopt a duplication definition for commercial television stations that mimic the definition established in the cable carriage context. We also interpret the SHVIA's duplication provisions to mean that a satellite carrier is not obligated to carry two of the same network affiliates, even if their signals do not duplicate.

- **Noncommercial Television Stations.** We find that a satellite carrier must carry all non-duplicative noncommercial educational television stations in a market where local-into-local service is provided. We also find that a satellite carrier cannot satisfy its public interest set aside obligations through the carriage of noncommercial television stations.

- **Channel Positioning.** We implement the SHVIA's requirement that a satellite carrier must carry all local television stations in a contiguous manner on its channel line-up. The SHVIA also requires the Commission to establish rules prohibiting non-discriminatory treatment of television stations carried under the copyright compulsory license. We find that a satellite carrier must treat television stations that elect mandatory carriage in the same manner on its electronic program guide as it does stations that elect retransmission consent. We also find that a satellite carrier must offer television stations that elect mandatory carriage to subscribers on comparable price terms as it offers television stations that elect retransmission consent.

- **Content to be Carried.** The SHVIA requires the Commission to apply the cable carriage content requirements to satellite carriers. Given this directive, we implement rules requiring a satellite carrier to carry the primary video and accompanying audio of local television stations. We also implement rules requiring satellite carriers to carry all program-related material contained in a television station's vertical blanking interval, unless carriage of such data is technically infeasible.

- **Material Degradation.** The SHVIA requires the Commission to apply the material degradation principles established in the cable carriage context to satellite carriers. Given this directive, we find that a satellite carrier must provide the same degree of picture quality to television stations that elect mandatory carriage as it provides to television stations that elect retransmission consent.

- **Compensation.** We implement the SHVIA's directive prohibiting satellite carriers from requesting compensation in return for carriage.

- **Digital Television.** The Notice of Proposed Rulemaking in this proceeding raised several questions regarding the carriage of digital television signals by satellite carriers. The broadcasting industry generally supported satellite digital carriage requirements while the satellite industry opposed any digital carriage requirements. We refrain from addressing the merits of such requirements and state

that the satellite digital carriage issues will be addressed at the same time the Commission considers cable digital carriage issues.

- **Remedies.** The SHVIA provides the United States District Courts with exclusive jurisdiction to remedy a satellite carrier's failure to carry a local television station. However, the SHVIA also provides that the Commission shall order the satellite carrier to take appropriate remedial action if it fails to meet its obligations under Section 338. We interpret the SHVIA to require a television station to seek remedies for non-carriage by a satellite carrier under the statute in the court system. However, a television station that seeks remedial action and a carriage order under our rules may file a complaint with the Commission. We also interpret the SHVIA to allow the Commission to adjudicate satellite carriage complaints for each substantive topic enumerated in Section 338, including the content-to-be-carried and material degradation provisions.

IV. SATELLITE BROADCAST SIGNAL CARRIAGE

A. Constitutional Matters

10. Questions have been raised relating to the constitutionality of Section 338. The satellite industry argues that Section 338's carriage requirements are unconstitutional for several reasons. The Satellite Broadcasting and Communications Association ("SBCA") submits that mandatory carriage violates the First Amendment, by infringing on a carrier's editorial control in selecting programming, as well as the Takings Clause of the Fifth Amendment, by depriving the carrier of valuable spectrum without just compensation.[16] SBCA additionally argues that, by linking a statutory copyright license to a requirement to engage in certain speech, Congress has exceeded its authority under the Copyright Clause of the Constitution.[17] Echostar agrees and also asserts that Section 338 does not provide the Commission with any ability to salvage it from unconstitutionality, nor does the Act give the Commission any opportunity to alleviate the statutory burdens.[18]

11. The National Association of Broadcasters ("NAB") argues that the Act does not limit a satellite carriers' speech in any way, and carriers remain free to offer any programming for which they acquire the necessary rights in the marketplace.[19] It argues that the compulsory license is a transfer of rights from copyright owners to carriers, not a restriction of any kind. According to NAB, the SHVIA

[16]SBCA Comments at 10. We note that subsequent to the issuance of the *Notice* in this proceeding, SBCA, DirecTV and Echostar filed a civil complaint on September 20, 2000, in the United States District Court for the Eastern District of Virginia, Alexandria Division, claiming that Section 338 is unconstitutional. The Commission, the United States Copyright Office, and the United States of America were named as defendants. Similar to their comments filed in this proceeding, the satellite industry argues that Section 338 violates the Free Speech and Free Press clauses of the First Amendment, the Takings and Due Process clauses of the Fifth Amendment, as well as the Copyright clause of the Constitution. We note that the U.S. District Court for the Southern District of Florida has found that the SHVIA is constitutional under the First Amendment. *See CBS v. Echostar*, Case No. 98-2651-CIV-NESBITT, Order Granting Motion for Preliminary Injunction (S.D. Fla., Sept. 29, 2000)("In effect, Echostar seeks to 'make commercial use of the copyrighted works of others. There is no first amendment right to do so.'") *citing United Video, Inc. v. FCC*, 890 F.2d 1173, 1191 (D.C. Cir. 1989).

[17]SBCA Comments at 3.

[18]Echostar Comments at ii.

[19]NAB Reply Comments at vii.

gives satellite carriers a royalty-free statutory license to override the normal rights of copyright owners by retransmitting copyrighted programming, under specified circumstances.[20] Paxson states that the Supreme Court has concluded that the cable carriage requirements satisfy the intermediate scrutiny test under *O'Brien* because they advance the important government interests of preserving the benefits of free over-the-air broadcasting and promoting the widespread dissemination of information from a multiplicity of sources.[21] According to Paxson, the same government interests are protected and promoted through comparable carriage requirements on the satellite industry.[22]

12. In the legislative history accompanying this section, Congress noted its belief that the carriage requirements are constitutional under the First Amendment:

> The conferees believe that the must carry provisions of this Act neither implicate nor violate the First Amendment. Rather than requiring carriage of stations in the manner of cable's mandated duty, this Act allows a satellite carrier to choose whether to incur the must carry obligation in a particular market in exchange for the benefits of the local statutory license. It does not deprive any programmers of potential access to carriage by satellite carriers. Satellite carriers remain free to carry any programming for which they are able to acquire the property rights. The provisions of this Act allow carriers an easier and more inexpensive way to obtain the right to use the property of copyright holders when they retransmit signals from all of a market's broadcast stations to subscribers in that market. The choice whether to retransmit those signals is made by carriers, not by the Congress. The proposed licenses are a matter of legislative grace, in the nature of subsidies to satellite carriers, and reviewable under the rational basis standard.[23]

The Conferees also noted that they were "confident that the proposed license provisions would pass constitutional muster even if subjected to the *O'Brien* standard [intermediate First Amendment scrutiny] applied to the cable mandatory carriage requirement."[24]

13. We observe that Congress enacted Section 338 to preserve free over-the-air broadcasting, promote a multiplicity of voices, and promote fair competition between video providers. The SHVIA furthers these important government interests by establishing provisions ensuring that satellite carriers treat all local television stations seeking carriage in a fair manner. The goals, and the means to further them, are similar to those Congress enacted in 1992 when it promulgated the cable carriage provisions in the 1992 Cable Act.[25] With regard to the arguments raised by SBCA, we find that the claims it raises, excepting the Copyright Clause claim, are similar to those the cable industry raised against the constitutionality of Sections 614 and

[20] *Id.* at 3.

[21] Paxson Reply Comments at 1-2.

[22] *Id.*

[23] *See* Conference Report at H11795.

[24] *Id.*

[25] Congress established cable carriage requirements in Sections 614 and 615 of the Act to: (1) preserve the benefits of free, over-the-air local broadcast television; (2) promote the widespread dissemination of information from a multiplicity of sources; and (3) promote fair competition in the market for television programming. *Turner Broadcasting System, Inc. v. FCC*, 114 S.Ct. 2445, 2469 (1994)("Turner I").

615 of the Act in 1992. In the *Turner* cases, the Supreme Court found that the Act's cable carriage provisions were constitutional.[26] In this matter, we defer to Congress's determination that Section 338 is lawful.[27] Thus, notwithstanding the satellite industry's court challenge, our task in this proceeding is to implement the statutory directives set forth in the SHVIA.

B. Commencing Satellite Broadcast Signal Carriage

14. Satellite carriers have had the right to retransmit local television stations without first obtaining retransmission consent, and without a mandatory carriage obligation, for a six month period from November 29, 1999 to May 28, 2000. Beginning on May 29, 2000 and continuing until December 31, 2001, satellite carriers may carry local television stations on a station-by-station basis if a retransmission consent agreement has been reached. As of January 1, 2002, satellite carriers will have an obligation to carry all local television stations seeking carriage in any market in which they provide local-into-local service.[28] This requirement is not absolute as satellite carriers generally need not carry duplicative television stations in the same market.[29] In addition, a television station in a market where local-into-local service is provided must submit a request to the satellite carrier to gain carriage.[30] Commercial television stations must make an election between retransmission consent and mandatory carriage when requesting carriage.[31] Noncommercial television stations do not have to make an election because they do not have retransmission consent rights. However, a noncommercial television station and a satellite carrier may enter into a voluntary carriage agreement apart from the requirements contained in the Act.

15. We find that Section 338 provides a satellite carrier with two options for carrying local television broadcast signals. If a satellite carrier provides its subscribers with the signals of local television stations through reliance on the statutory copyright license, they will have the obligation to carry all of the commercial television signals in that particular market that request carriage.[32] If a satellite

[26] *Id.*; *Turner Broadcasting System, Inc. v. FCC*, 117 S.Ct. 1174 (1997)("Turner II"). We note that the Court found that the cable carriage provisions were constitutional under the First Amendment. However, the Court did not consider whether these same provisions were constitutional under the Fifth Amendment's Takings and Due Process clauses.

[27] *See Johnson v. Robinson*, 415 U.S. 361, 368 (1974)(administrative agencies should presume that implementing statutes are constitutional and refrain from questioning their legality).

[28] 47 U.S.C. §338(a)(1). It is important to note that any television broadcast station provided by a satellite carrier within that station's local market under the statutory copyright license in Section 122(a) is treated as a local station for purposes of Section 325 (retransmission consent) and 338 (mandatory carriage). The satellite carriage of a "superstation" in its local market would likely trigger the Section 338 obligations. The term "superstation" means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier. 17 U.S.C. §119(d)(9)(A).

[29] *Id.* at §338(c)(1) and (2).

[30] *Id.* at §338(a)(1).

[31] 47 U.S.C. §325(b)(3)(C)(1).

[32] This requirement is subject to the other limiting provisions in Section 338, such as the one concerning duplicative programming.

carrier provides local television signals pursuant to private copyright arrangements, the Section 338 carriage obligations do not apply. In this context, we note that a retransmission consent agreement, in most instances, is not analogous to a private copyright arrangement. Retransmission consent permits an MVPD to retransmit a station's signal, but it does not generally grant copyright clearance for the program content carried by that station. To obtain private clearances for material carried by a particular station, the copyright holders of each of the programs, advertisements, and music aired by that station must consent to the retransmission. In some cases, however, a television station may have permission from the copyright holders to provide clearances on their behalf. We therefore conclude that unless the retransmission contract clearly provides for all copyright clearances, a carrier retransmitting television stations electing retransmission consent would be subject to the compulsory license and be required to carry all other local market television stations under the provisions set forth in Section 338.

1. Election Cycle

16. In *Implementation of the Satellite Home Viewer Improvement Act of 1999—Retransmission Consent Issues*, Report and Order, the Commission promulgated good faith and anti-exclusivity requirements per the provisions amending Section 325 of the Act.[33] Retransmission consent and mandatory carriage election cycle requirements for satellite carriers were discussed in the *Notice* in that docket. The *Retransmission Consent Notice* requested comment on whether the Commission should employ the same rules and procedures the Commission adopted in response to the 1992 Cable Act or adopt a different election cycle with different procedures to implement Section 325(b)(3)(C)(i).[34] The *Notice* in this proceeding sought comment on how the carriage provisions of Section 338 would work with the revised Section 325 provisions regarding retransmission consent.[35] Because the issues of retransmission consent and mandatory carriage are intertwined, we believe that a coherent election regime is best effectuated by consolidating the election cycle record from that proceeding with the instant proceeding and determining the unresolved issues here.

17. The SHVIA amended Section 325 to provide that no cable system or other multichannel video program distributor shall transmit the signal of a broadcasting station, or any part thereof, except: (A) with the express authority of the originating station; (B) pursuant to Section 614, in the case of a station electing to assert the right to carriage by a cable operator;[36] or (C) pursuant to Section 338, in the case of a station electing to assert the right to carriage by a satellite carrier.[37] The SHVIA also amended Section 325(b) by adding new paragraph (3)(C)(i), which directs the Commission to adopt regulations which shall "establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph…."[38]

---

[33] *See Implementation of the Satellite Home Viewer Improvement Act of 1999—Retransmission Consent Issues* Notice of Proposed Rulemaking, 14 FCC Rcd 21736 (1999); First Report and Order, 15 FCC Rcd 5445 (2000).

[34] *Retransmission Consent Notice*, 14 FCC Rcd at 21741-42.

[35] *Notice*, 15 FCC Rcd at 12152-53.

[36] 47 U.S.C. §325(b)(1)(B).

[37] 47 U.S.C. §325(b)(1)(C).

[38] 47 U.S.C. §325(b)(3)(C). Subparagraph (B) of existing Section 325(b)(3) provides that: "the regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and every three years thereafter, make an election (continued…)

18. Section 325(b)(3)(C)(i) instructs the Commission to establish regulations and procedures governing the election process for retransmission consent and mandatory carriage that correspond, as much as possible, with existing Section 325(b)(3)(B) of the Act. We find that the length of the first election cycle shall be for a four-year period commencing on January 1, 2002 and ending December 31, 2005. We believe that a four-year timeframe is necessary to align the election cycles among satellite carriers and cable operators so that local television stations would be making retransmission consent/mandatory carriage elections for cable and for satellite on the same cycle.[39] This conclusion is also consistent with many commenters that advocated a synchronized cycle.

19. ALTV, for example, proposed an alternative that would ultimately synchronize the cable and satellite cycles, but by beginning with a one-year cycle, followed by a three year cycle.[40] We find that a four-year cycle is less burdensome for both broadcasters and satellite carriers. We note that certain broadcast interests argue against parallel election cycles because it would be overly burdensome to simultaneously negotiate carriage among cable operators and satellite carriers. [41] We do not believe that the need to negotiate with the limited number of satellite carriers will place an undue burden on broadcasters. We also believe that simultaneous election cycles most effectively equalizes the obligation for satellite carriers and cable operators negotiating retransmission consent.

20. Echostar and DirecTV also favor synchronizing the cable and satellite cycles but note that regulations developed for the cable industry would not sufficiently take into account the distinctive aspects of retransmission consent/mandatory carriage elections for the satellite industry.[42] EchoStar urges the Commission to give satellite carriers at least six months between new retransmission consent/carriage election dates and their respective effective dates.[43] We agree that a satellite carrier needs ample time to commence carriage prior to the first election cycle because of the logistics of adding hundreds of local television stations to its channel line-up. We therefore provide satellite carriers with six months, from

(….continued from previous page)
between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system that serves the same geographic area, a station's election shall apply to all such cable systems." 47 U.S.C. § 325(b)(3)(B). The regulations are codified in Section 76.64 of the Commission's rules. *See* 47 C.F.R. § 76.64(f)(l).

[39]For example, the next cable election must be made by October 1, 2002 and will take effect on January 1, 2003. The subsequent cable election must be made by October 1, 2005, to take effect on January 1, 2006, which will allow for synchronization between cable operators and satellite carriers on this particular date.

[40]ALTV Retransmission Consent Comments at 3. NAB agrees that an election procedure similar to that applicable in the cable context should be adopted. NAB Comments at 3. Other broadcasters agree that the first election cycle should commence on January 1, 2002 but offer differing views on the length of the initial election period. *See* Network Affiliates Retransmission Consent Reply Comments at 5-6; Network Affiliates Comments at 4; ALTV Comments at 38.

[41]Network Affiliates Retransmission Consent Reply Comments at 3-5. *See also* LTVS Retransmission Consent Comments at 2.

[42]EchoStar Retransmission Consent Reply Comments at 2-4; DirecTV Retransmission Consent Comments at 2.

[43]EchoStar Retransmission Consent Reply Comments at 2; DirecTV Retransmission Consent Comments at 2.

July 1, 2001 to December 31, 2001, to complete the carriage process.[44] The election cycle and notification timeframes established for the first cycle, as described more fully below, are designed to accommodate the initial implementation of Section 338. After satellite carriers commence carriage on January 1, 2002, the rationales for extended timeframes no longer apply. Thus, the second election cycle, and all cycles thereafter, shall be for a period of three years (e.g. January 1, 2006 through December 31, 2008).

21. In terms of procedure and timing for the second election cycle and all subsequent cycles, commercial television broadcast stations should make their election by October 1st for the election cycle beginning the following January 1st. Satellite carriers shall have 90 days prior to the new election cycle, beginning October 1st and ending December 31st, to negotiate retransmission consent agreements. These are the same timeframes as those established under the cable election rules.[45] If a satellite carrier begins providing local-into-local service in a new market during an election cycle, the carrier and the commercial television stations in that market have 90 days to complete their retransmission consent discussions. In this situation, the election cycle starts at the date a satellite carrier begins local-into-local service and ends on the date the cycle ends under our rules.

22. Under the SHVIA, satellite carriers taking advantage of the compulsory copyright license for local signals are required to carry television broadcast stations "upon request."[46] We note that cable carriage under the Act is an immediate right that vests without request. That is why we initially adopted a default rule in the cable context.[47] We find, however, that there can be no default mandatory carriage requirement under Section 338 because a commercial television station must expressly request carriage. Rather, if a commercial television station does not make an election, it defaults to retransmission consent. In this context, we also recognize that carriers need some measure of control in configuring their satellite systems to meet their statutory obligations. Therefore, if an existing television station fails to request carriage by the established deadlines, it is not entitled to mandatory carriage under 338 for the duration of the election cycle. This policy does not apply to new television stations to which different substantive and procedural rules apply.

23. **Consistent Retransmission Consent/Carriage Elections.** Section 76.64(g) requires that broadcasters make consistent retransmission consent/must carry elections between cable operators where franchise areas of cable systems overlap.[48] While the SHVIA does not expressly require such action in the satellite context, in the *Retransmission Consent Notice* we requested comments on whether broadcasters should be subject to a consistent election requirement between satellite carrier and cable operators.[49] Broadcast industry commenters argue that the SHVIA does not require Commission

[44] *See* the Initiating Carriage sub-section, *infra.*

[45] *See* 47 C.F.R. §76.64.

[46] 47 U.S.C. §338(a)(1).

[47] *Must Carry Order*, 8 FCC Rcd at 3002.

[48] 47 C.F.R. § 76.64(g); 47 U.S.C. § 325(b)(3)(requiring that if there is more than one cable system that serves the same geographic area, a station's election shall apply to all such cable systems).

[49] *Retransmission Consent Notice*, 14 FCC Rcd at 21741-42.

expansion of the consistent election requirements to satellite carriers as well as cable systems.[50] DirecTV, on the other hand, argues that a consistent election rule should be adopted to prevent broadcasters from unfairly disadvantaging one MVPD competitor over another.[51] We find that Section 325, amended by the SHVIA, makes no reference to expanding the consistent election requirement to the satellite context, notwithstanding the fact that the obligation was imposed in the cable context. Absent express statutory language to the contrary, we believe that a consistent election requirement between a cable operator and a satellite carrier should not be imposed.

24. While the absence of statutory language guides our determination, we also note that the service area differences between satellite carriers and cable operators also counsels against implementing such a rule. Television broadcast stations elect retransmission consent or mandatory carriage on a system-by-system basis under the cable carriage requirements. There are many cable systems in a television market. Sometimes, a television broadcast station may choose retransmission consent on one cable system, but select mandatory carriage for a system in an adjacent area. A satellite carrier's service area for local-into-local purposes, on the other hand, encompasses television market areas that are substantially broader in scope. When a television station is carried by a satellite carrier, it is either a retransmission consent station or a mandatory carriage station in the local market area. Given these facts, it is difficult to require consistency between the two MVPDs without also requiring a station to make a uniform election for all local market cable systems in order to match the election choice the station made with regard to the satellite carrier.

2. Initiating Carriage

25. In the *Notice*, we discussed the framework and procedural rules that should be established for implementing Section 338.[52] We sought comment regarding the meaning of the phrase "carry upon request" and noted that in the cable context, the Commission initially required the cable operator to contact all local broadcast television stations, in writing, on matters relating to their carriage rights.[53] We asked commenters whether we should adopt a similar rule requiring satellite carriers to notify all local broadcasters, in writing, of their carriage rights once any local station in a particular market is being carried.[54] The *Notice* also pointed out that broadcast television stations requesting mandatory carriage as part of the election process must make such carriage requests in writing.[55] The Commission sought comment on whether similar provisions should be adopted in the satellite carriage context.[56]

[50]NAB Retransmission Consent Reply Comments at 2-3; ALTV Retransmission Consent Comments at 5-6; Network Affiliates Retransmission Consent Comments at 2; NAB Reply Comments at 12.

[51]DirecTV Retransmission Consent Reply Comments at 3; BellSouth Reply Comments at 3.

[52]*Notice*, 15 FCC Rcd at 12152-53.

[53]*Id.*; 47 C.F.R. § 76.58.

[54]*Notice*, 15 FCC Rcd at 12153.

[55]*Id.*

[56]*Id.*

26. ALTV and others assert that a local television station that elects mandatory carriage under Section 338 should be considered to have requested carriage as well. ALTV argues that the additional requirement of a formal carriage request is unnecessary where a local television station already has notified a satellite carrier of its choice between retransmission consent and mandatory carriage.[57] We agree with ALTV. An election made by the television broadcast station shall be treated as the request for carriage. The procedural policy we adopt here is necessary to reduce the paperwork lag time that would impede satellite carriers from complying with its Section 338 obligations by January 1, 2002.

27. Commenters propose different approaches to the carriage obligations of satellite carriers and the responsibilities of television broadcast stations when local-into-local service is provided in a television market. Broadcasters generally argue that because a satellite carrier's carriage obligations are triggered only when the carrier decides to avail itself of the local-into-local statutory copyright license, it is appropriate for the carrier to notify local stations, in writing, if it decides to rely on such a license.[58] NAB asserts that imposing an affirmative notification requirement on satellite carriers will help prevent disputes about whether parties understood the other's intentions.[59] Conversely, DirecTV asserts that Section 338 places an affirmative burden on television broadcast stations to "request" carriage on the satellite carrier's system. EchoStar similarly contends that broadcasters should be required to contact satellite carriers in the first instance, in writing, to request mandatory carriage because broadcasters have actual notice of the satellite carriers providing local-into-local service in their market.[60]

28. We find that television stations have the burden of initiating satellite carriage. DirecTV and Echostar are the only satellite carriers currently operating and providing local-into-local service. It is reasonable to conclude that a television station has actual notice of the local presence of these carriers since satellite subscribers already have access to certain local television stations and a satellite carrier's programming activities are well publicized.[61]

29. We also find that a television broadcast station must notify a satellite carrier, by July 1, 2001, of its carriage intentions if it is located in a market where local-into-local service is provided.

[57]ALTV Comments at 37.

[58]Network Affiliates Comments at 5-6; NAB Comments at 2; ALTV Comments at 40; CTN Comments at 3; LTVS Comments at 6-7; and AAPTS Comments at 11.

[59]NAB Comments at 2.

[60]Echostar Comments at 12.

[61]*See* http://www.dishnetwork.com/software/third_level_content/locals/index.asp (for Echostar) and http://www.directv.com/howtoget/howtogetpages/0,1076,224,00.html (for DirecTV). We note that there are 485 full power television stations (379 commercial and 106 noncommercial) in the top 35 television markets as ranked by Nielse Media Research. *See* Appendix J. These are substantially the same markets where DirecTV and Echostar currently provide local-into-local service. We note, however, that Echostar is not providing local-into-local service in: Market #24—Baltimore, Market #27—Hartford-New Haven, Market #33—Milwaukee, and Market #34—Columbus, Ohio. It is providing local-into-local service in Market #36—Salt Lake City, Market #37—San Antonio and Market #50—Albuquerque-Santa Fe. DirecTV is not providing local-into-local service in: Market #27—Hartford-New Haven. It is providing local-into-local service in Market #36—Salt Lake City, Market #37—San Antonio, Market #39—Birmingham (Anniston, Tuscaloosa), Market #40—Memphis, TN, and Market #47--Greensboro-High Point-W. Salem. It plans to provide local-into-local service in Market #34—Columbus, Ohio, Market #43—West Palm Beach-Ft. Pierce, and Market #58—Austin.

Commercial television stations are required to choose between retransmission consent and mandatory carriage on this date. NCE stations must simply request carriage. We believe that a six month timeframe provides satellite carriers with sufficient time to plan for receive facility accommodations and channel line-up changes before January 1, 2002. To facilitate the carriage process, we also find that a satellite carrier must respond to a television station's carriage request by August 1, 2001, and state whether it accepts or denies the carriage request. If the satellite carrier denies the request, it must state the reasons why. In this context, some valid reasons for not commencing carriage of a television station are: (1) poor quality television signal; (2) substantial duplication; (3) non-local station requesting carriage; and (4) the satellite carrier is offering local-into-local service via private copyright agreements. If the television station's request for carriage is rejected, it may file a complaint pursuant to the rules established in the Remedies section, below.

30. With regard to the notification procedure, the request made by the television station must be in writing and sent to the satellite carrier's principal place of business, as listed on the carriers' website or official correspondence. The notification must be sent by certified mail, return receipt requested. A station's written notification should include the name of the appropriate station contact person as well as the station's: (i) call sign; (ii) address for purposes of receiving official correspondence; (iii) community of license; (iv) DMA assignment and (v) affirmative carriage election. These notification elements are necessary to ensure that a satellite carrier has the base information it needs to commence the carriage of local television stations.

31. **New Local-Into-Local Service.** In the *Notice*, we requested comment on whether separate procedures should be established for new satellite carriers and whether such rules should be similar to those established for cable carriage.[62] Broadcast commenters favor notification requirements for new market entrants.[63] While generally objecting to a notification burden being placed on satellite carriers, DirecTV submits that if one is adopted, the requirement should only apply to markets in which a satellite carrier commences service after January 1, 2002.[64] We find that a new satellite carrier must notify all local television stations in a given market when it plans to provide local service. Similarly, an existing satellite carrier must provide notice when it provides local-into-local service in a new market. We note that requiring carriers to provide notice in these circumstances is less burdensome because there are far fewer television stations to contend with, at the same time, than in markets with existing local-into-local service. We also believe that advance notice in these situations ensures a level competitive playing field in two respects: (1) all local television stations will know, at the same time, when local-into-local service will be provided in a market and (2) all local television stations will be able to exercise their carriage rights at the same time.[65]

32. We therefore adopt procedural provisions that substantially replicate the existing requirements for new cable systems under Section 76.64. However, we craft the rules in a slightly different manner recognizing that satellite carriers provide a national service. The carriage procedures also provide carriers with adequate preparation time while not unduly delaying the provision of full local-

[62] *Notice*, 15 FCC Rcd at 12153.

[63] NAB Comments at 2; ALTV Comments at 41.

[64] DirecTV Comments at 11.

[65] We note that this result would have an adverse economic impact on smaller television stations in the market that are competing against larger stations for satellite subscriber viewership and advertising revenue.

into-local service in a market. We adopt the following guidelines for both new satellite carriers and carriers that offer new local-into-local service for the first time on or after July 1, 2001. First, satellite carriers shall notify local television stations, in writing, at least 60 days before the date it intends to provide new satellite service or intends to enter into a new market. At the same time, the satellite carrier should provide the location of the local receive facility in that particular market.[66] A local television station then must provide its election, in writing, no more than 30 days after receipt of the satellite carrier's notice.[67] If a satellite carrier finds that the television station meets the criteria for carriage under Section 338 and our rules, it shall then have 90 days after the election letter was received to negotiate carriage, resolve local receive facility issues, reconfigure its system and channel line-up, notify subscribers of the change in service, and commence carriage of the local television station.[68] If the satellite carrier finds that the station is not qualified for carriage for any of the reasons stated above, it shall notify the local station in writing of the reason for such refusal within 30 days of the receipt of the station's election. The television station may either accept the satellite carrier's conclusion or file a carriage complaint.

33. **New Television Stations.** Section 338 requires carriage of all local stations in local markets regardless of when such stations begin broadcasting. Given this statutory directive, we find that new television broadcast stations licensed and providing over-the-air service have carriage rights under the SHVIA.[69] Those stations licensed to provide over-the-air service for the first time on or after July 1, 2001 will be considered new television broadcast stations for satellite carriage purposes. We believe it appropriate to require a new television station to make its initial election between 60 days before commencing broadcast and 30 days after commencing broadcast. This requirement is similar to the cable rules regarding new television stations.[70] If the station meets all of the requirements under Section 338 and our rules, the satellite carriers shall commence carriage within 90 days of receiving a carriage request from the television broadcast station or whenever the new television station provides over-the-air service.[71] If the satellite carrier believes that the station is not qualified, it must notify the station of such a determination with 30 days of receiving the election notice. An aggrieved television station may then file a complaint for non-carriage in the appropriate forum under the guidelines established in Section 338.

[66]We note that a satellite carrier's notice of intent should be viewed as conditional in nature as it may decide not to enter into a market based on costs or other considerations. However, once it begins providing local-into-local service by offering any local television station to its subscribers, not carried under a private copyright arrangement, it must fulfill its carriage obligations under Section 338.

[67]A television station's notification letter should contain the same elements enumerated in paragraph 30, above.

[68]*See* Appendix B.

[69]Our finding here applies to new analog television station licensees. The rights of digital television stations will be decided at a later time in a separate proceeding.

[70]*See* 47 C.F.R. §76.64(f).

[71]We note that the same rationales for giving a satellite carrier 90 days to commence carriage in paragraph 32 above, apply in this circumstance.

C. Market Definitions

34. Section 338(h)(3) defines the term, "local market," as having the meaning it has under Section 122(j) of title 17, United States Code.[72] Section 122(j)(2)(A) defines the term, "local market," in the case of both commercial and noncommercial television broadcast stations, to mean the designated market area in which a station is located, and-(i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station."[73] In addition to the area described in subparagraph (A), a station's local market includes the county in which the station's community of license is located.[74] Section 122(j)(2)(C) defines the term, designated market area to mean the 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."[75]

35. We did not receive comments interpreting these provisions. DirecTV, however, did suggest that the Commission adopt a rule expressly allowing satellite carriers, at their discretion, to limit a television station's carriage coverage area to its predicted Grade B service contour within its DMA.[76] ALTV and NAB respond that DirecTV's proposal is antithetical to the language and purpose of the SHVIA.[77] NAB asserts that the geographic scope of the mandatory carriage obligation is precisely the same as the scope of the compulsory license granted by Congress -- namely, the "local market," which generally means the DMA.[78]

36. We find that the term "local market," as it is used for satellite carriage purposes, includes all counties within a market, as well as the home county of the television station if that county is not physically located in the DMA. We believe that the satellite compulsory license includes not only television stations licensed to a local market, but also extends to stations licensed in one market but assigned[79] by Nielsen to another market. For example, a television station licensed to a community in

[72] 47 U.S.C. §338(h)(3).

[73] 17 U.S.C. §122(j)(2)(A).

[74] 17 U.S.C. §122(j)(2)(B).

[75] 17 U.S.C. §122(j)(2)(C).

[76] DirecTV Comments at 23 (Section 122(j)(2) does not specify that a broadcaster's carriage rights extend throughout the DMA in which the broadcaster is located.)

[77] ALTV Reply Comments at 19; NAB Reply Comments at 14.

[78] *Id.*

[79] Nielsen has established a system to determine which stations are considered "local" for ratings reporting purposes. This is the "market-of-origin" assignment process and involves several statistical calculations based upon viewership and other factors. A television station is generally designated as local in the DMA in which its community of license is located. *See 1997-1998 NSI Reference Supplement* at 47. However, a station may petition Nielsen to change its market-of-origin assignment if both its transmitter and the majority of its Grade B service contour are located in a different DMA than the DMA in which the station's community of license is located. Such (continued…)

Jefferson County, Missouri, which is in the Paducah DMA, but assigned by Nielsen to the St. Louis DMA, would be considered within the St. Louis market under Section 338. In this case, Jefferson County is the home county, and such a county should be treated as part of the St. Louis DMA for satellite carriage purposes. Moreover, since this station is licensed to a community in the Paducah market, it may assert its carriage rights in that market as well, if satellite carriers decide to provide local-into-local service there. If there happens to be another television station licensed to a community in Jefferson County, that station will also be considered in the St. Louis DMA and eligible to assert its right to carriage against a satellite carrier. In addition, if a station is licensed to a community that is inside one DMA, but is assigned to another DMA by Nielsen, the station could assert its right to carriage in the market where its community of license is located. For example, KNTV is licensed to San Jose, CA, which is in the San Francisco DMA, but is assigned by Nielsen to the Salinas-Monterey DMA. In this case, KNTV can assert its carriage rights in the San Francisco DMA because that is where its community of license is located. These interpretations are consistent with the SHVIA's goals of preserving over-the-air broadcasting and providing satellite subscribers with a full complement of local station signals.

37. **Timing of Revisions to Market Definitions.** We sought comment on when to change the reference to the 1999-2000 Nielsen publications to reflect changes in market structure and market conditions. We noted, in the cable context, that the rules account for a market update every three years.[80] We asked whether the rules we implement under this section should be updated on a triennial basis or at another interval. We also noted that cable operators are required to use the 1997-98 Nielsen publications to determine local markets for broadcast signal carriage purposes up until January 1, 2003,[81] yet satellite carriers are obliged to use the 1999-2000 Nielsen publications for carriage purposes. We asked whether satellite carriers and cable operators should be required to use the same annual Nielsen market publications so that both may rely on the same market definition.

38. Our goals here are threefold. We intend to: (1) implement the language of Section 338; (2) establish comparable timelines and requirements for satellite carriers and cable operators; and (3) reduce procedural and administrative burdens. BellSouth argues for an extended period between updates to allow for satellite carriers' difficulties in accessing and tuning the satellite equipment used to transport television signals.[82] ALTV and NCTA argue that the Commission should adopt rules allowing for the use of the same Nielsen data by cable systems and satellite carriers as quickly as practicable.[83] NAB asserts

(….continued from previous page)
a petition must include relevant information on which the petitioning station bases its request for a change in market-of-origin including, but not limited to: (1) community of license; (2) present transmitter location; (3) signal coverage (including FCC coverage maps), audience data from previous measurements, and/or competitive considerations. Nielsen reserves the right to use its best judgement based upon the information available to it in considering whether the change sought by the petition reflects the reality of the market affected. The station's assignment is then made available in Nielsen's *Directory of Stations* publication. *See Definitions of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999).

[80]*Notice*, 15 FCC Rcd at 12155; 47 C.F.R. §76.55(e)(2).

[81]*Notice*, 15 FCC Rcd at 12155. 47 C.F.R. §76.55(e)(2)(i).

[82]BellSouth Comments at 13 (Commission has the discretion to choose the Nielsen 1999-2000 DMA definition or any subsequently published definition).

[83]ALTV Comments at 44; NCTA Comments at 5.

that the 1999-2000 lists are the correct ones for the Commission to use to determine markets for the first election cycle commencing in January 1, 2002.[84]

39. We will require satellite carriers to use Nielsen's 1999-2000 DMA market assignments to initially determine their carriage obligations. Satellite carriers and television broadcast stations have been on notice since November 29, 1999, that the 1999-2000 Nielsen publications will be used for Section 338 purposes. To avoid overburdening satellite carriers, we will not require market boundaries to be updated on an annual basis. However, we do believe that television markets should be updated triennially, for each election cycle, to better reflect new market conditions and viewership patterns.[85] Satellite carriers may, nevertheless, voluntarily adjust markets based upon county additions found in annual editions of Nielsen DMA market assignment publications. On this point, we agree with DirecTV when it states that Section 122(j)(2) allows a local market originally defined in the 1999-2000 Nielsen market assignment to be expanded in accordance with later issues of the relevant Nielsen publications.[86] Satellite carriers may add counties to the markets in which they now provide local-into-local service by referring to the Nielsen 2000-2001 DMA market assignments and future assignments. By adopting this approach, a satellite carrier is able to serve new communities on the basis of each yearly Nielsen DMA market change, if that is what is desirable[87] Counties that are removed from a market in subsequent Nielsen publications should remain in the market for satellite carriage purposes so that satellite subscribers will not lose local-into-local service.[88] This policy fulfills the SHVIA's goal of furthering the availability of local-into-local service and providing effective competition to incumbent cable systems.

40. **Market Modifications.** In the *Notice*, we pointed out that a statutory device exists to expand or contract the size of a local television market for cable carriage purposes and sought opinion on whether the Commission has the authority to implement a market modification mechanism for satellite carriage purposes.[89] Certain broadcast commenters assert that implementing a market modification mechanism is necessary to promote Congress' goal of protecting free television service, placing satellite

[84]NAB Comments at 4-5.

[85]For the second retransmission consent/mandatory carriage election commencing on January 1, 2006, for which elections must be made by October 1, 2005, the Nielsen publications from 2003-2004 should be used. This requirement is consistent with the market update rule developed for cable carriage purposes. *See* 47 C.F.R. 76.55(e)(2)(ii).

[86]DirecTV Comments at 15.

[87]*Id.* at 18.

[88]We note that this approach is intended to ensure that if Nielsen moved a county out of a DMA in which there is satellite local-into-local service into a DMA in which there is no satellite local-into-local service, the satellite subscribers in that county will not lose access to local stations via satellite. If Nielsen moves a county from one DMA that has local-into-local satellite service, a satellite carrier may consider the county to be in both DMAs and provide local-into-local service from both DMAs to subscribers in that county.

[89]*Notice*, 15 FCC Rcd at 12155. Pursuant to Section 614(h)(1)(C), at the request of either a broadcaster or a cable operator, the Commission may, with respect to a particular commercial television broadcast station, include additional communities within its television market or exclude communities from such station's television market. The Commission's inclusion of additional communities within a station's market imposes new carriage requirements on cable operators subject to the modification request, while the grant to exclude communities from a station's market relieves a cable operator from its obligation to carry a certain station's television signal.

and cable on equal terms, and preserve localism by ensuring that satellite carriage markets actually reflect what is truly local.[90] However, BellSouth and DirecTV state that the Commission has no authority to add communities to a broadcaster's television market. They believe that Section 122(j) limits a station's satellite carriage rights to the DMA that includes its community of license.[91] DirecTV argues, however, that the Commission can and should adopt market modification procedures that allow a satellite carrier to remove a station from the market if it can demonstrate that the station does not serve the relevant market.[92] Paxson, in contrast, argues that had Congress intended to grant the Commission market modification authority, it would have explicitly done so in the statute just as it did in the cable context.[93]

41. We find that the Act does not permit the Commission to change the shape of a television market. While we recognize the concerns raised above, we note that the satellite compulsory license is coterminous with the market in which the satellite carrier provides local-into-local service. Without express language in the Copyright Act or the Communications Act, any attempt to establish a market addition policy under our public interest authority would be moot because a satellite carrier cannot retransmit a local television station under Section 338 into another market without subjecting itself to copyright liability under Section 122 of the Copyright Act. In addition, there is no explicit provision providing the Commission with the authority to modify markets in the manner permitted under Section 614(h). Therefore, we cannot establish a market modification policy on our own motion. We note that the Senate version of the SHVIA had, at one point in time, a market modification provision.[94] This subsection was not adopted by Congress. Thus, any attempt by the Commission to implement a market modification regime would run counter to the express intent of Congress.

42. **Coverage.** Satellite carriers are currently developing spot beam technology where programming can be delivered to a discrete geographical location using a specialized satellite.[95] Spot beam satellites have the potential to increase satellite system channel capacity through the re-use of transponders.[96] DirecTV argues that satellite carriers should be permitted to use spot beams, when they are in operation, for local-into-local service even if the beam does not cover the entire market.[97] We will

[90]WFMD Comments at 5; KNTV Comments at 7; and WDBJ Comments at 1.

[91]BellSouth Comments at 12; DirecTV Comments at 15.

[92]DirecTV Comments at 21.

[93]Paxson Comments at 7.

[94]*See* Senate amendments to H.R. 1554 (May 20, 1999)("Section 338. Carriage of Local Television Stations by Satellite Carrier. . . .The mandatory carriage provisions of section 614 and 615 of this Act will apply in a local market no later than January 1, 2002, to satellite carriers retransmitting any television broadcast station in that local market pursuant to the compulsory license provided by section 122 of title 17, United States Code."

[95]*Id.* The coverage area or "footprint" of satellite systems can vary: (1) "global beam" where 1/3 of the earth is covered by a satellite; (2) "regional beam" where a couple of continents are covered by a satellite; (3) "CONUS coverage" which is the satellite footprint over the continental United States; and (4) "spot beam" as described above.

[96]In the *Notice*, we also had questions concerning the phrase "similar technologies to meet their carriage obligations" as it is found in the legislative history surrounding material degradation. We asked what was meant by the term "similar technologies." We specifically sought comment on whether the phrase encompasses satellite spot beams. *Notice*, 15 FCC Rcd at 12167.

[97]DirecTV Comments at 23.

permit carriers to use spot beam satellites in such a manner. We first observe that Section 338 does not require a satellite carrier to serve each and every county in a television market. Rather, it requires that in the areas it does provide local-into-local service, it must carry all local television stations subject to carriage under the statute. In this context, we recognize that there are some markets, such as the Denver DMA encompassing counties in four states, that are geographically expansive. A spot beam may not be able to cover the entire DMA in these instances, and to make the satellite carrier reconfigure its spot beam may deprive it of capacity to serve additional markets with local-into-local coverage.

D. Receive Facilities

43. Section 338(b)(1) states that, "A television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market."[98] Section 338(h)(2), in turn, defines the term "local receive facility" as "the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission."[99] The *Notice* sought comment on the term "local receive facility" and on the parameters under which a satellite carrier may construct and designate a local receive facility.[100] We noted that the statutory language could be read to permit the satellite carrier to establish a regional receive facility that would receive broadcast signals from other markets provided 50% of the relevant broadcasters agreed to the location.[101] We also asked questions concerning the procedures by which a satellite carrier must inform local market television stations of the location of the receive facility, and whether there should be Commission procedures to resolve a broadcaster's complaint if it disputes the receive location selected by the majority of broadcasters.

44. DirecTV agreed with the preliminary statement in the *Notice* that "the most economically feasible means [of delivery of multiple local broadcast signals] is to aggregate signals in each local market at one point and deliver them over the facilities of an interstate telecommunications carrier to the uplink site(s)" and co-locate at such a carrier's switching center.[102] DirecTV provided comments detailing the process needed to establish a local receive facility, a process they have used to create 27 local receive sites to provide service to 27 local-into-local markets served since the SHVIA was enacted at the end of November, 1999.[103] According to DirecTV, the parameters for construction and designation of a local receive facility include: 1) access to multiple long distance common carriers for DS-3 or other high-speed digital fiber circuits; 2) access to at least one local common carrier that can provide TV1 quality digital fiber circuits to most, if not all, television broadcast stations [in the DMA], and/or local DS-3 circuits, microwave, and broadband analog service as local conditions may require; 3) access to

[98] 47 U.S.C. §338(b)(1).

[99] 47 U.S.C. §338(h)(2).

[100] *Notice*, 15 FCC Rcd at 12157.

[101] *Id.* For example, a regional receive facility could serve stations throughout New England, which is comprised of several DMAs.

[102] *See* DirecTV Comments at 25 and *Notice*, 15 FCC Rcd at 12157. *See also* Echostar Comments at 13-14.

[103] DirecTV Comments at 25-26.

multiple long distance carriers that can provide a wide area data network up to 256kb/s as well as dial up voice service must also be available; 4) access to building rooftop with connecting conduits to support, where needed, good quality over-the-air television reception, microwave links, and satellite reception; 5) access to a suitable area with connecting conduits to support a satellite downlink antenna; and 6) access to a suitable area to install equipment to support all local collection, compression, monitoring, and transmission equipment. This area must be securable against unauthorized access and have stable power source and HVAC. DirecTV also states that local receive facilities must be planned twelve months in advance.[104]

1. Local Receive Facilities

45. In the definition of "local receive facility" in Section 338(h)(2), the satellite carrier is the entity authorized to designate the placement of a local receive facility.[105] If the satellite carrier designates a local receive facility, the television broadcast stations are required by the statute to bear the costs of delivering a good quality signal to "the designated local receive facility of the satellite carrier."[106] We find that the statute expressly provides that the satellite carrier has the right to determine the location of the local receive facility. We disagree with the proposals offered by AAPTS and Network Affiliates to require a satellite carrier to locate a receive facility either within the Grade B contour or not more than 50 miles from the community of license of each of the local stations in a market.[107] We recognize that in some of the larger DMAs in the western United States, some broadcast stations may be required to provide their signals over hundreds of miles if the receive facility is located beyond a local commercial or non-commercial television station's Grade B signal.[108] We believe this is the reason Congress provided for an alternative receive facility, as discussed below. But, we do not believe it would be consistent with statutory language, which requires the broadcast station to bear the cost of delivering a good quality signal, to require satellite carriers to bear the cost of erecting additional facilities to receive signals from stations that are more than 50 miles away from a designated receive point.[109]

[104]To establish a receive facility, a satellite carrier must: (1) select a location for the receive facility and negotiate a lease; (2) order and install encoding and other equipment; (3) hire support, maintenance and monitoring staff; (4) make arrangements with local television stations to obtain a signal of sufficient quality; (5) allow television stations to negotiate fiber agreements with telephone carriers and install local fiber links; (6) install, as needed, over-the-air antennas and noise reduction equipment; (7) negotiate a long-haul fiber agreement and install a long haul fiber link; (8) order and install equipment for broadcast/uplink centers; and (9) test each link in the system. DirecTV Comments at 26-27.

[105]47 U.S.C. §338(h)(2). *See, e.g.,* DirecTV Comments at 25; BellSouth Comments at 16.

[106]47 U.S.C. §338(b)(1).

[107]Network Affiliates Comments at 10; AAPTS Comments at 13.

[108]AAPTS Comments at 13 (a television station might have to relay the signal over microwave or fiber at a cost of $30 to $60 per mile per month in order for a local station to deliver a good quality signal to the receive facility).

[109]*See, e.g.,* BellSouth Reply Comments at 14 (Requirement to place a local receive facility within a certain radius of all stations or within their Grade B contours is inconsistent with definition of "local receive facility" as the "reception point in each local market which the satellite carrier designates").

46. With respect to the costs of erecting and maintaining the receive facility itself, we note that in the cable context, the cable operator pays the costs for signal processing at its principal headend.[110] Given that the satellite carrier's local receive facility functions like a headend, and is under the carrier's control, we believe that the satellite carrier has the sole responsibility to pay for the costs of building and maintaining such a facility. We also find that the satellite carrier should pay for the costs of constructing and maintaining an alternative receive facility, as discussed below. This is appropriate particularly if the alternative facility is regional, and the satellite carrier benefits from having fewer facilities to build and maintain.

47. We note that DirecTV and Echostar have already built facilities in a number of television markets where they now provide local-into-local service.[111] While DirecTV states that twelve months is the minimum amount of time necessary to establish a receive facility, we believe that the satellite carriers that are currently providing local-into-local service should not experience any difficulties in carrying local television stations by January 1, 2002 due to buildout issues.[112] In the future, satellite carriers that enter new markets with local-into-local service should be able to fulfill their carriage obligations because Section 338 does not impose carriage obligations until the satellite carrier retransmits at least one local television station, which would necessitate that the carrier have a receive facility in place or under development before the carriage requirement is triggered.

48. We also find, as AAPTS and others suggest, that a satellite carrier should designate the same receive facility for both retransmission consent and mandatory carriage television stations so as to avoid any opportunity to assign less convenient facilities to those stations seeking mandatory carriage.[113]

2. Alternative Receive Facility

49. The definition of local receive facility in Section 338(h)(2) strongly suggests that Congress intended to permit carriers to designate a single point for all local-into-local stations to be received, processed and retransmitted. However, the second clause of Section 338(b)(1) provides that, with respect to the costs of delivering a good quality signal, there may be "another facility that is acceptable to at least one-half the stations" to which the television broadcast station delivers a good quality signal. The *Notice* considered this other facility as a facility outside the local DMA, perhaps a facility serving a regional area. Some commenters agreed that this is the likely meaning of this clause.[114] We note, however, that this is not the only possible meaning of "another facility." As DirecTV suggests, the other facility could be an alternative facility, not necessarily a non-local or regional facility.[115] Most

[110] *See Must Carry Order*, 8 FCC Rcd at 2988.

[111] At the time it filed comments, DirecTV stated it has 27 facilities for 27 markets. DirecTV Comments at 26.

[112] Neither DirecTV nor Echostar stated in the record that the receive facilities they are using for local-into-local now cannot be used to retransmit all of the local television stations in those markets.

[113] NAB also asserts that both retransmission consent and mandatory carriage television stations should use the same local receive facility. NAB Comments at 10.

[114] *Notice*, 15 FCC Rcd at 12157. *See, e.g.* Network Affiliates Comments at 8-10; Echostar Comments at 13-14; and BellSouth Reply at 14.

[115] DirecTV Comments at 28-30; LTVS Comments at 15.

of the comments on this subject assumed that the other facility would be a non-local, regional facility established by a satellite carrier and that is acceptable to at least one-half of the stations asserting the right to carriage.[116] We focus here on this interpretation and the necessary rules to implement it, but we do not foreclose the possibility that the creation of an alternative site, whether local or non-local, can also be consistent with the statutory language. An alternative local receive facility would be one selected after the satellite carrier has chosen its first designated local receive facility.

50. AAPTS states that the consent of at least one local NCE station eligible for carriage in the market should be required before an alternate facility is chosen.[117] Broadcast groups generally assert that non-local receive sites should not be selected unless the majority of stations in each affected market agree to the location of the facility.[118] Echostar argues that it is significantly more burdensome for satellite carriers to seek the agreement of a majority of stations in each locality than the majority of stations in a particular region.[119] ALTV states that a non-local receive facility may be established if half the local stations electing mandatory carriage, rather than retransmission consent, agree to the alternate site.[120]

51. Under our reading of the phrase "that is acceptable to at least one-half the stations asserting the right to carriage in the local market," we find that an alternative receive facility may be established if 50% or more of those stations in a particular market consent to such a site. As the statute uses the term "local," we find that the calculation should be based on the majority of stations entitled to carriage in each affected market, not the aggregate number of stations in all affected markets.[121] Since the "right to carriage" under Section 338 extends, at least initially, to all local television broadcasters, the calculation includes all stations, whether they elect mandatory carriage or retransmission consent. We disagree, in part, with ALTV, which asserts that a non-local receive facility may be established if half the local stations electing mandatory carriage, rather than retransmission consent, agree to the alternate site.[122] Just as we decide that a satellite carrier should include both retransmission consent and mandatory carriage local stations on the same designated local receive facility, we do not distinguish between retransmission consent and mandatory carriage in the determination of an acceptable alternative receive facility. We note, however, that if a satellite carrier has both a designated local receive facility and a non-local or regional receive facility and can accommodate local stations for retransmission into their local markets at either one, the television station may choose whether to deliver its good quality signal to one or the other, and must notify the satellite carrier to which one of the facilities it will deliver its signal.

[116]LTVS Comments at 15; ALTV Comments at 32.

[117]AAPTS Comments at 14.

[118]ALTV Comments at 33; Network Affiliates Comments at 10; NAB Comments at 11.

[119]Echostar Comments at 6.

[120]ALTV Comments at 32.

[121]For example, if DirecTV were to establish an alternative receive facility in Howard County, MD, (which is in the Baltimore DMA) that would serve the Washington, D.C., Philadelphia, and Baltimore television markets, 50% or more of the stations in Washington, D.C. and 50% or more of stations in Philadelphia would have to agree to the site location. A satellite carrier cannot combine the number of Washington, D.C. and Philadelphia stations to reach the 50% threshold.

[122]ALTV Comments at 32.

Each local television broadcast station requesting carriage must bear the cost of delivering its good quality signal to the receive facility.

52. All stations "asserting a right to carriage," either through retransmission consent or mandatory carriage, may participate in the consideration of whether an alternative receive facility is acceptable. We note that television stations that substantially duplicate other local television stations may not ultimately be carried, but should, nevertheless, be counted in the 50% of stations that must find the alternative facility acceptable. For example, if there are 20 stations in a local market that may request carriage, but only 16 that must ultimately be carried, the satellite carrier must notify all 20 stations of a proposed alternative receive site, and at least 10 must find the alternative site acceptable.[123]

53. As several commenters observed, a satellite carrier's local receive facility is the equivalent of a cable system's headend.[124] We do not believe that the statute requires, nor that any party contemplates, that television stations can unilaterally select a site and force a satellite carrier to construct a facility or move its receive facility there.[125] NAB asserts that the Act contemplates negotiations in which a carrier attempts to persuade more than half of the stations eligible for carriage to agree to deliver a good quality signal to a particular location outside the local market.[126] We agree with NAB on this point. If the satellite carrier designates one local receive facility, 50% or more of the local stations may not demand or require that the satellite carrier provide an alternative receive facility.[127] We find that Congress intended that the satellite carrier be part of the negotiation process concerning the establishment of an alternative receive facility. Given the costs and steps involved in creating a receive facility, the satellite carrier is to play a central role in such discussions. Indeed, we expect that in most cases, the satellite carrier will be the initiating party seeking to use a non-local or regional receive facility other than its designated local receive facility and to obtain the consent of at least 50% of the stations asserting the right to carriage.

54. As noted above, the statute assigns costs to the broadcaster when providing the satellite carrier with a good quality signal to either a local or alternative facility. We agree, therefore, with BellSouth that a satellite carrier is not obligated to carry a television broadcast station that refuses to pay for the costs of providing a good quality signal. [128] For similar reasons, we disagree with Network Affiliates' proposal that if the carrier uses an alternative facility, which at least half of the local stations find acceptable, then the satellite carrier should pay the incremental costs of delivering each broadcaster's

[123]New television stations that sign on-the-air during the middle of an election cycle, must deliver their signal to an existing local or non-local receive facility and need not be counted in the 50% coalition until the next election cycle commences.

[124]*See, e.g.*, Network Affiliates Comments at 8; ALTV Comments at 24; and AAPTS Comments at 12.

[125]*See, e.g.*, NAB Comments at 21-22; DirecTV Comments at 29; and note 25, *supra.*

[126]NAB Comments at 21-22.

[127]We believe such a result would be comparable to a television broadcast station requiring a cable operator to move its headend or create a new headend to accommodate its signal.

[128]BellSouth Comments at 19 (Television stations in the losing minority of a vote to allow a non-local receive facility may be denied carriage by the satellite provider unless such stations bear the costs to deliver a good quality signal to the out-of-market reception point).

signal if the alternative facility is more than 50 miles from the reference point of the station's community of license.[129]

3. Notification

55. We conclude that a satellite carrier should provide local television stations with information on the location of an existing local receive facility, or where it plans to build a local or alternative receive facility, before the station makes its election. Advance notice of the receive point location is necessary because television stations must make arrangements for delivering good quality signals to the receive site. Advance notice is also desirable to enable the satellite carrier to negotiate with all the local television stations concerning alternative receive facilities. In the event a satellite carrier must select which duplicating station or NCE station to carry from among several that request carriage, nothing in the statute or our rules prevents the satellite carrier from taking into consideration which stations that find the satellite carrier's proposed alternative receive facility acceptable. As described above, we consider this to be a fair subject for negotiation amongst the affected parties.

56. We disagree with DirecTV's argument that satellite carriers not be required to inform local broadcast television stations of the location of the receive facility until after such stations have notified the carrier, in writing, that they wish to be carried pursuant to Section 338, and it has been established that they are otherwise eligible for such carriage.[130] We see no reason to keep the location of existing designated local receive facilities or planned sites a secret. We agree with the suggestion of other commenters that the satellite carrier should designate the local receive facility in its carriage agreements with local television stations or, in the mandatory carriage situation, provide notice to the affected stations as to the location of the local receive facility.[131]

57. Satellite carriers must be afforded a reasonable period of time to finalize arrangements for the location of the local receive facility in order to meet the January 1, 2002 deadline. Any delays by local television stations will work against a satellite carrier meeting its carriage obligations in a timely manner, which ultimately works against the television stations and viewers, as well. Therefore, when a satellite carrier has a designated local receive facility to which local stations seeking carriage must deliver a good quality signal, the carrier must make the location of this facility known by June 1, 2001 for the first election cycle, and at least 120 days prior to the commencement of all election cycles thereafter.[132] The means by which television stations are notified is left to the discretion of the satellite carrier.

58. BellSouth suggests that a carrier should give local television stations 90 days notice before it moves a local receive facility in order to protect the legitimate interests of television stations and to avoid service disruption to subscribers.[133] We agree, in principal, with BellSouth's proposal.

[129]Network Affiliates Comments at 10 (Arguing that satellite carriers are the primary beneficiaries of regional receive facilities and should bear the costs).

[130]DirecTV Comments at 28.

[131]*See, e.g.,* LTVS Comments at 15.

[132]We reject, as unnecessary, DirecTV's argument that any agreement among television broadcast stations may only be made twelve months prior to the election cycle to allow satellite carriers to plan ahead and to prevent broadcasters from garnering votes for an alternate facility throughout the entire period. DirecTV Comments at 29.

[133]BellSouth Comments at 18.

Generally, a satellite carrier may relocate the designated local receive facility every three years coinciding with the election cycle. We believe that satellite carriers should have the flexibility to change their designated local receive facility or alternative facility, and will require 60 days advance notice to all local stations. We are concerned, however, that the relocation of a local receive facility may make it more difficult for some television stations to pay the costs of delivering a good quality signal. Therefore, if a satellite carrier decides to relocate the designated local receive facility during an election cycle, it should pay the television stations' costs to deliver a good quality signal to the new location. With respect to moving the alternative facility, the new location must be acceptable to at least half of the local stations entitled to carriage in the local market. Obtaining such agreement may require more than 60 days notice, and the satellite carrier may find it necessary to plan for a new alternative facility with additional advance notice. A satellite carrier may not require local stations to deliver their signals to a new alternative facility unless and until at least 50% of the stations agree to the new facility.

4. Process

59. The *Notice* requested comment on the process by which broadcast television stations agree to the establishment and location of an alternative receive facility.[134] NAB urges the Commission to establish a complaint process whereby stations in the minority of a determination of an acceptable alternative receive facility can protest if they believe the designation of a non-local receive facility site would undermine or evade the mandatory carriage requirements.[135] BellSouth disagrees with this suggestion because under Section 338(b)(1), the stations' vote decides the issue, and there is no statutory basis for Commission action to review or reverse this process.[136] AAPTS responds by stating the Commission has the authority to create remedial processes that are not expressly mandated by statute.[137]

60. We decline to establish a special complaint standard or process for disputes concerning alternative receive facility disputes. To the extent a television broadcast station believes its right to carriage has been denied because fewer than 50% of the relevant stations agreed to an alternative site, such claims may be raised in a mandatory carriage complaint. If there is no dispute that 50% or more of the local stations that could assert mandatory carriage have agreed to an alternative site, then we see no issue that would require our intervention.

61. We find that the negotiations and arrangements among local television broadcast stations and satellite carriers with respect to agreeing upon an alternative local receive facility are generally

[134] *Notice*, 15 FCC Rcd at 12157.

[135] NAB Comments at 12.

[136] BellSouth Reply Comments at 16 (Congress considered and rejected language that would have prohibited a satellite carrier from designating a receive site to "undermine or evade the carriage requirements …." citing H.R. 1027, the last sentence to what was enacted as Section 338(h)(2), defining "local receive facility." H.R. Rep. No. 86, 106th Cong., 1st Sess., at 7 (April 12, 1999). Resurrecting that standard in rules, after Congress consciously rejected that standard, would violate Congressional intent). *See also* DirecTV Comments at 30 (Commission should not adopt remedies and procedures that have no basis in the statute).

[137] AAPTS Comments at 19 (satellite carriers object to such a process because they fear it will result in the creation of additional and expensive receive facilities).

intended to be a voluntary process. We also decline to adopt a good faith test to be used in the context of receive point negotiations.[138]

5. Good Quality Signal

62. **Standard.** In the *Notice*, we inquired about the "good quality signal" mandate in Section 338. Under the current cable carriage regime, television broadcast stations must deliver either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, to be considered eligible for carriage.[139] We sought comment on whether the signal quality parameters under Section 614 and the Commission's cable regulations are appropriate in the satellite carriage context.[140]

63. DirecTV states that the Commission should define "good quality signal" as one that will facilitate efficient MPEG compression of all channels. DirecTV proposes that the signal must meet the requirements of GR-338 CORE, TV1 for <20 route miles.[141] It states that the "<20 route miles" specification contains essential elements that are necessary for the digital video compression equipment used in DBS systems.[142] DirecTV also argues that the Commission should require a television broadcast station to contract with a local telecommunications common carrier to lease a dedicated TV1-quality fiber circuit from the broadcast station to the satellite carrier's local receive facility.[143] We decline to adopt DirecTV's good quality signal proposals for several reasons. First, we believe that the TV1 standard is too rigid a construct. Specifically, a signal-to-noise ratio of +67 dB cannot be easily implemented by most television broadcast stations.[144] Broadcasters do not have to meet such exacting ratios and levels when delivering signals to a cable operator's headend to qualify for carriage. Moreover, as NAB points out, satellite carriers, such as Echostar, have been retransmitting local television signals that they have received over-the-air without much concern about signal quality.[145] We also note that it would be prohibitively expensive for a small television station to lease a dedicated TV1 circuit from a

[138]We note that Section 338 does not contain a "good faith" clause similar to the one contained in the amendments to Section 325. *See* 47 U.S.C. §325(b)(3)(C)(ii). We also reject as unnecessary BellSouth's request for rules prohibiting local television stations from unreasonably withholding consent to a regional receive facility location. BellSouth Comments at 17. *See* ALTV Comments at 8; NAB Reply Comments at 2-3 (arguing that BellSouth's good faith request exceeds the scope of Section 338 and that Congress gave television stations the absolute right to refuse to agree to a non-local receive facility).

[139]47 U.S.C. §534(h)(1)(B)(iii); 47 C.F.R. §76.55(c)(3).

[140]*Notice*, 15 FCC Rcd at 12157.

[141]DirecTV remarks that an equally acceptable standard is ANSI/EIA/TIA-250-C, known as the "Short Haul." DirecTV Comments at 32.

[142]We note that the short haul standard specifies a signal-to-noise ratio of +67dB, not –67dB as stated by DirecTV.

[143]*Id.*

[144]AAPTS comments that this is a standard that a broadcaster could achieve only by using fiber-optic capacity all the way from the station to the receive facility. AAPTS Reply Comments at 16.

[145]NAB Reply Comments at 20.

telecommunications carrier. It is not our intention to impose inordinate costs on small television stations that would prevent them from being carried by a satellite carrier.

64. We decide to apply the current good quality signal standards applicable in the cable context to satellite carriers, as suggested by ALTV.[146] The standards that have been applied to cable operators have functioned well since the inception of the statutory cable carriage requirements seven years ago. No evidence has been presented suggesting the cable signal quality standard will not prove equally satisfactory in the satellite context. We believe that the application of the current good quality signal standards will provide parties with a workable, tested standard.

65. Christian Television Network ("CTN") argues that the good quality signal standard should not be premised on off-air signal strength, but should turn on the quality of the picture delivered by any means.[147] AAPTS also states local stations that cannot provide a good quality signal to the local receive facility over-the-air should be permitted to deliver the signal in another way.[148] We agree with these commenters that television stations may use any delivery method to improve the quality of their signals to the satellite carrier. A television station may use microwave transmissions, fiber optic cable, or telephone lines as long as they pay for the costs of such delivery mechanisms. Such alternative delivery methods are sanctioned under the cable carriage rules and should be applicable in the satellite carriage context.

66. **Carriage of Television Stations With Disputed Signal Quality.** In the *Notice*, we recognized that a broadcaster not providing a good quality signal to a cable system headend is not qualified for carriage.[149] In this situation, a cable system is under no obligation to carry such a signal, but the broadcaster has an opportunity to provide equipment necessary to improve its signal to the requisite level and gain carriage rights.[150] We sought comment on whether Congress intended the same result for broadcasters that do not provide a good quality signal to the local satellite receive facility.

67. ALTV, AAPTS, and Network Affiliates agree that a satellite carrier may insist that a station cover the costs of delivering a good quality signal; they argue, however, that a satellite carrier cannot refuse to carry a television station just because its signal is less than adequate.[151] NAB comments that satellite carriers operating under Section 338, unlike cable systems operating under Sections 614 and 615, do not have the option of holding a station's carriage "hostage" during a dispute about a good quality signal.[152] It posits that even if the Commission had the power to allow carriers to do so, it should decline that invitation, since a litigious satellite carrier could, as a practical matter, unilaterally postpone the

[146]ALTV Comments at iii.

[147]CTN Comments at 7.

[148]AAPTS Comments at 16.

[149]*Notice*, 15 FCC Rcd at 12157.

[150]*Broadcast Signal Carriage Order*, 8 FCC Rcd at 2991. A broadcast station may use microwave facilities, fiber-optics, or even a translator station to improve the quality of its signal, and therefore be qualified for carriage. *Id.*

[151]ALTV Comments at iii; AAPTS Comments at 15; and Network Affiliates Comments at 12.

[152]NAB Comments at 7.

effective date of the Section 338 requirements for long periods by dragging out Commission and court enforcement proceedings.[153] Conversely, DirecTV and LTVS assert that a satellite carrier may refuse to carry a station that fails to provide a good quality signal to the local receive facility.[154] LTVS adds that the satellite carrier should first notify the broadcast station of the deficient signal, including measurements and relevant data, and then discontinue carriage if the broadcaster fails to improve the signal quality.[155]

68. We disagree with the broadcast groups on this issue. We first observe that the statute does not affirmatively instruct satellite carriers to carry television stations that do not provide a good quality signal. Rather, Section 338 only provides that a television station is responsible for the costs of delivering a good quality signal. Given the absence of a statutory directive, we must interpret Section 338 in a manner that is both reasonable and consistent with current law. We also find that it would be contrary to the public interest to require satellite carriers to carry television stations that provide a poor quality signal. The principle reason underlying this decision is that satellite subscribers would not benefit from receiving a television signal that is of poor quality. In this instance, we believe that satellite subscribers would rather subscribe to cable or receive the signals over-the-air rather than pay for inadequate television signals retransmitted by a satellite carrier. Moreover, cable operators are not required to carry poor quality signals under Sections 614 and 615 of the Act. Noting the SHVIA's directive in establishing comparable carriage requirements between satellite carriers and cable operators, we should not require the carriage of poor quality signals under Section 338. We note that our findings here do not relieve the satellite carrier of its obligations to carry television signals where it provides local-into-local service. Rather, the satellite carrier does not have an obligation to carry television stations until they voluntarily pay and provide a good quality signal.

69. **Good Signal Quality Measurement and Testing.** With respect to the manner of testing for a good quality signal, we note that the Commission has adopted a method for measuring signal strength in the cable carriage context. Generally, if a test measuring signal strength results in an initial reading of less than -51 dBm for a UHF station, at least four readings must be taken over a two-hour period. If the initial readings are between -51 dBm and -45 dBm, inclusive, readings must be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results. For a VHF station, if the initial readings are less than -55 dBm, at least four readings must be taken over a two-hour period. Where the initial readings are between -55 dBm and -49 dBm, inclusive, readings should be taken over a 24-hour period, with measurements no more than four hours apart to establish reliable test results.[156] The Commission stated that cable operators are further expected to employ sound engineering measurement practices when testing signal strength.[157] We sought comment on whether we should require the same signal testing practices for measuring a broadcaster's signal strength in the satellite context.

[153] *Id.*

[154] DirecTV Comments at 28; LTVS Comments at 16.

[155] LTVS Comments at 17.

[156] *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, Memorandum Opinion and Order, 9 FCC Rcd 6723-24 (1994) ("Must Carry Reconsideration")

[157] *Id.* For example, we have required the: (1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; (2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; (3) height of the antenna above ground level and whether the antenna was properly oriented; and (4) weather conditions and time of day when the tests were done. *Id.*

70. LTVS states that the signal testing practices used in the cable context should apply in the satellite context.[158] NAB proposes adding "additional safeguards" to the signal testing process, such as permitting local stations to observe measurement procedures and requiring use of independent engineers to conduct tests.[159] NAB also advocates that the good quality signal requirements for satellite carriers should incorporate the various findings in Commission rulings in the cable context, such as the requirement that an operator use actual field measurements, rather than computer predictions, to measure a television station's signal.[160] BellSouth argues that NAB provides no support for imposing more stringent requirements on satellite carriers than on cable systems.[161] BellSouth also argues that like cable systems, satellite carriers should cooperate in testing the signal quality delivered by television stations to the satellite carrier's local receive facility.[162]

71. We believe that the signal testing practices in the cable carriage context should be generally applied in the satellite carriage context. The Commission developed its engineering standards through experience in adjudicating signal quality disputes between cable operators and television broadcast stations. In this instance, commenters have not provided any arguments or data suggesting that the cable practices and engineering standards would be unsuited for satellite carriers. As for NAB's call for additional safeguards, we find that such engineering and procedural processes should not be implemented as regulatory requirements. Instead, the parties should look to precedent as useful guidance. With regard to testing fees, we believe that the television broadcast station should pay for signal tests.[163]

72. At the same time, however, we note that the satellite carrier's local receive facility may not have a tower with broadcast station reception equipment mounted onto it like that is found at a cable system's principal headend. It has been standard practice among cable operators and broadcasters to test a television station's signal strength at the tower site. To remedy this situation, we strongly recommend that satellite carriers and broadcasters follow the testing procedures for field strength measurements found in Section 73.686(b)(2) of the Commission's rules, in addition to following the good engineering practices established in the cable context.[164] These rules, we believe, will serve as an adequate proxy for conducting signal measurements in lieu of an actual tower.

---

[158]LTVS Comments at 17.

[159]NAB Comments at 14-15. DirecTV agrees that an independent engineer may be consulted to determine signal quality. DirecTV Reply Comments at 19.

[160]*Id.*

[161]BellSouth Reply Comments at 17.

[162]BellSouth Comments at 18.

[163]Under Section 338, the station bears the responsibility to provide a good quality signal. Attendant to this burden is its obligation to prove to the satellite carrier that the signal is of good quality.

[164]47 C.F.R. §73.686(b)(2). The rule, in part, requires that at each measuring location, the following procedures shall be employed: (1) The instrument calibration is checked; (2) The antenna is elevated to a height of 30 feet; (3) The receiving antenna is rotated to determine if the strongest signal is arriving from the direction of the transmitter; and (4) The antenna is oriented so that the sector of its response pattern over which maximum gain is realized is in the direction of the transmitter.

E. Duplicating Signals

73. **Definition.** Section 338(c)(1) states that:

> Notwithstanding subsection (a), a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market. . . .[165]

In the *Notice*, we asked several definitional questions concerning this phrase.

74. Section 614(b)(5) provides that a cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network.[166] The Commission decided that, based on the legislative history of this section, two stations "substantially duplicate" each other "if they simultaneously broadcast identical programming for more than 50 percent of the broadcast week."[167] For purposes of this definition, identical programming means the identical episode of the same program series.[168] Section 615(e) provides that cable operator with cable system capacity of more than 36 usable activated channels, and carrying the signals of three qualified NCE stations, is not required to carry the signals of additional stations the programming of which substantially duplicates the programming broadcast by another qualified NCE station requesting carriage.[169] The 1992 Cable Act states that substantial duplication was to be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.[170] The Commission concluded that an NCE station does not substantially duplicate the programming of another NCE station if at least 50 percent of its typical weekly programming is distinct from programming on the other station either during prime time or during hours other than prime time.[171] We sought comment on whether the Commission should apply the cable carriage duplication definitions to satellite carriers under Section 338.

75. DirecTV proposes that the definition of "substantial duplication," as employed in Section 338(c), should include identical programming, whether broadcast simultaneously or not, of either 50 percent or more of a television broadcast station's total weekly programming, or 50 percent or more of its

[165] 47 U.S.C. §338(c)(1).

[166] 47 U.S.C. §534(b)(5).

[167] *Must Carry Order*, 8 FCC Rcd at 2980-81. The Commission has stated, in the cable carriage context, that programs in foreign languages (e.g., MacNeil/Lehrer in Spanish) are not duplicative of the same programs broadcast in English, because they target different audiences. *Id.* at 2971.

[168] *Id.*

[169] 47 U.S.C. §535(e).

[170] *Id.*

[171] *Must Carry Order*, 8 FCC Rcd at 2970.

prime-time programming.[172] Network Affiliates argue that substantial duplication should be found only where there is an overlap in the Grade B contours of the stations in question. According to Network Affiliates, where there is no Grade B overlap between the stations, the stations' signals should not be deemed to substantially duplicate each other and should be entitled to carriage.[173] We do not find that these commenters have presented persuasive evidence as to why the cable standard is not suited for satellite carriers. Their proposals are also contrary to the purpose of the Act. DirecTV's proposal would winnow away a television station's right to carriage and would unduly expand the substantial duplication exception beyond what was intended by Congress. If the Network Affiliates' suggestion were adopted, we believe that the statutory duplication provision would be eviscerated, as there would be no station in a particular market that would duplicate another.

76. Accordingly, we will apply the duplication standards for commercial television stations,[174] set forth in the cable operator context, to satellite broadcast signal carriage as suggested by ALTV, NCTA, and LTVS.[175] That is, two commercial television stations substantially duplicate each other if they simultaneously broadcast identical programming for more than 50 percent of the broadcast week. The cable duplication provisions for commercial television stations have been in effect for the last seven years, without much controversy, and there is no reason to believe that they will be difficult to implement in the satellite carriage context.

77. We note, however, that due to the fundamental operational differences between cable systems and satellite service, a satellite carrier may choose which duplicating signal it is not required to carry. This policy differs from the cable duplication rules where an operator must carry the station that is closest to its principal headend. Since there are no "headends" in the satellite carriage context, that are relevant to the question of which stations in a particular market to carry, comparable rules in this specific instance should not be implemented. Absent an analogous headend standard or statutory guidance, we believe the public interest is best served by permitting satellite carriers to determine which stations to offer their subscribers.

78. DirecTV argues that, in addition to its ability to deny carriage of duplicative stations in the first instance, a satellite carrier should be permitted to remove a television broadcast station from its line-up if it begins to substantially duplicate its programming after carriage of the station has commenced.[176] We agree with DirecTV on this point. If the substantial duplication criteria are satisfied, a satellite carrier is permitted to drop that television station from its channel line-up. If this situation arises, however, we require the satellite carrier to notify the station, and its subscribers, in a timely manner prior to its removal from the relevant local-into-local channel line-up. By the same token, we

[172]DirecTV Comments at 35.

[173]Network Affiliates Comments at 13-14.

[174]In the cable carriage context, the Commission treated the duplication provisions of Sections 615(b)(2) and Section 614(b)(5) separately. The Commission noted that the two provisions were intended to accommodate different situations and were addressed separately in the statute and its legislative history. 8 FCC Rcd at 2980. We believe that our separate duplication postulates for commercial and NCE stations in the cable context should also be applied in the satellite context.

[175]ALTV Comments at 44; NCTA Comments at 6; and LTVS Comments at 20.

[176]DirecTV Comments at 37.

also find that a satellite carrier must begin carrying a television station that stops duplicating another local television station. When this circumstance presents itself, the station shall use the same procedures to establish carriage as permitted for new television stations under Section 76.66.

79. We sought comment on the phrase, "affiliated with a particular television network." In this situation, we asked what definition of "television network" applies because that term is not specifically defined in Section 338.[177] We asked whether we should implement the definition of television network found in Section 339 of the Act, the SHVIA's distant signal carriage provision, for the purposes of administering the Section 338 duplication provision.[178] BellSouth, NCTA, and LTVS all agree that the definition in Section 339(d) is acceptable.[179] Given the parties assent to the inclusion of the Section 339 definition, and the lack of opposition, we adopt this definition for the purpose of the substantial duplication analysis.

80. We now turn to the second part of Section 338(c)(1): "Notwithstanding subsection (a), a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market *or to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different states.*" (emphasis added). We find that this part of the provision dictates three results. First, satellite carriers are not obligated to carry more than one network affiliate in a television market when both affiliates are licensed to communities in the same state, even if the affiliates do not substantially duplicate their programming. This is analogous to the cable rule stating that a cable system need only carry the network affiliate closest to the principal headend.[180] In this context, a satellite carrier may select which network affiliate it wants to carry. Second, a satellite carrier must carry network affiliated television stations licensed to different states, but located in the same market, even if they meet the definition of substantial duplication under the Commission's rules. An example of this situation is WMUR and WCVB. Both are ABC network affiliates, but the former is licensed to Manchester, New Hampshire, while the latter is licensed to Boston, Massachusetts.[181] Under Section 338(c)(1), the satellite carrier would be obligated to carry both. Third, if two television stations located in different states (but within the same "local market") duplicate each other, but are not network affiliates, the satellite carrier only has to carry one. For example, if there are two Home Shopping Network station affiliates in the same market, but located in different states, the satellite carrier need not carry both because the Home Shopping Network is not a television network under our definitional rule.[182]

---

[177] *Notice*, 15 FCC Rcd at 12159.

[178] *Id*. "The term 'television network' means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States." This is known as the 15-25-10 rule. 47 U.S.C. §339(d)(5).

[179] BellSouth Comments at 21; NCTA Comments at 6; and LTVS Comments at 20.

[180] *See* 47 C.F.R. §76.56(b)(5).

[181] We note that Hearst-Argyle is the licensee for both WMUR and WCVB.

[182] If a network no longer meets the 15-25-10 rule, or a new network meets that rule, it is incumbent upon the station to make this fact known to the satellite carrier. The satellite carrier can either accept or reject the station's determination. A station may file a complaint with the Commission if it is in a disagreement with the satellite (continued…)

81. **Different States Examples.** In the *Notice*, we inquired about the application of the statutory phrase, "communities in different states."[183] Congress stated that this phrase addresses unique and limited cases, including such station pairs as WMUR (Manchester, New Hampshire) and WCVB (Boston, Massachusetts) in the Boston DMA (both ABC affiliates), cited above, as well as WPTZ[184] (Plattsburg, New York) and WNNE (White River Junction, Vermont)[185] in the Burlington-Plattsburgh DMA (both NBC affiliates), in which mandatory carriage of both duplicating local stations upon request assures that satellite subscribers will not be precluded from receiving the network affiliate that is licensed to a community in the state in which they reside.[186] We asked whether there were other similar situations that must be addressed and accounted for.[187]

82. According to DirecTV, Congress sought to create only a very narrow exception to the general rule that satellite carriers shall not be required to carry duplicative signals – one that applies in "unique and limited cases."[188] DirecTV argues that the Commission must implement this provision in the limited manner that Congress intended--in no case should the Commission infer additional authority to address "similar situations."[189] We infer no such additional authority. NAB asserts that there is no conflict between the Act and the Conference Report on this issue: the Act reaches any instance in which two affiliates of the same network are licensed to different states but within the same local market.[190] According to NAB, while these instances are no doubt "unique and limited," as the Conference Report indicates, the Act is not restricted to the particular examples mentioned in the Conference Report.[191] We agree with NAB. The reference in the legislative history, cited above, merely states known examples. It cannot be read to limit the phrase's application to only the noted examples.

83. **National Programming.** DirecTV argues that it would make no sense for the Commission to mandate carriage of local affiliates if they substantially duplicate the programming

(….continued from previous page)
carrier.

[183]*Notice*, 15 FCC Rcd at 12159.

[184]We note that WNNE is a satellite of WPTZ.

[185]We note that Hartford, VT is the station's city of license. White River Junction is where the station's studio is located.

[186]Conference Report at H11795.

[187]Quorum of Maryland License provided the only other example of a situation meeting the duplication exception in Section 338. It states that WHAG-TV (NBC, Hagerstown, MD) and WRC-TV (NBC, Washington, D.C.) are located in different states, and thus the exception should apply. However, WHAG-TV only wants carriage in the upper northwest part of the Washington, D.C.-Hagerstown, MD DMA. Quorum of Maryland License Comments at 2-3.

[188]DirecTV Comments at 38.

[189]*Id.*

[190]NAB Reply Comments at 26, *citing* 47 U.S.C. § 338(c)(1).

[191]*Id.*

provided by the same channel that is carried nationally.[192] NAB argues that the term "another local commercial television broadcast station" in Section 338's duplication provision cannot be read to mean a non-local TV station or non-broadcast satellite channel.[193] We disagree with DirecTV's position here. The relevant statutory provision is specifically an intra-market exemption, directly referring to situations where "local" television stations duplicate each other. Congress did not intend for national programming to be considered in the duplication analysis, otherwise it would have so stated. If we were to adopt DirecTV's position, local television stations that carry Univision or Telemundo Spanish language programming, for example, would not have to be carried by satellite carriers because their national feeds are already carried. In so doing, we would obviate the statute's focus on localism.

F. Noncommercial Educational Television Station Carriage Issues.

84. Section 338(c)(2) states that: "The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulation shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under Section 615."[194] Section 615(l)(1), in turn, provides that a local noncommercial educational television ("NCE") station qualifies for cable carriage rights if it is licensed by the Commission as an NCE station and if it is owned and operated by a public agency, nonprofit foundation, or corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting.[195] For purposes of cable carriage, an NCE station is considered local if its community of license is within 50 miles of, or the station places a Grade B contour over, the principal headend of the cable system.[196] Cable systems are required to carry local noncommercial educational television stations under a statutory provision based on a cable system's number of usable activated channels.[197] As part of our inquiry regarding Section 338's duplication provision, we sought comment on the scope of a satellite carrier's obligations with regard to noncommercial educational television stations.[198] We also asked whether we should adopt procedural rules for the carriage of NCE television stations to mirror the cable carriage requirements.[199]

[192]DirecTV Comments at 36.

[193]NAB Reply Comments at 25.

[194]47 U.S.C. §338(c)(2).

[195]47 U.S.C. §535(l)(1). An NCE station is also considered qualified if it is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes. 47 C.F.R. §76.55(a).

[196]47 U.S.C. §535(l)(2).

[197]Cable systems with: (1) 12 or fewer usable activated channels are required to carry the signal of one qualified local noncommercial educational station; (2) 13-36 usable activated channels are required to carry no more than three qualified local noncommercial educational stations; and (3) more than 36 usable activated channels shall carry at least three qualified local noncommercial educational stations. *See* 47 U.S.C. §535(b) and (e); 47 C.F.R. §76.56(a).

[198]*Notice*, 15 FCC Rcd at 12160-61.

[199]*Notice*, 15 FCC Rcd at 12153. *See* 47 C.F.R. §76.56 (signal carriage obligations) and 47 C.F.R. §76.61(b) (regarding the carriage of noncommercial televisions).

85. AAPTS argues that the duplication provision is the only limitation on local NCE station carriage contemplated by SHVIA. AAPTS argues that Congress intended for eligible local NCE stations to be carried whenever a satellite carrier system is providing local-into-local service in a particular market.[200] On the opposite side, DirecTV and Echostar assert that the Commission should limit satellite carriage of NCE stations in a manner consistent with a carrier's technical limitations and other factors that differentiate the satellite industry from the cable industry.[201] For example, EchoStar argues that no more than 2% of a satellite carrier's total channel capacity (*i.e.*, 6 channels nationwide for a system of 300 channels) should be devoted to local noncommercial station carriage.[202] DirecTV submits that satellite carriers should only be required to carry a number of NCE stations that would bring the total number of NCE channels (defined to include national educational channels) available in a local market to a maximum of four percent of the local required channels offered by the satellite carrier in the market.[203] According to DirecTV, none of these channels should substantially duplicate programming that is offered on another channel already carried in the market.[204]

86. We find that the NCE carriage formulations proposed by DirecTV and Echostar would deprive satellite subscribers of access to local noncommercial television stations in those markets where local-into-local service is offered. While we recognize that satellite carriers provide a national service, their proposals would vitiate the intent of Congress in promoting carriage of local NCE stations. Instead, we agree with AAPTS that the duplication provision is the only limitation on NCE carriage contemplated by Congress when it promulgated Section 338. Therefore, a satellite carrier must carry all non-duplicative NCE stations in markets where they provide local-into-service. Section 338 instructs the Commission to implement NCE station carriage requirements providing the same degree of carriage by satellite carriers as is required by cable systems under Section 615 of the Act.[205] Cable systems with more than 36 channels are required to carry all non-duplicative NCE stations.[206] Given that satellite carriers have more than 36 channels, we hold that satellite carriers' NCE station carriage obligations should be comparable to the requirements imposed on cable operators. [207]

[200]AAPTS Comments at 9.

[201]DirecTV Comments at 34; EchoStar Comments at 5.

[202]Echostar Comments at iv, 5.

[203]DirecTV Comments at 39.

[204]NCTA and AAPTS argue that the formulations proposed by EchoStar and DirecTV would lead to satellite NCE carriage requirements that do not remotely resemble those imposed on the cable industry in terms of the nature of the signal (national versus local) and in the number of stations carried. NCTA Comments at 10; AAPTS Reply Comments at 3.

[205]47 U.S.C. §338(c)(2).

[206]47 U.S.C. §535(e).

[207]The Commission has held that Section 615 requires cable operators with more than 36 channels to carry additional qualified NCE stations where there are more than three such stations available. *See Must Carry Reconsideration*, 9 FCC Rcd at 6723-24. For example, Cox Communications in Fairfax County, VA, has to carry NCE stations WMPT, WETA, WHUT and WNVC because it has more than 36 channels and each of these stations are either within 50 miles of the operator's principal headend or the stations place Grade B Contours over the headend.

87. At the same time, we recognize that Section 338 requires the Commission to limit the carriage of multiple NCE stations in markets where local-into-local service is provided. It is important to note that this instruction was embedded in the NCE duplication provision of Section 338.[208] Against this backdrop, we adopt a limitation principle based upon duplicative programming.[209] Using the NCE station duplication definition found in the cable context as a general model, we have developed a two step approach in defining substantial duplication in this context. First, a noncommercial television station substantially duplicates the programming of another noncommercial station if it simultaneously broadcasts the same programming as another noncommercial station for more than for more than 50 percent of prime time, as defined by §76.5(n), and more than 50 percent outside of prime time over a three month period. After three noncommercial television stations are carried,[210] the test of duplication shall be whether more than 50 percent of prime time programming and more than 50 percent outside of prime time programming is duplicative on a non-simultaneous basis.[211] As for the timeframe of when to measure duplication, we find that the amount of duplicative prime-time weekly programming broadcast should be examined over the course of three month period. The end of the three month period must fall within 30 days prior to the date the satellite carrier notifies the NCE station that it is denying or discontinuing carriage based on substantial duplication. The amount of duplicative weekly programming broadcast outside of prime time will be measured over the same period. Only if the station duplicates more than 50 percent of the other station's weekly programming in both of these respects can it be denied carriage. We believe this approach is a reasonable means of achieving the statutory goal of implementing an NCE carriage obligation for satellite carriers that parallels the existing cable carriage requirement, and takes into account, "to the extent possible," the other relevant technical and legal constraints. In reaching this balance, we note in particular that, unlike satellite carriers, cable operators are generally required to carry up to three local noncommercial educational stations regardless of the duplication involved.[212] However, unlike satellite carriers, cable operators need not carry all NCE stations licensed to communities in an expansive DMA, but need only carry those NCE stations within 50 miles of the cable system principal headend or which place a Grade B service contour over the principal headend.[213] The rule adopted attempts to balance these differences in a practical way using the avoidance of duplication mechanism identified in Section 338(c) of the SHVIA.[214]

---

[208] *See* 47 U.S.C. §338(c)(2).

[209] Given the differences between commercial and noncommercial television stations in the statutory language, we are able to develop different definitions of substantial duplication.

[210] We note that 11 of the top 35 markets contain more than 3 NCE stations. They are: (1) New York (7 NCEs); (2) Los Angeles (4 NCEs); (3) Philadelphia (5 NCEs); (4) San Francisco-Oakland-San Jose (5 NCEs); (5) Boston (4 NCEs); (6) Washington, D.C. (6 NCEs); (7) Minneapolis-St. Paul (5 NCEs); (8) Indianapolis (4 NCEs); (9) Charlotte (4 NCEs); (10) Cincinnati (4 NCEs) ; and (11) Greenville-Spartanburg (4 NCEs).

[211] Like our conclusion in the cable context, we consider the programming broadcast in prime time distinct from the programming broadcast at other times because prime time often is intended for different purposes and attracts different viewers. *See Must Carry Order*, 8 FCC Rcd at 2971

[212] 47 U.S.C. §615(e).

[213] *Compare* 47 U.S.C. §615(l)(2) with 47 U.S.C. §338(h)(3).

[214] The Act's NCE cable carriage provision instructs that duplication shall be defined by the Commission "in a manner that promotes access to distinctive noncommercial educational television service." 47 U.S.C. §535(e).

88. **Public Interest Set-Aside**. DirecTV and BellSouth have suggested that local NCE station carriage should be capped by the 4% set-aside requirement pursuant to Section 335 of the 1992 Cable Act and the Commission's rules.[215] AAPTS urges the Commission to reject the DBS industry's attempt to use the national public interest set-aside requirement to limit NCE carriage obligations. According to AAPTS, the satellite carriers' attempt to cap their carriage requirements through their public interest obligations confuses two separate statutory schemes: (1) the DBS set-aside for national, noncommercial educational programming, designed primarily to satisfy DBS public interest obligations; and (2) the satellite carriage obligations, triggered only when a satellite carrier offers local channels to its subscriber's pursuant to the compulsory license.[216]

89. We will not permit satellite carriers to include NCE stations, carried under Section 338, in the calculation of the 4% set-aside. We agree with AAPTS that the carriage requirements of the SHVIA have different purposes from the set-aside requirements contained in the satellite public interest provisions. The Section 338 provisions further the goals of localism and nondiscriminatory treatment of local television stations while Section 335 furthers the goal of program diversity. In this regard, we are concerned that if a satellite carrier were permitted to satisfy the public interest set-aside with NCE stations, programming diversity would be diminished because all programming currently carried to satisfy the set-aside will likely be dropped in lieu of NCE station carriage.[217] Section 335 would also be rendered a nullity if NCE stations, carried under a different statutory section, were allowed to satisfy the set-aside obligations. Moreover, public interest set-aside programming must be made available to all subscribers of a satellite carrier without additional charge.[218] This is a condition that cannot be met through the carriage of NCE stations under the SHVIA because the compulsory license prohibits satellite carriers from offering a local NCE station signal to subscribers in a non-local market. In this context, it is also important to note that cable operators have carriage obligations under Title VI that are mutually exclusive. For example, cable operators have an obligation to establish public, educational, and government access ("PEG") channels under Section 611 of the Act and pursuant to a local franchising agreement. We note that in this context, a cable operator cannot unilaterally satisfy its PEG requirements by carrying NCE stations under Section 615.

90. **PBS Feed.** KQED requests the Commission to clarify that satellite carriers may not avoid their local NCE station carriage obligations simply by carrying the national PBS satellite feed.[219] According to KQED, the national PBS feed was intended as an interim measure to facilitate the satellite industry's ability to offer public television service to their subscribers while the industry organized to comply with Section 338. On this point, we note that the statutory copyright license for the PBS feed

[215]DirecTV Comments at 39-40; BellSouth Comments at 24. 47 U.S.C. §335; 47 C.F.R. §100.5(c); *see also Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992; Direct Broadcast Satellite Public Interest Obligations, Report and Order*, 13 FCC Rcd 23254 (1998)("*Direct Broadcast Satellite Public Interest Obligations Order"*).

[216]AAPTS Comments at 10.

[217]47 U.S.C. §335; *Direct Broadcast Satellite Public Interest Obligations Order,* 13 FCC Rcd at 23385.

[218]*Id.* at 23285.

[219]KQED Comments at 3; Detroit Television Reply Comments at 1.

expires on January 1, 2002.[220] This expiration date coincides with the onset of the Section 338 obligations for satellite carriers. The SHVIA purposefully instituted a phase-out and phase-in with regard to the two compulsory license provisions so that satellite subscribers, in markets with local-into-local service, would have continuous access to public broadcasting programming.

G. Channel Positioning

91. **Placement.** Section 338(d) of the Communications Act states that:

> No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.[221]

The Conference Report notes that the obligation to carry local stations on contiguous channels is to ensure that satellite carriers position local stations in a way that is convenient and practically accessible for consumers.[222] We stated in the *Notice* that the statutory directive for channel positioning confirms that satellite carriers are required to present local broadcast channels to satellite subscribers in an uninterrupted series.[223] We sought comment, however, on whether broadcast signals carried under retransmission consent must be contiguous with the television stations carried under Section 338 or whether they may be presented to satellite subscribers in a non-contiguous manner.[224]

92. ALTV submits that the signals of all local television stations, including retransmission consent stations, must be provided on contiguous channels.[225] AAPTS argues that local broadcast signals are to be grouped together regardless of their regulatory status because such grouping makes all local signals more easily accessible to viewers.[226] NAB suggests that all stations should appear on channel

[220] 17 U.S.C. §119(a).

[221] 47 U.S.C. §338(f)(1). The satellite carriage channel positioning obligation is different from the requirement imposed on cable operators. Under Section 614(b)(6) commercial television stations may choose among four channel positioning options vis-à-vis cable operators: (1) the channel number on which the station broadcasts over-the-air; (2) the channel on which the station was carried on July 19, 1985; (3) the channel on which it was carried on January 1, 1992; and (4) any other channel number as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §534(b)(6); 47 C.F.R. §76.57(a). Noncommercial television stations have three channel positioning options under Section 615(g)(5): (1) the channel number on which the station is broadcast over-the-air; (2) the channel on which the station was carried on July 19, 1985; and (3) any other channel number as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b).

[222] Conference Report at H11795.

[223] *Notice*, 15 FCC Rcd at 12161.

[224] *Id.*

[225] ALTV Comments at iii.

[226] AAPTS Comments at 26-27.

numbers that are in the order in which the stations appear to the over-the-air receiver.[227] BellSouth argues against requiring contiguous channel location for retransmission consent stations.[228] It also asserts that Section 338(d) is explicit that a satellite carrier cannot be required to provide carry mandatory carriage stations in any particular order.[229]

93. DirecTV urges the Commission to interpret the term "contiguous" as allowing satellite carriers to form channel "neighborhoods" of local television broadcast stations which consist of contiguous channels, but some of which remain vacant.[230] ALTV believes that this proposal is consistent with the contiguous channel requirement provided that all local stations' signals are carried in an uninterrupted series with no intervening channels of programming.[231] NAB does not object to DirecTV's "neighborhood" proposal, provided that: (1) the neighborhood includes all the local television stations, including retransmission consent television stations; (2) the television stations are listed in the same order as their over-the-air channel numbers, and (3) the neighborhood includes only local TV stations.[232]

94. Based on the language of the statute, we find that the channel placement provision encompasses all local television stations. Therefore, a satellite carrier is obligated to carry both retransmission consent stations and mandatory carriage stations in a block on the satellite carrier's channel line-up. We find that DirecTV's neighborhood proposal is consistent with the statutory language as long as the local channel block is not interrupted by non-local programming.[233] We do not believe, however, that the statute requires a satellite carrier to place local television stations in any particular order. Such restrictive language is not found in Section 338(d).

95. **Nondiscriminatory Program Guide Treatment.** In the *Notice*, we sought comment on the phrase, "provide access to such station's signals. . . . in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu."[234] We specifically sought comment on what rules the Commission should develop to ensure that television stations are accessible to satellite subscribers on nondiscriminatory terms. We asked whether there were any existing Commission rules that we may use as a model to develop regulations for this particular situation. We also sought comment on whether Congress meant that electronic program guide information concerning required television station

[227]NAB Comments at 15, n.13.

[228]BellSouth Comments at 24.

[229]*Id.*

[230]DirecTV Comments at 40. For example, channels 970-985 on DirecTV's channel line-up would be the channel neighborhood for the Washington, D.C. (Hagerstown) market stations. However, channels 979 and 981 may not be programmed and remain dark.

[231]ALTV Reply Comments at i.

[232]NAB Reply Comments at 27.

[233]The term "contiguous" in this context refers to the tuning of channels and easy accessibility on the satellite carrier's channel line-up. The term does not refer to frequency continuity.

[234]*Notice*, 15 FCC Rcd at 12162 *citing* 47 U.S.C. §338(d).

signals should be presented to subscribers in the same fashion as other programming services provided by the satellite carrier.[235]

96. AAPTS urges the Commission to adopt nondiscrimination rules that parallel the open video system ("OVS") requirements. It argues that such rules should ensure that all television broadcast stations, including NCE stations, are represented in a nondiscriminatory fashion on the electronic program guide, menu, and/or navigation device provided by the satellite carrier.[236] NAB provides a list of suggestions regarding how satellite carriers should treat television stations to achieve the statute's objectives.[237] One of those examples is to "bar satellite carriers from requiring viewers to take extra steps (e.g., mouse or remote control clicks) to obtain access to particular local stations, or from placing 'carry one, carry all' stations on different screens."[238] We find that the broadcasters' suggestions are too restrictive to be implemented. The open video system model, as BellSouth points out, is a statutory creation with unique requirements and characteristics not meant to be transferred to other contexts.[239] The open video system requirements address access to a video delivery platform where two-thirds of system capacity must be made available at a nondiscriminatory price to outside programmers.[240] The OVS provisions do not directly address concerns involved here, such as nondiscriminatory treatment on an electronic program guide. We also find that NAB's proposals involve too much detail to be implemented as rules. We do not believe that Congress meant to bar satellite carriers from requiring viewers to take extra steps to reach a local television station on an electronic program guide, when it promulgated the SHVIA.

97. In this context, we hold that a satellite carrier should treat all local television stations on EPGs in the same manner. Program guide presentation and information about a local independent television station, or an NCE station, should be similar to that given to a local network affiliate carried under retransmission consent. This requirement is similar to the statute's treatment of television station picture quality under the material degradation provisions, discussed below.

98. **Nondiscriminatory Price.** In the *Notice*, we inquired about the statutory phrase, "provide access to such station's signals at a nondiscriminatory price," and asked whether Congress meant that television station signals carried pursuant to mandatory carriage requests may cost no more per channel to subscribers than packages of retransmission consent television station signals or other satellite

[235] *Id.*

[236] AAPTS Comments at 29-30. AAPTS states that representation in a nondiscriminatory fashion means that the NCE station logo, for example, should be given the same prominence and placement as that of the most favored channel. AAPTS also asserts that the method, by which the NCE station is selected, whether by channel number or interaction with a program guide, should be comparable to the method used to select the most-favored channel. *Id.*

[237] NAB Comments at 16, *quoting* 47 U.S.C. § 338(d).

[238] *Id.* at 17.

[239] BellSouth states that those rules implement an explicitly different statutory/ regulatory model for the delivery of video services, and are uniquely designed to implement that model and the combination of open video platform and cable regulatory elements contained within it. BellSouth Reply Comments at 31.

[240] 47 U.S.C. §1503(c).

service packages.[241] In response to this inquiry, ALTV and NAB assert that all local signals should be included in a single package.[242] AAPTS asserts that NCE mandatory carriage television stations should be offered as part of the existing local broadcast signal package without any additional cost to the subscriber.[243] BellSouth argues that a satellite carrier has the right to place local television signals on a pay tier, an enhanced service tier, or any other tier of service, as long as all local television stations are on this tier and the viewing of no one station costs the viewer more than the viewing of any other station in the DMA.[244] Echostar comments that one of the crucial differences between cable and satellite carriers is that the latter do not have obligations as to the tier in which local signals are to be offered. It states that channel placement requirements of Section 338 cannot be used as a lever to impose such obligations on satellite carriers.[245]

99. We do not believe that the statute requires satellite carriers to sell all local television stations as one package to subscribers. As Echostar points out, Congress did not intend to establish a basic service tier-type requirement for satellite carriers when it implemented Section 338. Nor did Congress explicitly prohibit the sale of local television station signals on an a la carte basis. Rather, Section 338's anti-discrimination language prohibits satellite carriers from implementing pricing schemes that effectively deter subscribers from purchasing some, but not all, local television station signals. Thus, we find that a satellite carrier must offer local television signals, as a package or a la carte, at comparable rates.

100. ALTV and NAB asks the Commission to rule that no new equipment should be required to access some, but not all of the local signals in a market. According to ALTV, such a pronouncement is necessary to prevent discriminatory treatment of mandatory carriage television stations.[246] NAB also suggests that satellite carriers should be barred from placing mandatory carriage television stations on any satellite that would require a subscriber to purchase another dish to receive such signals. BellSouth agrees in principle noting that the channel placement provisions of Section 338 were designed to ensure that dominant stations in a DMA receive no better carriage treatment than other stations.[247] On the other hand, Echostar comments that one of the obligations advocated by the NAB – that the local stations be available from the same orbital location – is tantamount to a provision that had been included in draft legislation prior to the passage of SHVIA.[248] Echostar states that such provision, which was dropped from the final version of Section 338, would have barred satellite carriers from transmitting local stations in a manner that would require additional reception equipment. Echostar argues that the Commission

[241] *Notice*, 15 FCC Rcd at 12162.

[242] ALTV Comments at 16; NAB Comments at 17.

[243] AAPTS Comments at 29.

[244] BellSouth notes that it is not endorsing the concept that station signals cannot be sold on an a la carte basis. BellSouth Reply Comments at 28.

[245] Echostar Comments at iii.

[246] NAB Comments at 17-18. ALTV Comments at 20-21.

[247] BellSouth Reply Comments at 27, *citing* Conf. Rep. at S14711.

[248] Echostar Reply Comments at iv.

cannot implement a rule similar to this provision when Congress decided not to include such a requirement in the SHVIA.[249]

101. We find that the language of Section 338(d) covers the additional equipment concerns raised by the parties and bars satellite carriers from requiring subscribers to purchase additional equipment when television stations from one market are segregated and carried on separate satellites. However, we are not prohibiting a satellite carrier from requiring a subscriber to pay for an additional dish in order to receive all television stations from a single market. For example, DirecTV may require an additional dish to receive all television stations from the Baltimore market, but it may not require subscribers to purchase the same to receive some Baltimore stations where the others are available using existing equipment.

H. Content To Be Carried

102. **Programming in the Vertical Blanking Interval.** Section 338(g) states that, "The regulations prescribed [under Section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under Sections 614(b)(3). . . .and 615(g)(1)."[250] Section 614(b)(3) states that:

> A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval ["VBI"] or on subcarriers. Retransmission of other nonprogram-related material (including teletext and other subscription and advertiser supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost canceling, from the broadcast signal and employ such enhancements at the system headend or headends.[251]

Section 615(g)(1), which is the noncommercial equivalent of the commercial television station provision in Section 614(b)(3), states that:

> A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.[252]

---

[249] *Id.*

[250] 47 U.S.C. §338(g).

[251] 47 U.S.C. §534(b)(3).

[252] 47 U.S.C. §535(g)(1).

We sought comment on the applicability of these two similar cable requirements in the satellite carriage context, especially in light of the term "comparable" contained in Section 338(g), above.[253] We note that the VBI contained in a television broadcast's signal is composed of many lines of information. Our concern here is with those lines of the VBI where certain types of data, such as closed captioning information, are found.[254] We also note that a satellite carrier does not retransmit VBI information as it is received. Rather, it converts the data from an analog to a digital form and carries such data as a digital stream to the subscriber's home.[255] The set-top box then converts the digital stream and makes the data available for subscriber use.

103. Several commenters argue that the Commission should apply the applicable cable provisions to satellite carriers.[256] NAB comments that satellite carriers should carry whatever information the broadcaster may have embedded in its analog VBI.[257] BellSouth, however, seeks to limit the content-to-be-carried requirements for satellite carriers to only closed captioning information until the technical feasibility of other applications can be tested and agreed to on a case-by-case basis.[258] We will apply the current cable content-to-be-carried requirements to satellite carriers. We are not persuaded that satellite carriers are unable to carry the relevant data currently contained in the VBI. Nor has any satellite carrier proffered a credible argument as to why we should treat them differently from cable operators in this context. We therefore require satellite carriers to carry the same program-related vertical blanking information as cable operators, including but not limited to, closed captioning,[259] Nielsen rating codes, V-chip information and for NCE stations, material necessary for the receipt of programs by people with disabilities as well as education and language-related material. We believe our decisions here will further the goals of the SHVIA and are consistent with the cable television requirements.

104. **Program-Related.** In the *Broadcast Signal Carriage Order*, the Commission decided that the factors enumerated in *WGN Continental Broadcasting, Co. v. United Video Inc.* ("*WGN*")[260]

[253]*Notice*, 15 FCC Rcd at 12162-63.

[254]Line 21, for example, has several fields that can be used for a variety of data purposes.

[255]*See, e.g.*, BellSouth Comments at 24. (All direct-to-home satellite providers use digital modulation, and for that reason, there is no VBI in the digital bitstream. VBI information must be stripped from the analog signal and re-created as a bitstream.)

[256]*See* ALTV Comments at iv; NCTA Comments at 6; LTVS Comments at 24; Paxson Comments at 6.

[257]NAB Comments at 18-19.

[258]BellSouth Comments at 25.

[259]We did not receive any comments stating that a satellite carrier cannot carry closed captioning information.

[260]*WGN*, 693 F.2d 622 (7th Cir. 1982). The *WGN* court set out three factors for making a copyright determination. First, the broadcaster must intend for the information in the VBI to be seen by the same viewers who are watching the video signal. Second, the VBI information must be available during the same interval of time as the video signal. Third, the VBI information must be an integral part of the program. The court in *WGN* held that if the information in the VBI is intended to be seen by the viewers who are watching the video signal, during the same interval of time as the video signal, and as an integral part of the program on the video signal, then the VBI and the video signal are one copyrighted expression and must both be carried if one is to be carried. *WGN*, 693 F.2d at 626.

provide useful guidance for what constitutes program-related material.[261] The *WGN* case addressed the extent to which the copyright on a television program also included program material in the VBI of the signal. Under the cable carriage rules, all program-related broadcast material must be carried. We sought comment on whether the *WGN* program-related analysis applies in the context of satellite broadcast signal carriage. Very few parties provided comments on this issue. Of those who did, there were no negative arguments made. BellSouth, for example, has no objection to use of the WGN criteria to determine what content is program related and must be carried. Given the dearth of opposition to the WGN factors and our cable program-related decisions, we hereby incorporate all Commission policies and references regarding the term "program-related" into the satellite carriage context. This measure, again, serves to align the carriage requirements imposed both on cable operators and satellite carriers. Moreover, since the *WGN* case centered on copyright law, and the SHVIA and Section 338 are also copyright-based, we believe that adopting such a policy for satellite carriers is reasonable and appropriate.

105. In the *Notice*, we recognized that the Commission has not specifically defined "primary video" in the rules and has instead relied on the language of Section 614(b)(3)(B) to clarify the scope of the term for purposes of cable broadcast signal carriage.[262] In view of this history, we sought comment on whether a specific definition of primary video is required for satellite carriers to fulfill the requirements contained in Section 338. Network Affiliates state that a specific definition of primary video need not be adopted for the satellite carriage rules.[263] Network Affiliates assert that the term has proved self-explanatory and non-controversial as applied to cable carriage of analog signals and should be equally so in the satellite context.[264] AAPTS asserts that the Commission has not further defined primary video for the cable carriage rules, and in the seven years that the rules have been in effect, this lack of definition has not been a problem.[265] We agree that the primary video concept has worked in the cable carriage context. We therefore incorporate the cable version of primary video into the satellite broadcast signal carriage rules. Given these indicia, and the fact that implementing the cable definition will further the Congressional goal of comparability, we believe our finding serves the public interest. We note that the Act also mandates that, in addition to primary video, accompanying audio must be carried.[266] Therefore, satellite carriers are required to carry the secondary audio programming ("SAP") material that accompanies many broadcast television programs.

---

[261]*Must Carry Order*, 8 FCC Rcd at 2986. The Commission declined to further define "program-related," apart from the WGN analysis, noting that carriage of information in the VBI was rapidly evolving. Close captioning information, and television ratings data are some examples of the material carried in the vertical blanking interval. *Id.*

[262]*Notice* at ¶ 31. *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 7 FCC Rcd 8055, 8062 (1992) (Section 614(b)(3)(B) provides that the cable operator shall carry the entirety of the program schedule of any television station included on its system unless carriage of specific programming is prohibited, and other programming is authorized to be substituted, pursuant to Section 76.67 (regarding sports broadcasts) or Subpart F of Part 76 of the Commission's rules (regarding nonduplication protection and syndicated exclusivity)).

[263]Network Affiliates Comments at 19.

[264]*Id.*

[265]AAPTS Comments at 23.

[266]*See* 47 U.S.C. §534(b)(3); 47 U.S.C. §535(g)(1).

106. **Technical Feasibility.** With regard to the "technical feasibility" of the carriage of program-related material in the VBI or on subcarriers, the Commission stated in the *Broadcast Signal Carriage Order* that such carriage should be considered "technically feasible" if it does not require the cable operator to incur additional expenses and to change or add equipment in order to carry such material.[267] The Commission noted that it would consider signal carriage to be "technically feasible" if only nominal costs, additions or changes of equipment are necessary.[268] We sought comment on whether the consideration of technical feasibility should be different in the context of satellite broadcast signal carriage.[269]

107. AAPTS states that there is no technical impediment to the carriage of VBI material over satellite; it is simply a question of capacity.[270] LTVS asserts that it is technically possible for a satellite carrier to carry closed captioning information, audience measurement and/or ratings data, and SAP audio.[271] While BellSouth does not dispute that satellite carriers can and do carry, without significant expense, the program-related material which television stations currently deliver through the VBI, it argues that requiring carriage of different, additional or future VBI-carried information may be expensive and may impose significant spectrum capacity burdens.[272] DirecTV asserts that “billions of dollars” of additional investment would be required to retrofit its satellite system so that it could carry additional material on the VBI and allow consumers to view the additional material.[273] AAPTS asserts that, given the widely divergent viewpoints on this issue within the satellite industry, the Commission cannot accept DirecTV’s contention that it is not technically feasible for carriers to retransmit program-related material in the VBI.[274] AAPTS further asserts that DirecTV’s satellite systems are already being designed to deliver data and that even the first DBS receivers had both a wide-band and a low-speed data port.[275]

108. Based on the arguments presented, we find that it is technically feasible for satellite carriers to carry the current program-related material contained in a television station’s VBI. DirecTV has not provided detailed evidence to support its claim that it will incur financial hardship if it were required to carry such program content. We also find it significant that LTVS, a future satellite carrier, admits that it would have no difficulty in carrying VBI information. With regard to BellSouth’s argument, there could be new kinds of program-related data in the VBI that would cause the satellite carrier to incur

[267] *Must Carry Order*, 8 FCC Rcd at 2986.

[268] *Id.*

[269] *Notice*, 15 FCC Rcd at 12163.

[270] AAPTS Comments at 24.

[271] LTVS Comments at 26.

[272] *Id.*

[273] DirecTV Comments at 41. DirecTV states that the encoding and processing equipment used to transmit programming from the uplink facility to the appropriate transponder would have to be modified, and the receivers used by customers who subscribe to its service programming would have to be replaced in order to support the additional functions.

[274] AAPTS Reply Comments at 21.

[275] *Id.*

inordinate expenses and to change or add a substantial amount of equipment. We will address such issues on a case-by-case basis in the future.

109. In this context, DirecTV and LTVS also urge the Commission to recognize that satellite systems must be designed and constructed far in advance of the date for commencement of service.[276] They state that once the systems are deployed in orbit, few changes can be made without necessitating the complete replacement of the satellite systems at issue.[277] While we understand the challenges involved in constructing, designing, and launching new satellites, the arguments expressed by the satellite carriers' are unrelated to our discussion here. The underlying concern of the carriers is that the carriage of VBI information requires channel capacity. On this point, Congress was cognizant of channel capacity concerns when the SHVIA was being drafted, yet it still instructed the Commission to apply the cable content-to-be carried requirements to satellite carriers. We cannot relieve satellite carriers of the carriage obligations Congress imposed in the SHVIA in this instance.

I. Material Degradation

110. **Picture Quality.** Section 338(g) states that, "The regulations prescribed [by the Commission under Section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(4). . . .and 615(g)(2)."[278] Section 614(b)(4)(A) states that,

> The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.[279]

Section 615(g)(2), which is the noncommercial equivalent of the commercial television station provision in Section 614(b)(4), states that,

> A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.[280]

111. When implementing the material degradation provision for cable carriage, the Commission relied on the technical standards as updated in the *Cable Television Technical and*

[276]DirecTV Comments at 5; LTVS Comments at 4.

[277]DirecTV Comments at 5; LTVS Comments at 4.

[278]47 U.S.C. §338(g).

[279]47 U.S.C. §534(b)(4).

[280]47 U.S.C. §535(g)(2).

Operational Requirements Report and Order, in defining the scope of the requirement.[281] The *Cable Technical Report and Order* specifically addressed the issue of preventing material degradation of local television signals carried on cable systems by adopting a number of technical standards and providing that cable operators must make reasonable efforts and use good engineering practices and proper equipment to guard against unnecessary degradation in the signal received and delivered to the cable subscriber.[282] The Commission stated that the standards adopted in the *Cable Technical Report and Order* were sufficient to satisfy the material degradation requirements contained in the 1992 Cable Act.[283] In declining to adopt regulations in addition to those found in the *Cable Technical Report and Order*, the Commission stated that further rules may have the unwarranted effect of impeding technological advances and experimentation in the cable industry.[284] Standards specific to digital transmission were not adopted. We sought comment on whether reliance on Commission precedent in the cable carriage context regarding material degradation was appropriate and whether technical standards mirroring those in the cable television field would be warranted.[285] We also asked whether there were certain compression ratios or encoding techniques that should be prohibited because their use would result in material degradation.[286]

112. Commenters have proposed a variety of ways to determine picture quality standards. LTVS argues that the definition of material degradation should include any instance where a television broadcast station freezes, tiles, or looks "dirty" due to a satellite carrier's choice of encoding and compression techniques.[287] AAPTS advocates a rule requiring satellite carriers to maintain local television stations at a TASO Grade 2 level to avoid material degradation of these signals.[288] DirecTV urges the Commission to refrain from setting standards for material degradation until two industry committees devoted to video picture quality, IEEE G-2.1.6 and ITU VQEG, complete their work.[289] HBO argues that because of the rapid changes in digital technology, there is significant danger that any standards adopted today would quickly be obsolete, or worse, would prevent beneficial changes in transmission parameters

[281]*See* 7 FCC Rcd at 8063 *citing Cable Television Technical and Operational Requirements Report and Order*, 7 FCC Rcd 2021 (1992) ("Cable Technical *Report and Order*") and *Cable Television Technical and Operational Requirements Memorandum Opinion and Order*, 7 FCC Rcd 8676 (1992) ("Cable Technical Reconsideration").

[282]*Must Carry Order*, 8 FCC Rcd at 2990.

[283]*See id.*

[284]*Id.*

[285]*Notice*, 15 FCC Rcd at 12165.

[286]*Id.*

[287]LTVS Comments at 27.

[288]AAPTS Comments at 25-26. In response, BellSouth argues that the snow and interference effects that would be measured, subjectively, to determine the TASO quality of a signal simply do not exist in a digital environment; instead, the digital picture malformations (at least in presently employed technology) are in the nature of total picture loss, block errors, tiling and other artifacts that do not occur in an analog picture and thus cannot be used to assign a TASO grade to a digital picture. BellSouth Reply Comments at 34.

[289]DirecTV Comments at 45.

as technology improves.[290] We decline to adopt specific picture quality standards at this time. As we stated in the *Notice*, analog degradation standards for the cable industry were developed over the course of several years and evolved as technology changed and improved.[291] The Commission has not had a significant opportunity to evaluate satellite delivery of broadcast signals. We agree with DirecTV that it would be premature for the Commission to adopt specific picture quality standards at this time.

113. The Conference Report noted that because of constraints on the use of satellite spectrum, satellite carriers may initially be limited in their ability to deliver must carry signals into multiple markets.[292] According to the Conference Report: "New compression technologies, such as video streaming, may help overcome these barriers, and if deployed, could enable satellite carriers to deliver must carry signals into many more markets than they could otherwise."[293] The Commission was urged, pursuant to its obligations under Section 338, or in any other related proceedings, "to not prohibit satellite carriers from using reasonable compression, reformatting, or similar technologies to meet their carriage obligations, consistent with existing authority."[294]

114. ALTV argues that those technical means of enhancing capacity, but degrading picture quality, should be prohibited. ALTV argues that the Conference Report language on signal processing techniques should not be read to eviscerate the material degradation prohibition.[295] AAPTS argues that the compression techniques a satellite carrier employs should not degrade a local broadcast signal such that, to the average viewer, the signal appears materially inferior to what the viewer might receive over the air. BellSouth argues that the Commission should decline to adopt signal quality standards that would contravene Congress's mandate to not prohibit satellite carriers from using reasonable compression, reformatting, or similar technologies to meet their carriage obligations.[296] DirecTV argues against prohibiting any encoding techniques, compression ratios or the use of similar technologies that would impede technical innovation that Congress specifically sought to foster.[297]

115. At the outset, we note that our concerns here revolve around the satellite carrier's treatment of the broadcast signal on the equipment it controls or authorizes. Thus, our focus does not involve picture quality issues that may arise because of the type of television receiver used since the satellite carrier has little control over the use of these devices. We also note that the satellite carrier should not be responsible for a poor quality picture delivered to the local receive facility. Rather, the broadcast station is responsible for ensuring that its signal is delivered in good quality.[298] Moreover, our analysis of

[290]HBO Comments at 3.

[291]*Notice*, 15 FCC Rcd at 12167.

[292]Conference Report at H11795.

[293]*Id.*

[294]*Id.*

[295]ALTV Comments at 35.

[296]BellSouth Comments at 26.

[297]DirecTV Comments at 44.

[298]*See* the Good Quality Signal Issues sub-section, *supra*.

material degradation recognizes that dish placement on or near the subscriber's premises can affect the quality of the picture received, but that the satellite carrier cannot control how and where dishes are installed.[299]

116. It is important to note the technical steps in the digital conversion process affecting the material degradation analysis.[300] In satellite digital television systems, such as those implemented by DirecTV and Echostar, there are four layers of the system where video quality may be affected.[301] The first layer, known as the picture layer, is where decisions are made regarding the use of progressive or interlace scanning techniques as well as whether the picture will be produced in a standard definition or high definition format. The choices made in this layer will not likely affect the quality of retransmitted analog broadcasts.[302] In the second layer, the compression layer, decisions are made regarding the types of compression techniques used. The relevant digital standard, MPEG-2, supports a wide range of compression ratios and data rates. At this layer, the satellite carrier attempts to maximize the number of channels carried on each transponder and there is an effort to place a limit on the maximum data rate of each channel. Limiting the data rate may cause the picture quality to degrade, especially when certain video scenes involve rapid motion images or there is a greater degree of camera panning and zooming. The third layer is known as the transport layer and this is where the data are structured and organized into data packets. Since most digital video systems use the MPEG packet structure, there is little likelihood that any type of degradation would occur at this level. The final layer is the transmission layer and this is where data are modulated on to a carrier for transmission. Satellite carriers use quadrature phase-shift keying or "QPSK" -- as the principal format when transmitting video programming.[303] The use of high efficiency modulation techniques, such as the cable industry's QAM[304] standard, permit greater data rate throughput. QPSK, however, is a lower order modulation and requires satellite carriers to limit the data rate or increase channel bandwidth. The chances for degradation to occur at this level are tied to the limiting data rate technique in the compression layer.

[299]For example, if the dish is not properly situated or is obfuscated by foliage, the satellite carrier cannot be held responsible for the resulting degradation of picture quality. We also note that satellite signal degradation varies from location to location due to atmospheric differences. For example, satellite signal outages due to rain fade are more common in Miami, Florida, than in Cheyenne, Wyoming.

[300]This discussion was previously mentioned in the *Notice* in this proceeding. *See Notice*, 15 FCC Rcd at 12165-67.

[301]We note that all digital video systems, including DBS, are based on MPEG standards for the compression of moving video images.

[302]Picture quality questions in this layer may arise in the future when satellite carriers decide to retransmit digital broadcast signals.

[303]This is also a different digital format from the vestigial sideband modulation ("VSB") system that broadcasters are currently using to deliver over-the-air digital signals to viewers.

[304]QAM is the acronym for quadrature amplitude modulation.

117. We specifically note that degradation may result when the satellite carrier encodes an analog broadcast signal and readies it for digital retransmission. During the encoding process, certain artifacts may be introduced into the original material that would have an effect on picture quality. The most dominant artifact is quantization[305] noise in the picture. This effect is often visible on edges of subjects and textured areas of the image. It is caused when there is a high amount of picture detail along with a high degree of picture activity and levels of quantization are restricted due to data rate reduction. Random noise can also be introduced into the source video. This can result in activity or "busyness" in detail areas of the picture and tiling or flicker in other areas of the picture. Such effects are caused by the encoder attempting to encode random noise. During the encoding process of rapidly moving images, certain data reduction techniques can result in another artifact known as "dirty window," where noise appears stationary while images behind it are moving.

118. To satisfy the material degradation principles in the Act, we will adopt a simple comparability rule. That is, a satellite carrier should treat all local television stations in the same manner with regard to picture quality. The signal processing, compression and encoding techniques a satellite carrier uses to carry retransmission consent stations should also be used for mandatory carriage stations. This rule comports with the non-discriminatory thrust of Section 338 and the SHVIA. As long as all local television stations are treated equally, and the degradation resulting from processing these stations does not exceed the level for the lowest quality non-broadcast video service provided by the carrier, we will refrain from prohibiting compression methods. We recognize that compression technology is rapidly evolving and we do not want to impede innovation by proscribing certain techniques. We also believe that new compression methods may benefit subscribers as satellite carriers could offer more services, particularly those involving broadband applications.

119. **Measurement.** In the *Notice*, we sought suggestions for measurement standards that may be used to address broadcast signal degradation by satellite carriers.[306] We found it necessary to request such information because the Commission has had relatively little experience in evaluating quality in the context of the analog to digital to analog conversion of the type involved in satellite broadcast signal carriage.[307] LTVS states that subjective criteria should be used to measure broadcast signal degradation and suggests that the Commission consider the International Telecommunications Union's recommendations for broadcast video evaluation.[308] NAB, however, proposes the use of three objective criteria -- (a) carrier-to-noise (C/N) ratio, (b) bit error rates (BER), and (c) bit rate allocation for each channel -- that collectively provide a method for checking whether a satellite carrier is "materially degrading" a local station's signal in comparison to other channels.[309] We decline to adopt, as a rule, any one specific technique for

[305]Quantization is part of the process by which analog signals are encoded into digital form. Specifically, it is the classification step that determines the number of bits to be used in the conversion process.

[306]*Notice*, 15 FCC Rcd at 12167.

[307]In this context, we note that the broadcast signal is converted back to analog at the satellite set-top box so that the picture can be displayed on the analog television receiver.

[308]LTVS specifically notes two proposed international standards: (1) ITU-R 500-10 ("methodology for the subjective assessment of the quality of television pictures") and (2) ITU-R 1129-2 ("subjective assessment of standard definition digital television") LTVS Comments at 28.

[309]NAB Comments at 19. BellSouth asserts that the adoption of NAB's criteria would restrain technological innovation beneficial to local-into-local station carriage and improvements in signal quality. BellSouth Reply Comments at 35.

measuring degradation. Both LTVS and NAB present worthy proposals, but they are untested in the field of satellite broadcast signal carriage. The more reasonable approach here is to develop a uniform measurement technique over time. After some experience with satellite broadcast signal carriage, broadcasters and satellite carriers will be able to apply such a technique for analog-to-digital degradation measurements.[310] At some future point, the Commission will be in a better position to scrutinize the techniques used and establish standards, if necessary.

J. Digital Television

120. Section 338(g) states: "The regulations prescribed [by the Commission under Section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(4) . . . ."[311] Section 614(b)(4)(B) of the Act provides: "At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards."[312] The Conference Report stated: "by directing the FCC to promulgate these must carry rules [found in Section 338], the conferees do not take any position regarding the application of must-carry rules to carriage of digital television signals by either cable or satellite systems."[313]

121. The Commission has adopted rules establishing a transitional process for the conversion from an analog to a digital form of broadcast transmission.[314] The rules allow each existing analog television licensee or each eligible permittee to construct and operate digital facilities using 6 MHz of spectrum, in addition to the 6 MHz of spectrum used to continue analog broadcasting until the end of the transition. The broadcast station will transmit a signal consistent with the standards adopted in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fourth Report and Order, giving it the flexibility to broadcast in a high definition mode, in a multiple program standard definition mode, in a datacasting mode, or a mixture of all three, provided that the licensee provides at least one over-the-air video program stream to consumers.[315] During the transition period, both the analog and digital television signals will be broadcast. At the end of the transition which is scheduled for 2006,

[310]We also note that as broadcasters' transition to digital television, the question of measuring degradation changes. This issue was raised in the Commission's pending Digital Must Carry rulemaking in the cable context. *See Digital Broadcast Signal Carriage Issues*, 13 FCC Rcd 15092, 15122 (1998) ("DTV Must Carry Notice")

[311]47 U.S.C. §338(g).

[312]47 U.S.C. §534(b)(4)(B).

[313]Conference Report at H11795.

[314]47 C.F.R. §§73.622-624. The rules governing the transition from analog to digital broadcasting are found in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809 (1997). ("*DTV Fifth Report and Order*"). The *DTV Fifth Report and Order* set forth a phased-in implementation schedule for the introduction of digital broadcast television. Construction requirements vary depending on the size of the television market and other factors. *DTV Fifth Report and Order*, 12 FCC Rcd at 12840-41; *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860 (1998); *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348 (1998).

[315]*See* 11 FCC Rcd 17771 (1996).

with certain statutory exceptions, the station is to cease broadcasting an analog signal and will return to the government 6 MHz of spectrum.[316]

122. The Commission commenced a proceeding to determine the carriage obligations cable operators should have with regard to a broadcast station's digital television signal during the transition period to digital television. [317] We sought comment in that proceeding on how to accomplish the Congressional goals reflected in Section 614, Section 615, and Section 325 of the Act in light of the significant changes to the relevant industries resulting from the conversion to digital operations. The thrust of the proceeding was to examine the timing and scope of digital broadcast signal carriage obligations for cable operators. When this proceeding was initiated, there was no satellite broadcast signal carriage requirement, and satellite carriers did not comment on the issues addressed in that proceeding. We therefore sought comment on whether satellite carriers should be required to carry digital broadcast television signals in addition to analog broadcast signals up until the time that television stations return their analog spectrum to the government.[318]

123. We believe that our goal of initiating a discussion on a satellite carrier's digital broadcast signal carriage obligations has been achieved. As expected, broadcast commenters support the imposition of a digital broadcast signal carriage rule under Section 338[319] and satellite carriers oppose a digital broadcast signal carriage requirement.[320] We note that these comments generally reflect the positions taken by the broadcast and cable industries in response to the questions raised in the Digital Must Carry Notice.[321] We will consider the digital carriage obligations of both cable operators and satellite carriers in tandem within the context of the rulemaking for cable operators, and will consider the comments filed on this issue in that proceeding.[322] In any instance, we note that Echostar argues that the Commission cannot impose digital carriage obligations on satellite because there are no current rules in effect for the cable industry.[323] We find that the Commission must be able to issue rules for satellite digital broadcast signal

[316]The 2006 date is subject to certain exceptions related to consumer acceptance of digital technology and other market-based conditions as provided for in the 1997 Balanced Budget Act. 47 U.S.C. §309(j)(14)(B) (Balanced Budget Act language concerning the reversion of the analog television spectrum to the government). *See also DTV Fourth Report and Order*, 11 FCC Rcd 17771 (1996); *DTV Fifth Report and Order*, 12 FCC Rcd 12809 (1997); *DTV Sixth Report and Order*, 12 FCC Rcd 14588 (1997).

[317]*See Digital Must Carry Notice*, 13 FCC Rcd 15092 *et. seq*.

[318]*Notice*, 15 FCC Rcd at 12169.

[319]*See, e.g.,* ALTV Comments at v and 50.

[320]*See, e.g.,* DirecTV Comments at 46.

[321]We note that the satellite carriers also raise the novel argument that a dual carriage policy will significantly impede the Congressional goal of offering local-into-local service into as many television markets as possible. See SBCA Comments at 11; DirecTV Comments at 46-47.

[322]We note that the Commission has held, in the cable carriage context, that digital television signals ultimately will have carriage rights. *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 00-224 (released June 30, 2000) at ¶ 65.

[323]*Id.*

carriage that are comparable to those for cable operators. The Congressional goal of comparable requirements was not frozen in time on November 29, 1999. Rather, we are authorized to implement changes or additions in the satellite carriage rules whenever we adopt changes in the cable carriage rules, including digital carriage requirements.

K. Compensation for Carriage

124. Section 338(e) states:

> A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.[324]

We noted that this provision largely parallels provisions applicable to cable operators that are found in Sections 614(b)(10) and 615(i) of the Act that are implemented in Section 76.60 of the Commission's rules. In the cable context, commercial broadcasters elect either must carry or retransmission consent to obtain carriage of their signals. If mandatory carriage is selected, there are no specific terms for carriage that must be requested, other than choosing the relevant channel positioning options available to broadcasters under the Act. If retransmission consent is selected, the operator may receive compensation from the broadcaster in exchange for carriage. We assumed the same general policy was intended for satellite carriers and that a broadcaster seeking carriage rather than requesting carriage "in fulfillment of the requirements of [Section 338]" would simply negotiate carriage provisions, including payment terms, in the context of a retransmission consent negotiation. We sought comment on this interpretation.[325] We also sought comment on the policy underlying this provision and its purpose in the statutory scheme.

125. Network Affiliates agree that the compensation rules applicable to satellite carriers pursuant to Section 338(e) of the Act should parallel the provisions applicable to cable operators.[326] LTVS comments that there is no reason why the parties cannot themselves reach agreement on reasonable compensation for carriage in a retransmission consent agreement.[327] In the context of mandatory carriage, LTVS asserts that satellite carriers cannot charge local television stations for carriage of their signals. We find that the current compensation rules applicable to cable operators should likewise apply to satellite carriers. That is, a station must bear the costs associated with delivering a good quality signal and a satellite carrier may accept payments from stations pursuant to a retransmission consent agreement. No one commented that there should be different rules between the industries nor can we find any valid reason to impose different rules. We therefore implement the language of Section 338 as presented in the statute.

L. Remedies

[324] 47 U.S.C. §338(e). Sections 614(b)(10) and 615(i) impose substantially similar requirements on cable operators.

[325] *Notice*, 15 FCC Rcd at 12169.

[326] Network Affiliates Comments at 22.

[327] LTVS Comments at 30.

126. Section 338(a)(2) states that the remedies for any failure to meet the obligations under subsection (a) (carriage obligations) shall be available exclusively under Section 501(f) of title 17, United States Code.[328] New section 501(f)(1) states,

> With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.[329]

New section 501(f)(2) further provides that: "A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934."[330]

127. Section 338(f)(1) states,

> Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under subsections (b) through (e) of this section [(b) good signal required, (c) duplication not required, (d) channel positioning, and (e) compensation for carriage], such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations. The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations. A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.[331]

In addition, Section 338(f)(2) states: "The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.[332] Section 338(f)(3) then states that: "Within 120 days after the date a complaint is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e). If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint." At the

[328] 47 U.S.C. §338(a)(2).

[329] 17 U.S.C. §501(f)(1)(as amended by Section 1002 of the SHVIA).

[330] 17 U.S.C. §501(f)(2).

[331] 47 U.S.C. §338(f)(1). The remedial provisions of the SHVIA are substantially similar to provisions applicable to cable operators set forth in Section 614(d)(1)-(3) of the 1992 Cable Act.

[332] 47 U.S.C. §338(f)(2).

outset, we find that the procedural provisions contained in Section 338(f)(1-3), concerning the steps required to file a carriage complaint, are plain on their face. We adopt the statutory procedures without change. With regard to the substantive issues raised in the *Notice*, we address each one in turn below.

128. In the *Notice*, the Commission discussed the parameters of its enforcement authority regarding the carriage obligation rules under SHVIA.[333] We sought to reconcile forum disputes that may arise if a satellite carrier fails to carry a local television station that has requested carriage in a market in which it provides local-into-local service. In addition, we sought to determine whether disputes concerning the non-carriage of broadcast station signals by satellite carriers because of signal quality problems should be within the domain of the courts, the Commission, or shared by the different jurisdictions.[334] ALTV states that the outright failure to carry a station entitled to carriage under Section 338 should be grounds for an infringement of copyright suit in federal court.[335] DirecTV asserts that the remedy available to a broadcaster in the event of a compulsory carriage dispute is to file a civil action against the satellite carrier that has refused carriage and that the Commission does not have jurisdiction to remedy non-carriage of broadcast station signals by satellite carriers.[336] On the one hand, the statute provides that the remedies for any failure to meet the carriage obligations of Section 338(a) shall be available exclusively under Section 501(f) of the Copyright Act, which directs complainants to an appropriate United States District Court. On the other hand, Sections 338(b) – (e) clearly contemplate the Commission making determinations that, in appropriate circumstances, require carriage. We find that if a television station is not being carried and seeks damages and other specific forms of monetary or injunctive relief under either Section 338(a) of the Act or Section 501(f) of the Copyright Act, then the United States District Court is the exclusive forum for adjudicating the complaint. If the television station seeks a finding on the facts and a resulting determination of whether it is entitled to carriage pursuant to Section 76.66 of our rules, then it may file a complaint with the Commission. In arriving at this determination, we do not believe that Congress intended to deprive the Commission of the right to enforce the regulations the statute specifically directs us to adopt under Section 338.

129. We find that the Commission should have primary jurisdiction over issues concerning: (1) good quality signal; (2) substantial duplication; (3) channel positioning; and (4) compensation matters. We adopt this position to ensure the rapid and timely implementation of Section 338. The Commission has the technical expertise to review and address such matters. The institutional knowledge the Commission has developed in adjudicating cable-broadcast disputes will be helpful in processing satellite carriage cases in an efficient manner.

130. In response to questions we raised in the *Notice*, several commenters addressed the issue of whether broadcasters should be permitted to file complaints with the Commission against a satellite carrier for non-compliance with the content-to-be-carried and material degradation provisions of the SHVIA, specifically referenced in Section 338(g). A number of broadcast commenting parties assert that the Commission's jurisdiction should be extended to allow consideration and resolution of complaints relating to content-to-be-carried and material degradation issues.[337] Network Affiliates and LTVS, for

[333] *Notice*, 15 FCC Rcd at 12170.

[334] *Id.* at 12171.

[335] ALTV Comments at 46.

[336] DirecTV Comments at 49.

[337] LTVS Comments at 32; NAB Comments at 22; ALTV Comments at 47; AAPTS Comments at 38; Network (continued…)

example, state that such disputes rest squarely within the Commission's expertise and excluding such disputes from the complaint procedures would be inconsistent with Section 338(g), which requires the Commission to implement regulations regarding material degradation and content-to-be-carried in the satellite context that mirror those in the cable context.[338] DirecTV however, argues that Section 338(f) does not provide for broadcaster complaints against a satellite carrier for non-compliance with provisions concerning content-to-be-carried or material degradation.[339] Consistent with the general authority invested in the Commission to implement Section 338,[340] we will adjudicate complaints concerning the material degradation and content-to-be-carried provisions under the same procedural framework established for the other satellite carriage provisions of the Act. For the reasons outlined in the above paragraph, we will also assert primary jurisdiction over these matters.

131. We adopt a date certain for when a complaint must be filed with the Commission. Consistent with the procedural rule for cable carriage complaints, [341] we will not consider a complaint brought by a television station if it is filed later than 60 days after a satellite carrier denies the station's carriage request. In this context, the denial can be in the affirmative, as in a rejection letter, or by silence, where a carrier does not respond to a carriage request within 30 days of its receipt. We implement this requirement, pursuant to Section 338(f) of the Act, to facilitate the carriage process and ensure that television broadcast stations do not delay in enforcing their rights to the detriment of the satellite carrier.[342]

132. **Other Actions.** In the *Notice*, we requested comment on additional enforcement actions the Commission may impose.[343] Some broadcasters have stated that the Commission should take into account any failure to comply with the local carriage requirements when considering license renewals for satellite carriers.[344] We find that this issue is a matter better suited for discussion in the context of a satellite licensing proceeding, not within the confines of a rulemaking implementing the SHVIA's carriage requirements. We therefore decline to rule on the merits of the broadcasters' suggestion at this time.

(….continued from previous page)
Affiliates Comments at 27.

[338]Network Affiliates Comments at 27; LTVS Comments at 32. The complaint and special relief procedures in the cable rules allow broadcasters with material degradation or content carriage disputes to bring their disputes before the Commission. *See* 47 C.F.R. §§ 76.7 and 76.61.

[339]DirecTV Comments at 50.

[340]*See* 47 U.S.C. §338(g).

[341]*See* 47 C.F.R. §76.61(a)(5).

[342]47 U.S.C. §338(f)(1)-(3). These statutory provisions discuss the satellite carriage complaint process and the remedial actions the Commission may take.

[343]*Notice*, 15 FCC Rcd at 12171.

[344]Network Affiliates Comments at 28.

133. ALTV proposes that the Commission require satellite carriers to file semi-annual reports detailing their efforts to achieve compliance with Section 338 by January 1, 2002.[345] We find that the statute does not mandate such a requirement. Nevertheless, carriage compliance information will be useful in updating Congress on the implementation of the SHVIA. We therefore plan to ask questions concerning the implementation of Section 338 in the Commission's Notice of Inquiry, preceding the Annual Competition Report to be issued in 2002.[346]

M. Definitional Issues and Other Concerns.

134. Section 338 contains several definitions that provide the framework for satellite broadcast signal carriage. While these definitions are generally self-effectuating, such as the meaning of "satellite carrier," "secondary transmission," and "subscriber," we asked commenters to further clarify the meaning of other terms found in Section 338.[347] We received a number of viewpoints on the carriage status of certain types of stations. We also received comments from other parties on the general application of Section 338. We address each concern separately, below.

135. **Distributor.** Section 338(h)(1) of the Communications Act defines the term "distributor" as an "entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities."[348] In the *Notice*, we stated that the term "distributor" is not found in any other provision of Section 338, other than the definitional subsection.[349] Given this omission, we sought comment on the definition of distributor and its relevance in this context. Local TV on Satellite, Inc. ("LTVS") argues that the use of term distributor has no relevance to Section 338 and has no bearing on the implementation of the mandatory carriage provisions.[350] We agree. This particular provision appears to have no connection with the carriage requirements in Section 338. Therefore, it requires no implementation.

136. **Class A Television Stations.** Section 338(h)(7) defines the term "television broadcast station" as having the meaning given such term in Section 325(b)(7).[351] Section 325(b)(7) defines "television broadcast station," as "an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator station."[352] Paging Associates,

[345]ALTV Comments at 50.

[346]*See* 47 U.S.C. §548(g) ("The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c) [concerning program access], annually report to Congress on the status of competition in the market for the delivery of video programming.)

[347]*Notice*, 15 FCC Rcd at 12154.

[348]47 U.S.C. §338(h)(1).

[349]*Notice*, 15 FCC Rcd at 12154.

[350]LTVS Comments at 12.

[351]47 U.S.C. §338(h)(7).

[352]47 U.S.C. §325(b)(7)(B).

nevertheless raises the question of whether low power stations that receive Class A status from the Commission, pursuant to the Community Broadcasters Protection Act of 1999 ("CBPA"), may assert carriage rights under Section 338.[353] Paging Associates states that Class A licensees are on equal footing with full-service television licensees as prescribed by the CBPA.[354] We disagree. Low power television stations that receive Class A status pursuant to the CBPA are still low power stations for mandatory carriage purposes.[355] Class A stations do not gain the same rights to carriage as their full power counterparts simply by receiving such status. The principal intent of the CBPA was to protect low power television stations from digital television ("DTV") interference. The CBPA did not create a new class of television stations eligible for full-fledged carriage rights on cable systems or satellite carriers. Given the burdens a Class A carriage requirement would impose, we believe that Congress would have specifically noted in Section 338 that satellite carriers were required to carry these stations if they provide local-into-local service in a market.

137. **Satellite Television Stations.** In the *Notice*, we asked whether satellite carriers must carry terrestrial broadcast "satellite television stations", as cable operators are required to do.[356] Satellite stations, by definition, replicate substantially all of the programming of another full power television station in a market and also broadcast a minimum amount of original programming.[357] LTVS and NAB assert that regulations should be developed to require satellite carriers to carry such stations if they carry other local market television stations, unless they substantially duplicate another station in the local market.[358] DirecTV, however, argues that the compulsory carriage of satellite television stations will unduly burden satellite carriers' systems and limit the amount of capacity available.[359] The Commission has long held that cable operators must carry satellite television stations because they are full power television stations with an assignment in the Table of Allotments under Part 73 of the rules. Congress was cognizant of this carriage policy at the time the SHVIA was enacted, but did not expressly exclude such stations from the definition of television broadcast station in the SHVIA. Therefore, a satellite television station, being a full power television station, may request carriage like other local full power television stations, but is subject to the duplications provisions, stated above.

138. **MMDS Operators.** Fifth Avenue Channel Corporation raises the concern that the carriage obligations under Section 338 may be construed to apply to multichannel multipoint distribution

[353]Paging Associates Reply Comments at 1-2.

[354]Community Broadcasters Protection Act of 1999, P.L. No. 106-113, 113 Stat. Appendix 1 at p.1501A-594-1501A-598 (1999) (codified at 47 U.S.C. §336(f)).

[355]The Commission has already determined that cable operators are under no obligation to treat Class A television stations like full power television stations for the purpose of mandatory carriage. *See Establishment of a Class A Television Service*, Report and Order, MM Docket No. 00-10, 15 FCC Rcd 6355, n.61 (2000) ("Nothing in this *Report and Order* is intended to affect a Class A LPTV station's eligibility to qualify for mandatory carriage under 47 U.S.C. §534.")

[356]*Notice*, 15 FCC Rcd at 12154. *Broadcast Signal Carriage Order*, 8 FCC Rcd at 2973.

[357]*See generally*, 47 C.F.R. §73.3555 at note 5.

[358]LTVS Comments at 11; NAB Comments at 4.

[359]DirecTV Comments at 12.

service providers ("MMDS" or "wireless cable").[360] We find that the provision does not apply to such entities. MMDS operators generally receive television broadcast signals either off-the-air or by a direct feed from the broadcast station. They do not use the facilities of a satellite or satellite service to distribute those television station signals. Thus, an MMDS operator who contracts to distribute the signal of a local television station directly from the station is not a satellite carrier as that term is defined in the Act.

139. **Rural Service.** The National Rural Telecommunications Cooperative ("NRTC") argues that satellite carriers will not provide local-into-local service in lower population, lower-profit markets if they are required to carry all television stations in larger markets.[361] It states that there is not enough satellite capacity available, nor is there a large enough subscriber base in less populated markets, to introduce local-into-local service.[362] We recognize that one of the SHVIA's principal mandates is to permit satellite carriers to provide local-into-local service wherever and whenever possible. We also understand that satellite carriers, like cable operators, have limited capacity to add additional channels of programming. Congress, however, was aware of these concerns when it promulgated Section 338. Thus, while we find that the provision of dependable television service to rural areas is an important policy goal, the Section 338 requirements must be followed and implemented.

V. PROCEDURAL MATTERS

140. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act ("RFA"), *see* 5 U.S.C. §603, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into both the *Notice* and the *Retransmission Consent Notice*. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *Notice* and the *Retransmission Consent Notice*, including comments on the IRFAs. Pursuant to the RFA, *see* 5 U.S.C. §604, a Final Regulatory Flexibility Analysis is contained in Appendix C.

141. *Paperwork Reduction Act of 1995 Analysis.* This *Report & Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. It will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

VI. ORDERING CLAUSES

142. Accordingly, **IT IS ORDERED** that, pursuant authority found in Sections 4(i) 4(j), 303(r), 325, 338, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 325, 338, 534, and 535, the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B.

143. **IT IS FURTHER ORDERED** that the Consumer Information Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

[360] Fifth Avenue Channel Corporation Comments at 3.

[361] NRTC Comments at 5.

[362] *Id.*

144. **IT IS FURTHER ORDERED** that the rules adopted in this *Report and Order* **SHALL TAKE EFFECT** upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A

COMMENTS FILED IN CS 00-96

Association of Local Television Stations ("ALTV")
Association of America's Public Television Stations, the Public Broadcasting System, and the Corporation for Public Broadcasting ("AAPTS")
BellSouth Corp. and BellSouth Entertainment ("BellSouth")
Christian Television Network ("CTN")
Community Television of Southern California, KQED, Inc. & North Texas Public Broadcasting, Inc. ("KQED")
Detroit Educational Television Foundation ("DETF")
DirecTV
Echostar Satellite Corporation ("Echostar")
Gray Communications, *et. al.*
Home Box Office ("HBO")
J.E. Schmidt
Joint Comments of the ABC, CBS, Fox, and NBC Television Network Affiliate Associations ("Network Affiliates")
KNTV License, Inc. ("KNTV")
Local TV on Satellite, LLC ("LTVS")
Mid-State Television, Inc. ("WMFD")
National Association of Broadcasters ("NAB")
National Cable Television Association ("NCTA")
National Rural Telecommunications Cooperative ("NRTC")
Paxson Communications Corporation ("Paxson")
Quorum of Maryland License ("WHAG")
Satellite Broadcasting and Communications Association ("SBCA")
SJL of California, L.P. ("KSBY")
WDBJ Television, Inc. ("WDBJ")
Wisdom Media Group
5th Avenue Channel Corporation

REPLY COMMENTS FILED IN CS 00-96

American Cable Association ("ACA")
Association of America's Public Television Stations, the Public Broadcasting System, and the Corporation for Public Broadcasting
Association of Local Television Stations
BellSouth Corp. and BellSouth Entertainment
Detroit Educational Television Foundation
DirecTV
Echostar Satellite Corporation
Joint Comments of the ABC, CBS, Fox, and NBC Television Network Affiliate Associations
Local TV on Satellite, LLC
Mid-State Television, Inc.
National Association of Broadcasters
National Cable Television Association
Paging Associates
Paxson Communications Corporation

COMMENTS FILED IN CS 99-363

ABC, CBS, Fox, and NBC Television Network Affiliate Associations ("Network Affiliates").
American Cable Association
Association of Local Television Stations, Inc.
BellSouth Corporation, BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc.
CBS Corporation ("CBS")
DirecTV, Inc.
EchoStar Satellite Corporation
Fox Television Stations, Inc. ("Fox")
LEXCOM Cable
Local TV on Satellite, LLC
National Association of Broadcasters
National Broadcasting Company, Inc. ("NBC").
National Cable Television Association
Satellite Broadcasting and Communications Association
U S West, Inc. ("U S West")
Walt Disney Company ("Disney")
Wireless Communications Association International, Inc. ("WCA")

REPLY COMMENTS FILED IN CS 99-363

American Cable Association
ABC, CBS, Fox, and NBC Television Network Affiliate Associations
Association of Local Television Stations, Inc.
BellSouth Corporation, BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc.
DIRECTV, Inc.
EchoStar Satellite Corporation
Fisher Broadcasting Inc. ("Fisher")
Hearst-Argyle Television, Inc. ("Hearst")
Lin Television Corporation ("Lin")
Local TV on Satellite, LLC
National Association of Broadcasters
National Broadcasting Company, Inc.
National Cable Television Association
RCN Telecom Services, Inc. ("RCN").
Satellite Broadcasting and Communications Association
Seren Innovations, Inc. ("Seren")
The Post Company ("Post")
Time Warner Cable ("Time Warner")
U S West, Inc.
Walt Disney Company
Young Broadcasting, Inc. ("Young").

Appendix B

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

Part 76 – Multichannel Video and Cable Television Service

1. The authority citation for Part 76 reads as follows:

AUTHORITY: 47 U.S.C. §§151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.66 is added to Subpart D to read as follows:

§ 76.66 Satellite Broadcast Signal Carriage

(a) *Definitions.*

(1) Satellite carrier. A satellite carrier is an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or a service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

(2) Secondary transmission. A secondary transmission is the further transmitting of a primary transmission simultaneously with the primary transmission.

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

(4) Television broadcast station. A television broadcast station is an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(5) Television network. For purposes of this section, a television network is an entity which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(6) Local-into-local television service. A satellite carrier is providing local-into-local service when it retransmits a local television station signal back into the local market of that television station for reception by subscribers.

(b) *Signal carriage obligations.*

(1) Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of title 47, United States Code, and other paragraphs in this section.

(2) No satellite carrier shall be required to carry local television broadcast stations, pursuant to this section, until January 1, 2002.

(c) *Election cycle.* In television markets where a satellite carrier is providing local-into-local service, a commercial television broadcast station may elect either retransmission consent, pursuant to section 325 of title 47 United States Code, or mandatory carriage, pursuant to section 338, title 47 United States Code.

(1) The first retransmission consent-mandatory carriage election cycle shall be for a four-year period commencing on January 1, 2002 and ending December 31, 2005.

(2) The second retransmission consent-mandatory carriage election cycle, and all cycles thereafter, shall be for a period of three years (*e.g.* the second election cycle commences on January 1, 2006 and ends at midnight on December 31, 2008).

(3) A commercial television station must notify a satellite carrier, by July 1, 2001, of its retransmission consent-mandatory carriage election for the first election cycle commencing January 1, 2002.

(4) Except as provided in paragraphs 76.66(d)(2) and (3), local commercial television broadcast stations shall make their retransmission consent-mandatory carriage election by October 1st of the year preceding the new cycle for all election cycles after the first election cycle.

(5) A noncommercial television station must request carriage by July 1, 2001 for the first election cycle and must renew its carriage request at the same time a commercial television station must make its retransmission consent-mandatory carriage election for all subsequent cycles.

(d) *Carriage procedures.*

(1) *Carriage requests.*

(i) A retransmission consent-mandatory carriage election made by a television broadcast station shall be treated as a request for carriage for purposes of this section.

(ii) A carriage request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested.

(iii) A television station's written notification shall include the: (1) station's call sign; (2) name of the appropriate station contact person; (3) station's address for purposes of receiving official correspondence; (4) station's community of license; (5) station's DMA assignment; and (6) for commercial television stations, its election of mandatory carriage or retransmission consent.

(iv) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing: 1) those local television stations it will not carry, along with the reasons for such a decision; and 2) those local television stations it intends to carry.

(v) A satellite carrier is not required to carry a television station, for the duration of the election cycle, if the station fails to assert its carriage rights by the deadlines established in this section.

(2) *New local-into-local service.*

(i) A new satellite carrier or a satellite carrier providing local service in a market for the first time on or after July 1, 2001, must notify local television stations of its intent to provide local-into-local service at least 60 days before it intends to provide service or decides to enter into a new television market. This notification shall include information on the location of the satellite carrier's designated local receive facility in that particular market.

(ii) A local television station shall make its request for carriage, in writing, no more than 30 days after receipt of the satellite carrier's notice.

(iii) A satellite carrier shall have 90 days, from the receipt of a request for carriage, to commence carriage of a local television station.

(iv) A satellite carrier shall notify a local television station in writing of its reasons for refusing carriage within 30 days of the station's carriage request.

(3) *New television stations.*

(i) A television station providing over-the-air service in a market for the first time on or after July 1, 2001, shall be considered a new television station for satellite carriage purposes.

(ii) A new television station shall make its request for carriage between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting.

(iii) A satellite carrier shall commence carriage within 90 days of receiving the request for carriage from the television broadcast station or whenever the new television station provides over-the-air service.

(iv) A satellite carrier shall notify a new television station in writing of its reasons for refusing carriage within 30 days of the station's carriage request.

(e) *Market definitions.*

(1) A local market, in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, and (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

(2) A designated market area is the 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.

(3) A satellite carrier shall use the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates to define television markets for the first retransmission consent-mandatory carriage election cycle commencing on January 1, 2002 and ending on December 31,

2005. The 2003-2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates shall be used for the second retransmission consent-mandatory carriage election cycle commencing January 1, 2006 and ending December 31, 2008, and so forth for each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999-2000 Nielsen Station Index Directory or any subsequent issue of that publication.

(4) A local market includes all counties to which stations assigned to that market are licensed.

(f) *Receive facilities.*

(1) A local receive facility is the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

(2) A satellite carrier may establish another receive facility to serve a market if the location of such a facility is acceptable to at least one-half the stations with carriage rights in that market.

(3) Except as provided in 76.66(d)(2), a satellite carrier providing local-into-local service must notify local television stations of the location of the receive facility by June 1, 2001 for the first election cycle and at least 120 days prior to the commencement of all election cycles thereafter.

(4) A satellite carrier may relocate its local receive facility at the commencement of each election cycle. A satellite carrier is also permitted to relocate its local receive facility during the course of an election cycle, if it bears the signal delivery costs of the television stations affected by such a move. A satellite carrier relocating its local receive facility must provide 60 days notice to all local television stations carried in the affected television market.

(g) *Good quality signal.*

(1) A television station asserting its right to carriage shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) To be considered a good quality signal for satellite carriage purposes, a television station shall deliver to the local receive facility of a satellite carrier either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment.

(3) A satellite carrier is not required to carry a television station that does not agree to be responsible for the costs of delivering a good quality signal to the receive facility.

(h) *Duplicating signals.*

(1) A satellite carrier shall not be required to carry upon request the signal of any local television broadcast station that substantially duplicates the signal of another local television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) A satellite carrier may select which duplicating signal in a market it shall carry.

(3) A satellite carrier may select which network affiliate in a market it shall carry.

(4) A satellite carrier is permitted to drop a local television station whenever that station meets the substantial duplication criteria set forth in this paragraph. A satellite carrier must add a television station to its channel line-up if such station no longer duplicates the programming of another local television station.

(5) A satellite carrier shall provide notice to its subscribers, and to the affected television station, whenever it adds or deletes a station's signal in a particular local market pursuant to this paragraph.

(6) A commercial television station substantially duplicates the programming of another commercial television station if it simultaneously broadcasts the identical programming of another station for more than 50 percent of the broadcast week.

(7) A noncommercial television station substantially duplicates the programming of another noncommercial station if it simultaneously broadcasts the same programming as another noncommercial station for more than for more than 50 percent of prime time, as defined by §76.5(n), and more than 50 percent outside of prime time over a three month period, Provided, however, that after three noncommercial television stations are carried, the test of duplication shall be whether more than 50 percent of prime time programming and more than 50 percent outside of prime time programming is duplicative on a non-simultaneous basis.

(i) *Channel positioning.*

(1) No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels.

(2) The television stations subject to this paragraph include those carried under retransmission consent.

(3) All local television stations carried under mandatory carriage in a particular television market must be offered to subscribers at rates comparable to local television stations carried under retransmission consent in that same market.

(4) Within a market, no satellite carrier shall provide local-into-local service in a manner that requires subscribers to obtain additional equipment at their own expense or for an additional carrier charge in order to obtain one or more local television broadcast signals if such equipment is not required for the receipt of other local television broadcast signals.

(5) All television stations carried under mandatory carriage, in a particular market, shall be presented to subscribers in the same manner as television stations that elected retransmission consent, in that same market, on any navigational device, on-screen program guide, or menu provided by the satellite carrier.

(j) *Manner of carriage.*

(1) Each television station carried by a satellite carrier, pursuant to this section, shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical

blanking interval or on subcarriers. For noncommercial educational television stations, a satellite carrier must also carry any program-related material that may be necessary for receipt of programming by persons with disabilities or for educational or language purposes. Secondary audio programming must also be carried. Where appropriate and feasible, satellite carriers may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the local receive facility.

(2) A satellite carrier, at its discretion, may carry any ancillary service transmission on the vertical blanking interval or the aural baseband of any television broadcast signal, including, but not limited to, multichannel television sound and teletext.

(k) *Material degradation.* Each local television station whose signal is carried under mandatory carriage shall, to the extent technically feasible and consistent with good engineering practice, be provided with the same quality of signal processing provided to television stations electing retransmission consent. A satellite carrier is permitted to use reasonable digital compression techniques in the carriage of local television stations.

(l) *Compensation for carriage.*

(1) A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the mandatory carriage requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the receive facility of the satellite carrier.

(2) A satellite carrier may accept payments from a station pursuant to a retransmission consent agreement.

(m) *Remedies.*

(1) Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.

(2) The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations.

(3) A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission, in accordance with §76.7 of title 47, Code of Federal Regulations. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(4) The satellite carrier against which a complaint is filed is permitted to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(5) The Commission shall determine whether the satellite carrier has met its obligations under this section. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of this section, it shall dismiss the complaint.

(6) The Commission will not accept any complaint filed later than 60 days after a satellite carrier, either implicitly or explicitly, denies a television station's carriage request.

Appendix C

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[363] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking in CS Docket No. 00-96, FCC 00-195 ("*Notice*") and in the Notice of Proposed Rulemaking in CS Docket No. 99-363, FCC 99-406 ("Retransmission Consent *Notice*"). The Commission sought written public comments on the proposals in both *Notices*, including comment on the IRFAs.[364] No specific comments were received on the IRFAs. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.[365]

2. **Need for, and Objectives of, this Report and Order**. Section 338(g) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. §338(g), directed the Commission, within one year of enactment of the Satellite Home Viewer Improvement Act of 1999,[366] to "issue regulations implementing this section following a rulemaking proceeding." The relevant provisions concern the carriage of all local television broadcast station signals by satellite carriers commencing on January 1, 2002. Section 325(b)(3)(C) of the Act, 47 U.S.C. § 325(b)(3)(C), also directs the Commission to complete all actions necessary to prescribe election cycle regulations within one year of enactment of the Satellite Home Viewer Improvement Act of 1999.[367]

3. **Summary of Significant Issues Raised by Public Comments in Response to the IRFAs**. We did not receive any comments in direct response to the IRFA in CS Docket 00-96. The American Cable Association commented on the IRFA in CS Docket No. 99-363, but those comments were directed at the SHVIA's good faith and exclusivity provisions, and did not concern the election cycle addressed herein.

4. **Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules.[368] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small

[363] *See* 5 U.S.C. §603. The RFA, *see* 5 U.S.C. §601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[364] *See Implementation of the Satellite Home Viewer Improvement Act of 1999—Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 15 FCC Rcd 12147 (2000). *Implementation of the Satellite Home Viewer Improvement Act of 1999—Retransmission Consent Issues*, Notice of Proposed Rulemaking, 14 FCC Rcd 21736 (1999). The IRFAs are found at Appendix A in the respective *Notices*.

[365] *See* 5 U.S.C. § 604.

[366] Act of Nov. 29, 1999, Pub. Law 106-113, §1000(9), 113 Stat. 1501, Appendix A.

[367] *Id.*

[368] 5 U.S.C. §603(b)(3).

governmental jurisdiction."[369] In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.[370] Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[371] The rules we adopt affect television station licensees and satellite carriers.

5. *Television Stations*: The rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[372] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[373] Included in this industry are commercial, religious, educational, and other television stations.[374] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[375] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[376]

6. Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

7. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that

[369] 5 U.S.C. §601(6).

[370] 5 U.S.C. §601(3)(incorporating by reference the definition of "small business concern" in 15 U.S.C. §632.)

[371] 15 U.S.C. §632.

[372] 13 C.F.R. §121.201, Standard Industrial Code (SIC) 4833 (1996).

[373] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

[374] *Id*. *See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833)" as:

> Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[375] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

[376] *Id*.; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which rules may apply may be over-inclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

8. There were 1,509 television stations operating in the nation in 1992.[377] That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 1999.[378] For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[379] Thus, the new rules will affect approximately 1,616 television stations; approximately 77%, or 1,230 of those stations are considered small businesses.[380] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

9. *Small Multichannel Video Program Distributors* (*MVPDs*): SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts.[381] This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue.[382] We address below services individually to provide a more precise estimate of small entities.

10. *DBS*: There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

---

[377]FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9.

[378]FCC News Release, Broadcast Station Totals as of September, 1999 (released November, 1999).

[379]The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[380]We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1999 total of 1,616 TV stations to arrive at 1,230 stations categorized as small businesses.

[381]13 C.F.R. §121.201 (SIC 4841).

[382]1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC Code 4841 (Bureau of the Census data under contract to the Office of Advocacy of the SBA).

11. *Home Satellite Delivery ("HSD")*: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.[383] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.[384]

12. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers.[385] These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide.[386] This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is possible that some program packagers may be smaller.

13. **Description of Projected Reporting, Recordkeeping and other Compliance Requirements**. In order to implement the Satellite Home Viewer Improvement Act of 1999, the Commission will add new rules. We have adopted a regulatory framework for substantive rules and procedures concerning satellite broadcast signal carriage similar to, but separate from, the broadcast signal carriage rules for cable operators. There are certain compliance requirements involving the satellite broadcast signal carriage process. Foremost is that satellite carriers will have to carry all local television stations in a given market, subject to certain limited exceptions, if it decides to carry at least one signal in a market. There will be costs relating to the time and effort involved in carrying these local broadcast signals.

14. In terms of recordkeeping, entities will likely have to keep a record of their election status and entities may be required to maintain such information within their business environment and may also have to file such information with the Commission. These records are uncomplicated and are inexpensive to produce and maintain.

15. **Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into

[383]Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Third Annual Report, CS Docket No. 96-133, 12 FCC Rcd 4358, 4385 (1996)(*"Third Annual Report").*

[384]*Third Annual Report*, 12 FCC Rcd at 4385.

[385]*Id.*

[386]*Id.*

account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[387]

16. As indicated above, the *Report and Order* implements certain aspects of the Satellite Home Viewer Improvement Act of 1999. Among other things, the new legislation requires satellite carriers to carry all local television broadcast stations in a market, if it carries any local market television stations, by January 1, 2002. This document also discusses implementing regulations relating to the scope and substance of local broadcast signal carriage by satellite carriers, including the establishment of an election cycle process for broadcasters vis-à-vis satellite carriers. The rules adopted were required by Congress. Where there was discretion to consider alternatives, as in the case of notification requirements to commence carriage, the Commission chose to place the notice burden on broadcast stations rather than satellite carriers. In making this decision, the Commission recognized that there are only two affected satellite carriers while there are almost 500 television stations at issue. This legislation applies to small entities and large entities equally.

17. **Report to Congress**: The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[388] In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will as be published in the Federal Register.[389]

[387] 5 U.S.C. §603(c)

[388] *See* 5 U.S.C. §801(a)(1)(A).

[389] *See* 5 U.S.C. §604(b).

Appendix D

Television Markets with Local-Into-Local Service from DirecTV (38 total markets)

Atlanta, GA
Baltimore, MD*
Birmingham, AL*
Boston, MA
Charlotte, NC
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas/Ft. Worth, TX
Denver, CO
Detroit, MI
Greensboro, NC*
Greenville, SC*
Houston, TX
Indianapolis, IN
Kansas City, MO*
Los Angeles, CA
Memphis, TN*
Miami/Ft. Lauderdale, FL
Milwaukee, WI
Minneapolis/St. Paul, MN
Nashville, TN
New York, NY
Orlando/Daytona, FL
Philadelphia, PA
Phoenix, AZ
Pittsburgh, PA*
Portland, OR
Raleigh-Durham, NC*
Sacramento/Stockton, CA
St. Louis, MO
Salt Lake City, UT
San Antonio, TX*
San Diego, CA*
San Francisco/Oakland/San Jose, CA
Seattle/Tacoma, WA
Tampa/St. Petersburg, FL
Washington, D.C.

*** indicates that special equipment is required to receive local television stations on satellite**

Appendix E

Television Markets with Local-Into-Local Service from Echostar (34 total markets)

Albuquerque-Santa Fe
Atlanta, GA
Boston, MA
Charlotte, NC
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas/Ft. Worth, TX
Denver, CO
Detroit, MI
Greenville, NC
Houston, TX
Indianapolis, IN
Kansas City, MO
Los Angeles, CA
Miami/Ft. Lauderdale, FL
Minneapolis/St. Paul, MN
Nashville, TN
New York, NY
Orlando, FL
Philadelphia, PA
Phoenix, AZ
Pittsburgh, PA
Portland, OR
Raleigh/Durham, NC
Sacramento/Stockton, CA
Salt Lake City, UT
San Antonio, TX
San Diego, CA
San Francisco/Oakland/San Jose, CA
Seattle/Tacoma, WA
St. Louis, MO
Tampa/St. Petersburg (Sarasota), FL
Washington, D.C.

Appendix F

Section 338 of the Communications Act of 1934, as amended
Carriage of Local Television Signals by Satellite Carriers.

(a) Carriage obligations.--

(1) In general.--Subject to the limitations of paragraph (2), each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b).

(2) Remedies for failure to carry.--The remedies for any failure to meet the obligations under this subsection shall be available exclusively under section 501(f) of title 17, United States Code.

(3) Effective date.--No satellite carrier shall be required to carry local television broadcast stations under paragraph (1) until January 1, 2002.

(b) Good signal required.--

(1) Costs.--A television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) Regulations.--The regulations issued under subsection (g) shall set forth the obligations necessary to carry out this subsection.

(c) Duplication not required.--

(1) Commercial stations.--Notwithstanding subsection (a), a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) Noncommercial stations.--The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulations shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under section 615.

(d) Channel positioning.--No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

(e) Compensation for carriage.--A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.

(f) Remedies.--

(1) Complaints by broadcast stations.--Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under subsections (b) through (e) of this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations. The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations. A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(2) Opportunity to respond.--The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) Remedial actions; dismissal.--Within 120 days after the date a complaint is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e). If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint.

(g) Regulations by commission.--Within 1 year after the date of the enactment of this section, the Commission shall issue regulations implementing this section following a rulemaking proceeding. The regulations prescribed under this section shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(3) and (4) and 615(g)(1) and (2).

(h) Definitions.--As used in this section:

(1) Distributor.--The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

(2) Local receive facility.--The term 'local receive facility' means the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

(3) Local market.--The term 'local market' has the meaning given that term under section 122(j) of title 17, United States Code.

(4) Satellite carrier.--The term 'satellite carrier' has the meaning given such term under section 119(d) of title 17, United States Code.

(5) Secondary transmission.--The term 'secondary transmission' has the meaning given such term in section 119(d) of title 17, United States Code.

(6) Subscriber.--The term 'subscriber' has the meaning given that term under section 122(j) of title 17, United States Code.

(7) Television broadcast station.--The term 'television broadcast station' has the meaning given such term in section 325(b)(7).

Appendix G

Section 614 of the Communications Act
Carriage of Local Commercial Television Signals by Cable Operators

(a) Carriage obligations

Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b) of this title.

(b) Signals required

(1) In general

(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

(2) Selection of signals

Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that--

(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

(3) Content to be carried

(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program- related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking internal or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

(4) Signal quality

(A) Nondegradation; technical specifications

The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

(B) Advanced television

At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

(5) Duplication not required

Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

(6) Channel positioning

Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

(7) Signal availability

Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide

the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 543(b)(3) of this title.

(8) Identification of signals carried

A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

(9) Notification

A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

(10) Compensation for carriage

A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that--

(A) any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system;

(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of Title 17 as indemnification for any increased copyright liability resulting from carriage of such signal; and

(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

(c) Low power station carriage obligation

(1) Requirement

If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b) of this section--

(A) a cable operator of a cable system with a capacity of 35 or fewer usable activated channels shall be required to carry one qualified low power station; and

(B) a cable operator of a cable system with a capacity of more than 35 usable activated channels shall be required to carry two qualified low power stations.

(2) Use of public, educational, or governmental channels

A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to section 531 of this title, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) Remedies

(1) Complaints by broadcast stations

Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The cable operator shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning in accordance with this section by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(2) Opportunity to respond

The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) Remedial actions; dismissal

Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

(e) Input selector switch rules abolished

No cable operator shall be required--

(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device; or

(2) to provide information to subscribers about input selector switches or comparable devices.

(f) Regulations by Commission

Within 180 days after October 5, 1992, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations.

(g) Sales presentations and program length commercials

(1) Carriage pending proceeding

Pending the outcome of the proceeding under paragraph (2), nothing in this chapter shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

(2) Proceeding concerning certain stations

Within 270 days after October 5, 1992, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a) of this section. In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

(h) Definitions

(1) Local commercial television station

(A) In general

For purposes of this section, the term "local commercial television station" means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 535(l)(1) of this title, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

(B) Exclusions

The term "local commercial television station" shall not include--

(i) low power television stations, television translator stations, and passive repeaters which operate

pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

(ii) a television broadcast station that would be considered a distant signal under section 111 of Title 17 if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

(iii) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

(C) Market determinations

(i) For purposes of this section, a broadcasting 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, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

(ii) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as--

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) 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

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

(iii) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

(iv) Within 120 days after the date on which a request is filed under this subparagraph (or 120 days after February 8, 1996, if later), the Commission shall grant or deny the request.

(2) Qualified low power station

The term "qualified low power station" means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if--

(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations;

(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

(C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations;

(D) such station is located no more than 35 miles from the cable system's headend, and delivers to the principal headend of the cable system an over- the-air signal of good quality, as determined by the Commission;

(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on October 5, 1992.

Appendix H

Section 615 of the Communications Act
Carriage of Noncommercial Educational Television Signals by Cable Operators

(a) Carriage obligations

In addition to the carriage requirements set forth in section 534 of this title, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

(b) Requirements to carry qualified stations

(1) General requirement to carry each qualified station

Subject to paragraphs (2) and (3) and subsection (e) of this section, each cable operator shall carry, on the cable system of that cable operator, any qualified local noncommercial educational television station requesting carriage.

(2) Systems with 12 or fewer channels

(A) Notwithstanding paragraph (1), a cable operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of one qualified local noncommercial educational television station; except that a cable operator of such a system shall comply with subsection (c) of this section and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station--

(i) the cable operator shall import and carry on that system the signal of one qualified noncommercial educational television station;

(ii) the selection for carriage of such a signal shall be at the election of the cable operator; and

(iii) in order to satisfy the requirements for carriage specified in this subsection, the cable operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such cable operator shall use the first channel available to satisfy the requirements of this subparagraph.

(3) Systems with 13 to 36 channels

(A) Subject to subsection (c) of this section, a cable operator of a cable system with 13 to 36 usable activated channels--

(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

(ii) may, in its discretion, carry additional such stations.

(B) In the case of a cable system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the cable operator shall import and carry on that system the signal of at least one qualified noncommercial educational television station to comply with subparagraph (A)(i).

(C) The cable operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television stations affiliated with the same network if the programming of such additional stations is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

(D) A cable operator of a system described in this paragraph which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990, shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e) of this section.

(c) Continued carriage of existing stations

Notwithstanding any other provision of this section, all cable operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular cable operator and a particular such station, upon the written consent of the cable operator and the station.

(d) Placement of additional signals

A cable operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so, subject to approval by the franchising authority pursuant to section 531 of this title, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

(e) Systems with more than 36 channels

A cable operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

(f) Waiver of nonduplication rights

A qualified local noncommercial educational television station whose signal is carried by a cable operator shall not assert any network nonduplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that cable operator.

(g) Conditions of carriage

(1) Content to be carried

A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.

(2) Bandwidth and technical quality

A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

(3) Changes in carriage

The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the cable operator, at least 30 days in advance of such repositioning, has provided written notice to the station and all subscribers of the cable system. For purposes of this paragraph, repositioning includes (A) assignment of a qualified local noncommercial educational television station to a cable system channel number different from the cable system channel number to which the station was assigned as of March 29, 1990, and (B) deletion of the station from the cable system. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

(4) Good quality signal required

Notwithstanding the other provisions of this section, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission.

(5) Channel positioning

Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a qualified local noncommercial educational television station shall be resolved by the Commission.

(h) Availability of signals

Signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

(i) Payment for carriage prohibited

(1) In general

A cable operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.

(2) Distant signal exception

Notwithstanding the provisions of this section, a cable operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of subsection (c) of this section, where such signal would be considered a distant signal for copyright purposes unless such station indemnifies the cable operator for any increased copyright costs resulting from carriage of such signal.

(j) Remedies

(1) Complaint

Whenever a qualified local noncommercial educational television station believes that a cable operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

(2) Opportunity to respond

The Commission shall afford such cable operator an opportunity to present data, views, and arguments to establish that the cable operator has complied with the signal carriage requirements of this section.

(3) Remedial actions; dismissal

Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the cable operator has complied with the requirements of this section. If the Commission determines that the cable operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the cable operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the cable operator has fully complied with such requirements, the Commission shall dismiss the complaint.

(k) Identification of signals

A cable operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

(l) Definitions

For purposes of this section--

(1) Qualified noncommercial educational television station

The term "qualified noncommercial educational television station" means any television broadcast station which--

(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of this title; or

(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.

(2) Qualified local noncommercial educational television station

The term "qualified local noncommercial educational television station" means a qualified noncommercial educational television station--

(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system.

Appendix I

Section 122 of the Copyright Act, as Amended
Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets

(a) Secondary transmissions of television broadcast stations by satellite carriers.--A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station into the station's local market shall be subject to statutory licensing under this section if--

(1) the secondary transmission is made by a satellite carrier to the public;

(2) with regard to secondary transmissions, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and

(3) the satellite carrier makes a direct or indirect charge for the secondary transmission to--

(A) each subscriber receiving the secondary transmission; or

(B) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

(b) Reporting requirements.--

(1) Initial lists.--A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name in alphabetical order and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a).

(2) Subsequent lists.--After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the network a list identifying (by name in alphabetical order and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.

(3) Use of subscriber information.--Subscriber information submitted by a satellite carrier under this subsection may be used only for the purposes of monitoring compliance by the satellite carrier with this section.

(4) Requirements of networks.--The submission requirements of this subsection shall apply to a satellite carrier only if the network to which the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register of Copyrights shall maintain for public inspection a file of all such documents.

(c) No royalty fee required.--A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall have no royalty obligation for such secondary transmissions.

(d) Noncompliance with reporting and regulatory requirements.--Notwithstanding subsection (a), the willful or repeated secondary transmission to the public by a satellite carrier into the local market of a

television broadcast station of a primary transmission embodying a performance or display of a work made by that television broadcast station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided under sections 502 through 506 and 509, if the satellite carrier has not complied with the reporting requirements of subsection (b) or with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast signals.

(e) Willful alterations.--Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a performance or display of a work embodied in a primary transmission made by that television broadcast station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(f) Violation of territorial restrictions on statutory license for television broadcast stations.--

(1) Individual violations.--The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a television broadcast station to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119 or a private licensing agreement, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that--

(A) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber; and

(B) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred.

(2) Pattern of violations.--If a satellite carrier engages in a willful or repeated pattern or practice of secondarily transmitting to the public a primary transmission embodying a performance or display of a work made by a television broadcast station to subscribers who do not reside in that station's local market, and are not subject to statutory licensing under section 119 or a private licensing agreement, then in addition to the remedies under paragraph (1)--

(A) if the pattern or practice has been carried out on a substantially nationwide basis, the court--

(i) shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of that television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network); and

(ii) may order statutory damages not exceeding $250,000 for each 6-month period during which the pattern or practice was carried out; and

(B) if the pattern or practice has been carried out on a local or regional basis with respect to more than one television broadcast station, the court--

(i) shall order a permanent injunction barring the secondary transmission in that locality or region by the satellite carrier of the primary transmissions of any television broadcast station; and

(ii) may order statutory damages not exceeding $250,000 for each 6-month period during which the pattern or practice was carried out.

(g) Burden of proof.--In any action brought under subsection (f), the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a television broadcast station is made only to subscribers located within that station's local market or subscribers being served in compliance with section 119 or a private licensing agreement.

(h) Geographic limitations on secondary transmissions.--The statutory license created by this section shall apply to secondary transmissions to locations in the United States.

(i) Exclusivity with respect to secondary transmissions of broadcast stations by satellite to members of the public.--No provision of section 111 or any other law (other than this section and section 119) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers of programming contained in a primary transmission made by a television broadcast station may be made without obtaining the consent of the copyright owner.

(j) Definitions.--In this section--

(1) Distributor.--The term "distributor" means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

(2) Local market.--

(A) In general.--The term "local market", in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and--

(i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and

(ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

(B) County of license.--In addition to the area described in subparagraph (A), a station's local market includes the county in which the station's community of license is located.

(C) Designated market area.--For purposes of subparagraph (A), 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.

(3) Network station; satellite carrier; secondary transmission.--The terms "network station", "satellite carrier", and "secondary transmission" have the meanings given such terms under section 119(d).

(4) Subscriber.--The term "subscriber" means a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(5) Television broadcast station.--The term "television broadcast station"--

(A) means an over-the-air, commercial or noncommercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station; and

(B) includes a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico if the station broadcasts primarily in the English language and is a network station as defined in section 119(d)(2)(A).

Appendix J

Nielsen Media Research
Designated Market Area Ranking for 2000-2001

1 New York
2 Los Angeles
3 Chicago
4 Philadelphia
5 San Francisco-Oakland-San Jose
6 Boston (Manchester)
7 Dallas-Ft. Worth
8 Washington, DC (Hagerstown)
9 Detroit
10 Atlanta
11 Houston
12 Seattle-Tacoma
13 Minneapolis-St. Paul
14 Tampa-St. Petersburg (Sarasota)
15 Cleveland
16 Miami-Ft. Lauderdale
17 Phoenix
18 Denver
19 Sacramento-Stockton-Modesto
20 Pittsburgh
21 Orlando-Daytona Beach-Melbourne
22 St. Louis
23 Portland, OR
24 Baltimore
25 San Diego
26 Indianapolis
27 Hartford-New Haven
28 Charlotte
29 Raleigh-Durham (Fayettevlle)
30 Kansas City
31 Nashville
32 Cincinnati
33 Milwaukee
34 Columbus, OH
35 Greenville-Spartanburg
36 Salt Lake City
37 San Antonio
38 Grand Rapids-Kalamazoo
39 Birmingham (Anniston,Tuscaloosa)
40 Memphis
41 Norfolk-Portsmouth-Newport News
42 New Orleans
43 West Palm Beach-Ft. Pierce
44 Buffalo

45 Oklahoma City
46 Harrisburg-Lancaster
47 Greensboro-High Point
48 Louisville
49 Providence-New Bedford
50 Albuquerque-Santa Fe
51 Las Vegas
52 Wilkes Barre-Scranton
53 Jacksonville, Brunswick
54 Fresno-Visalia
55 Dayton
56 Albany-Schenectady-Troy
57 Little Rock-Pine Bluff
58 Austin
59 Tulsa
60 Richmond-Petersburg
61 Charleston-Huntington
62 Mobile-Pensacola
63 Knoxville
64 Flint-Saginaw-Bay City
65 Wichita-Hutchinson Plus
66 Lexington
67 Toledo
68 Roanoke-Lynchburg
69 Green Bay-Appleton
70 Des Moines-Ames
71 Tucson (Sierra Vista)
72 Honolulu
73 Paducah
74 Rochester, NY
75 Omaha
76 Shreveport
77 Spokane
78 Springfield, MO
79 Portland-Auburn
80 Syracuse
81 Ft. Myers-Naples
82 Huntsville-Decatur (Florence)
83 Champaign & Springfield-Decatur
84 Madison
85 Columbia, SC
86 Chattanooga
87 South Bend-Elkhart
88 Jackson, MS
89 Cedar Rapids
90 Davenport
91 Burlington-Plattsburgh
92 Colorado Springs-Pueblo
93 Tri-Cities, TN-VA
94 Waco-Temple-Bryan
95 Johnstown-Altoona

96 Baton Rouge
97 Evansville
98 El Paso
99 Youngstown
100 Savannah
101 Lincoln & Hastings-Kearny Plus
102 Harlingen
103 Charleston, SC
104 Ft. Wayne
105 Springfield-Holyoke
106 Greenville-New Bern
107 Lansing
108 Tyler-Longview
109 Reno
110 Tallahassee-Thomasville
111 Sioux Falls (Mitchell)
112 Peoria-Bloomington
113 Augusta
114 Florence-Myrtle Beach
115 Ft. Smith
116 Montgomery (Selma)
117 Santa Barbara
118 Monterey-Salinas
119 Traverse City-Cadillac
120 Fargo-Valley City
121 Macon
122 Eugene
123 Boise
124 Lafayette, LA
125 Yakima-Pasco
126 La Crosse-Eau Claire
127 Amarillo
128 Columbus, GA
129 Corpus Christi
130 Bakersfield
131 Columbus-Tupelo-West Point
132 Duluth-Superior
133 Chico-Redding
134 Monroe-El Dorado
135 Rockford
136 Wausau-Rhinelander
137 Beaumont-Port Arthur
138 Topeka
139 Terre Haute
140 Wheeling-Steubenville
141 Medford-Klamath Falls
142 Erie
143 Columbia-Jefferson City
144 Sioux City
145 Joplin-Pittsburg
146 Wichita Falls & Lawton

147 Lubbock
148 Wilmington
149 Bluefield-Beckley-Oak Hill
150 Albany, GA
151 Odessa-Midland
152 Minot-Bismarck-Dickinson
153 Rochester-Mason City-Austin
154 Anchorage
155 Bangor
156 Binghamton
157 Biloxi-Gulfport
158 Panama City
159 Palm Springs
160 Abilene-Sweetwater
161 Sherman, TX-Ada, OK
162 Salisbury
163 Quincy-Hannibal-Keokuk
164 Idaho Falls-Pocatello
165 Clarksburg-Weston
166 Gainesville
167 Hattiesburg-Laurel
168 Utica
169 Billings
170 Missoula
171 Elmira
172 Dothan
173 Lake Charles
174 Yuma-El Centro
175 Rapid City
176 Watertown
177 Marquette
178 Alexandria, LA
179 Harrisonburg
180 Jonesboro
181 Bowling Green
182 Greenwood-Greenville
183 Meridian
184 Jackson, TN
185 Parkersburg
186 Grand Junction-Montrose
187 Great Falls
188 Twin Falls
189 Laredo
190 Butte-Bozeman, MT
191 Eureka
192 St. Joseph
193 Charlottesville
194 Lafayette, IN
195 Mankato
196 San Angelo
197 Casper-Riverton

198 Cheyenne, WY-Scottsbluff,
199 Ottumwa-Kirksville
200 Bend, OR
201 Lima
202 Zanesville
203 Fairbanks
204 Victoria
205 Presque Isle
206 Juneau, AK
207 Helena
208 Alpena
209 North Platte
210 Glendive