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November 5, 2010

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Implementation of Section 203 of the Satellite
Television Extension and Localism Act of 2010
(STELA), MB Docket No. 10-148

Establishment of a Model for Predicting Digital
Broadcast Television Field Strength Received at
Individual Locations, ET Docket No. 10-152;
Measurement Standards for Digital Television Signals
Pursuant to the Satellite Home Viewer Extension and
Reauthorization Act of 2004, ET Docket No. 06-94.

Dear Ms. Dortch:

Yesterday, on behalf of the National Association of Broadcasters, Jane Mago and Ben Ivins of the National Association of Broadcasters and I met with Commissioner McDowell, his legal assistant, Rosemary C. Harold, Joshua Cinelli, Media Advisor to Commissioner Copps, and Krista Witanowski, legal assistant to Commissioner Baker to discuss issues related to the STELA implementation proceedings captioned above.

We discussed, as reflected in the earlier filed joint Comments and Reply Comments by the National Association of Broadcasters, the ABC Television Affiliates Association, the CBS Television Network Affiliates Association, the FBC Television Affiliates Association, and the NBC Television Affiliates in this proceeding, that "carriage" and "retransmission" of a local network station by a satellite carrier is a condition precedent to importation by satellite of a "significantly viewed," out-of-market station affiliated with the same network. Specifically, in that regard, we discussed the legislative history

Ms. Marlene H. Dortch
November 5, 2010
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of the “significantly viewed” provision in SHVERA and the effect of STELA’s amendment of that provision.

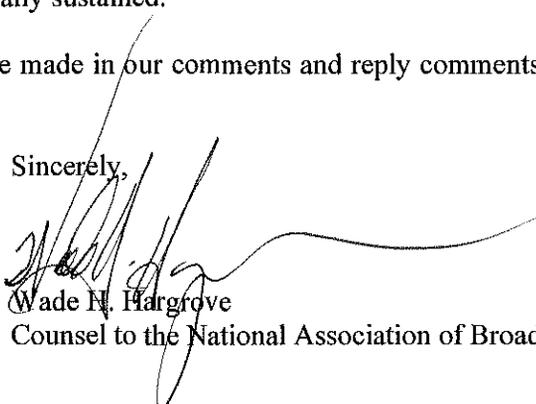
We discussed points consistent with earlier submissions in the proceeding as reflected in the attached talking points. We also provided the staff with the attached tables reflecting the extent to which out-of-market, duplicating network stations are “significantly viewed” in several local markets. We also discussed how Congress continues to view significantly viewed satellite signals as a subset of *distant* signals, not as local signals and cited in H.R. REP. NO. 111-319 (2009), at 10 (emphasis added):

Since significantly viewed signals are by definition a subset of *distant signals*, SHVERA included this provision in Section 119, the distant signal license. However, since significantly viewed signals do not incur royalties, the Committee believes it should be moved to Section 122, which governs all other royalty-free satellite transmissions under the compulsory license. The bill accordingly incorporates the significantly viewed provision, previously in Section 119(a)(3), into Section 122(a).

We discussed how the fundamental structure of Section 340(b) upon which the Commission relied in 2005 in implementing SHVERA was *not* amended by STELA. In particular, the Commission in 2005 relied on the “same network affiliate” language in STELA’s Sections 340(b)(3) and (b)(4) to require satellite carriage of the local station as a prerequisite to carriage of a duplicating, out-of-market significantly viewed station in Section 340(b)(1), *see SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd 17278 (2005), at ¶ 71, and that the very same language is carried forward in STELA. We pointed out that Section 340(b)(2) also contains “same network affiliate” language as a secondary factor that supported the Commission’s 2005 interpretation of the overall structure of Section 340(b). *See id.* at ¶ 72. Because STELA *did not* amend in any way either Section 340(b)(3) or Section 340(b)(4) (and Section 340(b)(2) still contains the “same network affiliate” language), logic compels the same construction be placed on Section 340(b) in implementing STELA as the Commission placed on that language in 2005 in implementing SHVERA, and that a different construction of essentially identical language could not, as a matter of law, be rationally sustained.

And, we briefly discussed the points we made in our comments and reply comments concerning STELA’s antenna requirements.

Sincerely,



Wade H. Hargrove

Counsel to the National Association of Broadcasters

cc: Commissioner McDowell
Rosemary C. Harold
Josh Cinelli
Krista Witanowski

**National Association of Broadcasters
ILLR Model Talking Points**

- I. STELA Requires the Commission to Continue to Rely on an Outdoor Antenna Standard to Determine Whether a Household Is Unserved**
- A. Section 339(c)(3)(A) requires the FCC to adopt the digital ILLR model it recommended to Congress in 2005. In that model, the FCC relied on use of an outdoor antenna and expressly rejected reliance on indoor antennas for modeling stations' coverage.
 - B. The statute says the Commission "shall rely on" its recommended digital ILLR model. The carriers claim that that language only means "as a starting point," but there is no support for such an unorthodox interpretation of plain language. In fact, Section 119(a)(2)(B)(ii)(II) also requires that courts "shall rely on" a particular site measurement methodology, and the D.C. Circuit (at the Commission's urging) held neither carriers nor courts could deviate from it. *See EchoStar Satellite L.L.C. v. FCC*, 457 F.3d 31, 41 (D.C. Cir. 2006) ("EchoStar points to nothing in the statute to support its conclusion that it may bypass the procedures in § 339 by conducting its own on-site testing; nor do we see how one can square the above-referenced instructions to courts with any procedure other than that in § 339.").
 - C. Section 339(c)(3)(A) also requires the FCC to prescribe a predictive model for determining the ability of individual households to receive signals in accordance with the signal intensity standard in Section 73.622(e)(1) of the FCC's rules. That rule is predicated on outdoor antennas.
 - D. Section 205(b) of STELA requires the FCC to continue to use its pre-STELA rules for analog LPTV and translator stations. Those rules obviously require reliance on an outdoor antenna, and it would make no sense to require an outdoor antenna standard for analog signals but not for digital signals.
- II. The Carriers' Arguments That STELA Imposed an Indoor Antenna Requirement Are Without Merit**
- A. Congress could have said "indoor antenna" if that was its intent. But it did not. And there is no legislative history indicating that Congress intended to mandate reliance on indoor antennas for either predictions or testing.
 - B. The congressional report on which the carriers rely to assert that Congress mandated use of an indoor antenna accompanied a bill that was never passed. And that report told the FCC to study the issue, not to mandate use of an indoor antenna.

- C. The carriers' reliance on the removal of certain words in the Copyright Act ignores STELA's mandate in the Communications Act to adopt the FCC's proposed ILLR model, which relies on outdoor antennas.
- D. The carriers also ignore that the Copyright Act likewise references the 2005 digital ILLR model, which (as just mentioned) relies on outdoor antennas.
- E. The Communications Act frequently imposes more restrictions on carriers than the Copyright Act does, so it is not unusual that Section 339 mandates a digital ILLR model with an outdoor antenna standard, even if the "unserved household" definition in Section 119 is less specific.
- F. Congress' purpose in deleting the words qualifying "antenna" in STELA's revisions to the Copyright Act was to eliminate unnecessary words, not to eliminate the Commission's reliance on an outdoor antenna.
- G. At most, deletion of the words qualifying "antenna" meant that Congress was leaving it up to the Commission to determine whether the outdoor antenna standard should be abandoned, and it has tentatively, and correctly, determined it should not do so.
- H. The most natural reading of "an antenna" in Section 119 is "**any** antenna." Thus, Congress' use of the unqualified term "antenna" in Section 119 means that if a household can receive the signal through use of any antenna, whether outdoor or indoor, whether conventional or not, whether stationary or not, the household is served.
- I. By choosing to rely on an outdoor antenna, the Commission is making it *easier* for households to be considered unserved than if it said that a household was unserved only if **no** antenna of any type could receive the signal at that location – not even one on top of a 200-foot tower.

III. Adoption of an Indoor Antenna Standard Would Be Discriminatory and Patently Unfair

- A. An indoor antenna standard is radically inconsistent with the idea of nearly universal television service. The Commission was well aware of this in designing both analog service areas (in the 1950s) and digital service areas (over the last 20 years). The carriers' proposal is thus inconsistent with the fundamental premises of the American broadcast TV system.
- B. An indoor antenna standard would reduce program exclusivity protection and the need to obtain retransmission consent.
- C. Broadcasters spent billions converting to a digital allocation scheme based upon outdoor antennas, and it would be grossly unfair to change the rules of the game now.

- D. The carriers' customers must use outdoor antennas, but they claim that broadcasters should be saddled with an unworkable indoor antenna standard.
 - E. DIRECTV's own website tells consumers they may need an outdoor antenna.
- IV. Adoption of an Indoor Antenna Standard Would be Contrary to the Public Interest**
- A. An indoor antenna standard would seriously impair stations' ability to fulfill their local public service obligations.
 - B. To serve their current coverage areas under an indoor antenna standard, stations would need unimaginably large amounts of electricity and would create massive interference with each other's signals.
- V. A Predictive Model Relying on Indoor Antennas Would Violate Statutory Requirements That the Model Be "Reliable" and "Accurate"**
- A. It would be, literally, impossible to administer an indoor antenna standard.
- VI. No Changes Are Needed to Any of the ILLR Model's Inputs**
- A. The ILLR model is highly accurate—95%. It does a very good job balancing overpredictions and underpredictions. The carriers' claim that "people have known for years that the model is inaccurate" is completely incorrect.
 - B. NAB's website does *not* contradict the accuracy of the ILLR model.
 - C. Land use and land cover has already been properly dealt with by the Commission. DISH previously litigated—and lost—this very issue in 2006.
 - D. There is no need for any adjustment to address interference. The FCC has found that modern receivers do an excellent job of defeating interference. See 2005 Report to Congress at ¶ 103. Similarly, there is no need to require additional signal strength to deal with multipath. The FCC has also found that DTV receivers provide service under most multipath conditions they encounter. See 2005 Report to Congress at ¶ 77.
 - E. The FCC has already considered, and correctly rejected, the carriers' proposal to increase time variability from 90% to 99%.
- VII. The Carriers' Proposed Indoor Testing Model Is Fatally Flawed**
- A. The carriers' proposal would allow gaming of the system, since most households have multiple TVs in various locations.

- B. The carriers' proposal does not require testing equipment to be calibrated, which is contrary to existing testing standards in Section 73.683(d)(2)(i) of the FCC's rules.
- C. The carriers' proposal would have a tester wielding a nearly 9 foot half-wave dipole antenna in subscribers' living rooms.
- D. The carriers' proposal would have the testing antenna placed on the floor.
- E. The carriers' proposal calls for the testing antenna to be intentionally misoriented.
- F. The carriers' proposal is contrary to STELA's requirement that the FCC seek ways to minimize consumer burdens associated with on-location testing.

VIII. "Reception" Testing Is Fundamentally Contrary to the Act, As the Courts Have Repeatedly Concluded

**National Association of Broadcasters
Significantly Viewed Talking Points**

- I. **The Only Significant Change STELA Made to Significant Viewing Was to Replace the “Equivalent or Entire Bandwidth” Requirement with the HD Format Requirement with Respect to the Manner in Which Local Stations Must Be Carried If Significantly Viewed Stations of the Same Network Are Provided**

- II. **Contrary to the NPRM’s Tentative Conclusion, Congress Did Not Delete the Requirement that Carriers Must Actually Transmit the Signal of a Local Network Affiliate As a Condition Precedent to Importation of a Distant Significantly Viewed Signal Affiliated with the Same Network**
 - A. STELA did not alter the “same network affiliate” requirement pursuant to which carriers must transmit the local station affiliated with the same network before providing a distant SV station of that network. DIRECTV acknowledged in its comments that the statute, on its face, “could mean that a satellite carrier must retransmit a particular local station’s high definition feed as an absolute precondition of carrying a significantly viewed station’s high definition feed.” DIRECTV Comments at 4.
 - B. Prior Section 340(b)(2) and Amended Section 340(b)(2) both contain “affiliated with the same network” language. This is the operative language upon which the Commission concluded in its 2005 SHVERA Significantly Viewed R&O that local carriage is a condition precedent to SV importation.
 - C. This interpretation is compelled by reading Sections 340(b)(1)-(4) as a whole, as the FCC did in its SHVERA Significantly Viewed R&O.
 - D. Since carriers misconstrue STELA’s textual changes to Section 340(b), their claim that the Commission’s “contextual reasoning” no longer applies is without merit.
 - E. There is nothing in STELA’s legislative history to suggest that Congress objected to the Commission’s carriage requirement interpretation; rather, all of STELA’s legislative history suggests that Congress intended *only* to remedy the “equivalent or entire bandwidth” requirement and to update the statute for DTV transition purposes. In amending STELA as Congress did, the Commission should presume not only that Congress was aware of the carriage requirement interpretation the agency had given to Section 340 under SHVERA, but also that Congress’s failure to expressly amend the statute to alter that interpretation (unlike with respect to the “equivalent or entire bandwidth” requirement) is tantamount to a legislative re-enactment of that interpretation.

- III. **STELA Requires Carriage of Local Stations in SD Format If a Carrier Retransmits a Significantly Viewed Station Only in SD Format**

- IV. **The Requirement That Carriers Must Carry a Local Station in an HD Format, If Available, and If It Imports a Significantly Viewed Station of the Same Network, Applies to Multicast Channels**
 - A. Section 340(b) uses the inclusive term “signal.” Had Congress intended to differentiate between multicast and primary channels in Section 340, it would have done so, just as it did in other sections of STELA.
 - B. DIRECTV agrees with this interpretation. See DIRECTV Comments at 5 & 5 n.14.
 - C. Case-by-case HD multicast determinations would be discriminatory and would violate the Act.

- V. **STELA Did Not, in Any Way, Change the Statutory Exceptions to the Eligibility Limitations on Subscribers Receiving Significantly Viewed Stations.**
 - A. These exceptions do not permit SV carriage in a local market if a carrier does not yet offer local-into-local service.
 - B. Both carriers stated in their comments that they agree. See DISH Comments at 5; DIRECTV Comments at 5.
 - C. Section 340(b)(3) permits SV carriage into a local-into-local market when there is no local affiliate of the same network present in that market (i.e., a short market).
 - D. Section 340(b)(4) permits local stations in a local-into-local market to waive either the carriage requirement or the HD format requirement.

- VI. **Congress Did Not Intend for STELA to Affect Retransmission Consent Negotiations**
 - A. The carriers’ claim that STELA be construed such that a local station is not “available” for local-into-local carriage if it is in a retransmission consent dispute with a carrier is contrary to Congress’ intent not to use STELA as a vehicle to change the playing field for retransmission consent negotiations.
 - B. The pre-condition that a subscriber “receive” the local affiliate before an SV station of the same network be imported defeats the carriers’ claim that they need not carry such a station with which there is a retransmission consent dispute.

- C. The Commission properly and correctly rejected such carrier overtures in implementing SHERVA and should do so here.
- D. The Commission has another open proceeding more appropriate to deal with retransmission consent issues.

VII. A Satellite Carrier Delivering a Distant Significantly Viewed Network Station to a Local Market Must:

- A. provide local-into-local service in the local market,
- B. retransmit in SD format the local network station's signal, whether a primary or multicast channel, as a condition precedent to importation of an SV duplicating distant network signal, and
- C. retransmit in HD format, if available, the local network station's signal, whether a primary or multicast channel, as a condition precedent to importation of an SV duplicating distant network signal in HD format.

VIII. The Carriers Want the Commission to Interpret a Statutory Structure That Congress Did Not Enact, and They Repeatedly Ignore a Fundamental Premise of STELA and Its Predecessors—the Protection of Localism

- A. The carriers complained about the onerous nature of the "entire or equivalent bandwidth" requirement, and Congress amended the statutory scheme to ameliorate that problem. But now the carriers want the Commission to interpret STELA in ways that are contrary to STELA's basic structure.
- B. The carriers concede that "if a satellite carrier offered an entire market in SD format only, it could not import a significantly viewed station in HD format because the HD format of the in-market station is 'available' to it." Joint DIRECTV and DISH Significantly Viewed Talking Points, IV.D. They then say, however, that they should not be required to "downrez" an SV signal that is only carried in HD format in the SV area because it is not technically possible. *See id.* IV.F. So while the carriers acknowledge what the law requires, they want the Commission to do something different. Congress, however, was primarily concerned with protecting localism. The obvious solution is not to let the carriers violate the express HD format requirement of the statute, but for the carriers not to carry SV signals where they cannot, or would rather not, comply with the law.
- C. Similarly, the carriers complain that they may be contractually obligated not to "downrez" an SV signal. The Commission has, wisely, stayed out of such private contractual matters. Again, the obvious solution is not to carry the SV signal where the carrier cannot comply with the law.
- D. The carriers also complain that "[n]ew multicast 'network affiliates' appear every day, almost like mushrooms." Joint DIRECTV and DISH

Significantly Viewed Talking Points, IV.F. Hyperbole aside, DIRECTV acknowledged in its Comments that STELA applies equally to multicasts. See DIRECTV Comments at 5 & 5 n.14. To foster localism, STELA and its predecessors' policy preferred local stations over distant stations. The statutory structure is intended to encourage satellite carriage of the multicast channel throughout the entire DMA for the benefit of all viewers, not to undermine the multicast's economic viability by permitting a duplicating SV signal to be imported into a portion of the market.

IX. DISH's Request for a Further Rulemaking to Limit Stations' Retransmission Consent Negotiating Rights and to Alter Market Modification Rules Should Be Summarily Denied

- A. The Commission already has an open rulemaking proceeding to deal with retransmission consent issues.
- B. It is *not* inconsistent with competitive marketplace considerations and the good faith negotiation requirement for a local station to offer a proposal that forecloses carriage of other programming services by the MVPD that would substantially duplicate the local station's programming. Moreover, DISH ignores significant elements of reciprocity, and there is no restriction on a local station bargaining to prevent importation of a duplicating SV signal whose carriage is not legally mandated.
- C. DISH's proposal that an SV station be precluded from refusing to grant retransmission consent, even if required by the station's contractual obligations to its network and other program suppliers, is directly contrary to Section 325(b)(6) of the Communications Act and to long-established Commission precedent.
- D. DISH's "orphan county" market modification proposal is a blatant attempt to obtain from the Commission through the back door that which Congress clearly considered and flatly rejected. Moreover, DISH's proposal is inconsistent with the statutory license in Section 122(a).

**Significantly Viewed Out-Of-Market Stations
In The Dayton DMA**

County	Station	Network	DMA
Champaign	WCMH	NBC	Columbus
	WSYX	ABC	Columbus
	WBNS	CBS	Columbus
	WTTE	FOX	Columbus
Clark	WCMH	NBC	Columbus
	WSYX	ABC	Columbus
	WBNS	CBS	Columbus
Darke	WCPO	ABC	Cincinnati
	WSTR	My Network TV	Cincinnati
Greene	WCPO	ABC	Cincinnati
	WKRC	CBS	Cincinnati
Logan	WCMH	NBC	Columbus
	WSYX	ABC	Columbus
	WBNS	CBS	Columbus
	WTTE	FOX	Columbus
Mercer	WANE	CBS	Ft. Wayne (Indiana)
	WPTA	ABC	Ft. Wayne (Indiana)
	WKJG ¹	NBC	Ft. Wayne (Indiana)
	WFFT	FOX	Ft. Wayne (Indiana)
	WLIO	NBC	Lima
	WTLW	Family	Lima
Miami	N/A		
Montgomery	WCPO	ABC	Cincinnati
	WKRC	CBS	Cincinnati
Preble	WLWT	NBC	Cincinnati
	WCPO	ABC	Cincinnati
	WKRC	CBS	Cincinnati
	WXIX	FOX	Cincinnati
	WSTR	My Network TV	Cincinnati
Shelby	N/A		

¹ WKJG's call sign changed to WISE in 2003.

**Significantly Viewed Out-Of-Market Stations
In The Lansing DMA**

County	Station	Network	DMA
Clinton	WNEM	CBS	Flint-Saginaw-Bay City
	WJRT	ABC	Flint-Saginaw-Bay City
	WSMH	FOX	Flint-Saginaw-Bay City
	WOOD	NBC	Grand Rapids-Kalamazoo-Battle Creek
	WXMI	FOX	Grand Rapids-Kalamazoo-Battle Creek
Eaton	WJRT	ABC	Flint-Saginaw-Bay City
	WWMT	CBS	Grand Rapids-Kalamazoo-Battle Creek
	WOOD	NBC	Grand Rapids-Kalamazoo-Battle Creek
	WXMI	FOX	Grand Rapids-Kalamazoo-Battle Creek
Hillsdale	WWMT	CBS	Grand Rapids-Kalamazoo-Battle Creek
	WOOD	NBC	Grand Rapids-Kalamazoo-Battle Creek
	WXMI	FOX	Grand Rapids-Kalamazoo-Battle Creek
	WTOL	CBS	Toledo
	WTVG	ABC	Toledo
Ingham	WUPW	FOX	Toledo
	WJRT	ABC	Flint-Saginaw-Bay City
	WWMT	CBS	Grand Rapids-Kalamazoo-Battle Creek
	WOOD ¹	NBC	Grand Rapids-Kalamazoo-Battle Creek
Jackson	WJBK	FOX	Detroit
	WDIV	NBC	Detroit
	WXYZ	ABC	Detroit

¹ WOOD's significantly viewed status in Ingham County has been waived for the cable communities of Lansing and East Lansing, MI.

**Significantly Viewed Out-Of-Market Stations
In The Sherman-Ada DMA**

County	Station	Network	DMA
Atoka	N/A		
Bryan	KDFW	FOX	Dallas-Ft. Worth
	WFAA	ABC	Dallas-Ft. Worth
	KTVT	CBS	Dallas-Ft. Worth
Carter	KWTV	CBS	Oklahoma City
	KFDX	NBC	Wichita Falls & Lawton
	KAUZ	CBS	Wichita Falls & Lawton
Choctaw	KTVT	CBS	Dallas-Ft. Worth
Coal	KFOR	NBC	Oklahoma City
Johnston	N/A		
Love	KDFW	FOX	Dallas-Ft. Worth
	WFAA	ABC	Dallas-Ft. Worth
	KTVT	CBS	Dallas-Ft. Worth
	KFDX	NBC	Wichita Falls & Lawton
	KAUZ	CBS	Wichita Falls & Lawton
	KSWO	ABC	Wichita Falls & Lawton
Marshall	KDFW	FOX	Dallas-Ft. Worth
Pontotoc	KFOR	NBC	Oklahoma City
	KOCO	ABC	Oklahoma City
	KWTV	CBS	Oklahoma City
	KOKH	FOX	Oklahoma City
	KAUT	My Network TV	Oklahoma City
Pushmataha	N/A		
Grayson (TX)	KDFW	FOX	Dallas-Ft. Worth
	KXAS	NBC	Dallas-Ft. Worth
	WFAA	ABC	Dallas-Ft. Worth
	KTVT	CBS	Dallas-Ft. Worth
	KTXA	IND	Dallas-Ft. Worth

**Significantly Viewed Out-Of-Market Stations
In The Hartford & New Haven DMA**

County	Station	Network	DMA
Hartford	N/A		
Litchfield	WCBS	CBS	New York
	WNBC	NBC	New York
	WNYW	FOX	New York
	WPIX	CW	New York
Middlesex	WNYW	FOX	New York
New Haven	WCBS*	CBS	New York
	WNBC	NBC	New York
	WNYW*	FOX	New York
	WABC*	ABC	New York
	WWOR*	My Network TV	New York
	WPIX	CW	New York
New London	WTEV ¹	ABC	Providence-New Bedford
	WJAR	NBC	Providence-New Bedford
	WPRI	CBS	Providence-New Bedford
	WCVB	ABC	Boston (Manchester)
Tolland	WBZ	CBS	Boston (Manchester)
	WGGB	ABC/FOX	Springfield-Holyoke
Windham	WLNE	ABC	Providence-New Bedford
	WJAR	NBC	Providence-New Bedford
	WPRI	CBS	Providence-New Bedford
	WBZ	CBS	Boston (Manchester)
	WCVB	ABC	Boston (Manchester)
	WHDH	NBC	Boston (Manchester)

* Station's significantly viewed status has been waived for certain communities in the identified county.

¹ WTEV's call sign changed to WLNE in 1980.

2010 Act (STEWA)

▷

Effective: [See Notes]

United States Code Annotated Currentness
Title 47. Telegraphs, Telephones, and Radiotelegraphs
Chapter 5. Wire or Radio Communication (Refs & Annos)
 Subchapter III. Special Provisions Relating to Radio (Refs & Annos)
 Part I. General Provisions
 → § 340. Significantly viewed signals permitted to be carried

(a) Significantly viewed stations

In addition to the broadcast signals that subscribers may receive under section [FN1] 338 and 339 of this title, a satellite carrier is also authorized to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal--

- (1) has, before December 8, 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules; or
- (2) is, after December 8, 2004, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.

(b) Limitations

- (1) Service limited to subscribers taking local-into-local service

This section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal from that satellite carrier pursuant to section 338 of this title.

- (2) Service limitations

A satellite carrier may retransmit to a subscriber in high definition format the signal of a station determined by the Commission to be significantly viewed under subsection (a) only if such carrier also retransmits in high definition format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station.

- (3) Limitation not applicable where no network affiliates

The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the

station whose signal is being retransmitted pursuant to this section.

(4) Authority to grant station-specific waivers

Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph [FN2] (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

(c) Publication and modifications of lists; regulations

(1) In general

The Commission shall--

(A) within 60 days after December 8, 2004--

(i) publish a list of the stations that are eligible for retransmission under subsection (a)(1) of this section and the communities in which such stations are eligible for such retransmission; and

(ii) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking;

(B) adopt rules pursuant to such rulemaking within 1 year after December 8, 2004.

(2) Public availability of list

The Commission shall make readily available to the public in electronic form, on the Internet website of the Commission or other comparable facility, a list of the stations that are eligible for retransmission under subsection (a) of this section and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities.

(3) Modifications

In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders--

(A) by which stations may be added to those that are eligible for retransmission under subsection (a) of this section, and by which communities may be added in which such stations are eligible for such retransmission; and

(B) by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e) of this section.

(d) Effect on other obligations and rights

(1) No effect on carriage obligations

47 U.S.C.A. § 340

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Effective: December 08, 2004

United States Code Annotated Currentness

Title 47. Telegraphs, Telephones, and Radiotelegraphs

Chapter 5. Wire or Radio Communication (Refs & Annos)

▣ Subchapter III. Special Provisions Relating to Radio (Refs & Annos)

▣ Part I. General Provisions

⇒ § 340. Significantly viewed signals permitted to be carried

(a) Significantly viewed stations

In addition to the broadcast signals that subscribers may receive under section 338 and 339 of this title, a satellite carrier is also authorized to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal--

(1) has, before December 8, 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules; or

(2) is, after December 8, 2004, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.

b) Limitations

(1) Analog service limited to subscribers taking local-into-local service

With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338 of this title.

(2) Digital service limitations

With respect to a signal that originates as a digital signal of a network station, this section shall apply only if--

(A) the subscriber receives from the satellite carrier pursuant to section 338 of this title the retransmission of the digital signal of a network station in the subscriber's local market that is affiliated with the same television network; and

(B) either--

(i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or

(ii) the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station.

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(3) Limitation not applicable where no network affiliates

The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

(4) Authority to grant station-specific waivers

Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

(c) Publication and modifications of lists; regulations

(1) In general

The Commission shall--

(A) within 60 days after December 8, 2004--

(i) publish a list of the stations that are eligible for retransmission under subsection (a)(1) of this section and the communities in which such stations are eligible for such retransmission; and

(ii) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking;

(B) adopt rules pursuant to such rulemaking within 1 year after December 8, 2004.

(2) Public availability of list

The Commission shall make readily available to the public in electronic form, on the Internet website of the Commission or other comparable facility, a list of the stations that are eligible for retransmission under subsection (a) of this section and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities.

(3) Modifications

In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders--

(A) by which stations may be added to those that are eligible for retransmission under subsection (a) of this section, and by which communities may be added in which such stations are eligible for such retransmission; and

(B) by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e) of this section.

(d) Effect on other obligations and rights

(1) No effect on carriage obligations