FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–96; FCC 00–417]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues/ Retransmission Consent Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements certain aspects of the Satellite Home Viewer Improvement Act of 1999, which was enacted on November 29, 1999. Among other things, the act authorizes satellite carriers to add more local and national broadcast programming to their offerings and seeks to place satellite carriers on an equal footing with cable operators with respect to availability of broadcast programming. This document implements regulations regarding the carriage of local television stations in markets where satellite carriers offer local television service to their subscribers.

DATES: Effective January 23, 2001. Written comments by the public on the new and/or modified information collections are due March 26, 2001.

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 Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Ben Golant at (202) 418–7111 or via internet at via internet at *bgolant@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 Report and Order (''Order''), FCC 00–417, adopted November 29, 2000; released November 30, 2000. The full text of the Commission's Order 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, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via internet at *http://www.fcc.gov/csb/*. This *Report and Order* contains new or modified information collections(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

Synopsis of the Report and Order

I. Introduction

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

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

II. Satellite Broadcast Signal Carriage

A. Commencing Satellite Broadcast Signal Carriage

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

4. We find that section 338 provides a satellite carrier with two options for carrying local television broadcast signals. If a satellite carrier provides its subscribers with the signals of local television stations through reliance on the statutory copyright license, they will have the obligation to carry all of the commercial television signals in that particular market that request carriage. If a satellite carrier provides local television signals pursuant to private copyright arrangements, the section 338 carriage obligations do not apply. In this context, we note that a retransmission consent agreement, in most instances, is not analogous to a private copyright arrangement. Retransmission consent permits an MVPD to retransmit a station's signal, but it does not generally grant copyright clearance for the program content carried by that station. To obtain private clearances for material carried by a particular station, the copyright holders of each of the programs, advertisements, and music

aired by that station must consent to the retransmission. In some cases, however, a television station may have permission from the copyright holders to provide clearances on their behalf. We therefore conclude that unless the retransmission contract clearly provides for all copyright clearances, a carrier retransmitting television stations electing retransmission consent would be subject to the compulsory license and be required to carry all other local market television stations under the provisions set forth in section 338.

1. Election Cycle

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

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

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

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

9. Echostar and DirecTV also favor synchronizing the cable and satellite cycles but note that regulations developed for the cable industry would not sufficiently take into account the distinctive aspects of retransmission consent/mandatory carriage elections for the satellite industry. EchoStar urges the Commission to give satellite carriers at least six months between new retransmission consent/carriage election dates and their respective effective dates. We agree that a satellite carrier needs ample time to commence carriage prior to the first election cycle because of the logistics of adding hundreds of local television stations to its channel line-up. We therefore provide satellite carriers with six months, from July 1, 2001 to December 31, 2001, to complete the carriage process. The election cycle and notification timeframes established for the first cycle, as described are designed to accommodate the initial implementation of section 338. After satellite carriers commence carriage on January 1, 2002, the rationales for extended timeframes no longer apply. Thus, the second election cycle, and all cycles thereafter, shall be for a period of three years (*e.g.* January 1, 2006 through December 31, 2008).

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

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

12. *Consistent Retransmission Consent/Carriage Elections.* Section 76.64(g) requires that broadcasters make consistent retransmission consent/must carry elections between cable operators where franchise areas of cable systems overlap. While the SHVIA does not expressly require such action in the satellite context, in the *Retransmission Consent Notice* we requested comments on whether broadcasters should be

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

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

2. Initiating Carriage

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

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

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

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

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

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

20. *New Local-Into-Local Service.* In the *Notice,* we requested comment on whether separate procedures should be established for new satellite carriers and whether such rules should be similar to those established for cable carriage. Broadcast commenters favor notification requirements for new market entrants. While generally objecting to a notification burden being placed on satellite carriers, DirecTV submits that if one is adopted, the requirement should

only apply to markets in which a satellite carrier commences service after January 1, 2002. We find that a new satellite carrier must notify all local television stations in a given market when it plans to provide local service. Similarly, an existing satellite carrier must provide notice when it provides local-into-local service in a new market. We note that requiring carriers to provide notice in these circumstances is less burdensome because there are far fewer television stations to contend with, at the same time, than in markets with existing local-into-local service. We also believe that advance notice in these situations ensures a level competitive playing field in two respects: (i) all local television stations will know, at the same time, when local-into-local service will be provided in a market and (ii) all local television stations will be able to exercise their carriage rights at the same time.

21. We therefore adopt procedural provisions that substantially replicate the existing requirements for new cable systems under § 76.64. However, we craft the rules in a slightly different manner recognizing that satellite carriers provide a national service. The carriage procedures also provide carriers with adequate preparation time while not unduly delaying the provision of full local-into-local service in a market. We adopt the following guidelines for both new satellite carriers and carriers that offer new local-into-local service for the first time on or after July 1, 2001. First, satellite carriers shall notify local television stations, in writing, at least 60 days before the date it intends to provide new satellite service or intends to enter into a new market. At the same time, the satellite carrier should provide the location of the local receive facility in that particular market. A local television station then must provide its election, in writing, no more than 30 days after receipt of the satellite carrier's notice. If a satellite carrier finds that the television station meets the criteria for carriage under section 338 and our rules, it shall then have 90 days after the election letter was received to negotiate carriage, resolve local receive facility issues, reconfigure its system and channel line-up, notify subscribers of the change in service, and commence carriage of the local television station. If the satellite carrier finds that the station is not qualified for carriage for any of the reasons stated, it shall notify the local station in writing of the reason for such refusal within 30 days of the receipt of the station's election. The television station may either accept the satellite carrier's conclusion or file a carriage complaint.

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

B. Market Definitions

23. Section 338(h)(3) defines the term, ''local market,'' as having the meaning it has under section 122(j) of title 17, United States Code. Section 122(j)(2)(A) defines the term, ''local market,'' in the case of both commercial and noncommercial television broadcast stations, to mean the designated market area in which a station is located, and—(i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.'' In addition to the area described in paragraph (A), a station's local market includes the county in which the station's community of license is located. Section 122(j)(2)(C) defines the term, designated market area to mean the market area, as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.''

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

25. We find that the term ''local market,'' as it is used for satellite carriage purposes, includes all counties within a market, as well as the home county of the television station if that county is not physically located in the DMA. We believe that the satellite compulsory license includes not only television stations licensed to a local market, but also extends to stations licensed in one market but assigned by Nielsen to another market. For example, a television station licensed to a community in Jefferson County, Missouri, which is in the Paducah DMA, but assigned by Nielsen to the St. Louis DMA, would be considered within the St. Louis market under section 338. In this case, Jefferson County is the home county, and such a county should be treated as part of the St. Louis DMA for satellite carriage purposes. Moreover, since this station is licensed to a community in the Paducah market, it may assert its carriage rights in that market as well, if satellite carriers decide to provide local-into-local service there. If there happens to be another television station licensed to a community in Jefferson County, that station will also be considered in the St. Louis DMA and eligible to assert its right to carriage against a satellite carrier. In addition, if a station is licensed to a community that is inside one DMA, but is assigned to another DMA by Nielsen, the station could assert its right to carriage in the market where its community of license is located. For example, KNTV is licensed to San Jose, CA, which is in the San Francisco DMA, but is assigned by Nielsen to the Salinas-Monterey DMA. In this case, KNTV can assert its carriage rights in the San Francisco DMA because that is where its community of license is located. These interpretations are consistent with the SHVIA's goals of

preserving over-the-air broadcasting and providing satellite subscribers with a full complement of local station signals.

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

27. Our goals here are threefold. We intend to: (i) Implement the language of section 338; (ii) establish comparable timelines and requirements for satellite carriers and cable operators; and (iii) reduce procedural and administrative burdens. BellSouth argues for an extended period between updates to allow for satellite carriers' difficulties in accessing and tuning the satellite equipment used to transport television signals. ALTV and NCTA argue that the Commission should adopt rules allowing for the use of the same Nielsen data by cable systems and satellite carriers as quickly as practicable. NAB asserts that the 1999–2000 lists are the correct ones for the Commission to use to determine markets for the first election cycle commencing in January 1, 2002.

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

29. *Market Modifications.* In the *Notice,* we pointed out that a statutory device exists to expand or contract the size of a local television market for cable carriage purposes and sought opinion on whether the Commission has the authority to implement a market modification mechanism for satellite carriage purposes. Certain broadcast commenters assert that implementing a market modification mechanism is necessary to promote Congress' goal of protecting free television service, placing satellite and cable on equal terms, and preserve localism by ensuring that satellite carriage markets actually reflect what is truly local. However, BellSouth and DirecTV state that the Commission has no authority to add communities to a broadcaster's television market. They believe that section 122(j) limits a station's satellite carriage rights to the DMA that includes its community of license. DirecTV argues, however, that the Commission can and should adopt market modification procedures that allow a satellite carrier to remove a station from the market if it can demonstrate that the station does not serve the relevant market. Paxson, in contrast, argues that had Congress intended to grant the Commission market modification authority, it would have explicitly done so in the statute just as it did in the cable context.

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

31. *Coverage.* Satellite carriers are currently developing spot beam technology where programming can be delivered to a discrete geographical location using a specialized satellite. Spot beam satellites have the potential to increase satellite system channel capacity through the re-use of transponders. DirecTV argues that satellite carriers should be permitted to use spot beams, when they are in operation, for local-into-local service even if the beam does not cover the entire market. We will permit carriers to use spot beam satellites in such a manner. We first observe that section 338 does not require a satellite carrier to serve each and every county in a television market. Rather, it requires that in the areas it does provide local-into-local service, it must carry all local television stations subject to carriage under the statute. In this context, we recognize that there are some markets, such as the Denver DMA encompassing counties in four states, that are geographically expansive. A spot beam may not be able to cover the entire DMA in these instances, and to make the satellite carrier reconfigure its spot beam may deprive it of capacity to serve additional markets with local-into-local coverage.

C. Receive Facilities

32. Section 338(b)(1) states that, ''A television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.''

Section 338(h)(2), in turn, defines the term ''local receive facility'' as ''the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.'' The *Notice* sought comment on the term ''local receive facility'' and on the parameters under which a satellite carrier may construct and designate a local receive facility. We noted that the statutory language could be read to permit the satellite carrier to establish a regional receive facility that would receive broadcast signals from other markets provided 50% of the relevant broadcasters agreed to the location. We also asked questions concerning the procedures by which a satellite carrier must inform local market television stations of the location of the receive facility, and whether there should be Commission procedures to resolve a broadcaster's complaint if it disputes the receive location selected by the majority of broadcasters.

33. DirecTV agreed with the preliminary statement in the *Notice* that ''the most economically feasible means [of delivery of multiple local broadcast signals] is to aggregate signals in each local market at one point and deliver them over the facilities of an interstate telecommunications carrier to the uplink site(s)'' and co-locate at such a carrier's switching center. DirecTV provided comments detailing the process needed to establish a local receive facility, a process they have used to create 27 local receive sites to provide service to 27 local-into-local markets served since the SHVIA was enacted at the end of November, 1999. According to DirecTV, the parameters for construction and designation of a local receive facility include: (i) Access to multiple long distance common carriers for DS–3 or other high-speed digital fiber circuits; (ii) access to at least one local common carrier that can provide TV1 quality digital fiber circuits to most, if not all, television broadcast stations [in the DMA], and/or local DS–3 circuits, microwave, and broadband analog service as local conditions may require; (iii) access to multiple long distance carriers that can provide a wide area data network up to 256kb/s as well as dial up voice service must also be available; (iv) access to building rooftop with connecting conduits to support, where needed, good quality over-the-air television reception, microwave links, and satellite reception; (v) access to a suitable area with connecting conduits to support a satellite downlink antenna; and (vi) access to a suitable area to install equipment to support all local collection, compression, monitoring, and transmission equipment. This area must be securable against unauthorized access and have stable power source and HVAC. DirecTV also states that local receive facilities must be planned twelve months in advance.

1. Local Receive Facilities

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

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

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

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

2. Alternative Receive Facility

38. The definition of local receive facility in section 338(h)(2) strongly suggests that Congress intended to permit carriers to designate a single point for all local-into-local stations to be received, processed and retransmitted. However, the second clause of section 338(b)(1) provides that, with respect to the costs of delivering a good quality signal, there may be ''another facility that is acceptable to at least one-half the stations'' to which the television broadcast station delivers a good quality signal. The *Notice* considered this other facility as a facility outside the local DMA, perhaps a facility serving a regional area. Some commenters agreed that this is the likely meaning of this clause. We note, however, that this is not the only possible meaning of ''another facility.'' As DirecTV suggests, the other facility could be an alternative facility, not necessarily a non-local or regional facility. Most of the comments on this subject assumed that the other facility would be a non-local, regional facility established by a satellite carrier and that is acceptable to at least one-half of the stations asserting the right to carriage. We focus here on this interpretation and the necessary rules to implement it, but we do not foreclose the possibility that the creation of an alternative site,

whether local or non-local, can also be consistent with the statutory language. An alternative local receive facility would be one selected after the satellite carrier has chosen its first designated local receive facility.

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

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

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

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

43. As noted, the statute assigns costs to the broadcaster when providing the satellite carrier with a good quality signal to either a local or alternative facility. We agree, therefore, with BellSouth that a satellite carrier is not obligated to carry a television broadcast station that refuses to pay for the costs of providing a good quality signal. For similar reasons, we disagree with Network Affiliates' proposal that if the carrier uses an alternative facility, which at least half of the local stations find acceptable, then the satellite carrier should pay the incremental costs of delivering each broadcaster's signal if the alternative facility is more than 50 miles from the reference point of the station's community of license.

3. Notification

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

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

46. Satellite carriers must be afforded a reasonable period of time to finalize arrangements for the location of the local receive facility in order to meet the January 1, 2002 deadline. Any delays by local television stations will work against a satellite carrier meeting its carriage obligations in a timely manner, which ultimately works against the television stations and viewers, as well. Therefore, when a satellite carrier has a

designated local receive facility to which local stations seeking carriage must deliver a good quality signal, the carrier must make the location of this facility known by June 1, 2001 for the first election cycle, and at least 120 days prior to the commencement of all election cycles thereafter. The means by which television stations are notified is left to the discretion of the satellite carrier.

47. BellSouth suggests that a carrier should give local television stations 90 days notice before it moves a local receive facility in order to protect the legitimate interests of television stations and to avoid service disruption to subscribers. We agree, in principal, with BellSouth's proposal. Generally, a satellite carrier may relocate the designated local receive facility every three years coinciding with the election cycle. We believe that satellite carriers should have the flexibility to change their designated local receive facility or alternative facility, and will require 60 days advance notice to all local stations. We are concerned, however, that the relocation of a local receive facility may make it more difficult for some television stations to pay the costs of delivering a good quality signal. Therefore, if a satellite carrier decides to relocate the designated local receive facility during an election cycle, it should pay the television stations' costs to deliver a good quality signal to the new location. With respect to moving the alternative facility, the new location must be acceptable to at least half of the local stations entitled to carriage in the local market. Obtaining such agreement may require more than 60 days notice, and the satellite carrier may find it necessary to plan for a new alternative facility with additional advance notice. A satellite carrier may not require local stations to deliver their signals to a new alternative facility unless and until at least 50% of the stations agree to the new facility.

4. Process

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

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

50. We find that the negotiations and arrangements among local television broadcast stations and satellite carriers with respect to agreeing upon an alternative local receive facility are generally intended to be a voluntary process. We also decline to adopt a good faith test to be used in the context of receive point negotiations.

5. Good Quality Signal

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

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

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

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

55. *Carriage of Television Stations With Disputed Signal Quality.* In the *Notice,* we recognized that a broadcaster not providing a good quality signal to a cable system headend is not qualified for carriage. In this situation, a cable system is under no obligation to carry such a signal, but the broadcaster has an opportunity to provide equipment necessary to improve its signal to the requisite level and gain carriage rights. We sought comment on whether

Congress intended the same result for broadcasters that do not provide a good quality signal to the local satellite receive facility.

56. ALTV, AAPTS, and Network Affiliates agree that a satellite carrier may insist that a station cover the costs of delivering a good quality signal; they argue, however, that a satellite carrier cannot refuse to carry a television station just because its signal is less than adequate. NAB comments that satellite carriers operating under section 338, unlike cable systems operating under sections 614 and 615, do not have the option of holding a station's carriage ''hostage'' during a dispute about a good quality signal. It posits that even if the Commission had the power to allow carriers to do so, it should decline that invitation, since a litigious satellite carrier could, as a practical matter, unilaterally postpone the effective date of the section 338 requirements for long periods by dragging out Commission and court enforcement proceedings. Conversely, DirecTV and LTVS assert that a satellite carrier may refuse to carry a station that fails to provide a good quality signal to the local receive facility. LTVS adds that the satellite carrier should first notify the broadcast station of the deficient signal, including measurements and relevant data, and then discontinue carriage if the broadcaster fails to improve the signal quality.

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

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

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

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

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

D. Duplicating Signals

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

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

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

63. Section 614(b)(5) provides that a cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry

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

64. DirecTV proposes that the definition of ''substantial duplication,'' as employed in section 338(c), should include identical programming, whether broadcast simultaneously or not, of either 50 percent or more of a television broadcast station's total weekly programming, or 50 percent or more of its prime-time programming. Network Affiliates argue that substantial duplication should be found only where there is an overlap in the Grade B contours of the stations in question. According to Network Affiliates, where there is no Grade B overlap between the stations, the stations' signals should not be deemed to substantially duplicate each other and should be entitled to carriage. We do not find that these commenters have presented persuasive evidence as to why the cable standard is not suited for satellite carriers. Their proposals are also contrary to the purpose of the Act. DirecTV's proposal would winnow away a television station's right to carriage and would unduly expand the substantial duplication exception beyond what was intended by Congress. If the Network Affiliates' suggestion were adopted, we believe that the statutory duplication provision would be eviscerated, as there would be no station in a particular market that would duplicate another.

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

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

67. DirecTV argues that, in addition to its ability to deny carriage of duplicative stations in the first instance, a satellite carrier should be permitted to remove a television broadcast station from its line-up if it begins to substantially duplicate its programming after carriage of the station has commenced. We agree with DirecTV on this point. If the substantial duplication criteria are satisfied, a satellite carrier is permitted to drop that television station from its channel line-up. If this situation arises, however, we require the satellite carrier to notify the station, and its subscribers, in a timely manner prior to its removal from the relevant local-into-local channel line-up. By the same token, we also find that a satellite carrier must begin carrying a television station that stops duplicating another local television station. When this circumstance presents itself, the station shall use the same procedures to establish carriage as permitted for new television stations under § 76.66.

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

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

market'') duplicate each other, but are not network affiliates, the satellite carrier only has to carry one. For example, if there are two Home Shopping Network station affiliates in the same market, but located in different states, the satellite carrier need not carry both because the Home Shopping Network is not a television network under our definitional rule.

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

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

72. *National Programming.* DirecTV argues that it would make no sense for the Commission to mandate carriage of local affiliates if they substantially duplicate the programming provided by the same channel that is carried nationally. NAB argues that the term ''another local commercial television broadcast station'' in section 338's duplication provision cannot be read to mean a non-local TV station or non-broadcast satellite channel. We disagree with DirecTV's position here. The relevant statutory provision is specifically an intra-market exemption, directly referring to situations where ''local'' television stations duplicate each other. Congress did not intend for national programming to be considered in the duplication analysis, otherwise it would have so stated. If we were to adopt DirecTV's position, local television stations that carry Univision or Telemundo Spanish language programming, for example, would not have to be carried by satellite carriers because their national feeds are already carried. In so doing, we would obviate the statute's focus on localism.

E. Noncommercial Educational Television Station Carriage Issues

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

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

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

76. At the same time, we recognize that section 338 requires the Commission to limit the carriage of multiple NCE stations in markets where local-into-local service is provided. It is important to note that this instruction

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

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

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

79. *PBS Feed.* KQED requests the Commission to clarify that satellite carriers may not avoid their local NCE station carriage obligations simply by carrying the national PBS satellite feed. According to KQED, the national PBS feed was intended as an interim measure to facilitate the satellite industry's ability to offer public television service to their subscribers while the industry organized to comply with section 338. On this point, we note that the statutory copyright license for the PBS feed expires on January 1, 2002. This expiration date coincides with the onset of the section 338 obligations for satellite carriers. The SHVIA purposefully instituted a phase-out and phase-in with regard to the two compulsory license provisions so that satellite subscribers, in markets with local-into-local service, would have continuous access to public broadcasting programming.

F. Channel Positioning

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

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

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

81. ALTV submits that the signals of all local television stations, including retransmission consent stations, must be

provided on contiguous channels. AAPTS argues that local broadcast signals are to be grouped together regardless of their regulatory status because such grouping makes all local signals more easily accessible to viewers. NAB suggests that all stations should appear on channel numbers that are in the order in which the stations appear to the over-the-air receiver. BellSouth argues against requiring contiguous channel location for retransmission consent stations. It also asserts that section 338(d) is explicit that a satellite carrier cannot be required to provide carry mandatory carriage stations in any particular order.

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

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

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

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

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

87. *Nondiscriminatory Price.* In the *Notice,* we inquired about the statutory phrase, ''provide access to such station's signals at a nondiscriminatory price,'' and asked whether Congress meant that television station signals carried pursuant to mandatory carriage requests may cost no more per channel to subscribers than packages of retransmission consent television station signals or other satellite service packages. In response to this inquiry, ALTV and NAB assert that all local signals should be included in a single package. AAPTS asserts that NCE mandatory carriage television stations should be offered as part of the existing local broadcast signal package without any additional cost to the subscriber. BellSouth argues that a satellite carrier has the right to place local television signals on a pay tier, an enhanced service tier, or any other tier of service, as long as all local television stations are on this tier and the viewing of no one station costs the viewer more than the viewing of any other station in the DMA. Echostar comments that one of the crucial differences between cable and satellite carriers is that the latter do not have obligations as to the tier in which local signals are to be offered. It states that channel placement requirements of section 338 cannot be used as a lever to impose such obligations on satellite carriers.

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

89. ALTV and NAB asks the Commission to rule that no new equipment should be required to access some, but not all of the local signals in a market. According to ALTV, such a pronouncement is necessary to prevent discriminatory treatment of mandatory carriage television stations. NAB also suggests that satellite carriers should be barred from placing mandatory carriage television stations on any satellite that would require a subscriber to purchase another dish to receive such signals. BellSouth agrees in principle noting that

the channel placement provisions of section 338 were designed to ensure that dominant stations in a DMA receive no better carriage treatment than other stations. On the other hand, Echostar comments that one of the obligations advocated by the NAB—that the local stations be available from the same orbital location—is tantamount to a provision that had been included in draft legislation prior to the passage of SHVIA. Echostar states that such provision, which was dropped from the final version of section 338, would have barred satellite carriers from transmitting local stations in a manner that would require additional reception equipment. Echostar argues that the Commission cannot implement a rule similar to this provision when Congress decided not to include such a requirement in the SHVIA.

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

G. Content To Be Carried

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

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

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

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

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

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

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

94. In the *Notice*, we recognized that the Commission has not specifically defined ''primary video'' in the rules and has instead relied on the language of section 614(b)(3)(B) to clarify the scope of the term for purposes of cable broadcast signal carriage. In view of this history, we sought comment on whether a specific definition of primary video is required for satellite carriers to fulfill the requirements contained in section 338. Network Affiliates state that a specific definition of primary video need not be adopted for the satellite carriage rules. Network Affiliates assert that the term has proved self-explanatory and non-controversial as applied to cable carriage of analog signals and should be equally so in the satellite context. AAPTS asserts that the Commission has not further defined primary video for the cable carriage rules, and in the seven years that the rules have been in effect, this lack of definition has not been a problem. We

agree that the primary video concept has worked in the cable carriage context. We therefore incorporate the cable version of primary video into the satellite broadcast signal carriage rules. Given these indicia, and the fact that implementing the cable definition will further the Congressional goal of comparability, we believe our finding serves the public interest. We note that the Act also mandates that, in addition to primary video, accompanying audio must be carried. Therefore, satellite carriers are required to carry the secondary audio programming (''SAP'') material that accompanies many broadcast television programs.

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

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

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

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

H. Material Degradation

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

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

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

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

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

101. Commenters have proposed a variety of ways to determine picture quality standards. LTVS argues that the definition of material degradation should include any instance where a television broadcast station freezes, tiles, or looks ''dirty'' due to a satellite carrier's choice of encoding and compression techniques. AAPTS advocates a rule requiring satellite carriers to maintain local television stations at a TASO Grade 2 level to

avoid material degradation of these signals. DirecTV urges the Commission to refrain from setting standards for material degradation until two industry committees devoted to video picture quality, IEEE G–2.1.6 and ITU VQEG, complete their work. HBO argues that because of the rapid changes in digital technology, there is significant danger that any standards adopted today would quickly be obsolete, or worse, would prevent beneficial changes in transmission parameters as technology improves. We decline to adopt specific picture quality standards at this time. As we stated in the *Notice,* analog degradation standards for the cable industry were developed over the course of several years and evolved as technology changed and improved. The Commission has not had a significant opportunity to evaluate satellite delivery of broadcast signals. We agree with DirecTV that it would be premature for the Commission to adopt specific picture quality standards at this time.

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

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

104. At the outset, we note that our concerns here revolve around the satellite carrier's treatment of the broadcast signal on the equipment it controls or authorizes. Thus, our focus does not involve picture quality issues that may arise because of the type of television receiver used since the satellite carrier has little control over the use of these devices. We also note that the satellite carrier should not be responsible for a poor quality picture delivered to the local receive facility. Rather, the broadcast station is responsible for ensuring that its signal is delivered in good quality. Moreover, our analysis of material degradation recognizes that dish placement on or near the subscriber's premises can affect the quality of the picture received, but that the satellite carrier cannot control how and where dishes are installed.

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

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

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

carriers could offer more services, particularly those involving broadband applications.

108. *Measurement.* In the *Notice,* we sought suggestions for measurement standards that may be used to address broadcast signal degradation by satellite carriers. We found it necessary to request such information because the Commission has had relatively little experience in evaluating quality in the context of the analog to digital to analog conversion of the type involved in satellite broadcast signal carriage. LTVS states that subjective criteria should be used to measure broadcast signal degradation and suggests that the Commission consider the International Telecommunications Union's recommendations for broadcast video evaluation. NAB, however, proposes the use of three objective criteria—(i) carrier-to-noise (C/N) ratio, (ii) bit error rates (BER), and (iii) bit rate allocation for each channel—that collectively provide a method for checking whether a satellite carrier is ''materially degrading'' a local station's signal in comparison to other channels. We decline to adopt, as a rule, any one specific technique for measuring degradation. Both LTVS and NAB present worthy proposals, but they are untested in the field of satellite broadcast signal carriage. The more reasonable approach here is to develop a uniform measurement technique over time. After some experience with satellite broadcast signal carriage, broadcasters and satellite carriers will be able to apply such a technique for analog-to-digital degradation measurements. At some future point, the Commission will be in a better position to scrutinize the techniques used and establish standards, if necessary.

I. Compensation for Carriage

109. Section 338(e) states:

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

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

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

J. Remedies

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

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

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

112. Section 338(f)(1) states:

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

In addition, section 338(f)(2) states:

> ''The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section. Section 338(f)(3) then states that: ''Within 120 days after the date a complaint is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e). If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint.'' At the outset, we find that the procedural provisions contained in section 338(f)(1–3), concerning the steps required to file a carriage complaint, are plain on their face. We adopt the statutory procedures without change. With regard to the substantive issues raised in the *Notice,* we address each one in turn.

113. In the *Notice,* the Commission discussed the parameters of its enforcement authority regarding the carriage obligation rules under SHVIA. We sought to reconcile forum disputes that may arise if a satellite carrier fails to carry a local television station that

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

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

115. In response to questions we raised in the *Notice,* several commenters addressed the issue of whether broadcasters should be permitted to file complaints with the Commission against a satellite carrier for non-compliance with the content-to-be-carried and material degradation provisions of the SHVIA, specifically referenced in section 338(g). A number of broadcast commenting parties assert that the Commission's jurisdiction should be extended to allow consideration and resolution of complaints relating to content-to-be-carried and material degradation issues. Network Affiliates and LTVS, for example, state that such disputes rest squarely within the Commission's expertise and excluding such disputes from the complaint procedures would be inconsistent with section 338(g), which requires the Commission to implement regulations regarding material degradation and content-to-be-carried in the satellite context that mirror those in the cable context. DirecTV however, argues that section 338(f) does not provide for broadcaster complaints against a satellite carrier for non-compliance with provisions concerning content-to-be-carried or material degradation. Consistent with the general authority invested in the Commission to implement section 338, we will adjudicate complaints concerning the material degradation and content-to-be-carried provisions under the same procedural framework established for the other satellite carriage provisions of the Act. For the reasons outlined, we will also assert primary jurisdiction over these matters.

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

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

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

I. Procedural Matters

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

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

Final Regulatory Flexibility Analysis

a. As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Notice of Proposed Rulemaking in CS Docket No. 00–96, FCC 00–195 (''Notice'') and in the Notice of Proposed Rulemaking in CS Docket No. 99–363, FCC 99–406 (''Retransmission Consent Notice''). The Commission sought written public comments on the proposals in both

Notices, including comment on the IRFAs. No specific comments were received on the IRFAs. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

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

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

d. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''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 adopt affect television station licensees and satellite carriers.

e. *Television Stations:* The rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. 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.

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

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

h. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the new rules will affect approximately 1,616 television stations; approximately 77%, or 1,230 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.

i. *Small Multichannel Video Program Distributors (MVPDs):* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. 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 services individually to provide a more precise estimate of small entities.

j. *DBS:* There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that 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.

k. *Home Satellite Delivery (''HSD''):* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. 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.

l. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers 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 possible that some program packagers may be smaller.

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

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

o. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

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

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

Paperwork Reduction Act

This *Report and Order* contains a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due March 26, 2001. Comments should address: (a) Whether the new or modified 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: Broadcast Signal Carriage Issues/ Retransmission Consent Issues.

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

Respondents: Business or other for-profit entities.

Number of Respondents: Satellite carriers and television broadcast licensees: 900.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 2700 hours.

Cost to Respondents: $14,400.00.

Needs and Uses: Congress directed the Commission to adopt regulations that apply broadcast signal carriage requirements to satellite carriers pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. The availability of such information will serve the purpose of informing the public of the method of broadcast signal carriage. In addition, the information is needed so that local broadcast stations can assert their carriage rights within their local markets.

IV. Ordering Clauses

121. Pursuant to sections 4(i) 4(j), 303(r), 325, 338, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 325, 338, 534, and 535, the Commission's rules are hereby amended as set forth in this document.

122. The Consumer Information Bureau, Reference Information Center shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

123. The rules adopted in this *Report and Order* shall take effect January 23, 2001.

List of Subject in 47 CFR Part 76

Cable television, Multichannel video and cable television service.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Group.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532,

533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

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

§ 76.66 Satellite Broadcast Signal Carriage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Carriage procedures.* (1) *Carriage requests.* (i) A retransmission consent-mandatory carriage election made by a television broadcast station shall be treated as a request for carriage for purposes of this section.

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

(iii) A television station's written notification shall include the:

(A) Station's call sign;

(B) Name of the appropriate station contact person;

(C) Station's address for purposes of receiving official correspondence;

(D) Station's community of license;

(E) Station's DMA assignment; and

(F) For commercial television stations, its election of mandatory carriage or retransmission consent.

(iv) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing:

(A) those local television stations it will not carry, along with the reasons for such a decision; and

(B) those local television stations it intends to carry.

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

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

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

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

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

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

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

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

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

(e) *Market definitions.* (1) A local market, in the case of both commercial

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

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

(2) A designated market area is the market area, as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.

(3) A satellite carrier shall use the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates to define television markets for the first retransmission consent-mandatory carriage election cycle commencing on January 1, 2002 and ending on December 31, 2005. The 2003–2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates shall be used for the second retransmission consent-mandatory carriage election cycle commencing January 1, 2006 and ending December 31, 2008, and so forth for each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) All television stations carried under mandatory carriage, in a particular market, shall be presented to subscribers in the same manner as television stations that elected retransmission consent, in that same market, on any navigational device, on-

screen program guide, or menu provided by the satellite carrier.

(j) *Manner of carriage.* (1) Each television station carried by a satellite carrier, pursuant to this section, shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. For noncommercial educational television stations, a satellite carrier must also carry any program-related material that may be necessary for receipt of programming by persons with disabilities or for educational or language purposes. Secondary audio programming must also be carried. Where appropriate and feasible, satellite carriers may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the local receive facility.

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

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

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

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

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

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

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

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

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

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

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