

based on over-the-air viewing.²²⁶ DirecTV argues that this exception could only apply in a few cases in which the superstation is functioning as a local station and since local stations are not covered by this section of SHVIA, the significantly viewed exception should not be present in the satellite context.²²⁷ We believe that pursuant to the SHVIA, the local-into-local copyright license can only apply within the station's DMA. Thus, once carried outside the DMA, the station cannot be considered a "local" station. Therefore, we believe the significantly viewed and Grade B contour exceptions²²⁸ will rarely, if ever, be applicable in the satellite context.

J. Overlapping Specified Zones

58. In a related matter, under the network non-duplication rules, if a cable community is located in one or more overlapping specified zones, neither station can blackout the other station's duplicating programming because both stations have equal priorities.²²⁹ The *Notice* stated that we did not believe that a similar situation could occur in the satellite context and sought comment on this issue.²³⁰ The one commenter addressing this issue contends this exception will not be triggered in the satellite context since superstations do not have specified zones outside their local markets and SHVIA only applies network non-duplication to nationally distributed superstations.²³¹ As mentioned above, a nationally distributed superstation is a "local station" when carried by a satellite carrier within its local market. When carried as a local station, the network non-duplication and syndicated exclusivity rules do not apply to delete its programming. To the extent the overlapping zones situation could occur, it will be covered by the exception for significantly viewed or Grade B contour discussed above.

K. NCE Must-Carry Exception

59. Under Section 76.92(g) of the rules, a cable community unit is not required to delete the duplicating network programming of any qualified noncommercial educational ("NCE") broadcast television station²³² that is carried pursuant to the must carry rules.²³³ Congress mandated that this provision be added to the cable network non-duplication rules as part of the must carry requirements.²³⁴ Congress recognized that in some situations an NCE station could be considered "local" under the must-carry rules, which are based on a 50-mile zone around the station's community of license, and "distant"

²²⁶ MPAA Comments at 2, n. 2; DirecTV Comments at 12-13.

²²⁷ *Id.*

²²⁸ With respect to the Grade B contour exception to syndicated exclusivity, Section 76.156(a) (amended rule §76.106(a)) of the syndicated exclusivity rules provides that a broadcast signal is not required to be deleted by a cable operator when the cable community unit falls, in whole or in part, within that signal's Grade B contour. No comments were received on this issue in this proceeding.

²²⁹ 47 C.F.R. § 76.92(b).

²³⁰ *See Notice* at 15 FCC Rcd at 443.

²³¹ DirecTV Comments at 13.

²³² 47 C.F.R. § 76.55(a)-(b).

²³³ 47 C.F.R. § 76.56.

²³⁴ § 615(f) added to the Communications Act by Section 5 of the 1992 Cable Act. *See also Implementation of the Cable Television Consumer & Competition Act of 1992, Broadcast Signal Carriage Issues, Report and Order*, 8 FCC Rcd 2965, 2969, n. 33 (1993).

for purposes of the network non-duplication rules, which are based on a 35-mile specified zone.²³⁵ No commenters addressed this issue and we believe that this exception is not relevant in this context. The SHVIA provision applies only to a local station asserting exclusivity rights against one of six nationally distributed superstations, none of which is an NCE licensee.

VI. SECTION 339(b)(1)(A) AND (B): APPLICATION OF SPORTS BLACKOUT TO RETRANSMISSION OF NATIONALLY DISTRIBUTED SUPERSTATIONS AND NETWORK STATIONS

60. In addition to requiring application of the network non-duplication and syndicated exclusivity rules, Section 339(b)(1)(A) also requires that we apply the sports blackout rule to retransmission of nationally distributed superstations, and Section 339(b)(1)(B) requires that we apply the sports blackout rule to satellite retransmission of network stations. Unlike the other cable rules we are required to apply to satellite carriers, only the sports blackout rule applies to retransmission of both nationally distributed superstations and network stations. In the case of retransmission of network stations, we are instructed to apply the cable sports blackout rule only "to the extent technically feasible and not economically prohibitive.

61. The Commission's sports broadcasts rule ("sports blackout rule") is designed to allow the holder of the exclusive distribution rights to local programming, in this case sporting events, to control, through contractual agreements, the display of that event on local cable systems.²³⁶ The purpose of the sports blackout rule is to ensure the continued general availability of sports programming to the public. The Commission adopted this rule based on a concern that sports teams would refuse to sell the rights to their local games to television stations serving distant markets due to their fear of losing gate receipts if the local cable system imported the local sporting event carried on a distant station.²³⁷ The cable sports blackout rule is triggered when a subject sporting event will not be aired live by any local television station carried on a community unit cable system.²³⁸ Under the cable sports blackout rule, the holder of the rights to the event (e.g., a sports team or league, rather than a broadcaster) has the power to demand that the local cable system blackout the distant importation of the subject sporting event. The zone of protection afforded by the sports blackout rule is generally 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place.²³⁹ As with the

²³⁵ Cable Television Consumer Protection & Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), House Report at 100.

²³⁶ 47 C.F.R. § 76.67 (amended rule § 76.111).

²³⁷ The Commission stated this would have the ultimate undesirable effect of making sporting events available to fewer viewers. See *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Cable Television Systems and the Carriage of Sports Programs*, Report and Order, 54 FCC 2d 265, 281 (1975).

²³⁸ 47 C.F.R. § 76.67 (amended rule § 76.111).

²³⁹ For a full explanation of the relevant zone of protection for the application of the sports blackout rule see 47 C.F.R. § 76.5(e). The 35 mile zone of protection is measured from a television station's reference point based upon the list of reference points in 47 C.F.R. § 76.53. The same reference point applies to all stations licensed to the same community regardless of where their transmitter or studios are located. When sports facilities are located in suburban areas, the downtown reference points may be inappropriate for purposes of calculating the protected zone (e.g., the New England Patriots play mid way between Boston and Providence). Therefore, the Commission has expressed its willingness to consider waivers "to substitute a zone of protection extending out 35 miles from the site of a sports event for the television station specified zone designated by the rule." *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Cable Television Systems and the Carriage of Sports Programs on Cable Television* (continued...)

Commission's exclusivity rules, the sports blackout rule specifies notification procedures regarding the sports programming to be deleted.²⁴⁰ However, the time frame allowed for notification is significantly shorter in the case of the sports blackout rule than for network non-duplication and syndicated exclusivity. Notification for sports blackout can be given as little as 24 hours in advance.²⁴¹ The sports blackout rule does not apply to any community unit with fewer than 1,000 subscribers.²⁴² This exemption is based on the cost of the equipment needed to delete programming.²⁴³

A. Technical and Economic Effects of Sports Blackout on Satellite Carriers

62. With respect to retransmission of nationally distributed superstations, the SHVIA requires us to apply the sports blackout rule from the cable context to satellite carriers. With respect to retransmission of network stations, however, the SHVIA provides that the sports blackout rules should be applied only to the extent technically feasible and not economically prohibitive.²⁴⁴ The language limits the application of the sports blackout rules in this narrow circumstance but only if the technical and economic difficulties are serious and harmful to the satellite carriers.²⁴⁵ In the *Notice* we asked for specific information on the technical and economic problems that would be encountered by satellite carriers.²⁴⁶ We requested per subscriber cost data and asked whether the existing conditional access mechanisms would work for this purpose. We did not receive specific data or descriptions of how the requirement to black out sporting events on network stations would be unfeasible or economically prohibitive to the degree of posing a serious economic threat to the health of satellite carriers.

63. DirecTV argues that the Commission should invoke the technical/economic hardship exception of Section 339(b)(1)(B) and not apply any sports blackout requirements on satellite retransmission of network stations but does not explain why the methods it uses to perform the blackouts required by its contracts with sports leagues cannot be used to black out network stations.²⁴⁷ DirecTV

(...continued from previous page)

Systems, Reconsideration of Report and Order in Docket No. 19417 ("1975 Sports Blackout Reconsideration Order"), 56 FCC 2d 561, 567 (1975). See also NHL Comments at 19-20.

²⁴⁰See 47 C.F.R. §§ 76.67(b), (c) (amended rule § 76.111(b), (c)).

²⁴¹Notifications for regularly scheduled events subject to the sports blackout rule must be received no later than the Monday preceding the calendar week during which the deletion is to be made. Notifications for events not regularly scheduled, or when the schedule is revised, must be received within 24 hours after the time of the deleted telecast is known, but in no event less than 24 hours before the event will take place. 47 C.F.R. § 76.67(c) (amended rule § 76.111(c)).

²⁴²See 47 C.F.R. §§ 76.67(f) (amended rule § 76.111(f)).

²⁴³ *Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems, First Report and Order*, 63 FCC 2d 956 (1977) and *Second Report and Order*, 68 FCC 2d 18 (1978).

²⁴⁴See 47 U.S.C. § 339(b)(1)(B).

²⁴⁵The legislative history requires a proof of a "very serious economic threat." Joint Statement, 145 Cong. Rec. H11793, H11796.

²⁴⁶ *Notice*, 15 FCC Rcd at 447.

²⁴⁷See e.g., NAB Reply at 5 (Quotes the DirecTV website as explaining to subscribers that they will be blacked out for individual games if they live in a zip code within a blackout area, citing <http://www.directv.com/sports/sportspages/0,1072,13,00.html> (visited 2/28/00)).

does explain that the actual blackouts are “manually triggered” by a person who can watch and monitor only four events at a time. DirecTV states that additional personnel would be needed to monitor and trigger the additional events that will be covered by the sports blackout rule. It asserts there will be “vast numbers of subscribers” and “thousands of blackout requests” creating a “monumental, expensive, and time-consuming task.”²⁴⁸ There are no specific costs provided. The Echostar comments offer even less specific information. Echostar provides no information about particular burdens that would be imposed by the requirement to black out sport events from network stations.²⁴⁹

64. As the Network Affiliates point out, no commenting party explains why it would be infeasible to develop the technology to black out sports programming, if such technology is not already in use, nor does any commenter offer cost figures to demonstrate that the technology would be cost prohibitive.²⁵⁰ We agree with those commenters that observe that the statutory language and expressions of legislative intent place a high burden to justify not imposing the sports blackout requirements for satellite retransmission of network stations. Such burden cannot be satisfied by the vague assertions and undocumented conclusions offered in this record. In contrast, the record provides unrefuted information that the technology to implement the network station sports blackout exists. Indeed, the satellite carriers currently black out sports programming pursuant to geographic restrictions in their contracts with regional sports networks and sports leagues.²⁵¹ Consequently, we find that the heavy burden is not met to justify not applying the sports blackout obligations to satellite carriers with respect to network stations.

B. Notification

65. In one aspect of the sports blackout rules, however, the timing of notification, we find that the record supports some modification from the notification periods in the cable sports blackout rules. DirecTV and Echostar urge that we lengthen the notification periods with respect to sports blackouts.²⁵² In this respect, DirecTV describes a blackout system that is notably more complex than that of a cable operator. The cable operator controls the programming at a headend, which facilitates blacking out a particular area of limited geographic size. The satellite carrier, in contrast, is controlling programming on a national basis:

First the programmer must notify DirecTV and provide information about the program to be blacked out, as well as the areas (by zip code) affected. The information provided by the programmer must then be reformatted for DirecTV compatibility. Traffic department employees must then build the blackout by entering the data into the system and notify the scheduling

²⁴⁸ DirecTV Comments at 16. *See also* DirecTV Reply at 9 (“onerous technical and logistical burdens”).

²⁴⁹ Echostar Comments at 10 (“the Commission should not at this point impose any sports blackout rules on satellite carriers”) and Reply at 5 (“current contractually required sports blackouts are broad-based enough to be manageable (as they do not demand the pin-point accuracy that would be required by rigid application of the syndex, network nondup and sports blackout rules) and thus cannot be viewed as proof that satellite carriers can comply with a far more cumbersome set of requirements.”)

²⁵⁰ Network Affiliates Reply at 3-4. *See also* NHL Comments at 18 (satellite carriers must either have or develop mechanisms to delete programming from nationally distributed superstations because there is no flexibility in the application of Section 339(b)(1)(A), and, therefore, the only question is whether it is significantly more difficult or expensive to black out a network station or if the incremental cost of deleting sports programming from network stations renders it economically prohibitive).

²⁵¹ *See* NBA Comments at 5; NFL Comments at 8; NBA/NHL Reply at 3; and Network Affiliates Reply at 4.

²⁵² DirecTV Reply at 10-11; and Echostar Reply at 9-10.

department. The blackout is then scheduled and the data regarding the blackout is processed. The blackout is checked again for accuracy before it hits the air. Finally the actual blackout itself must be manually triggered, both in and out, by an employee who determines when the actual event begins and ends by watching an actual signal of the event.²⁵³

DirecTV also notes the difficulty of re-programming the time period that has been blacked out, especially with very short advance notice.²⁵⁴

66. While the process generally described by DirecTV does not appear to present such a serious technical or economic burden as to excuse compliance with the sports blackout rules altogether, it does suggest that the challenge of implementing multiple, simultaneous blackouts and identifying and arranging substitute programming is greater for satellite carriers than for cable operators.²⁵⁵

67. DirecTV correctly notes that the time frame allowed for notification for sports blackouts is significantly shorter than it is for either network non-duplication or syndicated exclusivity, and recognizes that rights holders may not always have the ability to provide more than 24 hours notice.²⁵⁶ The cable sports blackout rules require notice for regularly scheduled events to be received on the Monday preceding the calendar week during which the deletion is to be made, and, for events not regularly scheduled or revisions to previously submitted notices, within 24 hours after the time of the telecast is known and no later than 24 hours before the telecast is to occur.²⁵⁷ This timing was instituted in 1975 to address sports interests' concerns that playoffs and weather cancellations often afford little advance notice of scheduling changes.²⁵⁸ DirecTV explains that while it may be capable of deleting a sporting event on short notice, it cannot accomplish the reprogramming necessary in such a short period of time.²⁵⁹ DirecTV proposes a notification period of 60 days prior to the start of a season for sports with a specific season, 60 days prior to the event for nonseasonal but regularly scheduled events, 30 days for events not regularly scheduled, and 10 working days for revisions to previously submitted notices.²⁶⁰

68. Commenters respond to DirecTV's proposal that, while they sometimes can provide notice as soon as a season's games are scheduled, the televising schedule may not be set until a later

²⁵³ DirecTV Comments at 16 (one person can track up to four events simultaneously; for more blackouts, more personnel are required, which could be a "monumental, expensive, and time-consuming task").

²⁵⁴ DirecTV Reply at 10.

²⁵⁵ As noted above, the satellite carriers' options for substitute programming are significantly narrower and more complex than that available to cable operators due to differences in the copyright provisions between cable and satellite. See, *supra*, notes 41, 174 and 175.

²⁵⁶ DirecTV Reply at 10.

²⁵⁷ 47 C.F.R. § 76.67(c) (amended rule § 76.111(c)).

²⁵⁸ 1975 *Sports Blackout Reconsideration Order*, 56 FCC 2d at 568.

²⁵⁹ DirecTV Reply at 10.

²⁶⁰ DirecTV Comments at 16-17 and Reply at 10-11 (seeming to suggest both 10 days and 30 days for events not regularly scheduled). Echostar concurs with DirecTV's recommendation. Echostar Comments at 10, n. 12 and Reply at 10 (but proposing that there should be no blackout requirement for events not regularly scheduled nor where the schedule changes, requiring that the "sports rights holder should shoulder the consequences of any such changes or additions.") *Id.*

date.²⁶¹ We agree that a 60 day advance notice may allow time for the games to be scheduled but not for the telecasts to be arranged. Often the televising schedule is not finally decided until a week before the beginning of the season.²⁶² We find that the satellite carriers, although not providing sufficient data to warrant an exemption from the sports blackout requirements, have offered reasonable arguments in support of revising the notification periods in the satellite sports blackout rules to the extent possible without depriving the teams and leagues of their contractual rights by establishing time frames that afford no practical protection.

69. In light of the differences in the structure and operation of the satellite and cable industries, we are persuaded that some adjustment in the application of the sports blackout rules is justified and consistent with Congressional recognition of these differences. We find, however, that the lack of specific information in the record limits our ability to finely tailor the requirements while providing the protection the statute requires. Moreover, we take note that satellite carriers currently comply with contractually mandated blackouts, which require that they delete sporting events and provide subscribers with replacement programming. We believe it is appropriate to adjust the notification requirements for satellite carriers to ensure that the holders of rights to sporting events will provide the required notice as promptly as possible. The sports blackout rules for satellite carriers will, therefore, retain the same advance notice requirements for regularly scheduled events, including those events that have a specific season (notice must be received the Monday before the calendar week in which the deletion is to be made) but will also require that rights holders notify satellite carriers within forty-eight hours of the time the telecast is scheduled. We will not make the same requirement for events not regularly scheduled due to the last minute nature of such events.²⁶³ For these unscheduled events, as well as for last minute revisions to previously scheduled events, we must take into account the realities for the sports interests of last minute revisions, particularly due to weather. Therefore, we retain the 24 hour advance notice minimum to revise previously scheduled deletions.²⁶⁴ We hope that where satellite carriers have had adequate time to line up substitute programming, they will be able to shift the substitute programming into the revised time slot even with only 24 hours notice. Because this adjustment to the notification requirements reflects legitimate differences between satellite carriers and cable operators, we see no reason to limit this distinction to retransmission of network stations. For purposes of uniformity and clarity, the same notification requirements will apply to all sports blackout requirements imposed on satellite carriers, whether with respect to network stations or nationally distributed superstations.

²⁶¹ The Baseball Commissioner and the NHL acknowledge that they serve their blackout notices at the beginning of their respective seasons. Baseball Commissioner Comments at 13 and NHL Comments at 14.

²⁶² See, e.g., NFL *ex parte* submission of September 22, 2000.

²⁶³ The timing of notice requirements has been a frequent topic of Commission proceedings on the sports blackout rule. The current regime (requiring notice no later than the Monday preceding the calendar week during which the game would be deleted) was adopted in 1975. The Commission recognized the distinction between notice for regularly scheduled games for a sports season versus events not regularly scheduled, such as playoffs, or revisions of previously submitted notices, as in the case of rainouts. See *1975 Sports Blackout Reconsideration Order*, 56 FCC 2d at 568. The Commission observed that the notice could be given as far in advance as desired and concluded the notice provisions offered a reasonable compromise between the requests of the sports interests for 24 hours or less notice and the urgings of the cable operators for more than 24 hours. *Id.*

²⁶⁴ As in the cable sports blackout rules, the notice must be received within 24 hours of the time that the telecast to be deleted is known and in no event less than 24 hours before the deletion is to take place. 47 C.F.R. § 76.67(c) (amended rule § 76.111(c)).

C. Use of Zip Codes to Determine the Location of Households Subject to Sports Blackout

70. As with the network non-duplication and syndicated exclusivity rules, most commenters agree that the sports blackout rule can best be applied to satellite carriers by reference to zip codes rather than community units.²⁶⁵ For the same reasons discussed in connection with network non-duplication and syndicated exclusivity, we agree that the zip codes that comprise the specified zones are appropriate for this purpose. As in the cable sports blackout rule, the holder of the broadcast rights, or its agent, shall be responsible for including the appropriate information identifying areas subject to deletion with its blackout notification to the satellite carrier.²⁶⁶ The notification must include a list of the appropriate zip codes.²⁶⁷

D. Exception for Small Community Units, as Applied to Satellite Carriers

71. DirecTV advocates excepting satellite carriers from the sports blackout requirement if the blackout would affect fewer than 5% of the television households in the relevant DMA, on a provider-by-provider basis.²⁶⁸ DirecTV asserts that this would have a *de minimis* impact on rights holders. The holders of rights to sporting events strongly disagree. The Commissioner of Baseball states that satellite subscribers generally constitute less than 5% of households in most DMAs and contends such an exception would eliminate sports blackouts in most cases.²⁶⁹ We agree that there should be exceptions to the blackout requirements imposed on satellite carriers that are analogous to the exceptions for cable systems. We do not agree that 5% of television households in a DMA (which would include cable subscribers as well as satellite subscribers) is analogous to the small community unit exception for cable systems.

72. The cable sports blackout rule does not apply "to any community unit having fewer than 1,000 subscribers."²⁷⁰ Much has been made by some commenters of the difference between the language of this small system exception and the small system exceptions for non-duplication and syndicated exclusivity, which specifically exempt cable systems with fewer than 1,000 subscribers.²⁷¹ However, there appears to be no basis in past Commission Orders for emphasizing this difference in the rule language. The Commission's rationale for exempting either small systems or small community units is the cost of the equipment for the cable system, and the relatively *de minimis* effect on the protected rights holder of exempting such a small system.²⁷² Because there is no specific cost information in the record in

²⁶⁵ See, e.g., Baseball Commissioner Comments at 13; DirecTV Comments at 14-15; NHL Comments at 19 ("community unit" was originally used because it was the entity capable of having a cable franchise).

²⁶⁶ 47 C.F.R. § 76.67(b) (amended § 76.111(b)).

²⁶⁷ See Section 76.127(b) in Appendix B.

²⁶⁸ DirecTV Comments at 17-18 citing 47 CFR § 76.67(f).

²⁶⁹ Baseball Commissioner Comments at 5. See also NBA Comments at 10, n. 6; and NBA/NHL Reply at 10 (5% of television households in the relevant DMA is too a high threshold (e.g. it would equal 375,000 homes in the New York DMA)).

²⁷⁰ 47 C.F.R. § 76.67(f) (amended rule § 76.111(f)).

²⁷¹ DirecTV Comments at 17 and Reply at 11-12.

²⁷² See, e.g., *Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems, First Report and Order*, 63 FCC 2d 956, 985-86 (1977) and *Second Report and Order*, 68 FCC 2d 18, 33 (1978).

this proceeding, it is difficult for us to draw a direct connection from the Commission's concerns for small cable systems due to the cost of their blackout equipment to the satellite carriers who, by all reports, already possess the necessary equipment to perform the sports blackouts required by statute.²⁷³

73. We believe that the same type of exception we apply to the satellite network non-duplication and syndicated exclusivity rules is warranted here. Our primary concern here is for the affected subscribers, as well as the expense imposed upon satellite carriers relative to the number of subscribers who will be blacked out. The Commission has found in previous considerations of the cable sports blackout rule that the effect of excepting up to 1,000 subscribers from a blackout requirement will have a *de minimis* effect on the gate receipts.²⁷⁴ Insofar as we are using zip codes in lieu of community units, we believe an exception based upon the number of satellite subscribers, per carrier, in the zip codes affected by a sports blackout request is analogous to the exception in the cable sports blackout rule for community units with fewer than 1,000 subscribers. In this satellite context we find again that an exception for fewer than 1,000 subscribers per carrier, per zip code area comprising a protected zone, will not be so detrimental to the sports interests as to warrant the expense to satellite carriers and the loss of sports programming for viewers.²⁷⁵ We will reexamine this issue if, in the future, we receive information that the loss of 1,000 satellite subscribers is more costly to the sports interests than the comparable loss of 1,000 cable subscribers where the small system exception applies in the cable sports blackout rule.

E. Other Provisions of Sports Blackout Rule for Satellite Carriers

74. Apart from the changes in the use of zip codes and in the notification requirements described above, we do not change the other provisions of the cable sports blackout rules in their application to satellite carriers. Based upon the general consensus in the comments, the same 35 mile zone of protection that applies to cable systems will apply to satellite carriers, and the same willingness to consider waivers for suburban stadiums applies to the satellite sports blackout rules as well as to the cable sports blackout rules.²⁷⁶ The rights holder will have the obligation of providing a list of the relevant zip codes to the satellite carrier with its deletion notice. If satellite carriers want to evaluate each subscriber's address and black out only those households within the 35 mile zone, the rules will not prevent them from doing so.²⁷⁷ For the same reasons cited in the network non-duplication and syndicated exclusivity rules, we will not require an electronic list of zip codes, nor will we require that satellite carriers designate a particular name or address for receipt of the notification. We do not have such a requirement for cable systems, which are far more numerous and varied, and we see no reason to require it from satellite

²⁷³ In their comments, the C-Band satellite carriers provided detailed information about the technical and economic difficulties they would encounter to implement a sports blackout requirement. TV Guide Reply at 8 and SBCA Comments at 11-17. Subsequently, the NFL and NHL submitted information demonstrating that C-Band operators are fully capable of implementing blackouts of sporting events. NFL/NHL *ex parte* submission of June 14, 2000. In a subsequent *ex parte* submission, the C-Band carriers acknowledged that implementing sports blackout is technically feasible, although they maintain that network non-duplication and syndicated exclusivity continue to present serious problems, as discussed *supra*. TV Guide *ex parte* submission of June 16, 2000 at page 2.

²⁷⁴ See *Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems, First Report and Order*, 63 FCC 2d 956, 985-86, n. 27 (1977). See also NHL Comments at 15 (59% of cable systems are "small" but this represents only 3% of subscribers).

²⁷⁵ See Section 76.127(d) in Appendix B.

²⁷⁶ See, e.g., Baseball Commissioner Comments at 13; and DirecTV Comments at 14. See also, *supra* n. 239.

²⁷⁷ See, *supra*, Section V.C.

carriers. As in the cable sports blackout rule, satellite carriers may substitute other programming during the time scheduled for a sporting event that must be blacked out. Satellite carriers may only use substitute programming for which they have copyrights, and, when required, retransmission consent. They may substitute a different distant network station provided they do not retransmit more than two network stations affiliated with the same network in a single day.²⁷⁸ Of course the substitute programming must also comply with the network non-duplication and syndicated exclusivity rules.

75. In addition, to afford satellite carriers an opportunity to adjust their schedules to these new regulatory requirements, we will require that sports rights holders provide 60 days advance notice for any sports blackout to occur on or before March 31, 2001.²⁷⁹ As of April 1, 2001, the regular notice requirements, including 24 hour notice for changes in previously scheduled blackouts, will apply. Because satellite carriers are currently complying with contractually required sports blackouts, we do not believe it is necessary to provide the same length of time to phase-in the implementation of the sports blackout rules as we find warranted for the network non-duplication and syndicated exclusivity. We believe that this 60 day period will be adequate for satellite carriers to adjust to the additional sports blackout requests.²⁸⁰

VII. OTHER ISSUES

A. Digital Signals

76. In the *Notice*, we stated that Section 339(b)(1) and the relevant part of the *Joint Explanatory Statement* are silent regarding application of the exclusivity and sports blackout rules to the retransmission of digital broadcast signals.²⁸¹ We noted that in the pending proceeding considering cable mandatory carriage of digital signals, we requested comment on how these cable rules would function for cable carriage of digital signals.²⁸² In the *Notice*, we repeated our question of whether Congress intended to apply these rules to satellite retransmission of digital broadcast signals.²⁸³ We noted that the SHVIA may be read to apply to both analog and digital broadcast signals.²⁸⁴ An alternative interpretation we

²⁷⁸ See 17 U.S.C. § 119(a)(2)(B)(i). See also NHL Comments at 20.

²⁷⁹ See Section 76.127(f) in Appendix B. For example, a satellite carrier would be required to black out a sporting event to be telecast on February 16, 2001, only if the carrier receives notification on or before December 18, 2000. DirecTV requested a phase-in period to adjust to the new sports blackout rules. DirecTV Comments at 19. NFL asserts no phase-in is needed because DirecTV and the other satellite carriers have been conducting sports blackouts pursuant to contractual arrangements for years. NFL Reply at 4. See also NBA/NHL Reply at 9 (a one year phase-in period is inconsistent with the statutory requirement for the rules to take effect within one year of enactment of the SHVIA). We believe the regulatory requirements differ from the freely negotiated arrangements and therefore warrant this short period of transition.

²⁸⁰ See Baseball Commissioner Comments at 3-4 (satellite carriers already implement blackouts of baseball games); NBA Comments at 5 (satellite carriers are already blacking out professional basketball games); Joint NBA/NHL Reply at 3 (satellite carriers comply with blackout requirements in regional sports network contracts); NFL Reply at 3-4 *But see* DirecTV Comments at 19 (phase-in sports blackout requirement over 12 months); and Echostar *ex parte* submission of October 12, 2000 at 2 (12 month phase-in for all exclusivity rules).

²⁸¹ *Notice*, 15 FCC Rcd at 450.

²⁸² See *In re Carriage of the Transmission of Digital Television Broadcast Stations*, Notice of Proposed Rulemaking, 13 FCC Rcd. 15092 (1988).

²⁸³ *Notice*, 15 FCC Rcd at 450.

²⁸⁴ *Id.*

posited was that Congress was only concerned about the carriage of analog signals given that elsewhere in the statute Congress expressly mentioned digital signals and, presumably, could have done so in this context as well.²⁸⁵ We sought comment on whether and how the exclusivity rules could apply to satellite carriage of digital broadcast signals, and whether there is a meaningful distinction between analog and digital carriage issues for satellite carriers in this context.²⁸⁶

77. The responses we received concerning this matter are aligned by industry. EchoStar argues that there is no legislative authority for the extension of the exclusivity rules to digital signals.²⁸⁷ NAB argues that the SHVIA requires exclusivity and sports blackout protection to apply to both analog and digital signals.²⁸⁸ Other broadcast groups, such as Tribune, argue that Congress did not indicate an intent that digital signals should be excluded from the new exclusivity rules and therefore that there should be no distinction between analog and digital signals under the new rules.²⁸⁹ MPAA asserts that syndicated exclusivity should apply to both digital and analog signals, pointing out that Congress made exceptions for digital signals in certain instances but did not do so for syndicated exclusivity.²⁹⁰

78. Because digital exclusivity issues are closely related to digital carriage issues, we believe that it would be premature to resolve the matters related to this issue at this time. Exclusivity requirements cannot be fully fashioned until both cable operators and satellite carriers know what their carriage responsibilities will be for digital broadcast television. The digital exclusivity issues should be decided either when the Commission issues a Report and Order in the Digital Must Carry proceeding or in another proceeding that discusses a satellite carrier's digital broadcast signal carriage responsibilities.²⁹¹

79. We do address one aspect of this issue here. We are disinclined, in the early stage of the DTV transition, to allow a broadcaster to use an exclusive contract that applies only to digital programming to prevent a cable system or satellite carrier from providing that programming in analog form to its subscribers. However, to the extent contractual rights protect a broadcaster's exclusivity for both the analog and digital versions of the same program, we see no reason to limit the effectiveness of the contract to protect only analog exclusivity. Therefore, contractual language that expressly applies to analog and digital format of the same program content will be effective to require deletion of both. That is, the rule will provide that neither satellite carriers nor cable operators will be permitted to carry the digital version of a program when the analog version is required to be deleted and the contract expressly provides exclusivity for both, any, or all formats.

²⁸⁵Section 339(c) requires the Commission to conduct an inquiry into alternative standards for determining subscriber eligibility to receive distant signals and specifies that the Commission should recommend standards for analog and, separately, for digital signals. In addition, in the *Joint Explanatory Statement*, the conferees state, with reference to must carry requirements for satellite carriers, that they take no position regarding the application of must-carry rules to carriage of digital television signals by either cable or satellite systems. *Joint Explanatory Statement* at H11795.

²⁸⁶ *Notice*, 15 FCC Rcd at 450.

²⁸⁷ EchoStar Reply at 11, 13-14.

²⁸⁸ NAB comments at 6. *See also* ALTV Comments at 10.

²⁸⁹ Tribune Comments at 7.

²⁹⁰ MPAA Comments at 6. *See also* Baseball Commissioner Comments at 13; NHL Comments at 23.

²⁹¹ We note that the NAB has commented that satellite digital broadcast signal carriage issues should not be decided until next year. *See* NAB Comments in CS Docket No. 00-96 at 21.

B. NFL Proposal to Expand Exclusivity Rules to Apply to Unitary Program Packages

80. The *Notice* sought comment on an additional issue concerning the distribution of sports programming that is related to, but not directly covered by, the SHVIA.²⁹² The National Football League sells packages of programming to networks on a national basis, but different games are broadcast locally on a regional basis, often in two-game packages. To the extent that broadcasts of games are carried into local markets on distant broadcast signals via satellite, the network non-duplication and other rules involved in this proceeding appear to offer neither the stations nor the leagues involved any protection beyond the rights to the particular games that local stations are authorized to broadcast. We sought comment on the question of how the patterns of sports carriage involved are addressed by the new law, and whether they can and should be addressed in the regulations the Commission is required to adopt pursuant to it.

81. The NFL asks the Commission to “complete the work that Congress began” by applying the network non-duplication and syndicated exclusivity rules to network stations as well as to nationally distributed superstations.²⁹³ The NFL admits that damage to stations’ contractual rights is limited because only unserved and grandfathered households can receive such stations but argues that the numbers of viewers involved are significant nonetheless.²⁹⁴ The NFL further contends that the Commission should also recognize the unitary nature of the NFL or any other regional television plan and allow local affiliates to exercise network non-duplication protections to black out other games played at the same time but broadcast in other regions of the country²⁹⁵ (e.g., Redskins versus Cowboys could blackout Giants versus Packers). Similarly, the National Hockey League expresses concern that a satellite carrier that offers local-into-local service could have access to the four games that the NHL plans to regionalize on ABC this year and could thereby create a multi-game hockey package to compete unfairly with the “Center Ice” package on ABC.²⁹⁶ We note that in the case of local-into-local carriage, retransmission consent is required, and, presumably, the stations in question could contractually prevent this from occurring.

82. The advocates of this expanded application of network non-duplication have not described why such action would be in the public interest, although we are persuaded it could be in the Leagues’ interest. The NFL and other sports interests advocating this change ask us to revise the existing cable rules to require deletion of programming that does not duplicate protected programming. As noted in the discussion of the network non-duplication rules, *supra*, the Commission has determined in the cable context that the use of different camera crews and announcers for a sporting event results in the distant program not being considered the same as the local program.²⁹⁷ Here, the NFL asks us to reach a contrary result and decide that a different event between different teams “duplicates” the protected event. The NFL and others ask us to expand the scope of the new satellite exclusivity rules beyond what Congress mandated. In light of the SHVIA’s restrictions on households that are eligible to receive distant

²⁹² *Notice*, 15 FCC Rcd at 449.

²⁹³ NFL Comments at 11-12. *See also* Division 1-A Athletic Directors Comments at 3; NBA Comments at 2, n. 3; NHL Comments at 21-22.

²⁹⁴ NFL Comments at 12-13.

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 21-22.

²⁹⁷ *See Major League Baseball*, 6 FCC Rcd 5573 (1991).

network signals,²⁹⁸ it is not clear to what extent carriage of distant signals providing different games merits remedial action. The NFL asserts that allowing satellite carriers (and, presumably, cable systems as well) to import distant signals carrying different games would undermine the NFL's regional television plan. The NFL cautions that it might "be forced" to alter its distribution plan in unspecified ways that would be "less pro-consumer."²⁹⁹ However, we believe it would not be pro-consumer to take the action the sports interests request. There can be no doubt of the negative impact on viewers of losing access to more and more sports programming. The sports interests have not provided a compelling need for this additional protection, and other commenters have argued that it would deprive viewers unnecessarily.³⁰⁰ For the reasons given, we decline to expand the exclusivity rules to apply to regional or so-called unitary packages. If the program for which protection is sought is not, in fact, duplicated by the distant programming imported by the cable system or satellite carrier, then neither the network non-duplication nor syndicated exclusivity rules apply.

C. Two Network Affiliates in One DMA

83. In the *Notice* we asked for comment on the possibility and ramifications of a "two-affiliates-in-one market scenario" with respect to the sports blackout rule.³⁰¹ We described the possibility that, in areas in which there are two affiliates of the same network within the same DMA, a subscriber would be eligible to receive both network stations based on the satellite carrier's "local-into-local" license because the subscriber resides in the DMA of both stations. Thus, in this circumstance, the sports blackout requirement of the SHVIA could, conceivably, apply to retransmission of local, rather than distant, network stations where the geographic area for purposes of the sports blackout zone surrounding one of the affiliates is smaller than the DMA. If one of the affiliates is not carrying the event, the sports blackout rule might be triggered. If the second affiliate is carrying the event, then the satellite carrier might be required to black out the event being transmitted by the second affiliate to subscribers within the 35 mile zone. We received scant response to this scenario.³⁰² We believe these comments confirm that this situation is unlikely ever to occur because the contractual arrangements allow the rights holder to prohibit both affiliates from broadcasting the event in question. Therefore, we see no reason at this time to provide for this situation in the rules.

D. Technical Revisions to the Rules: §76.5(gg)

84. The *Notice* identified several of the cable exclusivity rules that contain out-dated cross-references to other sections.³⁰³ We sought comment on how these editorial corrections should be made. In

²⁹⁸Retransmission of distant network stations is generally restricted to households that cannot receive local stations over-the-air. See 17 U.S.C. § 119(a)(2)(B) and (d)(10).

²⁹⁹NFL Comments at 14.

³⁰⁰The NFL, NHL, NBA and Division 1-A Athletic Directors Association support this proposal. See *supra* n. 293. DirecTV, EchoStar and Tribune reject the proposal as beyond the scope of the statute and this proceeding. Echostar Comments at 10 and Reply at 11; DirecTV Reply at 13; Tribune at 4-5.

³⁰¹*Notice*, 15 FCC Rcd at 447.

³⁰²NFL Comments at 7, n. 7 (NFL contractual rights provide for 75 mile blackout zone around a city's exterior corporate limits); NHL Comments at 12-13 (sports contracts would always require blackouts of broadcast stations in the same market such that there would never be the situation we describe of one affiliate blacked out and the other affiliate of the same network allowed to carry the game).

³⁰³See *Notice*, 15 FCC Rcd at 450.

particular, we noted that the cable sports blackout rule (Section 76.67, amended rule §76.111) contains a cross-reference to Section 76.5(gg) to determine when the sports blackout rule is triggered.³⁰⁴ Section 76.5(gg) was eliminated for reasons unrelated to the operation of the sports blackout rule, and no replacement reference is provided.³⁰⁵ The *Notice* asked whether we should simply reinstate a standard based on the original criteria incorporated into former 76.5 (gg) or adopt a new standard.³⁰⁶

85. Former Section 76.5 (gg) of the Commission's rules referred to the 1972 must carry rules to determine whether a station was considered "local." The cable sports blackout rule is intended to be triggered only when no "local" television station carried by a cable system is broadcasting the subject sporting event for which protection is sought.³⁰⁷ In general, the 1972 must carry rules considered a television station "local" if the subject cable community served was located within the station's specified zone.³⁰⁸ In contrast, the current must carry rules consider a television station "local" if it is located in the same DMA as a cable community. The National Hockey League (NHL) maintains that any replacement for Section 76.5 (gg) should incorporate the 1972 must carry rules definition of a "local" television station's market area.³⁰⁹ We agree. The use of DMA's would unnecessarily undermine the application of the sports blackout rule because DMAs may encompass hundreds of miles.³¹⁰ In such a DMA, stations carrying the event located hundreds of miles distant from the relevant protected zone would be considered "local." If considered "local," the holder of the rights to the event could not assert the sports blackout rule without blacking out such distant over-the-air carriage if the station had must carry rights.

³⁰⁴ Section 76.67(a) applies "if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§76.5(gg)(1) through 76.5(gg)(3) of this part." Section 76.5(gg) defined "basic cable service" for purposes of basic cable service rate regulation and incorporated the standard for carriage of broadcast television signals under the Commission's original 1972 must-carry rules. In Section 76.67, the Commission referenced Section 76.5(gg) and the body of broadcast television stations meeting its criteria in order to maintain the original scope of the sports broadcasts rule subsequent to the adoption of its interim must-carry rules in 1986. *See Amendment of Part 76 of the Commission's Rules and Regulations Concerning Carriage of Television Broadcast Signals by Cable Television Systems*, Reconsideration in MM Dkt. No. 85-349, 2 FCC Rcd. 3593 (1987).

³⁰⁵ Following a successful challenge to the Commission's interim must carry rules, the Commission revised the Sports Blackout Rule to substitute rate regulation criteria for the former must carry provision. However, in 1993, the Commission revised the rate regulations and eliminated Section 76.5(gg) without replacing the reference for the sports blackout rules. *See Amendment of Part 76 of the Commission's Rules and Regulations Concerning Carriage of Television Broadcast Signals By Cable Television Systems*, Report and Order in MM Docket No. 85-349, 61 RR2d 792, 1 FCC Rcd 864 (1986); *Amendment of Part 76 of the Commission's Rules and Regulations Concerning Carriage of Television Broadcast Signals By Cable Television Systems*, Reconsideration in MM Docket No. 85-349, 62 RR2d 1251, 2 FCC Rcd 3593 (1987); and *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking in MM Dkt. No. 92-266, 8 FCC Rcd. 5631 (1993). *See also*, NHL Comments at 24, n. 62.

³⁰⁶ *See Notice*, 15 FCC Rcd at 450.

³⁰⁷ *See, e.g., Amendment of Part 76 of the Commission's Rules and Regulations Relative to Cable Television Systems and the Carriage of Sports Programs on Cable Television Systems*, Reconsideration of Report and Order in Dkt. No. 19417, 56 FCC 2d 561 (1975)

³⁰⁸ *See Notice*, 15 FCC Rcd at 445, n. 60, for a summary of when a station was considered local under former section 76.5(gg).

³⁰⁹ NHL Comments at 23-24 (blackout protection should be triggered by the non-carriage of a game by the must carry stations in a specific market, not the DMA).

³¹⁰ *See, e.g., Nielsen Media Research, Denver, Colorado Designated Market Area.*

86. For the limited purpose of the application of the sports blackout rule, the provisions of the former Section 76.5(gg) can be substantially shortened and consolidated. Because the purpose of the sports blackout rule is simply to ensure that the rights holders to local events can exercise their contractual exclusivity rights, it is unnecessary to re-instate the complex definition of "local" that was used for the 1972 must carry regime or the 1987 rate regulations. It is not our intention to change the operation of the cable sports blackout rule. This revision merely incorporates within the cable and satellite sports blackout rules the relevant concept from the former Section 76.5(gg).³¹¹

E. Other Technical Corrections

87. The *Notice* also included, in Appendix C, two other provisions that require minor, technical corrections.³¹² No comments were received regarding these provisions. In the absence of any objection, we make these modifications, as proposed, including an editorial change to the top 100 market list contained in the rules, and a correction to section 76.5 to reflect that the reference to 76.5 (o) in 76.5(ii) should be 76.5 (m).

88. In addition, we note that Section 73.658(m) contains a reference to the Arbitron list of smaller markets.³¹³ As discussed in the Commission's recent Market Modification Order,³¹⁴ Arbitron is no longer tracking television viewership. The Nielsen Research Company produces a similar list of markets, which is current.³¹⁵ We will, therefore, revise this section of the rules to accomplish this updated cross-reference.

89. We are also taking this opportunity to delete several provisions from the cable exclusivity rules that have no further applicability.³¹⁶ We find that notice and comment are unnecessary under Section 553(b) of the Administrative Procedure Act because the rules are outdated and have no further

³¹¹ See new Section 76.128 in Appendix B, which applies to both cable and satellite sports blackout rules.

³¹² Section 76.51 lists the top 100 television markets in the United States. The "Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif." market is listed at Section 76.51(a)(2). In 1995, the Commission redesignated the "Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif.," market as the "Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif." market. See *Cable Television Service; List of Major Television Markets*, Final Rule, MM Dkt. No. 93-304 (released August 31, 1995) (the "*Los Angeles Redesignation Order*"). However, the published amendment to Section 76.51(a) intended to effectuate the foregoing change inadvertently amended Section 76.51(a)(28), rather than Section 76.51(a)(2). As a result, the redesignated "Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif." market is listed as Section 76.51(a)(28) and the "Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif." market still is listed as Section 76.51(a)(2). The "Tampa-St. Petersburg-Clearwater, Florida" market, which was listed at Section 76.51(28) at the time the Commission adopted the *Los Angeles Redesignation Order*, was deleted inadvertently from Section 76.51(a)(28) and currently is not listed elsewhere in Section 76.51. The correct reference in Section 76.51(a)(2) is to the "Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif." market. The correct reference in Section 76.51(a)(28) is to the "Tampa-St. Petersburg-Clearwater, Florida" market. See corrected provisions in Appendix B.

³¹³ 47 C.F.R. § 73.658(m)(1).

³¹⁴ *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366, 8377 (1999).

³¹⁵ Nielsen Media Research DMA Rankings.

³¹⁶ See revisions to Sections 76.94 and 76.105 (formerly § 76.155) in Appendix B. Sections 76.97 and 76.163 have been eliminated in their entirety.

applicability.³¹⁷

VIII. PROCEDURAL MATTERS

90. The SHVIA requires that these rules become effective within one year of enactment.³¹⁸ The SHVIA was enacted on November 29, 1999. We find good cause exists under the Administrative Procedure Act ("APA") to have the rules adopted in this *Report and Order* take effect with fewer than 30 days advance publication in the Federal Register pursuant to section 553(d)(3) of the APA due to the statutory deadline.³¹⁹ The Commission has acted expeditiously to adopt these complex rules, and they will be adopted and published in the Federal Register before the statutory deadline. We note that the rules contemplate a phase-in period to allow parties to implement the new requirements, and thus parties will have time to consider the effect of the rules before they commence implementation.

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

92. *Final Paperwork Reduction Act of 1995 Analysis.* This Report and Order contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The Commission is requesting Office of Management and Budget ("OMB") approval, under the emergency processing provisions of the 1995 Act (5 C.F.R. §1320.13), of the information collection requirements contained in this *Report and Order*.

³¹⁷ 5 U.S.C. § 553(b).

³¹⁸ 47 U.S.C. § 339(b)(2).

³¹⁹The APA generally requires publication in the Federal Register of substantive rules 30 days prior to their effective date but permits substantive rules to become effective with less than 30 days advance publication for good cause. 5 U.S.C. § 553(d)(1) and (3). See also 47 C.F.R. 427(b).

IX. ORDERING CLAUSES

93. Accordingly, **IT IS ORDERED** that, pursuant authority found in Sections 4(i) 4(j), 303(r), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 339, the terms of this *Report and Order* and rules as set forth in Appendix B **ARE ADOPTED**. The amendments shall become effective November 25, 2000, provided that this Report and Order (or a summary thereof) and the rules have been published in the Federal Register and OMB emergency approval of the information collections has been obtained on or before that date.

94. **IT IS FURTHER ORDERED** that the Consumer Information Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

Appendix A: Commenters**Parties Filing Comments**

Association of Local Television Stations, Inc. ("ALTV").
Commissioner of Baseball.
DIRECTV, Inc. ("DirecTV").
Division 1-A Athletic Directors Association ("Athletic Directors").
EchoStar Satellite Corporation ("EchoStar").
Fox Entertainment Group ("Fox").
Grupo Televisa, S.A. ("Grupo Televisa").
Hudson, Eddie
McFatter, Russell A.
Motion Picture Association of America ("MPAA").
National Association of Broadcasters ("NAB").
National Basketball Association ("NBA").
National Cable Television Association ("NCTA").
National Football League ("NFL").
National Hockey League ("NHL").
Pyle, Scott
Satellite Broadcasting and Communications Association ("SBCA").
Stevens, Robert and Natalie.
Tribune Broadcasting Company ("Tribune").
TV Guide, Inc. and Affiliates ("TV Guide").
WIC Premium Television, Ltd. ("WIC").

Parties Filing Reply Comments

ABC, CBS, Fox, and NBC Television Network Affiliate Associations ("Network Affiliates").
American Cable Association ("ACA").
Association of Local Television Stations, Inc. ("ALTV").
Commissioner of Baseball.
DIRECTV, Inc. ("DirecTV").
EchoStar Satellite Corporation ("EchoStar").
Motion Picture Association of America ("MPAA").
National Association of Broadcasters ("NAB").
National Basketball Association ("NBA").
National Cable Television Association ("NCTA").
National Football League ("NFL").
National Hockey League ("NHL").
Satellite Broadcasting and Communications Association ("SBCA").
TV Guide, Inc. and Affiliates ("TV Guide").
WB Television Network ("WB").

Appendix B: Rules

The title of the Subpart will be revised to include the Sports Blackout Rule. The cable Network Non-Duplication Rules will not be renumbered or amended, except to revise an incorrect cross-reference in Section 76.92 to Section 76.658(m), which should be 73.658(m).

The cable Sports Broadcasts Rule will be renamed the Sports Blackout Rule, moved into Subpart F, and renumbered as 76.111. This rule will also be revised to replace the reference to the former 76.5(gg)'s definition of local market with a current definition by cross-reference to the new Section 76.128, which applies to both cable and satellite Sports Blackout rules.

The Syndicated Exclusivity Rules will be renumbered from 76.98-76.110.

The new satellite rules will follow the cable rules and be numbered 76.120-76.130.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 76 -- Multichannel Video and Cable Television Service.

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

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 325, 339, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

1. Part 76 of the Commission's Rules is amended to add the following:

Subpart F – Network Non-duplication Protection, Syndicated Exclusivity and Sports Blackout Rules

§ 76.92 Cable network non-duplication; extent of protection.

(a) Upon receiving notification pursuant to § 76.94, a cable community unit located in whole or in part within the geographic zone for a network program, the network non-duplication rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

(b) For purposes of this section, the order of nonduplication priority of television signals carried by a community unit is as follows:

(1) First, all television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;

(2) Second, all smaller market television broadcast stations within whose secondary zone the community of the community unit is located, in whole or in part.

(c) For purposes of this section, all noncommercial educational television broadcast stations licensed to a community located in whole or in part within a major television market as specified in §76.51 shall be treated in the same manner as a major market commercial television broadcast station, and all noncommercial educational television broadcast stations not licensed to a community located in whole or in part within a major television market shall be treated in the same manner as a smaller market television broadcast station.

(d) Any community unit operating in a community to which a 100-watt or higher power translator is located within the predicted Grade B signal contour of the television broadcast station that the translator station retransmits, and which translator is carried by the community unit shall, upon request of such translator station licensee or permittee, delete the duplicating network programming of any television broadcast station whose reference point (See § 76.53) is more than 88.5 km (55 miles) from the community of the community unit.

(e) Any community unit which operates in a community located in whole or in part within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any major market television broadcast station whose reference point (See Section 76.53) is also within 88.5 km (55 miles) of the community of the community unit.

(f) A community unit is not required to delete the duplicating network programming of any television broadcast station which is significantly viewed in the cable television community pursuant to § 76.54.

(g) A community unit is not required to delete the duplicating network programming of any qualified NCE television broadcast station that is carried in fulfillment of the cable television system's mandatory signal carriage obligations, pursuant to § 76.56.

Note: With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority of shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m), except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) for each named community in that market.

§ 76.93 Parties entitled to network non-duplication protection.

Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.92 in accordance with the contractual provisions of the network-affiliate agreement.

§ 76.94 Notification.

(a) In order to exercise non-duplication rights pursuant to § 76.92, television stations shall notify each cable television system operator of the non-duplication sought in accordance with the requirements of this Section. Except as otherwise provided in paragraph (b) of this section, non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;

(2) The name of the program or series (including specific episodes where necessary) for which protection is sought; and

(3) The dates on which protection is to begin and end.

(b) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected cable systems within 60 calendar days of the signing of such a contract. In the event the broadcaster is unable based on the information contained in the contract, to furnish all the information required by paragraph (a) of this section at that time, the broadcaster must provide modified notices that contain the following information:

(1) The name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster;

(2) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non-duplication protection is requested; and

(3) The duration and extent (e.g., simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster.

(c) Except as otherwise provided in paragraph (d) of this section, a broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice (as described in paragraphs (a) or (b) of this section, whichever is applicable) to the cable television system; or

(2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the cable television system receives notice from the broadcaster.

(d) A broadcaster shall provide the following information to the cable television system under the following circumstances:

(1) In the event the protection specified in the notices described in paragraphs (a) or (b) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to paragraph (b) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

(2) In the event the protection specified in the modified notices described in paragraph (b) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

(e) In determining which programs must be deleted from a television signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available:

(1) Newspapers or magazines of general circulation.

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The broadcaster requesting exclusivity.

(f) A broadcaster exercising exclusivity pursuant to § 76.92 shall provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.

§ 76.95 Exceptions.

(a) The provisions of §§ 76.92-76.94 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

(b) Network non-duplication protection need not be extended to a higher priority station for one hour following the scheduled time of completion of the broadcast of a live sports event by that station or by a lower priority station against which a cable community unit would otherwise be required to provide non-duplication protection following the scheduled time of completion.

Cable Syndicated Program Exclusivity Rules

§ 76.101 Cable syndicated program exclusivity: extent of protection.

Upon receiving notification pursuant to § 76.105, a cable community unit located in whole or in part within the geographic zone for a syndicated program, the syndicated exclusivity rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

Note: With respect to each syndicated program, the geographic zone within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial

exclusivity rights as defined in § 73.658(m). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) for each named community in that market.

§ 76.103 Parties entitled to syndicated exclusivity.

(a) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to § 76.101 in accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.109.

(b) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to § 76.101 for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

§ 76.105 Notification.

(a) In order to exercise exclusivity rights pursuant to § 76.101, distributors or television stations shall notify each cable television system operator of the exclusivity sought in accordance with the requirements of this section. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2) The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3) The dates on which exclusivity is to begin and end.

(b) Broadcasters entering into contracts on or after August 18, 1988, which contain syndicated exclusivity protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. Broadcasters who have entered into contracts prior to August 18, 1988, and who comply with the requirements specified in § 76.109 shall notify affected cable systems on or before June 19, 1989. A broadcaster shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the cable television system; or

(2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the cable television system receives notice from the broadcaster;

(c) In determining which programs must be deleted from a television broadcast signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available.

(1) Newspapers or magazines of general circulation;

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The distributor or television station requesting exclusivity.

(d) In the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

§ 76.106 Exceptions.

(a) Notwithstanding the requirements of §§ 76.101-76.105, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal's grade B contour, or when the signal is significantly viewed pursuant to § 76.54 in the cable community.

(b) The provisions of §§ 76.101-76.105 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

§ 76.107 Exclusivity contracts.

A distributor or television station exercising exclusivity pursuant to § 76.101 shall provide to the cable system, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

§ 76.108 Indemnification contracts.

No licensee shall enter into any contract to indemnify a cable system for liability resulting from failure to delete programming in accordance with the provisions of this subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this subpart.

§ 76.109 Requirements for invocation of protection.

For a station licensee to be eligible to invoke the provisions of § 76.101, it must have a contract or other written indicia that it holds syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after August 18, 1988, must contain the following words: "the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against

duplication of programming imported under the Compulsory Copyright License, as provided in § 76.101 of the FCC rules [or 'as provided in the FCC's syndicated exclusivity rules']." Contracts entered into prior to August 18, 1988, must contain either the foregoing language or a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against cable television broadcast signal carriage by the cable system in question upon the contingency that the government reimposed syndicated exclusivity protection. In the absence of such a specific reference in contracts entered into prior to August 18, 1988, the provisions of these rules may be invoked only if (a) the contract is amended to include the specific language referenced above or (b) a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this Section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

§ 76.110 Substitutions.

Whenever, pursuant to the requirements of the syndicated exclusivity rules, a community unit is required to delete a television program on a broadcast signal that is permitted to be carried under the Commission's rules, such community unit may, consistent with these rules and the sports blackout rules at 47 CFR 76.111, substitute a program from any other television broadcast station. Programs substituted pursuant to this section may be carried to their completion.

Cable Sports Blackout Rule.

§ 76.111 Cable sports blackout.

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast station meeting the criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this section shall include the following information:

(1) As to programming to be deleted from television broadcast signals regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(iii) The call letters of the television broadcast station(s) from which the deletion is to be made.

(2) As to programming to be deleted from television broadcast signals not regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted.

(c) Notifications given pursuant to this section must be received, as to regularly scheduled events, no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) Whenever, pursuant to this section, a community unit is required to delete a television program on a signal regularly carried by the community unit, such community unit may, consistent with the rules contained in Subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the community unit need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(e) The provisions of this section shall not be deemed to require the deletion of any portion of a television signal which a community unit was lawfully carrying prior to March 31, 1972.

(f) The provisions of this section shall not apply to any community unit having fewer than 1,000 subscribers.

Network Non-duplication Protection, Syndicated Exclusivity and Sports Blackout Rules for Satellite Carriers

§76.120 Definitions. For purposes of Sections 76.122-76.130, the following definitions apply:

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

(b) **Nationally distributed superstation.** -- The term 'nationally distributed superstation' means a television broadcast station, licensed by the Commission, that--

(1) is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(2) on May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and

(3) was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of Section 119 of title 17, United States Code.

(c) **Television Network.** --The term 'television network' means a television network in the United States which offers an interconnected program service on a regular basis for 15 or

more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

- (d) **Network station.** -- The term "network station" means --
- (1) 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 interconnected 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
 - (2) a noncommercial educational broadcast station (as defined in Section 397 of the Communications Act of 1934); except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.
- (e) **Zone of Protection.** -- The term "zone of protection" means --
- (1) With respect to network non-duplication, the zone of protection within which the television station is entitled to enforce network non-duplication protection shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m), except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) for each named community in that market.
 - (2) With respect to each syndicated program, the zone of protection within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) for each named community in that market.
 - (3) With respect to sports blackout, the zone of protection is the "specified zone" of a television broadcast station, as defined in § 76.5(e). If there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

§76.122 Satellite network non-duplication.

- (a) Upon receiving notification pursuant to (c), below, a satellite carrier shall not deliver, to subscribers within zip code areas located in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation when the network non-duplication rights to such program are held by the commercial television station providing notice, except as provided in (j), (k) or (l) of this Section.
- (b) Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.122 in accordance with the contractual provisions of the network-affiliate agreement, and as provided in § 76.124.
- (c) In order to exercise non-duplication rights pursuant to § 76.122, television stations shall notify each satellite carrier of the non-duplication sought in accordance with the requirements of this Section. Non-duplication protection notices shall include the

following information:

- (1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;
 - (2) The name of the program or series (including specific episodes where necessary) for which protection is sought;
 - (3) The dates on which protection is to begin and end;
 - (4) The name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster;
 - (5) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non-duplication protection is requested;
 - (6) The duration and extent (e.g., simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster; and
 - (7) A list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.
- (d) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected satellite carriers within 60 calendar days of the signing of such a contract; provided, however, that for such contracts signed before November 29, 2000, the broadcaster may provide notice on or before January 31, 2001, or with respect to pre-November 29, 2000 contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment.
- (e) Except as otherwise provided in this Section, a broadcaster shall be entitled to non-duplication protection beginning on the later of:
- (1) The date specified in its notice to the satellite carrier; or
 - (2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the satellite carrier receives notice from the broadcaster;
- Provided, however, that with respect to notifications given pursuant to this Section prior to June 1, 2001, a satellite carrier is not required to provide non-duplication protection until 120 days after the satellite carrier receives such notification.
- (f) A broadcaster shall provide the following information to the satellite carrier under the following circumstances:
- (1) In the event the protection specified in the notices described in paragraph (c) of this Section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the satellite carrier in a notice pursuant to paragraph (c) of this Section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" under this Subsection shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means.
 - (2) In the event the protection specified in the notices described in paragraph (c) of this Section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each satellite carrier that has previously received notice of all changes from the original notice.
- (g) In determining which programs must be deleted from a television signal, a satellite carrier may rely on information from newspapers or magazines of general circulation,

- the broadcaster requesting exclusivity protection, or the nationally distributed superstation.
- (h) If a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall answer the request:
 - (i) Within ten business days following its receipt of the request; or
 - (ii) Sixty days before the program or programs mentioned in the request for information will be broadcast, whichever comes later.
 - (i) A broadcaster exercising exclusivity pursuant to this Section shall provide to the satellite carrier, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.
 - (j) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64
 - (i) within the station's local market;
 - (ii) if the station is "significantly viewed," pursuant to § 76.54, in zip code areas included within the zone of protection; or
 - (iii) if the zone of protection falls, in whole or in part, within that signal's grade B contour.
 - (k) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation from an individual subscriber who is located outside the zone of protection, notwithstanding that the subscriber lives within a zip code provided by the broadcaster pursuant to paragraph (c) of this Section.
 - (l) A satellite carrier is not required to delete programming if it has fewer than 1,000 subscribers within the relevant protected zone who subscribe to the nationally distributed superstation carrying the programming for which deletion is requested pursuant to paragraph (c) of this Section.

Satellite Syndicated Program Exclusivity Rules

§ 76.123 Satellite syndicated program exclusivity.

- (a) Upon receiving notification pursuant to paragraph (d) of this Section, a satellite carrier shall not deliver, to subscribers located within zip code areas in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation when the syndicated program exclusivity rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (k), (l) and (m) of this Section.
- (b) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to this Section in accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.124.
- (c) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to this Section for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.
- (d) In order to exercise exclusivity rights pursuant to this Section, distributors of syndicated programming or television broadcast stations shall notify each satellite carrier of the exclusivity sought in accordance with the requirements of this paragraph. Syndicated program exclusivity notices shall include the following information:

- (1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;
 - (2) The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;
 - (3) The dates on which exclusivity is to begin and end; and
 - (4) A list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.
- (e) A distributor or television station exercising exclusivity pursuant to this Section shall provide to the satellite carrier, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.
- (f) Television broadcast stations or distributors entering into contracts on or after November 29, 2000, which contain syndicated exclusivity protection with respect to satellite retransmission of programming, shall notify affected satellite carriers within sixty calendar days of the signing of such a contract. Television broadcast stations or distributors who have entered into contracts prior to November 29, 2000, and who comply with the requirements specified in § 76.124 shall notify affected satellite carriers on or before January 31, 2001; provided, however, that with respect to pre-November 29, 2000 contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment.
- (g) Except as otherwise provided in this Section, a television broadcast station shall be entitled to exclusivity protection beginning on the later of:
- (1) The date specified in its notice to the satellite carrier; or
 - (2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the satellite carrier receives notice from the broadcaster.
- Provided, however, that with respect to notifications given pursuant to this Section prior to June 1, 2001, a satellite carrier is not required to provide syndicated exclusivity protection until 120 days after the satellite carrier receives such notification.
- (h) In determining which programs must be deleted from a television broadcast signal, a satellite carrier may rely on information from the distributor or television broadcast station requesting exclusivity; newspapers or magazines of general circulation; or the nationally distributed superstation whose programs may be subject to deletion.
- (i) If a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall answer the request:
- (1) Within ten business days following the its receipt of the request; or
 - (2) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.
- (j) In the event the exclusivity specified in paragraph (a) of this Section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the satellite carrier of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" under this Subsection shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means.
- (k) A satellite carrier is not required to delete the programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64
- (i) within the station's local market;

- (ii) if the station is "significantly viewed," pursuant to § 76.54, in zip code areas included within the zone of protection; or
 - (iii) if the zone of protection falls, in whole or in part, within that signal's grade B contour.
- (l) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation from an individual subscriber who is located outside the zone of protection, notwithstanding that the subscriber lives within a zip code provided by the broadcaster pursuant to paragraph (d) of this Section.
 - (m) A satellite carrier is not required to delete programming if it has fewer than 1,000 subscribers within the relevant protected zone who subscribe to the nationally distributed superstation carrying the programming for which deletion is requested pursuant to paragraph (d) of this Section.

§ 76.124 Requirements for invocation of protection.

For a television broadcast station licensee or distributor of syndicated programming to be eligible to invoke the provisions of § 76.122 or § 76.123 of this Subpart, it must have a contract or other written indicia that it holds network program non-duplication or syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after November 29, 2000, must contain the following words: "the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Statutory Copyright License, as provided in § 76.122 or § 76.123 of the FCC rules [or 'as provided in the FCC's satellite network non-duplication or syndicated exclusivity rules']." Contracts entered into prior to November 29, 2000, must contain the foregoing language plus a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against signal carriage by the satellite carrier in question, or by satellite carriage in general in a protected, geographic or specified zone. In the absence of such a specific reference in contracts entered into prior to November 29, 2000, the provisions of these rules may be invoked only if (a) the contract is amended to include the specific language referenced above or (b) a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this Section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

§ 76.125 Indemnification contracts.

No television broadcast station licensee shall enter into any contract to indemnify a satellite carrier for liability resulting from failure to delete programming in accordance with the provisions of this Subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this Subpart.

§ 76.127 Satellite sports blackout.

- (a) Upon the request of the holder of the broadcast rights to a sports event, or its agent, no satellite carrier shall retransmit to subscribers within the area comprising the specified zone a "nationally distributed superstation" or "network station" carrying the live television broadcast of a sports event if the event is not available live on a television broadcast station meeting the

criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this Section shall include the following information:

- (1) The name and address of the party requesting the program deletion;
- (2) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;
- (3) The call letters of the nationally distributed superstation or network station(s) from which the deletion is to be made;
- (4) The U.S. postal zip codes that encompass the specified zone.

(c) Notifications given pursuant to this Section must be received by the satellite carrier, as to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known, and no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) A satellite carrier is not required to delete a sports events from an individual subscriber who is located outside the specified zone, notwithstanding that the subscriber lives within a zip code provided by the holder of the broadcast rights pursuant to paragraph (b) of this Section.

(e) A satellite carrier is not required to delete a sports event if it has fewer than 1,000 subscribers within the relevant specified zone who subscribe to the nationally distributed superstation or network station carrying the sports event for which deletion is requested pursuant to paragraph (b) of this Section.

(f) Notwithstanding paragraph (c) of this Section, for sports events to be deleted on or before March 31, 2001, notification must be received by satellite carriers at least 60 full days prior to the day the telecast is to be deleted.

§76.128 Application of sports blackout rules.

The cable and satellite sports blackout rules (§§76.111 and 76.127) may apply when the sports event is not available live on any of the following television broadcast stations carried by a cable system or other MVPD:

- (i) Television broadcast stations within whose specified zone the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;
- (ii) Television broadcast stations within whose Grade B contours the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;
- (iii) Television broadcast stations licensed to other designated communities which are generally considered to be part of the same television market (Example: Burlington, Vt.-Plattsburgh, N.Y. or Cincinnati, Ohio-Newport, Ky., television markets);
- (iv) Television broadcast stations that are significantly viewed, pursuant to §76.54, in the community unit or community within the specified zone.

§ 76.130 Substitutions.

Whenever, pursuant to the requirements of the network program non-duplication, syndicated program exclusivity, or sports blackout rules, a satellite carrier is required to delete a television program from retransmission to satellite subscribers within a zip code area, such satellite carrier may, consistent with this Subpart, substitute a program from any other television broadcast station for which the satellite carrier has obtained the necessary legal rights and permissions, including but not limited to copyright and retransmission consent. Programs substituted pursuant to this Section may be carried to their completion.

TECHNICAL CORRECTIONS TO COMMISSION RULES**§ 76.5(ii) Definitions.**

Existing Section 76.5(ii) references Section 76.5(o). The correct reference is to Section 76.5(m).

Part 76, Subpart A

Amend 47 C.F.R. § 76.5(ii), as follows:

76.5(ii) A *syndicated program* is any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming as defined in § 76.5(m).

§ 76.51(a)(2), (a)(28) Major Television Markets.

Section 76.51 lists the top 100 television markets in the United States. The "Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif." market is listed at Section 76.51(a)(2). In 1995, the Commission redesignated the "Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif.," market as the "Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif." market.³²⁰ However, the published amendment to Section 76.51(a) intended to effectuate the foregoing change inadvertently amended Section 76.51(a)(28), rather than Section 76.51(a)(2). As a result, the redesignated "Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif." market is listed as Section 76.51(a)(28) and the "Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif." market still is listed as Section 76.51(a)(2). The "Tampa-St. Petersburg-Clearwater, Florida" market, which was listed at Section 76.51(a)(28) at the time the Commission adopted the *Los Angeles Redesignation Order*, was deleted inadvertently from Section 76.51(a)(28) and currently is not listed elsewhere in Section 76.51.

The correct reference in Section 76.51(a)(2) is to the "Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif." market. The correct reference in Section 76.51(a)(28) is to the "Tampa-St. Petersburg-Clearwater, Florida" market.

Part 76, Subpart D

Amend §76.51(a)(2), to read as follows:

(2) Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif.

Amend § 76.51(a)(28), to read as follows:

(28) Tampa-St. Petersburg-Clearwater, Florida.

³²⁰ *Cable Television Service; List of Major Television Markets*, Final Rule, MM Dkt. No. 93-304 (released August 31, 1995) (the "*Los Angeles Redesignation Order*").

Correction to § 73.658(m) to replace reference to Arbitron with Nielsen

Section 73.658(m), in the rules related to television broadcast stations, describes the Commission's territorial exclusivity rules in non-network arrangements. With respect to the list of television markets smaller than the 100 markets listed in § 76.51, the rule currently refers to the "ARB Television Market Analysis." This listing, formerly produced by the Arbitron Ratings Company, has been supplanted by a list currently produced by Nielsen Media Research. Therefore, the reference in this rule section must be changed accordingly.

Part 73 of Title 47 of the Code of Federal Regulations reads as follows:

PART 73 -- Radio Broadcast Services.

The authority citation for Part 73 reads as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334 and 336.

1. Part 73 of the Commission's Rules is amended to add the following:

Subpart E

Amend 47 C.F.R. § 73.658(m)(1), as follows:

§ 73.658(m) Territorial exclusivity in non-network arrangements.

(1) No television station shall enter into any contract, arrangement, or understanding, expressed or implied; with a non-network program producer, distributor, or supplier, or other person; which prevents or hinders another television station located in a community over 56.3 kilometers (35 miles) away, as determined by the reference points contained in § 76.53 of this chapter, (if reference points for a community are not listed in § 76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person, except that a television station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in § 76.51 of this chapter for those 100 markets listed, and for markets not listed in § 76.51 of this chapter, the listing as contained in the Nielsen Media Research DMA Rankings for the most recent year at the time that the exclusivity contract, arrangement or understanding is complete under practices of the industry. As used in this paragraph, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

Appendix C: Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),³²¹ an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the Notice of Proposed Rulemaking (“Notice”) in CS Docket No. 00-2, FCC 00-4. The Commission sought written public comments on the proposals in the Notice, including comment on the IRFA.³²² This Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.³²³
2. *Need for, and Objectives of this Report and Order.* Section 339(b) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. §339(b)(1), directed the Commission to “complete all actions necessary to prescribe regulations required by this section so that the regulations shall become effective within 1 year after” enactment of the Satellite Home Viewer Improvement Act of 1999.³²⁴ The relevant provisions concern the application of the cable network non-duplication, syndicated program exclusivity, and sports blackout rules to satellite carriers’ retransmission of nationally distributed superstations, and, with respect only to the cable sports blackout rules, to satellite retransmission of network stations.³²⁵
3. *Legal Basis.* The authority for the actions taken in this Report and Order is contained in Sections 1, 4(i) and (j), 303, and 339 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 303, and 339.
4. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* We did not receive any comments in direct response to the IRFA.
5. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.³²⁶ The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small business concern” under Section 3 of the Small Business Act.³²⁷ Under the Small Business Act, a small

³²¹See 5 U.S.C. §603. The RFA, see 5 U.S.C. §601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³²²Notice, 15 FCC Rcd 434 at Appendix D.

³²³See 5 U.S.C. § 604.

³²⁴Satellite Home Viewer Improvement Act of 1999, Pub.L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

³²⁵ 47 U.S.C. §§ 339(b)(1)(A) and (B).

³²⁶ 5 U.S.C. §604(b)(3).

³²⁷5 U.S.C. §601(3)(incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632.) Pursuant to the RFA, the statutory definition of a small business applies, “unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such the term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register. 5 U.S.C. § 601(3).

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").³²⁸ The rules we adopt affect television station licensees and satellite carriers.

6. *Television Stations.* The rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.³²⁹ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.³³⁰ Included in this industry are commercial, religious, educational, and other television stations.³³¹ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.³³² Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.³³³
7. Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."
8. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our

³²⁸15 U.S.C. §632.

³²⁹13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

³³⁰Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

³³¹*Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833)" as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

³³²Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

³³³*Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs)).

estimates of small businesses to which rules may apply may be over-inclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

9. There were 1,509 television stations operating in the nation in 1992.³³⁴ That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 1999.³³⁵ For 1992, the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.³³⁶ Thus, the new rules will affect approximately 1,616 television stations; approximately 77%, or 1,230 of those stations are considered small businesses.³³⁷ These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.
10. *Small Multiple Video Program Distributors ("MVPDs")*: SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts.³³⁸ This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue.³³⁹ We address below services individually to provide a more precise estimate of small entities.
11. *Direct Broadcast Satellite ("DBS")*: There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.
12. *Home Satellite Delivery ("HSD")*: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265

³³⁴FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9.

³³⁵FCC News Release, Broadcast Station Totals as of September, 1999 (released November, 1999).

³³⁶The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

³³⁷We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1999 total of 1,616 TV stations to arrive at 1,230 stations categorized as small businesses.

³³⁸13 C.F.R. §121.201 (SIC 4841).

³³⁹1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC Code 4841 (Bureau of the Census data under contract to the Office of Advocacy of the SBA).

channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.³⁴⁰ HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.³⁴¹

13. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers.³⁴² These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide.³⁴³ This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.
14. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* This Report and Order establishes a series of rules implementing the Satellite Home Viewer Improvement Act of 1999. We have adopted a regulatory framework for substantive rules and procedures concerning network non-duplication, syndicated program exclusivity, and sports blackout that is substantially similar to, but separate from, these rules in the cable context. There are certain compliance requirements involving the satellite broadcast signal delivery process. Foremost is satellite carriers will have to delete certain programming from the retransmission of nationally distributed superstations to satellite subscribers within the protected zone of the television broadcast station or other rights holder asserting network non-duplication, syndicated program exclusivity or sports blackout rights. With respect to satellite retransmission of network stations, satellite carriers will be required to delete certain sports events from retransmission to satellite subscribers located within the rights holder's zone of protection. There will be costs relating to the time and effort involved in deleting these superstation signals and replacing the deleted programming.
15. In terms of recordkeeping, entities will likely have to keep a record of the deletion and blackout requests and entities may be required to maintain such information within their business environment.
16. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance,

³⁴⁰Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Third Annual Report, CS Docket No. 96-133, 12 FCC Rcd 4358, 4385 (1996) ("Third Annual Report").

³⁴¹Third Annual Report, 12 FCC Rcd at 4385.

³⁴²Id.

³⁴³Id.

rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

17. As indicated above, the Report and Order implements certain aspects of the Satellite Home Viewer Improvement Act of 1999. Among other things, the new legislation requires the Commission to apply the network non-duplication rules, syndicated program exclusivity rules, and sports blackout rules to satellite carriers within one year of the November 29, 1999 effective date. This legislation applies to small entities and large entities equally. The cable rules that are to be applied to satellite carriers includes an exception for small cable systems, those with 1,000 or fewer subscribers. The new satellite rules have a similar exception for satellite carriers that have 1,000 or fewer subscribers within the zip codes areas that comprise the geographic zone protected by these rules.
18. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.