the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403 (b)(2)(B), (c), Public Law 104–104, 110 Stat. 56.

■ 2. Section 64.604 is amended by adding paragraph (b)(2)(iii) and revising paragraph (b)(4)(i) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(b) * * *

(2) * * *

(iii) Speed of answer requirements for VRS providers are phased-in as follows: by January 1, 2006, VRS providers must answer 80% of all calls within 180 seconds, measured on a monthly basis; by July 1, 2006, VRS providers must answer 80% of all calls within 150 seconds, measured on a monthly basis; and by Janury 1, 2007, VRS providers must answer 80% of all calls within 120 seconds, measured on a monthly basis. Abandoned calls shall be included in the VRS speed of answer calculation.

* * * * *

(4) * * *

(i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day, except VRS.

* * * * *

[FR Doc. 05–17327 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–181; FCC 05–159]

Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 To Amend Section 338 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts final rules implementing section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, which amends section 338(a)(4) of the Communications Act to require satellite carriage of the analog signals and digital signals of local stations in Alaska and Hawaii. Satellite carriers with more than five million subscribers must carry these signals to substantially all of their subscribers in each station's local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals

DATES: Effective September 30, 2005.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order, FCC 05–159, adopted on August 22, 2005 and released on August 23, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission received approval for the information collection requirements contained in this Order from the Office of Management and Budget on June 14, 2005. There have been no changes to the information collection requirements since receiving OMB approval. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). As described in the Final Regulatory Flexibility Certification, *supra*, the businesses affected by our action are not small.

Summary of the Report and Order

Introduction

1. In this Report and Order (''Order''), we adopt rules to implement section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Public Law 108–447, section 210, 118 Stat 2809 (2004). SHVERA was enacted on December 8, 2004, as title IX of the ''Consolidated Appropriations Act, 2005.'' Section 210 of the SHVERA amends section 338(a) of the Communications Act of 1934, as amended, (''Communications Act'' or ''Act''). Section 338 of the Act governs the carriage of local television broadcast stations by satellite carriers; *see* 47 U.S.C. 338. In general, the SHVERA amends this section to require satellite carriers to carry the analog and digital signals of television broadcast stations in local markets in states that are not part of the contiguous United States, and to provide these signals to substantially all of their subscribers in each station's local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals; *see* 47 U.S.C. 338(a)(4). Our rules will implement the SHVERA requirements for carriage of analog and digital signals in Alaska and Hawaii. This Order concludes that such carriage shall include high definition and multicast signals as broadcast by local stations in these states. We adopt a two-step carriage election process beginning with carriage elections for analog signals by October 1, 2005, and followed by carriage elections for digital signals by April 1, 2007.

Background

Satellite Home Viewer Act (SHVA) and Satellite Home Viewer Improvement Act of 1999 (SHVIA)

2. In 1988, Congress passed the Satellite Home Viewer Act (''SHVA''), which established a statutory copyright license for satellite carriers to offer subscribers access to broadcast programming via satellite when they are unable to receive the signal of a broadcast station over the air (that is, an ''unserved'' household). The Satellite Home Viewer Act of 1988, Pub. L. No. 100–667, 102 Stat. 3935, Title II (1988) (codified at 17 U.S.C. 111, 119). SHVA was enacted on November 16, 1988, as an amendment to the copyright laws. SHVA gave satellite carriers a statutory license to offer signals to ''unserved'' households. In 1999, Congress enacted the Satellite Home Viewer Improvement Act (''SHVIA''), which expanded the 1988 SHVA by amending both the 1988 copyright laws (*see* 17 U.S.C. 119, 122), and the Communications Act (*see* 47 U.S.C. 325, 338, 339 and 340) to permit satellite carriers to retransmit local broadcast television signals directly to subscribers in the station's local market (''local-into-local'' service) without requiring that they be ''unserved'' households. The Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106–113, 113 Stat. 1501 (1999) (codified in scattered sections of 17 and 47 U.S.C.). SHVIA was enacted on November 29, 1999, as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 (''IPACORA'') (relating to copyright licensing and carriage of broadcast signals by satellite carriers).

3. A satellite carrier provides ''local-into-local'' service when it retransmits a local television station's signal back into the local market of the television station for reception by subscribers; *see* 17 U.S.C. 122(j). If a carrier carries one or more stations in the market pursuant to the statutory copyright license, it is required to carry all of the other local stations in that market upon the station's request (that is, the ''carry-one, carry-all'' requirement); *see* 47 U.S.C. 338(a)(1). Generally, a television station's ''local market'' is the designated market area (''DMA'') in which it is located. Section 340(i)(1) (*as amended by* section 202 of the SHVERA) defines the term ''local market'' by using the definition in 17 U.S.C. 122(j)(2): ''The term 'local market,' in the case of both commercial and noncommercial television broadcast stations, means 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 are 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.'' DMAs describe each television market in terms of a unique geographic area, and are established by Nielsen Media Research based on measured viewing patterns; *see* 17 U.S.C. 122(j)(2)(A)–(C). There are 210 DMAs that encompass all counties in the 50 states, except for certain areas in Alaska; *see* Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates (2004–5 ed.); *see also* Television and Cable Factbook 2005 (Warren Communications) A–73. A satellite carrier choosing to provide such local-into-local service is generally obligated to carry any qualified local station in a particular DMA that has made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA, or the station does not provide a good quality signal to the carrier's local receive facility; *see* 47 U.S.C. 338(a)(1), (b)(1) and (c)(1).

Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA)

4. In December 2004, Congress passed and the President signed the Satellite Home Viewer Extension and Reauthorization Act of 2004. SHVERA again amends the 1988 copyright laws and the Communications Act. This rulemaking is required to implement provisions in section 210 of the SHVERA which establishes new and special requirements for satellite carriage of local stations in states outside the contiguous United States.

Discussion

5. Section 210 of the SHVERA creates a new subsection of the Communications Act, 338(a)(4), that requires satellite carriers with more than five million subscribers in the United States to carry the analog and digital signals of each television broadcast station licensed in local markets ''within a State that is not part of the contiguous United States.'' Due to an apparent inconsistency in numbering the provisions added by the SHVERA, it is not clear if this provision will ultimately be codified as 338(a)(4) or (a)(5); *see* 47 U.S.C.A. 338 n.1 (West 2005) (''So in original. Two pars. (3) enacted.''). In this Order we use the subsection as enacted by section 210, 338(a)(4). Analog signals are required to be carried by December 8, 2005, and digital signals by June 8, 2007. A carrier is required to provide these signals to substantially all of its subscribers in each station's local market. In addition, a satellite carrier is required to make available the stations that it carries in at least one local market to substantially all of its subscribers located outside of local markets and in the same state. The SHVERA also mandates that satellite carriers may not charge subscribers for these local signals more than they charge subscribers in other States to receive local market television stations. Although most of the requirements imposed by the new section 338(a)(4) are self-effectuating, the SHVERA requires the Commission to promulgate regulations concerning the timing of carriage elections by stations in local markets covered by section 338(a)(4) of the Act; *see* 47 U.S.C. 338(a)(4) (*as amended by* the SHVERA), which provides:

(4) Carriage of Signals of Local Stations in Certain Markets—A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall (A) within 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after such date of enactment retransmit the signals originating as digital signals of each such station. The retransmissions of such stations shall be made available to substantially all of the satellite carrier's subscribers in each station's local market, and the retransmissions of the stations in at least one market in the State shall be made available to substantially all of the satellite carrier's subscribers in areas of the State that are not within a designated market area. The cost to subscribers of such retransmissions shall not exceed the cost of retransmissions of local television stations in other States. Within 1 year after the date of enactment of that Act, the Commission shall promulgate regulations concerning elections by television stations in such State between mandatory carriage pursuant to this section and retransmission consent pursuant to section 325(b), which shall take into account the schedule on which

local television stations are made available to viewers in such State.

6. We adopted the required Notice of Proposed Rulemaking (''*NPRM*'') on April 29, 2005 and established a short pleading cycle due to the need to implement the new rules before the upcoming carriage cycle; *see Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, 20 FCC Rcd 9319, 9330, paragraph 30 (2005) (''*NPRM*''). We received comments from six parties. As we stated in the *NPRM*, the new and amended rules apply only to satellite service in the states covered by section 338(a)(4), which we herein conclude are Alaska and Hawaii. The existing signal carriage provisions in § 76.66 of the Commission's rules also continue to apply to satellite service in these states, where relevant and not inconsistent with the rules adopted in this proceeding; see 47 CFR 76.66.

Satellite Carriers With More Than 5,000,000 Subscribers

7. Section 338(a)(4) of the Act expressly applies to a ''satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers;'' *see* 47 U.S.C. 338(a)(4) (*as amended by* the SHVERA). In the *NPRM*, we proposed that this provision applies to satellite carriers that have more than five million subscribers in 2005 and, in the future, to any carriers with more than five million subscribers. Currently, DIRECTV and EchoStar qualify under this definition; see *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, MB Docket No. 04–227, FCC 05–13 at paragraphs 54–55 (2004). We received no comments relevant to the proposed rule, which follows the statutory language and which we adopt as new § 76.66(b)(2) without change. Section 76.66(a)(1) of the current rules defines ''satellite carrier;'' *see* 47 CFR 76.66(a)(1). If in the future there are new satellite carriers with more than five million subscribers, they would be required to comply with this carriage provision and to follow the rule provisions that apply to ''new local-into-local service;'' see 47 CFR 76.66(d)(2).

Noncontiguous States

8. Section 338(a)(4) of the Act as amended by section 210 of the SHVERA applies to ''a State that is not part of the contiguous United States;'' *see* 47 U.S.C. 338(a)(4) (*as amended by* the SHVERA). Because the general definition of ''State'' in the Communications Act includes ''the Territories and possessions,'' we sought comment on whether ''State'' as used in the SHVERA should be read to include the noncontiguous territories and possessions of the United States, including but not limited to Puerto Rico and Guam, and whether considerations such as a satellite carrier's regulatory authorizations and/or actual service area are relevant to interpreting the obligation under section 338(a)(4) of the Act to serve ''noncontiguous states.'' Territories in the Pacific, such as Guam, are in a different International Telecommunication Union (''ITU'') region from the 50 states. The contiguous United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands are located in ITU Region 2 and have orbital assignments in the Region 2 BSS Plan. The ''*Region 2 Plans*'' comprise the Plan for BSS in the band 12.2–12.7 GHz in ITU Region 2 as contained in Appendix 30 of the ITU Radio Regulations, and the associated Plan for the feeder-links in the frequency band 17.3–17.8 GHz for the broadcasting-satellite service in Region 2 as contained in Appendix 30A of the ITU Radio Regulations. Guam, the Northern Marianas, Wake Island and Palmyra Island are located in ITU Region 3 and have orbital assignments in the Region 3 BSS plan at 122.0° E.L., 121.80° E.L., 140.0° E.L. and 170.0° E.L. respectively. Satellites operating pursuant to the Region 2 BSS plan are subject to different technical requirements and use different frequency bands than satellites authorized to operate in Region 3. Therefore, satellites designed to serve Region 2 areas would not meet the technical requirements necessary to serve Region 3 areas. We requested comment on the impact of regulatory differences (*e.g.*, use of different frequency bands) between ITU regions in providing service to these locations, but we noted in the NPRM that spot beam technology may allow coverage of widely spaced areas if visible from the satellite location; see NPRM, 20 FCC Rcd at 9322, paragraph 7.

9. We recognize that the phrase ''a State that is not part of the contiguous United States'' is susceptible to different interpretations. It is unclear from the statutory text whether the intended application of the term ''State'' means the definition of ''State'' as it appears in the Communications Act, which includes all territories and possessions, or whether it refers to the literal or colloquial use of the word ''State,'' meaning one of the fifty more or less internally autonomous territorial and political units composing the United States of America. In determining the proper interpretation, we bear in mind that section 3 of the Communications Act provides definitions of terms that apply for the purposes of this Act, ''unless the context otherwise requires;'' *see* 47 U.S.C. 153. As explained below, we believe the best construction of this phrase, based on context and the current record before us, is that ''a State that is not part of the contiguous United States'' was intended to refer only to Alaska and Hawaii and not to the broader definition of the Communications Act which includes territories and possessions. This conclusion is consistent with arguments made by satellite carriers EchoStar and DIRECTV, who point out the serious technical difficulties of serving all the territories and possessions. Several broadcast stations in Puerto Rico argue that ''State'' should be read to include territories and possessions so that stations in Puerto Rico will be entitled to mandatory carriage. In addition to the technical difficulties, EchoStar also argues that Congress' intent to limit section 338(a)(4) of the Act to Alaska and Hawaii is evidenced by the related copyright provisions in the SHVERA. We agree. As mentioned in the *NPRM*, Alaska is the only one of the 50 states that is not entirely subsumed within one or more DMAs; *see Notice*, 20 FCC Rcd at 9326, paragraph 18. Similarly, none of the noncontiguous territories and possessions are included in a DMA. However, section 122 of title 17, which defines ''local market'' for the statutory copyright license, as well as for section 338 of the Act generally, was amended only to add the areas in the State of Alaska that are outside of all DMAs to the definition of ''local market;'' *see* 17 U.S.C. 122(j)(2) (generally defining local market as ''the designated market area in which a station is located'' and further defining ''designated market area'' by reference to determinations 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.''); 47 U.S.C. 338(k) (3). Critically, the noncontiguous territories and possessions were not added; *see* 17 U.S.C. 122(j)(2)(D), *as amended* by section 111(b) of the SHVERA (''Certain areas outside of any designated market area.—Any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research,

shall be deemed to be part of one of the local markets in the State of Alaska. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area.''); 47 U.S.C. 338(k)(3). Consequently, were we to apply ''State'' to the noncontiguous territories and possessions, satellite carriers would not have a statutory copyright license to retransmit the stations in these markets because they would not fall within the definition of ''local market'' in section 122(j).

10. Satellite carriers do not and are not required to reach all geographic areas that include the possessions and territories of the United States. Many areas are not visible to all satellites. For example, Guam is below the horizon for United States satellite assignment east of 148° W.L. The Commission has recognized that contiguous United States (''CONUS'') antenna beams modified to include Puerto Rico and the U.S. Virgin Islands could divert power from other regions and potentially adversely affect the services of other countries; *see Policies and Rules for Direct Broadcast Satellite Service Report and Order*, 17 FCC Rcd 11,368, 11,372 (2002). We acknowledge that EchoStar and a company affiliated with DIRECTV currently provide service to Puerto Rico, including some local stations, and to the U.S. Virgin Islands. No one disputes, however, that service to Guam and other islands in the far Pacific would be outside the range of these companies and that requiring service to islands without television stations and without permanent populations would be absurd. Based on the serious technical difficulties of serving the territories and possessions, and the fact that the affected satellite carriers have never before served any subscribers in much of these areas, we believe Congress did not have in mind the definition of ''State'' as set forth in the Communications Act. For all the reasons discussed above, we believe the best reading of the statute, and the one most consistent with Congressional intent, is that section 338(a)(4) of the Act's use of the phrase ''State that is not part of the contiguous United States'' was not meant to include the noncontiguous territories and possessions, but instead was meant to refer only to the states of Alaska and Hawaii; *see Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (stating that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available); *Lawson* v. *Suwanee Fruit & S.S. Co.*, 69 S. Ct. 503 (1949) (Statutory definitions usually control the meaning of statutory words, but not where obvious incongruities in language would be created and major purpose of statute would be destroyed); *Teva Pharm., USA, Inc.* v. *FDA*, 182 F.3d 1003, 1011 (D.C. Cir. 1999) (citing *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 346 (1997)) (asserting that the FDA must interpret that statute to avoid absurd results and further congressional intent).

Analog and Digital Signals

11. We explained in the *NPRM* that the SHVERA requirements for satellite carriage to the noncontiguous states differ significantly from the existing satellite broadcast carriage requirements, both in scope and timing; *see Notice*, 20 FCC Rcd at 9323, paragraph 8. Currently, under the Communications Act and Commission rules implementing the Act, satellite carriers choose whether to rely on the statutory copyright license in section 122 of title 17 to offer ''local-into-local service,'' which in turn triggers the carry-one, carry-all obligation; see 47 U.S.C. 338(a)(1) and 47 CFR 76.66(b); *see also Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 1918 (2000) (''*DBS Must Carry Report and Order*''), 16 FCC Rcd 16544 (2001) (''*DBS Must Carry Reconsideration Order*''). The U.S. Court of Appeals for the Fourth Circuit upheld the constitutional validity of SHVIA and the reasonableness of the Commission's rules promulgated thereunder. *See Satellite Broadcasting and Communications Ass'n* v. *FCC*, 275 F.3d 337 (2001), *cert. denied*, 536 U.S. 922 (2002). The Communications Act, moreover, prohibits a multichannel video programming distributor from retransmitting the signal of a broadcast station unless it has ''the express authority'' of the station. 47 U.S.C. 325(b)(1)(A). *See also* 17 U.S.C. 122(a) (*as amended by* section 1002 of the SHVIA) and 47 U.S.C. 338(a)(1) (*as amended by* section 1008 of the SHVIA); *see* 47 U.S.C. 338(a)(1) and 47 CFR 76.66(b); *see also Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 1918 (2000) (''*DBS Must Carry Report and Order*''), 16 FCC Rcd 16544 (2001) (''*DBS Must Carry Reconsideration Order*''). The U.S. Court of Appeals for the Fourth Circuit upheld the constitutional validity of SHVIA and the reasonableness of the Commission's rules promulgated thereunder. *See Satellite Broadcasting and Communications Ass'n* v. *FCC*, 275 F.3d 337 (2001), *cert. denied*, 536 U.S. 922 (2002). The Communications Act, moreover, prohibits a multichannel video programming distributor from retransmitting the signal of a broadcast station unless it has ''the express authority'' of the station. 47 U.S.C. 325(b)(1)(A). *See also* 17 U.S.C. 122(a) (*as amended by* section 1002 of the SHVIA) and 47 U.S.C. 338(a)(1) (*as amended by* section 1008 of the SHVIA). Satellite carriers are not currently required to offer local-into-local service in any market. The question of satellite carriage obligations concerning a station's digital signal is currently pending before the Commission; *see* MB Docket Nos. 98–120 and 00–96; *see also WHDT* v. *Echostar*, 18 FCC Rcd 396 (MB 2003) (''WHDT Order'').

12. Section 338(a)(4) of the Act supersedes carry-one, carry-all by mandating analog and digital carriage in Alaska and Hawaii. A satellite carrier with more than five million subscribers is now required to retransmit the analog signals of each television station in local markets in Alaska and Hawaii to subscribers in those local markets by December 8, 2005 (one year after enactment of the SHVERA) and to retransmit the digital signals of each station no later than June 8, 2007 (30 months after enactment of SHVERA). We sought comment in the *NPRM* on whether the statute unambiguously means that if any or all of the local stations in these states are still broadcasting analog signals as well as digital signals as of June 8, 2007, the SHVERA requirement mandates dual must carry; *see NPRM*, 20 FCC Rcd at 9323–24, paragraph 9. The Communications Act provides for termination of analog signal licenses as of December 31, 2006, unless local stations request an extension and demonstrate that one or more criteria exist in their markets; *see* 47 U.S.C. 309(j)(14) (criteria include the so-called ''85% test'').

13. DIRECTV contends that section 338(a)(4) of the Act does not unambiguously require that satellite carriers must continue carrying analog signals after they begin carrying digital signals. DIRECTV suggests that there are two plausible readings of the text: that satellite carriers must retransmit analog signals either as long as Alaska and Hawaii broadcasters transmit in analog, or until satellite carriers are required to retransmit digital signals. It advocates that latter reading as the wiser policy. DIRECTV therefore reads section 338(a)(4) of the Act to require that satellite carriers replace the analog signals with digital signals in June 2007. DIRECTV explains that because satellite

carriers digitize analog broadcast signals, there is little quality difference between an analog and SD digital signal to the DBS subscriber. Microcom, a satellite distributor and dealer in Alaska, argues that dual carriage is not warranted when a broadcast station is operating both its digital and analog service in a standard definition format because the law requires the content of those two services to be identical. Microcom, however, is in error as the ''simulcasting'' requirements were eliminated in our Second DTV Periodic Review last year. In contrast, IBC and R y F, representing broadcast stations in Puerto Rico, argue that SHVERA requires satellite carriers to retransmit both the analog and digital signals by the mandated dates.

14. We find that section 338(a)(4) of the Act is ambiguous with respect to the question of dual carriage. The statutory provision states that satellite carriers ''shall (A) within 1 year after December 8, 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States; and (B) within 30 months after December 8, 2004, retransmit the signals originating as digital signals of each such station.'' While this language clearly contains two separate carriage requirements, it is unclear from the text whether Congress intended the analog carriage requirement to continue after commencement of the digital carriage requirement (*i.e.*, simultaneous or dual carriage) or whether it intended the analog requirement to end when the digital requirement takes effect. The statute does not speak directly to the issue, and there is no legislative history to shed light on what Congress intended. Where the statutory language is ambiguous, we must construe the statute so as to effectuate the legislative purpose and intent; *see Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843 (1984) (asserting that if a statute is silent or ambiguous, the question for the court is whether the agency's interpretation is based on a permissible construction of the statute). The Supreme Court stated, ''If Congress has explicitly left a gap for the agency to fill, there is express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute;'' *see Id.* at 843–44; *see also Nat'l Cable & Telecomm. Assn.* v. *Brand X Internet Serv.,* 125 S. Ct. 2688, 2699 (2005) (citing *Smiley* v. *Citibank,* 517 U.S. 735, 742 (1996)) (clarifying that *Chevron* established the presumption that Congress, when it left a statute ambiguous, understood that the ambiguity would be resolved by an agency and desired the agency to possess whatever degree of discretion the ambiguity allowed). The Supreme Court noted that where a statute's plain terms admit two or more reasonable ordinary usages, the Commission's choice of one of them is entitled to deference; *see Id.* at 2704. Here, we agree with DIRECTV that the most reasonable interpretation of section 338(a)(4) of the Act is that the analog carriage requirement ends upon commencement of the digital carriage requirement. We therefore conclude that satellite carriers must carry the signals of local stations in Alaska and Hawaii that originate as analog beginning no later than December 8, 2005, and the signals that originate as digital beginning no later than June 8, 2007, but that the analog carriage requirement ends when the digital carriage requirement begins. Based on the record in this proceeding, requiring carriage of both analog and digital signals simultaneously would likely increase the burden on satellite carriers without offering subscribers a substantial benefit. Because satellite carriers digitize analog broadcast signals, there is essentially no difference from a satellite subscriber's perspective between the analog signal and the standard definition (SD) digital signal broadcast when such signals are carrying the same programming, as is currently the general practice in the industry. Thus, a dual carriage requirement would often result in a satellite carrier carrying the same programming with essentially the same signal quality twice. Moreover, in light of the requirement to carry multicast signals described below, satellite subscribers will be able to receive multiple digital programming streams offered by local stations, and we do not believe that the remote likelihood that certain programming transmitted by analog signals would not be transmitted by any of a station's digital signals justifies the burden that a dual carriage requirement would impose on satellite carriers. Therefore, we conclude that simultaneous carriage of both analog and digital signals is not required and would serve no useful purpose in light of our other decisions in this proceeding. We will address other issues related to carriage of digital signals in the context of the proceeding addressing satellite carriage of local stations pursuant to section 338 of the Act as it applies throughout the United States during and after the transition to digital television; *see Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* CS Docket Nos. 98–120 and 00–96 (pending rulemaking proceeding to determine satellite carriers' obligations with respect to carriage of digital signals pursuant to section 338 of the Act.

Digital Signal Content and Format

15. Section 338(a)(4) of the Act requires carriage of ''signals originating as analog signals'' and ''signals originating as digital signals.'' We stated in the *NPRM* that there is no reference to ''primary video'' or any other term in section 338(a)(4) of the Act that expressly limits or describes the nature, format or content of the broadcast signal that satellite operators must carry in the noncontiguous states; *see NPRM,* 20 FCC Rcd at 9323–24, paragraph 9; *see also* 47 U.S.C. 338(j), 534(b)(3) and 535(g). The Commission recently concluded that the statutory term relating to cable mandatory carriage, ''primary video,'' was ambiguous with respect to whether it requires cable operators to carry broadcasters' multicast signals. Faced with an ambiguous statute, the Commission did not require mandatory carriage of multicast signals by cable systems; *see Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* CS Docket No. 98–120, Second Report and Order and First Order on Reconsideration, FCC 05–27, at paragraph 33 (rel. Feb. 23, 2005) (''*DTV Second Report and Order*'') (declining, based on the record, to require cable operators to carry more than one programming stream of a digital station that multicasts). The *NPRM* concluded, therefore, that the amendment requires that satellite carriers carry all multicast signals of each station in noncontiguous states and carry the high definition digital signals of stations in noncontiguous states in high definition format. We also referenced the pending proceeding on satellite carriage of digital signals, in general, and sought comment on our view of the statutory language and any alternative construction of the SHVERA as the statute relates to the carriage of multicast and/or high definition signals. Satellite carriage of high definition and multicast local signals is also under review in the ongoing broadcast carriage rulemaking docket in the context of applying the statutory prohibition on material degradation; *see Implementation of the Satellite Home*

Viewer Improvement Act of 1999, 16 FCC Rcd 1918, 1970–72 , paragraphs 120–123 (2000) (''*Report and Order''); Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* 16 FCC Rcd 2598, 2600, 2658, paragraphs 3 and 136 (2001) (''*First Report and Order*''). *See also NPRM,* 20 FCC Rcd at 9323–24, paragraph 9.

16. As explained in the *NPRM,* we continue to believe that the statutory language requires that satellite carriers carry all multicast signals and high definition (HD) signals of each local broadcast station in the noncontiguous states. We find section 338(a)(4)of the Act's use of the plural term ''signals'' in requiring carriage of ''signals originating as digital signals'' to unambiguously mean carriage of the entire free over-the-air digital broadcast, without limitation, being transmitted by a broadcaster. While DIRECTV argues that, because Congress also used the plural term ''signals'' with respect to analog signals (and there is no analog multicast or analog HD), the phrase ''signals of each station'' could be interpreted to mean the transmission of a single station's signal over time, we do not believe that this constitutes a reasonable interpretation of the statute. Section 338(a)(4) of the Act contains no limitation on the nature of the digital broadcast signal—such as the term ''primary video'' as used in the cable context—in describing the digital signals the satellite operator must carry in the noncontiguous states. At the time the SHVERA was enacted in December 2004, the Commission had interpreted, in the cable carriage proceeding three years earlier, the term ''primary video'' in section 614(b)(3) of the Act to mean ''a single programming stream and other program-related content.'' Had Congress intended to limit digital carriage to only a single standard definition stream, we believe Congress would have included similar limiting language in the satellite context. Section 338(a)(4) of the Act, by contrast, contains a broad requirement that satellite carriers retransmit ''the signals originating as digital signals.'' We also find unconvincing DIRECTV's reliance on section 338(j) of the Act's general directive that the Commission prescribe requirements on satellite carriers that are ''comparable'' to the must carry requirements imposed on cable operators; *see* 47 U.S.C. 338(j). According to DIRECTV, because cable operators in Alaska and Hawaii are not yet required to carry most digital signals in HD format nor are they required to carry multicast signals, the Commission cannot impose such requirements on satellite carriers in Alaska and Hawaii without running afoul of section 338(j) of the Act. We disagree. Under principles of statutory construction, section 338(a)(4) of the Act's specific mandate requiring carriage of ''the signals originating as digital signals'' in Alaska and Hawaii supercedes the general comparability directive set forth in section 338(j) of the Act. Where the statute is clear and unambiguous, we must implement the express meaning of the statutory language; *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–43 (1984). Requiring carriage of multicast and HD signals most accurately reflects the requirement set forth in the statutory language itself. We decline to read into the statute a limitation where none exists. We believe that section 338(a)(4) of the Act requires carriage of Alaska and Hawaii broadcasters' entire free over the air broadcast, including multicast and HD signals. This decision, however, is limited to section 338(a)(4) of the Act and does not interpret any other statutory provision that regulates cable or satellite carriage obligations.

17. Even if we were to find ambiguity in the statutory language, however, we believe, for the reasons given above, that the better reading, and the one that most accurately reflects Congress's intent, requires satellite carriers to carry all multicast and HD signals. We also reject EchoStar and DIRECTV's argument that in order to avoid an unconstitutional construction of section 338(a)(4) of the Act, the Commission must not construe the statute to impose a multicast and HD carriage obligation. As explained below, we find interpreting section 338(a)(4) of the Act as mandating multicast and HD carriage is consistent with the First Amendment. The Supreme Court has held that must carry ''is a content-neutral regulation'' that must be analyzed under the intermediate level of scrutiny. Under this test, a content-neutral regulation will be upheld if: (1) It furthers an important or substantial governmental interest; (2) the government interest is unrelated to the suppression of free expression; and (3) the provisions do not burden substantially more speech than is necessary to further those interests.

18. With regard to the first prong of the analysis, we find that the multicast and HD carriage obligation imposed under section 338(a)(4) of the Act furthers two important governmental interests. First, it ensures that the citizens of Alaska have full access to television programming. In enacting section 338(a)(4), we believe Congress recognized the unique situation in Alaska which makes communications services critically important to the public safety, education, and economic development of the state. Alaska has the lowest population density in the country, and communities in rural Alaska are unique in several ways. Most rural Alaskan communities are quite small—almost 90% of Alaskan communities have fewer than 1,000 people; 25% of the communities have between 100 and 250 people; and 29% of the communities have fewer than 100 people. Most Alaskan communities are also very remote and isolated—most rural communities in Alaska do not have access via road systems to the relatively urban areas of the State (Anchorage, Fairbanks and Juneau), and, indeed, many Alaskan communities can be accessed only by air or by water and are frequently inaccessible because of weather conditions. These characteristics taken together significantly limit the communications options available to Alaskan communities. Indeed, Alaska's unique geography when combined with the State's unique population distribution presents many rural Alaskans with serious challenges in obtaining a diverse range of television programming, particularly through over-the-air broadcasting. Moreover, cable service and other forms of multichannel video programming distribution services are often not available to them. As the Alaska Broadcasters have reported, 23% of Alaskan households are unable to access cable television, and these rural households on average are able to receive only one television station through over-the-air broadcasting. Service transmitted by satellite is one of the few viable means of transcending these obstacles, and the ability to receive multiple programming streams from local stations through satellite carriers would be the only way that many rural Alaskan households would be able to access these programming streams. Moreover, given the important role that DBS service plays in rural Alaska, unless satellite customers are provided with access to multicasting, there may not be sufficient incentive for Alaskan television stations to develop additional programming streams targeted to the needs and interests of rural communities, thus denying these Alaskans the benefits of the digital transition. We thus believe Congress intended section 338(a)(4) of the Act to be interpreted broadly, without limitations, in order to further the important governmental interest of providing the Alaskan community with full access to digital communications.

19. In addition, we find that multicast and HD carriage obligations imposed under section 338(a)(4) of the Act further a second important governmental interest of ensuring Alaska and Hawaii an equitable distribution of satellite service. We recognize that section 338(a)(4) of the Act is responsive to a long history of more limited DBS service in Alaska and Hawaii than in the lower 48 states. Filings in prior Commission proceedings indicate that, with respect to DBS service, Alaskans had ''far fewer choices than other Americans do, often their signal reception is poorer, and the reception equipment required is often much larger.'' In Hawaii, the DBS subscriber packages were not comparable to the subscriber packages available in the 48 lower states, particularly in the area of programming. For example, some of the most popular programming channels—such as CNN, ESPN, Headline News, Discovery Channel—were not offered to subscribers in Hawaii. The State of Hawaii continues to maintain today that the level of service provided to Hawaiian subscribers remains significantly lower than that provided to subscribers in the lower 48 states. According to the State of Hawaii, every television market that is larger than Honolulu already receives local-into-local service from DIRECTV and nearly half of the 130 markets that receive local-into-local service from DIRECTV are smaller than Honolulu. We believe section 338(a)(4) of the Act was intended to remedy the situation in the noncontiguous states by providing Alaska and Hawaii with access to all of the programming offered through free over-the-air broadcasts, including all multicast and HD signals. We find that interpreting the statute in this manner best achieves the important governmental interest of making available ''to *all* people of the United States'' a ''rapid, efficient, *Nation-wide*, and world-wide wire and radio communication service'' and of providing ''a fair, efficient, and *equitable* distribution of radio services'' among the several States.

20. With respect to the second prong of the constitutional analysis, we find the Government's interest in ensuring the citizens of Alaska full access to television programming and the equitable distribution of satellite service are aimed at bringing a more robust communications service to the citizens of Alaska and Hawaii, not at stemming expression. These governmental interests are thus ''unrelated to the suppression of free expression.'' Indeed, they are aimed at providing the residents of Alaska and Hawaii with access to more information. We therefore find the second prong of the intermediate scrutiny test to be easily satisfied.

21. With respect to the third prong of the analysis, we find that this multicast and HD carriage requirement will not burden substantially more speech than is necessary to further the important governmental interests. Satellite carriage of local digital broadcast signals pursuant to section 338 of the Act as it will apply in the contiguous states, including carriage of HD and multicast signals, is under review in the ongoing broadcast carriage rulemaking docket; *see Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* CS Docket No. 98–120. Congress took steps to confine the breadth and burden of the regulation by directing the multicast and HD carriage obligation to apply only in the states of Alaska and Hawaii. The carriage requirement is thus narrowly tailored to serve the important government interests identified above in a direct and effective way. In addition, while DIRECTV makes a number of claims as to the burdensomeness of the regulation, the actual effects of a multicast and HD requirement in the States of Alaska and Hawaii remain unclear. We find speculative DIRECTV's argument that imposing an HD and multicast carriage requirement for Alaska and Hawaii would place a substantial capacity burden on its system. The requirement for carriage of multicast and HD signals does not begin until June 2007. We do not know at this time how many programming streams Alaskan and Hawaiian local broadcast stations will be multicasting in 2007. At this point, for example, no station in Alaska or Hawaii is broadcasting more than two streams of programming; *see e.g. www.CheckHD.com* (showing one station, each, in Anchorage, Fairbanks, and North Pole, Alaska currently broadcasting two streams and none in Hawaii). Moreover, by the time the multicast and HD carriage requirement would take effect, many of the capacity issues may well be remedied through improvements in satellite technology.

22. In short, we believe that in enacting section 338(a)(4), Congress sought to address the specific communications problems and special needs that exist in the states of Alaska and Hawaii and intended, through expanded satellite carriage, that subscribers in Alaska and Hawaii would be ensured full, not limited, access to the benefits of the digital transition. The multicast and HD carriage requirement furthers these important governmental interests without burdening substantially more speech than necessary and thus satisfies the requirements under the First Amendment. We note, however, that the foregoing analysis interprets section 338(a)(4) of the Act only, and thus does not interpret sections 614 and 615 or section 338 with respect to satellite carriage of digital signals throughout the United States.

Carriage Elections

23. Section 338(a)(4) of the Act leaves implementation of carriage election rules expressly to the Commission's discretion; *see* 47 U.S.C. 338(a)(4). Consequently, in the *NPRM* we proposed regulations concerning the timing of the carriage elections related to the new carriage requirements in Alaska and Hawaii; *see NPRM,* 20 FCC Rcd at 9324–25, paragraphs 10–15. The first satellite carriage cycle (pursuant to the SHVIA) will end on December 31, 2005. The carriage election deadline for the second cycle is October 1, 2005, for carriage beginning January 1, 2006; *see* 47 CFR 76.66(c)(4). As described in the *NPRM,* the analog signal carriage requirement for Alaska and Hawaii commences December 8, 2005, which is just a few weeks before the carriage cycle that applies to satellite carriers and broadcast stations in the contiguous states, which commences January 1, 2006, and continues until December 31, 2008; *see NPRM,* 20 FCC Rcd at 9324, paragraph 11; *see* 47 CFR 76.66(c). The carriage election process enables stations to choose between carriage pursuant to retransmission consent or mandatory carriage; see 47 U.S.C. 325(b). Retransmission consent is based on an agreement between a broadcast station and satellite carrier, and includes a station's authorization and terms for allowing its broadcast signal to be carried. Broadcast stations and satellite carriers are required to negotiate retransmission consent agreements in good faith. 47 U.S.C. 338(b)(3)(c) (*as amended by* section 207 of the SHVERA). If a station elects must-carry status, it is, in general, entitled to insist without other terms that the satellite carrier carry its signal in its local market; *see* 47 U.S.C. 338(a); *see also* 47 CFR 76.66(c).

24. To implement the carriage election timing requirements in section 210 of the SHVERA, we will track the existing regulations as closely as possible so that carriage elections in Alaska and Hawaii will be synchronized with carriage elections in the contiguous states. Because the analog carriage requirement in Alaska and Hawaii takes

effect only 24 days before the carriage cycle in the rest of the country, we will use the same carriage election deadline of October 1, 2005. Thus, commercial television broadcast stations in a local market in the noncontiguous states are required to make a retransmission consent-mandatory carriage (must carry) election by October 1, 2005, which is the same deadline for local stations in local-into-local markets in the contiguous states; *see* amended § 76.66(c)(6). No commenter disagreed with this proposal and we adopt rules to implement it now; *see* amended rule § 76.66(c)(6).

25. With respect to carriage of the digital signals of stations in Alaska and Hawaii, the *NPRM* proposed that the retransmission consent-must carry election by a station in a local market in Alaska or Hawaii should be a two-step process with one election that applies to the analog signal carriage, which commences December 8, 2005, and a second carriage election that would govern carriage of the digital signal. Carriage of signals originating as digital must commence by June 8, 2007, but may begin pursuant to retransmission consent at any time. We proposed that the deadline for the second carriage election, for digital carriage, would be April 1, 2007, two months before carriage must commence. As an alternative, we suggested a one-step process in which the station's election by October 1, 2005, for its analog signal, would also apply to its digital signal, for which mandatory carriage will commence by June 8, 2007.

26. Two commenters, EchoStar and Microcom, favored the one-step approach on the basis of simplicity for satellite carriers and reduced burden for broadcasters. We believe, however, that the two-step approach better tracks Congress' decision to mandate carriage of analog and digital signals in two separate steps. Two separate elections is also more consistent with the Commission's Cable Must Carry decision in 2001, which permits stations broadcasting both analog and digital signals to elect must carry for their analog signal and retransmission consent for their digital signal; *see Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, etc.*, 16 FCC Rcd 2598, 2610 (2001) (''*DTV Carriage First Report and Order*''). The two-step approach is also consistent with treating carriage of the digital signal as sequential rather than concurrent with the analog signal. It is important for local stations in Alaska and Hawaii to have a second, separate opportunity to elect between must carry and retransmission consent for their digital signals. We adopt the rule, as proposed in the *NPRM*, which establishes the procedures for this two-step carriage election; *see* amended rule § 76.66(c)(6).

27. As further described in the *NPRM*, after the initial carriage cycle in Alaska and Hawaii (January 1, 2006 through December 31, 2008), the election cycle and carriage election procedures provided in section 76.66(c) will apply in the future; see *NPRM*, 20 FCC Rcd at 9325, paragraph 14. For example, the next carriage election (after the upcoming 2005 election) is required by October 1, 2008, for the carriage cycle beginning January 1, 2009; *see* 47 CFR 76.66(c)(2) and (4). We received no comments on this point.

28. We also confirm that stations in Alaska and Hawaii should be permitted to elect must carry for their analog signals and negotiate for carriage of the digital signals via retransmission consent before the mandatory digital signal carriage takes effect. We received no comments on this point. Therefore, prior to June 8, 2007, when the mandatory digital carriage rights for local stations in Alaska and Hawaii take effect, such stations may separately negotiate for voluntary carriage of their digital signals even if they elect mandatory carriage for their analog signals; *see* amended § 76.66(c)(6). This flexibility is also consistent with the approach generally taken in the digital carriage rulemaking proceeding thus far.

29. We also described in the *NPRM* that new television stations in Alaska or Hawaii should follow § 76.66(d)(3) of the Commission's rules to notify the satellite carrier and elect carriage. Based on section 338(a)(4) of the Act, a new station in Alaska or Hawaii will have a right to mandatory carriage for its analog signal if it begins service after December 8, 2005, and for its digital signal if it begins service after June 8, 2007. The existing rule describes the procedures and timing for requesting and obtaining carriage; thus, no rule amendments are needed; *see* 47 CFR 76.66(d)(3)(ii) through (iv). We received no comments on this issue, except that EchoStar asked that we clarify that stations that commence digital service after March 1, 2007 be required to comply with the Commission's rules for new stations. This date was related to the proposed special notification rules, which are discussed, *infra*. We provide that clarification here: new television broadcast stations in Alaska and Hawaii should follow the new station rule in § 76.66(d)(3) of the Commission's rules to notify satellite carriers and elect must carry or retransmission consent for their analog and digital signals.

Procedures for Carriage

30. The *NPRM* provided that in all other respects related to the mechanics of carriage, other than the carriage election cycle, we would apply the existing rules pertaining to satellite carriage as they were adopted to implement section 338 pursuant to the SHVIA; *see NPRM*, 20 FCC Rcd at 9324, paragraph 10; *see also* 47 U.S.C. 338(a)(1), (b)(1), and (c); 47 CFR 76.66(g) and (h). As noted in the *NPRM,* section 338(a)(4) of the Act also refers to the ''cost to subscribers of such transmissions'' but does not require rules for implementation. *NPRM,* 20 FCC Rcd at 9324, n. 34. We received no comments with respect to the mechanics for carriage and application of the existing rules. Therefore, our amended rules provide that carriage may be requested by television broadcast stations in local markets in Alaska and Hawaii effective December 8, 2005 for analog signals, and June 7, 2007 for digital signals; *see* amended rule § 76.66(b)(2). The carriage procedures for stations in Alaska and Hawaii shall follow the existing requirements, except with respect to the carriage election process, as described herein; *see* amended rule § 76.66(c)(6). Non-commercial television stations do not elect carriage because they cannot elect retransmission consent; *see* 47 U.S.C. 325(b)(2)(A). They are entitled to mandatory carriage; *see* 47 U.S.C. 338.

Availability of Signals

31. Section 338(a)(4) of the Act provides that satellite retransmissions of local stations in Alaska and Hawaii ''shall be made available to substantially all of the satellite carrier's subscribers in each station's local market;'' *see* 47 U.S.C. 338(a)(4) (*as amended by* section 210 of the SHVERA). The provision did not define ''substantially all'' subscribers, and we sought comment on its meaning in this context. Given that the statute refers to ''subscribers,'' obviously it is not referring to parts of the state that the carrier cannot reach at all. Rather, as the *NPRM* pointed out, this wording is consistent with the physical limitations of some satellite technology that may not be able to reach all parts of a state or a DMA where a spot beam is used to provide local stations. EchoStar agrees with our interpretation, noting that the existing geographic service rules apply to both Alaska and Hawaii and provide well-established parameters for service offerings. Microcom asserts that, at a minimum, ''substantially all'' should be defined as those that could be served by a satellite providing primary services

within the engineering constraints of the primary or spot beams.

32. We believe that this statutory provision recognizes the existing physical limitations on satellite service, particularly in these noncontiguous states. With respect to DBS service to Alaska, for example, the Commission has stated that although reliable service usually requires a minimum elevation angle of ten degrees or more, service to Alaska is often offered at elevation angles as low as five degrees; *see Policies and Rules for the Direct Broadcast Satellite Service,* 17 FCC Rcd 11,331, 11,358–59 (2002). The Commission defined elevation angle ''as the upward tilt of an earth station antenna measured in degrees relative to the horizontal plane (ground), that is required to aim the earth station antenna at the satellite. When aimed at the horizon, the elevation angle is zero. If the satellite were below the horizon, the elevation angle would be less than zero. If the earth station antenna were tilted to a point directly overhead, it would have an elevation angle of 90°.'' In addition, the Commission determined that in some areas of Alaska, from some orbital locations, the elevation angle was less than five degrees, or even below the horizon, thereby making service to those areas impossible. For example, the elevation angle for Attu Island, Alaska is less than zero or below the horizon for the 61.5°, 101°, and 110° orbit locations and only 4 for the 119° location. Microcom asserts that no location in Alaska has an elevation angle less than 10 degrees to the DBS orbital locations at 148 and 157 degrees West Longitude and proposes that carriers that use these orbital locations to provide local-into-local service to local markets on the west coast could do the same to provide the local stations in one or more of the Alaska DMAs, as well as to serve parts of Alaska not in a DMA. We are inclined to agree with Microcom that satellite carriers that have these orbital slots and can serve these areas should do so, and we note that satellite carriers must abide by the geographic service rules that require service where technically feasible; *see Policies and Rules for the Direct Broadcast Satellite Service,* 17 FCC Rcd at 11,358–62.

33. In the *NPRM* we said it is not necessary to adopt new rules to implement this provision and noted that this provision is similar to the Commission interpretation adopted in the implementation of the SHVIA, that satellite carriers that offer local-into-local service are not required to provide service to every subscriber in a DMA. Only EchoStar commented and agreed that no special rules were necessary on this point.

Areas Outside Local Markets

34. As described above, Alaska is the only one of the fifty states that has areas that are not included within any DMA. Section 338(a)(4) of the Act requires a satellite carrier in Alaska to make available the signals of all the local television stations that it carries in at least one local market to substantially all of its subscribers in areas outside of local markets who are in the same state; *see* 47 U.S.C. 338(a)(4), *as amended* by section 210 of SHVERA. Congress also modified the copyright provisions of title 17 to include these areas of Alaska that are outside of all DMAs within the definition of ''local market'' as it pertains to the statutory copyright license for carriage of local stations; *see* 17 U.S.C. 122(j)(2)(D) *as amended by* section 111(b) of the SHVERA. In Alaska, there are three DMAs covering the main population centers, but most of the state, which is sparsely populated, is not included in a DMA. Thus, a satellite carrier in Alaska will be required to provide the television stations that it carries in at least one of the three DMAs, in which carriage of local stations is required by section 338(a)(4) of the Act, to areas of the State not included in DMAs. In the *NPRM* we said that we believe the statute speaks for itself and that no special rule is required to implement this statutory requirement.

35. No commenter disputed that the statutory language is largely self-effectuating, but Microcom recommended that the Commission allow subscribers that are outside all DMAs to subscribe to any local package that they are technically capable of receiving. DIRECTV contends that section 338(a)(4) of the Act does not contemplate giving subscribers this option and that the SHVERA leaves the choice of which package to offer to the satellite carrier. DIRECTV explains that it could not comply with a rule that allowed subscribers outside of DMAs to choose which DMA package of local signals they want due to limitations in the set top box based upon the ''market ID'' that DIRECTV assigns to each local market. The market ID is critical to the operation of DIRECTV's billing and customer service system, which cannot function with differing choices of local market packages within a given zip code or county. We agree that the statute does not require that the choice of local package rest with the individual subscriber, and, therefore, it is unnecessary to require a satellite carrier to reconfigure its operations to afford this choice. Moreover, the statutory copyright license in section 122 of title 17 specifies that: ''A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area;'' see 17 U.S.C. 122(j)(2)(D) as amended by section 111(b) of the SHVERA We note, too, that DIRECTV has committed to working with local officials in Alaska to identify the appropriate local market to offer to Alaska subscribers who are not in a DMA. A satellite carrier that wishes to offer subscribers their choice of Alaska DMA package, however, is free to do so, as the statutory language neither compels nor forbids this approach.

36. Microcom also raises a separate issue concerning signal availability, which is related to the revisions to the distant signal statutory copyright license, as revised by the SHVERA in conjunction with local signal availability pursuant to section 338(a)(4). Section 119(a)(16) of title 17 provides that the statutory copyright license for satellite retransmission of distant signals shall not apply with respect to satellite retransmission of a network station located outside of the State of Alaska to any subscriber in Alaska if a television station located in Alaska is made available by the satellite carrier pursuant to section 122; see 17 U.S.C. 119(a)(16)(A) as amended by section 111 of the SHVERA. Section 119(a)(16)(B) limits the restriction in (A) if the distant signal is a digital signal and no television station licensed to a community in Alaska and affiliated with the same network is transmitting a digital signal. See also, 17 U.S.C. 122(j)(2)(D) as amended by section 111(b) of the SHVERA, which amends the definition of ''local'' and thereby creates the copyright license for the areas in Alaska that are outside of a DMA: ''Any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area.'' Microcom asks that we define when a signal is made ''available'' for this purpose and to consider the cost to a subscriber to obtain the equipment to access the local signal package. We did not raise this question in the NPRM, as it applies

specifically to eligibility for distant signals. We note, however, that the statute defines ''available,'' as it pertains to the copyright license in section 119, to mean that the station is available if the satellite carrier offers that local station to other subscribers who reside in the same zip code as the subscriber in question; see 17 U.S.C. 119(a)(4)(G) as amended by section 103 of the SHVERA; see also 47 U.S.C. 339(a)(2)(H) as amended by section 204 of the SHVERA, which is substantially the same definition. Thus, we cannot agree with Microcom's proposal to determine availability based on the cost of equipment to receive the local station package. Microcom also asks the Commission to address questions pertaining to ''commercial retransmission consent'' for commercial establishments in Alaska that are not within a DMA. This issue is not within the scope of this proceeding, which is limited to implementation of section 338(a)(4).

37. The rules governing satellite carriage of local stations that were adopted to implement the SHVIA define ''local market'' based upon the copyright definition cited in section 338 of the Act; *see* 47 U.S.C. 338(k)(3) (formerly (h)(3)); *see also* 47 CFR 76.66(e). EchoStar referred to the notification proposal in connection with its request for clarification concerning new stations. Accordingly, we amend our rule section to track the revised definition of local market in section 122 of title 17 to reflect the revisions related to areas of Alaska outside of all DMAs; *see* adopted § 76.66(e)(2) and (3).

Notification by Satellite Carrier

38. In the *NPRM* we sought comment on a proposal to require special satellite carrier notifications to local stations in connection with the new carriage requirements in Alaska and Hawaii, although section 338(a)(4) of the Act does not require such notification. We proposed two special notifications: the first for the forthcoming carriage election for analog signals, and the second for carriage of digital signals in 2007. We received no comments on this proposal. We conclude that it is unnecessary to establish a special notification procedure for the upcoming carriage election with respect to analog signal carriage. Moreover, there is inadequate time to adopt such a provision and make it effective in time to be meaningful for the analog carriage election deadline adopted in this Order. The deadline for stations to make carriage elections is October 1, 2005, for the carriage cycle that commences January 1, 2006, and that will govern carriage for local stations' analog signals in Alaska and Hawaii beginning December 8, 2005. Thus, satellite carriers would have to send the proposed 30 day notification before September 1, which would require **Federal Register** publication of this Order no later than August 1, 2005. We note that EchoStar currently provides local-into-local service in the Honolulu and Anchorage DMAs, assuring that the stations in those markets are aware that they should make carriage elections no later than October 1, 2005 to ensure continued carriage. With respect to the other local markets in Alaska and Hawaii, if satellite carriers follow the existing rule for initiating local service, the notifications, elections, and carriage would come too late to satisfy the statutory requirement of commencing carriage of analog signals by December 8, 2005; see 47 CFR 76.66(d)(2) (Requires 60 day notice prior to commencing service in a new market, gives stations 30 days to elect carriage, requires carriage to commence 90 days later). We will instead rely on the publication of this Order and the existing carriage election deadline to assure that stations in Alaska and Hawaii receive adequate notice for the October 1, 2005 carriage election deadline.

39. We will adopt the second notification requirement to ensure that local stations in Alaska and Hawaii are reminded of their digital carriage rights commencing in June 2007. We will require satellite carriers with more than 5 million subscribers to notify all television broadcast stations located in local markets in Alaska and Hawaii that they are entitled to carriage of their digital signals as of June 8, 2007, and that they must elect mandatory carriage or retransmission consent by April 1, 2007, to be assured of carriage, as provided in §§ 76.66(b)(2) and (c)(6). This notification will be required by March 1, 2007, with respect to the carriage election for digital signals; *see* adopted § 76.66(d)(2)(iii). The amended rule provides for carriage requests from both commercial and noncommercial television broadcast stations.

40. As further described in the *NPRM*, a new satellite carrier that meets the definition in section 338(a)(4) of the Act in the future will be required to comply with § 76.66(d)(2) of the Commission's rules regarding ''new local-into-local service'' (imposes requirements when a new satellite carrier intends to retransmit a local television station back into its local market).

Procedural Matters

41. *Accessibility Information.* To request this *Report and Order* or other materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov*.

42. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Certification

43. The Regulatory Flexibility Act of 1980, as amended (RFA), requires a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' 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).

44. We are amending § 76.66 of the Commission's rules as required by section 210 of the SHVERA. We expect these rule amendments will not have a significant economic impact on a substantial number of small entities. The rules are required by statute and will allow for local television stations to elect carriage pursuant to retransmission consent or mandatory carriage with respect to satellite carriers with more than 5 million subscribers in a non-contiguous state. ''Satellite carriers,'' including Direct Broadcast Satellite (DBS) carriers, will be directly and primarily affected by the rules.

45. The satellite carriers covered by these rules are governed by the SBA-recognized small business size standard of Cable and Other Program Distribution. This size standard provides that a small entity is one with $12.5 million or less in annual receipts. The two satellite carriers that are subject

to these rule amendments because they currently have more than five million subscribers, DIRECTV and EchoStar, report annual revenues that are in excess of the threshold for a small business. We anticipate that any satellite carrier that, in the future, has more than five million subscribers would necessarily have more than $12.5 million in annual receipts. Thus, the entities directly affected by the proposed rules are not small entities.

46. We also note that, in addition to satellite carriers, television broadcast stations are indirectly affected by the amended rule in that they potentially benefit from the satellite carriage required by the rule and must elect between mandatory carriage and retransmission consent. This carriage election, however, follows the existing Commission rules. These existing rules currently permit stations in Alaska and Hawaii to elect carriage if and when a satellite carrier offers local-into-local service in their market. The amended rules affect these election rights by merely providing a date certain for carriage in these specified markets, and this change does not amount to a significant economic impact.

47. Therefore, we certify that the adopted rules will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Report and Order, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This certification will also be published in the **Federal Register**.

Final Paperwork Reduction Act of 1995 Analysis

48. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission received approval for the information collection requirements contained in this Order from the Office of Management and Budget on June 14, 2005. There have been no changes to the information collection requirements since receiving OMB approval. In addition, we note that there is no new or modified ''information burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* U.S.C. 3506(c)(4). As described in the Final Regulatory Flexibility Certification, *supra*, the businesses affected by our action are not small.

49. *Further Information.* For additional information concerning the PRA information collection requirements contained in this Order, contact Cathy Williams at 202–418–2918, or via the Internet to *Cathy.Williams@fcc.gov*.

50. *Additional Information.* For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

Ordering Clauses

51. Accordingly, *it is ordered* that pursuant to section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, and sections 1, 4(i) and (j), and 338(a)(4) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 338(a)(4), that this Report and Order *is adopted* and the commission's rules are hereby amended and shall become effective October 31, 2005.

52. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television, Television.

Federal Communications Commission

William F. Caton,

Deputy Secretary.

Rule Changes

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

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

■ 2. Section 76.66 is amended by revising paragraphs (b)(2) and (c)(4), by adding paragraph (c)(6), redesignate paragraphs (d)(2)(iii) and (iv) as paragraphs (d)(2)(iv) and (v), add new paragraph (d)(2)(iii) and revise paragraphs (e)(2) and (3) to read as follows:

§ 76.66 Satellite broadcast signal carriage.

* * * * *

(b) * * *

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

* * * * *

(c) * * *

(4) Except as provided in paragraphs (c)(6), (d)(2) and (d)(3) of this section, local commercial television broadcast stations shall make their retransmission consent-mandatory carriage election by October 1st of the year preceding the new cycle for all election cycles after the first election cycle.

* * * * *

(6) A commercial television broadcast station located in a local market in Alaska or Hawaii shall make its retransmission consent-mandatory carriage election by October 1, 2005, for carriage of its signal that originates as an analog signal for carriage commencing on December 8, 2005, and by April 1, 2007, for its signal that originates as a digital signal for carriage commencing on June 8, 2007 and ending on December 31, 2008. For analog and digital signal carriage cycles commencing after December 31, 2008, such stations shall follow the election cycle in paragraphs (c)(2) and (4). A noncommercial television broadcast station located in a local market in Alaska or Hawaii must request carriage by October 1, 2005, for carriage of its signal that originates as an analog signal for carriage commencing on December 8, 2005, and for its signal that originates as a digital signal for carriage commencing on June 8, 2007 and ending on December 31, 2008.

* * * * *

(d) * * *

(2) * * *

(iii) A satellite carrier with more than five million subscribers shall provide the notice as required by paragraphs (d)(2)(i) and (ii) of this section to each television broadcast station located in a local market in Alaska or Hawaii, not

later than March 1, 2007 with respect to carriage of digital signals; provided, further, that the notice shall also describe the carriage requirements pursuant to 47 U.S.C. 338(a)(4), and paragraph (b)(2) of this section.

* * * * *

(e) * * *

(2) A designated market area is 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. In the case of areas outside of any designated market area, any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska.

(3) A satellite carrier shall use the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates to define television markets for the first retransmission consent-mandatory carriage election cycle commencing on January 1, 2002 and ending on December 31, 2005. The 2003–2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates shall be used for the second retransmission consent-mandatory carriage election cycle commencing January 1, 2006 and ending December 31, 2008, and so forth for each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.

* * * * *

[FR Doc. 05–17324 Filed 8–30–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2005–22240]

RIN 2127–AJ60

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration requesting changes to a final rule published on February 27, 2004 (February 2004 final rule). The February 2004 final rule amended the upper interior impact requirements of Federal Motor Vehicle Safety Standard No. 201, ''Occupant protection in interior impact.'' Among other matters, to address the safety consequences of certain new vehicle designs, the February 2004 final rule added new targets to door frames and seat belt mounting structures found in some vehicles. This document amends the definition of ''seat belt mounting structure'' to ensure that the definition is not unnecessarily broad, and clarifies several issues related to existing target relocation procedures. This document also delays the implementation of the new requirements for door frames and seat belt mounting structures from September 1, 2005 until December 1, 2005.

DATES: The amendments in this rule are effective September 1, 2005.

Petitions: Petitions for reconsideration must be received by October 17, 2005, and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues: Lori Summers, Office of Crashworthiness Standards, NVS–112, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–1740. Fax: (202) 493–2290.

For legal issues: Mr. George Feygin, Attorney Advisor, Office of the Chief Counsel, NCC–112, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–5834. Fax: (202) 366–3820. E-mail: George.Feygin@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, the National Highway Traffic Safety Administration (NHTSA) amended Federal Motor Vehicle Safety Standard (FMVSS) No. 201, ''Occupant protection in interior impact,'' to require passenger cars, trucks, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, and buses with a GVWR of 3,860 kilograms (8,500 pounds) or less, to provide head protection when an occupant's head strikes upper interior components, such as pillars, side rails, headers, and the roof during a crash.[1] The new head protection requirements were necessary because head impacts with upper interior components resulted in a significant number of occupant injuries and fatalities.

The head impact protection provisions of FMVSS No. 201 set minimum performance requirements for vehicle interiors by establishing target areas within the vehicle that must be properly padded or otherwise have energy absorbing properties to minimize head injury in the event of a crash. Compliance with the upper interior impact requirements is determined, in part, by measuring the forces experienced by a Free Motion Headform (FMH) test device when it is propelled, at any speed up to and including either 18 km/h or 24 km/h (12 mph or 15 mph), into certain targets on the vehicle interior.

New vehicle designs not contemplated by the 1995 amendments to FMVSS No. 201 emerged, and with them, certain safety concerns. First, a number of manufacturers began producing three door coupes and pickup trucks with three or four doors. Unlike the conventional designs, these vehicles do not have B-pillars between doors. Yet, the door frames appeared to be equivalent to the B-pillar for purposes of head impact protection because these door frames were located near the head of a seated vehicle occupant and posed the same potential head injury risks as a B-pillar. Second, certain pillarless coupes and convertibles used a freestanding vertical structure to provide an attachment point for the upper anchorage of a lap and shoulder belt. This structure, which must be relatively stiff in order to ensure the stability of the belt anchorage, was normally located near the head of the occupant in the seating position for which the belt is provided.

[1] *See* 60 FR 43031 (August 18, 1995). For a detailed discussion of subsequent amendments to the head impact protection requirements see 69 FR 9217 at 9218–9220 (February 27, 2004).