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

In the Matter of	)	
	)	
Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA)	)	MB Docket No. 10-148
	)	
Amendments to Section 340 of the Communications Act	)	
	)	

NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we propose changes to our satellite television "significantly viewed" rules to implement Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA).[1] Section 203 of the STELA amends Section 340 of the Communications Act of 1934 ("Communications Act" or "Act"), which gives satellite carriers the authority to offer out-of-market but "significantly viewed" broadcast television network stations as part of their local service to subscribers.[2] The STELA requires the Commission to issue final rules in this proceeding on or before Wednesday, November 24, 2010.[3]

2. Significantly viewed ("SV") stations are television broadcast stations that the Commission has determined have sufficient over-the-air (*i.e.*, non-cable or non-satellite) viewing[4] to be considered local for certain purposes and so are not constrained by the boundary of that station's local market or Designated Market Area ("DMA"). The individual TV station, or cable operator or satellite carrier that seeks to carry the station, may petition the Commission to obtain "significantly viewed" status for the station,[5] and placement on the SV List.[6] The designation of "significantly viewed" status allows a

[1] The Satellite Television Extension and Localism Act of 2010 (STELA) § 203, Pub. L. No. 111-175, 124 Stat. 1218, 1245 (2010) (§ 203 codified as amended at 47 U.S.C. § 340, other STELA amendments codified in scattered sections of 17 and 47 U.S.C.). The STELA was enacted on May 27, 2010 (S. 3333, 111th Cong.). This proceeding to implement STELA § 203 (titled "Significantly Viewed Stations"), 124 Stat. at 1245, and the related statutory copyright license provisions in STELA § 103 (titled "Modifications to Statutory License for Satellite Carriers in Local Markets"), 124 Stat. at 1227-28, is one of a number of Commission proceedings that are required to implement the STELA.

[2] 47 U.S.C. § 340. We note that the nature of SV carriage under Section 340 is permissive (and not mandatory), meaning the statute applies when a satellite carrier chooses to carry an SV station and has obtained retransmission consent from such SV station. *Id*. at § 340(d).

[3] The STELA requires the Commission to take all actions necessary to promulgate a rule to implement the amendments within 270 days after the date of the enactment. STELA § 203(b). The STELA establishes February 27, 2010 as its effective date or "date of enactment," even though the law was enacted by Presidential signature on May 27, 2010. STELA § 307. Congress backdated the STELA's effective date to protect the satellite carriers that continued to provide distant signals (which, at that time, included significantly viewed signals) during a two-day gap in coverage of the distant signal statutory copyright license, which expired on February 28 and was not extended until March 2, 2010. Congress passed four short-term extensions of the distant signal statutory copyright license (December 19, 2009, March 2, March 25 and April 15, 2010) before finally passing STELA to reauthorize the license for five years.

[4] To qualify for significantly viewed status (*i.e.*, for placement on the significantly viewed list or "SV List," *see* note 6, *infra*), an SV station can be either a "network" station or an "independent" station, with network stations requiring a higher share of viewing hours. 47 C.F.R. § 76.5(i)(1)-(2). The Commission's rules define network station as one of the "three major national television networks" (*i.e.*, ABC, CBS or NBC). 47 C.F.R. § 76.5(j) and (k). Parties may demonstrate that stations are significantly viewed either on a community basis or on a county-wide basis. 47 C.F.R. § 76.54(b), (d).

[5] *See* 47 C.F.R. §§ 76.5, 76.7, 76.54. A TV station, cable operator or satellite carrier that wishes to have a station designated significantly viewed must file a petition pursuant to the pleading requirements in 47 C.F.R. § 76.7(a)(1) and use the method described in 47 C.F.R. § 76.54 to demonstrate that the station is significantly viewed as defined in 47 C.F.R. § 76.5(i). *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17290, ¶ 25. *See also* ¶ 7, *infra*.

[6] The significantly viewed list or "SV List" identifies the list of stations the Commission has determined to be significantly viewed in specified counties and communities. The list applies to both cable and satellite providers. The Commission updates this list as necessary upon the appropriate demonstrations by stations or cable or satellite providers. The current SV List is available on the Media Bureau's website at http://www.fcc.gov/mb/.

station assigned to one market to be treated as a "local" station with respect to a particular cable or satellite community[7] in another market, and, thus, enables its cable or satellite carriage into said community in that other market.[8] Whereas cable operators have had carriage rights for SV stations since 1972,[9] satellite carriers have had such authority only since 2004[10] and may only retransmit SV network stations to "eligible" satellite subscribers.[11] These satellite subscriber eligibility restrictions are intended to prevent satellite carriers from favoring an SV network station over the in-market (local) station affiliated with the same network.[12]

3. Section 203 of the STELA eliminates two statutory limitations on subscriber eligibility to receive SV network stations from satellite carriers.[13] To implement the STELA, we propose the following changes to our satellite subscriber eligibility rules:

- We propose to eliminate the requirement that satellite carriers offer "equivalent bandwidth" to the local and SV network station pair, and to require instead carriage of the local network affiliate in high definition (HD) as a precondition to satellite carriage of the HD programming of an SV station affiliated with the same network.
- We propose to eliminate the requirement that a subscriber receive the specific local network station (as part of the satellite carrier's "local-into-local" service) in order for that subscriber to also receive an SV station affiliated with the same network and to require instead that the subscriber receive local-into-local satellite service.

[7] We note that the SV station can only be carried in the cable or satellite community in which it is significantly viewed. *See* 47 C.F.R. §§ 76.5(dd) (defining cable "community unit") and 76.5(gg) (defining a "satellite community").

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

[9] *See Cable Television Report and Order*, 36 FCC 2d 143, 174, ¶ 83 (1972) ("*1972 Cable R&O*") (adopting the concept of "significantly viewed" signals to differentiate between otherwise out-of-market television stations "that have sufficient audience to be considered local and those that do not").

[10] Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) created Section 340 of the Communications Act, which authorized satellite carriage of Commission-determined SV stations. *See* SHVERA § 202, Pub. L. No. 108-447, 118 Stat 2809, 3393 (2004) (codified in 47 U.S.C. § 340). *See also Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, MB Docket No. 05-49, Report and Order, 20 FCC Rcd 17278 (2005) ("*SHVERA Significantly Viewed Report and Order*").

[11] *See* 47 U.S.C. § 340(b) and 47 C.F.R. § 76.54(g)-(h). *See also* ¶ 8, *infra* (for background).

[12] 47 U.S.C. § 340(b)(1)-(2). *See*, *e.g.*, SHVERA Significantly Viewed Report and Order, 20 FCC Rcd at 17314, ¶ 94. The Copyright Act's definitions of "network station" and "non-network station" will apply for purposes of determining subscriber eligibility to receive an SV network station. *See* 47 U.S.C. § 339(d) and 47 U.S.C § 122(j)(4), as amended, applying the definitions of such terms in 47 U.S.C § 119(d)(2) and (9). Unlike the definition in the Commission's rules, which specifically include only ABC, CBS and NBC (*see* note 4, *supra*), the Copyright Act definition of "network station" may include other stations. *See SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17294, ¶¶ 35-36 and note 102.

[13] 47 U.S.C. § 340(b)(1)-(2).

II. BACKGROUND

4. In May 2010, Congress passed and the President signed the STELA, which amends the 1988 copyright laws[14] and the Communications Act of 1934[15] to "modernize, improve and simplify the compulsory copyright licenses governing the retransmission of distant and local television signals by cable and satellite television operators."[16] Congress intended for the STELA to increase competition and service to satellite and cable consumers and update the law to reflect the completion of the digital television (DTV) transition.[17] Notably, Congress reauthorizes the statutory copyright license for satellite carriage of SV stations and moves that license from the distant signal statutory copyright license provisions to the local signal statutory copyright license provisions.[18] The STELA is the fourth in a series of statutes that addresses satellite carriage of television broadcast stations.

5. In the 1988 Satellite Home Viewer Act ("1988 SHVA"), Congress established a statutory copyright license to enable satellite carriers to offer subscribers who could not receive the over-the-air signal of a broadcast station access to broadcast programming via satellite.[19] The 1988 SHVA was intended to protect the role of local broadcasters in providing over-the-air television by limiting satellite delivery of network broadcast programming to subscribers who were "unserved" by over-the-air signals. The 1988 SHVA also permitted satellite carriers to offer distant "superstations" to subscribers.[20]

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[14] *See* 17 U.S.C. §§ 119 and 122. 17 U.S.C. § 119 contains the statutory copyright license for satellite carriage of "distant" network stations (limited to "unserved households") and 17 U.S.C. § 122 contains the statutory copyright license for satellite carriage of "local" stations (generally defined as stations and subscribers in the same DMA but which now also includes SV stations that are treated as "local" for copyright purposes, even though such stations are not in the same DMA as the subscribers). The STELA also amended 17 U.S.C. § 111, the statutory copyright license for cable carriage of broadcast stations.

[15] *See* 47 U.S.C. §§ 325, 338, 339 and 340.

[16] *See* House Judiciary Committee Report dated Oct. 28, 2009, accompanying House Bill, H.R. 3570, 111th Cong. (2009), H.R. REP. NO. 111-319, at 4 ("*H.R. 3570 Report*"). There was no final Report issued to accompany the final version of the STELA bill (S. 3333) as it was enacted. *See* Senate Bill, S. 3333, 111th Cong. (2010) (enacted). Therefore, for the relevant legislative history, we look to the Reports accompanying the various predecessor bills (*e.g.*, H.R. 3570, H.R. 2994, and S. 1670). These Reports remain relevant with respect to those provisions that were unchanged, which is the case for the amendments to the "significantly viewed" provisions (*see* STELA §§ 203, 103). Finally, also relevant are certain remarks made in floor statements in passing the bill (S. 3333). *See* "House of Representatives Proceedings and Debates of the 111st Congress, Second Session," 156 Cong. Rec. H3317, H3328-3330 (daily ed. May 12, 2010) (statements of Reps. Conyers and Smith) ("*House Floor Debate*") and "Senate Proceedings and Debates of the 111st Congress, Second Session," 156 Cong. Rec. S3435, (daily ed. May 7, 2010) (statement of Sen. Leahy) ("*Senate Floor Debate*").

[17] *See H.R. 3570 Report* at 5. As of the June 12, 2009 statutory DTV transition deadline, all full-power television stations stopped broadcasting in analog and are broadcasting only digital signals. 47 U.S.C. § 309(j)(14)(A).

[18] STELA § 103 (moving the SV signal statutory copyright license from § 119(a)(3) to § 122 (a)(2) of title 17). In doing so, Congress now defines SV signals as another type of local signal, rather than as an exception to distant signals. The move also means that Congress won't need to reauthorize the SV signal license in five years, when the distant signal license will expire.

[19] The Satellite Home Viewer Act of 1988 (SHVA), 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. The 1988 SHVA gave satellite carriers a statutory copyright license to offer distant signals to "unserved" households. 17 U.S.C. § 119(a).

[20] *See id*. § 119(a)(1) (2009). The STELA § 102(g) replaces the term "superstation" with the term "non-network station." This change in wording has no substantive impact on our rules. A non-network station (previously superstation) is defined as a television station, other than a network station, licensed by the Commission that is (continued….)

6. In the 1999 Satellite Home Viewer Improvement Act ("SHVIA"), Congress expanded satellite carriers' ability to retransmit local broadcast television signals directly to subscribers.[21] A key element of the SHVIA was the grant to satellite carriers of a statutory copyright license to retransmit 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.[22] Generally, a television station's "local market" is the DMA in which it is located.[23] 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.[24] This is commonly referred to as the "carry one, carry all" requirement. The Commission implemented the SHVIA by adopting rules for satellite carriers with regard to carriage of broadcast signals, retransmission consent, and program exclusivity that paralleled the requirements for cable service.[25]

7. In the 2004 Satellite Home Viewer Extension and Reauthorization Act ("SHVERA"), Congress established the framework for satellite carriage of "significantly viewed" stations.[26]

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retransmitted by a satellite carrier. Non-network stations are still not considered "network stations" for copyright purposes. *See* 17 U.S.C. § 119(d)(9); *see also* note 12, *supra*.

[21] The Satellite Home Viewer Improvement Act of 1999 (SHVIA), Pub. L. No. 106-113, 113 Stat. 1501 (1999). 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). In the SHVIA, Congress amended both the copyright laws, 17 U.S.C. §§ 119 and 122, and the Communications Act, 47 U.S.C. §§ 325, 338 and 339.

[22] 47 C.F.R. § 76.66(a)(6).

[23] *See* 17 U.S.C. §122(j)(2)(A); 47 U.S.C. § 340(i)(1). 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)(A)-(C).

[24] *See* 47 U.S.C. § 338.

[25] *See* Implementation of the Satellite Home Viewer Improvement Act 1999: Broadcast Signal Carriage Issues, CS Docket No. 00-96, Retransmission Consent Issues, CS Docket No. 99-363, Report and Order, 16 FCC Rcd 1918 (2000) ("*SHVIA Signal Carriage Order*"); Technical Standards for Determining Eligibility For Satellite-Delivered Network Signals Pursuant To the Satellite Home Viewer Improvement Act, ET Docket No. 00-90, Report, 15 FCC Rcd 24321 (2000); Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules To Satellite Retransmissions of Broadcast Signals, CS Docket No. 00-2, Report and Order, 15 FCC Rcd 21688 (2000) ("*Satellite Exclusivity Order*"); Implementation of the Satellite Home Viewer Improvement Act of 1999, Enforcement Procedures for Retransmission Consent Violations, Order, 15 FCC Rcd 2522 (2000); Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, CS Docket No. 99-363, First Report and Order, 15 FCC Rcd 5445 (2000).

[26] The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Pub. L. No. 108-447, 118 Stat 2809 (2004) (codified in scattered sections of 17 and 47 U.S.C.). The SHVERA was enacted on December 8, 2004 as title IX of the "Consolidated Appropriations Act, 2005." The SHVERA contained additional mandates requiring Commission action, but not relevant to this proceeding, which concerns the carriage of SV stations. *See Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Reciprocal Bargaining Obligation*, MB Docket No. 05-89, Report and Order, 20 FCC Rcd 10339 (2005) ("*Reciprocal Bargaining Order"*) (imposing a reciprocal good faith retransmission consent bargaining obligation on multichannel video programming distributors); *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, MB Docket No. 05-181, Report and Order, 20 FCC Rcd 14242 (2005) (requiring satellite carriers to carry local TV broadcast stations in Alaska and (continued….)

Specifically, the SHVERA expanded the statutory copyright license to allow satellite carriers to retransmit a distant (out-of-market) network station as part of their local service to subscribers in a local market where the Commission determined that distant station to be "significantly viewed" (based on over-the-air viewing).[27] In providing this authority to satellite carriers, Congress sought to create parity with cable operators, who had already had such authority to offer SV stations to subscribers for more than 38 years.[28] The Commission implemented the SHVERA's significantly viewed provisions by publishing a list of SV stations[29] and adopting rules for stations to attain eligibility for significantly viewed status and for subscribers to receive SV stations from satellite carriers. The SHVERA mandated that the Commission apply the same station eligibility requirements (*i.e.*, rules and procedures for parties to show that a station qualifies for significantly viewed status) to satellite carriers that already applied to cable operators.[30] However, to prevent a satellite carrier from favoring SV stations over traditional local market stations, the SHVERA also imposed subscriber eligibility requirements that applied only to satellite carriers.[31]

8. The SHVERA limited subscribers' eligibility to receive SV digital television stations from satellite carriers in two key ways. First, the SHVERA allowed a satellite carrier to offer SV stations only to subscribers that received the carrier's "local-into-local" service.[32] The Commission interpreted

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Hawaii); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Procedural Rules*, Order, 20 FCC Rcd 7780 (2005) ("*Procedural Rules Order*") (adopting procedural rules concerning satellite carriers' notifications to TV broadcast stations and obligations to conduct signal testing); *Public Notice*, "Media Bureau Seeks Comment For Inquiry Required By the on Rules Affecting Competition In the Television Marketplace," MB Docket No. 05-28, 20 FCC Rcd 1572 (2005) (opening inquiry concerning the impact of certain rules and statutory provisions on competition in the television marketplace).

[27] In the SHVERA, Congress again amended both the Communications Act, 47 U.S.C. §§ 325, 338, 339 and 340, and the copyright laws, 17 U.S.C. §§ 119 and 122. In creating a statutory copyright license for satellite carriers to offer significantly viewed stations as part of their local service to subscribers, Congress distinguished between out-of-market stations that had significant over-the-air viewership in a local market (*i.e.*, significantly viewed stations) and truly "distant" stations.

[28] *See SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17280-1, ¶ 2 (2005). In 1972, the Commission adopted the concept of "significantly viewed" stations for cable television to differentiate between out-of-market television stations "that have sufficient audience to be considered local and those that do not." *1972 Cable R&O*, 36 FCC 2d at 174, ¶ 83. The Commission concluded at that time that it would not be reasonable if choices on cable were more limited than choices over the air, and gave cable carriage rights to stations in communities where they had significant over-the-air (non-cable) viewing. *Id.*

[29] *See* note 6, *supra*.

[30] *See* 47 C.F.R. § 76.5, 76.7 and 76.54(a)-(d). As mandated by the SHVERA, the Commission required satellite carriers or broadcast stations seeking significantly viewed status for satellite carriage to follow the same petition process now in place for cable carriage.

[31] 47 U.S.C. § 340(b) (2004). The eligibility requirements also addressed the different carriage requirements that apply to cable (*i.e.*, "must carry" for all cable systems) as compared with satellite (*i.e.*, "carry one, carry all"). *See* ¶ 6, *supra*.

[32] *See id*. at §§ 340(b)(1) (analog service limitations) and (b)(2)(A) (digital service limitations) (2004). The Commission found that "subscriber receipt of 'local-into-local' service [was] unambiguously required by the statute." *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17304-5, ¶ 68. The SHVERA provided for two exceptions to the local service limitations, contained in 47 U.S.C. § 340(b)(3) and (4), respectively. Section 340(b)(3) allows satellite carriage of an SV network station to a subscriber when there is no local station affiliated with the same television network as the SV station present in the local market. Section 340(b)(4) allows a satellite carrier to privately negotiate with the local network station to obtain a waiver of the subscriber eligibility restrictions in Sections 340(b)(1) and 340(b)(2). While revising the eligibility limitations, the STELA retains these exceptions unchanged. *See* discussion in ¶ 19, *infra*.

this provision to further require that the subscriber receive the specific local network station (as part of the carrier's "local-into-local" service) in order for that subscriber to also receive an SV station affiliated with the same network (called the receipt of the "same network affiliate" requirement).[33] Second, the SHVERA allowed a satellite carrier to offer an SV digital station to a subscriber only if the carrier also provided to that subscriber the affiliated local network station in a format that used either (1) an "equivalent" amount of bandwidth for the local and SV network station pair, or (2) the "entire" bandwidth of the local station (called the "equivalent or entire bandwidth" requirement).[34] The Commission interpreted this provision to require an objective comparison of each station's use of its bandwidth in terms of megabits per second (mbps) or bit rate.[35]

III. DISCUSSION

9. STELA simplifies the significantly viewed provisions in Section 340(b) of the Communications Act to make it easier for satellite carriers to offer SV stations to subscribers.[36] The STELA makes two key changes to the significantly viewed provisions in Section 340(b) to ease the limitations on satellite subscriber eligibility to receive SV stations.[37] First, the STELA eliminates the equivalent or entire bandwidth requirement in Section 340(b)(2)(B).[38] In its place, the STELA permits a satellite carrier to carry in high definition (HD) format an SV network station, provided the satellite carrier also carries in HD format the local station in the market that is affiliated with the same network whenever the local station is available in HD format.[39] Second, the STELA strikes Section 340(b)(2)(A), the former digital service limitation which contained the "same network affiliate" limitation language, choosing, instead, to apply Section 340(b)(1), the former analog service limitation which contained only the "local-into-local" service limitation language, to digital stations.[40] Accordingly, we propose rules to implement the changes made to Section 340(b) of the Act and seek comment on them. Our discussion

[33] *Id*. at 17308, ¶ 76 (discussing digital service limitations). The SHVERA's language differed with respect to the analog and digital service limitations. The Commission noted that, "[u]nlike the ambiguity in its sister analog provision [of 47 U.S.C. § 340(b)(1) (2004)], Section 340(b)(2)(A) of the Act, 47 U.S.C. § 340(b)(2)(A) (2004), is clear in requiring a subscriber to receive "the digital signal of a network station in the subscriber's local market that is affiliated with the same television network." *Id*. *See also id*. at 17305, ¶ 70 (discussing analog service limitations).

[34] 47 U.S.C. § 340(b)(2)(B) (2004). Congress sought to prevent satellite carriers from offering the local network station's digital signal "in a less robust format" than the significantly viewed affiliate station's digital signal). *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17314, ¶ 94.

[35] *See SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17315, ¶ 96.

[36] *See H.R. 3570 Report* at 4-5.

[37] STELA § 203(a) (amendments to be codified at 47 U.S.C. § 340(b)(1) and (2)). We note that the subscriber eligibility limitations in 47 U.S.C. § 340(b)(1)-(2), which are amended by the STELA § 203, do not apply to cable subscribers and that we do not propose to substantively amend our significantly viewed rules and procedures that satellite carriers share with cable operators. *See* 47 C.F.R. §§ 76.54(a)-(d); *see also* note 30, *supra*. Furthermore, we note that the STELA § 203 does not amend the "significantly viewed" provisions in the Communications Act governing the eligibility of a television broadcast station to qualify for "significantly viewed" status. *See* 47 U.S.C. §§ 340(a), (c)-(g). Therefore, we do not propose here any substantive (non-"housecleaning") changes to our rules and procedures implementing the significantly viewed station eligibility requirements. *See* 47 C.F.R. §§ 76.54(a)-(f), (j)-(k).

[38] The STELA § 203(a) removes the equivalent or entire bandwidth requirement in 47 U.S.C. § 340(b)(2)(B) and the STELA § 204(c) strikes the definition of equivalent or entire bandwidth in 47 U.S.C. § 340(i)(4).

[39] *See* 47 U.S.C. § 340(b)(2) (2010), as amended by the STELA § 203(a).

[40] *See Id*. § 340(b)(1) (2010), as amended by the STELA § 203(a).

below addresses these two key changes to Section 340(b), and also considers the impact of these changes on the statutory exceptions to this section. We also propose some non-substantive, "housecleaning" rule changes. We seek comment on our proposals and tentative conclusions set forth herein, and also invite comment on any other issues that may be relevant to our implementation of the STELA's amendments to the significantly viewed provisions.

A. Proposed Elimination of "Equivalent or Entire Bandwidth" Requirement

10. In the 2004 SHVERA, Congress enacted the "equivalent" or "entire" bandwidth requirements to prevent a satellite carrier from using technological means to discriminate against a local network station in favor of the SV network affiliate.[41] The Commission codified these requirements in Section 76.54(h) of the rules, which tracks the language of the statute.[42] In implementing this provision, the Commission strictly interpreted the statutory requirement for "equivalent bandwidth." As a result, satellite carriers must ensure virtually minute-by-minute comparisons between the satellite bandwidth allocated to carriage of the local station and the SV stations, making carriage of SV stations so burdensome that they are rarely carried.[43]

11. STELA eliminates the "equivalent or entire bandwidth" requirement from the statute,[44] changing the focus of the provision from "equivalent bandwidth" to "HD format." The STELA amends Section 340(b)(2) of the Act to read as follows:[45]

> SERVICE LIMITATIONS.—A satellite carrier may retransmit to a subscriber in high definition format the signal of a station determined by the Commission to be significantly viewed under subsection (a) only if such carrier also retransmits in high definition format the signal of a

[41] 47 U.S.C. § 340(b)(2)(B) (2004). The law reflects Congress' intent to prevent a satellite carrier from offering the local digital station "in a less robust format" than the SV digital station). *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17314, ¶ 94.

[42] 47 C.F.R. § 76.54(h) states: "Signals of significantly viewed network stations that originate as digital signals may not be retransmitted to subscribers unless the satellite carrier retransmits the digital signal of the local network station, which is affiliated with the same television network as the network station whose signal is significantly viewed, in either (1) at least the equivalent bandwidth of the significantly viewed station or (2) the entire bandwidth of the digital signal broadcast by such local station."

[43] In a House Energy and Commerce Committee Report, Congress noted that the "equivalent bandwidth" requirement "has generally served to discourage satellite carriers from using Section 340 to provide significantly viewed signals to qualified households." *See* House Energy and Commerce Committee Report dated Dec. 12, 2009, accompanying House Bill, H.R. 2994, 111th Cong. (2009), H.R. REP. NO. 111-349, at 16 ("*H.R. 2994 Report*"). *See also* Testimony of Bob Gabrielli, Senior Vice President, Broadcasting Operations and Distribution, DIRECTV, Inc., before the U.S. House of Representatives Subcommittee on Communications, Technology and the Internet, Hearing on Reauthorization of the of the Satellite Home Viewer Extension and Reauthorization Act, at 9 (Feb. 24, 2009) (asserting that it is "infeasible" for DIRECTV to "carry local stations in the same format as SV stations every moment of the day").

[44] We note that DIRECTV, Inc. ("DIRECTV") and EchoStar Satellite LLC ("EchoStar") filed a joint petition, which remains pending, seeking reconsideration of two decisions in the 2005 *SHVERA Significantly Viewed Report and Order*. The first decision challenged by the petition is the Commission's interpretation of the "equivalent bandwidth" requirement. *See* DIRECTV and EchoStar Joint Petition for Reconsideration in MB Docket No. 05-49 (filed Jan. 26, 2006) ("*DIRECTV/ EchoStar Joint Petition*"). As a result of the STELA's elimination of this requirement, we believe the petition on this first issue is now moot. The second issue relates to the receipt of the local analog station affiliate requirement, which we also believe is moot. *See* note 63, *infra*. We expect to dismiss the petition soon after we issue final rules in this proceeding.

[45] 47 U.S.C. § 340(b)(2) (2010), as amended by the STELA § 203(a).

> station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station.

In doing so, Congress intended to facilitate satellite carriage of SV stations, which Congress thought was thwarted by the Commission's implementation of the predecessor provision.[46] The legislative history also indicates an intent by Congress to simplify the law and increase service to satellite consumers.[47] Additionally, in reauthorizing the SHVERA and mostly retaining its framework for the carriage of SV stations, the STELA retains the key goals of its predecessor statute – those being to foster localism and promote parity between cable and satellite service.[48] The principal concern of Congress was simply to clarify that a satellite carrier may provide an SV station in HD format when the local network affiliate is broadcasting only in Standard Definition (SD) format, as long as the carrier provides the local station in HD format whenever such format is available.[49] Moreover, in moving the statutory copyright license into the "local" license, we believe Congress recognized the "local" nature of an SV station,[50] and that carriage of an SV network station, in itself, promotes localism, as long as such station is not favored over the in-market (local) affiliate. Therefore, we tentatively conclude that, in revising the law, Congress intended for the Commission to create a workable framework that would generally provide for the satellite carriage of SV stations, while ensuring that the SV network station is not retransmitted in HD format unless the in-market affiliate is also retransmitted in HD format when so broadcast.

12. Accordingly, we propose to revise our rule in Section 76.54(h), which we now move to Section 76.54(g)(2), to eliminate the "equivalent or entire bandwidth" requirement and to provide that a satellite carrier may retransmit the HD signal of an SV station to a subscriber only if such carrier also retransmits the HD signal of the local station affiliated with the same network whenever that signal is available in HD format.[51] Our proposed rule tracks the revised language in Section 340(b)(2).[52] We also tentatively conclude that Section 340(b)(2), by its terms, only limits satellite carriage of an SV station with respect to HD format; it does not apply if the satellite carrier only carries the SV station in SD format.[53] Finally, we note that the Advanced Television Systems Committee ("ATSC"), a non-profit organization that develops voluntary standards for digital television, including HDTV, defines "high definition" television as having a screen resolution of 720p, 1080i, or higher, and believe that no further definition of "HD format" is needed to implement the statute.[54] We seek comment on our statutory

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[46] *See* note 43, *supra*.

[47] *See H.R. 3570 Report* at 4-5. Congress wanted to clarify that a satellite carrier may provide an SV station in HD format, when the local network affiliate is broadcasting only in Standard Definition (SD) format, as long as the carrier provides the local station in HD format whenever such format is available. *H.R. 2994 Report* at 16.

[48] *See SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17314, ¶ 94.

[49] *H.R. 2994 Report* at 16. The Commission interpreted the "equivalent bandwidth" requirement to include multicast signals. *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17315-16, ¶ 97 (concluding that "if the SV station transmits in HD and the local station transmits multiplexed (multicast) signal, then a satellite carrier may carry the SV station's HD signal, provided it also carries as many of the local station's multicast channels as necessary to match the bandwidth provided to the SV station."). However, the STELA's change to 47 U.S.C. § 340(b)(2) appears to refocus the comparison of the local and SV network station pair on HD format.

[50] *See* notes 14 and 18, *supra*.

[51] *See* Appendix A proposed rule 47 C.F.R. § 76.54(g)(2).

[52] *Id.*

[53] We propose including a sentence in our proposed rule to clarify this point. *See* Appendix A proposed rule 47 C.F.R. § 76.54(g)(2).

interpretation, proposed rule and tentative conclusions. We also seek comment on whether satellite carriers will face any technical problems in order to comply with our proposed rule.

13. Section 340(b)(2) permits retransmission of an SV network station in HD "only if such carrier also retransmits in high definition format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station."[55] We seek comment on the significance of this requirement. What is required by this language in the event a satellite carrier wants to retransmit an SV network affiliate and there is an in-market (local) station that is multicasting in HD format and airing programming affiliated with the same network in HD on a secondary stream? Is the satellite carrier required to carry this secondary stream in HD in order to be permitted to retransmit the SV station in HD even if the in-market station's primary stream is affiliated with another network? We also seek information on the extent to which stations are broadcasting HD programming from two different networks, and whether this is sufficiently rare that it can be addressed on a case-by-case basis, rather than in a rule or order.

B. Proposed Elimination of Requirement to Receive Specific Local Affiliate of the Same Network

14. We propose to amend our rules regarding subscriber eligibility to address STELA's change to Sections 340(b)(1) and 340(b)(2)(A) that eliminates the reference to receiving a specific local station affiliated with the same network as the SV station.[56] In the 2004 SHVERA, Congress authorized satellite carriers to offer SV stations to subscribers, but crafted Sections 340(b)(1) and 340(b)(2)(A) of the Act to protect localism by requiring that these subscribers also receive the carrier's local service.[57] These two provisions, however, contained different language. Whereas Section 340(b)(1),[58] the provision related to analog service, required only that the analog subscriber receive local service "pursuant to Section 338" – referring to the "carry one, carry all" carriage requirements that pertain to local stations,[59]

(Continued from previous page)

[54] *See, e.g., Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules Implementation of the Satellite Home Viewer Improvement Act of 1999*; CS Docket No. 98-120, Local Broadcast Signal Carriage Issues, CS Docket No. 00-96, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2628, ¶ 71 and n 204 (2001) (discussing several formats that are considered "high definition"). *See also Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules Implementation of the Satellite Home Viewer Improvement Act of 1999*; Local Broadcast Signal Carriage Issues, CS Docket No. 00-96, Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 5351, 5354, ¶ 5 (2008). *See also*, *e.g.*, Newton's Telecom Dictionary definition of HDTV at 389 (20th ed. 2004) and the Commission's "DTV Shopping Guide" for consumers at http://www.dtv.gov/shopgde.html.

[55] *See* 47 U.S.C. § 340(b)(2) (2010), as amended by the STELA § 203(a).

[56] *See* 47 U.S.C. § 340(b)(1) (2010), as amended by the STELA § 203(a).

[57] 47 U.S.C. §§ 340(b)(1) and (b)(2)(A) (2004). Congress intended for these provisions to protect localism "by helping ensure that the satellite operator cannot retransmit into a market a significantly viewed digital signal of a network broadcast station from a distant market without also retransmitting into the market a digital signal of any local affiliate from the same network." *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17306-7, ¶¶ 71-2.

[58] 47 U.S.C. § 340(b)(1) (2004), as established in 2004, stated: "With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338."

[59] 47 U.S.C. § 338. *See also* ¶ 6, *supra* (discussing the "carry one, carry all" requirement).

Section 340(b)(2)(A),[60] the provision related to digital service, contained additional language that expressly required the digital subscriber to receive the local station that was specifically "affiliated with the same television network" as the SV station (hereinafter referred to as the "same network affiliate" language). Thus, while each of these provisions clearly required a subscriber to at least receive the satellite carrier's local-into-local service before that subscriber could receive an SV station, it was unclear whether Section 340(b)(1) also required an analog subscriber to receive the specific local network station before that subscriber could receive the SV station affiliated with the same network.[61] For example, the statute did not address the situation where there is a local network station in the local market, but such station fails to request local carriage, refuses to grant retransmission consent, or is otherwise ineligible for local carriage.[62]

15. Ultimately, in the 2005 *SHVERA Significantly Viewed Report and Order*, the Commission interpreted both Sections 340(b)(1) and 340(b)(2)(A) to require that the subscriber receive the specific local station that is affiliated with the same network as the SV station.[63] Although Section 340(b)(1) lacked the express "same network affiliate" language as contained in Section 340(b)(2)(A), the Commission read the two provisions together and interpreted Section 340(b)(1) to also contain the "same network affiliate" requirement, based largely on the notion that Congress intended the two provisions to achieve similar ends.[64] Accordingly, the Commission adopted Section 76.54(g) of the rules, based on the "same network affiliate" language in Section 340(b)(2)(A).[65]

16. In the STELA, Congress strikes Section 340(b)(2)(A), which governed digital stations and included the "same network affiliate" language,[66] and removes the references to analog in Section

[60] 47 U.S.C. § 340(b)(2)(A) (2004), as established in 2004, stated: "With respect to a signal that originates as a digital signal of a network station, this section shall apply only if – (A) the subscriber receives from the satellite carrier pursuant to section 338 the retransmission of the digital signal of a network station in the subscriber's local market that is affiliated with the same television network ….."

[61] *Id*. at 17304-8, ¶¶ 68, 70-73.

[62] *See id*. at 17304, ¶ 67.

[63] *Id*. at 17305 and 17308, ¶¶ 70 and 76. This is the second decision challenged by the pending 2006 *DIRECTV/ EchoStar Joint Petition*. *See* note 44, *supra*. The petition challenged only the Commission's interpretation of the *analog* service limitation provision in 47 U.S.C. § 340(b)(1), essentially conceding the meaning of the plain language in the digital provision in 47 U.S.C. § 340(b)(2)(A). With the end of analog full-power broadcasting (due to the completion of DTV transition), we believe this second issue in the petition is also moot, and we expect to dismiss the petition soon after we issue final rules in this proceeding.

[64] *See id*. at 17307, ¶ 72. We note that the Commission also stated that its interpretation of Section 340(b)(1) was necessary to give meaning to the statutory exceptions in Sections 340(b)(3)-(4) (*see* note 32, *supra*). As discussed, *infra*, in paragraph 18 and note 75, we believe the statutory exceptions remain meaningful to, and are consistent with, our proposed interpretation of Section 340(b)(1) as amended by STELA.

[65] 47 C.F.R. § 76.54(g) states: "(g) Signals of analog or digital significantly viewed television broadcast stations may not be retransmitted by satellite carriers to subscribers who do not receive local-into-local service, including a station affiliated with the same network as the significantly viewed station, pursuant to §76.66 of this chapter; except that a satellite carrier may retransmit a significantly viewed signal of a television broadcast station to a subscriber who receives local-into-local service but does not receive a local station affiliated with the same network as the significantly viewed station, if: (1) There is no station affiliated with the same television network as the station whose signal is significantly viewed; or (2) The station affiliated with the same television network as the station whose signal is significantly viewed has granted a waiver in accordance with 47 U.S.C. 340(b)(4)."

[66] 47 U.S.C § 340(b)(2)(A) (2004). The digital local service provision provided: "With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—(A) the subscriber receives from the satellite carrier pursuant to section 338 of this title the retransmission of the digital signal of a network station in (continued….)

340(b)(1) because of the completion of the DTV transition.[67] Specifically, the STELA amends Section 340(b)(1) of the Act to read as follows:[68]

> SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—This section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal from that satellite carrier pursuant to section 338.

This provision, as amended, still contains the local-into-local service requirement,[69] but no longer requires carriage of the local affiliate of the same network. We presume that Congress acted intentionally and purposely when it chose to discard the "same network affiliate" language in Section 340(b)(2)(A), which language the Commission had relied upon for its more restrictive interpretation of Section 340(b)(1).[70]

17. Accordingly, we propose to revise our rule in Section 76.54(g) to reflect the amended statutory language in Section 340(b)(1).[71] We tentatively conclude that, by striking Section 340(b)(2)(A), Congress intended to eliminate the requirement that a subscriber receive the specific local station that is affiliated with the same network as the SV station. Therefore, our proposed rule requires only that a subscriber receive the satellite carrier's local-into-local service as a pre-condition for the subscriber to receive SV stations. We note that this interpretation would allow a satellite carrier to carry an SV station affiliated with a particular network if the local in-market station affiliated with the same network does not grant retransmission consent. We seek comment on our proposed rule and tentative conclusions.

C. Statutory Exceptions to the Subscriber Eligibility Limitations

18. While revising the subscriber eligibility limitations in Sections 340(b)(1) and 340(b)(2), the STELA retains without change the statutory exceptions in Sections 340(b)(3) and 340(b)(4) to these restrictions.[72] As noted above, the Section 340(b)(3) exception to the subscriber eligibility limitations

(Continued from previous page)
the subscriber's local market *that is affiliated with the same television network*; and" (B) the retransmission complies with either the (i) equivalent or (ii) entire bandwidth requirement. (Emphasis added.)

[67] 47 U.S.C § 340(b)(1) (2004). The analog local service provision provided: "With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338 of this title."

[68] 47 U.S.C. § 340(b)(1) (2010), as amended by the STELA § 203(a).

[69] The provision limits subscriber eligibility for SV stations to those subscribers that receive retransmissions from their satellite carrier pursuant to the "carry one, carry all" requirement in 47 U.S.C. § 338. *See* ¶ 6, *supra* (explaining that 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).

[70] *See*, *e.g.*, *Moshe Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1990) ("[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal citations omitted); *Russello v. United States*, 464 U.S. 16, 23 (1983) (same); *Estate of Bell v. Commissioner*, 928 F.2d 901, 904 (9th Cir. 1991) ("Congress is presumed to act intentionally and purposely when it includes language in one section but omits it in another."); *Arizona Elec. Power Co-op. v. United States*, 816 F.2d 1366, 1375 (9th Cir. 1987) ("When Congress includes a specific term in one section of a statute but omits in another section of the same Act, it should not be implied where it is excluded.").

[71] *See* Appendix A proposed rule 47 C.F.R. § 76.54(g)(1).

[72] 47 U.S.C. § 340(b)(3) and (4). We note that the STELA § 103 does amend the waiver provision in the corresponding satellite statutory copyright license in 17 U.S.C. § 122(a)(2) to eliminate the "sunset" provision and replace the term "superstation" with "non-network station" (*see* note 20, *supra*).

permits a satellite carrier to offer an SV network station to a subscriber when there is no local network affiliate present in the local market.[73] The Section 340(b)(4) exception permits a satellite carrier to privately negotiate with the local network station to obtain a waiver of the eligibility restrictions.[74] These two exceptions provide as follows:

> (b)(3) The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.
>
> (b)(4) Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

We tentatively conclude that these statutory exceptions will continue to apply as they have before and are consistent with our proposed interpretations of the amended subscriber limitation provisions in Sections 340(b)(1)-(2). We believe the statutory exceptions in Sections 340(b)(3)-(4) will continue to have meaning, and would not be superfluous, to our proposed interpretation of Section 340(b)(1).[75] For example, the statutory exceptions in Sections 340(b)(3)-(4) would still apply where local-into-local service is not available to a subscriber for technical reasons (such as the spot beam does not cover the DMA or its reception is blocked for an individual subscriber by terrain or foliage) or if local-into-local service is not yet offered by the satellite carrier to a subscriber's market. We seek comment on our tentative conclusions. We also invite comment on whether application of these unchanged statutory exceptions to the amended subscriber limitation provisions raise any issues that may be relevant to our implementation of the Section 340(b) significantly viewed provisions as a whole.

D. Housecleaning Rule Changes

19. In this section, we propose non-substantive changes to update our significantly viewed rules. We seek comment on these proposed rule changes.

20. Section 76.5(i). We propose to amend Section 76.5(i) of the rules to replace its references to the term "non-cable" with the term "over-the-air."[76] In the 2005 *SHVERA Significantly Viewed Report and Order*, the Commission made this change to Section 76.54 to reflect the rule's true meaning, that being to indicate over-the-air viewing.[77] The Commission explained that, in the *1972 Order*, the concept of significant viewing was adopted to apply to over-the-air households, which at the time essentially meant households without cable (*i.e.*, non-cable households).[78] Thus, amending Section

[73] *Id*. at § 340(b)(3). *See* note 32, *supra*.

[74] *Id*. at § 340(b)(4).

[75] *See SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17306-7, ¶ 71. The Commission stated that if Section 340(b)(1) only required receipt of any local-into-local service as a prerequisite to receiving an SV network affiliate, as opposed to receiving the specific local affiliate of the same network as the SV station, then there would be no need for the statutory exceptions in Sections 340(b)(3)-(4) to apply to Section 340(b)(1). *Id*.

[76] *See* Appendix A proposed rule change to 47 C.F.R. § 76.5(i).

[77] *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17292-3, ¶ 32.

[78] *Id*. (citing to *1972 Cable R&O,* 36 FCC 2d at 175-6, ¶¶ 83-6).

76.5(i) to change "non-cable" to "over-the-air" reflects the true intent of the rule as it was in 1976, and is more consistent with the statute's intent to establish parity between cable and satellite.

21. Section 76.54(c). We propose to amend Section 76.54(c) of the rules to strike the outdated reference to the analog Grade B contour.[79] In the 2004 *SHVERA Significantly Viewed Report and Order*, the Commission revised this rule to add the appropriate service contour relevant for a station's digital signal – that being the noise limited service contour ("NLSC").[80] With the completion of the transition, we now propose to eliminate this reference to Grade B contour.

IV. CONCLUSION

22. In conclusion, in this NPRM, we propose to simplify our satellite TV significantly viewed rules, as mandated by Congress. To implement Section 203 of the STELA, we propose changes to Section 76.54 of our rules. Our proposed rule changes – shown in Appendix A of this document – are modeled on the amended language in the statute. Specifically, we propose to eliminate both the "equivalent or entire bandwidth" requirement and the requirement for a subscriber to receive the specific local affiliate of the SV station.

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

23. As required by the Regulatory Flexibility Act of 1980 ("RFA"),[81] the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") relating to this NPRM. The IRFA is attached to this NPRM as Appendix B.

B. Initial Paperwork Reduction Act of 1995 Analysis

24. This NPRM has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA"),[82] and does not propose any new or modified information collection requirements.[83] In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002.[84]

C. Ex Parte Rules

25. Permit-But-Disclose. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules.[85] *Ex parte* presentations are permissible if disclosed in accordance with

[79] *See* Appendix A proposed rule change to 47 C.F.R. § 76.54(c).

[80] *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17292, ¶ 31. (The digital NLSC is defined in 47 C.F.R. § 73.622(e).)

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

[82] The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[83] The Commission does not propose to modify the existing information collections that relate to the Commission's significantly viewed rules and procedures: OMB Control Nos. 3060-0311 (47 C.F.R. § 76.54), 3060-0960 (47 C.F.R. §§ 76.122, 76.123, 76.124, 76.127), and 3060-0888 (47 C.F.R. § 76.7). The Commission will continue to maintain these collections and seek extensions at the appropriate time.

[84] The Small Business Paperwork Relief Act of 2002 ("SBPRA"), Pub. L. No. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

[85] *See* 47 C.F.R. § 1.1206(b); *see also id.* §§ 1.1202, 1.1203.

Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[86] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

D. Filing Requirements

26. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,[87] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.[88]

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

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

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

27. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

28. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's

[86] *See id.* § 1.1206(b)(2).

[87] *See id.* §§ 1.415, 1419.

[88] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: http://www.fcc.gov.

29. Additional Information. For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

VI. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED that pursuant to Section 203 of the Satellite Television Extension and Localism Act of 2010, and Sections 1, 4(i) and (j), and 340 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), and 340, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

31. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rule Changes

The Federal Communications Commission proposes to amend Part 76 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

PART 76 – Multichannel Video and Cable Television Service.

1. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Amend § 76.5 by revising paragraph (i) and the Note to paragraph (i) to read as follows:

   a. In § 76.5, paragraph (i), remove the words "other than cable television" and add, in their place, the words "over-the-air".

   b. In § 76.5, Note to paragraph (i), in each place, remove the word "noncable" and add, in their place, the words "over-the-air".

3. Amend § 76.54 by revising paragraphs (c), (g) and (h) to read as follows:

§ 76.54 Significantly viewed signals; method to be followed for special showings.

* * * * *

(c) Notice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted noise limited service contour, as defined in §73.622(e) of this chapter, the cable or satellite community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least (30) days prior to the initial survey period. * * *

* * * * *

(g) Limitations on satellite subscriber eligibility. A satellite carrier may retransmit a significantly viewed network station to a subscriber, provided the subscriber satisfies the conditions in paragraphs (1) and (2) of this section or qualifies for one of the two exceptions to these conditions provided in paragraphs (3) and (4) of this section.

(1) Receipt of local-into-local service. A satellite carrier may retransmit to a subscriber the signal of a significantly viewed station only if that subscriber receives local-into-local service, pursuant to §76.66 of this chapter.

(2) Receipt in HD format. A satellite carrier may retransmit to a subscriber in high definition (HD) format the signal of a significantly viewed station only if such carrier also retransmits in HD format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station. This condition does not apply to, nor prohibit, the retransmission to a subscriber of a significantly viewed station in standard definition (SD) format.

(3) Exception if no network affiliate in local market. The limitations in paragraphs (1) and (2) of this section will not prohibit a satellite carrier from retransmitting a significantly viewed network station to a

subscriber located in a local market in which there are no network stations affiliated with the same television network as the significantly viewed station.

(4) Exception if waiver granted by local station. The limitations in paragraphs (1) and (2) of this section will not apply if, and to the extent that, the local network station affiliated with the same television network as the significantly viewed station has granted a waiver in accordance with 47 U.S.C. § 340(b)(4).

(h) [reserved]

* * * * *

Proposed Rule Changes Showing Changes

For ease of review, the proposed rule changes are repeated here showing changes in bold/underline (for additions) or strikethrough/underline (for deletions) text.

1. Section 76.5 is amended by revising paragraph (i) and the Note to paragraph (i) to read as follows:

§ 76.5 Definitions.

* * * * *

(i) Significantly viewed. Viewed in ~~other than cable television~~**over-the-air** households as follows: (1) For a full or partial network station—a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent; and (2) for an independent station—a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent. See §76.54.

Note: As used in this paragraph, "share of viewing hours" means the total hours that ~~noncable~~**over-the-air** television households viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the period, and "net weekly circulation" means the number of ~~noncable~~**over-the-air** television households that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total ~~noncable~~**over-the-air** television households in the survey area.

* * * * *

2. Section 76.54 is amended by revising paragraphs (c), (g) and (h) as set forth below:

§ 76.54 Significantly viewed signals; method to be followed for special showings.

* * * * *

(c) Notice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted ~~Grade B contour (and, with respect to a survey pertaining to a station broadcasting only a digital signal, the~~ noise limited service contour, as defined in §73.622(e)~~)~~ of this chapter**,** the cable or satellite community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least (30) days prior to the initial survey period. * * *

* * * * *

(g) Limitations on satellite subscriber eligibility. A satellite carrier may retransmit a significantly viewed network station to a subscriber, provided the subscriber satisfies the conditions in paragraphs (1) and (2) of this section or qualifies for one of the two exceptions to these conditions provided in paragraphs (3) and (4) of this section.

(1) Receipt of local-into-local service. A satellite carrier may retransmit to a subscriber the signal of a significantly viewed station only if that subscriber receives local-into-local service, pursuant to §76.66 of this chapter. ~~(g) Signals of analog or digital significantly viewed television broadcast stations may not be retransmitted by satellite carriers to subscribers who do not receive local-into-local service, including a station affiliated with the same network as the significantly viewed station, pursuant to section 76.66; except that a satellite carrier may retransmit a significantly viewed signal of a television broadcast station to a subscriber who receives local-into-local service but does not receive a local station affiliated with the same network as the significantly viewed station, if~~

(2) Receipt in HD format. A satellite carrier may retransmit to a subscriber in high definition (HD) format the signal of a significantly viewed station only if such carrier also retransmits in HD format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station. This condition does not apply to, nor prohibit, the retransmission to a subscriber of a significantly viewed station in standard definition (SD) format. ~~(h) Signals of significantly viewed network stations that originate as digital signals may not be retransmitted to subscribers unless the satellite carrier retransmits the digital signal of the local network station, which is affiliated with the same television network as the network station whose signal is significantly viewed, in either (1) at least the equivalent bandwidth of the significantly viewed station or (2) the entire bandwidth of the digital signal broadcast by such local station.~~

(3) Exception if no network affiliate in market. The limitations in paragraphs (1) and (2) of this section will not prohibit a satellite carrier from retransmitting a significantly viewed network station to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the significantly viewed station. ~~(1) there is no station affiliated with the same television network as the station whose signal is significantly viewed; or~~

(4) Waiver granted by local station. The limitations in paragraphs (1) and (2) of this section will not apply if, and to the extent that, the local network station affiliated with the same television network as the significantly viewed station has granted a waiver in accordance with 47 U.S.C. § 340(b)(4). ~~(2) the station affiliated with the same television network as the station whose signal is significantly viewed has granted a waiver in accordance with 47 U.S.C. § 340(b)(4).~~

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* ("*NPRM*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in Section V.D. of the *NPRM*. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rule Changes

2. This document proposes changes to the Commission's satellite television "significantly viewed" rules to implement Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA).[4] The STELA requires the Commission to issue final rules in this proceeding on or before Wednesday, November 24, 2010.[5]

3. Section 203 of the STELA amends Section 340 of the Communications Act, which gives satellite carriers the authority to offer out-of-market but "significantly viewed" broadcast television network stations as part of their local service to subscribers.[6] The designation of "significantly viewed" status allows a station assigned to one DMA to be treated as a "local" station with respect to a particular cable or satellite community in another DMA, and, thus, enables cable or satellite carriage into said community in that other DMA. Whereas cable operators have had carriage rights for "significantly viewed" ("SV") stations since 1972, satellite carriers have had such authority only since the 2004 Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) and may only retransmit SV network stations to "eligible" satellite subscribers. The satellite subscriber eligibility rules impose conditions on when satellite carriers may retransmit SV stations to subscribers. These conditions are intended to prevent satellite carriers from favoring an SV network station over the in-market (local) station affiliated with the same network. We note that the nature of SV carriage under Section 340 is permissive (and not mandatory), meaning the statute applies when a satellite carrier chooses to carry an SV station and has obtained retransmission consent from such SV station.[7]

4. Section 203 of the STELA amends the SHVERA's Section 340(b) satellite subscriber eligibility rules in two ways. First, it eliminates the former requirement that satellite carriers devote "equivalent bandwidth" to the carriage of the in-market (local) station as compared with the bandwidth

[1] *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).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] The Satellite Television Extension and Localism Act of 2010 (STELA) § 203, Pub. L. No. 111-175, 124 Stat 1218, 1245 (2010) (§ 203 codified as amended at 47 U.S.C. § 340, other STELA amendments codified in scattered sections of 17 and 47 U.S.C.).

[5] STELA § 203(b).

[6] 47 U.S.C. § 340.

[7] *Id*. at § 340(d).

devoted to carriage of the out-of-market SV station.[8] In its place, the STELA requires a satellite carrier to retransmit "in high definition format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station."[9] Second, STELA revises the subscriber eligibility requirements by eliminating the SHVERA requirement that the subscriber receive the local station affiliated with the same network as the SV station and requires only that the subscriber receive the local-into-local package from the satellite carrier.[10] The STELA does not amend the SHVERA's Section 340(a) station eligibility requirements, which govern the eligibility of a television broadcast station to qualify for "significantly viewed" status.[11]

5. To implement the STELA's two amendments to Section 340(b), the NPRM proposes the following changes to our satellite subscriber eligibility rules:

- The document proposes to eliminate the requirement that satellite carriers offer "equivalent bandwidth" to the local and SV network station pair, and to require instead carriage of the local network affiliate in high definition (HD) as a precondition to satellite carriage of the HD programming of an SV station affiliated with the same network.
- The document proposes to eliminate the requirement that a subscriber receive the specific local network station (as part of the satellite carrier's "local-into-local" service) in order for that subscriber to also receive an SV station affiliated with the same network and to require instead that the subscriber receive local-into-local satellite service.

Finally, the document also seeks comment on the proposals and tentative conclusions set forth in the NPRM, and invites comment on any other issues that may be relevant to the Commission's implementation of the STELA's amendments to the significantly viewed provisions.

B. Legal Basis

6. The proposed action is authorized pursuant to Section 203 of the Satellite Television Extension and Localism Act of 2010, and Sections 1, 4(i) and (j), and 340 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i) and (j), and 340.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. 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, if adopted.[12] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[13] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[14] A small business

[8] 47 U.S.C. § 340(b)(2)(B) (2004). *See* NPRM note 34, *supra*.

[9] 47 U.S.C. § 340(b)(2) (2010), as amended by the STELA § 203(a).

[10] *Id*. § 340(b)(1) (2010), as amended by the STELA § 203(a). *See* NPRM ¶ 6, *supra* (explaining that "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").

[11] 47 U.S.C. § 340(a). Accordingly, the NPRM does not propose any changes to such station eligibility requirements; *see* 47 C.F.R. § 76.54(a)-(f), (j)-(k). *See also* NPRM note 37.

[12] 5 U.S.C. § 603(b)(3).

[13] 5 U.S.C. § 601(6).

[14] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after (continued….)

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 SBA.[15] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

8. Satellite Carriers. The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed under Part 25 of the Commission's rules to operate in the Direct Broadcast Satellite (DBS) service or Fixed-Satellite Service (FSS) frequencies.[16] As a general practice (not mandated by any regulation), DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.[17] In the *SHVERA Significantly Viewed Report and Order*, the Commission concluded that the definition of "satellite carrier" includes all three of these types of entities.[18]

9. Direct Broadcast Satellite ("DBS") Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, "Wired Telecommunications Carriers,"[19] which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[20]

(Continued from previous page)
consultation with the Office of Advocacy of the Small Business Administration 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." 5 U.S.C. § 601(3).

[15] 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[16] The Communications Act defines the term "satellite carrier" by reference to the definition in the copyright laws in title 17. *See* 47 U.S.C. §§ 340(i)(1) and 338(k)(3); 17 U.S.C. §119(d)(6). Part 100 of the Commission's rules was eliminated in 2002 and now both FSS and DBS satellite facilities are licensed under Part 25 of the rules. *Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd 11331 (2002); 47 C.F.R. § 25.148.

[17] *See, e.g., Application Of DirecTV Enterprises, LLC, Request For Special Temporary Authority for the DirecTV 5 Satellite; Application Of DirecTV Enterprises, LLC, Request for Blanket Authorization for 1,000,000 Receive Only Earth Stations to Provide Direct Broadcast Satellite Service in the U.S. using the Canadian Authorized DirecTV 5 Satellite at the 72.5° W.L. Broadcast Satellite Service Location,* 19 FCC Rcd. 15529 (Sat. Div. 2004).

[18] *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17302-3, ¶¶ 59-60.

[19] *See* 13 C.F.R. § 121.201, NAICS code 517110 (2007). The 2007 North American Industry Classification System ("NAICS") defines the category of "Wired Telecommunications Carriers" as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*" (*Emphasis* added to text relevant to satellite services.) U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; http://www.census.gov/naics/2007/def/ND517110.HTM.

[20] 13 C.F.R. § 121.201, NAICS code 517110 (2007).

However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." The definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts.[21] Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation ("EchoStar") (marketed as the DISH Network).[22] Each currently offer subscription services. DIRECTV[23] and EchoStar[24] each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider. We seek comments that have data on the annual revenues and number of employees of DBS service providers.

10. Fixed-Satellite Service ("FSS"). The FSS is a radiocommunication service between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites.[25] The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. FSS, by exception, is now included in the SBA's broad economic census category, "Wired Telecommunications Carriers,"[26] which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[27] However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." The definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts.[28] Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. The two DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS frequencies to broadcast signals to subscribers. It is possible that other entities could similarly use FSS frequencies, although we are not aware of any entities that might do so.

11. Television Broadcasting. The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts.[29] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[30] The

[21] 13 C.F.R. § 121.201, NAICS code 517510 (2002).

[22] S*ee Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 580, ¶ 74 (2009) ("13th Annual Report"). We note that, in 2007, EchoStar purchased the licenses of Dominion Video Satellite, Inc. ("Dominion") (marketed as Sky Angel). *See* Public Notice, "Policy Branch Information; Actions Taken," Report No. SAT-00474, 22 FCC Rcd 17776 (IB 2007).

[23] As of June 2006, DIRECTV is the largest DBS operator and the second largest MVPD, serving an estimated 16.20% of MVPD subscribers nationwide. *See id*. at 687, Table B-3.

[24] As of June 2006, DISH Network is the second largest DBS operator and the third largest MVPD, serving an estimated 13.01% of MVPD subscribers nationwide. *Id*. As of June 2006, Dominion served fewer than 500,000 subscribers, which may now be receiving "Sky Angel" service from DISH Network. *See id*. at 581, ¶ 76.

[25] *See* 47 C.F.R. § 2.1(c).

[26] *See* 13 C.F.R. § 121.201, NAICS code 517110 (2007).

[27] 13 C.F.R. § 121.201, NAICS code 517110 (2007).

[28] 13 C.F.R. § 121.201, NAICS code 517510 (2002).

[29] *See* 13 C.F.R. § 121.201, NAICS Code 515120 (2007).

[30] *Id*. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or (continued….)

Commission has estimated the number of licensed commercial television stations to be 1,392.[31] According to Commission staff review of the BIA/Kelsey, MAPro Television Database ("BIA") as of April 7, 2010, about 1,015 of an estimated 1,380 commercial television stations[32] (or about 74 percent) have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390.[33] We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[34] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

12. In addition, 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 estimate 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. Also, as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

13. Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs). SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, "Wired Telecommunications Carriers,"[35] which was developed for small wireline firms.[36] Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[37] However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." The definition of Cable and Other

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from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[31] *See* News Release, "Broadcast Station Totals as of December 31, 2009," 2010 WL 676084 (F.C.C.) (dated Feb. 26, 2010) ("*Broadcast Station Totals*"); also available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296538A1.pdf.

[32] We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra*, note 33; however, we are using BIA's estimate for purposes of this revenue comparison.

[33] *See Broadcast Station Totals*, *supra*, note 33.

[34] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

[35] *See* 13 C.F.R. § 121.201, NAICS code 517110 (2007).

[36] Although SMATV systems often use DBS video programming as part of their service package to subscribers, they are not included in Section 340's definition of "satellite carrier." *See* 47 U.S.C. §§ 340(i)(1) and 338(k)(3); 17 U.S.C. §119(d)(6).

[37] 13 C.F.R. § 121.201, NAICS code 517110 (2007).

Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts.[38] As of June 2004, there were approximately 135 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs.[39] The IMCC indicates that, as of June 2006, PCOs serve about 1 to 2 percent of the multichannel video programming distributors (MVPD) marketplace.[40] Individual PCOs often serve approximately 3,000-4,000 subscribers, but the larger operations serve as many as 15,000-55,000 subscribers. In total, as of June 2006, PCOs serve approximately 900,000 subscribers.[41] Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest 10 PCOs, we believe that a substantial number of PCOs may have been categorized as small entities under the now superseded SBA small business size standard for Cable and Other Program Distribution.[42]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The NPRM's proposed rules do not impose any new reporting, recordkeeping or other compliance requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. 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 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.[43]

16. We invite comment on whether there are any alternatives we should consider to our proposed implementation of the statutory amendments to Section 340(b) that would minimize any adverse impact on small businesses, but which are consistent with the statute and its goals and also maintain the benefits of our proposals. As discussed in the NPRM, STELA's amendments to Section 340(b) intend to facilitate satellite carriage of SV stations, with the expectation that this will increase satellite TV service to consumers and promote regulatory parity between cable and satellite service.[44] We believe our proposed rule changes implement the statute in the way that is most consistent with the plain language of

[38] 13 C.F.R. § 121.201, NAICS code 517510 (2002).

[39] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, FCC 05-13, ¶ 110 (rel. Feb. 4, 2005) ("*2005 Cable Competition Report*").

[40] *See 13th Annual Report*, 24 FCC Rcd at 684, Table B-1.

[41] *Id*.

[42] 13 C.F.R. § 121.201, NAICS code 517510 (2002).

[43] 5 U.S.C. § 603(c)(1)-(c)(4)

[44] *See H.R. 3570 Report* at 4-5; *H.R. 2994 Report* at 16. *See also* NPRM ¶ 11. In the NPRM, we stated that, in revising the law, Congress intended for the Commission to create a framework that would generally provide for the satellite carriage of SV stations. *Id*.

the statute.[45] We also note that the plain language of the statute does not appear to give us discretion to treat small entities differently from larger ones, but seek comment on this question.

17. As was the intent of Congress, we believe our proposed rules will benefit satellite carriers and the SV stations which they would carry,[46] as well as consumers of satellite TV service.[47] We believe that adverse impact to these entities is unlikely because SV carriage under Section 340 is permissive (and not mandatory); that is, the satellite carrier chooses to carry an SV station and the SV station must grant its consent to be carried.[48] We do not have data to measure whether small TV stations on the whole, including in-market network affiliates, are more or less likely to benefit from satellite carriage of SV stations, so we invite small stations to comment on this issue.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

18. None.

[45] Our proposed rules are based on, and largely track, the amended language of the statute.

[46] For example, small broadcast stations will benefit from the opportunity to be delivered as an SV station to more viewers.

[47] *See H.R. 3570 Report* at 4-5.

[48] *See* 47 U.S.C. § 340(d).