

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See, section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter,

Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 17 2008.

**Russell L. Wright, Jr.**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart L—Georgia

■ 2. Section 52.570(c) is amended by revising the entry for "391–3–20" to read as follows:

#### § 52.570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA—APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation date
391–3–20	Enhanced inspection and Maintenance	09/26/2007	05/05/2008 [Insert citation of publication].	

\* \* \* \* \*

[FR Doc. E8–9735 Filed 5–2–08; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[CS Docket No. 00–96; FCC 08–86]

#### Carriage of Digital Television Broadcast Signals; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The actions taken in this document represent another step in the Commission's ongoing efforts to complete the transition from analog to digital television. In this document, we amend 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.

**DATES:** Effective June 4, 2008, except the amendments to 47 CFR 76.66(b)(1) and 47 CFR 76.66(d)(2)(vi), which contain new information collection requirements under the PRA and shall not be effective until the FCC publishes a document in the **Federal Register** announcing OMB approval of the effective date of these information collections.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by CS Docket No. 00–96, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

*People with Disabilities:* Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For more information on this proceeding, please contact Lyle Elder, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), or Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams on (202) 418–2918, or via the Internet at [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in CS Docket No. 00–96, FCC 08–86, adopted March 19, 2008 and released March 27, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

#### **Paperwork Reduction Act of 1995 Analysis**

This document has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA") and contains new and/or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. The Commission will publish a separate **Federal Register** at a seeking these comments. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we have assessed "the information collection burden for small business concerns with fewer than 25 employees." The Commission finds that there is unlikely to be an increased administrative burden on businesses with fewer than 25 employees. Although the Commission believes that some small business concerns with fewer than 25 employees will be impacted by the rules adopted herein, we do not believe that the requirements imposed in this document will create an information collection burden for these entities.

### **Summary of the Report and Order**

#### **I. Introduction**

1. The actions taken in this Order represent another step in the Commission's ongoing efforts to complete the transition from analog to digital television. In this Order, we amend 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. In recognition of the capacity and technological constraints faced by satellite carriers, the latter requirement will be phased-in over a four-year period. These decisions are consistent with section 338 of the Act's instructions that the Commission implement comparable, rather than identical, carriage rules between cable and direct broadcast satellite ("DBS"), and is supported by the record in this proceeding.

#### **II. Background**

2. The Communications Act of 1934, as amended (the "Act"), requires cable systems and satellite carriers to carry the signals of local commercial and noncommercial broadcast stations in their local markets. Cable systems are presumptively required to carry all local television stations in all television markets, while satellite carriers are only required to carry all television stations in a local television market if they carry one local television signal in that market under the compulsory copyright license ("carry-one, carry-all"). Commercial television stations may however, choose to be carried pursuant to voluntary retransmission consent agreements rather than by mandatory carriage. Generally, every three years commercial television stations must elect to either grant retransmission consent or pursue their mandatory carriage rights. Noncommercial ("NCE") television stations may only elect mandatory carriage (NCE stations do not have retransmission consent rights), but are nonetheless free to negotiate issues related to voluntary carriage with cable operators and satellite carriers.

#### **III. Second Report and Order**

3. The Commission's *First Report and Order and Further Notice of Proposed Rulemaking* in this proceeding adopted rules for cable carriage of digital broadcast signals pursuant to retransmission consent and mandatory carriage when a local television station

is broadcasting only a digital signal. The Commission concluded that digital-only stations are entitled to elect mandatory cable carriage. The *First Report and Order* did not make a similar determination with respect to satellite carriage, which had only recently been implemented with respect to analog signals. Instead, in the *Further Notice*, we solicited comment on how to implement digital broadcast signal carriage rules for satellite carriers.

#### **A. Digital-Only Carriage**

4. We conclude that providing digital-only stations with mandatory satellite carriage in local-into-local markets now furthers the completion of the digital transition by assuring that any station—whether a new digital station or a station that is returning its analog spectrum—will have satellite carriage rights. Section 338(a) of the Act states that satellite carriers must carry, "upon request the signals of all television broadcast stations located within that local market." This provision makes no distinction between analog and digital signals, and we find that any such distinction would be inappropriate. Furthermore, section 338(j) of the Act requires that the rules applying to satellite carriers be "comparable" to those governing cable companies in certain areas, including signal carriage. The Commission has required carriage of digital-only stations by cable operators, and a similar requirement is both appropriate and comparable for satellite carriers. This decision ensures that broadcasters and satellite subscribers can be confident of uninterrupted satellite carriage of local stations after the transition to digital broadcasting for all full-power stations that will conclude on midnight, February 17, 2009. This conclusion is particularly important for the stations that are not affiliated with the top four networks and rely on "must carry" to reach viewers who are satellite subscribers. Congress adopted the carry-one, carry-all requirements with these stations particularly in mind, and our decision in this Order ensures the continued viability of these stations as they make their transition to all digital service.

#### **B. HD Carry One, Carry All**

5. We turn next to the manner of carriage, particularly with respect to material degradation during carriage of HD signals. For the reasons described below, we conclude that satellite carriage of local stations' digital signals should conform to the nondiscrimination requirement adopted by the Commission in 2000. Therefore,

with respect to carriage of digital-only signals, we require satellite carriers to carry each station in the market in the same manner, including carriage of HD signals in HD format if any broadcaster in the same market is carried in HD.

6. The Act requires that the Commission adopt rules for DBS “comparable” to those governing cable in the areas of material degradation, signal processing, carriage, and technical capacity. In the *2000 DBS Carriage Order*, the Commission discussed this requirement at length, particularly in regard to the question of material degradation. At that time, the Commission noted that satellite compression technology was evolving rapidly, and was therefore reluctant to adopt specific technical standards for digital carriage. The Commission’s conclusion at the time was that treating all local television stations in a market in the same manner with regard to picture quality was the best way to establish regulations comparable to cable while still tailored to the unique circumstances of satellite operation. Thus, the Commission required that the signal processing, compression and encoding techniques a satellite carrier used to carry retransmission consent stations would also be used for mandatory carriage stations. *Id.* See also 47 CFR 76.66(k). We note that the comparability standard applied to cable carriage compares carriage of local stations with any other programming, whether broadcast or non-broadcast. The comparability standard for satellite compares carriage of mandatory carriage local stations to local stations carried pursuant to retransmission consent. This comparability standard for satellite carriers is also consistent with the Act’s requirement for nondiscriminatory carriage of local broadcast signals. We find that the approach taken by the Commission in 2000 remains appropriate as we approach the conclusion of the full-power digital transition. Thus, in order to provide for rules comparable to those of cable and consistent with the Commission’s 2000 approach, we will continue to require satellite carriers to carry each digital broadcast station in the market in the same manner, including carriage of HD signals in HD format if any broadcaster in the same market is carried in HD.

#### C. HD Carry-One, Carry-All Phase-In

7. We recognize that satellite carriers face unique capacity, uplink, and ground facility construction issues that must be factored into the timing of any HD “carry-one, carry-all” requirement. In recognition of the necessity for additional bandwidth to provide HD

carry-one, carry-all, DIRECTV and DISH Network have submitted a joint proposal detailing a four-year phase-in period, starting in 2009, during which markets would be progressively transitioned to HD carry-one, carry-all. This proposal is designed to provide DIRECTV and DISH Network time to address satellite capacity issues inherent in providing HD carry-one, carry-all service.

8. We find the satellite carriers’ proposal to be reasonable and technically sound. Satellite carriers have documented in the record that immediate HD carriage requirements would slow the rollout of HD markets and limit the number of markets that can be launched. The record is persuasive that subscribers would be harmed by requirements that take effect on February 18, 2009, if satellite carriers are forced to drop other programming, including broadcast stations now carried in HD pursuant to retransmission consent, in order to free capacity or if they are inhibited from adding new local-into-local markets. Therefore, because of the serious technical difficulties that we find satellite carriers face, we will permit them to “phase-in” their carriage of all HD signals on a market-by-market basis. Specifically, we conclude that by February 17, 2010, a satellite carrier must provide carriage of HD broadcast stations, in HD, in at least 15% of the markets in which they carry any station pursuant to the statutory copyright license in HD. This “HD carry-one, carry-all” requirement will apply to 30% of a satellite carrier’s HD markets no later than February 17, 2011, 60% no later than February 17, 2012, and 100% by February 17, 2013. Satellite carriers are required to carry each digital broadcast station in the market in the same manner, including carriage of HD signals in HD format if any local station in the same market is carried in HD. In addition, satellite carriers will be required to notify all local stations in a market at least 60 days prior to their launch of HD carry-one, carry-all in that market. Our decision implements the statutory requirements in light of the severe technical limitations faced by satellite carriers.

9. Comparability to cable drives the development of DBS rules, but we are conscious that comparable is not the same as identical. We believe that the comparability standard permits a reasonable phase-in period. A significant number of the comments in the record developed in response to the FNPRM advocate and emphasize the importance of comparability. Other commenters, however, caution that

rules based on cable “comparability” should not ignore the legitimate technical challenges faced by satellite carriers, which differ significantly from those faced by cable operators. We agree that there are important differences between the two services. As cable providers transition from providing analog signals to providing digital standard definition and high definition signals, they realize significant benefits in spectrum efficiency. Where a cable operator previously carried a single analog standard stream, post-transition they potentially carry ten digital standard definition streams, two high definition streams, or some combination of standard and high definition streams. In contrast, DBS service has always been transmitted as a digital signal. Consequently, satellite carriers realize a net loss in the total number of program streams they may carry in a given bandwidth as they transition from standard definition to high definition signals. Where a satellite carrier previously carried approximately four standard definition streams, it is now capable of carrying only one high definition stream. Advanced technologies such as 8PSK modulation, DVB-S2, and advances in digital compression technology, such as MPEG-4 AVC/H.264 and Windows Media Video 9, could potentially increase satellite capacity. However, these likely improvements will be unable to compensate for the inherent differences in the nature of the transition from standard to high definition programming for satellite carriers.

10. Due to the time required to design, construct, and place in service new satellite capacity, as well as the required ground facilities to receive these new digital signals and uplink them to their satellites, satellite carriers must plan capacity availability many years in advance. Currently, DISH Network is providing service using most of its licensed transponders at all of its licensed orbital locations. DIRECTV is also facing bandwidth limitations, in part due to post launch issues with satellite DIRECTV 10 and the delay of satellite DIRECTV 11’s launch. In order to meet the requirements of HD carry-one, carry-all for all markets, both DIRECTV and DISH Network assert that they will be required to launch additional satellites. DISH Network February 11, 2008, *ex parte* at 1. DISH Network asserts that it will require three additional satellites to meet its obligations. DIRECTV asserts that it will need at least one more satellite, in addition to the two already planned, to

comply with an HD carry-one, carry-all requirement and that operation in the “reverse band” (17/24 GHz) or more Ka band spectrum will be necessary. DIRECTV March 10, 2008, *ex parte* at 1 and DIRECTV February 13, 2008, *ex parte* at 1–2. DIRECTV has recently launched DIRECTV 11, which will expand its DBS capacity. DISH Network considers its next two satellites as replacements for existing satellites in its fleet, and expects little additional capacity as a result. As both parties have attested, satellite construction and launch is a lengthy process, generally taking approximately four years. Both parties have applications for satellites in the new 17/24 GHz BSS service, but these applications are currently pending and it is expected that the construction of the 17/24 GHz BSS satellites will take three years or longer.

11. Further, for satellite carriers, the capacity used for local channels is separate from the capacity used for national channels and the two are generally not interchangeable. As a result, even if a local station is not presently broadcasting in HD or is only broadcasting a minimal amount of HD programming, a satellite carrier must set aside capacity when planning new satellite construction to accommodate the possibility of future HD programming. This capacity would go unused, or lie fallow, until the stations are actually broadcasting in HD. Reservation of otherwise unused “fallow bandwidth” is particularly burdensome because a higher percentage of a satellite carrier’s capacity is dedicated to local channel carriage relative to the percentage necessary for a cable operator. Thus, while the combined bandwidth of the satellite carriers’ entire fleets are substantially larger than that of a cable provider’s plant, neither DIRECTV’s nor EchoStar’s current fleet is capable of carrying in HD all the local stations of all the local-into-local markets they currently serve.

12. The record shows that satellite carriers have legitimate capacity concerns at this time. A phased-in HD carriage requirement would not only give satellite carriers time to increase their capacity, but might also alleviate the problem of potential wasted capacity that might occur from bandwidth lying fallow. At this time, many stations, particularly those not affiliated with the top four networks, are broadcasting relatively little or no HD programming. We believe the demand for such programming will increase as more consumers purchase HD equipment spurred on by falling equipment costs and a broader choice of

available programming. With increased demand and assurance of future satellite carriage, broadcasters will be more likely to invest the funds necessary to begin HD broadcasting. A phased-in HD carriage requirement with a defined time schedule will encourage broadcasters in their HD efforts as well as help satellite carriers avoid having to reserve capacity for stations not ready to use it.

13. We adopt the phase-in schedule for satellite carriage of all HD signals in part to afford satellite carriers the time and flexibility to launch local-into-local service in more markets. They will be working on a wide array of technical issues as they develop HD carry-one, carry-all for their HD markets, and we strongly encourage them to keep nationwide service in mind as they design, develop, and plan the use of their capacity.

14. Although we do not adopt rules in this Order requiring the expansion of local-into-local service by satellite carriers, we recognize that the availability of local broadcast signals in markets unserved by satellite would constitute a significant consumer benefit. Currently 182 of 210 United States market areas have local-into-local service from at least one of the national satellite carriers. Satellite-delivered local-into-local service throughout the nation would promote competition, localism, and diversity, particularly where broadcast signals cannot be received off-air. In those areas, residents are dependent on cable—where available—for the important local news, weather, and emergency information provided by local broadcasters. Thus, expanded satellite-delivered local-into-local service in all 210 television markets would serve the public interest.

#### D. Other Issues

15. *Carriage Election.* Pursuant to the Commission’s decision in this Order, in any market in which a satellite carrier is currently offering or in the future offers local-into-local service pursuant to the statutory copyright license in 17 U.S.C. 122, it must carry digital-only stations in that market upon request. In markets currently subject to “carry-one, carry-all,” the rules pertaining to new stations will govern carriage elections for digital-only stations (whether new stations or stations that have returned their analog spectrum) and satellite carriers. We do not believe it is necessary to amend the rule concerning new stations, but we determine in this Order that a station that turns off its analog signal and returns its licensed spectrum to the Commission and commences operation in digital-only

prior to January 1, 2009, constitutes a “new station” for purposes of this rule. For markets in which local-into-local service is initiated after the release of this Order, stations and carriers should follow the rules for “new local-into-local service.” By operation of this Order, digital-only stations are entitled to request carriage.

16. In compliance with the statutory mandate in section 325 of the Act, the Commission established a regular schedule for carriage elections. In accordance with this schedule, the Act requires broadcasters to elect, by October 1, 2008, whether they wish to engage in retransmission consent negotiations with satellite carriers or request mandatory carriage for the three-year period beginning January 1, 2009. We conclude here that if a station elects must carry on October 1, 2008, for the 2009–2011 carriage cycle, satellite carriers must provide carriage of the station’s analog signal beginning (or continuing) on January 1, 2009, and concluding no earlier than the actual termination of analog service by that broadcaster. Once the station terminates analog service and begins broadcasting in digital, the carrier shall commence carriage of the station’s digital signal without any gap in carriage. To facilitate carriage and the final transition process, beginning January 1, 2009, satellite carriers must immediately commence carriage of the digital signal of stations that cease analog broadcasting prior to the February 17, 2009, statutory deadline; provided, however, that broadcasters must notify the satellite carrier(s) on or before October 1, 2008, of the date on which they anticipate termination of their analog signal if it will be earlier than February 17, 2009.

17. *Program-Related.* The Commission’s rules for satellite carriage, adopted to implement section 338(j) of the Act, include the same program-related requirements as apply to cable. We conclude that certain over-the-air digital services, such as closed-captioning information and V-chip information, are sufficiently and incontrovertibly related to the broadcaster’s primary digital video programming such that satellite carriers will be required to carry them when they carry a digital-only station (as we also require in the cable context).

18. *Signal Quality.* With respect to signal quality, because broadcast of digital signals differs from broadcast of analog signals, we must adjust the requirement for a good quality signal. In the context of cable carriage, the Commission has stated that the signal level necessary to provide a good quality digital television signal at a

cable system's principal headend is – 61 dBm. Broadcast stations must similarly deliver a good quality signal to a satellite carrier's designated local receive facility. For purposes of carriage by satellite carriers, we determine that – 61 dBm is the signal level necessary to provide a good quality digital television signal at a satellite carrier's local receive facility. This is the same digital signal quality standard that our rules require in the cable context, and is consistent with our adoption of the same analog signal level for satellite as we used for cable carriage of analog signals. The technology available to cable carriers for digital television signal reception is also available to satellite carriers, and there is nothing in the record to suggest that satellite carriers would require a different digital television signal level to obtain the reception quality necessary to carry the digital television signal. We therefore adopt this signal level.

#### IV. Procedural Matters

##### A. Final Regulatory Flexibility Act Analysis

19. As required by the Regulatory Flexibility Act of 1980 ("RFA"), the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Second Report and Order*. The FRFA, which was contained in Appendix A of the *Report and Order*, is set forth below.

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Further Notice of Proposed Rulemaking (Further NPRM)*. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

##### 1. Need for, and Objectives of, the *Report and Order*

21. This *Report and Order* adopts rules requiring 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. In recognition of the capacity and technological constraints faced by satellite carriers, the latter requirement will be phased-in over a four-year period. Our goals in adopting these rules are to facilitate the nation's transition to digital broadcast television; to ensure that satellite subscribers will

be able to experience the benefits of the digital transition by continued access to broadcast signals after the digital transition; and to ensure consistency with section 338's instructions that the Commission implement comparable, rather than identical, carriage rules between cable and DBS.

##### 2. Summary of Issues Raised by Public Comments in Response to the IRFA

###### 22. None.

##### 3. Description and Estimate of the Number of Small Entities to Which the *Report and Order* Will Apply

23. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The rules adopted herein will directly affect small television broadcast stations and small satellite carriers. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

24. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than \$13.0 million in annual receipts. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." The Commission has estimated the number of licensed commercial television stations to be 1,376. According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) have revenues of \$13.0 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission

has estimated the number of licensed noncommercial educational (NCE) television stations to be 380. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

25. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

26. *Satellite Carriers.* The term "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. As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license. Since 2007, the SBA has recognized satellite television distribution services within the broad economic census category of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. The most current Census Bureau data, however, are from the last economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in this

category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both prior categories, such a business was considered small if it had \$13.5 million or less in average annual receipts.

27. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Wired Telecommunications Carriers. However, as discussed above, we rely on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with \$13.5 million or less in annual receipts. Currently, only two operators—DirecTV and EchoStar Communications Corporation (“EchoStar”)—hold licenses to provide DBS service, which requires a great investment of capital for operation. Both currently offer subscription services and report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

28. *Fixed-Satellite Service (“FSS”).* The FSS is a radiocommunication service between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites. The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. Therefore, to the extent FSS frequencies are used to provide subscription services, FSS falls within the SBA-recognized definition of Wired Telecommunications Carriers. However, as discussed above, we rely on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with \$13.5 million or less in annual receipts. Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. Both of the DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS

frequencies to broadcast signals to subscribers. It is possible that other entities could similarly use FSS frequencies, although we are not aware of any entities that might do so.

#### 4. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements for Small Entities

29. The rules adopted by this *Report and Order* primarily impose requirements on satellite carriers, and as discussed above few if any satellite carriers qualify as small entities. They 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 require carriage of all HD signals in a market in which any station’s signals are carried in HD. The carriage election rule requires notice to satellite carriers from broadcasters, including small broadcasters, but the *Report and Order* makes no changes to the rule. The one-time requirement that broadcasters notify satellite carriers of their station’s transition date when making their carriage election is a *de minimis* additional burden on small broadcasters.

#### 5. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

30. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

31. As a result of these rules, any small satellite carriers will face additional costs if they choose to provide local-into-local service, in that these rules impose additional requirements on the provision of local-into-local service, compliance with which will require the use of more technical capability than would otherwise have been the case. We note that these costs will not be any greater for small than for large companies, and we find that these rules are necessary in order to achieve the Commission’s goals, discussed above.

32. As noted above, any additional costs borne by small broadcasters will be *de minimis*, consisting solely of additional information being provided in an existing communication. Furthermore, this additional information is designed to benefit broadcasters, by ensuring that their signals are carried without interruption after the transition. Thus, no alternative rule would be appropriate.

#### 6. Report to Congress

33. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### B. Paperwork Reduction Act of 1995 Analysis

34. The *Second Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 (“PRA”). This document contains new information collection requirements (section 76.66(b)(1), section 76.66(d)(2)(vi) and the non-rule requirement at paragraph 16 of this document) subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The information collection requirements contained in this document will be submitted to the Office of Management and Budget (“OMB”) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we have assessed “the information collection burden for small business concerns with fewer than 25 employees.” We find that there is unlikely to be an increased administrative burden on businesses with fewer than 25 employees. Although we believe that some small business concerns with fewer than 25 employees will be impacted by the rules adopted herein, we do not believe that the requirements imposed in this document will create an information collection burden for these entities.

### C. Congressional Review Act

35. The Commission will include a copy of this *Second Report and Order and Memorandum Opinion and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

### D. Additional Information

36. For more information on this *Second Report and Order*, please contact Lyle Elder, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), or Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

### V. Ordering Clauses

37. Accordingly, *It is ordered*, that, pursuant to authority found in sections 4(i), 4(j), 303(r), 325, 336, 338, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 325, 336, 338, 534, and 535, this *Second Report and Order* is hereby adopted and the Commission's Rules are hereby amended as set forth in Appendix C of this Order. Section 76.66(k) is effective June 4, 2008. 47 CFR 76.66(b)(1) and 47 CFR 76.66(d)(2)(vi) contain new information collection requirements under the PRA and shall not be effective until the FCC publishes a document in the **Federal Register** announcing OMB approval of the effective date of these information collections.

38. *It is further ordered* that a station that commences operation as digital-only after this *Second Report and Order* is effective but before January 1, 2009, either because it is licensed to broadcast only a digital signal or because it turns off its analog signal and returns its licensed spectrum to the Commission and commences operation in digital-only, constitutes a "new station" for purposes of section 76.66(d)(3) of the Commission's Rules, 47 CFR 76.66(d)(3), and may request carriage as provided in that rule.

39. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Report and Order*, *Memorandum Opinion and Order*, and *Second Further Notice of*

*Proposed Rulemaking*, including the Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

40. *It is further ordered* that the Commission shall send a copy of this *Second Report and Order and Second Further Notice of Proposed Rulemaking* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

### List of Subjects in 47 CFR Part 76

Cable television, Digital television, Multichannel video programming distributors, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

### Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 76 as follows:

### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.66 is amended by revising paragraph (b)(1), by adding paragraph (d)(2)(vi), and by revising paragraph (k) to read as follows:

#### § 76.66 Satellite broadcast signal carriage.

\* \* \* \* \*

(b) \* \* \*

(1) 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.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(vi) Satellite carriers shall 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.

\* \* \* \* \*

(k) *Material degradation.* (1) Each local television station whose signal is carried under mandatory carriage shall, to the extent technically feasible and consistent with good engineering practice, be provided with the same quality of signal processing provided to television stations electing retransmission consent, including carriage of HD signals in HD if any local station in the same market is carried in HD. A satellite carrier is permitted to use reasonable digital compression techniques in the carriage of local television stations.

(2) Satellite carriers must provide carriage of local stations' HD signals if any local station in the same market is carried in HD, pursuant to the following schedule:

(i) In at least 15% of the markets in which they carry any station pursuant to the statutory copyright license in HD by February 17, 2010;

(ii) In at least 30% of the markets in which they carry any station pursuant to the statutory copyright license in HD no later than February 17, 2011;

(iii) In at least 60% of the markets in which they carry any station pursuant to the statutory copyright license in HD no later than February 17, 2012; and

(iv) In 100% of the markets in which they carry any station pursuant to the statutory copyright license in HD by February 17, 2013.

\* \* \* \* \*

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