

## SUPPORTING STATEMENT

### A. Justification

1. The information collection requirements that are approved under this collection are as follows:

**47 CFR Section 76.66(d)(6)** addresses satellite carriage after a market modification is granted by the Commission. The rule states that television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to § 76.66) due to a change in the market definition (by operation of a market modification pursuant to §76.59) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier. A satellite carrier shall commence carriage within 90 days of receiving the carriage election from the television broadcast station. The election must be made in accordance with the requirements of 47 CFR Section 76.66(d)(1).

**47 CFR Section 76.66(b)(1)** states each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of title 47, United States Code, and other paragraphs in this section. Satellite carriers are required to carry digital-only stations upon request in markets in which the satellite carrier is providing any local-into-local service pursuant to the statutory copyright license.<sup>1</sup>

**47 CFR Section 76.66(b)(2)** requires a satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall, no later than December 8, 2005, carry upon request the signal originating as an analog signal of each television broadcast station that is located in a local market in Alaska or Hawaii; and shall, no later than June 8, 2007, carry upon request the signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii. Such satellite carrier is not required to carry the signal originating as analog after commencing carriage of digital signals on June 8, 2007. Carriage of signals originating as digital signals of each television broadcast station that is located in a local market in Alaska or Hawaii shall include the entire free over-the-air signal, including multicast and high definition digital signals.

**47 CFR Section 76.66(c)(3)-(4)** 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(c)(6)** requires a commercial television broadcast station located in a local market in a noncontiguous state to make its retransmission consent-mandatory carriage election<sup>2</sup> by October 1, 2005, for carriage of its signals that originate as analog signals for carriage commencing on December 8,

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<sup>1</sup> Section 76.66(b)(1) requires satellite carriers to carry digital-only stations on request in markets in which the carrier is providing any local-into-local service pursuant to the statutory copyright license. We estimate that approximately 20 stations will now be able to request carriage that did not have the right to do so before. As a result, several rules that govern carriage requests and related procedures will now apply to 20 more stations.

<sup>2</sup> 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.

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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 station<sup>3</sup> located in a local market in Alaska or Hawaii must 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 originate 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.

**47 CFR Section 76.66(d)(1)(ii)** states an election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested.

**47 CFR Section 76.66(d)(1)(iii)** states a television station's written notification shall include the:

- (A) Station's call sign;
- (B) Name of the appropriate station contact person;
- (C) Station's address for purposes of receiving official correspondence;
- (D) Station's community of license;
- (E) Station's DMA assignment; and
- (F) For commercial television stations, its election of mandatory carriage or retransmission consent.

**47 CFR Section 76.66(d)(1)(iv)** Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing: (A) those local television stations it will not carry, along with the reasons for such a decision; and (B) those local television stations it intends to carry.

**47 CFR Section 76.66(d)(2)(i)** states a new satellite carrier or a satellite carrier providing local service in a market for the first time after July 1, 2001, shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage

- (A) Of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;
- (B) Of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);
- (C) That such licensee has 30 days from the date of the receipt of such notice to make such election; and
- (D) That failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

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<sup>3</sup> See 47 U.S.C. § 545(l) (definition of noncommercial television broadcast station). See also 47 U.S.C. § 338(c)(2).

**47 CFR Section 76.66(d)(2)(ii)** states satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

**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)(2)(iv)** requires that a satellite carrier shall commence carriage of a local station by the later of 90 days from receipt of an election of mandatory carriage or upon commencing local-into-local service in the new television market.

**47 CFR Section 76.66(d)(2)(v)** states within 30 days of receiving a local television station's election of mandatory carriage in a new television market, a satellite carrier shall notify in writing: Those local television stations it will not carry, along with the reasons for such decision, and those local television stations it intends to carry.

**47 CFR Section 76.66(d)(2)(vi)** requires satellite carriers to notify all local stations in a market of their intent to launch HD carry-one, carry-all in that market at least 60 days before commencing such carriage.

**47 CFR Section 76.66(d)(3)(ii)** states a new television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iii) of this section.

**47 CFR Section 76.66(d)(3)(iv)** states within 30 days of receiving a new television station's election of mandatory carriage, a satellite carrier shall notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station.

**47 CFR Section 76.66(d)(5)(i)** states beginning with the election cycle described in §76.66(c)(2), the retransmission of significantly viewed signals pursuant to §76.54 by a satellite carrier that provides local-into-local service is subject to providing the notifications to stations in the market pursuant to paragraphs (d)(5)(i)(A) and (B) of this section, unless the satellite carrier was retransmitting such signals as of the date these notifications were due.

(A) In any local market in which a satellite carrier provided local-into-local service on December 8, 2004, at least 60 days prior to any date on which a station must make an election under paragraph (c) of this section, identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle and the communities into which the satellite carrier reserves the right to make such retransmissions;

(B) In any local market in which a satellite carrier commences local-into-local service after December 8, 2004, at least 60 days prior to the commencement of service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under §76.66(c) or (d)(2), identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle.

**47 CFR Section 76.66 (f)(3)** states except as provided in 76.66(d)(2), a satellite carrier providing local-into-local service must notify local television stations of the location of the receive facility by June 1,

2001 for the first election cycle and at least 120 days prior to the commencement of all election cycles thereafter.

**47 CFR Section 76.66 (f)(4)** states a satellite carrier may relocate its local receive facility at the commencement of each election cycle. A satellite carrier is also permitted to relocate its local receive facility during the course of an election cycle, if it bears the signal delivery costs of the television stations affected by such a move. A satellite carrier relocating its local receive facility must provide 60 days notice to all local television stations carried in the affected television market.

**47 CFR Section 76.66 (h)(5)** states a satellite carrier shall provide notice to its subscribers, and to the affected television station, whenever it adds or deletes a station's signal in a particular local market pursuant to this paragraph.

**47 CFR 76.66 (m)(1)** states whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.

**47 CFR 76.66 (m)(2)** states the satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations.

**47 CFR 76.66 (m)(3)** states a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission, in accordance with §76.7 of title 47, Code of Federal Regulations. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

**47 CFR 76.66 (m)(4)** states the satellite carrier against which a complaint is filed is permitted to present data and arguments to establish that there has been no failure to meet its obligations under this section.

### **Background/History:**

The Satellite Television Extension and Localism Act Reauthorization Act of 2014<sup>4</sup> (“STELA Reauthorization Act” or “STELAR”), enacted December 4, 2014, is the latest in a series of statutes that have amended the Communications Act and Copyright Act to set the parameters for the satellite carriage of television broadcast stations. The 1988 Satellite Home Viewer Act (SHVA) first established a “distant” statutory copyright license to enable satellite carriers to offer subscribers who could not receive the over-the-air signal of a broadcast station access to broadcast programming via satellite.<sup>5</sup> The 1999

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<sup>4</sup> The STELA Reauthorization Act of 2014 (STELAR), § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014). The STELAR was enacted on December 4, 2014 (H. R. 5728, 113th Cong.).

<sup>5</sup> Satellite Home Viewer Act of 1988 (SHVA), Pub. L. No. 100-667, 102 Stat. 3935, Title II (1988); 17 U.S.C. § 119 (distant statutory copyright license). In addition to allowing satellite carriers to retransmit television signals of distant network stations to “unserved” subscriber households, the SHVA also permitted satellite carriers to retransmit distant superstations (non-network stations) to any subscriber household. See 17 U.S.C. § 119(d)(2) (defining “network station”), (d)(9) (defining “non-network station,” previously “superstation”) and (d)(10) (defining “unserved household”). The 1994 Satellite Home Viewer Act reauthorized the distant statutory copyright license for five years and made other changes to the distant statutory copyright license but did not amend the Communications Act or otherwise alter satellite carriage rights. Satellite Home Viewer Act of 1994, Pub. L. No.

Satellite Home Viewer Improvement Act (SHVIA) established a “local” statutory copyright license and expanded satellite carriers’ ability to offer broadcast television signals directly to subscribers by permitting carriers to offer “local” broadcast signals.<sup>6</sup> The 2004 Satellite Home Viewer Extension and Reauthorization Act (SHVERA) reauthorized the distant signal statutory copyright license until December 31, 2009 and expanded that license to allow satellite carriers to carry “significantly viewed” stations.<sup>7</sup> The 2010 Satellite Television Extension and Localism Act (STELA) extended the distant signal statutory copyright license through December 31, 2014,<sup>8</sup> moved the significantly viewed station copyright provisions to the local statutory copyright license (which does not expire), and revised the “significantly viewed” provisions to facilitate satellite carrier use of that option.<sup>9</sup> With the STELAR, Congress extended the distant signal statutory copyright license for another five years, through December 31, 2019, and, among other things, authorized market modification in the satellite carriage context and revised the

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103-369, 108 Stat. 3477 (1994). Each successive statute in the SHVA progeny has reauthorized the distant statutory copyright license.

<sup>6</sup> Satellite Home Viewer Improvement Act of 1999 (SHVIA), Pub. L. No. 106-113, 113 Stat. 1501 (1999); 17 U.S.C. § 122 (local statutory copyright license). The local statutory copyright license makes no distinction between network and non-network signals or served or unserved households. *See id.* Local stations may elect mandatory carriage or carriage pursuant to retransmission consent. 47 U.S.C. §§ 325, 338. *See* 47 C.F.R. § 76.66(c). Unlike the distant license, the local statutory copyright license does not expire.

<sup>7</sup> Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Pub. L. No. 108-447, 118 Stat. 2809 (2004). Significantly viewed (“SV”) stations are television broadcast stations that the Commission has determined have sufficient over-the-air (*i.e.*, non-cable and non-satellite) viewing to be treated as local stations with respect to a particular satellite community in another market, thus, allowing them to be carried by the satellite carrier in that community in the other market. For copyright purposes, SV status entitles satellite carriers to carry the out-of-market but SV station with the reduced copyright payment obligations applicable to local (in-market) stations. *See* 17 U.S.C. § 122(a)(2). Satellite carriers are not required to carry out-of-market SV stations. If they do carry such SV stations, retransmission consent is required. *See* 47 U.S.C. § 340(d).

<sup>8</sup> The Satellite Television Extension and Localism Act of 2010 (STELA), Pub. L. No. 111-175, 124 Stat. 1218, 1245 (2010). Congress passed four short-term extensions of the distant signal statutory copyright license (on December 19, 2009, March 2, March 26 and April 15, 2010) before passing the STELA to reauthorize the distant signal statutory copyright license for a full five years, until December 31, 2014. STELA § 107(a). *See* Department of Defense Appropriations Act, 2010, § 1003(b), Pub. L. No. 111-118, 123 Stat. 3409, 3469 (2009) (extending distant license until February 28, 2010); Temporary Extension Act of 2010, § 10, Pub. L. No. 111-144, 124 Stat. 42, 47 (2010) (extending license until March 28, 2010); Satellite Television Extension Act of 2010, Pub. L. No. 111-151, 124 Stat. 1027 (2010) (extending license until April 30, 2010); Continuing Extension Act of 2010, § 9, Pub. L. No. 111-157, 124 Stat. 1116 (2010) (extending license until May 31, 2010).

<sup>9</sup> As noted, the STELA reauthorized the statutory copyright license for satellite carriage of significantly viewed signals and moved that license from the distant signal statutory copyright license provisions in 17 U.S.C. § 119(a)(3) to the local signal statutory copyright license provisions in 17 U.S.C. § 122(a)(2). STELA § 103. By doing so, Congress defined significantly viewed signals as another type of local signal, rather than as an exception to distant signal status. The move to the local license also meant that the significantly viewed signal license would not expire. STELA § 107(a). In the *STELA Significantly Viewed Report and Order*, the Commission revised its satellite television significantly viewed rules to facilitate satellite carriage of significantly viewed stations and thereby provide satellite subscribers with greater choice of programming and to improve parity and competition between satellite and cable carriage of broadcast stations. *STELA Significantly Viewed Report and Order*, 25 FCC Rcd at 16411, ¶ 55.

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market modification provisions for cable to promote parity for satellite and cable subscribers and competition between satellite and cable operators.<sup>10</sup>

Section 338 of the Communications Act authorizes satellite carriage of local broadcast stations into their local markets, which is called “local-into-local” service.<sup>11</sup> Specifically, a satellite carrier provides “local-into-local” service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.<sup>12</sup> Generally, a television station’s “local market” is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company (Nielsen).<sup>13</sup> DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.<sup>14</sup> The United States is divided into 210 DMAs.<sup>15</sup> Unlike cable operators, satellite carriers are not required to carry local broadcast television stations. However, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the statutory copyright license, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage.<sup>16</sup> This is commonly referred to as the “carry one, carry all” requirement. If a broadcaster elects retransmission consent, the satellite carrier and broadcaster negotiate the terms of a retransmission consent agreement. With respect to those stations electing mandatory carriage, satellite carriers are generally not required to carry a station if the station’s programming “substantially duplicates”<sup>17</sup> that of another station carried by the satellite carrier in the

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<sup>10</sup> In Section 102 of the STELAR, Congress intended to “create a television market modification process for satellite carriers similar to the one already used for cable operators.” *Senate Commerce Committee Report* at 6. The STELAR also makes a variety of reforms to the video programming distribution laws and regulations that are not relevant to our implementation here of this section.

<sup>11</sup> See 47 U.S.C. § 338(a)(1).

<sup>12</sup> 47 C.F.R. § 76.66(a)(6).

<sup>13</sup> See 17 U.S.C. §122(j)(2); 47 C.F.R. § 76.66(e) (defining a television broadcast station’s local market for purposes of satellite carriage as the DMA in which the station is located). We note that a commercial television broadcast station’s local market for purposes of cable carriage is also generally defined as the DMA in which the station is located. See 47 U.S.C. 534(h)(1)(C); 47 C.F.R. § 76.55(e)(2).

<sup>14</sup> The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to one market based on measured viewing patterns both off-air and via MVPD distribution. Generally, each U.S. county is assigned exclusively to the market whose stations receive the preponderance of the audience in that county. However, in a few cases where a county is large and viewing patterns differ significantly between parts of the county, a portion of the county is assigned to one television market and another portion of the county is assigned to another market. Several counties in Alaska are not assigned to any DMA. *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 2005 WL 2206070, at ¶ 53, n.177 (Sept. 8, 2005) (*SHVERA Report*); see also Nielsen Media Research, Glossary of Media Terms, at <http://www.nielsenmedia.com/glossary/>.

<sup>15</sup> DMAs frequently cross state lines and thus may include counties from multiple states.

<sup>16</sup> See 17 U.S.C. § 122; 47 U.S.C. § 338(a)(1); 47 C.F.R. § 76.66(b)(1). DISH Network currently provides local service to all 210 DMAs, and DIRECTV currently provides local service to 198 DMAs, according to the most recent Local Network Channel Broadcast Reports filed by these satellite carriers. 47 U.S.C.A. § 338 Note. These annual reports were initially required for five years by Section 305 of the STELA and were continued to be required for another five years by Section 108 of the STELAR.

DMA,<sup>18</sup> and satellite carriers are not required to carry more than one affiliate station of a particular network in a DMA (even if the affiliates do not substantially duplicate their programming), unless the stations are licensed to communities in different states.<sup>19</sup> Satellite carriers are also not required to carry an otherwise qualified station if the station fails to provide a good quality signal to the satellite carrier's local receive facility.<sup>20</sup>

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 11/29/2000), the Commission implemented carriage rules for satellite carriers pursuant to Section 338 of the Communications 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.

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<sup>17</sup> "A commercial television station substantially duplicates the programming of another commercial television station if it simultaneously broadcasts the identical programming of another station for more than 50 percent of the broadcast week." *Id.* § 76.66(h)(6). "A noncommercial television station substantially duplicates the programming of another noncommercial station if it simultaneously broadcasts the same programming as another noncommercial station for more than 50 percent of prime time, as defined by §76.5(n), and more than 50 percent outside of prime time over a three month period, provided, however, that after three noncommercial television stations are carried, the test of duplication shall be whether more than 50 percent of prime time programming and more than 50 percent outside of prime time programming is duplicative on a non-simultaneous basis." *Id.* § 76.66(h)(7).

<sup>18</sup> 47 U.S.C. § 338(c)(1); 47 C.F.R. § 76.66(h)(1). "A satellite carrier may select which duplicating signal in a market it shall carry." 47 C.F.R. § 76.66(h)(2).

<sup>19</sup> 47 U.S.C. § 338(c)(1); 47 C.F.R. § 76.66(h)(1). "A satellite carrier may select which network affiliate in a market it shall carry." 47 C.F.R. § 76.66(h)(3). However, a satellite carrier must carry network affiliated television stations licensed to different states, but located in the same market, even if the stations meet the definition of substantial duplication under the Commission's rules. See *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues*, CS Docket Nos. 00-96 and 99-363, *Report and Order*, 16 FCC Rcd 1918, 1951, ¶ 80 (2000) (DBS Broadcast Carriage Report and Order). If two stations located in different states (but within the same local market) duplicate each other, but are not network affiliates, the satellite carrier only has to carry one. *Id.*

<sup>20</sup> 47 U.S.C. § 338(b)(1); 47 C.F.R. § 76.66(g)(1). A television station asserting its right to carriage is required to bear the costs associated with delivering a good quality signal to the designated local-receive-facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market. *Id.*

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 2004<sup>21</sup> 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 signals<sup>22</sup> of television broadcast stations in local markets in noncontiguous states<sup>23</sup> (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.

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”<sup>24</sup> 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.

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<sup>21</sup> The *NPRM* implemented the Satellite Home Viewer Extension and Reauthorization Act of 2004, SHVERA, which established 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.

<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> 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.

On March 27, 2008 the Commission released a *Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking* Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues, FCC 08-86, CS Docket 00-96. The Commission amended the rules to require satellite carriers to carry digital-only stations upon request in markets in which they are providing any local-into-local service pursuant to the statutory copyright license, and to require carriage of all high definition ("HD") signals in a market in which any station's signals are carried in HD.

On September 2, 2015, the Commission released a *Report and Order (Order)*, FCC 15-111, in MB Docket No. 15-71,<sup>25</sup> adopting satellite television market modification rules to implement Section 102 of the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (STELAR).<sup>26</sup> With respect to this collection, the Order amended Section 76.66 of the Commission's Rules by adding a new paragraph (d)(6) that addresses satellite carriage after a market modification is granted by the Commission.

The Commission is requesting a three year extension of this collection from the Office of Management and Budget (OMB).

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 325, 338, 339, and 340 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 325, 338, 339, and 340.

2. Television broadcast stations and satellite carriers will use the information collected to determine what stations must be carried by satellite carriers. The Commission will use information collected in order to ensure compliance with its satellite television broadcast carriage rules.
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 requirements accounted for in this information collection do not have a significant impact on a substantial number of small businesses or other small entities.

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<sup>25</sup> See *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-71, Report and Order, FCC 15-111 (rel. Sept. 2, 2015) (Report and Order).

<sup>26</sup> The STELA Reauthorization Act of 2014 (STELAR), § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014). The STELAR was enacted on December 4, 2014 (H. R. 5728, 113th Cong.). STELAR Section 102(a) amends Section 338 of the Act by adding a new paragraph (l), titled "Market Determinations." 47 U.S.C. § 338(l). STELAR Section 102(b) also makes conforming amendments to the cable market modification provision at 47 U.S.C. § 534(h)(1)(C).

6. The Commission is required by the Communications Act to establish procedures for the satellite carriage of television broadcast stations. If this collection of information were not sponsored by the Commission, then television broadcast stations would be unable to make satellite carriage elections and the Commission would be unable to ensure that satellite carriers comply with their carriage obligations.

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

8. The Commission published a Notice in the *Federal Register* seeking public comments on September 18, 2018 (83 FR 47151). The Commission has not received any comments following the publication of the Notice.

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.

## Title: Satellite Television Broadcast Signal Carriage, 47 CFR Section 76.66

12. The estimated burden for this collection of information is as follows:<sup>27</sup>

| Rule Sections  | Number of Respondents | Number of Responses/ Notices / Complaints | Respondents Hourly Burden | Total Annual Burden Hours | Hourly "In House" Cost | Total "In House" Costs |
|--|-----------------------|---|---------------------------|---------------------------|------------------------|------------------------|
| <b>Sections 76.66(c)(3), 76.66(c)(5), 76.66(c)(6), 76.66(d)(1)(ii)</b> ( <i>Election Notices</i> )     | 2,882                 | 2,882                                     | 1 hour                    | 2,882                     | \$48.08/hr             | \$138,566.56           |
| <b>Sections 76.66(c)(3), 76.66(c)(5), 76.66(c)(6), 76.66(d)(1)(ii)</b> ( <i>Responses to Notices</i> ) | 2,882                 | 2,882                                     | 1 hour                    | 2,882                     | \$48.08/hr             | \$138,566.56           |
| <b>Section 76.66(b)(1)</b> <i>Requests for signals</i>   | 20 <sup>28</sup>      | 40  | 1 hour                    | 40                        | \$48.08/hr             | \$ 1,923.20            |
| <b>Section 76.66(b)(2)</b> <i>Noncontiguous states</i>   | 50 <sup>29</sup>      | 100                                       | 1 hour                    | 100                       | \$48.08/hr             | \$ 4,808.00            |
| <b>Section 76.66(d)(1)(ii) and (iii)</b> <i>Carriage election - stations</i>                           | 20 <sup>30</sup>      | 40  | 1 hour                    | 40                        | \$48.08/hr             | \$ 1,923.20            |
| <b>Section 76.66(d)(1)(iv)</b> <i>Satellite carriers responses</i>                                     | 2 <sup>31</sup>       | 40  | 1 hour                    | 40                        | \$48.08/hr.            | \$ 1,923.20            |
| <b>Section 76.66(d)(2)(i), (ii) and (iv)</b> <i>Satellite Local Service</i>                            | 1,420                 | 1,420                                     | 1 hour                    | 1,420                     | \$48.08/hr.            | \$ 68,273.60           |
| <b>Section 76.66(d)(2)(iii)</b> <i>Notifications -TV stations in noncontiguous states</i>              | 82                    | 82  | 1 hour                    | 82                        | \$48.08/hr             | \$ 3,942.56            |
| <b>Section 76.66(d)(2)(v)</b> <i>Satellite decisions not to carry stations</i>                         | 2 <sup>32</sup>       | 10  | 1 hour                    | 10                        | \$48.08/hr             | \$ 480.80              |
| <b>Section 76.66(d)(3)(ii)</b> <i>new station election request</i>                                     | 20 <sup>33</sup>      | 40  | 1 hour                    | 40                        | \$48.08/hr.            | \$ 1,923.20            |

<sup>27</sup> All estimates are based on Commission staff's knowledge and familiarity with the availability of the data required. These estimates take into account the amount of time that it will take respondents to maintain supporting documentation that the Commission may request for review and also the time that it takes to maintain files and records.

<sup>28</sup> Twenty station licensees will request signal carriage from each satellite carrier.

<sup>29</sup> Fifty station licensees will request signal carriage from two satellite carriers.

<sup>30</sup> Twenty station licensees will notify two satellite carriers each regarding carriage election.

<sup>31</sup> Two satellite carriers will respond to 20 station licensees each regarding carriage election.

<sup>32</sup> Two satellite carriers will notify five station licensees each re mandatory carriage.

<sup>33</sup> Twenty station licensees will notify two satellite carriers each regarding election requests.

## Title: Satellite Television Broadcast Signal Carriage, 47 CFR Section 76.66

| Rule Sections   | Number of Respondents  | Number of Responses/ Notices / Complaints | Respondents Hourly Burden | Total Annual Burden Hours | Hourly "In House" Cost | Total "In House" Costs |
|---|------------------------|---|---------------------------|---------------------------|------------------------|------------------------|
| <b>Section 76.66(d)(3) (iv)</b> – responses to election request               | 2 <sup>34</sup>        | 40  | 1 hour                    | 40                        | \$48.08/hr             | \$ 1,923.20            |
| <b>Section 76.66(d)(5)(i)</b> Satellite notifications – significantly viewed  | 2,820                  | 2,820                                     | 1 hour                    | 2,820                     | \$48.08/hr.            | \$135,585.60           |
| <b>Section 76.66(d)(6) station election request after market modification</b> | <b>20<sup>35</sup></b> | <b>40</b>                                 | <b>1 hour</b>             | <b>40</b>                 | <b>\$48.08/hr</b>      | <b>\$ 1,923.20</b>     |
| <b>Section 76.66(f)(3) and (4)</b> Satellite notifications – local facilities | 2 <sup>36</sup>        | 40  | 1 hour                    | 40                        | \$48.08/hr             | \$ 1,923.20            |
| <b>Section 76.66(h)(5)</b> Satellite notice to subscribers                    | 2 <sup>37</sup>        | 10  | 1 hour                    | 10                        | \$48.08/hr             | \$ 480.80              |
| <b>Section 76.66(m)(1)</b> Notifications                                      | 17                     | 17 <sup>38</sup>                          | 5 hours                   | 85                        | \$48.08/hr.            | \$ 4,086.80            |
| <b>Section 76.66(m)(2)</b> Responses to Notifications                         | 17                     | 17 <sup>39</sup>                          | 5 hours                   | 85                        | \$48.08/hr.            | \$ 4,086.80            |
| <b>Section 76.66(m)(3)</b> Complaints   | 9                      | 9 <sup>40</sup>                           | 5 hours                   | 45                        | \$100/hr.              | \$ 4,500.00            |
| <b>Section 76.66(m)(4)</b> (Responses to Complaints)                          | 9                      | 9 <sup>41</sup>                           | 5 hours                   | 45                        | \$100/hr.              | \$ 4,500.00            |
| <b>Notifications by satellite carriers</b>                                    | 20 <sup>42</sup>       | 40  | 1 hour                    | 40                        | \$48.08/hr             | \$ 1,923.20            |
| <b>TOTALS:</b>  | <b>10,300</b>          | <b>11,978</b>                             |                           | <b>12,186</b>             |                        | <b>\$590,575.68</b>    |

<sup>34</sup> Two satellite carriers will respond to 20 station licensees each regarding election requests.

<sup>35</sup> Twenty station licensees will notify two satellite carriers each regarding election requests.

<sup>36</sup> Two satellite carriers will respond to 20 station licensees each regarding local facilities.

<sup>37</sup> Two satellite carriers will respond to 5 station licensees/subscribers each regarding station signals.

<sup>38</sup> Seventeen stations will notify satellite carriers who did not meet their obligations.

<sup>39</sup> Seventeen respondents will reply to notifications by satellite carriers.

<sup>40</sup> There are a total of 17 complaints. We estimate that 9 of the 17 complaints will be prepared by in-house legal staff at an hourly rate of \$100/hr. The remaining complaints will be prepared by outside counsel.

<sup>41</sup> There are a total of 17 responses to complaints. We estimate that 9 of the 17 responses will be prepared by in-house legal staff at \$100/hr. The remaining responses to complaints will be prepared by outside counsel.

<sup>42</sup> Twenty station licensees will notify two satellite carriers each regarding termination of analog signal.

- **Total Number of Respondents:** 10,300 respondents (increase from 10,280)
- **Total Number of Responses:** 11,978 responses (increase from 11,938)
- **Total Annual Burden Hours:** 12,186 hours (increase from 12,146 hours)
- **Total Annual In-house Cost:** \$590,575.68 (increase from \$588,652.48)

**13. Annual Cost Burden:** We estimate that outside legal counsel will prepare eight complaints and responses under Section 76.66(m)(3) and (m)(4). We estimate the legal work at \$300 per hour and each complaint/response will take 5 hours.

$$8 \text{ complaints} + 8 \text{ responses} @ 5 \text{ hours} \times \$300 \text{ per hour} = \mathbf{\$24,000.}$$

**14. Cost to Federal Government:** FCC staff attorneys (GS-15, step 5 (\$73.20/hour) will review these complaints at rule sections 76.66(m)(3) and (m)(4). The review is expected to take 40 hours per complaint.

$$9 \text{ complaints} + 9 \text{ responses} \times 40 \text{ hours review/filing} \times \$73.20 = \mathbf{\$52,704.}$$

15. The Commission does not have any program changes or adjustments to this collection.

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

17. The Commission will display the expiration date for this collection of information.

18. There are no other exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods.**

No statistical methods are employed.