

Title: 47 CFR 76.122, Satellite Network Non-duplication Protection Rules; 47 CFR 76.123, Satellite Syndicated Program Exclusivity Rules; 47 CFR 76.124, Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection; 47 CFR 76.127, Satellite Sports Blackout Rules

SUPPORTING STATEMENT

A. Justification

1. On February 7, 2005, the Commission adopted a Notice of Proposed Rulemaking (“*NPRM*”), In the Matter of Implementation of the Satellite Home Viewer Extension and Reauthorization Act “ of 2004, Implementation of Section 340 of the Communications Act, MB Docket No. 05-49, FCC 05-24. This *NPRM* proposes rules to apply network non-duplication¹ and syndicated exclusivity² requirements to satellite carriers³ with respect to the carriage of “significantly-viewed” signals.⁴ Parties seeking to apply the network non-duplication and syndicated exclusivity rules to stations on the significantly viewed list⁵ may seek a waiver from the exception for significantly viewed stations.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 (“*SHVERA*”) required the Commission to apply to satellite carriers’ retransmission of FCC-determined “significantly-viewed” signals, the Commission’s network non-duplication and syndicated exclusivity rules, when appropriate. The *SHVERA* required that the Commission issue rules to implement Section 340 of the Act⁶ that will take effect within one year of enactment, which is December 8, 2005.

¹ Network Program Nonduplication Rule allows a local TV broadcast station to protect its exclusive distribution rights for network programming against duplicating programming carried on a nationally distributed superstation by a satellite carrier.

² Syndicated Program Exclusivity Rule allows a local TV broadcast station or syndicator to protect its exclusive distribution rights for syndicated programming against duplicating programming carried on a nationally distributed superstation by a satellite carrier.

³ The definition of satellite carrier includes entities providing services as described in 17 U.S.C. § 119(d)(6) using the facilities of a satellite or satellite service licensed under Part 25 of the Commission’s rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies.

⁴ The *NPRM* implements the Satellite Home Viewer Extension and Reauthorization Act of 2004, *SHVERA*, which establishes for satellite carriers and subscribers the concept of “significantly viewed,” which has applied in the cable context for more than 30 years. The concept of “significantly viewed” signals is used to differentiate between out-of-market television broadcast stations that have significant over-the-air non-cable viewing and those that do not. The designation of “significantly viewed” status is important because it will enable a broadcast station assigned to one market to be treated as a “local” station with respect to a particular cable or satellite community in another market, and thus enable its cable or satellite carriage into that market.

⁵ The *SHVERA* directed the Commission to publish and maintain a unified list of significantly viewed stations, and the communities containing such stations, that will apply to both cable operators and satellite carriers.

⁶ Section 340(a) of the Act, as created by the *SHVERA*, authorizes a satellite carrier “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 the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 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 such date of enactment, determined by the

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The proposed rule made changes to 47 CFR Sections 76.122 and 76.123 and implemented these statutory requirements to provide new rights for stations to assert non-duplication and exclusivity rights. The proposed rules did not have an impact on rule sections 47 CFR 76.124 and 76.127.

Therefore, Report and Order, FCC 05-187, released November 3, 2005 adopted the information collection requirements, as proposed above.

History:

The Satellite Home Viewer Improvement Act of 1999 (“SHVIA”) directed the Commission to apply to satellite carriers’ retransmission of nationally distributed superstations,⁷ the network non-duplication, syndicated exclusivity and sports blackout requirements⁸ that currently apply to cable operators. The SHVIA also directed the Commission to apply the cable sports blackout rule to satellite carriers’ retransmission of network stations to subscribers. Pursuant to the SHVIA’s mandate, the FCC adopted a Report and Order, FCC 00-388 on October 27, 2000, implementing regulations that apply network non-duplication, syndicated exclusivity, and sports blackout requirements to satellite carriers.

The following rule sections are covered in this information collection:

Satellite Network Non-duplication Protection Rules

47 CFR Section 76.122(c) requires that in order to exercise non-duplication rights television stations must notify each satellite carrier of the non-duplication protection sought. Non-duplication notices shall include the following information: (1) the name and address of the party requesting non duplication protection and the television broadcast station holding the non-duplication right; (2) the name of the program or series (including specific episodes where necessary) for which protection is sought; (3) the dates on which protection is to begin and end;

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.”

⁷ The term “nationally distributed superstation” means a television broadcast station, licensed by the Commission, that is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States. See 47 U.S.C. § 339(b)(1)(A).

⁸ The sports blackout rule protects the holder of the exclusive distribution rights to a local sporting event (e.g., a sports team).

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(4) the name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster; (5) the time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non duplication protection is requested; (6) the duration and extent (e.g., simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster; and (7) a list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.

47 CFR Section 76.122(f) provides procedures for amending notices described in Section 76.122(c). In the event the protection specified in the notices has been limited or ended prior to the time specified, or in the event a time period, as identified to the satellite carrier in a notice, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means. In the event the protection specified in the notices has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each satellite carrier that has previously received notice of all changes from the original notice.

47 CFR Section 76.122(h) states that, if a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall respond within 10 business days following its receipt of the request or 60 days before the program or programs mentioned in the request will be broadcast, whichever comes later.

47 CFR Section 76.122(i) requires a broadcaster to provide to the satellite carrier, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning the broadcast signal to which the parties have agreed.

Satellite Syndicated Program Exclusivity Rules

47 CFR Section 76.123(d) requires that in order to exercise exclusivity rights distributors of syndicated programming or television broadcast stations shall notify each satellite carrier of the exclusivity sought. Syndicated program exclusivity notices shall include the following information: (1) the name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right; (2) the name of the program or series

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(including specific episodes where necessary) for which exclusivity is sought; (3) the dates on which exclusivity is to begin and end; and (4) a list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.

47 CFR Section 76.123(e) provides that a distributor or television station exercising exclusivity shall provide to the satellite carrier, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

47 CFR Section 76.123(i) states that, if a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall respond within 10 business days following the its receipt of the request or 60 days before the program or programs mentioned in the request for information will be broadcast, whichever comes later.

47 CFR Section 76.123(j) provides procedures for amending notices described in Section 76.123(d). In the event the exclusivity specified in the notices has been limited or has ended prior to the time specified, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the satellite carrier of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means.

Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection

47 CFR Section 76.124 requires that, in order to be eligible to invoke nonduplication or syndicated exclusivity protection (as defined above), a television station licensee or distributor of syndicated programming must have an unambiguous contract or other written indications that it holds network program non-duplication or syndicated exclusivity rights for the exhibition of the program in question. In the absence of such a specific reference in contracts entered into prior to November 29, 2000, the provisions of these rules may be invoked only if (a) the contract is amended to include the specific language set forth in the rules or (b) a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights.

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Satellite Sports Blackout Rules

47 CFR Section 76.127(b) requires that in order for the holder of the broadcast rights to a sports event, or its agent, to exercise its blackout rights (as defined above), it shall notify each satellite carrier of the programming to be deleted. The notice shall include the following information: (1) the name and address of the party requesting the program deletion; (2) the date, time and expected duration of the sports event the television broadcast of which is to be deleted; (3) the call letters of the nationally distributed superstation (as defined above) or network station(s) from which the deletion is to be made; and (4) the zip code areas that comprise the specified zone.

47 CFR Section 76.127(c) requires that notifications requesting sports blackout protection (as defined above) be received by the satellite carrier, as to regularly scheduled events, within 48 hours after the time of the telecast to be deleted is known, and no later than the Monday preceding the calendar week (Sunday Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within 24 hours after the time of the telecast to be deleted is known, but in any event no later than 24 hours from the time the subject telecast is to take place.

The Commission is seeking an extension of this information collection in order to receive the full three year OMB approval/clearance for this collection.

As noted on the OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in Section 4(i), 4(j), 303(r), 339 and 340 of the Communications Act of 1934, as amended.

2. The purpose of the various notification and disclosure requirements accounted for in this collection is to protect exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the transmission of network, syndicated, and sports programming in the broadcasters' market, as defined by the contract. In enacting the SHVIA, Congress sought to keep the competitive marketplace in balance by protecting the broadcasters' private contractual arrangements and ensuring that satellite carriers have regulatory obligations that are as similar as possible to cable operators.

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3. We do not believe the use of information technology is feasible for this collection, because of the unique nature of the notification and disclosure requirements.
4. This agency does not impose similar information collection requirements on the respondents.
5. This collection does not have a significant impact on a substantial number of small entities. The Commission's network non-duplication, syndicated exclusivity, and sports blackout provisions are not applicable to satellite carriers where the zip code areas comprising the area where the programming must be deleted has fewer than 1,000 subscribers.
6. If the Commission did not sponsor this collection, broadcasters and rights holders would have no process for exercising their network non-duplication, syndicated exclusivity, or sports blackout rights.
7. The following special circumstances apply to this collection of information:

In several instances, the rules require responses in less than 30 days after the receipt of a request of information or a notice of a request for network non-duplication, syndicated exclusivity, or sports blackout protection. This is necessary because program schedules are subject to change on a short-term basis. The relevant rules are:

Sections 76.122(h) and 76.123(i) require a nationally distributed superstation to provide a satellite carrier with information about its program schedule within 10 business days following the nationally distributed superstation's receipt of the request or 60 days before the program or programs mentioned in the request will be broadcast, whichever comes later.

Sections 76.122(f) provides procedures for amending notices in the event the protection specified in notices has been limited or ended prior to the time specified, or in the event a time period, as identified to the satellite carrier in a notice, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice.

Section 76.123(j) provides procedures for amending notices described in Section 76.123(d). In the event the exclusivity specified in the notices has been limited or has ended prior to the time specified, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify

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the satellite carrier of the occurrence of the relevant contingency.

Section 76.127(c) requires that notifications requesting sports blackout protection be received by the satellite carrier, as to regularly scheduled events, within 48 hours after the time of the telecast to be deleted is known, and no later than the Monday preceding the calendar week (Sunday- Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within 24 hours after the time of the telecast to be deleted is known, but in any event no later than 24 hours from the time the subject telecast is to take place.

8. The Commission published a Notice (72 FR 73816) in the *Federal Register* on December 28, 2007. No comments were generated as a result of the Notice.

9. There will be no payment or gifts given to respondents.

10. There is no need for confidentiality with this information collection.

11. This collection of information does not address any private matters of a sensitive nature.

12. The Commission estimates the annual paperwork burden for the various notification and disclosure requirements as follows:

Rule Section	Estimated Number of Respondents	Estimated Notices/Requests/ Responses Per Respondent	Total Responses/ Notices Received	Hourly Burden To Process and Prepare Notices/ Requests/ Responses	Total Annual Hourly Burden Hours	Hourly "In House" Cost	Total Annual Hourly "In House" Cost
76.122(c)	170 stations	8 notices	1,360 notices	1 hour	1,360 hours	\$18.00	\$24,480
76.122(f)	170 station	8 notices	1,360 notices	1 hour	1,360 hours	\$18.00	\$24,480
76.122(h)	6 satellite carriers	12 requests	72 requests	1 hour	72 hours	\$18.00	\$1,296
		72 requests received from superstations (for schedule information)	72 requests	0.50 hours	36 hours	\$18.00	\$648
76.122(i)	6 satellite				150 hours		

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Rule Section	Estimated Number of Respondents	Estimated Notices/Requests/ Responses Per Respondent	Total Responses/ Notices Received	Hourly Burden To Process and Prepare Notices/ Requests/ Responses	Total Annual Hourly Burden Hours	Hourly "In House" Cost	Total Annual Hourly "In House" Cost
	carriers	25 requests	150 requests	1 hour		\$18.00	\$2,700
		150 requests received from stations (for contract information)	150 requests	0.50 hour	75 hours	\$18.00	\$1,350
76.123(d)	170 stations	22 notices	3,740 notices	1 hour	3,740 hours	\$18.00	\$67,320
76.123(e)	6 satellite carriers	50 requests	300 requests	1 hour	300 hours	\$18.00	\$5,400
		300 requests received from stations (for contract information)	300 requests	0.50 hours	150 hours	\$18.00	\$2,700
76.123(i)	6 satellite carriers	36 request/carrier	216 requests	1 hour	216 hours	\$18.00	\$3,888
		216 requests received (for schedule information)	216 requests	0.50 hours	108 hours	\$18.00	\$1,944
76.123(j)	170 stations	10 notices/station	1,700 notices	1 hour	1,700 hours	\$18.00	\$30,600
76.124	170 stations	1 document to maintain (recordkeeping) per station	N/A	0.50 hours	85 hours	\$18.00	\$1,530
76.127(c)	170 stations	15 notices	2,550 notices	1 hour	2,550 hours	\$18.00	\$45,900
76.127(b)	50 rights holders	10 notices	500 notices	1 hour	500 hours	\$18.00	\$9,000
Totals:			12,686 responses		12,402 hours		\$223,236

Total Number of Respondents: 1,366 Commercial TV Stations, 6 Satellite Carriers, 6 Superstations, 50 Rights Holders = **1,428 (respondents)**

Total Number of Responses: **12,686 (responses)**

Total Annual Burden Hours: **12,402 hours**

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Total Annual “In-House” Cost: \$223,236

13. a. Total capital or start-up costs: none.
 - b. Total operation and maintenance costs: none.
 - c. Total annualized cost requested: none.
 14. There is no cost to the Federal Government.
 15. There are no program changes or adjustments.
 16. These data will not be published for statistical use.
 17. We do not seek approval to not display the expiration date for OMB approval of this information collection.
 18. There are no exceptions to the certification statement.
- B. Collections of Information Employing Statistical Methods**
- No statistical methods are employed.