

SUPPORTING STATEMENT

A. Justification

1. 47 CFR Section 76.66(c)(6) required a commercial television broadcast station located in a local market in a noncontiguous state to make its retransmission consent-mandatory carriage election¹ by October 1, 2005, for carriage of its signals that originate as analog signals for carriage commencing on December 8, 2005 and ending on December 31, 2008, and by April 1, 2007 for its signals that originate as digital signals for carriage commencing on June 8, 2007 and ending on December 31, 2008. For analog and digital signal carriage cycles commencing after December 31, 2008, such stations shall follow the election cycle in 47 CFR Section 76.66(c)(2) and 47 CFR Section 76.66(c)(4). A noncommercial television broadcast station² located in a local market in Alaska or Hawaii was required to request carriage by October 1, 2005, for carriage of its signals that originate as an analog signal for carriage commencing on December 8, 2005 and ending on December 31, 2008, and by April 1, 2007 for its signals that originated as digital signals for carriage commencing on June 8, 2007 and ending on December 31, 2008. Moreover, Section 76.66(c) requires a commercial television station located in a local market in a noncontiguous state to provide notification to a satellite carrier whether it elects to be carried pursuant to retransmission consent or mandatory consent.

On March 28, 2005, the Commission adopted an *Order*, FCC 05-81, In the Matter of the Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”), Procedural Rules, to implement procedural rules as required by the SHVERA. The SHVERA is the third statute that addresses satellite carriage of television broadcast stations, the preceding statutes are discussed below in the history section. The 2004 SHVERA gives satellite carriers the additional option to carry Commission-determined “significantly viewed”³ out-of-market signals to subscribers. The SHVERA requires the Commission to undertake several proceedings to implement new rules, revise existing rules, and conduct studies. The Procedural Rules *Order*, FCC 05-81 was adopted by the Commission to implement Sections 202, 205, and 209 of the SHVERA is one of a number of Commission proceedings that will be required to implement the SHVERA.

¹ Retransmission consent applies to stations that negotiate for carriage with a satellite carrier, and mandatory carriage (“must carry”) applies to stations that demand carriage based on statutory right. *See, e.g.*, 47 U.S.C. §§ 325 and 534.

² *See* 47 U.S.C. § 545(l) (definition of noncommercial television broadcast station). *See also* 47 U.S.C. § 338(c)(2).

³ The concept of “significantly viewed,” which has applied in the cable context for more than 30 years 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.

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47 CFR Section 76.66(d)(2) requires satellite carriers to issue notices to station licensees when the carrier is going to initiate new local service. These notifications are required to be sent by certified mail to the television station licensees.

47 CFR Section 76.66(d)(2)(iii) requires a satellite carrier with more than five million subscribers to provide a notice as required by 47 CFR Section 76.66(d)(2)(i) and 47 CFR Section 76.66(d)(2)(ii) to each television broadcast station located in a local market in a noncontiguous state, not later than September 1, 2005 with respect to analog signals and a notice not later than April 1, 2007 with respect to digital signals; provided, however, that the notice shall also describe the carriage requirements pursuant to Section 338(a)(4) of Title 47, United States Code, and 47 CFR Section 76.66(b)(2).

47 CFR Section 76.66(d)(5) applies to satellite carriers that carry or intend to carry significantly viewed signals and provide television stations with different carriage election options in counties and markets in which the satellite carrier is offering significantly viewed signals. Therefore, if satellite carriers elect to carry significantly viewed signals, they are required to provide notifications to local broadcast stations informing them of their rights to elect mandatory carriage or retransmit consent on a county basis.

47 CFR Section 76.66(c)(3) requires that a commercial television station notify a satellite carrier in writing whether it elects to be carried pursuant to retransmission consent or mandatory consent in accordance with the established election cycle.

47 CFR Section 76.66(c)(5) requires that a noncommercial television station must request carriage by notifying a satellite carrier in writing in accordance with the established election cycle.

47 CFR Section 76.66(d) states a television station's written notification must include its call sign, the name of a station contact, the station's community of license, the station's designated market area (DMA) assignment, and, for commercial stations, its election of mandatory carriage or retransmission consent. Within 30 days of receiving a request for carriage, a satellite carrier must notify in writing any station whether it will carry the station requested. If the satellite carrier will not carry the station, it must include its reasons for denying carriage.

47 CFR Section 76.66(m) states whenever a local 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 reason for believing that the satellite carrier failed to comply with its obligations. The satellite carrier shall, within 30 days of 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. A local station that disputes a satellite carrier's

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response may obtain review of such response by filing a compliant with the Commission in accordance with 47 CFR Section 76.7 of the rules.

History:

On April 29, 2005, the Commission adopted a *Notice of Proposed Rule Making (NPRM)*, In the Matter of the Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004⁴ to Amend Section 338 of the Communication Act, MB Docket No. 05-181, FCC 05-92. The *NPRM* proposed amendments to 47 CFR 76.66 to implement Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”). Section 210 of the SHVERA amends Section 338(a) of the Communications Act of 1934, as amended, (“Communications Act” or “Act”). Section 338 governs the carriage of local television broadcast stations by satellite carriers. In general, the SHVERA amends this section to require satellite carriers to carry both the analog and digital signals⁵ of television broadcast stations in local markets in noncontiguous states⁶ (including Alaska and Hawaii), and to provide these signals to substantially all of their subscribers in each station’s local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals.

The final rules, FCC 05-159, were adopted on August 22, 2005 without revisions.

In 1988, Congress passed the Satellite Home Viewer Act (“1988 SHVA”),⁷ which established a statutory copyright license for satellite carriers to offer broadcast programming to subscribers who could not receive the signal of a broadcast station over the air (“unserved households”). The 1988 SHVA statutory copyright license did not distinguish between signals from local

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 Most television broadcast stations currently have a paired license to broadcast – an analog signal and a digital signal. When the transition from analog to digital television service is completed, the license for the 6 MHz of spectrum used for the analog signal will be terminated.

⁶ Section 338(a)(4) of the Communications Act, as amended by the SHVERA, requires carriage of these television signals to subscribers in local markets in “within a State that is not part of the contiguous United States...” (“noncontiguous states”). See 47 U.S.C. § 338(a)(4). Section 3 of the Communications Act defines “State” to include “the Territories and possessions” of the United States. See 47 U.S.C. § 153(40). Therefore, the *NPRM* asks whether it is correct to interpret “noncontiguous states” as used in Section 210 of the SHVERA to include the U.S. noncontiguous states, Alaska and Hawaii, as well as the territories and possessions, including Puerto Rico and Guam.

⁷ The Satellite Home Viewer Act of 1988, Pub. L. No. 100-667, 102 Stat. 3935, Title II (1988) (codified at 17 U.S.C. §§ 111, 119). The 1988 SHVA was enacted on November 16, 1988, as an amendment to the copyright laws.

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stations and signals from distant stations.⁸ In the 1999 Satellite Home Viewer Improvement Act (“SHVIA”),⁹ Congress expanded on the 1988 SHVA by amending both the 1988 copyright laws¹⁰ and the Communications Act¹¹ to permit satellite carriers to retransmit local broadcast television signals directly to their subscribers without requiring that they be “unserved.”

In the Implementation of the Satellite Home Viewer Improvement Act of 1999 (SHVIA) : Broadcast Signal Carriage Issues, Retransmission Consent Issues, *Report and Order*, CS Docket Nos. 99-363, 00-96, FCC 00-417 (adopted November 29, 2000), the Commission implemented carriage rules for satellite carriers pursuant to Section 338 of the Communications Act of 1934 (Act). In addition, the Commission established regulations and procedures governing the election process for mandatory carriage and retransmission consent pursuant to Section 325 of the Act.

In the SHVIA, Congress amended the Communications Act and Copyright Act to permit satellite carriers to provide the signal of local broadcast stations to subscribers residing in the broadcaster’s market. The *Report and Order* also established that commercial television stations must make an election between retransmission consent and mandatory carriage every three years for both satellite carriers and cable operators. Noncommercial educational television stations¹² must request carriage on the same dates as commercial television stations, even though they are not subject to an election cycle. Finally the *Report and Order* established separate timeframes for commencing carriage when a new television station begins service or when a satellite carrier commences new local-into-local service.

On September 5, 2001, the Commission released an *Order on Reconsideration*, FCC 01-249, CS Docket No. 00-96, that denied petitions for reconsideration. In addition, the Commission, on its own motion, clarified that satellite carriers must have a reasonable basis for denying carriage and amended the satellite broadcast signal carriage rule, 47 CFR 76.66.

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

⁸ See 17 U.S.C. § 119(a).

⁹ The Satellite Home Viewer Improvement Act of 1999, Pub.L. No 106-113, 113 Stat. 1501 (1999) (codified in scattered sections of 17 and 47 U.S.C.). The SHVIA was enacted on November 29, 1999, as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 (“IPACORA”) (relating to copyright licensing and carriage of broadcast signals by satellite carriers).

¹⁰ 17 U.S.C. §§ 119 and 122.

¹¹ See 47 U.S.C. §§ 325, 338 and 339.

¹² See, *supra*, n. 5.

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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 The Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No.108-447, §§ 202, 205, 209, 210, 118 Stat 2809 (2004); 47 C.F.R. §§ 325, 338, 339, and 340.

2. The data gathered for this information collection will ensure compliance with specific provisions of the SHVIA and SHVERA which enable the Commission to enforce satellite carrier obligations, synchronize election cycles for must-carry or retransmission consent and determine resolution mechanisms concerning complaints filed pursuant to 47 CFR Section 76.7.

3. Information technology is not likely to reduce the burden of compliance for these procedures, nor will electronic, mechanical or other collection techniques be used to gather information.

4. This agency does not duplicate nor impose similar requirements on satellite carriers.

5. The rules imposed in this proceeding affect a cross section of parties, television broadcast stations and satellite carriers, some of which may include small business entities. Overall compliance by parties with these provisions have the affect of minimizing the impact of any collection requirements on small business entities. The rules are required by Congress. Where there was discretion to consider alternatives, as in the case of notification requirements to commence carriage, the Commission chose to place the notice burden on broadcast stations rather than satellite carriers. In making this decision, the Commission recognized that there are only two affected satellite carriers while there are many television stations at issue in the revisions required by the SHVERA. This legislation applies to small entities and large entities equally.

6. The SHVERA revised the SHVIA collection of information requirements for satellite carriers that provide local-into-local retransmission of broadcast stations pursuant to the statutory copyright license. The SHVERA also requires a new collection of information for satellite carriers that choose to carry significantly viewed signals by providing local broadcast stations the right to make an election between retransmission consent and mandatory carriage in markets where the satellite carriers are providing local-into-local service. The SHVIA initially required a collection of information to allow broadcast television stations to invoke their must-carry/retransmission consent rights under the Communications Act.

7. There are no special circumstances that apply to this collection of information.

8. The Commission published a Notice in the *Federal Register* on February 4, 2008 (73 FR 6504). The Commission has not received any comments following publication of the Notice.

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- 9. There will be no payments or gifts given to respondents.
- 10. There is no need for confidentiality concerning these information collection requirements.
- 11. Information requirements in this collection do not address matters of a sensitive nature.
- 12. The estimated burden for this collection of information is as follows:

| Rule Sections | Estimated Number of Respondents | Estimated Number of Responses/ Notices/ Complaints | Estimated Hours for Respondent to Complete Information Collections | Total Annual Burden Hours | Hourly "In House" Cost | Total "In House" Costs |
|--|---------------------------------|--|--|---------------------------|------------------------|------------------------|
| Sections 76.66(c)(3), 76.66(c)(5), 76.66(c)(6), 76.66(d) (Election Notices) | 2,882 Respondents | 2,882 Election Notices | 1 hour/ Notice | 2,882 hours | \$25/hr. | \$72,050 |
| Sections 76.66(c)(3), 76.66(c)(5), 76.66(c)(6), 76.66(d) (Responses to Election Notices) | -- | 2,882 Responses to Election Notices | 1 hour/ Notice | 2,882 hours | \$25/hr. | \$72,050 |
| Section 76.66(d)(2) | 1,400 Respondents | 1,400 Notifications | 1 hr/notification | 1,400 hours | \$25/hr. | \$35,000 |
| Section 76.66(d)(2) (iii) | 82 Respondents | 82 Notifications | 1 hr/notification | 82 hours | \$25/hr. | \$2,050 |

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|---|--------------------------|---------------------------|-------------------|---------------------|----------|-----------------------|
| | | | | | | |
| Section 76.66(d)(5) | 2,800 Respondents | 2,800 Notifications | 1 hr/notification | 2,800 hours | \$25/hr. | \$70,000 |
| Section 76.66(m) (Complaints) | 15 Respondents | 15 Complaints | 5 hours/complaint | 75 hours | \$35/hr. | \$2,625 ¹³ |
| Section 76.66(m) (Responses to Complaints) | -- | 15 Responses | 5 hours/response | 75 hours | \$35/hr. | \$2,625 ¹⁴ |
| Totals | 7,179 Respondents | 10,076 (Responses) | | 10,196 hours | | \$256,400 |

Total Number of Respondents: 7,179

Total Number of Responses: 10,076 (multiple responses)

Total Annual Burden Hours: 10,196 hours

Total Annual In-house Cost: \$256,400

These estimates are based on Commission staff's knowledge and familiarity with the availability of the data required.

13. Annual Cost Burden:

- a. Total capital and start-up costs: None
- b. Total operation and maintenance costs: **\$30,000**

¹³ We estimate that half the complaints will be prepared by in-house legal staff at an hourly rate of \$35/hr.

¹⁴ We estimate that half the responses to complaints will be prepared by in-house legal staff at an hourly rate of \$35/hr.

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c. Total annualized cost requested: **\$30,000**

We estimate that outside legal counsel will prepare half the complaints and responses to complaints under rule 47 CFR Section 76.66(m). We estimate the legal work at \$200 per hour and each complaint/response will take 5 hours.

Total Annual Cost Burden:

15 complaints + 15 responses to complaints @ 5 hours per complaint/response x \$200 per hour = **\$30,000.**

14. Cost to Federal Government:

The Commission staff that reviews these carriage complaints associated with rule 47 CFR Section 76.66(m) consists of attorneys at the GS-15, step 5 level (\$62.62/hour). Each filing is estimated to undergo an average processing time of 40 hours.

Legal review: 15 complaints x 40 hours of legal review/filing x \$62.62 = \$37,572

Total Cost to the Federal Government: \$37,572

15. There are no program changes or adjustments.

16. The data will not be published for statistical use.

17. The Commission does not seek approval to not display the expiration date for this collection of information.

18. The Commission published a Federal Register Notice ("Notice") (73 FR 6504) on February 4, 2008 seeking public comment on the information collections contained in this supporting statement. Third party disclosure requirement and every three year reporting requirement were omitted from the Notice. They are included as frequency of responses for the information collection. There are no exceptions to the Certification Statement in Item 19.

B. Collections of Information Employing Statistical Methods.

No statistical methods are employed.