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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Implementation of the Satellite Home
Viewer Improvement Act of 1999

Broadcast Signal Carriage Issues

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CS Docket No. 00-96 /

COMMENTS OF LOCAL TV ON SATELLITE, LLC

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SUMMARY

Local TV on Satellite, LLC (“LTVS”) is developing a basic local television station satellite delivery service that will make available local television stations to direct broadcast satellite (“DBS”) providers for sale to subscribers. LTVS plans to distribute the local signals using a common satellite platform. The subscribers benefit by being able to receive their local stations and enjoy the convenience of having one dish, one box and one bill in common with the other DBS services to which they subscribe.

LTVS’s ability to provide this satellite service was made possible by the enactment of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”). The core of the SHVIA is the need for local stations to be available in their communities from satellite providers. Due to SHVIA, satellite carriers are now able to deliver commercial and noncommercial television broadcasting station signals that are “local” to an area served by a satellite provider. Beginning January 1, 2002, satellite carriers that provide local-into-local retransmission of any broadcast station in a given market pursuant to a statutory copyright license must carry, upon request, all local broadcast stations’ signals in the same local market. LTVS’s comments address the implementation of the SHVIA local broadcast television station carriage provisions.

As pointed out in SHVIA and the Notice of Proposed Rule Making, the FCC rules on satellite carriage should be similar, in many instances, to the cable carriage regulations. LTVS points out where regulations for satellite carriers can

be similar to the cable rules and also discusses instances where technological differences between cable and satellite require distinct regulations for satellite carriage. Regulations similar to those in the cable context can be enacted for notification of right to carriage, determination of a "good quality signal," consequences for failure to deliver a good quality signal, signal testing practices, costs of delivering a quality signal to the receive facility, definitions of "substantial duplication" and "network station" for purposes of determining duplication of signals, content to be carried (including primary video, audio, and line 21 closed captions), signal degradation and compensation for carriage. Satellite and cable regulations should differ, primarily for technological reasons, on the issues of commencement of carriage, carriage of noncommercial educational television stations, carriage of new stations or by new carriers and market modifications or revisions to DMAs.

The FCC also requests comment on other issues that do not have a parallel in the cable context, such as local receive facilities and access to subscribers on nondiscriminatory terms. LTVS's position, briefly, on these issues is that exclusive contracts for carriage should not be allowed; a local receive facility should meet the statutory requirement for location; the carrier should notify stations of the local receive facility; broadcasters disagreeing with the selection of an alternate facility can provide the signal to the facility or elect not to make the signal available; local signals must be carried on contiguous channels; no discrimination in pricing or conditions of delivery of similar local signals; electronic program guides must

provide local station schedules in the same fashion as other programming channels are presented; digital techniques such as compression ratios or encoding techniques should be allowed; and the FCC does not have jurisdiction for disputes related to non-carriage violations.

LTVS also addresses the issue of carriage of digital signals. As additional satellites must be constructed and launched to accommodate all DTV signals, LTVS suggests a transitional requirement for DTV carriage. Prior to the transition from analog to digital technology, a local station should elect the signal it wants to have carried via satellite (either analog or digital) and the satellite provider should be required to carry either the analog or full 19.4 digital signal. This transition allows stations in markets prepared for DTV to have their DTV signal carried, while allowing other (presumably smaller) markets the time to shift to DTV. LTVS suggests that the 19.4 digital signal should be carried in the top 30 markets by January 1, 2004, thus giving satellite providers adequate time to launch satellites to comply with the requirement. For those markets not in the top 30, a station's digital signal can be carried when the analog service is terminated. This phased-in transition to digital carriage benefits the providers, the stations and the public.

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On June 9, 2000, the Federal Communications Commission ("FCC" or "Commission") released a *Notice of Proposed Rule Making* ("*Notice*") seeking comments on implementation of various provisions of the Satellite Home Viewer Improvement Act of 1999¹ ("SHVIA") that enable satellite carriers to deliver commercial and noncommercial television broadcasting station signals that are "local" to an area served by a satellite provider. Local TV on Satellite, LLC ("LTVS") hereby submits its comments in response to this *Notice*.²

LTVS was founded in 1997 by Capitol Broadcasting Company, Inc. ("Capitol"), its subsidiary, Microspace Communications Corporation, and certain other members. Capitol Broadcasting Company is a family-owned diversified communications company with its principal office in Raleigh, North Carolina. In addition to Microspace, Capitol owns and operates WRAL-TV, WRAL-HD,

¹ SHVIA was enacted as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, Pub.Law 106-113, 113 Stat. 1501, Appendix I (1999).

² The *Notice* provided that comments were to be filed on July 14, 2000. Pursuant to an Order released June 30, 2000, this filing date was extended until July 14, 2000.

WRAZ(TV) and WRAL-FM in Raleigh; WJZY(TV), Belmont, North Carolina and WFVT(TV), Rock Hill, South Carolina, both in the Charlotte, North Carolina television market, the North Carolina News Network, and Capitol Radio Networks, Inc. In 1996, Capitol received the Commission's first grant of an experimental authorization for a DTV station and has been actively engaged in the development of digital broadcasting since that time. LTVS was founded to develop a basic local television station satellite delivery service to make available the local television stations to direct broadcast satellite ("DBS") providers for sale to subscribers. LTVS has developed a business plan and the technology to distribute via satellite commercial and non-commercial television stations within a given station's designated market area ("DMA"). LTVS's intent is to use a common satellite platform to promote the individual local station packages to multi-channel video program providers, who will then retail these packages to their subscribers. Thus, the LTVS plan will allow consumers to receive their local television stations with the convenience of one dish, one box and one bill, in common with the other DBS services to which they subscribe.

I. INTRODUCTION

Section 307 of the Communications Act obligates the FCC to manage the limited television spectrum so that, to the extent possible, all communities are served by local stations.³ The Commission is also required to grant applications to

³ 47 U.S.C. § 307(b) ("[T]he Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio services to each of the same.")

use the spectrum so as to serve the “public interest, convenience, and necessity.” 47 U.S.C. § 307. In fulfilling this obligation, the FCC has imposed regulations on television broadcasters to serve their communities of license with good quality signals and programming responsive to local problems and needs, e.g. children’s programming. In recognition of the importance of television to the local community, cable systems are required to carry local television signals on-channel, on a basic tier and without degradation of the broadcast television signals.⁴ In adopting the carriage regulations for cable, the Commission recognized the importance to the public that cable deliver the local channels.⁵

On November 29, 1999, Congress passed SHVIA allowing, *inter alia*, satellite carriers to provide the signals of local broadcast stations to subscribers residing in the broadcasters’ market. SHVIA requires satellite carriers, that provide local-into-local retransmission of any broadcast station in a given market pursuant to a statutory copyright license, to carry, upon request, all local broadcast stations’ signals in the same local market, as of January 1, 2002.⁶ When Congress passed the SHVIA, it again recognized and emphasized the importance of local broadcast stations to their communities by granting satellite providers the ability to carry

⁴ 47 C.F.R. § 76.57; 47 C.F.R. § 76.62(b).

⁵ *In re Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, Report and Order*, 8 FCC Rcd 2965 (1993); *In Re Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Clarification Order*, 8 FCC Rcd 4142 (1993); *In Re Implementation of the Cable Television Consumer Protection Act and Competition Act of 1992, Broadcast Signal Carriage Issues, Order*, 8 FCC Rcd. 5083 (1993); *In re Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, Memorandum Opinion and Order*, 9 FCC Rcd 6723 (1994) (collectively, “Cable Broadcast Signal Carriage Orders”).

⁶ 47 U.S.C. § 338.

local signals. This emphasis on the need for local stations' services to be available to their communities is at the core of SHVIA. The key issue in this proceeding is the ability of a consumer to receive local broadcast station signals via satellite, including receiving the local television station's DTV signal via satellite. The *Notice* solicits comments on implementing the carriage requirements and the details attendant thereto, such as carriage obligations and definitions, market definitions, broadcast station delivery to the local receive facility of a good quality signal, duplicating signals, channel positioning, content to be carried, material degradation, digital television, and compensation for carriage and remedies. LTVS's comments are directed to these issues.

In enacting SHVIA, Congress recognized that, to the extent possible, similar regulations should govern both cable and satellite providers' carriage of local broadcast stations.⁷ In implementing SHVIA, the Commission should impose regulations similar to cable rules in accordance with this intent, except for those few instances where, as LTVS will point out herein, technological differences between cable and satellite require a distinction in regulations. These distinctions are essentially twofold: satellites, obviously, are launched into space to orbit the earth and changes or modifications to a satellite thereafter are most difficult, if not impossible. Another technological distinction between cable and satellite systems is capacity. Satellites are more limited than cable because of spectrum constraints,

⁷ 47 U.S.C. § 338(g), specifically noting 47 U.S.C. § 614(b)(3) and (4) and § 615(g)(1) and (2). The cable "must carry" requirements are set forth at 47 U.S.C. §§ 534 and 535.

while cable has almost unlimited capacity and is active in re-building and increasing its channel capacity.

A look at major cable providers shows the tremendous growth in capacity of cable systems:

- In 1998, \$7.74 billion was invested in upgrading cable facilities. Technically, cable systems are upgrading to 550 MHz-750 MHz, creating new bandwidth to provide a host of new services. Current estimates say that 70% of all cable homes are passed by 550-750 MHz facilities and by the end of the year 78% will be passed by 550 MHz facilities and 55% will be passed by 750 MHz or higher facilities; 86% of cable homes will be passed by a system that allows interactive online services and/or telephony.⁸
- Many systems are rolling out digital cable and some 1.4 million subscribers have already signed up. This number is expected to grow to 9.8 million by the end of next year and to climb to 38.6 million by 2006. In the space it currently takes to provide one channel, digital compression can squeeze 12 channels of programming. TCI's National Digital Television Center offers operators some 155 digital networks.⁹

A number of issues addressed in the *Notice* concern the distinction(s) between cable and satellite technology. LTVS will address the general differences in cable and satellite capacity as they affect any recommendations for differing rules, in the respective portions of these Comments.

II. IMPLEMENTATION OF PARTICULAR SATELLITE BROADCAST SIGNAL CARRIAGE REQUIREMENTS.

The *Notice* seeks comment on how the Commission should implement the carriage provisions of § 338 of SHVIA, which governs both how the local signals are to be carried and whether they are to be carried in the digital format. This section

⁸ Communications Policy and Practice, Vol. 1, No. 4 (April 2, 1999).

⁹ *Id.*

of LTVS's Comments addresses implementation issues, aside from digital must-carry, which is treated under Part II, and suggests Commission direction in adapting the cable television rules for carriage of local broadcast signals by satellite.

A. Carriage Obligations and Definitions

47 U.S.C. § 338(a)(1) provides that, commencing January 1, 2002, "each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market . . ." The FCC solicits comment in the *Notice* on procedural guidelines for the "request" for carriage and asks whether the satellite guidelines should mirror the regulations imposed on cable providers as set forth at 47 C.F.R. § 76.58 (notification of right to carriage), § 76.64 (commencement of carriage), § 76.56 (carriage of noncommercial educational TV stations), § 76.64(f)(4) (procedure applicable to a new TV station that commences operation in a market), and § 76.64(l) (new cable system commencing operation in market).

1. Notification of Right to Carriage.

47 C.F.R. § 76.58 of the cable regulations requires a cable operator to give written notice of the right to carriage to a broadcast TV station. The Commission asks whether it should establish a similar requirement for satellite carriers to notify in writing all local broadcast TV stations of their carriage rights, once a local station in that particular market is carried. LTVS believes that the requirements

for notification of right to carriage should be similar for both cable and satellite operators. Commencing with the January 1, 2002 must-carry requirement, the satellite provider should be obligated to notify all stations in the particular market where any local broadcast station is carried, and provide to stations not being carried, the opportunity to elect carriage, either by seeking a retransmission consent agreement or pursuant to must-carry.¹⁰

2. Commencement of Carriage.

Although in many instances the regulations for cable and satellite should be similar, the rules pertaining to the commencement of carriage should differ for cable and satellite providers. Cable regulations provide for commencement of carriage on a specified date as part of the periodic television station election process.¹¹ Unlike in the cable context, where a cable system's franchise may require commencement of service by a date certain, there is no established time frame for a satellite carrier to commence providing local-into-local service in any particular market. Local signals are only required to be carried when a satellite provider elects to serve a local market and to carry at least a single station in that market pursuant to the compulsory copyright licensing system. Thus, the commencement of carriage for satellites cannot be subject to a given "start date," as with cable. Accordingly, the timing of the commencement of carriage should remain with the provider and the local stations. As the only carriage of local stations by satellite providers before January 1, 2002 is via retransmission consent agreements, the parties can

¹⁰ See, 47 C.F.R. § 76.58.

¹¹ 47 C.F.R. § 76.64.

voluntarily reach agreement on commencement dates. Stations have already negotiated for carriage of their signals in many markets without the benefit of rules governing the commencement of carriage of those signals.

3. Carriage of Noncommercial Educational Television Stations.

The Commission solicits comments on whether the procedural rules for the carriage of noncommercial educational (“NCE”) television stations should mirror the cable carriage requirements. In the cable context, a cable operator carries a certain number of qualified NCE stations based upon the number of activated channels on the cable system.¹² LTVS does not believe that carriage regulations for NCE stations should mirror the cable rules, but rather, it is in the public interest for a satellite operator to provide the subscribers in each community to which it provides a local-into-local service with the NCE stations that are local to the DMA served. NCE stations provide a valuable service to the local community and their carriage should be encouraged and required by all multi-channel video program providers, not just satellite carriers. Non-carriage of the NCE stations would threaten their ability to continue to exist and to serve their local communities. Each NCE station functions with a unique purpose and programming, owing, in part, to the diversity of those entities holding the licenses for NCE stations. For example, NCE station licensees that bring their own particular priorities to programming include boards

¹² 47 U.S.C. § 615(b); 47 C.F.R. § 76.56(a) (carriage of qualified noncommercial educational stations). 47 U.S.C. § 615(b) requires cable systems to carry any qualified local NCE television station requesting carriage. Systems with 12 or fewer activated channels must carry the signal of one qualified local NCE station. Systems with 13 to 36 activated channels must carry at least one qualified local NCE station, but need not carry more than three such stations. Cable systems with more than 36 activated channels are required to carry all NCE stations requesting carriage, but is

of education and school districts, universities, educational television associations, religious organizations and cultural organizations.¹³ Some markets in the U.S. enjoy the added benefit of having more than one NCE station broadcasting programs to the local communities.¹⁴ The carriage of these NCE stations, with their attendant unique programs, should be encouraged. If the community of license of the NCE station is within the DMA served, then any NCE station is eligible for carriage and should be carried. A caveat to this requirement should be similar to cable regulations in that, if a NCE station substantially duplicates the programming of another NCE station, the satellite provider can elect not to carry the duplicating station(s).¹⁵

4. Carriage of New Stations or By New Carriers.

The FCC asks whether procedures similar to those for cable should be established to cover new broadcast stations that commence operation in a market or for new satellite carriers. LTVS agrees that new broadcast stations be granted a certain number of days after commencement of broadcasting to elect must-carry, in

not required to carry more than three NCE stations if the additional station substantially duplicates the signal of NCE stations already carried by the system.

¹³ For example, WHUT-TV in Washington, DC (Howard University is the licensee), KLCS in Los Angeles (Los Angeles Unified School District is the licensee), WPBA in Atlanta (Board of Education of the City of Atlanta is the licensee), WYCC in Chicago (Board of Trustees of Community College is the licensee), KSCE in El Paso (Christian Television is the licensee) and KHCE in San Antonio (Hispanic Community Education Television is the licensee).

¹⁴ For example, in Los Angeles, stations KCET and KLCS (Los Angeles Unified School District is the licensee); in Washington, DC, stations WETA-TV and WHUT-TV (licensee is Howard University); in Tampa-St. Petersburg, stations WEDU and WUSF-TV (the State Board of Regents is the licensee); in Atlanta, stations WATC and WPBA (Board of Education is the licensee), in Chicago, stations WTTW and WYCC (Board of Trustees of Community College is the licensee); in Bowling Green, stations WKGB-TV and WKYU-TV (Western Kentucky University is the licensee); in New York City, stations WNET and WNYE-TV (Board of Education is the licensee).

¹⁵ 47 U.S.C. § 535 (b)(3)(C).

accordance with a rule such as that for cable set forth in 47 C.F.R. § 76.64(f)(4). However, unlike cable, it is not possible to accommodate an unlimited number of new broadcast stations. Once designed, constructed and launched, the capacity of satellites is not readily changeable. Therefore, the number of new television stations under must-carry should be limited during the life cycle of satellite systems. Cable and satellite regulations should also be similar for new carriers who will provide local-into-local service in the DMA. As in the cable context, procedures should be established for a new carrier commencing local-into-local service in a DMA to notify local broadcast stations of its intent to commence that service.¹⁶

5. Exclusive Contract for Carriage.

The FCC questions how the must-carry mandate will work with the provision of 47 U.S.C. § 325(b)(3) prohibiting, until January 1, 2006, a TV broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith if seeking to enter into retransmission consent agreements with different multichannel video programming distributors. LTVS believes that this prohibition on exclusive contracts should not sunset on January 1, 2006 and that television stations should not thereafter be able to enter into exclusive contracts for carriage with satellite providers. This prohibition on exclusive contracts for carriage, combined with the must-carry regulation, will best ensure that the public has access to a wide number of stations, with an opportunity to select from different providers.

¹⁶ 47 C.F.R. § 76.64(l).

6. Definitions.

The FCC asks for explication on the terms “television broadcast station” and “distributor” as defined in SHVIA. The term “Television Broadcast Station” is satisfactorily defined in SHVIA and does not require further explanation.¹⁷ The FCC notes that the difference between the satellite and cable definitions of “TV broadcast station” is that the satellite term excludes low-power and translator stations. In terms of carriage regulations, cable systems are only required to carry low power television stations if there are not sufficient full power local commercial stations to fulfill the cable operator's must-carry obligations.¹⁸ If there are sufficient full power stations, cable systems carry LPTV stations based upon the system's number of usable activated channels.¹⁹ In the satellite context, obviously recognizing spectrum limitations, Congress chose not to provide must-carry of LPTV stations by specifically excluding them, as well as translators, and thus there is no need to include LPTV in the definition of “TV broadcast station.” With regard to carriage of “satellite television stations,” regulations should require satellite carriers to carry such stations if they carry other local market television stations, unless they substantially duplicate another station in the local market.

With regard to “distributor,” 47 U.S.C. § 338 (h)(1) defines “distributor” as “an entity which contracts to distribute secondary transmissions from a satellite

¹⁷ Television broadcast station is defined as “an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.” 47 U.S.C. § 325(b)(7).

¹⁸ 47 U.S.C. § 614(c)(1).

¹⁹ *Id.*

carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.” As the term “distributor” is not used in SHVIA, the FCC asks for comment on its relevance. The definition or use of “distributor” in SHVIA has no relevance to the must-carry regulations. The definition appears to be included for unrelated issues relating to the delivery of distant signals to unserved households.²⁰

B. Market Definitions

“Local market” is defined in 17 U.S.C. § 122(j)(2)(A) as the designated market area in which a station is located and (i) in the case of a commercial broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area (“DMA”) within the same local market; and (ii) in the case of a NCE television broadcast station, the market includes any station that is licensed to a community within the same DMA as the NCE television broadcast station. The Commission solicits comments on the definition, determinations of market area and methods of modifying the local market.

The provisions of 17 U.S.C. § 122(j)(2)(A)(i) and (ii) were added to specifically define the stations that are to be included within a DMA. The definition needs no further explanation. The FCC is correct that the definition clarifies that the local

²⁰ As an aside, legislation recently submitted to Congress (H.R. 3615, 106th Congress, 2d Session) seeks to amend the definition of “distributor” to clarify that consumers can obtain waivers for long-distance service from either a satellite provider or a distributor. Currently, a television

market includes a geographic area and all broadcast stations located within that geographic area.

The Commission asks how references to Nielsen publications, wherein Nielsen publications determine the DMA in the definition of "designated market area," should be changed to reflect current conditions. In the cable context, markets are updated every three years and utilize certain annual Nielsen publications, depending upon the time of review. Due to technology, satellite regulations for revisions to market areas served by satellite must differ from the cable rules. Once a satellite is launched, it is difficult to make any adjustments in the DMA coverage due to the use of the spot beam technology in a satellite designed to provide local-to-local service. Each spot beam is designed to cover a specific geographic area, which would be determined by the Nielsen reports for the period 1999-2000. It is necessary, when utilizing satellite spot-beam technology, to ascertain the DMAs at the early stages of satellite construction because only minor adjustments can be made in the area to be covered by a particular spot beam once the satellite is in orbit. The FCC should not require satellite providers to utilize updated Nielsen publications due to this limitation in adjusting satellites once launched. The FCC should follow the Nielsen period specified in the statute or, at most, provide that any adjustments due to a Nielsen report be limited to the last Nielsen publication issued prior to the enactment of the instant FCC rules. Thus, the DMAs would be

station need only consider requests from providers or carriers, but not from a distributor. The proposed legislation would resolve this problem.

consistent among satellite providers by the referencing to the same annual Nielsen publication.

The FCC also asks for comments on adding or subtracting communities from a station's television market to better reflect marketplace conditions, noting that different carriage patterns may emerge for cable and satellite if no market modification mechanism exists for satellite. Due to the same technological reasons that substantially limit changes in market service areas, the FCC should decline to adopt rules on market modifications for satellite providers. Until technology allows, satellite carriers should not be required to modify markets. The question of whether the FCC has the authority to adopt a market modification mechanism to allow satellite carriers the ability to modify markets is moot, insofar as technology greatly limits such modification.

C. Broadcast Station Delivery of Good Quality Signal

Pursuant to 47 U.S.C. § 338(b)(1), “a television broadcast station asserting its right to carriage . . . shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half of the stations asserting the right to carriage in the local market.” The Commission asks for input on “local receive facility” and the selection of an alternate facility, signal quality, testing for signal quality and costs of delivering good quality signal.

1. Local Receive Facility.

47 U.S.C. § 338(h)(2) defines “local receive facility” as “the reception point in

each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.” The FCC seeks comment on whether the signals could be delivered over the facilities of an interstate telecommunications carrier to the uplink site and the “local receive facility” co-located at the carrier’s switching center or “point-of-presence.” The local receive facility should be either the local carrier’s point-of-presence or a local satellite uplink facility. In response to the FCC’s request for comments on the procedure to inform local stations of the location of the receive facility, LTVS suggests that the satellite carrier should designate the local receive facility in its carriage agreements with local television stations or, in a must-carry situation, provide notice to the affected station(s) as to the location of the local receive facility.

2. Alternate Receive Facility.

The FCC raises numerous issues in the *Notice* related to the selection of an alternate local receive facility, but, since the statute is clear on its face, there is no need for regulations on the selection of alternate facilities. The “alternate facility” can be a regional receive facility or any other facility, so long as 50% of broadcasters agree. In fact, the local receive facility can be located wherever the 50% agree. The satellite carrier should be allowed to designate a regional rather than local receive facility in its carriage agreements if at least 50% of stations asserting the right to carriage in that region sign a carriage agreement that specifies the location of the regional receive facility. Should a broadcast station be in the minority on the selection of an alternate facility, the options available to that station are to either

provide the signal to the alternate facility, provide the signal to the uplink for the satellite carrier or elect not to make the signal available to the provider. No other options are provided by statute and the FCC should decline to give the station in the minority on the selection an additional option (such as filing a complaint with the FCC) not provided by statute.

3. "Good Quality Signal."

The cable regulations provide that local commercial TV stations have the responsibility for the costs of delivering to the cable system headend a signal of good quality or a baseband video signal.²¹ The cable rules define the "good quality signal" which a television station must provide to the cable operator in order to be eligible for carriage.²² Should the broadcaster fail to deliver the quality signal, the cable provider is not obligated to carry the signal.

The standard for carriage in both the cable and satellite contexts is delivery of a "signal of good quality," and the rules for satellite providers should be similar to the cable rules. A satellite provider should have the right to refuse to carry a TV station signal that is delivered to the local receive facility which does not meet a certain quality standard. If the station cannot provide the required level of signal quality, the station is required to resolve the problem, and it is not the burden of the satellite operator to improve the station's signal. The operator should first notify the broadcast station of the deficient signal, including measurements and

²¹ 47 C.F.R. § 76.55(c)(3). The only difference between cable and satellite technology is that TV stations deliver the signal to a cable system headend, whereas in satellite context the signal is delivered to the local receive facility.

relevant data, and then discontinue carriage if the broadcaster fails to improve the signal quality. The consequences to a broadcaster that fails to provide a good quality signal in both the cable and satellite contexts should be the same.

4. Signal Testing.

The FCC also seeks comment on whether the same signal testing practices to measure a broadcaster's signal strength should be used in the satellite context as are used in the cable context. LTVS agrees that the same signal testing practices for cable and satellite operators should be utilized when measuring the broadcaster's signal strength.

5. Costs of Delivering Quality Signal.

The FCC inquires in the *Notice* about the costs of delivering a good quality signal. In the cable context, the TV station is obliged to bear the costs associated with delivering a good quality signal to the system's principal headend. Costs may include 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 otherwise operating properly.²³ These cost elements are applicable to satellite carriage, except that the receive facility is either local or regional

²² 47 C.F.R. § 76.55(c)(3). TV stations must deliver a signal level of -45 dBm for UHF signals or -49 dBm for VHF signals to be eligible for carriage.

²³ *In re the Implementation of the Cable Television Protection and Competition Act of 1992, Broadcast Signal Carriage Issue, Report and Order*, 8 FCC Rcd. 2965, 2991.

Considering the rapid advancement of technology, the list of costs associated with delivering quality signals to a headend or local receive facility will doubtless expand and change. New methods of delivering signals, whether to a headend or local receive facility, should not modify a TV station's current obligation to deliver a quality signal to a cable operator and a similar obligation should be applicable to delivery of a good quality signal to a local receive facility. TV stations can consult with satellite providers as new systems are designed and built concerning the necessary equipment needed to deliver a good quality signal to the local receive facility. TV stations are obliged in both the satellite and cable contexts to deliver a good quality signal and should be responsible for bearing the costs of delivering the good quality signal.

D. Duplicating Signals

1. "Substantial Duplication" and Network Affiliate Exemption to Carriage.

Under SHVIA, a provider is not obligated to carry the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station within the same local market, or to carry upon request the signals of more than one local broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different states.²⁴ The goals of non-duplication of network signals are to protect the integrity of local markets in order to ensure that local broadcasters can serve their local communities and compete

²⁴ 47 U.S.C. § 338 (c)(1).

fairly with other programming providers and encourage the development of diverse, high quality programming.

In the cable context, a cable operator is also not required to carry the signal of any local commercial television station that “substantially duplicates the signal of another local commercial television station that is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network . . .”²⁵ “Substantially duplicates” means that a “station regularly simultaneously broadcasts the identical programming as another station for more than 50% of the broadcast week. . . . [O]nly identical episodes of a television series are considered duplicative”²⁶ “TV network” is defined in the cable rules for purposes of applying the must-carry provisions where the programming schedules of two or more stations are similar. “Network” is defined as “an entity that offers programming on a regular basis for 15 or more hours per week to at least 25 affiliates in ten or more states.”²⁷ “Regular basis,” in the cable context, means exceeding the specified number of hours per week on an average

²⁵ In the cable context, commercial TV station licensees are entitled to protect the network programming they have contracted for by exercising nonduplication rights against more distant television broadcast stations carried on a local cable television system that serves more than 1,000 subscribers. Commercial broadcast stations may assert these nonduplication rights regardless of whether or not their signals are being transmitted by the local cable system and regardless of when, or if, the network programming is scheduled to be broadcast. Similar limitations on carriage of distant television stations by satellite carriers is set forth in 47 U.S.C. § 339. *See, In re Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions, Notice of Proposed Rule Making*, released January 7, 2000.

²⁶ 47 C.F.R. § 76.56(b)(5).

²⁷ 47 C.F.R. § 73.3613(a)(i).

basis during the preceding six months of operation.²⁸ The FCC requests comment on whether the definitions of “substantial duplication” and “network station” for satellite carriage should be similar to the cable regulations.

The definition of “substantial duplication” and “network station” should be similar for both cable and satellite providers. “Network station” is already defined in the SHVIA provision regarding carriage of distant television stations by satellite carriers as having the meaning given under 17 U.S.C. § 119(d).²⁹ In 17 U.S.C. § 119(d), “network” is defined as “a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an inter-connected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or a noncommercial education broadcast station. . . .” Obviously the intent of SHVIA was to define “network” similarly to the definition already utilized in the cable regulations.

2. Limited Carriage of Noncommercial TV Stations.

Cable systems must carry at least one local noncommercial educational station.³⁰ A noncommercial station which places a Grade B signal over a cable

²⁸ See, *In re Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965 at note 183.

²⁹ 47 U.S.C. § 339(d)(3).

³⁰ 47 U.S.C. § 535(b).