List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: June 23, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. Section 710.3 is amended by alphabetically adding the following definition to paragraph (d) to read as follows:

* * * * *

§ 710.3 Definitions.

(d) * * *

Non-isolated intermediate means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

* * * * *

§ 710.43 [Amended]

■ 3. Section 710.43 is amended by removing the definition for ''non-isolated intermediate.''

§ 710.46 [Amended]

■ 4. Section 710.46 is amended by removing the entire CAS No. entry for ''68648–86–2'' from the table in paragraph (b)(2)(iv).

■ 5. Section 710.52 is amended by removing the last sentence in paragraph (c)(3)(ix); italicizing the heading ''Specific information for chemical substances manufactured in amounts of 300,000 lbs. or more'' in paragraph (c)(4); italicizing the heading ''Industrial processing and use information'' in paragraph (c)(4)(i); and revising the table in paragraph (c)(4)(i)(E) to read as follows:

§ 710.52 Reporting information to EPA.

* * * * *

(c) * * *

(4) * * *

(i) * * *

(E) * * *

CODES FOR REPORTING NUMBERS OF SITES

Codes	Range
S1	less than 10 sites
S2	at least 10 but less than 25 sites
S3	at least 25 but less than 100 sites
S4	at least 100 but less than 250 sites
S5	at least 250 but less than 1,000 sites
S6	at least 1,000 but less than 10,000 sites
S7	10,000 or more sites

* * * * *

§ 710.58 [Amended]

■ 6. Section 710.58 is amended by italizing the headings for paragraphs (b) and (c) and changing the phrase ''paragraphs (c) and (d)'' to ''paragraphs (b) and (c)'' in paragraph (d).

■ 7. Section 710.59 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 710.59 Availability of reporting form and instructions.

* * * * *

(c) *Obtain the reporting documents.* EPA will send a letter with instructions describing how to obtain the reporting documents, including the reporting form and reporting instructions, to those submitters that reported in the IUR submission period that occurred immediately prior to the current submission period. EPA now makes the reporting documents available through the Internet, at *http://www.epa.gov/oppt/iur*. Failure to receive such a letter does not obviate or otherwise affect the requirement to submit a timely report. If you did not receive such a letter, but are required to report, you may obtain a copy of the form and other reporting documents from EPA by submitting a request for this information as follows:

* * * * *

[FR Doc. 04–15353 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 00–11; FCC 04–76]

Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of reconsideration.

SUMMARY: This document addresses two petitions for reconsideration of the *First Report and Order*, filed by EchoStar Satellite Corporation and the National Association of Broadcasters and Association for Maximum Service Television, Inc. The petitions for reconsideration challenge the process the Commission used to establish values for signal loss quantities in the predictive model, the particular signal loss values adopted, and our antenna height assumptions. The petitions also raise issues concerning the independence of persons who may be designated to conduct on-site reception tests, procedures to follow in determining when to test, and requirements for notification of parties as to the time and place of planned tests. The Commission denies the petitions for reconsideration.

FOR FURTHER INFORMATION CONTACT: Ron Chase, Office of Engineering and Technology, (202) 418–1378, or Harry Wong, Office of Engineering and Technology, (202) 418–2437.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* adopted March 31, 2004, and released May 25, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Memorandum Opinion and Order

1. The *Memorandum Opinion and Order* denies the petitions. The issues raised in the petitions for

reconsideration of the *First Report and Order*, 65 FR 36639, June 9, 2000, fall into two categories. First are questions regarding the predictive model we established. EchoStar Satellite Corporation (EchoStar) questions on legal grounds the process that we used to establish values for the signal loss quantities added to the ''Individual Location Longley Rice'' (ILLR) model, contending that we relied unjustifiably on a study incompletely represented in the record of the proceeding. Both EchoStar and the National Association of Broadcasts and Association for Maximum Service Television, Inc. (NAB/MSTV) request that the Commission change some of the values assigned to these signal loss quantities. NAB/MSTV also asks that we revise the standard values of receiving antenna heights used in the ILLR model. Second are questions regarding implementation of the on-site testing procedures contained in the statute. Both EchoStar and NAB/MSTV raise questions regarding how to assure the reliability of on-site tests and the independence of persons conducting them. EchoStar also asks that we determine whether an expedited procedure for completing on-site testing comports with the statute. EchoStar's proposal is opposed by NAB/MSTV.

A. ILLR Predictive Model

2. *Process Used to Establish Values for Signal Loss Quantities.* EchoStar asserts that we failed to comply with the Administrative Procedure Act in our implementation of the ILLR model by basing our decision on materials not contained in the record of the proceeding. Specifically, EchoStar states that we established values for signal loss quantities in the ILLR model based on the results of a study submitted in the joint comments of NAB/MSTV that was unaccompanied by underlying measurement data. It contends that the underlying measurement data had not been made part of the public record prior to the *First Report and Order*. It argues that we should not have accepted the results of the NAB/MSTV study without independent verification of the path loss calculations, and suggests that our decisions with regard to signal loss quantities may be in error since there is nothing in the record to indicate that we independently verified the statistical analysis of the NAB/MSTV study. EchoStar states that there is a possibility that the ILLR calculations made by NAB/MSTV contain an inherent bias. To test this possibility, it engaged the engineering firm of Hammett and Edison (H&E) to repeat the calculations for a few of the approximately 1000 individual locations analyzed by the NAB/MSTV study, and it asserts that variations in the results obtained by H&E demonstrate the unreliability of the NAB/MSTV data.

3. Contrary to EchoStar's assertions, our determinations of signal loss quantities for the ILLR were reasonably derived and complied fully with the provisions of the APA. The signal loss values we established for use in the ILLR model were derived by our own further analysis of both the NAB/MSTV study and another study by Rubinstein that similarly involved a large number of actual measurements of radio field intensity. The NAB/MSTV study was described and its results analyzed in the joint comments and reply comments of NAB/MSTV, submitted in response to the initial *Notice of Proposed Rulemaking*, 65 FR 4923, February 2, 2000. Our decision in the *First Report and Order* found that the technical assumptions and analytical methods described in both study reports were accurate representations of how the underlying data had been examined. The methodologies used in the NAB/MSTV and the Rubinstein studies are similar, and in both cases were clearly described so that we were able to determine their applicability and the validity of their results. We were thus able to assess the significance of the tabulated results without repeating the calculations. We did in fact verify that no apparent bias was introduced from the individual measurement locations selected in the NAB/MSTV study. We also determined that the measurement data and signal strength predictions were organized into clearly defined and non-overlapping categories, and that this organization of data was significant with respect to the type of conclusions sought. These are ordinary steps in the review of engineering and scientific studies, and we did not deem it necessary to relate routine activities of this nature in the text of the *First Report and Order*.

4. Moreover, the underlying raw data for the NAB/MSTV study, consisting of about 1000 measurements of signal intensity at individual locations, have been publicly available since well before the initial *Notice of Proposed Rulemaking*. About half of these measurements were placed in evidence in the matter of *CBS et al.* v. *PrimeTime24*, U.S. District Court, Southern District of Florida, Case No. 96–3650–CIV–Nesbitt. The remainder are contained in a report of field tests comparing digital and analog television transmission submitted to an FCC advisory committee. In sum, the data has now been filed in the record in this proceeding, and EchoStar has, in fact, reviewed and utilized the raw data in its arguments, as further discussed in the following paragraph. Thus, the provisions of the APA have been satisfied.

5. Finally, the Commission observes that the H&E analysis of the data fails to support EchoStar's assertion that there was an underlying bias in the NAB/MSTV submission. The differences between the H&E calculations and those of the NAB/MSTV study are due to the fact that they are made by different implementations of the ILLR model. The NAB/MSTV study's calculations were made by the ILLR computer program currently in general use for purposes of the SHVIA under arrangements that satellite carriers, including EchoStar, have made with Decisionmark Corporation, an independent agent. Moreover, the differences that do occur do not indicate a bias, since the H&E study found some values of path loss higher and some lower than those calculated by NAB/MSTV. Of the five calculations made by H&E, three predicted a higher signal level than those calculated by Decisionmark, and two lower.

6. *Values Assigned to Signal Loss Quantities.* In the SHVIA, Congress requires us to prescribe an improved model for reliably predicting the ability of individual locations to receive signals of grade B intensity. The SHVIA further requires that we ''ensure that such model takes into account terrain, building structures, and other land cover variations.'' EchoStar argues that, since Congress directs us to take buildings and other land cover variations into account, we failed to comply with the statutory mandate by setting some of the signal loss quantities to zero. It urges that the ILLR model incorporate, without reduction in magnitude, all the values derived from the Rubinstein study, as proposed in the initial *Notice of Proposed Rulemaking*.

7. Our analysis, based on the results of both studies, led us to give the value zero to the signal loss quantities associated with all VHF channels and to reduce the proposed values of those associated with UHF channels. The specific values we assigned as signal loss quantities provide ILLR predictions accurately reflecting the results of actual field testing. We did not ignore these losses, but rather made a considered determination that the most accurate ILLR predictions for VHF stations under certain groundcover conditions, including buildings, are made by setting the corresponding loss values to zero. Thus, we have taken the factors directed by Congress into consideration, and we

have followed its direction in the SHVIA by assigning values based on thorough analysis that make the ILLR model as accurate as possible, and reject EchoStar's contention in this regard.

8. NAB/MSTV asks that we revise our assignment of signal loss quantities in the land use category ''open land.'' It argues that the values assigned to certain subcategories of open land should be zero, due to the reception conditions implied by their names. The specific subcategories identified by NAB/MSTV for loss values of zero are ''Dry Salt Flats,'' ''Beaches,'' and ''Bare Ground'' as named by the United States Geological Survey (USGS). While it is true that these names individually imply the absence of buildings and vegetation, they represent only 3 of the 10 subcategories in the group ''open land.'' This combination of USGS subcategories into the single category of ''open land'' was at the core of the technical approach proposed in the initial *Notice of Proposed Rulemaking* and subsequently adopted in the *First Report and Order*. Following this technical approach, the NAB/MSTV study analyzed field measurements grouped in this larger category, rather than in the particular subcategories of ''Dry Salt Flats'', ''Beaches'', and ''Bare Ground''. There is consequently no public record of an analysis to substantiate a zero loss value for the particular subcategories singled out in the NAB/MSTV petition for reconsideration. In the absence of specific reliable data, we will not change the values assigned to individual land use categories from those established in the *Report and Order*.

9. *Antenna Height Assumptions*. NAB/MSTV also asks that we set the standard values of receiving antenna heights at 6.1 and 9.1 meters in place of the rounded values of 6 meters and 9 meters for two- and three-or-more-story buildings respectively. The receiving antenna height is a parameter of the ILLR model. We endorsed the Longley-Rice prediction procedure for the first time in the SHVA context in CS Docket No. 98–201, and recommended receiving antenna heights of 20 or 30 feet in the *Report and Order*, 64 FR 7113, February 12, 1999, in that docket. Subsequently, in a technical appendix to the *First Report and Order* in the present proceeding, we converted to metric units using the whole numbers 6 and 9 meters. This practice matches the antenna height assumption of 9 meters used for analysis of DTV and analog TV service as described in ''Longley-Rice Methodology for Evaluating TV Coverage and Interference,'' OET Bulletin 69, Federal Communications Commission (July 2, 1997). We have found that ILLR predictions are generally not precise enough to distinguish between 6.1 or 9.1 m and the rounded values.

10. Therefore, with regard to NAB/MSTV's request that the receiving antenna heights assumed for ILLR predictions be set at 6.1 and 9.1 m in place of the rounded values of 6 and 9 m, we find that the greater heights would not produce significantly different or more accurate field strength predictions. Accordingly, to maintain consistency with the 9 m value specified for receiving antenna height by OET Bulletin 69, we will continue to specify the rounded values for use in the ILLR.

B. On-Site Testing Procedures

11. The SHVIA establishes a procedure that may extend to on-site testing when a subscriber is denied satellite retransmission of a distant network station as a result of a predictive determination. Specifically, the SHVIA prescribes two steps before a test is performed. The first is the waiver request. A subscriber who is denied satellite retransmission of the signal of a specific distant network station or stations based on a predictive determination may request a waiver from the local network affiliate. This request is to be made through the satellite service provider. In the event the local affiliate denies the waiver request, the second step is a request for an on-site test. Having been denied a waiver, the subscriber may submit, through the satellite provider, a request for an on-site test to determine whether the subscriber receives or does not receive a signal meeting the signal intensity standard. The satellite carrier and the network station must then select a qualified and independent person to conduct the test, following the procedures set out in the Commission's rules, and the test must be conducted within 30 days of the subscriber's request for a test. If the test verifies the subscriber's inability to receive the locally broadcast signal at the required minimum intensity, the subscriber thereby becomes eligible for satellite retransmission of the distant network station's signal.

12. *Independence of Persons Conducting Reception Tests*. In its petition for reconsideration, the NAB/MSTV requests that we provide guidance about what is required for a signal intensity tester to be considered ''independent,'' and asks the Commission to rule that a tester can be considered independent only if he or she is not employed by and does not have a business relationship with any satellite carrier. It argues that satellite dish installers would be inclined to find customer premises unserved in the interest of the satellite carriers who recommend them and also in the interest of the customers paying for dish installation who wish to receive the distant network signals via satellite.

13. The Commission declines to adopt NAB/MSTV's suggestion. In the *First Report and Order*, we appointed the American Radio Relay League (ARRL) as the independent and neutral entity that will designate the person or organization to conduct measurements if the satellite carrier and the network station are unable to agree on the selection of a tester. The Commission has selected an impartial, independent entity to designate qualified testers and we expect that the tester's professionalism and any track record regarding their impartiality will be taken into consideration. We appointed the ARRL specifically because we expect it to designate persons who can make judgments with appropriate expertise and objectivity, and no one has raised a question as to ARRL's capability to do so. We further note that a dish installer may also be the local installer of television antennas and hence have broader business interests than solely as a dish installer. Moreover, if we were to require that testers not have business relationships with any satellite carrier, and similarly with any broadcasters, application of the statute would be problematic, since many experienced technicians will have gained their technical qualifications partly through work performed for satellite companies or broadcasters. Thus, qualified persons may be unavailable in many localities if business relationships by themselves were a barrier.

14. Rather than establishing a restrictive definition or finite list of testers that may be considered ''independent,'' we offer as guidance, for the satellite and broadcast industries as well as for the ARRL, examples of candidate testers who may be considered independent in the SHVIA context. We recommend that testers with a one-sided affiliation, either with satellite providers or broadcast stations, be avoided unless both parties affirmatively find the tester acceptable or no other qualified tester is available. For example, an employee of either the broadcaster or the satellite carrier involved in the dispute that gives rise to the need for a test would be the least independent candidate. A contractor or consultant whose business includes measuring signal reception for cellular

or land mobile radio services would be more suitable for conducting television signal intensity tests. A contractor who provides service in support of or who works for only broadcasters or satellite providers would be less independent than a contractor who provides services to neither or to both. In no event, however, should a tester receive compensation that is dependent upon the outcome of the particular test in question. We note in relation to these matters that the satellite provider and the local broadcast station may propose specific candidates to the ARRL for its consideration of their qualifications as well as independence. We recognize, however, that there can be circumstances, particularly in the smaller markets, in which the choice of qualified testers may be limited, and the parties, as well as ARRL, should show reasonable flexibility in applying the criteria. Finally, we expect that a tester that is initially agreed upon or determined by the ARRL to be qualified will conduct the test for which he or she has been designated without later objection by either party. That same tester could then be designated to conduct additional tests without further requalification unless a party raises a specific objection to his or her qualifications or practices.

15. *Event Sequence for On-Site Tests.* In the *First Report and Order*, we described the statutory provisions for waivers and testing with respect to the eligibility of satellite service subscribers to receive distant signals. Essentially, if the ILLR predicts that a subscriber is ''served,'' the subscriber may submit a request for a waiver through the satellite carrier to the network station. If the network station grants the waiver, the subscriber is eligible to receive the distant station via satellite. The statute further provides that if the waiver is denied, the subscriber may submit a request for a test to the satellite carrier. The SHVIA's scheme contemplates that a waiver would be sought from a broadcaster, and a test requested if the waiver is denied, with the broadcaster paying for the test if the test demonstrates that the subscriber does not receive an adequate over-the-air signal. This provides the broadcaster the opportunity to weigh the likelihood of an adequate signal against whether it wishes to incur the testing fee in the absence of an acceptable signal.

16. EchoStar requests that in the interest of efficiency we find it permissible for satellite providers to cause field intensity measurements to be made prior to the formalities of waiver request and possible denial anticipated in SHVIA. Specifically, EchoStar would have a field strength test occur during the same appointment with a potential subscriber as the antenna installation. Opponents argue, however, that EchoStar's proposal does not follow the three-event sequence for the procedure established in the SHVIA involving a waiver request, waiver denial, and then a request for an on-site test. NAB/MSTV further objects that EchoStar is proposing a ''secret'' test conducted by persons with ''a direct financial stake in the outcome.'' In reply, EchoStar explains that it is not proposing a secret test and that it proposes to use only an independent qualified tester, indeed, one that is examined and designated by the ARRL. Reiterating its concern for efficiency, EchoStar requests that we not preclude satellite service providers from conducting the test at an earlier stage in the process, ''before or as soon as the consumer is predicted to be ineligible.''

17. While the procedure advocated by EchoStar may be more expeditious than the one established in the *First Report and Order*, and may provide the protections intended by the statute, it is not the procedure contemplated by the statute. The statute delineates a specific sequence of events preceding testing: waiver request, waiver denial, the subscriber's request for an on-site test, selection of a qualified tester by the satellite carrier and the network station, and then the on-site test, which the broadcaster must pay for if it establishes that the subscriber does not receive an adequate over-the-air signal. As EchoStar's proposed procedure does not follow this temporal sequence specified in the statute, the Commission denies its request.

18. We believe that EchoStar has raised a valid public interest concern with the efficiency of the process used to determine SHVIA eligibility. In this regard, we note that the Commission's call center has received numerous complaints from subscribers stating that their requests for on-site signal tests have been ignored or delayed continuously by both satellite carriers and broadcast stations. The statute demonstrates a concern for prompt resolution of reception controversies, as indicated in the thirty-day time limit for on-site testing. We note that the distant signal copyright protection provisions expire on December 31, 2004, and Congress is currently considering the extension of this provision of the SHVIA. Congress thus has the opportunity to adopt EchoStar's or any other modifications to these procedures when it enacts legislation to extend those provisions. In the interim, we are continuing to monitor the situation closely and expect that the satellite providers and local network affiliates will coordinate their efforts to implement the SHVIA provisions as Congress intended.

19. Finally, NAB/MSTV has requested that the broadcaster be given 10 days after a test notification to reconsider the waiver denial that led to the test request and to provide an opportunity for interested parties to observe the test. No party has advanced a persuasive reason why a broadcaster cannot make an adequately considered judgment when first presented with a waiver request. The independently determined qualifications of the tester should obviate the need to observe every test. Moreover, such a delayed second-chance procedure would seem, in fact, to provide a broadcaster with incentive to deny all waiver requests when first presented. Accordingly, this request by NAB is denied.

Ordering Clauses

Pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j); Section 1008 of Pub. L. 106–113, 113 Stat. 1501, 1501A–526 to 1501A–545; and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a), the petitions for reconsideration submitted by EchoStar Satellite Corporation and by the National Association of Broadcasters and Association for Maximum Service Television, Inc. are denied.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–15005 Filed 7–6–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket No. OST–1998–3648]

RIN 2105–AC98

Transportation for Individuals With Disabilities—Accessibility of Over-the-Road Buses (OTRBs)

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule makes minor changes to the interim final rule published in the **Federal Register** on February 6, 2001 (66 FR 9048). The final rule sets out the ways in which an operator must transmit a copy of the request for accessible service. In addition, the final rule responds to