nonattainment area. Due to technical flaws EPA published a document in the **Federal Register** announcing these budgets inadequate on December 16, 1999 (64 FR 70332 and 64 FR 70348).

However, on February 15, 2000, EPA received the document entitled ''Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment area.'' This document included the revised transportation conformity budgets for 2007 shown below in Table 3:

TABLE 3.—2007 BUDGETS

Nonattainment area	VOC (tpsd)	NO_x (tpsd)
Severe area	9.7	23.7
Serious area	30.0	79.6

Since these budgets are more restrictive, cover a time frame longer than the post-1996 ROP plans, and are based on the attainment plan, the 2007 budgets take precedence over the 1999 budgets. Furthermore, EPA New England published a document in the **Federal Register** announcing that these budgets are adequate for use in transportation conformity determinations on June 16, 2000 (65 FR 37778). Therefore, the 2007 budgets supersede the 1999 budgets. As a result, all new and revised State Transportation Improvement Programs that require a conformity determination must conform to these 2007 budgets, not the 1999 budgets contained in the post-1996 rate of progress plan.

EPA's review of this material indicates that Connecticut has met the ROP requirements of the Act, and therefore EPA is proposing to approve the Connecticut post-1996 ROP plans that were submitted as revisions to the State's SIP on December 31, 1997 and January 7, 1998. EPA also proposes approval of minor revisions to the State's 1990 base year inventory. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

II. Proposed Action

EPA is proposing to approve the rate-of-progress SIP revision and minor revisions to the 1990 base year inventory submitted by Connecticut on December 31, 1997 and January 7, 1998 as a revision to the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone Environmental protection.

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

Dated: June 20, 2000.

Mindy S. Lubber,

Regional Administrator, EPA, New England.

[FR Doc. 00–16629 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–96; FCC 00–195]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999, which was enacted on November 29, 1999. Among other things, the act authorizes satellite carriers to add more local and national broadcast programming to their offerings and seeks to place satellite carriers on an equal footing with cable operators with respect to availability of broadcast programming. This document discusses specifically the implementation of regulations regarding the carriage of local television stations in markets where satellite carriers offer local television service to its subscribers.

DATES: Comments due July 7, 2000; reply comments are due July 28, 2000. Written comments by the public on the proposed information collections are due July 31, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before August 29, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Ben Golant at (202) 418–7111 or via internet at *bgolant@fcc.gov.* For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (''NPRM''), FCC 00–195, adopted May 31, 2000; released June 9, 2000. The full text of the Commission's NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via internet at http://www.fcc.gov/csb/

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. Section 338(a)(1) of the Communications Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''), provides that after December 31, 2001: each satellite carrier providing [television broadcast signals under the compulsory copyright licensing system] 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) [retransmission consent requirement].

2. In this NPRM, we seek comment on the appropriate rules to implement this requirement. The SHVIA authorizes satellite carriers to offer more local and national broadcast programming to their viewers and makes that programming available to subscribers who previously have been prohibited from receiving broadcast programming via satellite under the compulsory licensing provisions of the copyright law. The SHVIA generally seeks to place satellite carriers on an equal footing with cable operators regarding the provisions of local broadcast programming, and thus give consumers more competitive options in selecting a multichannel video program distributor (''MVPD''). It is the clear intent of both Congress and the Commission to provide satellite subscribers with local television service in as many markets as possible.

3. Among other things, this new legislation requires satellite carriers, by January 1, 2002, to carry upon request all local broadcast stations' signals in local markets in which the satellite carriers carry at least one broadcast station signal licensed to the subject television market pursuant to section 122 of title 17, United States Code. The SHVIA conference report added the cross-reference to section 122 to the House provision to indicate the relationship between the benefits of the statutory license and the carriage requirements imposed by this Act. Until January 1, 2002, satellite carriers are granted a royalty-free copyright license to retransmit broadcast signals on a station-by-station basis, subject to obtaining a broadcaster's retransmission consent. This transition period is intended to provide the satellite industry with time to begin providing local signals into local markets—''local-into-local'' satellite service. The applicable statutory provisions, noted in greater detail below, are found in section 1008 of the SHVIA and codified at section 338 of the Communications Act of 1934, as amended (the ''Communications Act'' or ''Act'').

II. Background

4. In 1988, Congress passed the Satellite Home Viewer Act (''1988 SHVA'') in order to provide households in unserved areas of the country with access to broadcast programming via satellite. The 1988 SHVA also reflected Congress' intent to maintain the role of local broadcasters in providing free, over-the-air television. As an amendment to the Copyright Act, the 1988 SHVA accommodated the broadcasters' interests by only allowing satellite carriers to provide broadcast programming to those satellite subscribers who were unable to obtain broadcast network programming over-the-air. Since 1988, subscribership to direct-to-home satellite service has increased markedly.

5. In the SHVIA, Congress amended the law so as to permit satellite carriers to provide the signals of local broadcast stations to subscribers residing in the broadcaster's market. After December 31, 2001, satellite carriers that provide local-into-local retransmission of broadcast stations pursuant to the statutory copyright license must ''carry upon request the signals of all television broadcast stations within that local market * * *.'' The SHVIA requires the Commission to issue rules implementing this carriage requirement within one year of the SHVIA's enactment on November 29, 1999. Congress has indicated that these requirements should be comparable to those for cable systems, specifically noting paragraphs (3) and (4) of section 614(b) and paragraphs (1) and (2) of section 615(g), presently found in the mandatory broadcast signal carriage provisions in Title VI of the Act.

6. In *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (''Broadcast Signal Carriage Order''),* the Commission implemented the broadcast signal carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''). This statute the Communications Act to provide television stations with certain carriage rights on local market cable television systems. Sections 614 and 615 of the Act contain the cable television ''must carry'' requirements for commercial and noncommercial television stations, respectively. Section

325 contains retransmission consent requirements pursuant to which cable operators may be obligated to obtain the consent of commercial broadcasters before retransmitting their signals. Within local market areas, commercial television stations may elect cable carriage under either the retransmission consent or mandatory carriage requirements. Noncommercial television stations may only opt for must carry under the Act, but may nevertheless agree to be carried on a voluntary basis.

7. There are important distinctions between cable operators and satellite carriers that are implicated in attempting to harmonize section 338 with sections 614 and 615. The first significant difference is that satellite carriers have uplink facilities that are used to receive, package, and retransmit video programming. In contrast, cable operators receive, process, and distribute video programming from a local facility called a headend. This distinction is important because many cable carriage rules, such as the carriage requirement for local noncommercial television stations, rely upon the location of the cable operator's principal headend, a facility not used by satellite carriers. Second, satellite carriers have no legal obligation to have a basic service tier. Thus, they are under no obligation to place broadcast signals on such a tier of service as cable operators are required to do under the Act. Rather, section 338(d) requires satellite carriers to position local broadcast station signals on contiguous channels. Third, a satellite carrier has a general obligation to carry all television stations in a market, if it carriers one station in that market through reliance on the statutory license, without reference to a channel capacity cap. In contrast, a cable system with more than 12 usable activated channels is required to devote no more than one-third of the aggregate number of usable activated channels to local commercial television stations that may elect mandatory carriage rights. A cable system is also obligated to carry a certain number of qualified noncommercial educational television stations above the one-third cap. Fourth, satellite carriers provide a national service and need not have a franchise from local or state authorities to serve subscribers with any type of television signal nor do they have local access channel requirements. Cable operators, on the other hand, serve local franchise areas under franchise agreements with either local, county, or state authorities. Local franchise authorities often impose technical and system build-out requirements, as well as public, educational, and government access channel requirements, on cable operators. Finally, we note that 82% of all multichannel video programming distributor subscribers receive their video programming from a local franchised cable operator, while the satellite industry represents less than 15% of all MVPD subscribers. We will take into account these differences between the two industries in order to sensibly implement the requirements of section 338.

8. Direct broadcast satellite (''DBS'') operators use satellites to transmit video programming to subscribers, who must buy or rent a small parabolic ''dish'' antenna and pay a subscription fee to receive the programming service. To obtain local television signals for local distribution, DBS companies may receive the signals over-the-air or have voluntary arrangements with local stations to deliver their signals via fiber-optic cables to a local telecommunications carrier's facilities. At a certain point designated by the satellite carrier, all of the broadcast signals are digitally encoded and multiplexed together. The packet of digitized television signals are then sent, using a high capacity (DS3) line, to the satellite carriers' programming facility, or group of facilities, where they are uplinked to the appropriate satellite and then retransmitted back to subscribers' dishes in the relevant stations' market of origin.

9. The home satellite dish industry, also known as HSD or C-Band, is another type of satellite carrier subject to the SHVIA and its related provisions. C-Band subscribers use a much larger dish, some seven to ten feet in diameter, to receive video programming than that equipment used for reception by DBS subscribers. C-Band subscribers are often located in rural areas that are unserved by cable operators.

III. Satellite Broadcast Signal Carriage

A. Carriage Obligations and Definitions

10. The SHVIA has accorded satellite carriers the right to retransmit local television stations without first obtaining retransmission consent, and without a mandatory carriage obligation, for a six month period from November 29, 1999 to May 28, 2000. Beginning on May 29, 2000 and continuing until December 31, 2001, carriage of broadcast television stations by satellite carriers is a station-by-station basis pursuant to retransmission consent agreement between the station and the satellite carrier. On January 1, 2002, pursuant to section 338(a)(1) of the Act: Subject to the limitations of paragraph (2) [remedies for failure to carry], 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 located market, subject to section 325(b). This provision gives satellite carriers a choice. If satellite carriers provide their subscribers with the signals of local television stations through reliance on the statutory copyrights license, they will have the obligations to carry all of the television signals in that particular market that request carriage. If satellite carriers provide local television signals pursuant to private copyright arrangements, the section 338 carriage obligations do not apply.

11. In order to effectuate section 338, it is necessary to determine what constitutes a request for carriage, adopt procedural guidelines regarding the manner in which a broadcaster communicates its request for carriage, and set out guidelines for the satellite carrier to commence carriage. In this context, we seek comment on the meaning of the phrase ''carry upon request.'' In the cable context, the Commission initially required the cable operator to contact all local broadcast television stations, in writing, on matters relating to their carriage rights. We ask whether we should establish a similar requirement, so that satellite carriers must notify all local broadcast television stations, in writing, of their carriage rights once any local station in a particular market is being carried. We note that broadcast television stations requesting carriage must do so in writing—cable marriage of local broadcast television stations requesting mandatory carriage then commences on a specified date when the request is part of the periodic election process. We ask whether we should adopt similar procedural rules in the satellite carriage context. We also ask whether we should adopt separate procedural rules for the carriage of noncommercial educational television stations to mirror the cable carriage requirements. In addition, we ask whether the Commission should establish separate procedures to cover new broadcast stations that may commence operation in a market or for new satellite carriers similar to those established for cable carriage. Finally, we seek comment on how the section 338 mandate will work with the revised

section 325 provision regarding satellite carriers and retransmission consent.

12. Section 338 contains several definitions that provide the framework for the satellite broadcast signal carriage paradigm. While these definitions are generally self effectuating, such as the meaning of ''satellite carrier,'' ''secondary transmission,'' and ''subscriber,'' two provision require further explication to understand the scope of the satellite carriage obligation. These two provisions are as follows:

Television Broadcast Station. Section 338(h)(7) defines the term, television broadcast station, as having the meaning given such term in section 325(b)(7). Section 325(b)(7) defines television broadcast station, as an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator station. We seek comment on the scope of the definition. We first note that, unlike cable operators, satellite carriers have no obligation to carry low power television stations in any instance. We also note that, unlike cable operators, satellite carriers are not required to carry noncommercial educational translator stations with five watts or higher power. We seek comment on these apparent differences and what impact they have on a satellite carrier's carriage responsibilities under section 338. A question also remains about whether satellite carriers must carry ''satellite television stations'' as cable operators are required to do. We believe that since television stations are not specifically excluded by section 338(h)(7), satellite carriers have an obligation to carry these entities if they carry other local market television stations. We seek comment on this interpretation. Finally, we ask if there are any other significant differences between the satellite carriage and cable carriage definitional requirements that affect this proceeding.

Distributor. Section 338(h)(1) of the Communications Act defines the term, distributor, as an ''entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.'' We note that the term distributor is not found in any other provision of section 338, other than the definitional subsection. Given this omission, which may or may not have been purposeful, we seek comment on the definition of distributor and its relevance in this context.

B. Market Definitions

13. Section 338(h)(3) defines the term, local market, as having the meaning it has under section 122(j) of title 17, United States Code. Section 122(j)(2)(A) defines the term, local market, in the case of both commercial and noncommercial television broadcast stations, to mean the designated market area in which a station is located, and (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station. In addition to the area described in subparagraph (A), a station's local market includes the county in which the station's community of license is located. Section 122(j)(2)(C) defines the term, designated market area to mean the market area as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.

14. At the outset, we inquire as to why subsections (i) and (ii) were added to the overall section. It appears that they clarify that the local market includes a geographic area and all broadcast stations licensed or located within that designated area. We seek comment on this view of subsections (i) and (ii). We also seek comment on when to change the reference to the 1999–2000 Nielsen publications to reflect changes in market structure and market conditions. We note, in the cable context, that the rules account for a market update every three years. We ask whether the rules we implement under this section should be updated on a triennial basis, at another interval (*e.g.,* every year, every five years, etc.) or not at all. We also note that the cable industry is required to use the 1997–98 Nielsen publications to determine local markets for broadcast signal carriage purposes up until January 1, 2003, yet satellite carriers are obliged to use the 1999–2000 Nielsen publications for carriage purposes. We ask whether satellite carriers and cable operators should be required to use the same annual Nielsen market publications so that both may rely on the same market definition, and thus have virtually the same carriage obligations.

15. It is important to note that a regulatory mechanism exists to expand or contract the size of a local television market for cable broadcast signal carriage purposes. Pursuant to section 614(h)(1)(C), at the request of either a broadcaster or a cable operator, the Commission may, with respect to a particular commercial television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of the Act's mandatory carriage provisions. In considering market modification requests, the Act provides that the Commission shall afford particular attention, ''to the value of localism'' by taking into account such factors as (1) whether the station, or other stations located in the same are, have been historically carried on the cable system or systems within such community; (2) whether the television station provides coverage or other local service to such community; (3) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and (4) evidence of viewing patterns in cable and non-cable households within the areas served by the cable system or systems in such community. The Commission's inclusion of additional communities within a station's market imposes new carriage requirements on cable operators subject to the modification request while the grant to exclude communities from a station's market relieves a cable operator from its obligation to carry a certain station's television signal.

16. No such statutory mechanism exists for satellite broadcast signal carriage purposes in section 338. As a result, different carriage patterns may emerge between cable operators and satellite carriers in certain markets because a cable operator may be carrying stations that have expanded their market area while not carrying others because those stations were deleted from the relevant market area. We seek comment on whether the Commission has the authority to implement a market modification mechanism similar to section 614(h) in order to provide satellite carriers and broadcast stations the ability to modify markets for satellite carriage purposes. If so, should we use the same procedural

and evidentiary standards used for cable market modifications? Alternatively, should the Commission's previously granted market modifications be applicable to satellite carriers in the affected market areas? We seek comment on whether Commission action in this area may further the Congressional goal of harmonizing the carriage obligations between cable operators and satellite carriers.

C. Broadcast Station Delivery of a Good Quality Signal

17. Section 338(b)(1) states that, ''A television broadcast station asserting is right to carriage under subsection (a) shall be 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.'' A host of novel technical and definitional questions arise under this particular provision.

18. We first seek comment on the term ''local receive facility.'' Section 338(h)(2) defines the term local receive facility as ''the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.'' There are a variety of possible technical configurations that a satellite carrier might use the receive, uplink, and distribute local market broadcast signals. Direct broadcast satellite operators, such as DirectTV and Echostar, generally appear to have one central uplink facility in the center of the country that relays content from the ground to the satellites involved. Broadcast signals from broadcast markets across the country need to be delivered to this facility. This could be accomplished using either a satellite or a terrestrial relay. It appears likely that the most economically feasible means would be to aggregate the signals in each local market at one point and deliver them over the facilities of an interstate telecommunications carrier to the uplink site(s). If this is correct, the ''local receive facility'' would be co-located at suitable carrier's switching center or ''point-of-presence.'' We seek comment on whether such a facility should be considered the ''local receive facility'' for purpose of section 338. We note that local receive facilities could also resemble, in a technical sense, a cable operator's headend, because that is where signals are received and processed. We seek comment on the parameters under which a satellite carrier may construct and designate such a facility. Aside from the above stated options, we also seek comment on other reception points a satellite carrier can consider to satisfy the provision's requirements. Finally, we seek comment on the procedures by which a satellite carrier must inform local market television stations of the location of the receive facility.

19. In addition, we seek comment on the meaning of the statutory phrase, ''to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.'' We read the statute to mean that a satellite carrier may establish a regional receive facility as long as one-half of broadcasters agree to that location. For example, a satellite carrier may establish a receive facility for all of New England, which encompasses several DMAs, as long as 50% of the relevant broadcasters agree on the location. We seek comment on this interpretation. We also inquire about the process by which broadcast television stations agree to the establishment and location of another facility. What did Congress intend when it included the term ''acceptable?'' What happens with those broadcast stations that do not agree to the location of the other facility? Who should pay to transmit the broadcast signals to such a facility? May the stations in the minority file a complaint with the Commission concerning the location of such a facility?

20. We also inquire about what constitutes a ''good quality signal'' as the term is used in section 338. Under the current cable carriage regime, television broadcast stations must deliver either a signal level of −45dBm for UHF signals or −49dBm for VHF signals at the input terminals of the signal processing equipment, to be considered eligible for carriage. We note that a broadcaster that does not provide a good quality signal to a cable system headend is not qualified for carriage. In this situation, a cable system is under no obligation to carry such a signal, but the broadcaster has an opportunity to provide equipment necessary to improve its signal to the requisite level and gain carriage rights. We seek comment on whether Congress intended the same result for broadcasters that do not provide a good quality signal to the local satellite receive facility. We also seek comment on whether the signal quality parameters under section 614 and the Commission's cable regulations are appropriate in the satellite carriage context.

21. With respect to the manner of testing for a good quality signal, we note that the Commission has adopted a method for measuring signal strength in the cable carriage context. Generally, if a test measuring signal strength results in an initial reading of less than −51 dBm for a UHF station, at least four readings must be taken over a two-hour period. If the initial readings are between −51 dBm and − dBm, inclusive, readings must be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results. For a VHF station, if the initial readings are less than −55 dBm, at least four readings must be taken over a two-hour period. Where the initial readings are between −55 dBm and −49 dBm, inclusive, readings should be taken over a 24-hour period, with measurements no more than four hours apart to establish reliable test results. The Commission stated that cable operators are further expected to employ sound engineering measurement practices; thus, signal strength surveys should, at a minimum, include the following: (1) Specific make and model number of the equipment used, as well as its age and most recent date(s) of calibration; (2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; (3) height of the antenna above ground level and whether the antenna was properly oriented; and (4) weather conditions and time of day when the test were done. We seek comment on whether we should require the same signal testing practices for measuring a broadcaster's signal strength in the satellite context.

22. We also seek comment on the cost of delivering a good quality signal. Under the mandatory cable carriage provisions of section 614, television stations are ''required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.'' The Commission has stated that such costs may be for ''improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements, especially if the cable system's over-the-air reception equipment is already in place and is otherwise operating properly.'' We seek comment on which of these cost elements in the cable context are applicable in the satellite context. Are there any additional costs, in a section 338 setting, that are not mentioned above?

D. Duplicating Signals

23. Section 338(c)(1) states that: Notwithstanding subsection (a), a satellite carrier shall not be required to carry upon request the signal of any

local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different states.

24. Section 614(b)(5) similarly provides that a cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network. The Commission has decided that, based on the legislative history of this section, two stations ''substantially duplicate'' each other ''if they simultaneously broadcast identical programming for more than 50 percent of the broadcast week.'' For purposes of this definition, identical programming means the identical episode of the same program series. The Commission noted that its interpretation was consistent with the 1992 Cable Act's legislative history that indicates that this phrase refers to the ''simultaneous transmission of identical programming on two stations'' and which ''constitutes a majority of the programming on each station.'' We seek comment on whether we should apply the Commission's determination of what constitutes ''substantial duplication'' under Title VI to this section of the SHVIA.

25. We seek comment on the phrase, ''affiliated with a particular television network.'' In this situation, we ask what definition of ''television network'' applies under this provision because that term is not specifically defined in section 338. We note that section 339(d) includes a definition of television network for purposes of satellite carriage of distant signals: ''The term 'television network' means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.'' We ask whether we should implement the section 339(d) definition for the purposes of administering the duplication provision at issue here. Are there any alternative definitions that we should consider?

26. We also inquire about the application of the statutory phrase, ''unless such stations are licensed to communities in different states.'' Congress stated that this phrase addresses unique and limited cases, including such station pairs as WMUR (Manchester, New Hampshire) and WCVB (Boston, Massachusetts) in the Boston DMA (both ABC affiliates) as well as WPTZ (Plattsburg, New York) and WNNE (White River Junction, Vermont) in the Burlington-Plattsburgh DMA (both NBC affilates), in which mandatory carriage of both duplicating local stations upon request assures that satellite subscribers will not be precluded from receiving the network affiliate that is licensed to a community in the state in which they reside. We seek comment on whether there are other similar situations that must be addressed as we proceed with adopting rules here. In addition, we seek comment on whether there are other regulatory issues that may arise in this situation.

27. Section 338(c)(2) states that: The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulation shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under section 615. Section 615(l)(1), in turn, provides that a local noncommercial educational television (''NCE'') station qualifies for cable carriage rights if it is licensed by the Commission as an NCE station and if it is owned and operated by a public agency, nonprofit foundation, or corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting. An NCE station is also considered qualified if it is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes. For purposes of cable carriage, an NCE station is considered local if its community of license is within 50 miles of, or the station places a Grade B contour over, the principal headend of the cable system. Cable systems are obliged to carry local noncommercial educational television stations under a statutory paradigm based upon a cable system's number of usable activated channels. Cable systems with: (1) 12 or fewer usable activated channels are required to carry the signal of one qualified local noncommercial educational station: (2) 13–36 usable activated channels are required to carry no more than three qualified local noncommercial educational stations; and (3) more than 36 usable activated channels shall carry at least three qualified local noncommercial educational stations. At the outset, we seek comment on whether this approach is applicable in the satellite context.

28. A cable operator with cable system capacity of more than 36 usable activated channels, and carrying the signals of three qualified NCE stations, is not required to carry the signals of additional stations the programming of which substantially duplicates the programming broadcast by another qualified NCE station requesting carriage. The Act states that substantial duplication was to be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services. The Commission concluded that an NCE station does not substantially duplicate the programming of another NCE station if at least 50 percent of its typical weekly programming is distinct from programming on the other station either during prime time or during hours other than prime time. We first seek comment on whether Congress, in drafting section 338(c)(2) meant for the Commission to focus solely on the substantial duplication language of section 615 to limit satellite carriage of NCE stations or whether it intended the Commission to prescribe other means to limit such carriage. If Congress meant for the Commission to concentrate on duplication, we ask whether we should apply the definition set forth in the cable carriage context or whether we should devise a new definition for satellite carriage purposes. If we are to develop additional carriage limitations, we ask what other rules should the Commission adopt to more narrowly tailor an NCE satellite carriage requirement to make it comparable to the NCE carriage obligations imposed on cable operators.

E. Channel Positioning

29. Section 338(d) of the Communications Act states that: No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-

screen program guide, or menu. The Conference Report notes that the obligation to carry local stations on contiguous channels is to ensure that satellite carriers position local stations in a way that is convenient and practically accessible for consumers. The statutory directive for channel positioning clearly states that satellite carriers are required to present local broadcast channels to satellite subscribers in an uninterrupted series. We seek comment, however, on whether broadcast signals carried under retransmission consent must be contiguous with the television stations carried under section 338 or whether they may be presented to satellite subscribers in a non-contiguous manner.

30. We also seek comment on the phrase, ''provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.'' We specifically seek comment on what rules the Commission should develop to ensure that television stations are accessible to satellite subscribers on nondiscriminatory terms. We ask whether there are any existing Commission rules that we may use as a model to develop regulations for this particular situation. We ask whether Congress meant that television station signals carried pursuant to mandatory carriage requests may cost no more per channel to subscribers than packages of retransmission consent television station signals or other satellite service packages. We seek comment on whether Congress meant that electronic program guide information concerning required television station signals should be presented to subscribers in the same fashion as other programming services provided by the satellite carrier.

F. Content To Be Carried

31. Section 338(g) states that, ''The regulations prescribed [under section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under section 614(b)(3) * * * and 615(g)(1).'' Section 614(b)(3) states that: A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other nonprogram-related material (including teletext and other subscription and advertiser supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

32. Section 615(g)(1), which is the noncommercial equivalent of the commercial television station provision in section 614(b)(3), states that: A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extend technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or educational or language purposes. Retransmission of other material in the vertical blanking interval [''VBI''] or on subcarriers shall be within the discretion of the cable operator.

33. We seek comment on the applicability of these requirements in the satellite carriage context, especially in light of the terms ''comparable'' contained in section 338(g), above. We recognize that the Commission has not specifically defined ''primary video'' in the rules and has instead relied on the language of section 614(b)(3)(B) to clarify the scope of the term for purposes of cable broadcast signal carriage. In view of this history, we seek comment on whether a specific definition of primary video is required for satellite carriers to fulfill the requirements contained in section 338.

34. In the *Broadcast Signal Carriage Order,* the Commission decided that the factors enumerated in *WGN Continental Broadcasting, Co.* v. *United Video Inc.* (''WGN'') provided useful guidance for what constitutes program-related material. The WGN case addressed the extent to which the copyright on a television program also included program material in the VBI of the signal. The WGN court set out three factors for making a copyright determination. First, the broadcaster must intend for the information in the VBI to be seen by the same viewers who are watching the video signal. Second, the VBI information must be an integral part of the program. The court in WGN held that if the information in the VBI is intended to be seen by the viewers who are watching the video signal, during the same interval of time as the video signal, and as an integral part of the program on the video signal, then the VBI and the video signal are one copyrighted expression and must both be carried if one is to be carried. We seek comment on whether the WGN program-related analysis applies in the context of satellite broadcast signal carriage.

35. With regard to the ''technical feasibility'' of the carriage of program-related material in the VBI or on subcarriers, the Commission stated in the *Broadcast Signal Carrier Order* that such carriage should be considered ''technically feasible'' if it does not require the cable operator to incur additional expenses and to change or add equipment in order to carry such material. The Commission noted that it would consider signal carriage to be ''technically feasible'' if only nominal costs, additions or changes of equipment are necessary. We seek comment on whether the consideration of technical feasibility should be different in the context of satellite broadcast signal carriage.

36. Finally, we note that satellite carriers are required to pass through closed captions regardless of the particular arrangements by which the broadcast station is carrier. Section 79.1 of the Commission's rules, adopted to implement section 713 of the Act, requires that all video programming distributors, as defined in § 79.1(a)(2) of the Commission's rules, shall deliver all programming received from the video programming owner or other origination source containing closed captioning to receiving television households with the original closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards of § 15.119 of the Commission's rules. We take this opportunity to ask whether satellite carriers have, or will have, any difficulties in passing through closed captioning information to its subscribers. If so, wee seek comment on what measures the Commission should take to ensure that captioning information reaches its intended audience.

G. Material Degradation

37. Section 338(g) states that, ''The regulations prescribed [by the Commission under section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(4) * * * and 615(g)(2).'' Section 614(b)(4)(A) states that, ''The signals of local commercial television stations that a cable operator carriers shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage

provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.'' Section 615(g)(2), which is the noncommercial equivalent of the commercial television station provision in section 614(b)(4), states that, ''A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided in commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommerical educational television station without material degradation.''

38. The Conference Report noted that because of unique technical challenges on satellite technology and constraints on the use of satellite spectrum, satellite carriers may initially be limited in their ability to deliver must carry signals into multiple markets. According to the Conference Report: ''New compression technologies, such as video streaming, may help overcome these barriers, and if deployed, could enable satellite carriers to deliver must carry signals into many more markets than they could otherwise.'' The Commission is urged, pursuant to its obligations under section 338, or in any other related proceedings, ''to not prohibit satellite carriers from using reasonable compression, reformatting, or similar technologies to meet their carriage obligations, consistent with existing authority.''

39. When implementing the material degradation provision for cable carriage, the Commission relied on the technical standards as updated in the *Cable Technical Report and Order,* in defining the scope of the requirement. The *Cable Technical Report and Order* specifically addressed the issue of preventing material degradation of local television signals carried on cable systems by adopting a number of technical standards and providing that cable operators must make reasonable efforts and use good engineering practices and proper equipment to guard against unnecessary degradation in the signal received and delivered to the cable subscriber. The Commission stated that the standards adopted in the *Cable Technical Report and Order* were sufficient to satisfy the material degradation requirements contained in the 1992 Cable Act. In declining to adopt regulations in addition to those found in the *Cable Technical Report and Order,* the Commission stated that further rules may have the unwarranted effect of impeding technological advances and experimentation in the cable industry. Standards specific to digital communications were not adopted. Given the technological differences between cable operators and satellite carriers, we seek comment on whether reliance on Commission precedent in the cable carriage context regarding material degradation is appropriate and whether technical standards mirroring those in the cable television field would be warranted. We seek comment on whether we should develop new rules for satellite carriers, and if so what such rules should be, consistent with the Congressional direction on digital compression and taking into account the unique technical aspects of satellite carriage of broadcast signals.

40. It is important to note that our concerns here revolve around the satellite carrier's treatment of the broadcast signal on the equipment it controls or authorizes. Thus, our focus does not involve picture quality issues that may arise because of the type of television receiver used since the satellite carrier has little control over the use of these devices. Moreover, our analysis of material degradation recognizes that dish placement on or near the subscriber's premises can affect the quality of the picture received, but that the satellite carrier cannot control how and where dishes are installed.

41. We understand that satellite carriers use a different modulation system from cable operators—quadrature phase-shift keying or ''QPSK''—as the principal format when transmitting video programming. Thus, it is important to note at this juncture, the technical steps in the digital conversion process affecting the material degradation analysis. In satellite digital television systems, such as those implemented by DirecTV and Echostar, there are four layers of the systems where video quality may be affected. The first layer, known as the picture layer, is where decisions are made regarding the use of progressive or interlace scanning techniques as well as whether the picture will be produced in a standard definition or high definition format. The choices made in this layer will not likely affect the quality of retransmitted analog broadcasts. In the second layer, the compression layer, decisions are made regarding the types of compression techniques used. The relevant digital standard, MPEG–2, supports a wide range of compression ratios and data rates. At this layer, the satellite carrier attempts to maximize the number of channels carried on each transponder and there is an effort to place a limit on the maximum data rate of each channel. Limiting the data rate may cause the picture quality to degrade, especially when certain video scenes involve rapid motion images or there is a greater degree of camera panning and zooming. The third layer is known as the transport layer and this is where the data are structured and organized into data packets. Since most digital video systems use the MPEG packet structure, there is little likelihood that any type of degradation would occur at this level. The final layer is the transmission layer and this is where data are modulated on to a carrier for transmission. The use of high efficiency modulation techniques, such as the cable industry's QAM standard, permit greater data rate throughput. QPSK, however, is a lower order modulation and requires satellite carriers to limit the data rate or increase channel bandwidth. The chances for degradation to occur at this level are tied to the limiting data rate technique in the compression layer.

42. We specifically note that degradation may result when the satellite carrier encodes an analog broadcast signal and readies it for digital retransmission. During the encoding process, certain artifacts may be introduced into the original material that would have an effect on picture quality. The most dominant artifact is quantization noise in the picture. This effect is often visible on edges of subjects and textured areas of the image. It is caused when there is a high amount of picture detail along with a high degree of picture activity and levels of quantization are restricted due to data rate reduction. Random noise can also be introduced into the source video. This can result in activity or ''busyness'' in detail areas of the picture and tiling or flicker in other areas of the picture. Such effects are caused by the encoder attempting to encode random noise. During the encoding process, data rate reduction in combination with rapid picture changes may result in another artifact known as the ''dirty window,'' where noise appears stationary while the images behind it are moving.

43. Understanding that satellite carriers use the technical process described above in retransmitting analog broadcast signals, and keeping in mind Congress's express statement that any reasonable type of digital compression technique is permissible, we seek comment on how to define material degradation for purposes of section 338. The focus of our concern in this context is where the satellite carrier has made a conscious decision to increase the number of channels carried to the detriment of picture quality. Thus, we

seek comment on how to define the term ''material,'' but in the context of a deliberate action on the part of the satellite carrier. For example, when a broadcast television station freezes, ''tiles'' or looks ''dirty'' due to a satellite carrier's choice of encoding and compression techniques, should that be considered ''material'' or ''immaterial'' degradation? We also seek comment on whether there are certain compression ratios or encoding techniques that should be prohibited because their use would result in material degradation.

44. Aside from the matters discussed above, questions arise as to what standards and measurement techniques the Commission should employ where specific broadcast signal quality disputes arise. In the cable carriage context, where an operator carries the broadcaster's analog television signal, issues such as signal to noise ratios and ghosting have been the focus of concern. In the satellite carriage situation, where an analog broadcast signal is digitally transmitted by a satellite carrier, picture resolution is still important but bit error rates and data throughput are also relevant. Moreover, the technical standards that are employed to evaluate cable analog picture quality were adopted and refined over the course of many decades, yet the Commission has had relatively little experience in evaluating the analog to digital to analog conversion of the type involved in satellite broadcast signal carriage. We seek suggestions for measurement standards that may be used in addressing signal degradation issues.

45. We also have questions concerning the phrase ''similar technologies to meet their carriage obligations'' as it is found in this section's legislative history. We first ask what is meant by the term ''similar technologies.'' Are there any limits as to the kind of technologies a satellite carrier may use to fulfill its statutory mandates under section 338? We specifically seek comment on whether the phrase encompasses ''spot beaming,'' where a satellite carrier delivers programming to a discrete geographical location using a specialized satellite. If so, what are the implications for using such technology in the satellite broadcast signal carriage context.

H. Digital Television

46. Section 338(g) states: ''The regulations prescribed [by the Commission under Section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(4) * * *.'' Section 614(b)(4)(B) of the Act provides: ''At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.'' The Conference Report stated: ''By directing the FCC to promulgate these must carry rules [found in section 338], the conferees do not take any position regarding the application of must-carry rules to carriage of digital television signals by either cable or satellite systems.''

47. The Commission has adopted rules establishing a transitional process for the conversion from an analog to a digital form of broadcast transmission. The rules allow each existing analog television licensee or each eligible permittee to construct or operate digital facilities with a roughly comparable service area using 6 MHz of spectrum, in addition to the 6 MHz of spectrum used for analog broadcasting. The broadcast station will transmit a signal consistent with the standards adopted in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,* Fourth Report and Order in MM Docket No. 87–268, giving it the flexibility to broadcast in a high definition mode, in a multiple program standard definition mode, in a datacasting mode, or a mixture of all three. During the transition period, both the analog and digital television signals will be broadcast. At the end of the transition which is scheduled for the year 2006, with certain statutory exceptions, the station is to cease broadcasting an analog signal and will return to the government 6 MHz of spectrum.

48. The rules governing the transition from analog to digital broadcasting are found in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,* Fifth Report and Order in MM Docket 87–268 (''Fifth Report and Order''). The *Fifth Report and Order* set forth a phased-in implementation schedule for the introduction of digital broadcast television. Construction requirements vary depending on the size of the television market and other factors.

49. In July 1998, the Commission commenced a proceeding to determine the carriage obligations cable operators should have with regard to a broadcast station's digital television signal during the transition period to digital television. We sought comment on that proceeding on how to accomplish the Congressional goals reflected in Sections 614, 615, and 325 of the Act in light of the significant changes to the relevant industries resulting from the conversion to digital operations. The thrust of the proceeding was to examine the timing and scope of digital broadcast signal carriage obligations for cable operators. The Commission proposed seven carriage options for the transition period ranging from an immediate dual carriage regime, where a cable operator would carry both the analog and digital signals at the same time, to the no carriage options, where a cable operator would be under no obligation to carry the station's digital signal until after the transition period has ended.

50. When this proceeding was initiated, there was no satellite broadcast signal carriage requirement, and satellite carriers apparently did not find it necessary to comment on the issues addressed in that proceeding. Thus, we seek comment on whether satellite carriers should be required to carry digital broadcast television signals in addition to analog broadcast signals up until the time that television stations return their analog spectrum to the government. What are the costs and benefits of such a requirement? In what ways would a dual carriage rule limit the number of markets satellite carriers can serve with analog broadcast signals alone? Moreover, would satellite carriers have to drop existing non-broadcast programming to accommodate digital television signals? To what extent should any digital carriage requirements for satellite carriers be consistent with those for cable operations?

I. Compensation for Carriage

51. Section 338(e) states: ''A satellite carrier shall accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.'' We will consider the costs associated with delivering a good quality signal as part of our consideration of the several related local receive facility issues, discussed above. This provision largely parallels provisions applicable to cable operators that are found in sections 614(b)(10) and 615(i) of the Act that are implemented in § 76.60 of the

Commission's rules. In the cable context, commercial broadcasters elect either must carry or retransmission consent to obtain carriage of their signals. If mandatory carriage is selected, there are no specific terms for carriage that must be requested, other than choosing the relevant channel positioning options available to broadcasters under the Act. If retransmission consent is selected, the operator may receive compensation from the broadcaster in exchange for carriage. We assume the same general policy is intended here and that a broadcaster seeking carriage rather than requesting carriage ''in fulfillment of the requirements of [section 338]'' would simply negotiate carriage provisions, including payment terms, in the context of a retransmission consent negotiation. We seek comment on this interpretation. We also seek comment on the policy underlying this provision and its purpose in the statutory scheme.

J. Remedies

52. Section 338(a)(2) states that the remedies for any failure to meet the obligations under subsection (a) (carriage obligations) shall be available exclusively under section 501(f) of title 17, United States Code. New section 501(f)(1) states: ''With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.'' New section 501(f)(2) further provides: ''A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934.'' As it appears that the Commission is not the statutory venue to remedy non-carriage of broadcast station signals by satellite carriers, we believe that there is not need for us to implement Section 338(a)(2). We seek comment on this view.

53. Section 338(f)(1) of the Communications Act states: ''Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under subsections (b) through (e) of this section [(b) good signal required, (c) duplication not required, (d) channel positioning, and (e) compensation for carriage], 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. The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or sate its reasons for believing that it is in compliance with such obligations. 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. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.'' In addition, section 338(f)(2) states: ''The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

54. Section 338(f)(3) of the Communications Act states: ''Within 120 days after the date a complain is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e). If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to make appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint.'' We seek comment on the meaning of the phrase, ''appropriate remedial action'' for each of the relevant subsections. We also ask whether the payment of forfeitures for non-compliance would fall under the ''appropriate remedial action'' rubric.

55. These provisions clearly state the remedial procedures for satellite carrier violations of section 338, with subsection 338(a) providing a remedy for failure to carry and subsection 338(f) providing specific remedies for unique carriage violations. We seek comment on two additional issues, however. First, we seek comment on how the section 501(f) remedial limitation in section 338(a)(2) relates to the complaint process set forth in section 338(f). For example, if a satellite carrier refuses to carry a broadcast station signal because of a signal quality dispute, would the broadcaster pursue its remedy in court, at the Commission, or would both fora be available? In addition, it appears that a broadcaster cannot file a complaint against a satellite carrier for non-compliance with the content-to-be-carried or material degradation provisions as the SHVIA specifically referenced those issues in section 338(g) rather than in (b) through (e), as provided in section 338(f). We seek comment on this interpretation. If this is the correct reading of the statute, should the Commission nonetheless include those issues as subject to the complaint process under its general authority to administer the Communications Act?

IV. Procedural Matters

A. Ex Parte Rules

This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but disclose'' requirements under § 1.1206(b) of the Commission's rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commissions rules.

B. Filing of Comments and Reply Comments

56. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's rules, interested parties may file comments regarding this NPRM on or before July 7, 2000 and reply comments on or before July 28, 2000. Comments may be filed using the Commission'e Electronic Comment Filing System (''ECFS'') or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters

should include their full name, Postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form your e-mail address.'' A sample form and directions will be sent in reply.

57. Written comments by the public on the proposed information collections are due July 31, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before August 29, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

58. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filing must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The Cable Services Bureau contact for this proceeding is Ben Golant at (202) 418–7111, TTY (202) 418–7172, or at bgolant@fcc.gov.

59. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Ben Golant, Cable Services Bureau, 445 12th Street NW, Room 4–A803, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''ready only'' mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case, CS Docket No. 00–96), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036.

C. Paperwork Reduction Act Statement and Initial Regulatory Flexibility Act Statement

60. This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB notification of action is due August 29, 2000. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues.

Type of Review: New collection or revision of existing collection.

Respondents: Business or other for-profit entities.

Number of Respondents: Satellite carriers—xxxx.

Estimated Time Per Response: xxxx hours.

Total Annual Burden: xxxx.

Cost to Respondents: xxxx.

Needs and Uses: Congress directed the Commission to adopt regulations that apply broadcast signal carriage requirements to satellite carriers pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. The availability of such information will serve the purpose of informing the public of the method of broadcast signal carriage.

Initial Regulatory Flexibility Analysis

a. As required by the Regulatory Flexibility Act (''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the possible policies and rules that would result from the NPRM of Proposed Rulemaking (''NPRM'') Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy on of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register.**

b. *Need for, and Objectives of, the Proposed Rules* Sections 38(g) of the Communications Act of 1934, as amended (''Act''), directed the Commission, within one year of enactment of the Satellite Home Viewer Improvement Act of 1999, to ''issue regulations implementing this section following a rulemaking proceeding.'' The relevant provisions concern the carriage of all local television broadcast station signals by satellite carriers commencing on January 1, 2002.

c. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 338,614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 338, 534, and 535.

d. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The IRFA 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 proposed rules. The IFRA 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 we will adopt as a result of the NPRM will affect television station licensees and satellite carriers.

e. *Television Stations.* The proposed rules and policies will apply to television broadcasting licenses, and potential licensees of television service. The Small Business Administration

defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program material are classified under another SIC number.

f. 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 estimates that follow of small businesses to which rules may apply to not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. As additional element of the definition of ''small business'' is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which rules may apply may be over-exclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.Thus, the new rules will affect approximately 1,616 television stations; approximately 77% per 1,230 of those stations are considered small business. These estimates may overstate the number of small entities since the revenue figures on which they are based on not include or aggregate revenues from non-television affiliated companies.

g. *Small MVPDs:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below service individually to provide a more precise estimate of small entities.

h. *DBS:* There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

i. *HSD:* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

j. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packages provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

k. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* In order to implement the Satellite Home Viewer Improvement Act of 1999, the Commission has proposed to add new rules. We have yet to determine whether to amend existing provisions of the Commission's rules, or to adopt some other regulatory framework or procedures concerning satellite broadcast signal carriage. There are certain compliance requirements involving the satellite broadcast signal carriage process. Foremost is satellite carriers will have to carry all local television stations in a given market if it decides to carry at least one signal in a market. There will be costs relating to the time and effort involved in carrying all local broadcast signals.

l. In terms of recordkeeping, entities most will likely have to keep a record of their election status and entities may be required to maintain such information within their business environment and may also have to file such information with the Commission.

m. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* 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: (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.

n. As indicated, the NPRM proposes to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999. Among other things, the new legislation requires satellite carriers to carry all local television broadcast stations in a market, if it carries any local market television stations, by January 1, 2002. This document also discusses implementing regulations relating to the scope and substance of local broadcast signal carriage by satellite carriers. This legislation applies

to small entities and large entities equally. At this time, small entities are not treated differently and might not be impacted differently, but we seek comment.

o. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

61. Pursuant to section 1008 of the Satellite Home Viewer Improvement Act of 1999, *notice is hereby given* of the proposals described in this NPRM.

62. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16185 Filed 6–29–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG12

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplementary information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Arkansas River Basin population of the Arkansas River shiner (*Notropis girardi*). This proposal is made in response to a court settlement in *Center for Biological Diversity* v. *Bruce Babbitt, et al.* C99–3202 SC, directing us to submit for publication in the **Federal Register** a proposal to withdraw the existing ''not prudent'' critical habitat determination together with a new proposed critical habitat determination for the Arkansas River Basin population of the Arkansas River shiner by June 23, 2000, and to invite public comment for 60 days. We are proposing as critical habitat a total of approximately 1,866 kilometers (1,160 miles) of rivers and 91.4 meters (300 feet) of their adjacent riparian zones. Proposed critical habitat includes portions of the Arkansas River in Kansas, the Cimarron River in Kansas and Oklahoma, the Beaver/North Canadian River in Oklahoma, and the Canadian/South Canadian River in New Mexico, Texas, and Oklahoma. If this proposed rule is finalized, Federal agencies proposing actions that may affect the areas designated as critical habitat must consult with us on the effects of the proposed actions, pursuant to section 7(a)(2) of the Act.

DATES: We will consider all comments on the proposed rule and the draft environmental assessment received from interested parties by August 29, 2000. We will hold public hearings in Amarillo, Texas, on August 7, 2000; in Oklahoma City, Oklahoma, on August 9, 2000; and in Pratt, Kansas, on August 11, 2000. We will start all hearings promptly at 3:00 p.m. and end them no later than 5:30 p.m. We must publish a final determination on this proposal by March 14, 2001, provided we determine that we do not need to prepare an Environmental Impact Statement to comply with NEPA.

ADDRESSES: 1. Send your comments on the proposed rule and draft environmental assessment to the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Office, 222 S. Houston, Suite A, Tulsa, Oklahoma 74127–8909.

2. The complete file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the above address. The draft environmental assessment is available by writing to the above address, or by connecting to our web site at http://ifw2es.fws.gov/oklahoma/. The draft economic analysis will be available during the public comment period. We will specify its availability in local newspapers and through a notice in the Federal Register.

3. We will hold the Amarillo hearing at Texas A&M University Agricultural Research and Extension Center, 6500 Amarillo Boulevard West, Amarillo, Texas. We will hold the Oklahoma City hearing at the Conservation Education Center Auditorium, Oklahoma City Zoo, 2101 NE 50th, Oklahoma City, Oklahoma. We will hold the Pratt hearing at the Carpenter Auditorium, Pratt Community College, 348 NE State Road 61, Pratt, Kansas.

FOR FURTHER INFORMATION CONTACT: Ken Collins, Oklahoma Ecological Services Office, at the above address; telephone 918/581–7458, facsimile 918/581–7467.

SUPPLEMENTARY INFORMATION:

Background

The Arkansas River shiner is a small, robust minnow with a small, dorsally flattened head, rounded snout, and small subterminal mouth (located near the head end of the body but not at the extreme end) (Miller and Robison 1973, Robison and Buchanan 1988). Dorsal (back) coloration tends to be light tan, with silvery sides gradually grading to white on the belly. Adults attain a maximum length of 51 millimeters (2 inches). Dorsal, anal, and pelvic fins all have eight rays, and there is a small, black chevron usually present at the base of the caudal fin.

The Arkansas River shiner was first described based on fish collection in 1926 from the Cimarron River northwest of Kenton, Cimarron County, Oklahoma (Hubbs and Ortenburger 1929). Historically, the Arkansas River shiner was widespread and abundant throughout the western portion of the Arkansas River basin in Kansas (KS), New Mexico (NM), Oklahoma (OK), and Texas (TX). This species has disappeared from more than 80 percent of its historical range and is now almost entirely restricted to about 820 kilometers (km) (508 miles (mi)) of the Canadian River in OK, TX, and NM (Larson *et al.* 1991; Pigg 1991). An extremely small population may still persist in the Cimarron River in OK and KS, based on the collection of only nine individuals since 1985. A remnant population also may persist in the Beaver/North Canadian River of OK, based on collection of only four individuals since 1990 (Larson *et al.* 1991; Jimmie Pigg, Oklahoma Department of Environmental Quality, pers. comm., 1993).

In 1999, six Arkansas River shiner were collected from the Arkansas River in Wichita, KS, at two locations—four from near the 47th Street South bridge and two near the Kansas State Highway 96 crossing (Vernon Tabor, U.S. Fish and Wildlife Service, Manhattan, KS, pers. comm., 2000). Prior to this collection, the Arkansas River shiner was believed to be extirpated from the Arkansas River. An accurate assessment of Arkansas River shiner populations in the Arkansas, Cimarron, and Beaver/North Canadian rivers is difficult because the populations may be so small that individuals may escape detection during routine surveys. The small size of Arkansas River shiner aggregations in these three rivers significantly reduces the likelihood that these populations will persist over evolutionarily significant timescales in the absence of intensive conservation efforts.