

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

In the Matter of:
Implementation of the Satellite Home Viewer
Extension and Reauthorization Act of 2004
Procedural Rules

ORDER

Adopted: March 28, 2005

Released: March 30, 2005

By the Commission:

I. INTRODUCTION

1. In this Order, we adopt rules in compliance with requirements in the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). Specifically, Section 202 of the SHVERA requires the Commission to implement new section 340(h) of the Communications Act of 1934, as amended ("Communications Act" or "Act"); Section 205 amends Section 338(h)(2) of the Act by instructing the Commission to amend rule section 76.66(d)(2); and Section 209 requires the Commission to exempt satellite carriers from complying with the testing requirements in Section 339(c)(4)(A) of the Act. We are amending the rules without providing prior public notice and comment because these amendments merely implement provisions of the SHVERA that direct the Commission to revise its rules as specified in the legislation. The Commission's action involves no discretion. Accordingly, we find that notice and comment would serve no purpose and thus are unnecessary, and this action falls within the "good cause" exception of the Administrative Procedure Act ("APA").

1 The SHVERA was enacted on December 8, 2004 as part of the Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, § 202, 118 Stat. 2809, 3393 (2004) (to be codified in scattered sections of 17 and 47 U.S.C.).

2 47 U.S.C. § 340(h) (as amended by Section 202 of the SHVERA); 47 U.S.C. § 338(h) (as amended by Section 205 of the SHVERA); 47 U.S.C. § 339 (c)(4)(D) (as amended by Section 209 of the SHVERA).

3 See 5 U.S.C. § 553(b)(B). See, e.g., Metzenbaum v. Federal Energy Regulatory Commission, 675 F.2d 1282, 1291 (DC Cir. 1982) (agency order, issued pursuant to congressional waiver of certain provisions of federal law that would otherwise have governed construction and operation of Alaskan natural gas pipeline, was appropriately issued without notice and comment as a nondiscretionary ministerial action); In the Matter of Implementation of Section 505 of the Telecommunications Act of 1996 (Scrambling of Sexually Explicit Adult Video Service Programming), 11 FCC Rcd 5386, 5387 (1996); In the Matter of Implementation of Sections 204(A) and 204(C) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures), 11 FCC Rcd 6363, 6364 (1996); In the Matter of Implementation of Sections 202(A) and 202(B)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership), 11 FCC Rcd 12368, 12371 (1996); In the Matter of Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations), 11 FCC Rcd 12374, 12377 (1996).

2. In December 2004, Congress passed and the President signed the SHVERA, which amends the 1988 copyright laws⁴ and the Communications Act of 1934⁵ to further aid competition in the multichannel video programming distribution market and provide more video programming options for satellite subscribers. The SHVERA is the third statute that addresses satellite carriage of television broadcast stations.

3. In 1988, Congress passed the Satellite Home Viewer Act (“1988 SHVA”),⁶ which established a statutory copyright license for satellite carriers to offer broadcast programming to subscribers who could not receive the signal of a broadcast station over the air (“unserved households”). The 1988 SHVA statutory copyright license did not distinguish between signals from local stations and signals from distant stations.⁷ In the 1999 Satellite Home Viewer Improvement Act (“SHVIA”),⁸ Congress expanded on the 1988 SHVA by amending both the 1988 copyright laws⁹ and the Communications Act¹⁰ to permit satellite carriers to retransmit local broadcast television signals directly to their subscribers without requiring that they live in “unserved households.”

4. The SHVIA provided satellite carriers with a statutory copyright license to facilitate the retransmission of local broadcast programming, or “local-into-local” service, to subscribers. A satellite carrier provides “local-into-local” service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. Generally, a television station’s “local market” is the Designated Market Area (“DMA”) in which it is located.¹¹ Each satellite carrier providing local-into-local service pursuant to the statutory copyright license is generally obligated to carry any qualified local television station in the particular DMA that has made a timely election for mandatory carriage, unless the station’s programming is duplicative of the programming of another station carried by the carrier in the DMA or the station does not provide a good quality signal to the carrier’s local receive facility.¹² This is commonly referred to as the “carry one, carry all” requirement.¹³

5. The 2004 SHVERA gives satellite carriers the additional option to carry Commission-determined “significantly viewed” out-of-market signals to subscribers.¹⁴ The SHVERA requires the

⁴ See 17 U.S.C. §§ 119 and 122.

⁵ See 47 U.S.C. §§ 325, 338, 339, and 340.

⁶ The Satellite Home Viewer Act of 1988, Pub. L. No. 100-667, 102 Stat. 3935, Title II (1988) (codified at 17 U.S.C. §§ 111, 119). The 1988 SHVA was enacted on November 16, 1988, as an amendment to the copyright laws.

⁷ See 17 U.S.C. § 119(a).

⁸ The Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106-113, 113 Stat. 1501 (1999) (codified in scattered sections of 17 and 47 U.S.C.). The SHVIA was enacted on November 29, 1999, as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 (“IPACORA”) (relating to copyright licensing and carriage of broadcast signals by satellite carriers).

⁹ See 17 U.S.C. §§ 119 and 122.

¹⁰ See 47 U.S.C. §§ 325, 338 and 339.

¹¹ DMAs, which describe each television market in terms of a unique geographic area, are established by Nielsen Media Research based on measured viewing patterns. See 17 U.S.C. § 122(j)(2).

¹² See 47 U.S.C. § 338.

¹³ Section 338 of the Communications Act, adopted as part of the 1999 SHVIA, requires satellite carriers, by January 1, 2002, “to carry upon request all local television broadcast stations’ signals in local markets in which the satellite carriers carry at least one television broadcast station signal,” subject to the other carriage provisions contained in the Act. 47 U.S.C. § 338.

¹⁴ Section 102 of the SHVERA extends the statutory copyright license contained in 17 U.S.C. § 119(a) to apply to “significantly viewed” out-of-market signals. 17 U.S.C. § 119(a)(3)(A). See also Implementation of the Satellite
(continued....)

Commission to undertake several proceedings to implement new rules, revise existing rules, and conduct studies.¹⁵ This proceeding addresses three separate requirements of the SHVERA. We are addressing them in one item because they do not involve discretionary action by the Commission and, therefore, notice and comment procedures are unnecessary under the “good cause” exception to the APA.¹⁶ First, Section 202 of the SHVERA requires the Commission to implement the new Section 340(h), which prescribes rules for carriage elections on a county basis, unified retransmission consent negotiations, and notifications by satellite carriers to local broadcasters concerning carriage of significantly viewed signals.¹⁷

6. We also adopt two additional procedural rule changes mandated by Sections 205 and 209 of the SHVERA. Section 205 amends Section 338 of the Communications Act to add subsection 338(h),¹⁸ which requires the Commission to revise its rules for satellite carriers’ notices to station licensees when the carrier is going to initiate new local service. Section 209 of the SHVERA amends Section 339(c)(4) of the Communications Act to require the Commission to exempt satellite carriers from the signal testing requirements mandated by this section when local-into-local service is available.¹⁹

II. DISCUSSION: RULE REVISIONS

A. Section 202: Implementation of Section 340(h)

7. On February 4, 2005, the Commission adopted a Notice of Proposed Rulemaking (“NPRM”) to propose rules implementing the new Section 340 of the Communications Act, which provides for satellite carriage of “significantly viewed” out-of-market signals.²⁰ The instant proceeding implements rule revisions required by Section 340(h) that are related to the new significantly viewed carriage options.²¹ The SHVERA established a separate and more rapid timeframe for the Commission to implement the rule revisions required by Section 340(h) than for the other significantly viewed rules. These provisions, in contrast to the rules required by Section 340(a)-(g), prescribe special notification requirements relating to the carriage election process. Pursuant to Section 325 of the Communications Act, stations elect between mandatory carriage and carriage pursuant to retransmission consent every

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Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act, MB Docket No. 05-49 (“SHVERA NPRM”), FCC 05-24, 2005 WL 289026 ¶ 7 (rel. Feb. 7, 2005).

¹⁵ This proceeding to implement Sections 202, 205, and 209 of the SHVERA is one of a number of Commission proceedings that will be required to implement the SHVERA. The other proceedings will be undertaken and largely completed in 2005. *See* SHVERA NPRM; Sections 202, 204, 205, 207, 208, 209 and 210 of the SHVERA; *see also* Public Notice, “Media Bureau Seeks Comment For Inquiry Required By the SHVERA on Rules Affecting Competition In the Television Marketplace,” MB Docket No. 05-28, DA 05-169 (rel. Jan. 25, 2005); and Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Reciprocal Bargaining Obligations, MB Docket No. 05-89, FCC 05-49 (rel. Mar. 7, 2005).

¹⁶ *See* 5 U.S.C. § 553(b)(B) and *supra* n. 3.

¹⁷ *See* 47 U.S.C. § 340(h) (*as amended* by Section 202 of the SHVERA). Section 102 of the SHVERA amends 17 U.S.C. § 119(a) to create new subsection (a)(3), entitled “secondary transmissions of significantly viewed signals.” 17 U.S.C. § 119(a)(3). Section 202 of the SHVERA amends the Communications Act to create a new Section 340, entitled “Significantly Viewed Signals Permitted To Be Carried.” 47 U.S.C. § 340.

¹⁸ *See* 47 U.S.C. § 338(h) (*as amended* by Section 205 of the SHVERA).

¹⁹ *See* 47 U.S.C. § 339(c)(4)(D) (*as amended* by Section 209 of the SHVERA).

²⁰ SHVERA NPRM, MB Docket No. 05-49, FCC 05-24, 2005 WL 289026 (rel. Feb. 7, 2005).

²¹ *Id.* at 2, n. 4.

three years.²² In general, when a station elects one or the other carriage option, the election pertains to carriage throughout the DMA.²³ The rules required by Section 340(h) apply to satellite carriers that carry or intend to carry significantly viewed out-of-market signals, and they provide television stations with different carriage election options in counties and markets in which the satellite carrier is offering significantly viewed signals. The SHVERA requires that the rules be revised no later than October 30, 2005.²⁴ However, as a practical matter, to allow for the 60 day notice that is required before the upcoming carriage election cycle, the revisions should be in place by August 1, 2005.²⁵ These revisions simply reflect changes mandated by the SHVERA, so that notice and comment procedures are not required.²⁶

8. Section 340(h)(1) provides that a television broadcast station may elect either retransmission consent or mandatory carriage separately for each county within the station's local market in which a satellite carrier provides local-into-local service if the satellite carrier has notified the station that it is carrying or intends to carry another affiliate of the same television network during the relevant election period in the station's local market.²⁷ As a result of this rule revision, local stations will, for example, be able to elect mandatory carriage when the satellite carrier is offering or reserving the option to offer a significantly viewed signal affiliated with the same network in that county or a community in that county, and to elect carriage pursuant to retransmission consent in counties in which out-of-market affiliates of the same network will not be carried.²⁸

²² See 47 U.S.C. § 325(b)(3).

²³ *Id.* See also 47 C.F.R. § 76.66(c) and (d).

²⁴ 47 U.S.C. § 340(h)(1).

²⁵ 47 U.S.C. § 325(b)(3)(C). See 47 C.F.R. § 76.66(c)(3). See also 76.66(c)(4) ("Except as provided for 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.") The second election cycle commences January 1, 2006 for a three year period. 47 C.F.R. § 76.66(c)(2).

²⁶ See *supra* n. 3 (citing prior rules that were adopted without notice and comment because the Commission had no discretion).

²⁷ See 47 U.S.C. § 340(h)(1), which states that "the Commission shall, no later than October 30, 2005, revise section 76.66 of its regulations (47 CFR 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325) a television broadcast station that is located in a local market into which a satellite carrier retransmits a television broadcast station pursuant to section 338, to elect, with respect to such satellite carrier, between retransmission consent pursuant to such section 325 and mandatory carriage pursuant to section 338 separately for each county within such station's local market, if – (A) the satellite carrier has notified the station, pursuant to paragraph [340(h)](3), that it intends to carry another affiliate of the same network pursuant to this section during the relevant election period in the station's local market; or (B) on the date notification under paragraph [340(h)](3) was due, the satellite carrier was retransmitting into the station's local market pursuant to this section an affiliate of the same television network."

²⁸ See 47 U.S.C. § 340(h)(1). Where this new provision is inapplicable, carriage elections are effective on a market-wide basis. See House Commerce Committee Report dated July 22, 2004, accompanying House Bill, H.R. 4501, 108th Cong. (2004), H.R. Rep. No. 108-634, at 16 (2004) ("*House Commerce Committee Report*"). There was no final Report issued to accompany the bill as it was enacted. See House Bill, H.R. 4818, 108th Cong. (2004) (enacted). Therefore, we look to the House Commerce Committee Report accompanying the House Bill, H.R. 4501, for the relevant legislative history for Section 202 of the SHVERA. Although certain changes were made to H.R. 4501 before it was enacted, the House Commerce Committee Report language remains relevant with respect to those provisions that were unchanged. See also The Honorable Fred Upton, Chairman, House Subcommittee on Telecommunications and the Internet, "Floor Statement" (dated Oct. 6, 2004) to H.R. 4518 (The Satellite Home Viewer Extension and Reauthorization Act of 2004) ("*Upton Floor Statement*") at 2.

9. Section 340(h)(2) requires that a television broadcast station making county-by-county elections under Section 340(h)(1) conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.²⁹ As a result of this revision, the broadcaster must inform the satellite carrier of all elections at once to allow satellite carriers to know where retransmission consent negotiations will be necessary and to conduct all such negotiations in a unified fashion with respect to any and all counties in the market in which retransmission consent is elected.³⁰ The House Commerce Committee Report explained that the term “unified” does not set a particular time limit on the negotiations or require that they take place in one sitting, but is intended to require the broadcaster to “lay all its elections on the table at once so that the satellite operator can see the entire picture in anticipation of any retransmission consent negotiations that may be necessary in the communities where the broadcaster does not elect carry-one, carry all.”³¹

10. We revise Section 76.66 of the Commission’s rules to implement Section 340(h)(3)(A), which provides that satellite carriage of a significantly viewed station is subject to the satellite carrier notifying any station affiliated with the same network as the significantly viewed station that the carrier may retransmit the significantly viewed station to subscribers in specified communities in that station’s local market during the next election cycle, as required by Section 340(h)(1) and (2).³² With respect to markets in which local-into-local service was provided as of the date of SHVERA’s enactment (December 8, 2004), the notification is to be at least 60 days before the carriage election date.³³ With respect to markets in which local-into-local service is offered after December 8, 2004, the notification is to be provided at least 60 days before the carrier introduces local-into-local service and at least 60 days before the next election cycle.³⁴ Section 340(h)(3)(A)(iii) provides that, commencing with the 2005 election cycle, a satellite carrier may only retransmit a signal during the election cycle if proper notice

²⁹ See 47 U.S.C. § 340(h)(2), which states that “in revising its regulations as required by paragraph [340(h)](1), the Commission shall provide that any such station shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.”

³⁰ See 47 U.S.C. § 340(h)(2).

³¹ The Commerce Committee Report states that the section is intended to ease the administrative burden on the satellite operator by requiring a unified negotiation between the satellite operator and broadcaster. *House Commerce Committee Report* at 16. See also *Upton Floor Statement* at 2-3.

³² See 47 U.S.C. § 340(h)(3)(A). See Section 76.66(d)(5)(i)-(iii) in the Appendix.

³³ See 47 U.S.C. § 340(h)(3)(A)(i), which provides that “a satellite carrier’s retransmission of television broadcast stations pursuant to this section shall be subject to the following limitations: (i) In any local market in which the satellite carrier provides service pursuant to section 338 on the date of enactment of the [SHVERA], the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under Section 76.66 of the Commission’s regulations (47 CFR 76.66), of (I) each affiliate of the same television network that the carrier reserves the right to retransmit into that station’s local market pursuant to this section during the next election cycle under such section of such regulations; and (II) for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions.” See also 47 C.F.R. § 76.66(c)(2) and (d)(2).

³⁴ See 47 U.S.C. § 340(h)(3)(A)(ii), which provides that “in any local market in which the satellite carrier commences service pursuant to section 338 after the date of enactment of the [SHVERA], the carrier may notify a station in that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission’s regulations (47 CFR 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station’s local market during the next election cycle under such section of such regulations.”

was given or it was retransmitting the signal into the local market as of the date notifications were due.³⁵

11. We also revise Section 76.66 to implement Section 340(h)(3)(B), which requires us to provide that if a satellite carrier notifies a station, pursuant to the new rules required by Section 340(h)(3)(A), that it reserves the right to retransmit an affiliate of the same network during the next election cycle, the station may choose either retransmission consent or mandatory carriage for any portion of the three year election cycle that is not covered by an existing retransmission consent agreement.³⁶

B. Section 205: Implementation of Section 338(h)(2)(A)

12. Section 205 of the SHVERA amends 47 U.S.C. § 338 to add subsection 338(h)(2)(A), which requires us to revise Section 76.66(d)(2) of the Commission's rules, concerning satellite carrier notification to television broadcast stations in new local-into-local markets, within 180 days of SHVERA's enactment.³⁷ Subsection 338(h)(2)(B) sets forth the contents of the required notice from satellite carriers to local stations when the carrier is about to commence service in a new local-into-local market.

13. The revised rule must require that the carrier's notice be sent to each station in a local market in which the carrier proposes to commence local-into-local service not later than 60 days before the local-into-local service will begin. The notice is required to include: (i) the carrier's intention to launch local-into-local service; (ii) the identity of the local market; (iii) the location of the carrier's proposed local receive facility for that local market; (iv) the station's right to elect mandatory carriage or grant retransmission consent; (v) that the station has 30 days from the date it receives the notice to make the election; and (vi) that failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the three-year carriage cycle.³⁸ The purpose is to ensure

³⁵ See 47 U.S.C. § 340(h)(3)(A)(iii), which provides that "beginning with the 2005 election cycle, a satellite carrier may only retransmit pursuant to this section during the pertinent election period a signal -- (I) as to which it has provided the notifications set forth in clauses (i) and (ii); or (II) that it was retransmitting into the local market under this section as of the date such notifications were due." The "2005 election cycle" refers to the second retransmission consent-mandatory carriage election for the second election cycle for satellite carriers, which commences on January 1, 2006 and ends on December 31, 2008. See 47 C.F.R. § 76.66(c)(2). The election for the 2005 election cycle must be made by October 1, 2005 because all elections other than the first election must be made by October 1st of the year preceding the new cycle. See 47 C.F.R. § 76.66(c)(4).

³⁶ See 47 U.S.C. § 340(h)(3)(B), which provides that "if a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement." See Section 76.66(d)(5)(iv) in the Appendix.

³⁷ See 47 U.S.C. § 338(h)(2)(A) (as amended by Section 205 of the SHVERA), which provides that "within 180 days after the date of enactment of the [SHVERA], the Commission shall revise the regulations under this section relating to notice to broadcast station licensees to comply with the requirements of this paragraph." See also 47 C.F.R. § 76.66(d)(3). The SHVERA was enacted on December 8, 2004, and 180 days from December 8 is June 6, 2005.

³⁸ See 47 U.S.C. § 338(h)(2)(B) (as amended by Section 209 of the SHVERA), which provides that "the notice required by such regulations shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage--(i) of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market; (ii) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b); (iii) that such licensee has 30 days from the date of the receipt of such notice to make such election; and (iv) that failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325."

that notices clearly indicate to local broadcasters the rights and responsibilities they have under the carry-one, carry-all provisions of the Communications Act and Commission regulations.³⁹ Section 338(h)(2)(C) further requires that the satellite carrier transmit the notice required by Section 338(h)(2)(B) via certified mail to the television station licensee's address listed in the Commission's consolidated database.⁴⁰ The revised rule section implements each of the required provisions.⁴¹

C. Section 209: Implementation of Section 339(c)(4)(D)

14. Section 209 of the SHVERA creates new Section 339(c)(4)(D) of the Communications Act.⁴² It requires the Commission to exempt satellite carriers from the signal testing requirements of Section 339(c)(4)(A) when the request comes from a satellite subscriber in a market in which local-into-local service is offered.⁴³ Signal testing was required by the SHVIA so that subscribers could attempt to demonstrate that they could not receive a signal of Grade B intensity or better and thereby qualify for a distant network signal.⁴⁴ This requirement is revised by Section 204 of the SHVERA, which provides that where local-into-local service is offered, subscribers are not eligible to receive distant analog signals unless they were getting distant analog signals as of December 8, 2004.⁴⁵ Consequently, there is no need for a signal strength test to measure whether the analog signal can be received at households in markets in which there is local-into-local service or such service is introduced before a subscriber seeks distant analog signals of network stations. Section 209, accordingly, requires the Commission to exempt satellite carriers from complying with the testing requirements in Section 339(c)(4)(A) of the Act.⁴⁶ The rule implementing this requirement will be added to part 73 of the Commission's rules as part of the rules that codify the measurements and independent testing required by the SHVIA.⁴⁷

III. PROCEDURAL MATTERS

15. This document contains new information collection requirements 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 information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief

³⁹ *House Commerce Committee Report* at 18-19.

⁴⁰ *See* 47 U.S.C. § 338(h)(2)(C) (*as amended by* Section 209 of the SHVERA), which provides that "such regulations shall require that each satellite carrier shall transmit the notices required by such regulation via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission."

⁴¹ *See* Section 76.66(d)(2) in the Appendix.

⁴² *See* 47 U.S.C. § 339(c)(4)(D) (*as amended by* Section 209 of the SHVERA).

⁴³ *See id.*, which provides that "section 339(c)(4) of the Communications Act of 1934 is amended by inserting after subparagraph (C) the following new subparagraph (D), Reduction of Verification Burdens, which provides that "within one year after the date of enactment of the [SHVERA], the Commission shall by rule exempt from the verification requirements of subparagraph (A) any request for a test made by a subscriber to a satellite carrier to whom the retransmission of the signals of local broadcast stations is available under section 338 from such carrier."

⁴⁴ *See* 47 U.S.C. § 339(c)(4) (*as amended by* Section 1008 of the SHVIA (1999)).

⁴⁵ *See* 47 U.S.C. § 339(a)(2)(A) and (B) (*as amended by* Section 204 of the SHVERA).

⁴⁶ There are no existing rules for satellite carriers to conduct tests. The requirement was created by the SHVIA and is in the Communications Act.

⁴⁷ *See* Section 73.683(f) in the Appendix. *See also* 47 C.F.R. § 73.683(d) and (e) and 47 U.S.C. § 339(c)(A)(3) and (4)(B), as enacted by Section 1008 of the SHVIA.

Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we have not previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” However, this information collection does not affect businesses with fewer than 25 employees. Accordingly, there is no impact pursuant to the Small Business Paperwork Relief Act of 2002.

16. Comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, S.W., Room 1-C823, Washington, D.C., 20554, or via the Internet to Cathy.Williams@fcc.gov; and also to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via Internet to Kristy_L_LaLonde@omb.eop.gov, or via fax at 202-395-5167.

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

18. The Commission will send a copy of this Order in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that pursuant to Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified as Section 340(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 340(h), Part 76.66(d)(5), IS ADDED, as set forth in the Rules Appendix. Rule Section 76.66(d)(5) contains a collection requirement under the PRA and is not effective until approved by OMB. The FCC will publish a document in the Federal Register announcing the effective date for this section.

20. IT IS FURTHER ORDERED that pursuant to Section 205 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified as Section 338(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 338(h), Part 76.66(d)(2), IS AMENDED, as set forth in the Rules Appendix. Rule Section 47 C.F.R. § 76.66(d)(2) contains a collection requirement under the PRA and is not effective until approved by OMB. The FCC will publish a document in the Federal Register announcing the effective date for this section.

21. IT IS FURTHER ORDERED that pursuant to Section 209 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified as Section 339(c)(4)(D) of the Communications Act of 1934, as amended, 47 U.S.C. § 339(c)(4)(D), Section 73.683(f), IS ADDED, as set forth in the Rules Appendix. Rule Section 47 C.F.R. § 73.683(f) shall become effective 30 days after publication in the Federal Register.

22. For additional information regarding this proceeding, contact Eloise Gore, Media Bureau, (202) 418-7200 or via the Internet at eloise.gore@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Rule Amendments**Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:**

PART 73 – Radio Broadcast Services

1. The authority citation for Part 73 is amended to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334, 336 and **339**.

2. Part 73 of the Commission's Rules is amended to read as follows:

Subpart E – Television Broadcast Stations.

* * * * *

3. Section 73.683 is amended to read as follows:

§ 73.683 Field strength contours and presumptive determination of filed strength at individual locations.

* * * * *

(f) A satellite carrier is exempt from the verification requirements of 47 U.S.C. 339(c)(4)(A) with respect to a test requested by a satellite subscriber to whom the retransmission of the signals of local broadcast stations is available under 47 U.S.C. 338 from such carrier. The definitions of satellite carrier, subscriber, and local-into-local television service contained in 47 C.F.R. 76.66(a) apply to this paragraph.

4. Part 76 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 76 – Multichannel Video and Cable Television Service

5. The authority citation for Part 76 is amended to add the following:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 325, 339, **340**, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

6. Part 76 of the Commission's Rules is amended as follows:

Subpart D – Carriage of Television Broadcast Signals

7. Section 76.1 is amended to add the following:

§ 76.1 Purpose.

*** * * * * The rules and regulations in this part also describe broadcast carriage requirements for cable operators and satellite carriers.**

8. Section 76.66 is amended as follows:

* * * * *

(d)(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 after July 1, 2001, **shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage:**

- (A) of the carrier's intention to launch local-into-local service under section 338 of title 47, United States Code, in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;**
- (B) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b) of title 47, United States Code;**
- (C) that such licensee has 30 days from the date of the receipt of such notice to make such election; and**
- (D) that failure to make such election will result in the loss of the right to demand carriage under section 338 for the remainder of the 3-year cycle of carriage under section 325.**

(ii) Satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

* * * * *

(d)(5) *Elections in Markets in which Significantly Viewed Signals are Carried.* (i) Beginning with the election cycle described in paragraph (c)(2) of this section, the retransmission of significantly viewed signals pursuant to section 340 of title 47, United States Code, by a satellite carrier that provides local-into-local service is subject to providing the notifications to stations in the market pursuant to paragraphs (A) and (B) below, unless the satellite carrier was retransmitting such signals as of the date these notifications were due. The definition of significantly viewed signals contained in section 76.54 of this part applies to this paragraph.

(A) In any local market in which a satellite carrier provided local-into-local service on December 8, 2004, at least 60 days prior to any date on which a station must make an election under paragraph (c) of this section, the notification must identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market pursuant to section 340 during the next election cycle and, for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions;

(B) In any local market in which a satellite carrier commences local-into-local service after December 8, 2004, at least 60 days prior to the commencement of service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under paragraph (c) or (d)(2) of this section, the notification must identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market pursuant to section 340 during the next election cycle.

(ii) A television broadcast station located in a market in which a satellite carrier provides local-into-local television service may elect, with respect to the carrier, either retransmission consent or mandatory carriage separately for each county within the station's local market if the satellite carrier provided notice to the station, pursuant to paragraph (d)(5)(i) of this section, that it intends to carry another

affiliate of the same network pursuant to section 340 during the relevant election cycle, or was carrying an affiliate of the same network pursuant to section 340 in the station's local market on the date notification was due.

(iii) A television broadcast station that elects mandatory carriage for one or more counties in its market and elects retransmission consent for one or more other counties in its market pursuant to paragraph (d)(5)(ii) of this section shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.

(iv) A television broadcast station that receives a notification from a satellite carrier pursuant to paragraph (d)(5)(i) of this section with respect to an upcoming election cycle may choose either retransmission consent or mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

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