

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 7, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 63

[IB Docket No. 04-47; FCC 10-187]

Modification of the Rules and Procedures Governing the Provision of International Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends its rules to grant in part the Petition for Reconsideration filed by the North American Submarine Cable Association (NASCA) and otherwise affirm the Commission's Report and Order, Amendment of parts 1 and 63 of the Commission's Rules, IB Docket No. 04-47, Report and Order, FCC 07-118, 22 FCC Rcd 11398, 72 FR 54363 (2007) (Report and Order), establishing that the Coastal Zone Management Act of 1972 (CZMA) applies to cable landing licenses granted by the Commission. NASCA's Petition for Reconsideration argues that the Commission should rescind the rules adopted in that Report and Order. Although we decline to rescind the rules, we amend them to clarify the applicable licensing requirements and to ensure that the Commission's process for evaluating cable landing licenses complies with the CZMA review procedures established by the National Oceanic and Atmospheric Administration (NOAA).

DATES: Effective January 27, 2011, except for the amendment to § 1.767(k)(4), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these rules after it receives OMB approval for the information collection requirements.

FOR FURTHER INFORMATION CONTACT: Kimberly Cook or David Krech, Policy

Division, International Bureau, FCC, (202) 418-1460 or via the Internet at Kimberly.Cook@fcc.gov and David.Krech@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in IB Docket No. 04-47, FCC 10-187, adopted October 29, 2010, and released November 2, 2010. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The document also is available for download over the Internet at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-187A1.pdf. The complete text also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), located in Room CY-B402, 445 12th Street, SW., Washington, DC 20554. Customers may contact BCPI at its Web site: <http://www.bcpweb.com> or call 1-800-378-3160.

Summary of Order on Reconsideration

1. In the Order on Reconsideration, the Commission amends parts 1 and 63 of its rules to grant in part the Petition for Reconsideration filed by the North American Submarine Cable Association (NASCA) and otherwise affirms the Commission's Report and Order, Amendment of parts 1 and 63 of the Commission's rules, IB Docket No. 04-47, Report and Order, FCC 07-118, 22 FCC Rcd 11398, 72 FR 54363 (2007) (Report and Order), establishing that the Coastal Zone Management Act of 1972 (CZMA) applies to cable landing licenses granted by the Commission. NASCA's Petition for Reconsideration argues that the Commission should rescind the rules adopted in that Report and Order. Although the Commission declines to rescind the rules, the Commission amends them to clarify the applicable licensing requirements and to ensure that the Commission's process for evaluating cable landing licenses complies with the CZMA review procedures established by the National Oceanic and Atmospheric Administration (NOAA).

2. *Applicability of CZMA to FCC Cable Landing Licenses:* The Commission reaffirms its finding the Report and Order that the CZMA applies to cable landing license applications. In a letter to the Commission, NOAA, the federal agency charged with implementation of CZMA, finds that an FCC license is a federal license or permit that could be reviewed by coastal states, pursuant to the CZMA. In deference to NOAA's statutory and regulatory authority and in furtherance

of the Commission's cable landing licensing authority under the Cable Landing License Act, as delegated to the Commission by Executive Order 10530, the FCC must ensure that its cable landing license rules and application procedures comport with the consistency review procedures specified in the CZMA.

3. The CZMA states that no federal agency may grant a license to conduct an activity affecting a coastal area until a state concurs or is presumed to concur with the applicant's certification that a proposed activity is consistent with the state's coastal management plan. See 16 U.S.C. 1456(c)(3)(A). If the state includes FCC cable landing licensing in its coastal management plan, FCC licensing is considered a "listed activity." See 15 CFR 930.53. As such, the state has six months to review and either concur with or object to the certification that is required if CZMA state consistency review is triggered by the filing of a cable landing license with the Commission. The state's concurrence is conclusively presumed if it does not act within six months after receiving the applicant's certification. See 16 U.S.C. 1456(c)(3)(A). At this time, no state has included FCC licensing in its coastal management plan. If the state does not include FCC licensing in its coastal management plan, such licensing is an "unlisted activity." For unlisted activities, NOAA rules require that the state notify the relevant federal agencies, applicants, and the Director of the Office of Ocean and Coastal Resource Management (OCRM) (within NOAA) of the state's request to review the activity within thirty days of notice of the license or permit application, or otherwise be deemed to have waived the right to review the unlisted activity. See 15 CFR 930.54.

4. *Certification Requirement:* The Order on Reconsideration amends the certification requirement of § 1.767 to clarify that the applicant need only certify that the proposed submarine cable will not be located in or impact any state that requires review of FCC cable landing applications as a listed activity in its coastal management plan.

5. *Constructive Notice to States:* The Order on Reconsideration clarifies that the thirty-day time period for a state to request NOAA approval for consistency review of the application as an unlisted activity will commence with the issuance of the Public Notice that the submarine cable landing license application has been accepted for filing. NOAA rules allow for constructive notice to a state of submission of an application for licenses for unlisted

activities. "Notice to the State agency may be constructive if notice is published in an official federal public notification document or through an official State clearinghouse. * * *" 15 CFR 930.54(a)(2). Issuance of the accepted-for-filing Public Notice provides constructive notice to a state of the submission of submarine cable landing license application and commences the thirty-day period specified in § 930.54(a)(1). This publication of the Order on Reconsideration in the **Federal Register** provides constructive notice to the states of this finding and of the utility of monitoring Public Notices for federal license activities that may be subject to consistency review. See 15 CFR 930.54(a)(1), providing that "[w]ith the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities."

6. The accepted-for-filing Public Notice provides a description of the proposed submarine cable, including the location of the landing points. The Public Notice also provides the file number for the application so that interested parties can access the application itself through the FCC Web site. A cable landing license application is publicly available before an accepted-for-filing Public Notice is released. The application must be filed electronically via the International Bureau Filing System (IBFS), 1 CFR 1.767(n); *see also* 1 CFR 1.10000 *et seq.*, and is available for viewing through IBFS once it is filed. IBFS includes a Submarine Cable Landing Pending Application List as a pre-defined report, and also allows for searches for pending applications, as well as current cable landing licenses. The Public Notice thus contains sufficient information about the proposed activity requiring a cable landing license to permit potentially affected states to evaluate whether there will be an impact that, subject to NOAA's agreement, warrants consistency review.

7. The accepted-for-filing Public Notices are available on the FCC Web site and are included in the FCC's Daily Digest. The Daily Digest provides a brief synopsis of Commission documents, including Public Notices, released each business day. The Daily Digest is available on the FCC Web site http://www.fcc.gov/Daily_Releases/Daily_Digest, and one can also subscribe to the Daily Digest and have a copy sent via e-mail http://www.fcc.gov/Daily_Releases/Daily_Digest/subscribe.html.

8. *Streamlining Process*: Streamlined processing will be available for all applications where the states have

waived, or are deemed to have waived, any section 1456(c)(3)(A) right to review the application as an unlisted activity. Also, all applications for transfer of control or assignment of a cable landing station license or modification that do not affect the construction of a submarine cable system or cable landing station are not subject to a consistency review and are eligible for the streamlined grant procedures.

9. With the above-discussed clarification of the rules, the Commission anticipates that the CZMA requirements will rarely if ever disrupt the streamlined processing of cable landing license applications. Unless a state were to change its coastal management program to include FCC cable landing licenses as a listed activity, or were to timely request NOAA approval for consistency review of a particular cable landing application as an unlisted federal license activity, there would be no change to the Commission's streamlined process. The Commission has minimized licensee burdens associated with compliance with the CZMA by removing any ambiguity about the consistency certification that section 1456(c)(3)(A) requires to be included in the application (with a copy to the state) if this is a listed activity, and clarifying the requirements with respect to states that do not list this type of application in their federally approved state programs. As long as no state amends its coastal management program to designate this type of application as a listed activity, the Commission must remove from streamlined processing only those applications that a state, within thirty days of constructive notice of the application, has identified as involving an unlisted activity that it believes requires consistency review. The applicant would be required to amend its application to submit a consistency certification (with a copy to the state) only if OCRM ultimately approved state consistency review of the unlisted activity. In that event, a delay of up to six months from the original Federal agency notice to the state agency or three months after the state receives the applicant's required consistency certification, whichever period terminates last, is unavoidable under applicable statutory and regulatory provisions.

10. *Workability of Rules*: The Commission disagrees with NASCA that the CZMA rules present applicants with a "Catch-22" in Florida. NASCA argues that applicants face a "Catch 22" in Florida because Florida requires applicants to first obtain and submit a copy of their cable landing license, and

thus, according to NASCA, under the CZMA rules, there is no way to obtain the federal and state approvals needed to land an undersea cable in Florida. The Order on Reconsideration notes that there is no current requirement that a cable landing license application must include a certification regarding the consistency of proposed activities with Florida's coastal management program, because Florida has not included FCC cable landing licenses as a listed activity in its coastal management plan. Consequently, with the clarification to our rules discussed above, there is no "Catch-22" situation in Florida, because the certification requirement only applies to listed activities and Applicants only need to comply with the procedures for unlisted activities discussed above. The Order on Reconsideration further notes that any problem with Florida's specific situation that may arise in the future could be addressed in consultation among the affected parties, including the state licensing agency, the FCC, and the Director of OCRM, as would be required if Florida were to amend its coastal management program to designate this type of application as a listed activity or to receive approval to review a particular application as an unlisted activity. Thus, if Florida amends its coastal management program to designate a cable landing license application as a listed activity, the FCC will take appropriate steps to address NASCA's concerns.

11. The new rules do not change what applicants for a cable landing license are required to provide the FCC other than the certification requirements necessary to alert the Commission of any outstanding state consistency review and to ensure Commission compliance with the CZMA. The new requirements relate to assuring compliance with the CZMA, and, as discussed above, the Commission defers to NOAA's expertise in the applicability of the consistency review procedures specified in the CZMA.

12. *WTO*: The Order on Reconsideration finds that the CZMA procedures, as clarified, interject no ambiguity concerning the time normally required to reach a decision on a license application. Rather, as required by WTO commitments, all license processing requirements, including any delays attributable to CZMA, are transparent and spelled out in the applicable statutes and rules.

13. *Request to Defer Effective Date*: NASCA's request to defer the effective date of the rules is moot since the Commission did not put the new rules

into effect while NASCA's Petition for Reconsideration was pending.

Paperwork Reduction Act of 1995 Analysis

14. The Report and Order contains rules with new information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (44 U.S.C. 3501-3520). Implementation of these rules will be subject to approval by OMB as prescribed by the PRA. The Commission has published a separate notice in the **Federal Register** inviting OMB, the general public, and other Federal agencies to comment on the information collection requirements contained in this document. In addition, the Commission notes pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-298, *see* 44 U.S.C. 3506(c)(4), that the Commission previously sought specific comment on how the Commission may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Final Regulatory Flexibility Analysis

15. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a Regulatory Flexibility Act analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. This proceeding was initiated as part of the Commission's 2002 biennial regulatory review process. Through this review, the Commission has sought to: Improve the processing of authorization applications and regulation of international services; and lessen the regulatory burdens placed on carriers.

17. In the Notice of Proposed Rulemaking, 69 FR 13276, the Commission certified that the rules proposed in this proceeding would not have a significant economic impact on a substantial number of small entities. This Order on Reconsideration will amend the submarine cable landing rules to require applicants to include

information regarding an applicant's compliance with the Coastal Zone Management Act of 1972. Although the majority of submarine cable landing license applicants are not considered small entities, the rule changes affecting these applicants are nominal and will ensure that our rules are consistent with the Coastal Zone Management Act of 1972. Therefore, we find that the rules adopted in this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

Ordering Clauses

18. For the reasons discussed above, *it is ordered*, pursuant to sections 1, 4(i), 4(j), and 5, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155, sections 34-39 of the Cable Landing License Act, 47 U.S.C. 34-39, and Sections 1.3 and 1.115 of the Commission's rules, 47 CFR 1.3, 1.115, that the Petition for Reconsideration of the Commission's Report and Order filed by NASCA is *granted* to the extent described in this Order and is otherwise *denied*.

19. *It is further ordered* that, pursuant to sections 1, 4(i), 4(j), and 5 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155, and sections 34-39 of the Cable Landing License Act, 47 U.S.C. 34-39, Part 1 of the Commission's rules *is amended* as set forth in the Appendix.

20. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *report and order*, including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

21. *It is further ordered* that the Regulatory Flexibility Certification, as required by section 604 of the Regulatory Flexibility Act and as set forth above *is adopted*.

List of Subjects in 47 CFR Parts 1 and 63

Cable, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(j), 160, 201, 225, and 303(r).

■ 2. Section 1.767 is amended by revising the note to paragraph (a)(10) and paragraph (k)(4) to read as follows.

§ 1.767 Cable landing licenses.

* * * * *

Note to paragraph (a)(10)—Applicants for cable landing licenses may be subject to the consistency certification requirements of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456, if they propose to conduct activities, in or outside of a coastal zone of a state with a federally-approved management plan, affecting any land or water use or natural resource of that state's coastal zone. Before filing their applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system, applicants must determine whether they are required to certify that their proposed activities will comply with the enforceable policies of a coastal state's approved management program. In order to make this determination, applicants should consult National Oceanic Atmospheric Administration (NOAA) regulations, 15 CFR part 930, Subpart D, and review the approved management programs of coastal states in the vicinity of the proposed landing station to verify that this type of application is not a listed federal license activity requiring review. After the application is filed, applicants should follow the procedures specified in 15 CFR 930.54 to determine whether any potentially affected state has sought or received NOAA approval to review the application as an unlisted activity. If it is determined that any certification is required, applicants shall consult the affected coastal state(s) (or designated state agency(ies)) in determining the contents of any required consistency certification(s). Applicants may also consult the Office of Ocean and Coastal Management (OCRM) within NOAA for guidance. The cable landing license application filed with the Commission shall include any consistency certification required by section 1456(c)(3)(A) for any affected coastal state(s) that lists this type of application in its NOAA-approved coastal management program and shall be updated pursuant to § 1.65 of the Commission's rules, 47 CFR 1.65, to include any subsequently required consistency certification with respect to any state that has received NOAA approval to review the application as an unlisted federal license activity. Upon documentation from the applicant—or notification from each coastal state entitled to review the license application for consistency with a federally approved coastal management program—that the state has either concurred, or by its inaction, is conclusively presumed to have concurred with the applicant's consistency

certification, the Commission may take action on the application.

* * * * *

(k) * * *

(4) Certifying that for applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system the applicant is not required to submit a consistency certification to any state pursuant to section 1456(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456.

Note to paragraph (k)(4)—Streamlining of cable landing license applications will be limited to those applications where all potentially affected states, having constructive notice that the application was filed with the Commission, have waived, or are deemed to have waived, any section 1456(c)(3)(A) right to review the application within the thirty-day period prescribed by 15 CFR 930.54.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 06-94; FCC 10-195]

Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission amends its rules to include measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures will be used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers, pursuant to the provisions of the Satellite Television Extension and Localism Act of 2010 (STELA).

DATES: Effective January 27, 2011, except for amendment to § 73.686(e), which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for that amendment.

FOR FURTHER INFORMATION CONTACT: Ira Keltz, Office of Engineering and Technology, (202) 418-0616, e-mail: Ira.Keltz@fcc.gov, TTY (202) 418-2989.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, ET Docket No. 06-94, FCC 10-195, adopted November 22, 2010 and released November 23, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference 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: www.fcc.gov.

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Summary of Report and Order

1. In accordance with the provisions of the STELA, the Commission amends its rules to include measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures will be used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers, pursuant to the provisions of the Satellite Television Extension and Localism Act of 2010 (STELA). The *Report and Order* implements DTV signal measurement procedures proposed in the Commission's *Notice of Proposed Rulemaking (SHVERA NPRM)*, 75 FR 46885, August 4, 2010, and *Further Notice of Proposed Rulemaking (STELA FNRPM)* in this proceeding with minor modifications. The rules adopted herein were developed based on our recommendations in the *SHVERA Report* and comments received in response to the *SHVERA NPRM* and the *STELA FNRPM*. They largely rely on existing proven methods the Commission has already established for measuring analog television signal strength at any individual location, as set forth in § 73.686(d) of the existing rules, but include modifications as necessary to accommodate the inherent differences between analog and digital TV signals. The new digital signal measurement procedures include provisions for the location of the measurement antenna, antenna height,

signal measurement method, antenna orientation and polarization, and data recording.

2. On December 2004, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), which amended the Copyright Act and the Communications Act to further aid the competitiveness of satellite carriers and expand program offerings for satellite TV subscribers while protecting localism. The SHVERA included new provisions for distant digital signal reception and amended section 339 of the Communications Act and section 119 of the Copyright Act to provide three methods by which a subscriber can establish eligibility to receive such signals. First, a subscriber would be eligible to receive the distant digital signal of a particular network if his or her household was predicted by the Satellite Home Viewer Act (SHVA) ILLR model to be unserved by the over-the-air analog signal of any affiliate of that network (not necessarily the local affiliate). Second, a subscriber whose household was predicted to be served by a local station's analog signal could request an on-site signal strength test to determine if his or her household is unable to receive that station's digital signal. Third, a satellite subscriber could receive distant digital signals if the television network station granted a waiver to allow satellite retransmission of the relevant network from a distant station.

3. Section 204 of the SHVERA also directed the Commission to conduct an inquiry regarding whether the Commission's digital TV signal strength standards and signal measurement procedures for determining if a household is "unserved" by local signals should be revised. Section 204 of SHVERA further directed the Commission to provide Congress with a Report on its findings and recommendations for any revisions that might be necessary for implementing DTV measurement standards and procedures. Pursuant to this requirement, the Commission issued a Notice of Inquiry and, on December 8, 2005, issued the *SHVERA Report* to Congress that, in relevant part, stated that the Commission generally believes that the digital television measurement procedures should be similar to the Commission's current procedures for measuring the field strength of analog television stations in § 73.686(d) of the rules, but with certain modifications to address the differences between analog and digital TV signals. The Commission also stated that no changes are needed to the digital television field strength standards and/or planning factors for