(12) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(13) The locations where all specimens, raw data, and the final report are to be stored.

(14) The statement prepared and signed by the quality assurance unit as described in § 806.35(b)(7).

(b) The final report shall be signed and dated by the study director.

(c) Corrections or additions to a final report shall be in the form of an amendment by the study director. The amendment shall clearly identify that part of the final report that is being added to or corrected and the reasons for the correction or addition, and shall be signed and dated by the person responsible. Modification of a final report to comply with the submission requirements of EPA does not constitute a correction, addition, or amendment to a final report.

(d) A copy of the final report and of any amendment to it shall be maintained by the sponsor and the test facility.

§ 806.190 Storage and retrieval of records and data.

(a) All raw data, documentation, records, protocols, specimens, and final reports generated as a result of a study shall be retained. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. Correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report, also shall be retained.

(b) There shall be archives for orderly storage and expedient retrieval of all raw data, documentation, protocols, specimens, and interim and final reports. Conditions of storage shall minimize deterioration of the documents or specimens in accordance with the requirements for the time period of their retention and the nature of the documents of specimens. A testing facility may contract with commercial archives to provide a repository for all material to be retained. Raw data and specimens may be retained elsewhere provided that the archives have specific reference to those other locations.

(c) An individual shall be identified as responsible for the archives.

(d) Only authorized personnel shall enter the archives.

(e) Material retained or referred to in the archives shall be indexed to permit expedient retrieval.

§ 806.195 Retention of records.

(a) Record retention requirements set forth in this section do not supersede the record retention requirements of any other regulations in this subchapter.

(b) Except as provided in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for:

(1) In the case of applicability under § 806.1(a), whichever of the following periods is longest:

(i) In the case of any study used to support an application for a research or marketing permit approved by EPA, the period during which the sponsor or any successor(s) hold(s) any research or marketing permit to which the study is pertinent.

(ii) A period of at least 5 years following the date on which the results of the study are submitted to EPA in support of an application for a research or marketing permit.

(iii) In other situations (e.g., where the study does not result in the submission of the study in support of an application for a research or marketing permit), a period of at least 2 years following the date on which the study is completed, terminated, or discontinued.

(2) In the case of applicability under § 806.1(b):

(i) In the case of a study required to be conducted under TSCA section 4 or section 5, except for those items listed in paragraph (c) of this section, all documentation, records, raw data, and specimens pertaining to that study and required to be retained by this part shall be retained in the archive(s) for a period of at least 5 years following the date on which the final report of that required study is submitted to EPA.

(ii) [Reserved]

(c) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage, shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. In no case shall retention be required for longer periods than those set forth in paragraph (b) of this section.

(d) The master schedule sheet, copies of protocols, and records of quality assurance inspections, as required by § 806.35(c) shall be maintained by the quality assurance unit as an easily accessible system of records for the period of time specified in paragraph (b) of this section.

(e) Summaries of training and experience and job descriptions required to be maintained by § 806.29(b) may be retained along with all other testing facility employment records for the length of time specified in paragraph (b) of this section.

(f) Records and reports of the maintenance and calibration and inspection of equipment, as required by § 806.63(b) and (c), shall be retained for the length of time specified in paragraph (b) of this section.

(g) If a facility conducting testing or an archive contracting facility goes out of business, all raw data, documentation, and other material specified in this section shall be transferred to the archives of the sponsor of the study. EPA shall be notified in writing of such a transfer.

(h) Specimens, samples, or other non-documentary materials need not be retained after EPA has notified in writing the sponsor or testing facility holding the materials that retention is no longer required by EPA. Such notification normally will be furnished upon request after EPA or FDA has completed an audit of the particular study to which the materials relate and EPA has concluded that the study was conducted in accordance with this part.

(i) Records required by this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records.

[FR Doc. 99–33831 Filed 12–28–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 99–363; FCC 99–406]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to implement certain aspects of the

Satellite Home Viewer Improvement Act of 1999, which was enacted on November 29, 1999. Among other things, the new legislation requires broadcasters, until the year 2006, to negotiate in good faith with satellite carriers and other multichannel video programming distributors (''MVPDs'') with respect to their retransmission of the broadcasters'' signals, and prohibits broadcasters from entering into exclusive retransmission agreements. We seek comment on these issues. This document also seeks comment on the adoption of implementing regulations relating to the exercise by television broadcast stations of the right to grant retransmission consent to satellite carriers and other MVPDs.

DATES: Comments by the public on the Exclusivity and Good Faith Negotiation Sections are due January 12, 2000; reply comments are due January 19, 2000. Comments on Retransmission Consent Election Process and Administrative Matters are due February 1, 2000; reply comments are due February 20, 2000. Written comments by the public on the proposed information collections relating to the entire Notice are due February 1, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before February 28, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to vhuth@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Steve Broeckaert at (202) 418–7200 or via internet at sbroecka@fcc.gov. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (''NPRM''), FCC 99–406, adopted December 21, 1999; released December 22, 1999. The full text of the Commission's NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW Washington, D.C. 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at http://www.fcc.gov/csb/

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking (''*Notice*''), we seek comment on our implementation of certain aspects of the Satellite Home Viewer Improvement Act of 1999 (''1999 SHVIA''), which was enacted on November 29, 1999. This act authorizes satellite carriers to add more local and national broadcast programming to their offerings, and to make that programming available to subscribers who previously have been prohibited from receiving broadcast fare via satellite under compulsory licensing provisions of the copyright law. The legislation generally seeks to place satellite carriers on an equal footing with local cable operators when it comes to the availability of broadcast programming, and thus give consumers more and better choices in selecting a multichannel video program distributor (''MVPD''). We intend to implement the 1999 SHVIA aggressively to ensure that the pro-competitive goals underlying this important legislation are realized.

2. Among other things, the new legislation requires broadcasters, until 2006, to negotiate in good faith with satellite carriers and other MVPDs with respect to their retransmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission agreements. We are initiating, and plan to conclude, this rulemaking well ahead of our statutory deadlines for doing so because of the vital importance of these provisions of the 1999 SHVIA. Strict adherence by broadcasters to the good faith requirement is crucial if the statutory objectives are to be fulfilled. This *Notice* also seeks comment on the adoption of implementing regulations relating to the exercise by television broadcast stations of the right to grant retransmission consent. Retransmission consent is the process whereby television broadcasters negotiate and consent to carriage of their signals by MVPDs such as cable television operators and satellite carriers.

II. Retransmission Consent

3. The Commission, in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (''Broadcast Signal Carriage Order'')* (58 FR 17350), implemented the retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''). The 1992 Cable Act amended section 325 of the Communications Act of 1934 by adding provisions governing retransmission of broadcast signals by cable systems and other MVPDs. Section 325 of the 1992 Cable Act provided that television broadcast stations were required to make an election every three years whether to proceed under the mandatory cable signal carriage rules or to govern their relationship with cable operators or other MVPDs by electing retransmission consent. Congress indicated that the retransmission consent and must-carry rule election provisions adopted pursuant to the 1992 Cable Act provide a model for implementation of the retransmission consent election provisions of the 1999 SHVIA.

Retransmission Consent and the Election Process

4. Section 1009 of the 1999 SHVIA amends section 325(b)(1) and provides that no cable system or other MVPD shall transmit the signal of a broadcasting station, or any part thereof, except: (A) with the express authority of the originating station; (B) pursuant to section 614, in the case of a station electing to assert the right to carriage by a cable operator; or (C) pursuant to section 338, in the case of a station electing to assert the right to carriage by a satellite carrier. Thereafter, the 1999 SHVIA provides that every three years television stations covered by 325(b) are required to elect retransmission consent pursuant to section 325 or must-carry pursuant to sections 614 or 338.

5. Amended section 325(b)(2) provides five exceptions to the retransmission consent requirement of section 325(b)(1). The amendment provides that the retransmission consent requirement does not apply to: (1) noncommercial television broadcast stations; (2) retransmission, in certain circumstances, of the signal of a superstation outside the station's local market by a satellite carrier; (3) until December 31, 2004, retransmission of signals of network stations directly to a home satellite antenna, if the subscriber receiving the signal is located in an area outside the local market of such station and resides in an unserved household; (4) retransmission, in certain circumstances, by a cable operator or other MVPD other than a satellite carrier of the signal of a superstation outside the station's local market; and (5) during

the six month period following the date of enactment of the 1999 SHVIA, the retransmission of the signal of a television broadcast station within the station's local market by a satellite carrier directly to its subscribers. In other words, subject to the limitations set forth therein, MVPDs, including satellite carriers, may freely transmit the signals of any of the broadcasters satisfying the criteria set forth in section 325(b)(2) without obtaining retransmission consent from such broadcasters.

6. Section 325(b)(3)(C) directs the Commission, within 45 days after the date of enactment of the 1999 SHVIA, to commence a rulemaking to administer the limitations contained in section 325(b)(2). At the outset, we note that this *Notice* relates to retransmission consent only. The exercise of must carry rights by broadcasters with regard to satellite carriers does not commence until January 1, 2002 and will be addressed in a subsequent Notice and Rulemaking proceeding. As part of that proceeding, we will seek comment on any necessary or prudent revisions to our retransmission consent rules as a result of the initiation of satellite must carry.

7. The Commission was directed by Congress to undertake a rulemaking to implement a substantially similar provision of the 1992 Cable Act. In the *Broadcast Signal Carriage Order,* the Commission adopted such regulations. The rules implementing this provision are codified at 47 CFR 76.64. We seek comment on the appropriate manner to implement the provisions of amended section 325(b)(2). In particular, we seek comment on whether the amended provisions should be incorporated into existing 47 CFR 76.64, or whether some other regulatory framework or procedures would more appropriately implement amended section 325(b)(2). We also seek comment on any other issues relevant to the implementation of section 325(b)(2). In addition, we note that, although the statute is entitled the *Satellite* Home Viewer Improvement Act, some of the amendments Congress enacted to section 325 appear to have general impact upon the retransmission consent provisions as applied to all MVPDs. We tentatively conclude that such was Congress' intent and seek comment on this tentative conclusion.

8. Congress also amended section 325(b) by adding new paragraph (3)(C)(i), which requires the Commission to adopt regulations which shall ''establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph. * * *'' Commission adopted the required regulations in the *Broadcast Signal Carriage Order.* The regulations are codified in 47 CFR 76.64.

9. We seek comment on the appropriate manner to implement section 325(b)(3)(C)(i). In particular we seek comment on whether, following an initial election period applicable only to satellite carriers, the Commission should merely incorporate the satellite carrier must carry-retransmission consent election cycle into the Commission's regulations, employing the same rules and procedures the Commission adopted in response to the 1992 Cable Act. In the alternative, we seek comment on whether a different election cycle with different procedures is required to appropriately implement section 325(b)(3)(C)(i) and what the effect would be of having different procedures in the cable and satellite contexts. In this regard, we seek comment on any statutory, regulatory or technical differences between satellite carriers and other MVPDs that would justify a different election scheme. 47 CFR 76.64(g) requires that broadcasters make consistent must carry-retransmission consent elections where the franchise areas of cable systems overlap. We seek comment on the consistent election requirement and how it would be implemented, if at all, in the context of any election cycle in which satellite carriers participate. We also seek comment on any other issues relevant to the implementation of section 325(b)(3)(C)(i).

III. Exclusivity and Good Faith Negotiation

A. Good Faith Negotiation Requirement

10. Congress further amended section 325(b) of the Communications Act, requiring the Commission to adopt regulations that shall:

> * * * until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from * * * failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations.

The Joint Explanatory Statement of the Committee of Conference (''Conference Report'') does not explain or clarify the statutory language and merely states that:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from * * * refusing to negotiate in good faith regarding retransmission consent agreements. A television station may generally offer different retransmission consent terms or conditions, including price terms, to different distributors. The [Commission] may determine that such different terms represent a failure to negotiate in good faith only if they are not based on competitive marketplace considerations.

Accordingly, we seek comment on the good faith negotiation requirement of section 325(b)(3)(C).

11. Congress did not expressly define the term ''good faith'' in the statutory language or the legislative history other than to instruct that retransmission consent agreements containing different terms and conditions, including price terms, with different video programming distributors do not reflect a failure to negotiate in good faith on behalf of the television broadcast station if such different terms and conditions are based on competitive marketplace conditions. While Congress did not expressly define what constitutes good faith under section 325(b)(3)(C), Congress has signaled its intention to impose some heightened duty of negotiation on broadcasters in the retransmission consent process. We seek to fulfill Congress' intent by adopting substantive and procedural rules that are clear and subject to swift and effective enforcement. We therefore seek comment on the criteria that should be employed to define ''good faith.'' We also seek comment on whether the duty of good faith negotiation applies equally to the MVPD negotiating a retransmission consent agreement. We seek comment on whether we need to explicitly define what constitutes good faith under section 325(b)(3)(C). The Uniform Commercial Code (''UCC'') defines the term ''good faith'' as ''honesty in fact in the conduct of the transaction concerned.'' In addition, Black's Law Dictionary defines good faith as ''an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice, and the absence of design to defraud or to seek an unconscionable advantage * * *'' We seek comment on whether to adopt either of these definitions, or some other explicit definition of the term good faith.

12. We note that, in other contexts within both the Communications Act and other Federal laws, Congress has imposed a good faith negotiation requirement upon parties subject to a federal statutory scheme. For example, section 8(d) of the Taft-Hartley Act details the collective bargaining duty of

both employers and employees, providing that:

> To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment * * * but such obligation does not compel either party to agree to a proposal or require the making of a concession.
>
> In determining good faith under section 8(d), the National Labor Relations Board (''NLRB'') and the courts apply two independent tests to see whether a party has acted in good faith during collective bargaining. In one test, the NLRB applies an objective set of criteria to determine whether a party has violated one or more enumerated *per se* violations of the duty to negotiate in good faith. In the second test, the NLRB subjectively examines the ''totality of the circumstances'' evidencing a party's behavior during negotiations to determine whether the duty to negotiate in good faith has been violated. The objective test allows the NLRB to single out specific recurring or particularly damaging behavior. On the other hand, the subjective test allows the NLRB to punish behavior that would not by itself constitute a *per se* violation, but when examined along with other suspect behavior constitutes a violation of the duty to negotiate in good faith.

13. Congress imposed a good faith negotiation requirement upon common carriers as part of the Telecommunications Act of 1996 (''1996 Act''). Section 251(c)(1) of the Communications Act imposes on incumbent local exchange carriers (''ILECs''):

> The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

In implementing section 251(c)(1), the Commission adopted a two-part test to determine good faith similar to that used by the NLRB. Reasoning that it would be futile to try to determine in advance every possible action that might be inconsistent with the duty to negotiate in good faith, the Commission found that it was appropriate to identify factors or practices that may be evidence of failure to negotiate in good faith, but that need to be considered in light of all relevant circumstances. The Commission adopted a list of eight specific actions or practices that, among other unenumerated actions or practices to be determined on a case-by-case basis, violate the section 251(c)(1) duty to negotiate in good faith.

14. We seek comment on whether to adopt a two-part objective-subjective test for good faith similar to that embraced by the NLRB and by the Commission pursuant to section 251 of the Communications Act. In this regard, we seek comment on specific actions or practices which would constitute a *per se* violation of the duty to negotiate in good faith in accordance with section 325(b)(3)(C). Establishing a specific list of *per se* requirements or prohibitions would lend clarity to, and thus expedite, the negotiation process and would do likewise with respect to our enforcement mechanism, where enforcement became necessary. In addition to any other actions or practices, we ask commenters to address whether it would be appropriate to include in any such list provisions similar to the *per se* violations set forth in 47 CFR 51.301. Although the 47 CFR 51.301 process provides a basis for comment in this proceeding, we emphasize that the good faith standard of SHVIA is different in significant respects. We also seek comment on any other specific legal precedent upon which we should rely and any other regulatory approach that might appropriately implement the good faith negotiation requirement of section 325(b)(3)(C) of the Communications Act.

15. Section 325(b)(3)(C) permits television broadcast stations to negotiate in good faith retransmission consent agreements with different MVPDs with different terms and conditions, including price terms, provided that such different terms and conditions are based upon ''competitive marketplace considerations.'' We seek comment on what constitutes a competitive marketplace consideration. We seek to define the term as specifically as possible in this rulemaking, rather than to adopt a general standard to be fleshed out in subsequent adjudication. While we will resolve each case on its own merits, adding specification to our rules should add certainty to the negotiation process and reduce the number of cases presented to the Commission for adjudication. We note that the Commission has adopted non-discrimination standards in both the program access and open video system contexts. We seek comment on the relevance, if any, of these standards to what constitutes a ''competitive marketplace consideration.'' We seek comment on the scope of the relevant marketplace to which Congress refers. In addition, we seek comment on any other factors or approaches to determining what constitutes competitive marketplace considerations under section 325(b)(3)(C). In this regard, we note that the Commission has recently relaxed the television broadcast ownership rules, in certain circumstances, permitting companies to own two television broadcast stations within a given market. We seek comment on this development and its impact upon a broadcaster's duty to negotiate in good faith. For example, can companies with two broadcast stations within the same market negotiate a joint retransmission consent agreement or should they be required to negotiate separate arms-length retransmission consent agreements on behalf of each station?

16. The Commission is aware that direct broadcast satellite providers have entered into retransmission consent agreements with television broadcast stations that predate enactment of section 325(b)(3)(C). In addition, we note that we are also aware of agreements that have been executed since the enactment of the 1999 SHVIA. We seek comment on the impact on these agreements of the duty to negotiate in good faith.

B. Prohibition of Exclusive Retransmission Consent

17. Section 325(b) of the Communications Act also directs the Commission to commence a rulemaking proceeding that shall:

> until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts * * *

The accompanying Conference Report contains no language to clarify or explain the prohibition, stating only:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from entering into an exclusive retransmission consent agreement with a multichannel video programming distributor * * *

18. The Commission established a similar prohibition in rulemakings following passage of the 1992 Cable Act. The 1992 Cable Act called upon the Commission to ''establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent * * *'' In the *Broadcast Signal Carriage Order,* the Commission recognized that ''exclusivity can be an efficient form of distribution, but, in view of the concerns that led Congress to regulate program access and signal carriage arrangements, we believe that it is appropriate to extend the same nonexclusivity safeguards to non-cable multichannel distributors with respect to television broadcast signals, at least initially.'' The Commission established

the following prohibition on exclusive retransmission contracts:

Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make an agreement with one multichannel distributor for carriage, to the exclusion of other multichannel distributors.

19. Section 325(b)(3)(C)(ii) requires us to ''until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts.'' We seek comment on what activities would constitute ''engaging in'' exclusive retransmission agreements. We note that section 325(b)(3)(C)(ii) prohibits a broadcaster from ''engaging in'' exclusive retransmission consent agreements, while the Conference Report describes the prohibition of ''entering into'' exclusive retransmission consent agreements. While the phrase ''engaging in'' could be interpreted to suggest a currently effective exclusive relationship, it would appear to allow television broadcast stations to negotiate future exclusive contracts that would take effect on or after January 1, 2006. We seek comment on whether the statute allows negotiation and execution of such agreements before January 1, 2006. We also note the distinction between the phrases ''engaging in'' and ''entering into.'' While the statutory phrase ''engaging in'' seems to indicate not only the act of entering into a contract, but also the acts necessary to performance of a contract, the phrase ''entering into'' seems to indicate only the process of negotiating and formalizing a contract. We seek comment on the significance, if any, of the Conference Report's use of the phrase ''entering into.''

20. The Conference Report states that the prohibition applies to ''an exclusive retransmission consent agreement with a multichannel video programming distributor'' until January 1, 2006. On its face, this provision would seem to sunset any prohibition on exclusive retransmission consent contracts for all multichannel video program distributors. Under this reading of the statute, the Commission's rule prohibiting exclusive retransmission consent agreements for cable operators would be deemed abrogated as of January 1, 2006. We seek comment on whether this was Congress' intent in enacting section 325(b)(3)(C)(ii). In addition, we seek comment regarding what public interest concerns are involved in such a sunset. Section 325(b)(3)(C)(ii) appears to have immediate effect. We seek comment on the existence of exclusive satellite carrier retransmission consent agreements that either predate the enactment of the 1999 SHVIA or under the Commission's rules implementing section 325(b)(3)(C)(ii). Assuming any such agreements exist, we seek comment on what, if anything, the Commission should do about them.

21. We seek comment on what evidence should be required to demonstrate the existence of an exclusive contract in violation of section 325(b)(3)(C)(ii). Presumably, if companies are engaged in an exclusive contractual relationship, they are in violation of the statute's prohibitions. However, there is no mechanism for determining whether such exclusive contracts exist. As such, it may be difficult for a MVPD not party to an exclusive retransmission consent agreement to determine whether one exists. We seek comment on approaches to establishing the existence of an exclusive retransmission consent agreement.

C. Procedural Issues

22. In directing the Commission to adopt regulations which, until January 1, 2006, prohibit exclusive carriage agreements and require good faith negotiation of retransmission consent agreements, Congress did not indicate what procedures the Commission should employ to enforce these provisions. We seek comment on what procedures the Commission should employ to enforce the provisions adopted pursuant to section 325(b)(3)(C). Our goal is swift and certain enforcement of the rules that Congress has directed us to adopt to further the pro-competitive goals of the 1999 SHVIA. Commenters should state whether the same set of enforcement procedures should apply to both the exclusivity prohibition and the good faith negotiation requirement, or whether the Commission should adopt different procedures tailored to each prohibition. We seek comment regarding whether special relief procedures of the type found in 47 CFR 76.7 which provides an appropriate framework for addressing issues arising under section 325(b)(3)(C). We seek comment on whether expedited procedures are necessary to the appropriate resolution of either exclusivity or good faith proceedings. We seek comment on whether there are circumstances in which the use of alternative dispute resolution services would assist in determining whether a television broadcast station negotiated in good faith as defined by section 325(b)(3)(C)(ii) and the Commission's rules adopted thereunder.

23. We also seek comment on how the burden of proof should be allocated. In this regard, we seek comment on whether the burden should rest with the complaining party until it has made a *prima facie* showing and then shift to the defending party. Under this approach, we seek comment on what would constitute a *prima facie* showing sufficient to shift the burden to the defending party.

24. Section 325(b)(3)(C) directs that the regulations adopted by the Commission prohibit exclusive carriage agreements and require good faith negotiation of retransmission consent agreements ''until January 1, 2006.'' We seek comment on whether the Commission's rules regarding exclusive carriage agreements and good faith negotiation should automatically sunset on this date. We seek comment on whether any sunset of regulations should apply to television broadcast stations negotiations with all MVPDs or solely to negotiations with satellite programming distributors. We also seek comment on what, if anything, is the Commission's role with regard to these issues after January 1, 2006.

IV. Administrative Matters

A. Initial Regulatory Flexibility Act Statement

25. The initial regulatory flexibility analysis is attached to this order as Appendix A.

B. Ex Parte Rules

26. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under 47 CFR 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with 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. *See* 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

C. Filing of Comments and Reply Comments

27. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing

paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form<your e-mail address.'' A sample form and directions will be sent in reply.

28. Written comments by the public on the proposed information collections are due February 1, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before February 28, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to vhuth@omb.eop.gov.

29. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The Cable Services Bureau contact for this proceeding is Steven Broeckaert at (202) 418–7200, TTY (202) 418–7172, or at sbroecka@fcc.gov.

30. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Steven Broeckaert, Cable Services Bureau, 445 12th Street N.W., Room 4–A802, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case [CS Docket No. 99–363]), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues.

Type of Review: New collection or revision of existing collection.

Respondents: Business or other for-profit entities.

Number of Respondents: Television broadcast licensees and MVPDs—11,588.

Estimated Time Per Response: 11.196 hours.

Total Annual Burden: 1,297,492.

Cost to Respondents: $13,000.

Needs and Uses: Congress directed the Commission to adopt regulations related to retransmission consent pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. Retransmission consent is the process whereby television broadcasters negotiate and consent to carriage of their signals by MVPDs. Television broadcasters will be required to make an election and make status information available for public review. The availability of such information will serve the purpose of informing the public of the method of broadcast signal carriage.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Appendix A

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the possible policies and rules that would result from this Notice of Proposed Rulemaking (''Notice''). 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 on the Notice provided above in paragraph 31. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

2. *Need for, and Objectives of, the Proposed Rules.* Section 325(b)(3)(C), of the Communications Act of 1934, as amended (''Act''), 47 U.S.C. § 325, directed the Commission, within 45 days of enactment of the Satellite Home Viewer Improvement Act of 1999, ''to commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent.'' These provisions concern retransmission consent in connection with transmission of television broadcast station signals by multichannel video programming distributors (''MVPDs'').

3. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 325, 338, and 614 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 325, 338, and 534.

4. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act.

Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). The rules we may adopt as a result of the Notice will affect television station licensees, cable operators, and other MVPDs.

5. *Television Stations.* The proposed rules and policies will apply to television broadcasting licensees. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the Nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the Nation as of May 31, 1998.

6. Thus, the proposed rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

7. In addition to owners of operating television stations, any entity that seeks or desires to obtain a television broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown. We invite comment as to such number.

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

9. *Cable Systems:* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules emanating out of the Notice.

10. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 64,000,000 subscribers and we have based our fee revenue estimates on that figure.

11. *Open Video System (''OVS''):* The Commission has certified eleven OVS operators. Of these eleven, only two are providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

12. *Multichannel Multipoint Distribution Service (''MMDS''):* The Commission refined the definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the proceeding three calendar years. This definition of a small entity in the context of the Commission's Report and Order concerning MMDS auctions that has been approved by the SBA.

13. The Commission completed its MMDS auction in March, 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1,573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1,634 small MMDS providers as defined by the SBA and the Commission's auction rules.

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

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

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

17. *SMATVs:* Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December, 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million

residential subscribers as of September, 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. 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 ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

18. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* In order to implement the Satellite Home Viewer Improvement Act of 1999, the Commission has proposed to add new rules and modify others. We have yet to determine whether to amend existing provisions of the Commission's rules, or to adopt some other regulatory framework or procedures concerning retransmission consent. There are certain compliance requirements involving the retransmission consent agreement process. Foremost is that entities most likely will have to participate in a negotiation process. There may be costs relating to the time and effort involved in discussions, in crafting, and possibly in achieving an agreement. In certain circumstances, there may be costs associated with hiring accounting or engineering personnel, as there may be instances where entities may have to provide detailed information relating to such aspects of their particular operations. Conversely, research may have to be conducted and information may have to be obtained on other entities' operations. All such data may be key to a negotiation and a retransmission consent agreement.

19. In terms of recordkeeping, entities most likely will have to keep a record of their election status and entities may be required to maintain such information within their business environment and may also have to file such information with the Commission. As discussed in the Notice, however, it is unclear what records or recordkeeping would be required of entities relating to the good faith negotiation and exclusive carriage aspects of a retransmission consent agreement. At this time, small businesses might not be impacted differently, but we seek comment on these and the above matters.

20. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (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.

21. As indicated above, the Notice proposes to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999. Among other things, the new legislation requires television broadcasters, until 2006, to negotiate in good faith with satellite carriers and other multichannel video programming distributors (''MVPDs'') with respect to their retransmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission agreements. This document also discusses implementing regulations relating to the exercise by television broadcast stations of the right to grant retransmission consent to satellite carriers and other MVPDs.

22. This legislation applies to small entities and large entities equally. However, in terms of the election process, in the Notice we specifically ask whether there are any statutory, regulatory, or technical differences between any of the MVPDs that would justify different election schemes. The Commission acknowledges that consideration should be given to possible differences in services. There may be established a different election process timetable or compliance requirement, and also possibly a different filing requirement, among the different MVPDs. In the Notice, however, the possible distinction in treatment was not related to the size of the entity. At this time, small entities are not treated differently and might not be impacted differently, but we seek comment.

23. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

[FR Doc. 99–33764 Filed 12–28–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF43

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Delisting of the Douglas County Population of the Columbian White-Tailed Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provide notice of the reopening of the comment period for the proposed delisting of the Douglas County, Oregon population of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*). The comment period has been reopened in order to provide the three independent peer reviewers an opportunity to review previous public comments, and any additional public comments, on the proposed rule.

DATES: Comments from all interested parties must be received by January 13, 2000.

ADDRESSES: Written comments, materials, data, and reports concerning this proposal should be sent to the Supervisor, U.S. Fish and Wildlife Service, Southwest Oregon Field Office, 2900 NW Stewart Parkway, Roseburg, Oregon 97470. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: David Peterson, at the address listed above (telephone 541/957–3474; facsimile 541/957–3475).

SUPPLEMENTARY INFORMATION:

Background

The Columbian white-tailed deer (*Odocoileus virginianus leucurus)* resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lbs) for females and 52 to 68 kg (115 to 150 lbs) for males. Generally a red-brown color in summer, and gray in winter, the species has white rings around the eyes and a white ring just behind the nose. Its tail is long and triangular in shape, and is brown on the dorsal (upper) surface, fringed in white, and the ventral (under) portion is white (Oregon Department of Fish and Wildlife (ODFW) 1995). The species was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936). It is the westernmost representative of the 38 subspecies of white-tailed deer. Early accounts suggested this deer was locally common, particularly in riparian areas along the major rivers (Gavin 1978). The decline in deer numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys. Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors apparently caused the extirpation of this deer over most of its range by the early 1900s (Gavin 1984). Only a small herd of 200 to 400 animals in the lower Columbia River area of Clatsop and Columbia Counties, Oregon, and Cowlitz and Wahkiakum Counties, Washington, and a disjunct population of unknown size in Douglas County,