88. **Public Interest Set-Aside.** DirecTV and BellSouth have suggested that local NCE station carriage should be capped by the 4% set-aside requirement pursuant to Section 335 of the 1992 Cable Act and the Commission's rules.[215] AAPTS urges the Commission to reject the DBS industry's attempt to use the national public interest set-aside requirement to limit NCE carriage obligations. According to AAPTS, the satellite carriers' attempt to cap their carriage requirements through their public interest obligations confuses two separate statutory schemes: (1) the DBS set-aside for national, noncommercial educational programming, designed primarily to satisfy DBS public interest obligations; and (2) the satellite carriage obligations, triggered only when a satellite carrier offers local channels to its subscriber's pursuant to the compulsory license.[216]

89. We will not permit satellite carriers to include NCE stations, carried under Section 338, in the calculation of the 4% set-aside. We agree with AAPTS that the carriage requirements of the SHVIA have different purposes from the set-aside requirements contained in the satellite public interest provisions. The Section 338 provisions further the goals of localism and nondiscriminatory treatment of local television stations while Section 335 furthers the goal of program diversity. In this regard, we are concerned that if a satellite carrier were permitted to satisfy the public interest set-aside with NCE stations, programming diversity would be diminished because all programming currently carried to satisfy the set-aside will likely be dropped in lieu of NCE station carriage.[217] Section 335 would also be rendered a nullity if NCE stations, carried under a different statutory section, were allowed to satisfy the set-aside obligations. Moreover, public interest set-aside programming must be made available to all subscribers of a satellite carrier without additional charge.[218] This is a condition that cannot be met through the carriage of NCE stations under the SHVIA because the compulsory license prohibits satellite carriers from offering a local NCE station signal to subscribers in a non-local market. In this context, it is also important to note that cable operators have carriage obligations under Title VI that are mutually exclusive. For example, cable operators have an obligation to establish public, educational, and government access ("PEG") channels under Section 611 of the Act and pursuant to a local franchising agreement. We note that in this context, a cable operator cannot unilaterally satisfy its PEG requirements by carrying NCE stations under Section 615.

90. **PBS Feed.** KQED requests the Commission to clarify that satellite carriers may not avoid their local NCE station carriage obligations simply by carrying the national PBS satellite feed.[219] According to KQED, the national PBS feed was intended as an interim measure to facilitate the satellite industry's ability to offer public television service to their subscribers while the industry organized to comply with Section 338. On this point, we note that the statutory copyright license for the PBS feed

[215]DirecTV Comments at 39-40; BellSouth Comments at 24. 47 U.S.C. §335; 47 C.F.R. §100.5(c); *see also Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992; Direct Broadcast Satellite Public Interest Obligations, Report and Order*, 13 FCC Rcd 23254 (1998)("*Direct Broadcast Satellite Public Interest Obligations Order*").

[216]AAPTS Comments at 10.

[217]47 U.S.C. §335; *Direct Broadcast Satellite Public Interest Obligations Order,* 13 FCC Rcd at 23385.

[218]*Id.* at 23285.

[219]KQED Comments at 3; Detroit Television Reply Comments at 1.

expires on January 1, 2002.[220] This expiration date coincides with the onset of the Section 338 obligations for satellite carriers. The SHVIA purposefully instituted a phase-out and phase-in with regard to the two compulsory license provisions so that satellite subscribers, in markets with local-into-local service, would have continuous access to public broadcasting programming.

G. Channel Positioning

91. **Placement.** Section 338(d) of the Communications Act states that:

> No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.[221]

The Conference Report notes that the obligation to carry local stations on contiguous channels is to ensure that satellite carriers position local stations in a way that is convenient and practically accessible for consumers.[222] We stated in the *Notice* that the statutory directive for channel positioning confirms that satellite carriers are required to present local broadcast channels to satellite subscribers in an uninterrupted series.[223] We sought comment, however, on whether broadcast signals carried under retransmission consent must be contiguous with the television stations carried under Section 338 or whether they may be presented to satellite subscribers in a non-contiguous manner.[224]

92. ALTV submits that the signals of all local television stations, including retransmission consent stations, must be provided on contiguous channels.[225] AAPTS argues that local broadcast signals are to be grouped together regardless of their regulatory status because such grouping makes all local signals more easily accessible to viewers.[226] NAB suggests that all stations should appear on channel

[220] 17 U.S.C. §119(a).

[221] 47 U.S.C. §338(f)(1). The satellite carriage channel positioning obligation is different from the requirement imposed on cable operators. Under Section 614(b)(6) commercial television stations may choose among four channel positioning options vis-à-vis cable operators: (1) the channel number on which the station broadcasts over-the-air; (2) the channel on which the station was carried on July 19, 1985; (3) the channel on which it was carried on January 1, 1992; and (4) any other channel number as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §534(b)(6); 47 C.F.R. §76.57(a). Noncommercial television stations have three channel positioning options under Section 615(g)(5): (1) the channel number on which the station is broadcast over-the-air; (2) the channel on which the station was carried on July 19, 1985; and (3) any other channel number as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b).

[222] Conference Report at H11795.

[223] *Notice*, 15 FCC Rcd at 12161.

[224] *Id.*

[225] ALTV Comments at iii.

[226] AAPTS Comments at 26-27.

numbers that are in the order in which the stations appear to the over-the-air receiver.[227] BellSouth argues against requiring contiguous channel location for retransmission consent stations.[228] It also asserts that Section 338(d) is explicit that a satellite carrier cannot be required to provide carry mandatory carriage stations in any particular order.[229]

93. DirecTV urges the Commission to interpret the term "contiguous" as allowing satellite carriers to form channel "neighborhoods" of local television broadcast stations which consist of contiguous channels, but some of which remain vacant.[230] ALTV believes that this proposal is consistent with the contiguous channel requirement provided that all local stations' signals are carried in an uninterrupted series with no intervening channels of programming.[231] NAB does not object to DirecTV's "neighborhood" proposal, provided that: (1) the neighborhood includes all the local television stations, including retransmission consent television stations; (2) the television stations are listed in the same order as their over-the-air channel numbers, and (3) the neighborhood includes only local TV stations.[232]

94. Based on the language of the statute, we find that the channel placement provision encompasses all local television stations. Therefore, a satellite carrier is obligated to carry both retransmission consent stations and mandatory carriage stations in a block on the satellite carrier's channel line-up. We find that DirecTV's neighborhood proposal is consistent with the statutory language as long as the local channel block is not interrupted by non-local programming.[233] We do not believe, however, that the statute requires a satellite carrier to place local television stations in any particular order. Such restrictive language is not found in Section 338(d).

95. **Nondiscriminatory Program Guide Treatment.** In the *Notice*, we sought comment on the phrase, "provide access to such station's signals. . . . in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu."[234] We specifically sought comment on what rules the Commission should develop to ensure that television stations are accessible to satellite subscribers on nondiscriminatory terms. We asked whether there were any existing Commission rules that we may use as a model to develop regulations for this particular situation. We also sought comment on whether Congress meant that electronic program guide information concerning required television station

[227]NAB Comments at 15, n.13.

[228]BellSouth Comments at 24.

[229]*Id.*

[230]DirecTV Comments at 40. For example, channels 970-985 on DirecTV's channel line-up would be the channel neighborhood for the Washington, D.C. (Hagerstown) market stations. However, channels 979 and 981 may not be programmed and remain dark.

[231]ALTV Reply Comments at i.

[232]NAB Reply Comments at 27.

[233]The term "contiguous" in this context refers to the tuning of channels and easy accessibility on the satellite carrier's channel line-up. The term does not refer to frequency continuity.

[234]*Notice*, 15 FCC Rcd at 12162 *citing* 47 U.S.C. §338(d).

signals should be presented to subscribers in the same fashion as other programming services provided by the satellite carrier.[235]

96. AAPTS urges the Commission to adopt nondiscrimination rules that parallel the open video system ("OVS") requirements. It argues that such rules should ensure that all television broadcast stations, including NCE stations, are represented in a nondiscriminatory fashion on the electronic program guide, menu, and/or navigation device provided by the satellite carrier.[236] NAB provides a list of suggestions regarding how satellite carriers should treat television stations to achieve the statute's objectives.[237] One of those examples is to "bar satellite carriers from requiring viewers to take extra steps (e.g., mouse or remote control clicks) to obtain access to particular local stations, or from placing 'carry one, carry all' stations on different screens."[238] We find that the broadcasters' suggestions are too restrictive to be implemented. The open video system model, as BellSouth points out, is a statutory creation with unique requirements and characteristics not meant to be transferred to other contexts.[239] The open video system requirements address access to a video delivery platform where two-thirds of system capacity must be made available at a nondiscriminatory price to outside programmers.[240] The OVS provisions do not directly address concerns involved here, such as nondiscriminatory treatment on an electronic program guide. We also find that NAB's proposals involve too much detail to be implemented as rules. We do not believe that Congress meant to bar satellite carriers from requiring viewers to take extra steps to reach a local television station on an electronic program guide, when it promulgated the SHVIA.

97. In this context, we hold that a satellite carrier should treat all local television stations on EPGs in the same manner. Program guide presentation and information about a local independent television station, or an NCE station, should be similar to that given to a local network affiliate carried under retransmission consent. This requirement is similar to the statute's treatment of television station picture quality under the material degradation provisions, discussed below.

98. **Nondiscriminatory Price.** In the *Notice*, we inquired about the statutory phrase, "provide access to such station's signals at a nondiscriminatory price," and asked whether Congress meant that television station signals carried pursuant to mandatory carriage requests may cost no more per channel to subscribers than packages of retransmission consent television station signals or other satellite

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[235] *Id.*

[236] AAPTS Comments at 29-30. AAPTS states that representation in a nondiscriminatory fashion means that the NCE station logo, for example, should be given the same prominence and placement as that of the most favored channel. AAPTS also asserts that the method, by which the NCE station is selected, whether by channel number or interaction with a program guide, should be comparable to the method used to select the most-favored channel. *Id.*

[237] NAB Comments at 16, *quoting* 47 U.S.C. § 338(d).

[238] *Id.* at 17.

[239] BellSouth states that those rules implement an explicitly different statutory/ regulatory model for the delivery of video services, and are uniquely designed to implement that model and the combination of open video platform and cable regulatory elements contained within it. BellSouth Reply Comments at 31.

[240] 47 U.S.C. §1503(c).

service packages.[241] In response to this inquiry, ALTV and NAB assert that all local signals should be included in a single package.[242] AAPTS asserts that NCE mandatory carriage television stations should be offered as part of the existing local broadcast signal package without any additional cost to the subscriber.[243] BellSouth argues that a satellite carrier has the right to place local television signals on a pay tier, an enhanced service tier, or any other tier of service, as long as all local television stations are on this tier and the viewing of no one station costs the viewer more than the viewing of any other station in the DMA.[244] Echostar comments that one of the crucial differences between cable and satellite carriers is that the latter do not have obligations as to the tier in which local signals are to be offered. It states that channel placement requirements of Section 338 cannot be used as a lever to impose such obligations on satellite carriers.[245]

99. We do not believe that the statute requires satellite carriers to sell all local television stations as one package to subscribers. As Echostar points out, Congress did not intend to establish a basic service tier-type requirement for satellite carriers when it implemented Section 338. Nor did Congress explicitly prohibit the sale of local television station signals on an a la carte basis. Rather, Section 338's anti-discrimination language prohibits satellite carriers from implementing pricing schemes that effectively deter subscribers from purchasing some, but not all, local television station signals. Thus, we find that a satellite carrier must offer local television signals, as a package or a la carte, at comparable rates.

100. ALTV and NAB asks the Commission to rule that no new equipment should be required to access some, but not all of the local signals in a market. According to ALTV, such a pronouncement is necessary to prevent discriminatory treatment of mandatory carriage television stations.[246] NAB also suggests that satellite carriers should be barred from placing mandatory carriage television stations on any satellite that would require a subscriber to purchase another dish to receive such signals. BellSouth agrees in principle noting that the channel placement provisions of Section 338 were designed to ensure that dominant stations in a DMA receive no better carriage treatment than other stations.[247] On the other hand, Echostar comments that one of the obligations advocated by the NAB – that the local stations be available from the same orbital location – is tantamount to a provision that had been included in draft legislation prior to the passage of SHVIA.[248] Echostar states that such provision, which was dropped from the final version of Section 338, would have barred satellite carriers from transmitting local stations in a manner that would require additional reception equipment. Echostar argues that the Commission

[241] *Notice*, 15 FCC Rcd at 12162.

[242] ALTV Comments at 16; NAB Comments at 17.

[243] AAPTS Comments at 29.

[244] BellSouth notes that it is not endorsing the concept that station signals cannot be sold on an a la carte basis. BellSouth Reply Comments at 28.

[245] Echostar Comments at iii.

[246] NAB Comments at 17-18. ALTV Comments at 20-21.

[247] BellSouth Reply Comments at 27, *citing* Conf. Rep. at S14711.

[248] Echostar Reply Comments at iv.

cannot implement a rule similar to this provision when Congress decided not to include such a requirement in the SHVIA.[249]

101. We find that the language of Section 338(d) covers the additional equipment concerns raised by the parties and bars satellite carriers from requiring subscribers to purchase additional equipment when television stations from one market are segregated and carried on separate satellites. However, we are not prohibiting a satellite carrier from requiring a subscriber to pay for an additional dish in order to receive all television stations from a single market. For example, DirecTV may require an additional dish to receive all television stations from the Baltimore market, but it may not require subscribers to purchase the same to receive some Baltimore stations where the others are available using existing equipment.

H. Content To Be Carried

102. **Programming in the Vertical Blanking Interval.** Section 338(g) states that, "The regulations prescribed [under Section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under Sections 614(b)(3). . . .and 615(g)(1)."[250] Section 614(b)(3) states that:

> A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval ["VBI"] or on subcarriers. Retransmission of other nonprogram-related material (including teletext and other subscription and advertiser supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost canceling, from the broadcast signal and employ such enhancements at the system headend or headends.[251]

Section 615(g)(1), which is the noncommercial equivalent of the commercial television station provision in Section 614(b)(3), states that:

> A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.[252]

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[249] *Id.*

[250] 47 U.S.C. §338(g).

[251] 47 U.S.C. §534(b)(3).

[252] 47 U.S.C. §535(g)(1).

We sought comment on the applicability of these two similar cable requirements in the satellite carriage context, especially in light of the term "comparable" contained in Section 338(g), above.[253] We note that the VBI contained in a television broadcast's signal is composed of many lines of information. Our concern here is with those lines of the VBI where certain types of data, such as closed captioning information, are found.[254] We also note that a satellite carrier does not retransmit VBI information as it is received. Rather, it converts the data from an analog to a digital form and carries such data as a digital stream to the subscriber's home.[255] The set-top box then converts the digital stream and makes the data available for subscriber use.

103. Several commenters argue that the Commission should apply the applicable cable provisions to satellite carriers.[256] NAB comments that satellite carriers should carry whatever information the broadcaster may have embedded in its analog VBI.[257] BellSouth, however, seeks to limit the content-to-be-carried requirements for satellite carriers to only closed captioning information until the technical feasibility of other applications can be tested and agreed to on a case-by-case basis.[258] We will apply the current cable content-to-be-carried requirements to satellite carriers. We are not persuaded that satellite carriers are unable to carry the relevant data currently contained in the VBI. Nor has any satellite carrier proffered a credible argument as to why we should treat them differently from cable operators in this context. We therefore require satellite carriers to carry the same program-related vertical blanking information as cable operators, including but not limited to, closed captioning,[259] Nielsen rating codes, V-chip information and for NCE stations, material necessary for the receipt of programs by people with disabilities as well as education and language-related material. We believe our decisions here will further the goals of the SHVIA and are consistent with the cable television requirements.

104. **Program-Related.** In the *Broadcast Signal Carriage Order*, the Commission decided that the factors enumerated in *WGN Continental Broadcasting, Co. v. United Video Inc.* ("*WGN*")[260]

[253]*Notice*, 15 FCC Rcd at 12162-63.

[254]Line 21, for example, has several fields that can be used for a variety of data purposes.

[255]*See, e.g.*, BellSouth Comments at 24. (All direct-to-home satellite providers use digital modulation, and for that reason, there is no VBI in the digital bitstream. VBI information must be stripped from the analog signal and re-created as a bitstream.)

[256]*See* ALTV Comments at iv; NCTA Comments at 6; LTVS Comments at 24; Paxson Comments at 6.

[257]NAB Comments at 18-19.

[258]BellSouth Comments at 25.

[259]We did not receive any comments stating that a satellite carrier cannot carry closed captioning information.

[260]*WGN*, 693 F.2d 622 (7th Cir. 1982). The *WGN* court set out three factors for making a copyright determination. First, the broadcaster must intend for the information in the VBI to be seen by the same viewers who are watching the video signal. Second, the VBI information must be available during the same interval of time as the video signal. Third, the VBI information must be an integral part of the program. The court in *WGN* held that if the information in the VBI is intended to be seen by the viewers who are watching the video signal, during the same interval of time as the video signal, and as an integral part of the program on the video signal, then the VBI and the video signal are one copyrighted expression and must both be carried if one is to be carried. *WGN*, 693 F.2d at 626.

provide useful guidance for what constitutes program-related material.[261] The *WGN* case addressed the extent to which the copyright on a television program also included program material in the VBI of the signal. Under the cable carriage rules, all program-related broadcast material must be carried. We sought comment on whether the *WGN* program-related analysis applies in the context of satellite broadcast signal carriage. Very few parties provided comments on this issue. Of those who did, there were no negative arguments made. BellSouth, for example, has no objection to use of the WGN criteria to determine what content is program related and must be carried. Given the dearth of opposition to the WGN factors and our cable program-related decisions, we hereby incorporate all Commission policies and references regarding the term "program-related" into the satellite carriage context. This measure, again, serves to align the carriage requirements imposed both on cable operators and satellite carriers. Moreover, since the *WGN* case centered on copyright law, and the SHVIA and Section 338 are also copyright-based, we believe that adopting such a policy for satellite carriers is reasonable and appropriate.

105. In the *Notice*, we recognized that the Commission has not specifically defined "primary video" in the rules and has instead relied on the language of Section 614(b)(3)(B) to clarify the scope of the term for purposes of cable broadcast signal carriage.[262] In view of this history, we sought comment on whether a specific definition of primary video is required for satellite carriers to fulfill the requirements contained in Section 338. Network Affiliates state that a specific definition of primary video need not be adopted for the satellite carriage rules.[263] Network Affiliates assert that the term has proved self-explanatory and non-controversial as applied to cable carriage of analog signals and should be equally so in the satellite context.[264] AAPTS asserts that the Commission has not further defined primary video for the cable carriage rules, and in the seven years that the rules have been in effect, this lack of definition has not been a problem.[265] We agree that the primary video concept has worked in the cable carriage context. We therefore incorporate the cable version of primary video into the satellite broadcast signal carriage rules. Given these indicia, and the fact that implementing the cable definition will further the Congressional goal of comparability, we believe our finding serves the public interest. We note that the Act also mandates that, in addition to primary video, accompanying audio must be carried.[266] Therefore, satellite carriers are required to carry the secondary audio programming ("SAP") material that accompanies many broadcast television programs.

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[261] *Must Carry Order*, 8 FCC Rcd at 2986. The Commission declined to further define "program-related," apart from the WGN analysis, noting that carriage of information in the VBI was rapidly evolving. Close captioning information, and television ratings data are some examples of the material carried in the vertical blanking interval. *Id.*

[262] *Notice* at ¶ 31. *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 7 FCC Rcd 8055, 8062 (1992) (Section 614(b)(3)(B) provides that the cable operator shall carry the entirety of the program schedule of any television station included on its system unless carriage of specific programming is prohibited, and other programming is authorized to be substituted, pursuant to Section 76.67 (regarding sports broadcasts) or Subpart F of Part 76 of the Commission's rules (regarding nonduplication protection and syndicated exclusivity)).

[263] Network Affiliates Comments at 19.

[264] *Id.*

[265] AAPTS Comments at 23.

[266] *See* 47 U.S.C. §534(b)(3); 47 U.S.C. §535(g)(1).

106. **Technical Feasibility.** With regard to the "technical feasibility" of the carriage of program-related material in the VBI or on subcarriers, the Commission stated in the *Broadcast Signal Carriage Order* that such carriage should be considered "technically feasible" if it does not require the cable operator to incur additional expenses and to change or add equipment in order to carry such material.[267] The Commission noted that it would consider signal carriage to be "technically feasible" if only nominal costs, additions or changes of equipment are necessary.[268] We sought comment on whether the consideration of technical feasibility should be different in the context of satellite broadcast signal carriage.[269]

107. AAPTS states that there is no technical impediment to the carriage of VBI material over satellite; it is simply a question of capacity.[270] LTVS asserts that it is technically possible for a satellite carrier to carry closed captioning information, audience measurement and/or ratings data, and SAP audio.[271] While BellSouth does not dispute that satellite carriers can and do carry, without significant expense, the program-related material which television stations currently deliver through the VBI, it argues that requiring carriage of different, additional or future VBI-carried information may be expensive and may impose significant spectrum capacity burdens.[272] DirecTV asserts that "billions of dollars" of additional investment would be required to retrofit its satellite system so that it could carry additional material on the VBI and allow consumers to view the additional material.[273] AAPTS asserts that, given the widely divergent viewpoints on this issue within the satellite industry, the Commission cannot accept DirecTV's contention that it is not technically feasible for carriers to retransmit program-related material in the VBI.[274] AAPTS further asserts that DirecTV's satellite systems are already being designed to deliver data and that even the first DBS receivers had both a wide-band and a low-speed data port.[275]

108. Based on the arguments presented, we find that it is technically feasible for satellite carriers to carry the current program-related material contained in a television station's VBI. DirecTV has not provided detailed evidence to support its claim that it will incur financial hardship if it were required to carry such program content. We also find it significant that LTVS, a future satellite carrier, admits that it would have no difficulty in carrying VBI information. With regard to BellSouth's argument, there

[267] *Must Carry Order*, 8 FCC Rcd at 2986.

[268] *Id.*

[269] *Notice*, 15 FCC Rcd at 12163.

[270] AAPTS Comments at 24.

[271] LTVS Comments at 26.

[272] *Id.*

[273] DirecTV Comments at 41. DirecTV states that the encoding and processing equipment used to transmit programming from the uplink facility to the appropriate transponder would have to be modified, and the receivers used by customers who subscribe to its service programming would have to be replaced in order to support the additional functions.

[274] AAPTS Reply Comments at 21.

[275] *Id.*

could be new kinds of program-related data in the VBI that would cause the satellite carrier to incur inordinate expenses and to change or add a substantial amount of equipment. We will address such issues on a case-by-case basis in the future.

109. In this context, DirecTV and LTVS also urge the Commission to recognize that satellite systems must be designed and constructed far in advance of the date for commencement of service.[276] They state that once the systems are deployed in orbit, few changes can be made without necessitating the complete replacement of the satellite systems at issue.[277] While we understand the challenges involved in constructing, designing, and launching new satellites, the arguments expressed by the satellite carriers' are unrelated to our discussion here. The underlying concern of the carriers is that the carriage of VBI information requires channel capacity. On this point, Congress was cognizant of channel capacity concerns when the SHVIA was being drafted, yet it still instructed the Commission to apply the cable content-to-be carried requirements to satellite carriers. We cannot relieve satellite carriers of the carriage obligations Congress imposed in the SHVIA in this instance.

I. Material Degradation

110. **Picture Quality.** Section 338(g) states that, "The regulations prescribed [by the Commission under Section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(4). . . .and 615(g)(2)."[278] Section 614(b)(4)(A) states that,

> The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.[279]

Section 615(g)(2), which is the noncommercial equivalent of the commercial television station provision in Section 614(b)(4), states that,

> A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.[280]

111. When implementing the material degradation provision for cable carriage, the Commission relied on the technical standards as updated in the *Cable Television Technical and*

[276]DirecTV Comments at 5; LTVS Comments at 4.

[277]DirecTV Comments at 5; LTVS Comments at 4.

[278]47 U.S.C. §338(g).

[279]47 U.S.C. §534(b)(4).

[280]47 U.S.C. §535(g)(2).

Operational Requirements Report and Order, in defining the scope of the requirement.[281] The *Cable Technical Report and Order* specifically addressed the issue of preventing material degradation of local television signals carried on cable systems by adopting a number of technical standards and providing that cable operators must make reasonable efforts and use good engineering practices and proper equipment to guard against unnecessary degradation in the signal received and delivered to the cable subscriber.[282] The Commission stated that the standards adopted in the *Cable Technical Report and Order* were sufficient to satisfy the material degradation requirements contained in the 1992 Cable Act.[283] In declining to adopt regulations in addition to those found in the *Cable Technical Report and Order*, the Commission stated that further rules may have the unwarranted effect of impeding technological advances and experimentation in the cable industry.[284] Standards specific to digital transmission were not adopted. We sought comment on whether reliance on Commission precedent in the cable carriage context regarding material degradation was appropriate and whether technical standards mirroring those in the cable television field would be warranted.[285] We also asked whether there were certain compression ratios or encoding techniques that should be prohibited because their use would result in material degradation.[286]

112. Commenters have proposed a variety of ways to determine picture quality standards. LTVS argues that the definition of material degradation should include any instance where a television broadcast station freezes, tiles, or looks "dirty" due to a satellite carrier's choice of encoding and compression techniques.[287] AAPTS advocates a rule requiring satellite carriers to maintain local television stations at a TASO Grade 2 level to avoid material degradation of these signals.[288] DirecTV urges the Commission to refrain from setting standards for material degradation until two industry committees devoted to video picture quality, IEEE G-2.1.6 and ITU VQEG, complete their work.[289] HBO argues that because of the rapid changes in digital technology, there is significant danger that any standards adopted today would quickly be obsolete, or worse, would prevent beneficial changes in transmission parameters

[281] *See* 7 FCC Rcd at 8063 *citing Cable Television Technical and Operational Requirements Report and Order*, 7 FCC Rcd 2021 (1992) ("Cable Technical *Report and Order*") and *Cable Television Technical and Operational Requirements Memorandum Opinion and Order*, 7 FCC Rcd 8676 (1992) ("Cable Technical Reconsideration").

[282] *Must Carry Order*, 8 FCC Rcd at 2990.

[283] *See id.*

[284] *Id.*

[285] *Notice*, 15 FCC Rcd at 12165.

[286] *Id.*

[287] LTVS Comments at 27.

[288] AAPTS Comments at 25-26. In response, BellSouth argues that the snow and interference effects that would be measured, subjectively, to determine the TASO quality of a signal simply do not exist in a digital environment; instead, the digital picture malformations (at least in presently employed technology) are in the nature of total picture loss, block errors, tiling and other artifacts that do not occur in an analog picture and thus cannot be used to assign a TASO grade to a digital picture. BellSouth Reply Comments at 34.

[289] DirecTV Comments at 45.

as technology improves.[290] We decline to adopt specific picture quality standards at this time. As we stated in the *Notice*, analog degradation standards for the cable industry were developed over the course of several years and evolved as technology changed and improved.[291] The Commission has not had a significant opportunity to evaluate satellite delivery of broadcast signals. We agree with DirecTV that it would be premature for the Commission to adopt specific picture quality standards at this time.

113. The Conference Report noted that because of constraints on the use of satellite spectrum, satellite carriers may initially be limited in their ability to deliver must carry signals into multiple markets.[292] According to the Conference Report: "New compression technologies, such as video streaming, may help overcome these barriers, and if deployed, could enable satellite carriers to deliver must carry signals into many more markets than they could otherwise."[293] The Commission was urged, pursuant to its obligations under Section 338, or in any other related proceedings, "to not prohibit satellite carriers from using reasonable compression, reformatting, or similar technologies to meet their carriage obligations, consistent with existing authority."[294]

114. ALTV argues that those technical means of enhancing capacity, but degrading picture quality, should be prohibited. ALTV argues that the Conference Report language on signal processing techniques should not be read to eviscerate the material degradation prohibition.[295] AAPTS argues that the compression techniques a satellite carrier employs should not degrade a local broadcast signal such that, to the average viewer, the signal appears materially inferior to what the viewer might receive over the air. BellSouth argues that the Commission should decline to adopt signal quality standards that would contravene Congress's mandate to not prohibit satellite carriers from using reasonable compression, reformatting, or similar technologies to meet their carriage obligations.[296] DirecTV argues against prohibiting any encoding techniques, compression ratios or the use of similar technologies that would impede technical innovation that Congress specifically sought to foster.[297]

115. At the outset, we note that our concerns here revolve around the satellite carrier's treatment of the broadcast signal on the equipment it controls or authorizes. Thus, our focus does not involve picture quality issues that may arise because of the type of television receiver used since the satellite carrier has little control over the use of these devices. We also note that the satellite carrier should not be responsible for a poor quality picture delivered to the local receive facility. Rather, the broadcast station is responsible for ensuring that its signal is delivered in good quality.[298] Moreover, our analysis of

[290] HBO Comments at 3.

[291] *Notice*, 15 FCC Rcd at 12167.

[292] Conference Report at H11795.

[293] *Id.*

[294] *Id.*

[295] ALTV Comments at 35.

[296] BellSouth Comments at 26.

[297] DirecTV Comments at 44.

[298] *See* the Good Quality Signal Issues sub-section, *supra*.

material degradation recognizes that dish placement on or near the subscriber's premises can affect the quality of the picture received, but that the satellite carrier cannot control how and where dishes are installed.[299]

116. It is important to note the technical steps in the digital conversion process affecting the material degradation analysis.[300] In satellite digital television systems, such as those implemented by DirecTV and Echostar, there are four layers of the system where video quality may be affected.[301] The first layer, known as the picture layer, is where decisions are made regarding the use of progressive or interlace scanning techniques as well as whether the picture will be produced in a standard definition or high definition format. The choices made in this layer will not likely affect the quality of retransmitted analog broadcasts.[302] In the second layer, the compression layer, decisions are made regarding the types of compression techniques used. The relevant digital standard, MPEG-2, supports a wide range of compression ratios and data rates. At this layer, the satellite carrier attempts to maximize the number of channels carried on each transponder and there is an effort to place a limit on the maximum data rate of each channel. Limiting the data rate may cause the picture quality to degrade, especially when certain video scenes involve rapid motion images or there is a greater degree of camera panning and zooming. The third layer is known as the transport layer and this is where the data are structured and organized into data packets. Since most digital video systems use the MPEG packet structure, there is little likelihood that any type of degradation would occur at this level. The final layer is the transmission layer and this is where data are modulated on to a carrier for transmission. Satellite carriers use quadrature phase-shift keying or "QPSK" -- as the principal format when transmitting video programming.[303] The use of high efficiency modulation techniques, such as the cable industry's QAM[304] standard, permit greater data rate throughput. QPSK, however, is a lower order modulation and requires satellite carriers to limit the data rate or increase channel bandwidth. The chances for degradation to occur at this level are tied to the limiting data rate technique in the compression layer.

[299]For example, if the dish is not properly situated or is obfuscated by foliage, the satellite carrier cannot be held responsible for the resulting degradation of picture quality. We also note that satellite signal degradation varies from location to location due to atmospheric differences. For example, satellite signal outages due to rain fade are more common in Miami, Florida, than in Cheyenne, Wyoming.

[300]This discussion was previously mentioned in the *Notice* in this proceeding. *See Notice*, 15 FCC Rcd at 12165-67.

[301]We note that all digital video systems, including DBS, are based on MPEG standards for the compression of moving video images.

[302]Picture quality questions in this layer may arise in the future when satellite carriers decide to retransmit digital broadcast signals.

[303]This is also a different digital format from the vestigial sideband modulation ("VSB") system that broadcasters are currently using to deliver over-the-air digital signals to viewers.

[304]QAM is the acronym for quadrature amplitude modulation.

117. We specifically note that degradation may result when the satellite carrier encodes an analog broadcast signal and readies it for digital retransmission. During the encoding process, certain artifacts may be introduced into the original material that would have an effect on picture quality. The most dominant artifact is quantization[305] noise in the picture. This effect is often visible on edges of subjects and textured areas of the image. It is caused when there is a high amount of picture detail along with a high degree of picture activity and levels of quantization are restricted due to data rate reduction. Random noise can also be introduced into the source video. This can result in activity or "busyness" in detail areas of the picture and tiling or flicker in other areas of the picture. Such effects are caused by the encoder attempting to encode random noise. During the encoding process of rapidly moving images, certain data reduction techniques can result in another artifact known as "dirty window," where noise appears stationary while images behind it are moving.

118. To satisfy the material degradation principles in the Act, we will adopt a simple comparability rule. That is, a satellite carrier should treat all local television stations in the same manner with regard to picture quality. The signal processing, compression and encoding techniques a satellite carrier uses to carry retransmission consent stations should also be used for mandatory carriage stations. This rule comports with the non-discriminatory thrust of Section 338 and the SHVIA. As long as all local television stations are treated equally, and the degradation resulting from processing these stations does not exceed the level for the lowest quality non-broadcast video service provided by the carrier, we will refrain from prohibiting compression methods. We recognize that compression technology is rapidly evolving and we do not want to impede innovation by proscribing certain techniques. We also believe that new compression methods may benefit subscribers as satellite carriers could offer more services, particularly those involving broadband applications.

119. **Measurement.** In the *Notice*, we sought suggestions for measurement standards that may be used to address broadcast signal degradation by satellite carriers.[306] We found it necessary to request such information because the Commission has had relatively little experience in evaluating quality in the context of the analog to digital to analog conversion of the type involved in satellite broadcast signal carriage.[307] LTVS states that subjective criteria should be used to measure broadcast signal degradation and suggests that the Commission consider the International Telecommunications Union's recommendations for broadcast video evaluation.[308] NAB, however, proposes the use of three objective criteria -- (a) carrier-to-noise (C/N) ratio, (b) bit error rates (BER), and (c) bit rate allocation for each channel -- that collectively provide a method for checking whether a satellite carrier is "materially degrading" a local station's signal in comparison to other channels.[309] We decline to adopt, as a rule, any one specific technique for

[305]Quantization is part of the process by which analog signals are encoded into digital form. Specifically, it is the classification step that determines the number of bits to be used in the conversion process.

[306]*Notice*, 15 FCC Rcd at 12167.

[307]In this context, we note that the broadcast signal is converted back to analog at the satellite set-top box so that the picture can be displayed on the analog television receiver.

[308]LTVS specifically notes two proposed international standards: (1) ITU-R 500-10 ("methodology for the subjective assessment of the quality of television pictures") and (2) ITU-R 1129-2 ("subjective assessment of standard definition digital television") LTVS Comments at 28.

[309]NAB Comments at 19. BellSouth asserts that the adoption of NAB's criteria would restrain technological innovation beneficial to local-into-local station carriage and improvements in signal quality. BellSouth Reply Comments at 35.

measuring degradation. Both LTVS and NAB present worthy proposals, but they are untested in the field of satellite broadcast signal carriage. The more reasonable approach here is to develop a uniform measurement technique over time. After some experience with satellite broadcast signal carriage, broadcasters and satellite carriers will be able to apply such a technique for analog-to-digital degradation measurements.[310] At some future point, the Commission will be in a better position to scrutinize the techniques used and establish standards, if necessary.

J. Digital Television

120. Section 338(g) states: "The regulations prescribed [by the Commission under Section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(4) . . . ."[311] Section 614(b)(4)(B) of the Act provides: "At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards."[312] The Conference Report stated: "by directing the FCC to promulgate these must carry rules [found in Section 338], the conferees do not take any position regarding the application of must-carry rules to carriage of digital television signals by either cable or satellite systems."[313]

121. The Commission has adopted rules establishing a transitional process for the conversion from an analog to a digital form of broadcast transmission.[314] The rules allow each existing analog television licensee or each eligible permittee to construct and operate digital facilities using 6 MHz of spectrum, in addition to the 6 MHz of spectrum used to continue analog broadcasting until the end of the transition. The broadcast station will transmit a signal consistent with the standards adopted in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fourth Report and Order, giving it the flexibility to broadcast in a high definition mode, in a multiple program standard definition mode, in a datacasting mode, or a mixture of all three, provided that the licensee provides at least one over-the-air video program stream to consumers.[315] During the transition period, both the analog and digital television signals will be broadcast. At the end of the transition which is scheduled for 2006,

[310]We also note that as broadcasters' transition to digital television, the question of measuring degradation changes. This issue was raised in the Commission's pending Digital Must Carry rulemaking in the cable context. *See Digital Broadcast Signal Carriage Issues*, 13 FCC Rcd 15092, 15122 (1998) ("DTV Must Carry Notice")

[311]47 U.S.C. §338(g).

[312]47 U.S.C. §534(b)(4)(B).

[313]Conference Report at H11795.

[314]47 C.F.R. §§73.622-624. The rules governing the transition from analog to digital broadcasting are found in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809 (1997). ("*DTV Fifth Report and Order*"). The *DTV Fifth Report and Order* set forth a phased-in implementation schedule for the introduction of digital broadcast television. Construction requirements vary depending on the size of the television market and other factors. *DTV Fifth Report and Order*, 12 FCC Rcd at 12840-41; *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860 (1998); *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348 (1998).

[315]*See* 11 FCC Rcd 17771 (1996).

with certain statutory exceptions, the station is to cease broadcasting an analog signal and will return to the government 6 MHz of spectrum.[316]

122. The Commission commenced a proceeding to determine the carriage obligations cable operators should have with regard to a broadcast station's digital television signal during the transition period to digital television. [317] We sought comment in that proceeding on how to accomplish the Congressional goals reflected in Section 614, Section 615, and Section 325 of the Act in light of the significant changes to the relevant industries resulting from the conversion to digital operations. The thrust of the proceeding was to examine the timing and scope of digital broadcast signal carriage obligations for cable operators. When this proceeding was initiated, there was no satellite broadcast signal carriage requirement, and satellite carriers did not comment on the issues addressed in that proceeding. We therefore sought comment on whether satellite carriers should be required to carry digital broadcast television signals in addition to analog broadcast signals up until the time that television stations return their analog spectrum to the government.[318]

123. We believe that our goal of initiating a discussion on a satellite carrier's digital broadcast signal carriage obligations has been achieved. As expected, broadcast commenters support the imposition of a digital broadcast signal carriage rule under Section 338[319] and satellite carriers oppose a digital broadcast signal carriage requirement.[320] We note that these comments generally reflect the positions taken by the broadcast and cable industries in response to the questions raised in the Digital Must Carry Notice.[321] We will consider the digital carriage obligations of both cable operators and satellite carriers in tandem within the context of the rulemaking for cable operators, and will consider the comments filed on this issue in that proceeding.[322] In any instance, we note that Echostar argues that the Commission cannot impose digital carriage obligations on satellite because there are no current rules in effect for the cable industry.[323] We find that the Commission must be able to issue rules for satellite digital broadcast signal

[316]The 2006 date is subject to certain exceptions related to consumer acceptance of digital technology and other market-based conditions as provided for in the 1997 Balanced Budget Act. 47 U.S.C. §309(j)(14)(B) (Balanced Budget Act language concerning the reversion of the analog television spectrum to the government). *See also DTV Fourth Report and Order*, 11 FCC Rcd 17771 (1996); *DTV Fifth Report and Order*, 12 FCC Rcd 12809 (1997); *DTV Sixth Report and Order*, 12 FCC Rcd 14588 (1997).

[317]*See Digital Must Carry Notice*, 13 FCC Rcd 15092 *et. seq.*

[318]*Notice*, 15 FCC Rcd at 12169.

[319]*See, e.g.*, ALTV Comments at v and 50.

[320]*See, e.g.*, DirecTV Comments at 46.

[321]We note that the satellite carriers also raise the novel argument that a dual carriage policy will significantly impede the Congressional goal of offering local-into-local service into as many television markets as possible. See SBCA Comments at 11; DirecTV Comments at 46-47.

[322]We note that the Commission has held, in the cable carriage context, that digital television signals ultimately will have carriage rights. *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 00-224 (released June 30, 2000) at ¶ 65.

[323]*Id.*

carriage that are comparable to those for cable operators. The Congressional goal of comparable requirements was not frozen in time on November 29, 1999. Rather, we are authorized to implement changes or additions in the satellite carriage rules whenever we adopt changes in the cable carriage rules, including digital carriage requirements.

K. Compensation for Carriage

124. Section 338(e) states:

> A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.[324]

We noted that this provision largely parallels provisions applicable to cable operators that are found in Sections 614(b)(10) and 615(i) of the Act that are implemented in Section 76.60 of the Commission's rules. In the cable context, commercial broadcasters elect either must carry or retransmission consent to obtain carriage of their signals. If mandatory carriage is selected, there are no specific terms for carriage that must be requested, other than choosing the relevant channel positioning options available to broadcasters under the Act. If retransmission consent is selected, the operator may receive compensation from the broadcaster in exchange for carriage. We assumed the same general policy was intended for satellite carriers and that a broadcaster seeking carriage rather than requesting carriage "in fulfillment of the requirements of [Section 338]" would simply negotiate carriage provisions, including payment terms, in the context of a retransmission consent negotiation. We sought comment on this interpretation.[325] We also sought comment on the policy underlying this provision and its purpose in the statutory scheme.

125. Network Affiliates agree that the compensation rules applicable to satellite carriers pursuant to Section 338(e) of the Act should parallel the provisions applicable to cable operators.[326] LTVS comments that there is no reason why the parties cannot themselves reach agreement on reasonable compensation for carriage in a retransmission consent agreement.[327] In the context of mandatory carriage, LTVS asserts that satellite carriers cannot charge local television stations for carriage of their signals. We find that the current compensation rules applicable to cable operators should likewise apply to satellite carriers. That is, a station must bear the costs associated with delivering a good quality signal and a satellite carrier may accept payments from stations pursuant to a retransmission consent agreement. No one commented that there should be different rules between the industries nor can we find any valid reason to impose different rules. We therefore implement the language of Section 338 as presented in the statute.

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[324] 47 U.S.C. §338(e). Sections 614(b)(10) and 615(i) impose substantially similar requirements on cable operators.

[325] *Notice*, 15 FCC Rcd at 12169.

[326] Network Affiliates Comments at 22.

[327] LTVS Comments at 30.

L. Remedies

126. Section 338(a)(2) states that the remedies for any failure to meet the obligations under subsection (a) (carriage obligations) shall be available exclusively under Section 501(f) of title 17, United States Code.[328] New section 501(f)(1) states,

> With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.[329]

New section 501(f)(2) further provides that: "A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934."[330]

127. Section 338(f)(1) states,

> Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under subsections (b) through (e) of this section [(b) good signal required, (c) duplication not required, (d) channel positioning, and (e) compensation for carriage], such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations. The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations. A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.[331]

In addition, Section 338(f)(2) states: "The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.[332] Section 338(f)(3) then states that: "Within 120 days after the date a complaint is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e). If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the

[328] 47 U.S.C. §338(a)(2).

[329] 17 U.S.C. §501(f)(1)(as amended by Section 1002 of the SHVIA).

[330] 17 U.S.C. §501(f)(2).

[331] 47 U.S.C. §338(f)(1). The remedial provisions of the SHVIA are substantially similar to provisions applicable to cable operators set forth in Section 614(d)(1)-(3) of the 1992 Cable Act.

[332] 47 U.S.C. §338(f)(2).

satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint." At the outset, we find that the procedural provisions contained in Section 338(f)(1-3), concerning the steps required to file a carriage complaint, are plain on their face. We adopt the statutory procedures without change. With regard to the substantive issues raised in the *Notice*, we address each one in turn below.

128. In the *Notice*, the Commission discussed the parameters of its enforcement authority regarding the carriage obligation rules under SHVIA.[333] We sought to reconcile forum disputes that may arise if a satellite carrier fails to carry a local television station that has requested carriage in a market in which it provides local-into-local service. In addition, we sought to determine whether disputes concerning the non-carriage of broadcast station signals by satellite carriers because of signal quality problems should be within the domain of the courts, the Commission, or shared by the different jurisdictions.[334] ALTV states that the outright failure to carry a station entitled to carriage under Section 338 should be grounds for an infringement of copyright suit in federal court.[335] DirecTV asserts that the remedy available to a broadcaster in the event of a compulsory carriage dispute is to file a civil action against the satellite carrier that has refused carriage and that the Commission does not have jurisdiction to remedy non-carriage of broadcast station signals by satellite carriers.[336] On the one hand, the statute provides that the remedies for any failure to meet the carriage obligations of Section 338(a) shall be available exclusively under Section 501(f) of the Copyright Act, which directs complainants to an appropriate United States District Court. On the other hand, Sections 338(b) – (e) clearly contemplate the Commission making determinations that, in appropriate circumstances, require carriage. We find that if a television station is not being carried and seeks damages and other specific forms of monetary or injunctive relief under either Section 338(a) of the Act or Section 501(f) of the Copyright Act, then the United States District Court is the exclusive forum for adjudicating the complaint. If the television station seeks a finding on the facts and a resulting determination of whether it is entitled to carriage pursuant to Section 76.66 of our rules, then it may file a complaint with the Commission. In arriving at this determination, we do not believe that Congress intended to deprive the Commission of the right to enforce the regulations the statute specifically directs us to adopt under Section 338.

129. We find that the Commission should have primary jurisdiction over issues concerning: (1) good quality signal; (2) substantial duplication; (3) channel positioning; and (4) compensation matters. We adopt this position to ensure the rapid and timely implementation of Section 338. The Commission has the technical expertise to review and address such matters. The institutional knowledge the Commission has developed in adjudicating cable-broadcast disputes will be helpful in processing satellite carriage cases in an efficient manner.

130. In response to questions we raised in the *Notice*, several commenters addressed the issue of whether broadcasters should be permitted to file complaints with the Commission against a satellite carrier for non-compliance with the content-to-be-carried and material degradation provisions of the SHVIA, specifically referenced in Section 338(g). A number of broadcast commenting parties assert that the Commission's jurisdiction should be extended to allow consideration and resolution of complaints

[333] *Notice*, 15 FCC Rcd at 12170.

[334] *Id.* at 12171.

[335] ALTV Comments at 46.

[336] DirecTV Comments at 49.

relating to content-to-be-carried and material degradation issues.[337] Network Affiliates and LTVS, for example, state that such disputes rest squarely within the Commission's expertise and excluding such disputes from the complaint procedures would be inconsistent with Section 338(g), which requires the Commission to implement regulations regarding material degradation and content-to-be-carried in the satellite context that mirror those in the cable context.[338] DirecTV however, argues that Section 338(f) does not provide for broadcaster complaints against a satellite carrier for non-compliance with provisions concerning content-to-be-carried or material degradation.[339] Consistent with the general authority invested in the Commission to implement Section 338,[340] we will adjudicate complaints concerning the material degradation and content-to-be-carried provisions under the same procedural framework established for the other satellite carriage provisions of the Act. For the reasons outlined in the above paragraph, we will also assert primary jurisdiction over these matters.

131. We adopt a date certain for when a complaint must be filed with the Commission. Consistent with the procedural rule for cable carriage complaints, [341] we will not consider a complaint brought by a television station if it is filed later than 60 days after a satellite carrier denies the station's carriage request. In this context, the denial can be in the affirmative, as in a rejection letter, or by silence, where a carrier does not respond to a carriage request within 30 days of its receipt. We implement this requirement, pursuant to Section 338(f) of the Act, to facilitate the carriage process and ensure that television broadcast stations do not delay in enforcing their rights to the detriment of the satellite carrier.[342]

132. **Other Actions.** In the *Notice*, we requested comment on additional enforcement actions the Commission may impose.[343] Some broadcasters have stated that the Commission should take into account any failure to comply with the local carriage requirements when considering license renewals for satellite carriers.[344] We find that this issue is a matter better suited for discussion in the context of a satellite licensing proceeding, not within the confines of a rulemaking implementing the SHVIA's carriage requirements. We therefore decline to rule on the merits of the broadcasters' suggestion at this time.

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[337]LTVS Comments at 32; NAB Comments at 22; ALTV Comments at 47; AAPTS Comments at 38; Network Affiliates Comments at 27.

[338]Network Affiliates Comments at 27; LTVS Comments at 32. The complaint and special relief procedures in the cable rules allow broadcasters with material degradation or content carriage disputes to bring their disputes before the Commission. *See* 47 C.F.R. §§ 76.7 and 76.61.

[339]DirecTV Comments at 50.

[340]*See* 47 U.S.C. §338(g).

[341]*See* 47 C.F.R. §76.61(a)(5).

[342]47 U.S.C. §338(f)(1)-(3). These statutory provisions discuss the satellite carriage complaint process and the remedial actions the Commission may take.

[343]*Notice*, 15 FCC Rcd at 12171.

[344]Network Affiliates Comments at 28.

133. ALTV proposes that the Commission require satellite carriers to file semi-annual reports detailing their efforts to achieve compliance with Section 338 by January 1, 2002.[345] We find that the statute does not mandate such a requirement. Nevertheless, carriage compliance information will be useful in updating Congress on the implementation of the SHVIA. We therefore plan to ask questions concerning the implementation of Section 338 in the Commission's Notice of Inquiry, preceding the Annual Competition Report to be issued in 2002.[346]

M. Definitional Issues and Other Concerns.

134. Section 338 contains several definitions that provide the framework for satellite broadcast signal carriage. While these definitions are generally self-effectuating, such as the meaning of "satellite carrier," "secondary transmission," and "subscriber," we asked commenters to further clarify the meaning of other terms found in Section 338.[347] We received a number of viewpoints on the carriage status of certain types of stations. We also received comments from other parties on the general application of Section 338. We address each concern separately, below.

135. **Distributor.** Section 338(h)(1) of the Communications Act defines the term "distributor" as an "entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities."[348] In the *Notice*, we stated that the term "distributor" is not found in any other provision of Section 338, other than the definitional subsection.[349] Given this omission, we sought comment on the definition of distributor and its relevance in this context. Local TV on Satellite, Inc. ("LTVS") argues that the use of term distributor has no relevance to Section 338 and has no bearing on the implementation of the mandatory carriage provisions.[350] We agree. This particular provision appears to have no connection with the carriage requirements in Section 338. Therefore, it requires no implementation.

136. **Class A Television Stations.** Section 338(h)(7) defines the term "television broadcast station" as having the meaning given such term in Section 325(b)(7).[351] Section 325(b)(7) defines "television broadcast station," as "an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator station."[352] Paging Associates,

[345] ALTV Comments at 50.

[346] *See* 47 U.S.C. §548(g) ("The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c) [concerning program access], annually report to Congress on the status of competition in the market for the delivery of video programming.)

[347] *Notice*, 15 FCC Rcd at 12154.

[348] 47 U.S.C. §338(h)(1).

[349] *Notice*, 15 FCC Rcd at 12154.

[350] LTVS Comments at 12.

[351] 47 U.S.C. §338(h)(7).

[352] 47 U.S.C. §325(b)(7)(B).

nevertheless raises the question of whether low power stations that receive Class A status from the Commission, pursuant to the Community Broadcasters Protection Act of 1999 ("CBPA"), may assert carriage rights under Section 338.[353] Paging Associates states that Class A licensees are on equal footing with full-service television licensees as prescribed by the CBPA.[354] We disagree. Low power television stations that receive Class A status pursuant to the CBPA are still low power stations for mandatory carriage purposes.[355] Class A stations do not gain the same rights to carriage as their full power counterparts simply by receiving such status. The principal intent of the CBPA was to protect low power television stations from digital television ("DTV") interference. The CBPA did not create a new class of television stations eligible for full-fledged carriage rights on cable systems or satellite carriers. Given the burdens a Class A carriage requirement would impose, we believe that Congress would have specifically noted in Section 338 that satellite carriers were required to carry these stations if they provide local-into-local service in a market.

137. **Satellite Television Stations.** In the *Notice*, we asked whether satellite carriers must carry terrestrial broadcast "satellite television stations", as cable operators are required to do.[356] Satellite stations, by definition, replicate substantially all of the programming of another full power television station in a market and also broadcast a minimum amount of original programming.[357] LTVS and NAB assert that regulations should be developed to require satellite carriers to carry such stations if they carry other local market television stations, unless they substantially duplicate another station in the local market.[358] DirecTV, however, argues that the compulsory carriage of satellite television stations will unduly burden satellite carriers' systems and limit the amount of capacity available.[359] The Commission has long held that cable operators must carry satellite television stations because they are full power television stations with an assignment in the Table of Allotments under Part 73 of the rules. Congress was cognizant of this carriage policy at the time the SHVIA was enacted, but did not expressly exclude such stations from the definition of television broadcast station in the SHVIA. Therefore, a satellite television station, being a full power television station, may request carriage like other local full power television stations, but is subject to the duplications provisions, stated above.

138. **MMDS Operators.** Fifth Avenue Channel Corporation raises the concern that the carriage obligations under Section 338 may be construed to apply to multichannel multipoint distribution

[353]Paging Associates Reply Comments at 1-2.

[354]*Community Broadcasters Protection Act of 1999, P.L. No. 106-113, 113 Stat. Appendix 1 at p.1501A-594-1501A-598 (1999) (codified at 47 U.S.C. §336(f)).*

[355]The Commission has already determined that cable operators are under no obligation to treat Class A television stations like full power television stations for the purpose of mandatory carriage. *See Establishment of a Class A Television Service*, Report and Order, MM Docket No. 00-10, 15 FCC Rcd 6355, n.61 (2000) ("Nothing in this *Report and Order* is intended to affect a Class A LPTV station's eligibility to qualify for mandatory carriage under 47 U.S.C. §534.")

[356]*Notice*, 15 FCC Rcd at 12154. *Broadcast Signal Carriage Order*, 8 FCC Rcd at 2973.

[357]*See generally*, 47 C.F.R. §73.3555 at note 5.

[358]LTVS Comments at 11; NAB Comments at 4.

[359]DirecTV Comments at 12.

service providers ("MMDS" or "wireless cable").[360] We find that the provision does not apply to such entities. MMDS operators generally receive television broadcast signals either off-the-air or by a direct feed from the broadcast station. They do not use the facilities of a satellite or satellite service to distribute those television station signals. Thus, an MMDS operator who contracts to distribute the signal of a local television station directly from the station is not a satellite carrier as that term is defined in the Act.

139. **Rural Service.** The National Rural Telecommunications Cooperative ("NRTC") argues that satellite carriers will not provide local-into-local service in lower population, lower-profit markets if they are required to carry all television stations in larger markets.[361] It states that there is not enough satellite capacity available, nor is there a large enough subscriber base in less populated markets, to introduce local-into-local service.[362] We recognize that one of the SHVIA's principal mandates is to permit satellite carriers to provide local-into-local service wherever and whenever possible. We also understand that satellite carriers, like cable operators, have limited capacity to add additional channels of programming. Congress, however, was aware of these concerns when it promulgated Section 338. Thus, while we find that the provision of dependable television service to rural areas is an important policy goal, the Section 338 requirements must be followed and implemented.

V. PROCEDURAL MATTERS

140. *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 into both the *Notice* and the *Retransmission Consent 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* and the *Retransmission Consent Notice*, including comments on the IRFAs. Pursuant to the RFA, *see* 5 U.S.C. §604, a Final Regulatory Flexibility Analysis is contained in Appendix C.

141. *Paperwork Reduction Act of 1995 Analysis.* This *Report & Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. It will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

VI. ORDERING CLAUSES

142. Accordingly, **IT IS ORDERED** that, pursuant authority found in Sections 4(i) 4(j), 303(r), 325, 338, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 325, 338, 534, and 535, the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B.

143. **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.

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[360] Fifth Avenue Channel Corporation Comments at 3.

[361] NRTC Comments at 5.

[362] *Id.*

144. **IT IS FURTHER ORDERED** that the rules adopted in this *Report and Order* **SHALL TAKE EFFECT** upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A

COMMENTS FILED IN CS 00-96

Association of Local Television Stations ("ALTV")
Association of America's Public Television Stations, the Public Broadcasting System, and the Corporation for Public Broadcasting ("AAPTS")
BellSouth Corp. and BellSouth Entertainment ("BellSouth")
Christian Television Network ("CTN")
Community Television of Southern California, KQED, Inc. & North Texas Public Broadcasting, Inc. ("KQED")
Detroit Educational Television Foundation ("DETF")
DirecTV
Echostar Satellite Corporation ("Echostar")
Gray Communications, *et. al.*
Home Box Office ("HBO")
J.E. Schmidt
Joint Comments of the ABC, CBS, Fox, and NBC Television Network Affiliate Associations ("Network Affiliates")
KNTV License, Inc. ("KNTV")
Local TV on Satellite, LLC ("LTVS")
Mid-State Television, Inc. ("WMFD")
National Association of Broadcasters ("NAB")
National Cable Television Association ("NCTA")
National Rural Telecommunications Cooperative ("NRTC")
Paxson Communications Corporation ("Paxson")
Quorum of Maryland License ("WHAG")
Satellite Broadcasting and Communications Association ("SBCA")
SJL of California, L.P. ("KSBY")
WDBJ Television, Inc. ("WDBJ")
Wisdom Media Group
5th Avenue Channel Corporation

REPLY COMMENTS FILED IN CS 00-96

American Cable Association ("ACA")
Association of America's Public Television Stations, the Public Broadcasting System, and the Corporation for Public Broadcasting
Association of Local Television Stations
BellSouth Corp. and BellSouth Entertainment
Detroit Educational Television Foundation
DirecTV
Echostar Satellite Corporation
Joint Comments of the ABC, CBS, Fox, and NBC Television Network Affiliate Associations
Local TV on Satellite, LLC
Mid-State Television, Inc.
National Association of Broadcasters
National Cable Television Association
Paging Associates
Paxson Communications Corporation

COMMENTS FILED IN CS 99-363

ABC, CBS, Fox, and NBC Television Network Affiliate Associations ("Network Affiliates").
American Cable Association
Association of Local Television Stations, Inc.
BellSouth Corporation, BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc.
CBS Corporation ("CBS")
DirecTV, Inc.
EchoStar Satellite Corporation
Fox Television Stations, Inc. ("Fox")
LEXCOM Cable
Local TV on Satellite, LLC
National Association of Broadcasters
National Broadcasting Company, Inc. ("NBC").
National Cable Television Association
Satellite Broadcasting and Communications Association
U S West, Inc. ("U S West")
Walt Disney Company ("Disney")
Wireless Communications Association International, Inc. ("WCA")

REPLY COMMENTS FILED IN CS 99-363

American Cable Association
ABC, CBS, Fox, and NBC Television Network Affiliate Associations
Association of Local Television Stations, Inc.
BellSouth Corporation, BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc.
DIRECTV, Inc.
EchoStar Satellite Corporation
Fisher Broadcasting Inc. ("Fisher")
Hearst-Argyle Television, Inc. ("Hearst")
Lin Television Corporation ("Lin")
Local TV on Satellite, LLC
National Association of Broadcasters
National Broadcasting Company, Inc.
National Cable Television Association
RCN Telecom Services, Inc. ("RCN").
Satellite Broadcasting and Communications Association
Seren Innovations, Inc. ("Seren")
The Post Company ("Post")
Time Warner Cable ("Time Warner")
U S West, Inc.
Walt Disney Company
Young Broadcasting, Inc. ("Young").

Appendix B

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

Part 76 – Multichannel Video and Cable Television Service

1. The authority citation for Part 76 reads as follows:

AUTHORITY: 47 U.S.C. §§151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.66 is added to Subpart D to read as follows:

§ 76.66 Satellite Broadcast Signal Carriage

(a) *Definitions.*

(1) Satellite carrier. A satellite carrier is 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 a 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.

(2) Secondary transmission. A secondary transmission is the further transmitting of a primary transmission simultaneously with the primary transmission.

(3) Subscriber. A subscriber is a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(4) Television broadcast station. A television broadcast station is an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(5) Television network. For purposes of this section, a television network is an entity 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.

(6) Local-into-local television service. A satellite carrier is providing local-into-local service when it retransmits a local television station signal back into the local market of that television station for reception by subscribers.

(b) *Signal carriage obligations.*

(1) Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of title 47, United States Code, and other paragraphs in this section.

(2) No satellite carrier shall be required to carry local television broadcast stations, pursuant to this section, until January 1, 2002.

(c) *Election cycle.* In television markets where a satellite carrier is providing local-into-local service, a commercial television broadcast station may elect either retransmission consent, pursuant to section 325 of title 47 United States Code, or mandatory carriage, pursuant to section 338, title 47 United States Code.

(1) The first retransmission consent-mandatory carriage election cycle shall be for a four-year period commencing on January 1, 2002 and ending December 31, 2005.

(2) The second retransmission consent-mandatory carriage election cycle, and all cycles thereafter, shall be for a period of three years (*e.g.* the second election cycle commences on January 1, 2006 and ends at midnight on December 31, 2008).

(3) A commercial television station must notify a satellite carrier, by July 1, 2001, of its retransmission consent-mandatory carriage election for the first election cycle commencing January 1, 2002.

(4) Except as provided in paragraphs 76.66(d)(2) and (3), local commercial television broadcast stations shall make their retransmission consent-mandatory carriage election by October 1st of the year preceding the new cycle for all election cycles after the first election cycle.

(5) A noncommercial television station must request carriage by July 1, 2001 for the first election cycle and must renew its carriage request at the same time a commercial television station must make its retransmission consent-mandatory carriage election for all subsequent cycles.

(d) *Carriage procedures.*

(1) *Carriage requests.*

(i) A retransmission consent-mandatory carriage election made by a television broadcast station shall be treated as a request for carriage for purposes of this section.

(ii) A carriage request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested.

(iii) A television station's written notification shall include the: (1) station's call sign; (2) name of the appropriate station contact person; (3) station's address for purposes of receiving official correspondence; (4) station's community of license; (5) station's DMA assignment; and (6) for commercial television stations, its election of mandatory carriage or retransmission consent.

(iv) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing: 1) those local television stations it will not carry, along with the reasons for such a decision; and 2) those local television stations it intends to carry.

(v) A satellite carrier is not required to carry a television station, for the duration of the election cycle, if the station fails to assert its carriage rights by the deadlines established in this section.

(2) *New local-into-local service.*

(i) A new satellite carrier or a satellite carrier providing local service in a market for the first time on or after July 1, 2001, must notify local television stations of its intent to provide local-into-local service at least 60 days before it intends to provide service or decides to enter into a new television market. This notification shall include information on the location of the satellite carrier's designated local receive facility in that particular market.

(ii) A local television station shall make its request for carriage, in writing, no more than 30 days after receipt of the satellite carrier's notice.

(iii) A satellite carrier shall have 90 days, from the receipt of a request for carriage, to commence carriage of a local television station.

(iv) A satellite carrier shall notify a local television station in writing of its reasons for refusing carriage within 30 days of the station's carriage request.

(3) *New television stations.*

(i) A television station providing over-the-air service in a market for the first time on or after July 1, 2001, shall be considered a new television station for satellite carriage purposes.

(ii) A new television station shall make its request for carriage between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting.

(iii) A satellite carrier shall commence carriage within 90 days of receiving the request for carriage from the television broadcast station or whenever the new television station provides over-the-air service.

(iv) A satellite carrier shall notify a new television station in writing of its reasons for refusing carriage within 30 days of the station's carriage request.

(e) *Market definitions.*

(1) A local market, in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, and (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

(2) A designated market area is the market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.

(3) A satellite carrier shall use the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates to define television markets for the first retransmission consent-mandatory carriage election cycle commencing on January 1, 2002 and ending on December 31,

2005. The 2003-2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates shall be used for the second retransmission consent-mandatory carriage election cycle commencing January 1, 2006 and ending December 31, 2008, and so forth for each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999-2000 Nielsen Station Index Directory or any subsequent issue of that publication.

(4) A local market includes all counties to which stations assigned to that market are licensed.

(f) *Receive facilities.*

(1) A local receive facility is the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

(2) A satellite carrier may establish another receive facility to serve a market if the location of such a facility is acceptable to at least one-half the stations with carriage rights in that market.

(3) Except as provided in 76.66(d)(2), a satellite carrier providing local-into-local service must notify local television stations of the location of the receive facility by June 1, 2001 for the first election cycle and at least 120 days prior to the commencement of all election cycles thereafter.

(4) A satellite carrier may relocate its local receive facility at the commencement of each election cycle. A satellite carrier is also permitted to relocate its local receive facility during the course of an election cycle, if it bears the signal delivery costs of the television stations affected by such a move. A satellite carrier relocating its local receive facility must provide 60 days notice to all local television stations carried in the affected television market.

(g) *Good quality signal.*

(1) A television station asserting its right to carriage shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) To be considered a good quality signal for satellite carriage purposes, a television station shall deliver to the local receive facility of a satellite carrier either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment.

(3) A satellite carrier is not required to carry a television station that does not agree to be responsible for the costs of delivering a good quality signal to the receive facility.

(h) *Duplicating signals.*

(1) A satellite carrier shall not be required to carry upon request the signal of any local television broadcast station that substantially duplicates the signal of another local television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) A satellite carrier may select which duplicating signal in a market it shall carry.

(3) A satellite carrier may select which network affiliate in a market it shall carry.

(4) A satellite carrier is permitted to drop a local television station whenever that station meets the substantial duplication criteria set forth in this paragraph. A satellite carrier must add a television station to its channel line-up if such station no longer duplicates the programming of another local television station.

(5) A satellite carrier shall provide notice to its subscribers, and to the affected television station, whenever it adds or deletes a station's signal in a particular local market pursuant to this paragraph.

(6) A commercial television station substantially duplicates the programming of another commercial television station if it simultaneously broadcasts the identical programming of another station for more than 50 percent of the broadcast week.

(7) A noncommercial television station substantially duplicates the programming of another noncommercial station if it simultaneously broadcasts the same programming as another noncommercial station for more than for more than 50 percent of prime time, as defined by §76.5(n), and more than 50 percent outside of prime time over a three month period, Provided, however, that after three noncommercial television stations are carried, the test of duplication shall be whether more than 50 percent of prime time programming and more than 50 percent outside of prime time programming is duplicative on a non-simultaneous basis.

(i) *Channel positioning.*

(1) No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels.

(2) The television stations subject to this paragraph include those carried under retransmission consent.

(3) All local television stations carried under mandatory carriage in a particular television market must be offered to subscribers at rates comparable to local television stations carried under retransmission consent in that same market.

(4) Within a market, no satellite carrier shall provide local-into-local service in a manner that requires subscribers to obtain additional equipment at their own expense or for an additional carrier charge in order to obtain one or more local television broadcast signals if such equipment is not required for the receipt of other local television broadcast signals.

(5) All television stations carried under mandatory carriage, in a particular market, shall be presented to subscribers in the same manner as television stations that elected retransmission consent, in that same market, on any navigational device, on-screen program guide, or menu provided by the satellite carrier.

(j) *Manner of carriage.*

(1) Each television station carried by a satellite carrier, pursuant to this section, shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical

blanking interval or on subcarriers. For noncommercial educational television stations, a satellite carrier must also carry any program-related material that may be necessary for receipt of programming by persons with disabilities or for educational or language purposes. Secondary audio programming must also be carried. Where appropriate and feasible, satellite carriers may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the local receive facility.

(2) A satellite carrier, at its discretion, may carry any ancillary service transmission on the vertical blanking interval or the aural baseband of any television broadcast signal, including, but not limited to, multichannel television sound and teletext.

(k) *Material degradation.* Each local television station whose signal is carried under mandatory carriage shall, to the extent technically feasible and consistent with good engineering practice, be provided with the same quality of signal processing provided to television stations electing retransmission consent. A satellite carrier is permitted to use reasonable digital compression techniques in the carriage of local television stations.

(l) *Compensation for carriage.*

(1) A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the mandatory carriage requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the receive facility of the satellite carrier.

(2) A satellite carrier may accept payments from a station pursuant to a retransmission consent agreement.

(m) *Remedies.*

(1) Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.

(2) The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations.

(3) A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission, in accordance with §76.7 of title 47, Code of Federal Regulations. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(4) The satellite carrier against which a complaint is filed is permitted to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(5) The Commission shall determine whether the satellite carrier has met its obligations under this section. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of this section, it shall dismiss the complaint.

(6) The Commission will not accept any complaint filed later than 60 days after a satellite carrier, either implicitly or explicitly, denies a television station's carriage request.

Appendix C

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[363] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking in CS Docket No. 00-96, FCC 00-195 ("*Notice*") and in the Notice of Proposed Rulemaking in CS Docket No. 99-363, FCC 99-406 ("Retransmission Consent *Notice*"). The Commission sought written public comments on the proposals in both *Notices*, including comment on the IRFAs.[364] No specific comments were received on the IRFAs. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.[365]

2. **Need for, and Objectives of, this Report and Order.** Section 338(g) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. §338(g), directed the Commission, within one year of enactment of the Satellite Home Viewer Improvement Act of 1999,[366] to "issue regulations implementing this section following a rulemaking proceeding." The relevant provisions concern the carriage of all local television broadcast station signals by satellite carriers commencing on January 1, 2002. Section 325(b)(3)(C) of the Act, 47 U.S.C. § 325(b)(3)(C), also directs the Commission to complete all actions necessary to prescribe election cycle regulations within one year of enactment of the Satellite Home Viewer Improvement Act of 1999.[367]

3. **Summary of Significant Issues Raised by Public Comments in Response to the IRFAs.** We did not receive any comments in direct response to the IRFA in CS Docket 00-96. The American Cable Association commented on the IRFA in CS Docket No. 99-363, but those comments were directed at the SHVIA's good faith and exclusivity provisions, and did not concern the election cycle addressed herein.

4. **Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.** The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules.[368] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small

[363] *See* 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").

[364] *See Implementation of the Satellite Home Viewer Improvement Act of 1999—Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 15 FCC Rcd 12147 (2000). *Implementation of the Satellite Home Viewer Improvement Act of 1999—Retransmission Consent Issues*, Notice of Proposed Rulemaking, 14 FCC Rcd 21736 (1999). The IRFAs are found at Appendix A in the respective *Notices*.

[365] *See* 5 U.S.C. § 604.

[366] Act of Nov. 29, 1999, Pub. Law 106-113, §1000(9), 113 Stat. 1501, Appendix A.

[367] *Id.*

[368] 5 U.S.C. §603(b)(3).