List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–2; FCC 00–4]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions

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 that would apply current cable rules for network nonduplication, syndicated program exclusivity and sports blackout to satellite carriers.

DATES: Comments due February 7, 2000; reply comments are due February 28, 2000. Written comments by the public on the proposed information collections are due March 3, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before April 3, 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 Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to vhuth@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Eloise Gore at (202) 418–7200 or via internet at via internet at *egore@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 00–4, adopted January 5, 2000; released January 7, 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. In this Notice of Proposed Rulemaking (''*Notice*''), we seek comment on our implementation of certain aspects of the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''), which was enacted on November 29, 1999. This act authorizes satellite carriers to add more local and national broadcast programming to their offerings, and to make that programming available to some subscribers who previously have been prohibited from receiving broadcast programming via satellite. The legislation generally seeks to place satellite carriers on an equal footing with cable operators with respect to the availability of broadcast programming. By this Notice we seek comment on the adoption of implementing regulations that apply network nonduplication, syndicated program exclusivity, and sports blackout requirements to satellite carriers.

2. Section 1008 of the SHVIA creates a new section 339 of the Communications Act of 1934 (''Communications Act'') entitled ''Carriage of Distant Television Stations by Satellite Carriers.'' Section 339(b) directs the Commission to apply these three rules (*i.e.*, network nonduplication, syndicated exclusivity, and sports blackout), previously applicable only to cable television systems, to satellite carriers' retransmission of nationally distributed superstations to subscribers. The Commission must also apply the cable sports blackout rule to satellite carriers' retransmission of network stations to subscribers, but only ''to the extent technically feasible and not economically prohibitive.'' This proceeding will consider how best to apply these rules to satellite carriers consistent with the statutory requirements and the Commission's goal of facilitating competition in the multichannel video programming distribution marketplace.

3. The complexity of both the statutory provisions and the existing cable rules that we are charged with applying in this new context requires that we include an explanation of the existing network nonduplication, syndicated exclusivity, and sports blackout rules as they apply to cable operators. We seek here to minimize the likelihood of confusion in the future by assuring that we begin with a common understanding of the rules and terminology. These rules have been in existence for 25 years, and the nuances attendant to enforcement and compliance require some explication to provide a solid foundation from which to build a new set of rules to apply to satellite carriers. This is particularly important given that Congress has asked us to implement these new rules so that they will be ''as similar as possible'' to the rules applicable to cable operators. Our goal throughout this proceeding is to develop regulations that will be as clear and easy to follow as possible. Our purpose in laying out the cable rules here is so that the newly covered satellite carriers and other parties will have an understanding of the existing rules for the preparation of their comments in this proceeding. Likewise, it is important to describe in some detail the interpretation of the statute upon which we will base our rulemaking. We seek comment on these explanations and interpretations.

II. Statutory Provisions and Interpretations

4. The first statutory provision discussed, section 339(b)(1)(A), requires application of three cable rules, network nonduplication, syndicated exclusivity, and sports blackout, to satellite retransmission of nationally distributed superstations. The second statutory provision, section 339(b)(1)(B), applies one of these cable rules, sports blackout, to satellite retransmission of network stations. As discussed, one important distinction between these provisions is that nationally distributed superstations may be retransmitted to both served and unserved households, but network stations may only be retransmitted to unserved households.

5. The Commission rules in question here, as applied in the cable context, generally protect exclusive contractual rights that have been negotiated between broadcasters and program providers or other rights holders. These exclusive contractual rights are potentially threatened by cable systems that are capable of retransmitting programming from distant sources beyond the control of the contracting parties. The Commission's network nonduplication, syndicated exclusivity and sports blackout rules provide that specific programs must be deleted from distant signals delivered to cable subscribers if the programs are subject to exclusive contracts to local stations or, in the context of sporting events, if carriage from distant stations would violate sports blackout arrangements to protect gate receipts in the local market. To determine how best to apply these cable rules in the satellite context, it is first necessary to understand the underlying statutory scheme. To that end, we first discuss the relevant provisions of the SHVIA statute and our interpretations of these provisions.

A. Section 339(b)(1)(A): Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout to Retransmission of Nationally Distributed Superstations

6. Section 339(b)(1)(A) of the Communications Act requires the Commission ''to apply network nonduplication protection (§ 76.92), syndicated exclusivity protection (§ 76.151), and sports blackout protection (§ 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers to subscribers.'' For these purposes, a ''nationally distributed superstation'' is a term that is defined as a television broadcast station, licensed by the Commission, that meets the following three criteria:

(A) is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(B) on May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and

(C) was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code.

It appears that the television broadcast stations that meet the foregoing criteria are limited to KTLA–TV (Los Angeles), WPIX–TV (New York), KWGN–TV (Denver), WSBK–TV (Boston), WWOR–TV (New York) and WGN–TV (Chicago). We do not believe that any other station could meet these criteria in the future due to the date-specific conditions set forth in the definition. We believe this is, therefore, a finite list of the nationally distributed superstations covered by the statute, but we invite comment on this issue. We also note that the statutory definitions of network station, television network, and television broadcast station generally contemplate entities within the United States. We seek comment on the relevance of this issue in this proceeding. Are stations based in foreign countries affected by the SHVIA provisions requiring application of the cable exclusivity and sports blackout rules to satellite retransmissions?

7. A nationally distributed superstation is a type of ''superstation,'' which is defined in the Copyright Act of 1947, *as amended* (''Copyright Act''), as ''a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.'' By creating this special category known as nationally distributed superstations, Congress permits satellite carriers to retransmit these superstations to subscribers regardless of whether they are ''served'' or ''unserved'' pursuant to the Copyright Act. Congress achieved this result by amending the section 119 compulsory copyright license in the Copyright Act. The amended copyright provision provides that the retransmission of nationally distributed superstations to subscribers who do not reside in ''unserved households'' shall not violate the compulsory copyright license. While section 1005(b) of the SHVIA does not refer to nationally distributed superstations expressly, the criteria for its application are identical to those contained in the definition of a nationally distributed superstation. Thus, we believe that based on section 1005(b), there is no geographic restriction on the retransmission of ''nationally distributed superstations'' pursuant to the compulsory copyright license.

8. In addition to amending the Copyright Act, section 1009 of the SHVIA amends the retransmission consent section of the Communications Act, which generally prohibits multichannel video programming distributors from retransmitting the signals of a broadcaster absent the broadcaster's written authorization. The SHVIA exemption allows a satellite carrier to retransmit the signal of a superstation in the absence of written consent from the superstation if: (i) the station was a superstation on May 1, 1991, and (ii) the station was retransmitted by the satellite carrier as of July 1, 1998, provided the satellite carrier complies with the Commission's nonduplication, syndicated exclusivity, and sports black out rules. This provision differs slightly from the definition of a nationally distributed superstation in that it does not specify that the superstation must not be affiliated with a network that existed as such as of January 1, 1995. At this time, this distinction is without practical significance because the six television stations cited meet the relevant criteria of either definition, and there are no additional stations that are included or excluded by operation of this third criterion. Taking all these provisions together, we believe that, pursuant to these new statutory provisions in the Copyright Act and the Communications Act, satellite carriers are permitted to retransmit the signals of the nationally distributed superstations covered by section 339(b)(1)(A) to both served and unserved households without the station's consent and without geographic restriction.

9. We believe that Congress' purpose in applying the network nonduplication, syndicated exclusivity, and sports blackout rules to these satellite retransmissions reflects a balance between providing access to national programming carried by the superstation and a recognition that, in the absence of retransmission consent requirements, broadcasters and rights holders will have no opportunity to protect their contractual rights. We also believe Congress is seeking to create parity between the regulations covering satellite carriers and cable operators. We seek comment on this interpretation of the operation and underlying intent of the statutory requirements.

B. Section 339(b)(1)(B): Application of the Sports Blackout Rule to Retransmission of Network Stations

10. In addition to applying the existing cable rules to nationally distributed superstations, section 339(b)(1)(B) requires the Commission to ''apply sports blackout protection (§ 76.67) to the retransmission of the signals of network stations by satellite carriers to subscribers'' ''to the extent technically feasible and not economically prohibitive.'' By its terms, section 339(b)(1)(B) applies only to ''network stations,'' which are, generally, television broadcast stations owned or operated by, or affiliated with, one or more of the television networks. Affiliates of these networks are the only entities that meet the definition of a

television network station contained in the Copyright Act and are the only stations covered by section 339(b)(1)(B). We note that in the cable context, the Commission's sports blackout rule applies to any television broadcast station and is not limited to network stations. We seek comment on whether the cable rules are indeed broader in scope than section 339(b)(1)(B).

11. We also observe that the title of new section 339, ''Carriage of Distant Television Stations by Satellite Carriers,'' suggests that this section is intended to apply to satellite retransmission of *distant* network stations, notwithstanding that the text of section 339(b)(1) does not specifically so state. We seek comment on this interpretation, which is relevant to determining which satellite retransmissions are covered by this section of the statute.

III. Implementation of the Statutory Requirement

12. In general, under the new statutory provisions, the network nonduplication, syndicated exclusivity, and sports blackout rules will apply when a satellite carrier retransmits a nationally distributed superstation to a household within a local broadcaster's zone of protection, and the nationally distributed superstation carries a program to which the local station has exclusive rights. In these cases, the television broadcast station holding exclusive rights may require the satellite carrier to blackout these particular programs for the satellite subscriber households within the protected zone. We seek comment generally on the appropriate manner in which to implement the provisions of section 339(b)(1) of the Communications Act. In particular, we seek comment on whether the amended provisions should be incorporated into existing §§ 76.67, 76.92, and 76.151 of the Commission's rules, or whether we should adopt new separate rules for satellite carriers.

A. Network Nonduplication Rule

13. The Commission's cable television network nonduplication rule allows a television broadcast station that has purchased exclusive rights to network programming within a specified area to protect its exclusivity on local cable systems. The rules allow a local television broadcast station to demand that a local cable system's duplicate carriage of the same program from an otherwise distant station be blacked out. A station may assert its exclusivity rights regardless of whether its signal is carried by the cable system in question. These rules are not statutorily mandated. They arose from the Commission's recognition in the 1970s and 1980s that protection of exclusive contractual rights is necessary both to protect local broadcasters from the importation of non-local stations by cable systems and to provide appropriate protections and incentives to program producers and distributors to provide the programming desired by viewers.

14. Under the network nonduplication rule, a television station is entitled to assert its exclusivity rights against a cable system serving any ''cable community unit'' within its ''specified zone'' that is carrying duplicative programming for which the local station has obtained exclusive distribution rights. The rule applies on a community unit basis by requiring the cable system for a particular community unit to black out a specific program based on the priorities established in the rule. The ''specified zone'' of a television broadcast station is the 35 mile area surrounding its community of license. The zone of exclusivity protection for television stations licensed to smaller television markets extends an additional 20 miles, for a total 55 miles surrounding a smaller television station's community of license. We seek comment on whether Congress intended to retain the same geographic zones for satellite carriers as those used in the cable context.

15. While the Commission's rules allow television stations to assert their nonduplication rights within the above territorial limits, a television station's rights within these areas are limited by the terms of the contractual agreement between the station and the holder of the rights to the program (''rights holder''). Thus, if the rights holder grants the television station a zone of protection of ten miles, then that station would be precluded from exercising its nonduplication rights against any cable system located more than ten miles from that station's city of license. In addition, for local programming to be protected, the local programming must be the same as the distant programming that is being imported into a local station's market.

16. In order to exercise nonduplication protection, a television broadcast station must notify cable operators of the rights they have obtained within 60 days of the signing of a contract affording exclusive rights. In adopting these rules, the Commission recognized that affected cable operators would need sufficient time to negotiate for the lifting of the requested protection or to arrange for alternative sources of programming to fill the void left when a station exercised its rights. In this regard, television stations have been required to disclose the exact contractual terms under which they have been granted exclusivity protection. We seek comment on how the notification process described in the network nonduplication rule can be applied to satellite carriers and on whether the 60 day period and the other notification periods used in the cable context are appropriate for satellite carriers.

17. There are several exceptions to application of the network nonduplication rule. First, the network nonduplication rule is inapplicable to any non-commercial educational (''NCE'') station programming carried in fulfillment of a cable system's mandatory carriage rules. Second, because of the cost of the equipment necessary to carry out deletions, the Commission exempted cable systems having fewer than 1,000 subscribers.

18. The rule also does not apply if the distant station's signal is ''significantly viewed'' in a relevant cable system community. The concept of significant viewing is directly related to whether an otherwise distant station's broadcast signal is viewable over-the-air in a cable community unit. The significantly viewed exception to the exclusivity rules is meant to insure that any programming that is available terrestrially in a community from an over-the-air station will not be blacked out on a community's cable system. We seek comment on the relevance in the satellite context of the exception for significantly viewed stations. Are there situations in which a nationally distributed superstation from an adjacent market could be significantly viewed within the relevant specified zone based on terrestrial transmission? We believe a nationally distributed superstation could only qualify as significantly viewed based on terrestrial broadcast reception over-the-air in the areas surrounding its city of license, thus limiting the relevance of this exception to those circumstances in which the superstation is actually functioning as a local station, and therefore, arguably, not covered by the terms of section 339(b)(1)(A).

19. Under the cable network nonduplication rules, if the cable community unit is located in one or more overlapping specified zones, neither station can blackout the other station's duplicating programming because both stations have equal priorities. We do not believe a similar situation could occur in the satellite carrier context because superstations, as such, do not have specified zones outside of the markets from which they

originate, and, under the new statutory requirement, network nonduplication applies only to the retransmission of nationally distributed superstations and not to retransmission of network stations. We seek comment on this issue.

B. Syndicated Program Exclusivity Rule

20. The Commission's syndicated program exclusivity rule allows local stations to protect their exclusive distribution rights for syndicated programming on local cable systems in a local market. This rule is similar in operation to the network nonduplication rule, but it applies to exclusive contracts for syndicated programming, rather than for network programming. In this rule, too, a local television station is entitled to assert its exclusivity rights within a specified zone of 35 miles surrounding a television station's city of license. Unlike the network nonduplication rule, however, the maximum zone of protection allowed under the rules is 35 miles surrounding a television station's city of license in a non-hyphenated television market and 35 miles surrounding each named city in any size hyphenated market; the zone of protection is not greater in smaller markets.

21. As with network nonduplication, the syndicated exclusivity rule applies on a community unit basis by requiring the cable system for a particular community unit to black out a specific program based on the priorities established in the rule. In addition, the geographic limits for exclusivity under the Commission's rules are limited by the terms of the contractual agreement between the station and the holder of the rights to the program. Thus, if the rights holder grants the television station a zone of protection of ten miles, then that station would be precluded from exercising its exclusivity rights against any cable system located more than ten miles from that station's city of license. In addition, as with the network nonduplication rules, for syndicated programming to be protected, the programming covered by the contract must be the same as the distant programming.

22. To exercise syndicated exclusivity protection under the cable rule, a television broadcast station must notify cable operators of the rights they have obtained within 60 days of the signing of a contract affording exclusivity rights, and must disclose the exact contractual terms under which they have been granted exclusivity protection. In addition to the television broadcast station, distributors of syndicated programming are also allowed to seek protection for a period of one year from the initial licensing of such programming anywhere in the United States, except where the relevant programming has already been licensed. We seek comment on whether the rights holder should, in the satellite context, notify the satellite carrier directly. We also seek comment on whether the 60 day period and the other notification periods used in the cable context for both network nonduplication and syndicated exclusivity are appropriate for satellite carriers.

23. The exceptions to application of the syndicated program exclusivity rule are similar to those that apply to the network nonduplication rule. Cable systems with fewer than 1,000 subscribers are exempted, again because of the cost of the equipment necessary to carry out deletions. This rule also does not apply if the distant station's signal is ''significantly viewed'' in a relevant cable system community. In addition, the syndicated programming of an otherwise distant station need not be blacked out if that station's grade B signal encompasses the relevant cable community. There is no exception to the syndicated exclusivity rules for NCE station programming carried pursuant to mandatory carriage because the syndicated exclusivity rule applies only to commercial stations.

C. Sports Blackout Rule

24. The Commission's sports broadcasts rule (''sports blackout rule'') is designed to allow the holder of the exclusive distribution rights to local programming, in this case sporting events, to control, through contractual agreements, the display of that event on local cable systems. Unlike the other cable rules we are required to apply to satellite carriers, only the sports blackout rule applies to retransmission of both nationally distributed superstations and network stations. The purpose of the sports blackout rule is to insure the continued general availability of sports programming to the public. The Commission adopted this rule based on a concern that sports teams would refuse to sell the rights to their local games to television stations serving distant markets due to their fear of losing gate receipts if the local cable system imported the local sporting event carried on the distant station. The Commission stated this would have the ultimate undesirable effect of making sporting events available to fewer viewers. When a subject sporting event will not be aired live by any local television station carried on a community unit cable system, the sports blackout rule allows the rights holder to the event to demand that the local cable system blackout the distant importation of the subject sporting event. Section 76.67(a) applies ''if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§ 76.5(gg)(1) through 76.5(gg)(3) of this part.'' 47 CFR 76.5(a). The former § 76.5(gg) defined ''basic cable service'' for purposes of basic cable service rate regulation and incorporated the standard for mandatory carriage under the Commission's original 1972 must-carry rules. In summary, for purposes of rate regulation of the basic tier at that time, § 76.5(gg) provided that the basic tier for cable systems serving communities located outside all major and smaller television markets included television broadcast stations within whose Grade B contours the community of the community unit was located; for communities in smaller television markets, the basic tier included television broadcast stations within whose specified zone the community of the community unit is located, commercial television broadcast stations licensed to communities in other smaller television markets within whose Grade B contours the community of the community unit is located, and television broadcast stations licensed to communities that are generally considered to be part of the same smaller television market; and for communities in major television markets, the basic tier included television broadcast stations within whose specified zone the community of the community unit is located and television broadcast stations licensed to other designated communities of the same major television market; as well as, in all size markets, commercial television broadcast stations that were significantly viewed in the community of the community unit. The zone of protection afforded by the sports blackout rule is generally 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place. As with the Commission's exclusivity rules, the sports blackout rule specifies notification procedures regarding the sports programming to be deleted. However, the time frame allowed for notification is significantly shorter in the case of the sports blackout rule, and can be as little as 24 hours in contrast to 60 days for the other rules. We seek comment on whether the same timing should apply for both cable operators and satellite carriers.

25. As with the network nonduplication and syndicated exclusivity rules, the sports blackout rule does not apply to cable systems with fewer than 1,000 subscribers. This exemption is based on the cost of the equipment needed to delete programming. We seek comment on whether there is an analogous situation for satellite carriers. Will there be situations in which there may be no more than 1,000 subscribers in an area subject to program blackout, and, if so, is there a significant cost to blacking out this limited number of subscribers? We seek specific information from satellite carriers on the likelihood of the occurrence of this situation. We seek comment on these questions with respect to the network nonduplication and syndicated exclusivity rules, as well as the sports blackout rule. We particularly seek specific information from satellite carriers on the comparative costs per subscriber of deleting programming where more than or less than 1,000 subscriber households are affected.

26. As noted, the sports blackout rule for cable systems applies only in a limited 35 mile geographic area surrounding the relevant broadcast station's community reference point and only when no local television station is carrying the event. Typically this area contains households that can receive a signal of Grade B intensity or better. Because the section 119 compulsory copyright license only allows the retransmission of distant network stations to unserved households, *i.e.* those that cannot receive a signal of Grade B intensity, and because the existing sports blackout zone is typically limited to an area containing only served households, we expect that there would be few occasions where a subscriber residing within a sports blackout zone would be eligible to receive protected programming *via* distant network retransmissions made pursuant to the section 119 compulsory copyright license. Thus, there may be very few occasions where, as a practical matter, the sports blackout rule could be invoked for a satellite retransmission of network stations. It may, however, present technical and economic challenges to the satellite carrier to take the actions necessary to blackout out the sports broadcast in these comparatively few situations. We seek comment on this issue.

27. The SHVIA's directive to apply the network nonduplication, syndicated exclusivity, and sports blackout rules to satellite retransmission of nationally distributed superstations appears to apply without any limitation based upon a satellite carrier's technical ability to comply. The SHVIA, however, limits application of the sports blackout rule to retransmission of network stations ''to the extent technically feasible and not economically prohibitive.'' The legislative history suggests that a ''very serious economic threat to the health of the carrier'' is necessary to justify deviating from the cable rules. We seek comment concerning the circumstances in which the sports blackout rule should apply in the satellite context, on whether the 35 mile zone is appropriate in the satellite context, and, particularly, on the technical and economic consequences related to satellite carriers' compliance with the rule.

28. We note that satellite carriers routinely provide pay-per-view events and descramble programming by use of ''conditional access'' mechanisms. With regard to the question of technical and economic effects on the satellite carrier, we ask whether conditional access mechanisms can be used to blackout sports programming on network stations. If the satellite provider can identify the households required to be blacked out for a specific sporting event, would conditional access provide the means to initiate the blackout? How much lead time would a satellite carrier need if conditional access can meet this requirement? What would the cost be per subscriber to implement sports blackout, as compared to the other exclusivity rules, using conditional access? Commenters are asked to address consideration of both the economic and technical considerations facing satellite carriers.

29. Under the new section 122 of the Copyright Act, a satellite carrier may retransmit the signal of a network station to all subscribers within that station's local market, which is defined as its Designated Market Area (''DMA''). It is possible that in areas in which there are two affiliates of the same network within the same DMA, a ''served'' subscriber would be eligible to receive both network stations based on the satellite carrier's ''local-into-local'' license because the subscriber resides in the DMA of the second station. The geographic area for purposes of the sports blackout zone surrounding one of the affiliates is most often smaller than the DMA. If one of the affiliates is not carrying the event, the sports blackout rule can be triggered. If the second affiliate is carrying the event, then the satellite carrier might be required to blackout the event being transmitted by the second affiliate to subscribers within the 35 mile zone. Alternatively, this situation may never occur if, as a practical matter, the contractual arrangements allow the rights holder to prohibit both affiliates from broadcasting the event in question. We seek comment on whether the two-affiliates-in-one market scenario is likely to occur, and whether the rules should treat this situation differently from the retransmission of a distant network station.

IV. Additional Discussion and Request for Comment

30. We also seek comment, generally, on how to apply the terms of the three existing cable rules to satellite carriers. As discussed, the cable rules refer to ''community units,'' which correspond to separate and discrete communities or municipal entities that comprise cable systems. In the cable context, all cable subscribers who are in a community unit that lies in whole or in part within the specified zone experience program deletions if the program is covered by one of these rules. There are, however, no boundaries for satellite service that readily and necessarily correspond to the cable community unit. Is it necessary to administer these rules in the satellite context using the same community unit concept that applies in the cable context? Or, is it more appropriate to consider each household served by the satellite carrier and determine if it is within a broadcaster's specified zone for protection under the rules? In either case, the satellite carrier must be able to determine the location of each subscriber in relation to the relevant zone of protection for each local broadcast television station. How can a satellite carrier accurately locate a subscriber whose address is a post office box or rural route number? Is it appropriate to use the subscriber's zip code for this purpose? We seek comment on which approach best serves the purposes of the statute while not unnecessarily depriving satellite subscribers who are beyond the specified zone—but within a community unit that lies partially within the specified zone—of programming. We also seek comment on how the use of DMA in the SHVIA to define the local market applies to determination of the specified zone for purposes of the nonduplication, syndicated exclusivity and sports blackout rules in the satellite context.

31. The syndicated exclusivity and sports blackout rules make specific provision for what type of programming a cable system may substitute for programming deleted pursuant to these rules. For example, when a program is blacked out based on syndicated rights, a cable operator may substitute a

program from any other television broadcast station and carry that program. We seek comment on what types of programming and methods of substitution are appropriate for satellite carriers. What role do retransmission consent requirements, as well as copyright licensing requirements, play in determination of substitute programming?

32. Congress apparently chose not to extend application of the network nonduplication and syndicated exclusivity rules to retransmission of television broadcast stations other than nationally distributed superstations. We believe that the statutory requirements, nevertheless, will protect all contractual arrangements because the satellite carrier either needs the retransmission consent of the independent station or voluntarily complies with the exclusivity and sports blackout rules. We believe, therefore, that the interests of rights holders and local broadcasters are protected, but we seek comment on this issue.

33. It has been suggested that the Commission consider certain additional issues concerning the distribution of sports programming that are related to, but not directly covered by, the SHVIA. The National Football League sells packages of programming to networks on a national basis, but different games are broadcast locally on a regional basis, often in two-game packages. To the extent that broadcasts of games are carried into local markets on distant broadcast signals via satellite, the network nonduplication and other rules involved in this proceeding appear to offer neither the stations nor the leagues involved any protection beyond the rights to the particular games that local stations are authorized to broadcast. In light of the SHVIA's restrictions on households that are eligible to receive distant network signals, it is not clear to what extent carriage of distant signals providing different games merits remedial action. We seek comment on the question of how the patterns of sports carriage involved are addressed by the new law, and whether they can and should be addressed in the regulations the Commission is required to adopt pursuant to it.

34. We note, too, that WPIX, KTLA, and KWGN are WB affiliates and WSBK and WWOR are UPN affiliates; thus all are both ''network stations'' as well as ''nationally distributed superstations,'' pursuant to the definitions in the SHVIA. Should the exclusivity rules apply to blackout programming on a local station if that station is also a nationally distributed superstation or should the station be treated only as a local station within its local market, notwithstanding that it is a nationally distributed superstation outside its market? We note by way of analogy that, in the context of mandatory cable carriage, we have concluded that local commercial stations do not become superstations until such time as they are retransmitted via satellite outside their market, an activity unrelated to their status as local commercial broadcast stations within their market. We seek comment on the applicability of that conclusion in the satellite context.

35. In addition, if we decide that it is necessary for the satellite carrier rules for sports blackout protection for network stations to differ from sports blackout protection for nationally distributed superstations due to technical feasibility and economic prohibitions, we seek comment on whether the sports blackout protection for these stations should apply to them as superstations, rather than as network stations.

36. Section 339(b)(1) and the relevant part of the *Joint Explanatory Statement* are silent regarding application of the exclusivity and sports blackout rules to the retransmission of digital broadcast signals. In the pending proceeding considering cable mandatory carriage of digital signals, we requested comment on how these cable rules would function for cable carriage of digital signals. Similarly here, we question whether Congress intended to apply these rules to satellite retransmission of digital broadcast signals. We note that the SHVIA can be read as applying to both analog and digital broadcast signals. An alternative interpretation is that Congress was only concerned about the carriage of analog signals given that elsewhere in the statute Congress expressly mentioned digital signals and, presumably, could have done so in this context as well. We seek comment on whether and how the exclusivity rules could apply to satellite carriage of digital broadcast signals, and whether there is a meaningful distinction between analog and digital carriage issues for satellite carriers in this context.

37. As a final matter, we note that several sections of the existing cable rules contain outdated cross-references to other sections of the rules. We welcome comment on these and any other such corrections that are needed. For example, § 76.67 contains a reference to § 76.5(gg) for purposes of identifying the broadcast television stations that trigger the rule's application. Section 76.5(gg) has been eliminated. The Commission deleted § 76.5(gg) in its 1993 Order rescinding cable service rate regulation. We seek comment on whether we should reinstate a standard based upon the original criteria incorporated into § 76.5(gg) or adopt a new standard. In addition, we welcome comment on changes to the application of the rules in the cable context to the extent necessary or desirable for harmonizing the regulatory requirements among the affected parties. Also, existing § 76.5(ii) references § 76.5(o). The correct reference should be to § 76.5(m). Furthermore, the existing Note to § 76.92 references § 76.658(m) in the last sentence. The correct reference should be to § 73.658(m), as correctly stated in the second sentence of the Note.

38. In addition, § 76.51 lists the top 100 television markets in the United States. The ''Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif.'' market is listed at § 76.51(a)(2). In 1995, the Commission redesignated the ''Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif.,'' market as the ''Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif.'' market. However, the published amendment to § 76.51(a) intended to effectuate the foregoing change inadvertently amended § 76.51(a)(28), rather than § 76.51(a)(2). As a result, the redesignated ''Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif.'' market is listed as § 76.51(a)(28) and the ''Los Angeles-San Bernardino-Corona-Fontana-Riverside, Calif.'' market still is listed as § 76.51(a)(2). The ''Tampa-St. Petersburg-Clearwater, Florida'' market, which was listed at § 76.51(28) at the time the Commission adopted the Los Angeles Redesignation Order, was deleted inadvertently from § 76.51(a)(28) and currently is not listed elsewhere in § 76.51. The correct reference in § 76.51(a)(2) should be to the ''Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif.'' market. The correct reference in § 76.51(a)(28) should be to the ''Tampa-St. Petersburg-Clearwater, Florida'' market.

V. Administrative Matters

A. Ex Parte Rules

39. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the 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. *See* § 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

B. Filing of Comments and Reply Comments

40. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 7, 2000 and reply comments on or before February 28, 2000. Comments may be filed using the Commission's 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.

41. 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 filings 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 Eloise Gore at (202) 418–7200, TTY (202) 418–7172, or at egore@fcc.gov.

42. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Eloise Gore, Cable Services Bureau, 445 12th Street NW, Room 4–A802, 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 ''read 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. 00–2]), 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. Written comments by the public on the proposed information collections are due March 3, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before April 3, 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 Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to *vhuth@omb.eop.gov*.

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

Paperwork Reduction Act: 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 collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB notification of action is due April 3, 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: Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmission.

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 network nonduplication, syndicated program exclusivity, and sports blackout 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 this Notice of Proposed Rulemaking (''Notice''). 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 Notice provided. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

b. *Need for, and Objectives of, the Proposed Rule Changes.* On November 29, 1999, the Satellite Home Viewer Improvement Act of 1999 was enacted (''SHVIA''). Section 1008 of the SHVIA creates a new section 339 of the Communications Act entitled ''Carriage of Distant Television Stations by Satellite Carriers.'' The Notice discusses adoption of implementing regulations relating to the cable rules concerning network nonduplication, syndicated program exclusivity, and sports

broadcasts to satellite carriers. Section 339(b) directs the Commission to apply these three cable rules to satellite carriers' retransmission of nationally distributed superstations to subscribers. The Commission is also to apply the sports broadcasts rule to satellite carrier's retransmission of network stations to subscribers, but only to the extent technically feasible and not economically prohibitive.

c. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 339 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 339.

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 IRFA 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 may adopt as a result of the Notice will affect television station licensees, satellite carriers and video program distributors and delivery services.

e. *Television Stations.* The proposed rules and policies will apply to television broadcasting licensees. 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, and 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 materials are classified under another SIC number. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998.

f. Thus, the proposed rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

g. In addition to owners of operating television stations, any entity that seeks or desires to obtain a television broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown. We invite comment as to such number.

h. *Small Multiple Video Program Distributors* (''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 revenues. We address services individually to provide a more precise estimate of small entities.

i. *Direct Broadcast Satellite* (''DBS''): There are four licenses 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.

j. *Home Satellite Delivery* (''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.

k. According to the most recently available information, there are approximately 30 program packages 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 packages may be substantially smaller.

l. Entities which may be indirectly affected by the rules we may adopt as a result of the Notice are cable television systems.

m. *Cable Systems:* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable systems operators that may be affected by the decisions and rules emanating out of the Notice.

n. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United

States and is not affiliate with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 64,000,000 subscribers and we have based our fee revenue estimates on that figure.

o. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* In order to implement Section 1008 of the Satellite Home Viewer Improvement Act of 1999, which creates a new Section 339 of the Communications Act, the Commission has proposed to add new rules and modify others, as the provisions at issue previously were applicable only to cable. We have yet to determine whether to amend existing provisions of the Commission's rules, or to adopt some other regulatory framework or procedures. There are compliance requirements involving the nonduplication protection, syndicated exclusivity, and sports blackout rules. To exercise nonduplication protection and syndicated exclusivity protection, the rights holder to specific network or syndicated programming will have to notify and report to the satellite carrier, and do so within 60 days of the signing of a contract affording exclusivity rights. Such notification and reporting is required to take place within a shorter time period in the sports blackout context. In certain instances, staff may have to dedicate time and effort to monitoring and ensuring that notifications are properly given in a timely manner to satellite carriers.

p. There may be costs associated with hiring accounting or engineering personnel, as there may be instances where entities may have to provide detailed information relating to such aspects of their particular operations. Specifically, costs here may relate possibly to conducting engineering studies to accurately determine zones of protection. Further, there will likely be costs in equipment necessary to carry out deletions. The Commission recognized the significant costs involved in implementing deletions and exempted systems having 1,000 or fewer subscribers.

q. In terms of record keeping, entities may have to keep a record of the contractual terms and agreements and may be required to maintain such information within their business environment. At this time, small businesses might not be impacted differently in any of the above, but we seek comment on these matters.

r. *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.

s. As indicated, the provisions of Section 339 refer to superstations and network stations, in terms of television broadcast stations. This legislation, however, applies to small entities and large entities equally. The Commission acknowledges that consideration should be given to possible differences in size of entities, as evidenced by the fact that there are certain exemptions in the application of these rules. Overall, at this time, small entities are not treated differently and might not be impacted differently, but we seek comment.

t. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

VI. Ordering Clauses

43. Pursuant to section 1008 of the Satellite Home Viewer Act of 1999, section 339(b)(1) of the Communications Act of 1934, as amended, notice is hereby given of the proposals described in this Notice of Proposed Rulemaking.

44. The Commission's Consumer Information Bureau, Reference Information Center shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2140 Filed 2–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[WT Docket No. 99–366; FCC 99–414]

Authorizing the Use of 406.025 MHz for Personal Locator Beacons (PLB)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to establish a new subpart H—Personal Locator Beacons under part 95 of the Commission's rules to permit the use of 406.025 MHz for PLBs. The action will provide individuals in remote areas a means to alert others of an emergency situation and help search and rescue (SAR) personnel locate those in distress.

DATES: Comments must be submitted on or before February 24, 2000 and reply comments are due on or before March 10, 2000. Written comments by the public on the proposed information collection are due on or before March 27, 2000. Written comments must be submitted to the Office of Management and Budget on proposed information collections on or before March 27, 2000.

FOR FURTHER INFORMATION CONTACT: James Shaffer, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: 1. This is a summary of the Commission's *Notice of Proposed Rule Making* FCC 99–414, adopted on December 28, 1999, and released on date. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

Summary of Notice of Proposed Rule Making

2. On June 3, 1993, the National Oceanic and Atmospheric