Under RCRA 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order. This action will not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2). This action will be effective September 26, 2001.

### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements.

**Authority:** This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 12, 2001.

**Mike Schulz,**

*Acting Deputy Regional Administrator, Region 9.*

[FR Doc. 01–24066 Filed 9–25–01; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[CS Docket No. 00–96; FCC 01–249]**

### Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for reconsideration.

**SUMMARY:** This document responds to petitions for reconsideration of certain aspects of the *Report and Order* (FCC 00–417) previously issued in this proceeding. The *Report and Order*, a summary of which is published in the **Federal Register** at 66 FR 7410 (January 23, 2001), implemented section 338 of the Communications Act of 1934, as amended by the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''). Specifically, the *Report and Order* implemented regulations regarding the carriage of local television stations in markets where satellite carriers offer local television service to their subscribers. As described, the Commission, in the *Order on Reconsideration*, denies the petitions and, on its own motion, clarifies and, where necessary, amends some of the requirements set forth in the *Report and Order* and the satellite broadcast signal carriage rule, 47 CFR 76.66.

**DATES:** Effective October 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Eloise Gore or Ben Bartolome, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172, or via Internet at *egore@fcc.gov* or *bbartolo@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Order on Reconsideration*, FCC 01–249, in CS Docket No. 00–96, adopted on September 4, 2001, and released on September 5, 2001. The full text of this *Order on Reconsideration* is available for public inspection and copying during normal business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*. The full text may also be reviewed and downloaded from the FCC Cable Services Bureau's website at *http://www.fcc.gov/csb/*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

### Synopsis of the Order on Reconsideration

#### I. Introduction

1. The *Order on Reconsideration* addresses eight distinct issues raised in two petitions for reconsideration of the Commission's *Report and Order* in *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, which implements section 338 of the Communications Act of 1934 (the ''Act''), as amended by the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''). The *Report and Order* adopted broadcast signal carriage requirements for satellite carriers in order to implement section 338 of the Act. Section 338 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 pursuant to the statutory copyright license, subject to the other carriage provisions contained in the Act. As noted in the *Report and Order*, 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. The Commission's carriage rules in many respects mirror the broadcast signal carriage rules applicable to cable operators, but with key distinctions made in recognition of the statutory and practical constraints that result from differences in satellite and cable technologies.

2. DIRECTV, Inc. (''DIRECTV'') and the Association of Local Television Stations, Inc. (''ALTV'') separately filed petitions for reconsideration of the *Report and Order*, raising different issues. Several parties separately filed oppositions or comments in response to DIRECTV's petition: ALTV; National Association of Broadcasters (''NAB''); Network Affiliated Stations Alliance (''NASA''); Paxson Communications

Corporation (''Paxson''); and a joint opposition by the Association of America's Public Television Stations, the Public Broadcasting Service, and the Corporation for Public Broadcasting (collectively ''Public Television Stations''). DIRECTV, in turn, filed a reply. In response to ALTV's petition, DIRECTV filed an opposition and NAB submitted comments in support. Both ALTV and NAB filed separate replies to DIRECTV's opposition.

3. Our response to the petitions are governed by the Communications Act and our own rules. Reconsideration of a Commission decision is warranted only if the petitioner cites a material error of fact or law, or presents additional facts and circumstances which raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. For the reasons stated herein, we affirm our decisions in the *Report and Order* and deny both DIRECTV's and ALTV's petition. We also take this opportunity to clarify and, where necessary, amend some of the requirements set forth in the *Report and Order* and the rule.

**II. Order on Reconsideration**

4. As explained below, after careful consideration of all the arguments and facts presented, we decline to revise the satellite broadcast signal carriage requirements adopted in the *Report and Order*, except to provide additional clarification to some of those rules. Consistent with the requirements of the SHVIA, the Commission's satellite broadcast signal carriage rules generally attempt to place satellite carriers on an equal footing with cable operators regarding the provision of local broadcast programming, in order to give consumers more competitive options in selecting a multichannel video program distributor (''MVPD''). In the legislative history to section 338, Congress made clear that ''[t]he procedural provisions applicable to section 338 (concerning costs, avoidance of duplication, channel positioning, compensation for carriage, and complaints by broadcast stations) are generally parallel to those applicable to cable systems.'' As the legislative history of the SHVIA indicates, Congress was concerned that, ''without must carry obligations, satellite carriers would simply choose to carry only certain stations which would effectively prevent many other local broadcasters from reaching potential viewers in their service areas.'' Our satellite carriage rules also reflect Congress's desire to provide satellite subscribers with local television service in as many markets as possible, but also take into account, to the extent possible, the inherent nature of satellite technology and constraints on the use of satellite spectrum in the delivery of must carry signals. Against this backdrop, we address the six issues raised by DIRECTV in its petition, then the two issues raised by ALTV in its petition, and, on our own motion, provide clarification and amendment to several of the rules governing procedures consistent with the legislative intent of section 338(g).

*A. DIRECTV's Petition*

1. Carriage of Local NCE Stations

5. The Commission denies DIRECTV's request that the Commission modify its noncommercial educational (''NCE'') carriage rule by limiting a satellite carrier's carriage obligation to only one qualified NCE station per designated market area (''DMA''), with additional NCE stations carried on a voluntary basis. We affirm the current rule requiring satellite carriers to carry all non-duplicative NCE stations in markets where they provide local-into-local service. Contrary to DIRECTV's contention, the Commission's rule is consistent with the plain language of section 338(c)(2) as it requires, ''[t]o the extent possible, * * * the same degree of carriage by satellite carriers * * * as is provided by cable systems.'' It also promotes parity between DBS and cable by assuring that consumers receive via satellite essentially the same local channels they would receive if they subscribed to cable.

6. Contrary to DIRECTV's assertion, the standard we developed for the NCE carriage obligation also took into consideration the technical limitations, as well as the national character, of satellite systems, in addition to other factors that differentiate the satellite industry from the cable industry. Under our rules, a cable system with more than 36 channels must carry all of the first three local NCEs in its market, even when the stations transmit substantially the same programming at the same time. The limitation on mandatory carriage of NCEs that duplicate only applies to additional NCEs when there are more than three local NCEs in the cable system's market. Satellite carriers, on the other hand, need not carry any simultaneously duplicative signals. Satellite carriers are required to carry up to three local NCEs that do not duplicate programming—with duplication defined as more than 50 percent of prime time programming and more than 50 percent of programming outside of prime time broadcast on a simultaneous basis. Once the carrier provides three local noncommercial stations, the duplication test becomes the same as for cable—whether more than 50 percent of prime time programming and more than 50 percent of programming outside of prime time is duplicative on a simultaneous or non-simultaneous basis. Given this standard, our rule does address the capacity concerns that DIRECTV raises because the foregoing standard prevents satellite capacity from being wasted on repetitive programming while ensuring carriage of nonduplicating, diverse public stations that respond to the different audiences and distinct needs of each community. In this regard, we agree with Public Television Stations and Paxson that the NCE carriage formulation proposed by DIRECTV (*i.e.*, that we require satellite carriers to carry only one qualified NCE station per DMA, with additional NCE stations carried on a voluntary basis) would deprive satellite subscribers of access to local noncommercial television stations in those markets where local-into-local is offered.

2. Public Interest Set-Aside

7. In 1998, the Commission, in *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations* (''*DBS Public Interest Report and Order*''), adopted rules implementing section 335 of the Act, as amended by the Cable Television Consumer Protection Act of 1992 (''1992 Cable Act''). The rules require DBS providers to reserve four percent (4%) of their channel capacity exclusively for use by qualified programmers for noncommercial programming of an educational or informational nature. DIRECTV, in its petition, asks the Commission to permit satellite carriers to include NCE stations in the calculation of public interest programming required to be set aside by satellite carriers under section 335 of the Act. DIRECTV argues that Congress knew of the existence of section 335 in crafting the satellite must carry regime of section 338, and that ''nothing in the text of this latter provision suggests that NCE stations should not be counted towards the 4% set-aside.''

8. The Commission denies DIRECTV's request for reconsideration of this issue. We find that DIRECTV's request that we permit satellite carriers to include local NCE stations, carried pursuant to section 338, in the calculation of public interest programming required to be set aside under section 335 would not result in compliance with section 335 because carriage of certain stations in a

limited number of markets does not provide the national scope intended by section 335. Section 338 is not a national but rather a market-by-market requirement. Significantly, the public interest set-aside requirement under the 1992 Cable Act focuses on educational or informational public interest programming available to all subscribers nationally. SHVIA, in contrast, is intended to provide satellite subscribers with their local noncommercial educational stations. Allowing satellite carriers to count towards the national set aside individual local NCE stations provided only in their respective local markets would violate section 335's requirement that a direct broadcast satellite service meet the set aside requirement ''by making channel capacity available to *national* educational programming suppliers.'' (emphasis added). In applying this requirement, we have made it clear that eligible public interest programming must therefore be available to all subscribers. We also note that DIRECTV is seeking reconsideration of an issue that has already been addressed in the *Report and Order*, and that DIRECTV has not presented any new arguments that would warrant reconsideration of this issue.

9. Alternatively, DIRECTV, in its petition, states that, ''[a]t a minimum, the Commission should clarify that NCE stations that are distributed on a national basis should be included in the 4% DBS public interest set-aside calculation.'' We note that the Commission has generally addressed DIRECTV's alternative request for clarification (on the issue of whether, in the abstract, a local NCE station can be counted as a programmer for section 335 purposes) in the *DBS Public Interest Report and Order* (concluding ''that we should interpret the term 'national' broadly so as to include local, regional, or national domestic nonprofit entities that qualify under the definitions listed above and produce noncommercial programming designed for a national audience'')), but we decline at this point to go beyond what we said in the *DBS Public Interest Report and Order* about this matter without having a concrete set of facts before us.

3. Programming in the Vertical Blanking Interval

10. In its petition, DIRECTV contends that carriage of ''additional'' VBI material is not ''technically feasible'' for existing, deployed satellite systems. It states that, ''[a]part from primary video and audio signals and Line 21 closed caption transmissions, it is not technically feasible for DIRECTV's DBS system to reliably pass through additional material in a usable form from other portions of the VBI.'' It asserts that the Commission's requirement on this issue ''could require the replacement of DIRECTV equipment for as many as ten million households, resulting in a cost of more than 2.8 billion dollars.'' DIRECTV asks the Commission to reconsider its findings with respect to the ability of existing satellite carriers to carry additional VBI material, ''at least insofar as it applies to satellite systems that are already in operation.'' The broadcast interests generally agree that DIRECTV should not have to replace all the set-top boxes currently being used by subscribers if it is technically infeasible or prohibitively expensive for DIRECTV to do so, but they maintain that DIRECTV should be required to comply with the VBI carriage requirement on a going-forward basis.

11. Section 338(g) of the Act states that, ''[t]he regulations prescribed [under section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under [s]ections 614(b)(3) * * * and 615(g)(1).'' Section 614(b)(3) states that, ''[a] cable operator shall carry in its entirety * * * the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers.'' Section 615(g)(1) applies a similar requirement to the contents of noncommercial educational stations. In the cable context, with regard to the ''technical feasibility'' of the carriage of program-related material in the VBI or on subcarriers, the Commission stated in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues* (''*Cable Must Carry Report and Order*'') that such carriage should be considered ''technically feasible'' if only nominal costs, additions or changes of equipment are necessary in order to carry such material. In the *Report and Order* the Commission expressed its view that, based on the record presented, it was technically feasible for satellite carriers to carry the program-related material currently carried in a television station's VBI. The *Report and Order* declined to rule on new kinds of program-related data in the VBI or on subcarriers indicating that these issues would be addressed in the future on a case-by-case basis. DIRECTV's petition addresses the carriage of such additional VBI material and does not dispute the feasibility of carrying the data in line 21. We conclude, for the reasons set forth, that it is unnecessary to revise the rule requiring satellite carriers to carry in its entirety the primary video, accompanying audio, and closed-caption data contained in line 21 of the VBI and, to the extent technically feasible, program-related material carried in the VBI or on subcarriers.

12. We find no reason to reconsider these decisions since it was not the Commission's intention to require satellite carriers to carry program-related material in the VBI if it is not ''technically feasible'' for satellite carriers to do so. DIRECTV indicates that its system is able to carry line 21 closed captioning, closed text, XDS, V-chip information, ''TSID'' data and extended service packets on line 21. Neither DIRECTV nor the broadcast parties commenting on this issue have been specific as to what additional information that, if made the subject of a carriage request, would be jeopardized by the current system limitations described by DIRECTV. In these circumstances, we believe it is generally appropriate to apply the ''technically feasible'' standard as previously articulated in the cable context, but that it is not appropriate to attempt to rule on any additional or future VBI service without more specific information. We note, however, that most of the costs that DIRECTV claims it would have to bear as the consequence of any additional carriage obligation, totaling some $2.8 billion, relate to replacing the integrated receiver/decoders that are currently used to receive DIRECTV service. In the future, any claim of technical infeasibility should address separately the technical issues involved with the transmission of the material in question as opposed to its reception and management in the receiver/decoder and the extent to which each set of issues is under the control of the satellite provider.

13. On a different, but related point, DIRECTV argues that satellite carriers should not be required to carry programming material of a ''must carry'' station if inclusion of such type of material is not covered by the retransmission consent agreements reached by that carrier with other stations in the local market in question. We find no authority in section 338, and DIRECTV has not presented any, to support DIRECTV's request. The terms negotiated by retransmission consent stations for the carriage of program-related material cannot be used to undermine Congress's directive that the

Commission adopt satellite carriage requirements that are comparable to the cable carriage requirements, which explicitly mandate the carriage of program-related material. We therefore reject DIRECTV's request that we establish separate VBI requirements for must carry and retransmission consent stations.

4. Good Quality Signal Standard

14. Section 338(b)(1) of the Act requires a television broadcast station asserting its right to carriage to bear the costs associated with delivering a ''good quality signal'' to the satellite carrier's receive facility. In the cable context, Congress defined a signal strength standard that would equate to a good quality signal. In the satellite context, however, Congress did not define specific signal levels that local stations must deliver to satellite carriers, and apparently left that determination to the Commission. In determining what constitutes a ''good quality signal,'' as that term is used in section 338, the Commission, in the *Report and Order,* found that the signal quality parameters under section 614 of the Act and section 76.55 of the Commission's cable regulations were appropriate in the satellite carriage context. The Commission noted that, 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. The Commission determined that application of the same standard to the satellite carriage context was appropriate, given that the standards that have been applied to cable operators ''have functioned well since the inception of the statutory carriage requirements seven years ago.'' Additionally, the Commission did not find evidence in the record to suggest that the cable signal quality standard will not prove equally satisfactory in the satellite context. In providing a good quality signal, the Commission concluded that television stations may use any delivery method (*e.g.,* microwave transmission, fiber optic cable, or telephone lines) to improve the quality of their signals to the satellite carrier as long as they pay for the costs of such delivery mechanisms.

15. In its petition for reconsideration, DIRECTV asks the Commission to change its signal quality standard and ''compel any station seeking carriage to provide a signal that meets the requirements of GR–388 CORE, TV1 for <20 route miles.'' DIRECTV asserts that the cable standard the Commission adopted will not allow satellite carriers to make efficient use of their allocated bandwidth and that it will increase the likelihood of signal degradation. It argues that the adoption of the cable signal quality standard in the satellite context is based on ''unsupported speculation that a higher standard may prove ''prohibitively expensive'' for small television stations to meet.'' DIRECTV also argues that there are no statutory limits on broadcasters' costs for providing a good quality signal. Furthermore, DIRECTV insists that the record contained ''ample evidence'' that satellite carriers must receive a TV–1 quality signal. According to DIRECTV, requiring a TV–1 quality signal is ''critical'' to differentiating DBS from cable television. DIRECTV maintains that it markets its services on the basis of providing a higher quality signal than cable, and that, without having a higher standard for what constitutes a good quality signal in the satellite context, its marketing advantage will be severely undercut. DIRECTV asserts that the use of compression systems based on the Moving Pictures Experts Group (''MPEG–2'') standard requires signals that meet the requirements of GR–338 CORE, TV1 for <20 route miles. It further asserts that all of the local stations that are currently carried by DIRECTV meet the TV–1 quality standard and are delivered to DIRECTV's local receive facilities using a dedicated fiber circuit. DIRECTV insists that any station seeking carriage should be required to meet the same standard, thus ensuring a ''good quality'' satellite signal.

16. The Commission declines to revise the ''good quality signal'' standard adopted in the *Report in the Order*, as urged by DIRECTV. As noted by ALTV and Paxson, DIRECTV made the same request in its initial comments in the proceeding which the Commission reviewed and rejected. As reflected in the *Report and Order,* the Commission has already considered DIRECTV's request that the Commission define ''good quality signal'' as one that will facilitate efficient MPEG compression of all channels, and that the signal must meet the requirements of GR–388 CORE, TV1 for <20 route miles. The Commission, however, declined to adopt DIRECTV's good quality signal proposals for the following 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 * * *. 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.

17. In reviewing DIRECTV's petition, we find that DIRECTV has not presented new evidence that warrants changing the good quality signal standard already adopted to a TV–1 quality signal, which NAB and ALTV refer to as an ''essentially perfect signal.'' DIRECTV, in an ex parte letter, suggests that ''a number of'' TV stations ''can come close'' to achieving a 67 dB S/N ratio. By ''coming close,'' DIRECTV means a S/N ratio of ''approximately 60 dB,'' and says that even achieving that S/N ratio with an over-the-air signal will, in many cases, require the purchase of additional noise reduction equipment. While lower than the 67 dB S/N ratio that DIRECTV initially requested, we agree with NAB and ALTV that ''a 60 dB signal-to-noise [ratio] would still force stations to deliver to DBS firms a virtually perfect signal, rather than the good quality signal that the SHVIA requires stations to provide to satellite carriers and that the Cable Act requires stations to provide to cable systems (including cable systems that provide digital service).'' Moreover, we note that DIRECTV proposes requiring a S/N ratio of 60 dB but does not clarify what signal strength level would satisfy the ''strong, high quality broadcast signal'' or whether the intention is to combine the −49dBm for VHF signals and −45dBm for UHF signals with a 60 dB S/N ratio. Additionally, DIRECTV does not define the ''as-received'' S/N ratio that a broadcast station must deliver, but rather proposes that stations must achieve the desired 60 dB S/N through use of noise reduction equipment. Furthermore, DIRECTV acknowledges that stations with ''weaker off-air signals at the local receive facility may not be able to meet the TV–1 (or 60 dB ) standard via off-air transmission'' and recommends that broadcasters can pay $14,000 per year to lease a TV–1 line to accommodate the standard proposed. As the Commission previously stated, however, ''[i]t is not our intention to impose inordinate costs on small television stations that would prevent them from being carried by a satellite carrier.''

18. With respect to DIRECTV's claims about the potential for diminished

capacity under the current good quality signal standard, we are unable to make a meaningful evaluation of this claim based on the record. DIRECTV, in its June 25, 2001 Ex Parte Letter, explains that if each video frame is similar to the next, then only ''a small amount of ''difference'' information is required for the second frame'' and states that ''noise is the enemy of compression.'' DIRECTV further explains that, in a compression system, it is difficult to differentiate between intended activity and undesirable background noise. It states that such excessive background noise will ''consume valuable transmission capacity thus causing the desired picture to be degraded.'' On this point, we note that DIRECTV, however, did not establish the amount of picture degradation that could result. DIRECTV asserts that tests conducted in its lab ''show that one channel with a 50 dB weighted signal-to-noise ratio will consume 25% more bandwidth than the same program with a 67 dB signal-to-noise ratio.'' DIRECTV, however, did not submit information as to how these tests were conducted and how capacity would be affected if we retain the signal strength standard established in the *Report and Order* versus adopting its proposed 60 dB S/N standard. Further, we see merit in NAB's and ALTV's response on this issue that a ''DBS firm can set a cap on the number of bits that will be allocated to any one channel, thus ensuring that there will be no effect on any other channel through the statistical multiplexing process.''

19. Although DIRECTV clarifies, in its reply, that microwave transmissions may be used in lieu of fiber optic cable to achieve a TV–1 quality signal, it appears to expect that microwave spectrum is available everywhere. Moreover, DIRECTV provided no standard or cost analysis for such an alternative.

20. DIRECTV has not provided sufficient evidence to demonstrate that the good quality signal standard used in the cable context is inadequate or inappropriate in the satellite context. As NAB and ALTV point out, ''many cable systems (like DBS firms) now provide digital service, but that has *not* resulted in any change in the quality of the signal that stations are required to provide to cable headends. As before, stations are still required to provide cable systems with a ''good quality,'' but not a flawless, signal to cable systems.'' The good quality signal standard—in either the cable or satellite context—ensures that a signal available to over-the-air viewers will receive carriage. We continue to believe that the standard used for cable is appropriate in the satellite context as well. The signal standard must be one that can be measured and can be satisfied by over-the-air delivery. We believe that the goal of preserving over-the-air local television, which underlies the carriage requirements in the Communications Act, would be disserved by a signal quality standard that cannot be satisfied by over-the-air delivery. Furthermore, as indicated in the *Report and Order,* the Commission was compelled to reject the TV–1 standard because, among other reasons, many television broadcast stations would have difficulty implementing the standard. We believe that imposing an exacting standard that exceeds the level necessary would inhibit many local stations' ability to qualify for carriage with a satellite carrier, when the same stations can qualify for carriage with a cable operator. If we adopted DIRECTV's proposal to require broadcasters to meet a 60 dB signal-to-noise ratio, we would be creating disparate schemes for satellite and cable. Moreover, to the extent that cable operators have upgraded their systems and equipment since the 1992 Cable Act, they have been bearing the costs of improving some broadcasters' signal quality to meet the cable system's higher standards and subscribers' higher expectations. Because the good quality signal standard is statutory for cable systems, we cannot revise it. Creating such a disparity for cable versus satellite subscribers, as well as for broadcast stations, is not what Congress contemplated in section 338.

5. Relocation of Local Receive Facilities Mid-Cycle

21. In the *Report and Order,* the Commission concluded that, as a general matter, a satellite carrier may relocate the designated local receive facility at the beginning of an election cycle (*i.e.,* at the time broadcast stations must elect either must carry or retransmission consent). The Commission stated that satellite carriers should have the flexibility to change their designated local receive facility or alternative facility, and required satellite carriers to provide 60 days advance notice to all local stations of such a change. In affording satellite carriers this flexibility, however, the Commission was concerned that the relocation of a local receive facility, if done mid-cycle, may make it more difficult for some television stations to pay the unanticipated costs of delivering a good quality signal. Accordingly, the Commission determined that if a satellite carrier decides to relocate its local receive facility in the middle of an election cycle (*i.e.,* after the time for electing must carry or retransmission consent during an election cycle has expired), it should pay the television stations' costs to deliver a good quality signal to the new location. In its petition, DIRECTV seeks reconsideration of this issue, contending that the costs of delivering a good quality signal in the context of the relocation of local receive facilities mid-cycle by satellite carriers should be borne by broadcasters, not satellite carriers.

22. The Commission denies DIRECTV's request for reconsideration of this issue. The Commission's prior interpretation of the statute is reasonable and consistent with the purpose of the SHVIA. It is within the Commission's discretion to interpret ''designated'' facility, as that term appears in section 338(b), as the facility for which the carrier gives a station notice before the station makes its carriage election. The carrier thus cannot change the ''designated'' facility to which the broadcaster can be held responsible for delivering its good quality signal until it comes time to make a carriage election for the next election cycle. If the satellite carrier, however, does make such a change mid-cycle, even as a result of unforeseen events, it is only reasonable to require it to bear any new capital costs and incremental ongoing expenses required for the delivery of a good quality broadcast signal, because the new receive facility was not the one initially ''designated'' and anticipated by local stations. We agree with Public Television Stations that this limited burden on carriers protects a broadcast station's reasonable expectations of the signal delivery costs it will incur if it elects satellite carriage.

6. Extra Equipment for Some Local Signals

23. In the *Report and Order,* the Commission interpreted the nondiscrimination provision of section 338(d) of the Act to prohibit satellite carriers from requiring subscribers to purchase additional equipment (*e.g.,* a satellite dish) to gain access only to some, but not all of the local signals in a market. This determination was made in response to concerns over the possible discriminatory treatment that television stations electing mandatory carriage might receive; that is, a concern that a satellite carrier may place mandatory carriage stations on a satellite that would require a subscriber to purchase another dish and/or other equipment to receive such signals, which would effectively inhibit the

ability of local stations to reach potential viewers. In addressing this issue, the Commission found that ''the language of [s]ection 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.'' As the Commission explained, this interpretation does not prohibit a satellite carrier from requiring a subscriber to pay for additional equipment in order to receive all television stations from a single market. To illustrate the application of the rule, the Commission noted: ''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.''

24. In its petition, DIRECTV asks the Commission to reconsider its interpretation of the nondiscrimination provision of section 338(d) of the Act, contending that section 338(d) does not unduly restrict satellite carriers from offering local-into-local service through the use of different orbital positions, with multiple dishes if necessary. DIRECTV further asserts that Congress considered this precise question and decided to delete draft statutory language that would have imposed the very restriction that the Commission found in the statute.

25. The Commission declines to reconsider this issue. DIRECTV's arguments were squarely before us when we made our determination that section 338(d)'s nondiscrimination provision bars satellite carriers from discriminating against some broadcast stations by requiring subscribers to purchase additional receiving equipment in order to access some, but not all, local signals. DIRECTV has not presented any new facts or arguments to convince us to change our interpretation of section 338(d) as it concerns this issue. Indeed, as reflected in the *Report and Order,* the Commission considered the very same line of legislative argument that DIRECTV now makes, which EchoStar previously made:

> EchoStar comments that one of the obligations advocated by the NAB—that 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 [s]ection 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.

In response, the Commission held ''that the language of [s]ection 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.'' The Commission's rule on this issue is intended to prohibit satellite carriers from placing mandatory carriage television stations on a satellite if that would require a subscriber to purchase equipment additional to what is needed to receive other local stations in the same market, and, at the same time, placing retransmission consent stations on another satellite that does not require subscribers to purchase any additional equipment.

26. We agree with Public Television Stations that DIRECTV, in any event, misinterprets the legislative history of SHVIA in arguing that it should be permitted to require subscribers to use two separate dishes to receive the full package of local channels. When Congress adopted the SHVIA, it rejected language that said subscribers could not be required to install an additional dish to receive any local signals. The legislative drafting change cited by DIRECTV involved a deletion of a much broader limitation on satellite carriers than what the Commission adopted under the general anti-discrimination language that survived. The legislative drafting change, at most, indicated that Congress did not want to prohibit satellite carriers from requiring additional dishes generally, but the change does not imply that Congress wanted to allow satellite carriers to require additional dishes if such a requirement created discriminatory effects. We believe that a limited prohibition on requiring subscribers to obtain a separate dish to receive some local signals when other local signals are available without the separate dish is necessary to give full effect to local station carriage requirements. Otherwise, as Public Television Stations argue, satellite carriers could structure local station packages and separate dish requirements to discourage consumers from subscribing to certain local stations, including local noncommercial stations. For the foregoing reasons, we affirm our rule prohibiting satellite carriers from requiring subscribers to purchase additional equipment to gain access only to some, but not all of the local signals in a market.

*B. ALTV's Petition*

1. A La Carte Sales of Local Signals

27. In the *Report and Order*, the Commission held that section 338 does not require satellite carriers to sell all local television stations as one package to subscribers, as broadcast interests had urged in their comments. The Commission found that Congress did not intend to establish a basic service tier-type requirement for satellite carriers when it implemented section 338, and that Congress did not explicitly prohibit the sale of local television station signals on an a la carte basis. The Commission determined that, instead, 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, the Commission stated, ''a satellite carrier must offer local television signals, as a package or a la carte, at comparable rates.''

28. ALTV seeks reconsideration of this issue. NAB, NASA, Paxson, and Public Television Stations submitted arguments, similar to those that ALTV makes, in support of reconsideration. ALTV and other parties contend that the Commission's decision to allow a la carte pricing of local stations could result in discrimination against local stations and run counter to the SHVIA's anti-discrimination requirements. They ask the Commission to require all local signals to be included in a single package in order to ensure that consumers have access to all local stations. ALTV insists that this change to the Commission's rule is needed because of its concern that a satellite carrier, through its packaging and pricing decision, could influence the availability of, and access to, local channels. NAB states that ''allowing satellite carriers to adopt differential pricing policies for 'favored' and 'disfavored' local channels directly contravenes the statutory prohibition on discriminatory pricing.'' Further, NAB asserts that authorizing a la carte pricing for local stations ''would allow satellite carriers to demote some local stations to second-class status in a manner that cable systems could never dream of—namely, selling a handful of stations in a market as a package, while offering the smaller stations in the market only on an a la carte basis, which predictably will be purchased by far fewer subscribers.''

29. The Commission denies ALTV's request for reconsideration of this issue. As reflected in the *Report and Order*, the Commission considered and rejected

the precise argument that ALTV is asking us to reconsider. Neither ALTV nor the parties that support ALTV on this issue has submitted new arguments or facts to warrant reconsideration of our decision that satellite carriers should not be required to offer local stations only as a single package. We find nothing in the statute that prohibits satellite carriers from offering local stations on an individual a la carte basis to the extent the carrier is not using this method of packaging to discriminate against local stations. As DIRECTV points out, and we agree, Congress could have created a requirement that satellite carriers must sell local stations to its subscribers as a single package, but it did not do so. The relevant part of section 338 requires only that a satellite carrier provide access to a local television station's signal ''at a nondiscriminatory price'' and access ''in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.'' Neither of these requirements prohibits satellite carriers from offering local television signals to consumers on an a la carte basis, and we believe that allowing a satellite carrier the flexibility to offer local television station signals to its subscribers on an a la carte basis promotes consumer choice.

30. ALTV faults our decision to implement the statutory prohibition on discriminatory pricing by requiring that satellite carriers offer broadcast stations at ''comparable rates.'' ALTV argues that the discriminatory pricing prohibition must translate to a prohibition of a la carte offerings and a requirement for a single package of local signals. We used the term ''comparable'' in the *Report and Order* to explain that ''non-discriminatory'' need not mean identical. That is, although the charges need not be the same, they should be within a nondiscriminatory range. The pricing should be based on relevant economic factors applied in a nondiscriminatory fashion that does not result in discriminatory treatment of any station or stations, such as pricing so as to effectively deter subscribers from purchasing some, but not all, local television station signals. We recognize that comparable pricing may require further clarification on a case-by-case basis, and that in most cases local stations should be offered to subscribers at the same or nearly identical prices. We are, however, unwilling at this time to require identical pricing for each local station carried and will evaluate on a case-by-case basis any complaints alleging discrimination prohibited by section 338.

31. We clarify here that although the statute does not prohibit satellite carriers from offering stations on an a la carte basis at comparable rates, we believe that a prohibited discriminatory effect would result if carriers created a mix of one or more packages for some stations while offering other stations only individually (*e.g.,* creating a package of six local stations and offering other local stations only on an individual a la carte basis, or creating two separate packages of different local stations). Allowing satellite carriers to offer some stations as a package and others on an a la carte basis could operate as a deterrent to the purchase of certain local stations without furthering consumer choice. We believe that this is one of the very discriminatory results that section 338 sought to prohibit. In contrast, we do not believe it would be discriminatory for a satellite carrier to offer either each local station individually or a package containing all local stations for a price less than or equal to the sum of subscribing to each station individually (*e.g.,* each of twelve local stations for $1 *or* all twelve stations for $10). Thus, if subscribers choose to forego a package of local stations that a satellite carrier is offering and instead subscribe, for example, to only three of the twelve stations that may be offered on an a la carte basis, that is an exercise of consumer choice. At the same time, other subscribers may choose to select a package that may be cheaper than the sum of individual stations.

2. Station Eligibility To Vote on Alternative Receive Facility

32. Section 338(b)(1) of the Act requires a television station asserting its ''right to carriage'' under section 338(a) to bear the costs associated with the delivery of a good quality signal to the satellite carrier's designated local receive facility or to ''another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.'' In the *Report and Order*, the Commission interpreted the phrase ''that is acceptable to at least one-half the stations asserting the right to carriage in the local market'' to mean that a satellite carrier may establish an alternative receive facility if ''50% or more'' of those stations in a particular market consent to such a site. The Commission determined that calculation of the ''50% or more'' stations should be based on the majority of stations entitled to carriage in each affected market. The Commission reasoned: ''Since the 'right to carriage' under [s]ection 338 extends, at least initially, to all local television broadcasters, the calculation includes *all stations*, whether they elect mandatory carriage or retransmission consent.''

33. ALTV asks the Commission to revise its rule concerning this issue. ALTV contends that the calculation of the 50% threshold should be based on the number of local stations actually electing mandatory carriage, and that it should not include those stations that elect to proceed via retransmission consent. ALTV asserts that, if stations that elect retransmission consent are allowed to approve an alternative receive facility, ''stations 'asserting their right' to be carried under the signal carriage rules will be harmed,'' because of the costs associated with having to transport their signals to a distant location.

34. We decline to revise our rule on this issue. As an initial observation, we note that the Commission already has considered and rejected similar arguments voiced in the initial rulemaking. In the *Report and Order*, the Commission stated:

> We disagree * * * 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 * * *. 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.

35. We recognize that ALTV wishes to ensure that stations electing retransmission consent are not permitted to vote in an election process that ALTV views as a protection only for must carry stations. We disagree, however, that this is the only or the best reading of the statute. The relevant language in section 338(b)(1) (''asserting the right to carriage'') is not the same as the language in section 338(a)(1), which requires carriage of those local stations that ''request'' carriage. Nothing in this language suggests that a station seeking to participate in the selection of an alternative reception site in order to determine its rights under the law could not assert that it has a right to carriage in a market but thereafter opt to be carried pursuant to retransmission consent. In this, as in many other areas, asserting the existence of a right need not be the same as proceeding to exercise that right. As the process

contemplated by the statue commences (and as it plays out in subsequent years) there is a set of stations that can assert a right to carriage consisting basically of all stations in the market. As the process proceeds, this group of stations is divided through the carriage election process into stations that request carriage and those that proceed under the retransmission consent provisions of the law. The assertion of the right and the request for carriage pursuant to that right are separate acts. Moreover, since the location of the receive facility may inform the station's decision to elect must carry or retransmission consent (*e.g.,* if the receive site is in a location to which the station is confident of delivering a good quality signal, it may encourage a mandatory carriage election), a logical reading of the phrase in section 338(b)(1) of ''asserting the right to carriage'' would permit a vote by all must carry eligibles (including those ultimately choosing retransmission consent at the election for the upcoming cycle) prior to the election. In addition, since a station's status as a ''must carry'' or ''retransmission consent'' station may change from election cycle to election cycle, and since there may be only one opportunity to vote on the alternative receive facility, the best reading of the phrase ''asserting the right to carriage'' would cover those stations asserting that they have such a right at the vote, which they may then exercise at the upcoming election cycle, or in future election cycles.

36. We note also that there are practical problems associated with the ALTV suggested rule. It is not known at the inception of the satellite broadcast carriage requirements, when or even if satellite carriers will attempt to use alternative receive facilities. If a satellite carrier proposes an alternative receive facility after the local stations in the affected market have submitted their carriage elections but before the carriage cycle commences (*e.g.,* between July 1 and December 31, 2001), it could be possible to identify stations that have elected mandatory carriage and that satellite carriers have agreed to carry. However, if the alternative receive facility is proposed at any other time, it is not possible to identify which stations have requested mandatory carriage for the relevant cycle. We believe the statute neither contemplates nor dictates station eligibility requirements that vary according to the timing of the satellite carrier's proposal of an alternative receive facility. We believe the statute provides us with the flexibility to adopt rules that will best address the factual circumstances we anticipate and, if warranted, to amend these rules if actions and events in practice prove otherwise.

*C. Issues for Clarification*

37. Below, we clarify and modify several requirements adopted in the *Report and Order*. We take these actions partly *sua sponte* and partly in response to informal telephonic requests for clarification of our rules from the public.

1. Refusals To Carry

38. The *Report and Order* implemented the terms of section 338 with respect to bases for refusing a local broadcast station's request for mandatory carriage. To the extent the statutory language in section 338 is similar to the language of section 614, we patterned the rules for satellite carriers on the cable must carry rules. Where possible, we endeavored to leave the details of compliance to the affected parties and the marketplace. We expected that the parties would act reasonably and not refuse carriage without a good-faith basis for doing so. As the parties have commenced acting on the carriage procedures set forth in the rules, however, we have seen indications that more specific instruction and parameters may be necessary. We take the opportunity afforded by this *Order on Reconsideration* to clarify our intent and expectations more fully. We continue to hope that specific rule amendments will not be necessary.

39. The rules we adopted to implement section 338 govern carriage elections and describe the information a station must include in its carriage request ''to ensure that a satellite carrier has the base information it needs to commence the carriage of local television stations.'' The rules also require satellite carriers to respond to must carry elections by accepting or denying carriage and providing reasons for denial. We noted, by way of example, that a valid reason for not commencing carriage is ''poor quality television signal.'' In addition, with respect to substantial duplication, we noted that a satellite carrier is not required to carry stations that broadcast programming that duplicates another station carried in the market. However, a broadcast station requesting mandatory carriage is not required to provide evidence with its request to prove that it does not duplicate. Indeed, it would be difficult or impossible for a station to do so because it does not know which other stations in the market have requested carriage. Rather, if the satellite carrier has a reasonable basis for asserting that the station substantially duplicates another station carried in the market, the carrier should describe its basis in sufficient detail to afford the station an opportunity to respond.

40. In the context of carriage elections, we did not require broadcast stations to provide information about signal quality nor did we require each station electing must carry to first prove to the satellite carrier that its signal is of good quality. Rather, we left it to the satellite carrier, in its response to a request for mandatory carriage, to notify the station if the request is rejected and the reason for refusal is a poor quality signal. If a satellite carrier has a reasonable, good-faith basis for believing that a station is not delivering a good quality signal to the designated receive facility, then it may describe its basis for this belief in its response to the station's request for mandatory carriage. We do not require in the satellite context, as we did in the cable context, that satellite carriers must conduct tests or present specific measurements to broadcasters in response to requests for mandatory carriage. However, the absence of this express requirement should not be taken to imply that the satellite carrier is not required to have a reasonable basis for a denial of carriage and to convey that information to the broadcast station affected. With respect to the issue of signal quality, a station should not be rejected for carriage unless, based on a knowledge of the facts and circumstances involved, there are engineering reasons for doubting that a good quality signal is likely to be available. Our expectation was that carriers would generally be able to readily determine whether the signal of a station requesting carriage is being received by the facility's reception equipment. It is implicit in the notification requirement, and indeed it is explicit in the statute itself, that stations are entitled to carriage if they qualify based on the applicable statutory and regulatory provisions. Carriage is not to be avoided by denials where there is no legitimate controversy as to the station's qualifications.

41. In discussing ''disputed'' signal quality, the *Report and Order* concluded that a satellite carrier is not required to carry a station ''until'' the station provides or pays the costs for a good quality signal. We required that ''the signal testing practices in the cable carriage context should be generally applied in the satellite carriage context.'' In the event of a dispute over signal quality, we advised parties to look to cable precedent for guidance,

and we concluded that the broadcast station should pay the cost of signal tests if necessary to prove that the signal is of good quality. If, however, the satellite carrier has no reasonable basis for contending that the broadcast station does not provide a good quality signal, then no test is required. When a carrier has a reasonable basis for asserting that the station is not providing a good quality signal, the station has the opportunity to improve its over-the-air signal or arrange alternative means of delivery. In that case, or if the station responds with a promise to provide or pay to provide a good quality signal in the future, we encourage the parties to arrange a reasonable time frame within which the good quality signal will be provided to avoid long-term uncertainty that ties up the carrier's capacity.

42. We further clarify that rejection of a request for carriage based on a broadcast station's ''failure'' to prove in its initial request for carriage that it delivers a good quality signal to the receive facility is not a valid ground for refusing carriage. Specifically, it has been reported to us that at least one satellite carrier has utilized a form letter that rejected carriage requests solely on the basis of ''failure to prove signal meets legal standard of quality necessary for mandatory carriage.'' This is not a valid reason for rejecting a request for mandatory carriage. Additionally, we are informed that the same carrier's form letter also attempts to shift the burden to the station requesting carriage to prove that it does not substantially duplicate another station that has requested carriage. Such attempts to shift the burden to the station requesting carriage do not comply with the rule or the *Report and Order*. We believe that stations that have received such form letters may appropriately respond by notifying the satellite carrier pursuant to section 76.66(m)(1) that it has failed to meet its obligations under the rules. Such notification by the broadcast station should specify how the satellite carrier's response failed to comply. For example, in response to a carrier's assertion that the station has failed to prove its signal quality, a station could provide information that the receive facility is within the station's Grade A service contours or that the Individual Location Longley-Rice computer model predicts that the station delivers a good quality signal to the receive facility. The satellite carrier would have 30 days to respond, pursuant to section 76.66(m)(2). The carrier could use the response to rescind its initial rejection and agree to carry the station or to provide specific information as to its basis for asserting that the station is not entitled to carriage. This response must state either that the station will be carried (*e.g.*, as of January 1, 2002 for the first election cycle), or provide reasons, including the reasonable basis therefor, for not carrying the station as requested.

43. We also clarify that the 60 days within which a complaint must be filed with the Commission pursuant to section 76.66(m)(6) will commence after the satellite carrier submits a final rejection of a broadcast station's carriage request, as clarified in this *Order on Reconsideration*. If a satellite carrier provides no response to a must carry election, the 60 days commences after the time for responding as required by the rule has elapsed. Or, in the case of a carrier's failure to provide the second response, as described above, the 60 days commences after the 30 days for response pursuant to section 76.66(m)(2) has elapsed. As in the cable context, if the parties are negotiating to resolve carriage disputes (*e.g.*, a station and carrier are planning to conduct a signal quality test or to determine alternative means for signal delivery), the 60 days does not begin to run until resolution efforts have failed, and the satellite carrier has notified the station in writing that it will not be carried. We continue to hope that parties will work together to resolve disputes or to determine that disputes cannot be resolved by negotiation and that Commission action is required. We note, however, that a station that has received an initial rejection letter may file a complaint with the Commission within 60 days of receipt if it believes that the carrier's apparent resolution efforts are not in good faith and are intended primarily to delay or derail legitimate carriage.

44. To summarize, as a general and guiding principle, we take this opportunity to note that the Act requires satellite carriers to carry stations upon request in those markets in which the carrier uses the statutory copyright license to retransmit one or more local stations. If the satellite carrier has a good faith, reasonable basis for refusing carriage, the carrier has the initial responsibility to specify that basis and to provide the station with adequate information and justification for its refusal. This principle applies to any refusal to carry, not only to refusals based upon signal quality. It is not consistent with the SHVIA or our rules to attempt to place the burden on the broadcast station to prove why it is entitled to carriage in the absence of a legitimate reason for questioning its eligibility. It is also inconsistent with the Act and rules to refuse to provide broadcast stations with reasonable and readily available access to the local receive facility to conduct signal strength tests as necessary. As in the cable context, a satellite carrier that fails to comply with the Act and rules, for example by using the notification procedures to frustrate the process or delay carriage without justification is not acting in the public interest and may be subject to further actions. In addition, in the satellite context, a local broadcast station may file a civil action under section 501(f) of the copyright provisions in title 17 to the extent the satellite carrier's actions result in a failure to carry a station entitled to carriage.

2. Consistent Carriage Elections

45. As indicated in the *Report and Order*, television broadcast stations are not required to have the same election requirement—*i.e.*, of either retransmission consent or must carry—between a satellite carrier and a cable operator. This decision was based in part on the lack of statutory language requiring television stations to make consistent retransmission consent/must carry elections for the two types of MVPDs, but also on the service area differences between satellite carriers and cable operators. In this *Order on Reconsideration*, we further clarify that where there is more than one satellite carrier in a local market area, a television station can elect retransmission consent for one satellite carrier and elect must carry for another satellite carrier. We believe that allowing broadcast stations to elect independently is consistent with our goal of promoting competition in the MVPD market.

3. Retransmission Consent Agreements

46. Under our rules, a television station must, during the first election cycle, notify a satellite carrier by July 1, 2001 of its carriage intention if it is located in a market where local-into-local service is provided. Beyond the first election cycle, our rules require television stations to 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. Commercial television stations are required to choose between retransmission consent and mandatory carriage by the prescribed date; NCE stations, on the other hand, must simply request carriage. A satellite carrier, in turn, must respond to a television station's carriage request within 30 days

of receiving notice (*e.g.*, for the first election cycle, 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. We clarify that, absent an agreement by the parties to the contrary, if a broadcast station has a retransmission agreement that extends into and terminates during an election cycle, the station—at the end of its contract term with the carrier—will not be entitled to demand must carry if it has not elected must carry by the required date (*i.e.*, by July 1, 2001 for the first election cycle, by October 1, 2005 for the next election cycle, etc.). We believe that this clarification is consistent with the requirements of the statute that, in the absence of a specific request for carriage by the relevant election deadline, a broadcaster is deemed to have elected retransmission consent and cannot assert a demand for carriage until the next election cycle.

4. Amendment of Carriage Request Provisions

47. On our own motion, we take this opportunity to clarify and amend the rule provisions concerning carriage election provisions that apply to satellite carriers. As described in the *Report and Order*, under section 338, satellite carriers are required to carry broadcast stations only ''upon request.'' The *Report and Order* further explains that if an existing station fails to request carriage by the election deadline, it is not entitled to demand carriage for the duration of that cycle. The request for carriage is manifested by the station's election of must carry by the specified deadline. Section 76.66(d)(1)(i) provides that ''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.'' We are concerned that, as written, this provision could be misconstrued to mean that an election for retransmission consent constitutes a request for carriage that necessitates mandatory carriage under the statute. To avoid confusion or misinterpretation of this language, we revise section 76.66(d)(1)(i), as follows: ''An election for mandatory carriage made by a television broadcast station shall be treated as a request for carriage. For purposes of this subsection concerning carriage procedures, the term ''election request'' includes an election of retransmission consent or mandatory carriage.'' We will also change the reference from ''carriage request'' to ''election request'' in section 76.66(d)(1)(ii) to conform to the revision in section 76.66(d)(1)(i).

48. In addition, on our own motion, we clarify and amend section 76.66(d)(2)(ii), which provides for carriage elections by television broadcast stations in new local-into-local markets. This provision requires local stations to make elections and requests for carriage ''in writing, no more than 30 days after receipt of the satellite carrier's notice.'' We note that this provision does not contain the same requirements that apply to carriage elections for existing local-into-local markets. We believe that certified mail, return receipt requested is the preferred method to ensure that broadcast stations are able to demonstrate that they submitted their elections by the required deadline, and that they were received by the satellite carrier. Therefore, we will amend section 76.66(d)(2)(ii) as follows: ''A local television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, no more than 30 days after the station's receipt of the satellite carrier's notice of intent to provide local-into-local service in a new television market. This written notification shall include the information required by Section 76.66(d)(1)(iii).''

49. We will also amend section 76.66(d)(3)(ii), which provides for elections and carriage requests for new television stations to be consistent with sections 76.66(d)(1) and (2), as amended. The amended language is as follows: ''A new television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by Section 76.66(d)(1)(iii).''

50. For similar reasons of consistency, we amend sections 76.66(d)(2)(iv) and (3)(iv), that set forth the procedures for new local-into-local service and new television stations, respectively. These amendments clarify the requirement that satellite carriers respond to elections for mandatory carriage within 30 days with notification of either agreement to carry or not to carry, along with reasons for the latter decision. These amendments track the requirement in section 76.66(d)(1)(iv). Accordingly, section 76.66(d)(2)(iv) is amended as follows: ''Within 30 days of receiving a local television station's election of mandatory carriage in a new television market, a satellite carrier shall notify in writing: (1) those local television stations it will not carry, along with the reasons for such decision; and (2) those local television stations it intends to carry.'' Also, section 76.66(d)(3)(iv) is amended as follows: ''Within 30 days of receiving a new television station's election of mandatory carriage, a satellite carrier shall notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station.''

51. In this respect we also note that if a satellite carrier provides notification of intent to provide local-into-local service in a new market, pursuant to section 76.66(d)(2)(i), the satellite carrier must respond to an election of mandatory carriage, requested pursuant to section 76.66(d)(2)(ii), as required by section 76.66(d)(2)(iv), notwithstanding that it has not yet commenced local-into-local service in that market. We clarify that the satellite carrier is not required to carry a local television station that elects mandatory carriage in the new local-into-local market until the satellite carrier has commenced such service. We amend section 76.66(d)(2)(iii) accordingly, as follows: ''A satellite carrier shall commence carriage of a local station by the later of 90 days from receipt of an election of mandatory carriage or upon commencing local-into-local service in the new television market.''

52. We further clarify that, with respect to determining the satellite carrier's principal place of business for purposes of submitting an election or carriage request, we believe it would be appropriate for a local television station to use a satellite carrier's letterhead address or other readily available principal address. If the satellite carrier wishes to designate a particular name or address for purposes of receipt of election notices, the carrier bears the obligation of providing that information to the local television stations no later than 30 days prior to the deadline for election and carriage requests. In addition, as in the cable context, the local television station's election or request for carriage may be signed by any person authorized to make and submit such election on behalf of the station.

53. In response to numerous telephone inquiries, we clarify that election requests must be sent by the relevant election deadline. In the cable context, section 76.64(h) provides that ''on or before each must carry/retransmission consent deadline, each television broadcast station shall * * * send via certified mail to each cable system in the station's defined market a copy of the station's election statement with respect to that operator.'' The rules

implementing satellite carriage requirements do not contain the same language, and we received no comments on this specific question during the rulemaking proceeding. In light of our general goal of making the satellite carriage rules comparable and parallel to the cable carriage rules, and in the absence of arguments demonstrating why the procedures for election notifications should differ, we clarify our intent that the election request should be sent by certified mail, return receipt by the election date to be effective. We hereby amend section 76.66(d) of our rules to clarify this intent, as follows: ''(4) Television broadcast stations must send election requests as provided in Sections 76.66(d)(1), (2), and (3) on or before the relevant deadline.''

5. Allocation of Costs for Reception Equipment at Receive Facility

54. DIRECTV in an ex parte meeting and submission requested a clarification that it would be permissible for a satellite carrier to ''pass through to broadcasters the costs incurred on the broadcaster side of the demarcation point at the local receive facility.'' DIRECTV asserts that section 76.66(g)(2) requires the broadcaster to provide a good quality signal ''at the input terminals of the signal processing equipment.'' DIRECTV contends that, in the satellite context, ''this would mean the input to any signal preamplifiers in the antenna downlead. Thus, the demarcation point for a station to hand off a 'good quality signal' must be at the preamplifier input, which in [DIRECTV's] case is a junction box at the point where the downleads enter the building.'' DIRECTV wants to pass through to broadcasters on a pro rata basis the costs of providing the rooftop equipment and other costs related to signal reception up to the junction box, which DIRECTV refers to as the ''demarcation point.'' DIRECTV further explains that the ''non-recurring costs'' for negotiating roof rights, obtaining local permits, mounting antenna masts and installing conduit range from $1,000 to $45,000 and average $15,000. DIRECTV estimates average monthly costs for maintaining roof rights would be $2,500. DIRECTV proposes to pass these costs on to the broadcasters in the market, both those carried pursuant to retransmission consent and mandatory carriage. In the average case, and assuming ten stations in the market, DIRECTV estimates charging each station ''a one-time, non-recurring charge of $1,500, and a recurring charge of $250 per month.''

55. In response to DIRECTV's views on this issue, NAB and ALTV, in a joint ex parte letter, contend that a station's obligation under the Act is only to deliver a good quality signal, ''and not to build (or rent) a local receive facility for a DBS operator.'' NAB and ALTV assert that ''the roof space on which DIRECTV has erected (or plans to erect) antennas is the relevant part of its local receive facility; and all that a station is required to do is deliver a good quality signal to that location.'' Thus, they argue, DIRECTV's demand that stations pay for DIRECTV's own real estate costs for creation of a local receive facility is ''inconsistent with the division of responsibility established by Congress in the SHVIA.''

56. DIRECTV's proposal and request for clarification raise an issue not mentioned in the original proceeding nor in the Petitions for Reconsideration. We do not have in the record information that would warrant a decision that could potentially impose unexpected expense on broadcast stations. We note that, in the cable context, upon which the satellite carriage rules generally are based, the cable system headends typically include antennas and other receiving and processing equipment necessary to receive a broadcaster's good quality signal. We have required cable operators to employ good engineering practices with respect to receiving and processing the broadcast station's signal. In the *Cable Must Carry Report and Order,* we noted that the television station has the obligation to bear the costs associated with delivering a good quality signal to the system's principal headend. In this context we offered by way of example, ''improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements, especially if the cable system's over-the-air reception equipment is already in place and operating properly.'' Cable operators are not, however, required to bear the burden of improving a broadcast station's signal.

57. In the Order clarifying the *Cable Must Carry Report and Order,* the Commission was asked to address whether the broadcaster or the cable system should pay for the purchase, installation, and maintenance of a special antenna if necessary to receive adequate signal strength. The Commission concluded that the statute specifies that a broadcast station must deliver a good quality signal to the principal headend of the cable system in order to be entitled to mandatory carriage, and, for broadcast stations received at the principal headend and carried on the system, the signal quality measurements should be made using the existing equipment at the headend. For stations that were not carried by the cable system prior to the implementation of the carriage rules, the Commission concluded that cable operators should measure the signal quality using ''generally accepted equipment that is currently used to receive signals of similar frequency range, type or distance from the principal headend'' but need not ''employ extraordinary measures or specialized equipment'' for stations not currently carried. The Commission also reiterated what was said in the *Cable Must Carry Report and Order* that broadcasters may provide ''improved antennas'' to deliver a good quality signal, that the cable operator may not refuse to allow the broadcaster to provide such types of equipment, either for measurements or delivery of signals, and that broadcasters ''shall be responsible for the cost of such specialized antennas or equipment. However, cable operators may not shift the costs of *routine reception of broadcast signals to those stations seeking must-carry status.*'' (emphasis added). The Commission concluded: ''Accordingly, we believe that it is appropriate to require a broadcast station to pay only for antennas, equipment and other needed improvements that are directly related to the delivery of its signal and not to contribute to the general maintenance of the cable system's facilities.''

58. We believe that for satellite carriers, like cable operators, it is reasonable to require that the local receive facility include, for example, the roof rights, antennas, towers, and processing equipment necessary to receive and process over-the-air good quality signals from local broadcasters. We do not believe, therefore, that it is consistent with our rules or with the statute to require broadcasters to pay for the basic equipment and property negotiations necessary to operate a receive facility. However, as in the cable context, if a broadcaster would require special or additional equipment so that its signal can be received at the established level of good quality at the receive facility, then the broadcaster is responsible for these additional costs.

**III. Paperwork Reduction Act of 1995 Analysis**

59. This *Order on Reconsideration* has been analyzed with respect to the Paperwork Reduction Act of 1995 and has been found to contain no new or

modified information collection requirements on the public. The rule revisions we adopt on our own motion are included in the approval we obtained from the Office of Management and Budget (''OMB''). *See* OMB Notice of Action (OMB No. 3060–0980) (June 7, 2001). No further OMB approval is required.

**IV. Ordering Clauses**

60. *It is ordered,* pursuant to section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and section 1.429 of the Commission's rules, 47 CFR 1.429, that DIRECTV's Petition for Reconsideration and the Association of Local Television Stations' Petition for Reconsideration *are denied.*

61. *It is further ordered,* pursuant to sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303, that the amendments to rule 47 CFR 76.66 discussed in this *Order on Reconsideration* and set forth in Appendix A, and the clarifications of that rule discussed in this *Order on Reconsideration, are adopted,* and shall become effective October 26, 2001.

**List of Subjects in 47 CFR Part 76**

Cable television, Multichannel video and cable television service.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**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 continues 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 amended by revising paragraph 3(d)(1)(i), (d)(2)(ii), (iii), (iv), (d)(3)(ii), (iv), and (d)(4) to read as follows:

**§ 76.66 Satellite broadcast signal carriage.**

* * * * *

(d) *Carriage procedures.* (1) *Carriage requests.* (i) An election for mandatory carriage made by a television broadcast station shall be treated as a request for carriage. For purposes of this paragraph concerning carriage procedures, the term election request includes an election of retransmission consent or mandatory carriage.

(ii) An election 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.

* * * * *

(2) * * *

(i) * * *

(ii) A local television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, no more than 30 days after the station's receipt of the satellite carrier's notice of intent to provide local-into-local service in a new television market. This written notification shall include the information required by paragraph (d)(1)(iii) of this section.

(iii) A satellite carrier shall commence carriage of a local station by the later of 90 days from receipt of an election of mandatory carriage or upon commencing local-into-local service in the new television market.

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

(3) * * *

(i) * * *

(ii) A new television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iii) of this section.

* * * * *

(iv) Within 30 days of receiving a new television station's election of mandatory carriage, a satellite carrier shall notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station.

(4) Television broadcast stations must send election requests as provided in paragraphs (d)(1), (2), and (3) of this section on or before the relevant deadline.

* * * * *

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 640

## Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

*CFR Correction*

In title 50 of the Code of Federal Regulations, part 600 to end, revised as of October 1, 2000, part 640 is corrected by adding Figure 1 as follows:

## PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

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**Figures—Part 640**