

Title: Section 76.54, Significantly Viewed Signals; Method to Be Followed for Special Showings

SUPPORTING STATEMENT

Justification:

The Commission is seeking OMB approval for an extension without change of this currently approved information collection.

47 CFR 76.54(b) states significant viewing in a cable television or satellite community for signals not shown as significantly viewed under 47 CFR 76.54(a) or (d) of this may be demonstrated by an independent professional audience survey of over-the-air television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes over-the-air television homes from each community that are proportional to the population. A satellite carrier may demonstrate significant viewing in more than one community or satellite community through a single survey, provided that the sample includes over-the-air television homes from each community that are proportional to the population.

47 CFR 76.54(c)¹ states a notice of a survey to be made pursuant to paragraph (b) of this section shall be served on all licensees or permittees of television broadcast stations within whose predicted noise limited service contour, as defined in 73.622(e) of this chapter the cable or satellite community or communities are located, in whole or in part, and on all other system community units, franchisees, and franchise applicants in the cable community or communities at least (30) days prior to the initial survey period. Such notice shall include the name of the survey organization and a description of the procedures to be used. Objections to survey organizations or procedures shall be served on the party sponsoring the survey within twenty (20) days after receipt of such notice.

47 CFR 76.54(d) states signals of television broadcast stations not encompassed by the surveys (for the periods May 1970, November 1970 and February/March 1971) used in establishing appendix B of the *Memorandum Opinion and Order on Reconsideration of Cable Television Report and Order*, FCC 72-530, 36 FCC 2d 326 (1972), may be demonstrated as significantly viewed on a county-wide basis by independent professional audience surveys which cover three

¹ In November 2010, the Commission made a non-substantive “housecleaning” amendment to Section 76.54(c) of the rules to strike the outdated reference to the analog Grade B contour. The reference to analog is obsolete because of the completion of the DTV transition. See Report and Order in MB Docket No. 10-148.

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separate, consecutive four-week periods and are otherwise comparable to the surveys used in compiling the above-referenced appendix B: *provided, however*, that such demonstration shall be based upon audience survey data for the first three years of the subject station's broadcast operations.

47 CFR 76.54(e) states satellite carriers that intend to retransmit the signal of a significantly viewed television broadcast station to a subscriber located outside such station's local market, as defined by 76.55(e) of this chapter, must provide written notice to all television broadcast stations that are assigned to the same local market as the intended subscriber at least 60 days before commencing retransmission of the significantly viewed station. Such satellite carriers must also provide the notifications described in 76.66(d)(5)(i) of this chapter. Such written notice must be sent via certified mail, return receipt requested, to the address for such station(s) as listed in the consolidated database maintained by the Federal Communications Commission.

47 CFR 76.54(f) states satellite carriers that retransmit the signal of a significantly viewed television broadcast station to a subscriber located outside such station's local market must list all such stations and the communities to which they are retransmitted on their website.

Background:

The Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA")² established the framework for satellite carriage of FCC-determined "significantly-viewed" ("SV") stations.³ The Commission implemented the SHVERA's SV provisions in a Report and Order, FCC 05-187, released Nov. 3, 2005.⁴ In the 2005 *SHVERA Significantly Viewed Report and Order*, the Commission, among other things, published a list of SV stations⁵ and adopted

² The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), § 202, Pub. L. No. 108-447, 118 Stat 2809, 3393 (2004) (codified in 47 U.S.C. § 340). The SHVERA was enacted on December 8, 2004. Section 202 of the SHVERA created Section 340 of the Communications Act, which authorizes satellite carriage of SV stations. 47 U.S.C. § 340.

³ The designation of "SV" status allows a station assigned to one DMA to be treated as a "local" station with respect to a particular cable or satellite community in another DMA, and, thus, enables cable or satellite carriage into that other DMA. Whereas cable operators have had carriage rights for SV stations since 1972, satellite carriers have had such authority only since the 2004 SHVERA and may only retransmit SV network stations to "eligible" satellite subscribers. See 47 U.S.C. § 340(b) (satellite subscriber eligibility requirements).

⁴ See *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, Report and Order, 20 FCC Rcd 17278 (2005) ("*SHVERA Significantly Viewed Report and Order*").

⁵ The significantly viewed list or "SV List" identifies the list of stations the Commission has determined to be significantly viewed in specified counties and communities. The list applies to both cable and satellite providers. The Commission updates this list as necessary upon the appropriate demonstrations by stations or cable or satellite providers. A station, satellite carrier or cable operator may petition the Commission, either to add eligible stations or communities pursuant to 47 C.F.R. § 76.54, or to restrict carriage of eligible stations through application of the Commission's network non-duplication or syndicated exclusivity rules in 47 C.F.R. §§ 76.122(a), (j) and

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rules in the satellite context for stations to attain eligibility for SV status and for subscribers to receive SV stations from satellite carriers.⁶ As mandated by the SHVERA, the Commission applied the same rules and procedures for parties to demonstrate that a station qualifies for SV status to satellite carriers that already apply to cable operators.⁷ As required by the statute, the *SHVERA Significantly Viewed Report and Order* also imposed additional notice and other requirements that do not apply to cable operators.⁸

In the Satellite Television Extension and Localism Act of 2010 (“STELA”),⁹ Congress amended Section 340(b) of the Act¹⁰ and reauthorized the statutory copyright license for satellite carriage of SV stations.¹¹ The Commission implemented the STELA in a Report and Order, released November 2010, to facilitate satellite carriage of SV stations.¹² The 2010 Report and Order did not make any substantive changes to the rules and procedures implementing the SV station eligibility requirements.¹³

In 1972, the Commission adopted the concept of “significantly viewed” stations for cable television to differentiate between out-of-market television stations “that have sufficient

76.123(a), (k). Generally, a station’s SV status is only challenged when another station seeks to exercise its rights under the network non-duplication or syndicated program exclusivity rules, and the SV station asserts its SV status, which is an exception to both requirements. See 47 C.F.R. § 76.92(f) (SV exception in cable network non-duplication rules); § 76.106(a) (SV exception in cable syndicated program exclusivity rules); § 76.122(j) (SV exception in satellite network non-duplication rules); and 76.123(k) (SV exception to satellite syndicated program exclusivity rules). If a station’s SV status is challenged, and it is demonstrated that the station is no longer significantly viewed in a particular community or county, the station’s listing is modified to indicate that it is subject to programming deletions in those communities or counties. See *SHVERA Significantly Viewed Report and Order*, 20 FCC Rcd at 17286, ¶ 14. The current SV List is available on the Media Bureau’s website at <http://www.fcc.gov/mb/>.

⁶ See 47 C.F.R. §§ 76.5(ee) (revised), 76.5(gg) (added), 76.54(a)-(c) (revised), 76.54(e)-(k) (added), 76.122(a) and (j) (revised), and 76.123(a) and (k) (revised).

⁷ See 47 U.S.C. § 340(a). Specifically, the Commission required satellite carriers or broadcast TV stations seeking SV status for satellite carriage to follow the same petition process now in place for cable carriage. See 47 C.F.R. §§ 76.5, 76.7 and 76.54(a)-(d).

⁸ See 47 C.F.R. §§ 76.54(e)-(f) (satellite carrier notice requirements) and 76.54(g)-(i) (satellite subscriber eligibility requirements).

⁹ The Satellite Television Extension and Localism Act of 2010 (STELA) § 203, Pub. L. No. 111-175, 124 Stat. 1218, 1245 (2010) (§ 203 codified as amended at 47 U.S.C. § 340). The STELA was enacted on May 27, 2010 (S. 3333, 111th Cong.).

¹⁰ 47 U.S.C. § 340(b).

¹¹ STELA § 103 moved the SV signal statutory copyright license from the distant signal statutory copyright license in 17 U.S.C. § 119(a)(3) to the local signal statutory copyright license in 17 U.S.C. § 122 (a)(2). As a result of this move, the SV signal license does not expire on December 31, 2014, when the distant signal license will expire. STELA § 107(a).

¹² See Report and Order in MB Docket No. 10-148.

¹³ *Id.* at ¶ 8, note 45. See 47 C.F.R. §§ 76.54(a)-(f), (j)-(k).

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audience to be considered local and those that do not.”¹⁴ In the *1972 Cable R&O*, the Commission concluded at that time that it would not be reasonable if choices on cable were more limited than choices over-the-air, and gave cable carriage rights to stations in communities where they had significant over-the-air (non-cable) viewing.

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 Sections 4(i) and 340 of the Communications Act of 1934, as amended.

2. The purpose of the information collection requirements contained herein is to: (1) permit parties to demonstrate that a particular broadcast station is eligible for “significantly viewed” status in a cable television or satellite community by an independent professional audience survey of non-cable television homes; and (2) notify interested parties, including licensees or permittees of television broadcast stations, about such audience surveys that are being conducted by an organization. (The notifications provide interested parties with an opportunity to review survey methodologies and file objections.) Parties (which include cable operators, satellite carriers and broadcast stations) may file Section 76.7 petitions (with audience surveys) to demonstrate “significantly viewed” status under rule 76.54.

3. Use of information technology is not feasible for this disclosure of information.

4. There are no similar disclosure requirements imposed on the respondents by the Commission. The information that is disclosed in the notices is not available elsewhere.

5. The information collection requirements contained in 76.54(b) and (d) may have a significant impact on small businesses or other small entities. Such collections are not mandatory, and are required only to obtain a benefit. The other collections contained herein do not have a significant impact on a substantial number of small businesses.

6. If this information were not to be collected, the Commission would be unable to adjudicate petitions and complaints filed pursuant to Sections 76.5, 76.7 and 76.54 of the rules. The Commission would therefore be unable to enforce its rules and would be unresponsive to entities regulated by the Commission. In addition, if the survey disclosures required by Section 76.54(c) were not made, then licensees and permittees of television broadcast stations, system community units, franchisees and franchise applicants would not be given adequate notice with which to

¹⁴ See *Cable Television Report and Order*, 36 FCC 2d 143, 174, ¶ 83 (1972) (“*1972 Cable R&O*”) (adopting the concept of “significantly viewed” signals for cable to differentiate between otherwise out-of-market television stations “that have sufficient audience to be considered local and those that do not”).

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review survey methodologies and to prepare arguments to such survey methodologies.

7. Objections to the survey organization or procedures should be served on the party sponsoring the survey within 20 days after receipt of notice of the survey.

8. The Commission published a Notice in the *Federal Register* on November 12, 2010 (75 FR 69441) seeking public comment on the information collection requirements contained in this supporting statement. The Commission has not received any comments following publication of the Notice.

9. There are no payments or gift to respondents for complying with the information collection requirement.

10. Any submission by parties as part of their petitions (pursuant to Sections 76.54(b) or (d)), complaint, or reply may request confidentiality under Section 0.459 of the Commission's rules. The other collections do not need confidentiality.

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

12. Each year, we estimate 250 cable operators, satellite carriers and TV stations will conduct audience surveys for "significantly viewed" signals, and thus may file petitions under either Section 76.54(b) or (d). These surveys may be conducted by disinterested professional organizations that are independent of the cable operator, satellite carrier or television station. We broadly estimate that each party initiating their own filings will undergo an average burden of 60 hours to comply with all aspects of the filing requirements particular to their pleadings, and parties using outside counsel to initiate their filing will undergo an average burden of 4 hours to coordinate filing information with outside counsel.

The filing of Section 76.7 petitions to demonstrate "significantly viewed" status under Section 76.54(b) or (d) will generally involve two filing parties.

Creating, disclosing and serving the required Section 76.54(c) notices about the survey to all parties are estimated to take an average of 15 hours per occurrence. The required Section 76.54(e) notices are similarly estimated to take an average of 15 hours per occurrence. The required Section 76.54(f) notices of all "significantly viewed" signals are estimated to take an average of 1 hour per occurrence.

Total Number of Annual Respondents: 500 respondents

Total Number of Annual Responses:

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Section 76.54(b): 250 Petitions (125 petitions x 2 parties)
Section 75.54(d): 250 Petitions (125 petitions x 2 parties)
Section 76.54(c): 250 notices
Section 76.54(e): 24 notices (2 satellite carriers x 12 notices)
Section 76.54(f): 500 notices (2 satellite carriers x 250 website listings)
1,274 notices or petitions (responses)

Annual Burden Hours:

Section 76.54(b) and Section 76.54(d):

Parties initiating their own filings: We estimate that 50% of parties involved in rule sections 76.54(b) and 76.54(d) will initiate their own filings at an average of 60 hours per filing.

250 petitions (50% of the 500 petitions filed under Sections 76.54(b) and 76.54(d)) x 60 hours/annum/filing = 15,000 hours

Section 76.54(c): 250 notices x 15 hours/notice/annum = 3,750 hours

Section 76.54(e): 2 satellite carriers x 12 notices/carrier/annum x 15 hours/carrier/annum = 360 hours

Section 76.54(f): 2 satellite carriers x 250 notices/carrier/annum x 1 hour/carrier/annum = 500 hours

Total Annual Burden Hours: 15,000 hours + 1,000 hours + 3,750 hours + 360 hours + 500 hours = **20,610 hours**

Annual "In-House" Cost: We estimate that an in-house attorney and paralegal will be involved in initiating the filings. We estimate that the paralegal is paid an average hourly wage of \$30.00 per hour and the attorney is paid an average hourly wage of \$50.00 per hour.

Paralegal: 20,610 hours x \$30/hour = \$ 618,300
Attorney: 20,610 hours x \$50/hour = \$1,030,500
Total Annual "In-House" Cost: \$1,648,800

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13. Annual Cost Burden:

- a. Total capital and start-up costs: \$0
- b. Total operation and maintenance costs: **\$200,000**. Parties using outside legal counsel will pay for those services at an estimated \$200 per hour. It is estimated to take outside counsel an average of 4 hours per filing to prepare the filings for parties using their services).

$$250 \text{ filings} \times 4 \text{ hours per filing} \times \$200 \text{ per hour} = \mathbf{\$200,000}$$

14. The Commission staff that reviews these filings/pleadings associated with rule sections 76.54(b) and 76.54(d) consists of attorneys at the GS-15, step 5 level (\$67.21/hour), paralegals at the GS-12, step 5 level (\$40.66/hour) and other administrative staff at the GS-5, step 5 level (\$18.50/hour.)

Legal review: 500 filings ¹⁵ x 40 hours of legal review/filing x \$67.21=	\$1,344,200
Paralegal review: 500 filings x 12 hours of review/filing x \$40.66 =	\$ 243,960
Admin. review: 500 filings x 8 hours processing of filings x \$18.50 =	<u>\$ 74,000</u>
Total Cost to the Federal Government:	\$1,662,160

- 15. There are no program changes or adjustments to this collection.
- 16. The results of this information collection requirement are not planned to be published.
- 17. We are not seeking approval to not display the expiration date for OMB approval of the information collection.
- 18. There are no other exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.

¹⁵ The 500 filings include 250 petitions and 250 oppositions.