TABLE 52.1525.—EPA—APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

| Title/subject | State citation chapter [2] | Date submitted by State | Date approved by EPA | Federal Register citation | 52.1520 | Explanation |
|---|---|---|---|---|---|---|
| * * * * * * * | | | | | | |
| $NO_X$ Budget Trading Program. | Part Env-A 3200 ..... | 7/27/98 | 11/14/00 | 65 FR 68082 ..... | (c)(57) | Approval of OTC $NO_X$ budget and allowance trading program. |
| * * * * * * * | | | | | | |
| Source specific order | Order ARD 98–001 ... | 7/17/98 | 11/14/00 | 65 FR 68082 ..... | (c)(64) | Source-specific $NO_X$ RACT order and discrete emission reduction protocols for Public Service of New Hampshire. |
| * * * * * * * | | | | | | |
| $NO_X$ Budget Trading Program. | Part Env-A 3200 ..... | 7/27/98 | 11/14/00 | 65 FR 68082 ..... | (c)(57) | Approval of OTC $NO_X$ budget and allowance trading program. |
| * * * * * * * | | | | | | |

[1] These regulations are applicable statewide unless otherwise noted in the Explanation section.
[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

[FR Doc. 00–28707 Filed 11–13–00; 8:45 am]
**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 76

**[CS Docket No. 00–2; FCC 00–388]**

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts regulations 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 adopts regulations that apply current cable rules for network non-duplication, syndicated program exclusivity and sports blackout to satellite carriers.

**DATES:** Effective November 29, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Eloise Gore at (202) 418–7200 or via internet at *egore@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (''Order''), FCC 00–388, adopted October 27, 2000; released November 2, 2000. The full text of the Commission's Order 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/ For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

### Paperwork Reduction Act

This Report and Order contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission is requesting Office of Management and Budget (''OMB'') approval, under the emergency processing provisions of the 1995 Act (5 CFR 1320.13), of the information collection requirements contained in this Report and Order.

### Synopsis of the Order

*Introduction*

1. In this Report and Order (''Order''), we adopt network non-duplication, syndicated exclusivity, and sports blackout rules for satellite carriers. These rules implement provisions of the Satellite Home Viewer Improvement Act of 1999 (''SHVIA,'' Public Law 106–113, 113 Stat. 1501, 1501A–526 to 1501A–545 (Nov. 29, 1999)), which provides statutory copyright licenses for satellite carriers to provide additional local and national broadcast programming to subscribers. In enacting the SHVIA, Congress sought to create parity between satellite carriers and cable operators with regard to the retransmission of broadcast programming and to expand the availability of such programming to consumers. Prior to enactment of the SHVIA, the copyright laws made it virtually impossible for satellite subscribers to receive television broadcast programming by satellite. In adopting these rules, the Commission implements the statutory requirements and seeks to facilitate competition in the multichannel video programming distribution marketplace.

2. Section 1008 of the SHVIA creates a new section 339 of the Communications Act of 1934, as amended (''Communications Act'') entitled ''Carriage of Distant Television Stations by Satellite Carriers.'' Section 339(b) directs the Commission to apply

the network non-duplication, syndicated exclusivity, and sports blackout rules, previously applicable only to cable television systems, to satellite carriers' retransmission of nationally distributed superstations to satellite subscribers. Congress also requires the Commission to apply the cable sports blackout rule to satellite carriers' retransmission of network stations, but only ''to the extent technically feasible and not economically prohibitive.'' The Commission released a Notice of Proposed Rulemaking (''NPRM'') on January 7, 2000, seeking comment on how best to apply these rules to satellite carriers (65 FR 4927, February 2, 2000). The Commission received 22 comments and 14 reply comments to the NPRM.

*Background*

3. The network non-duplication, syndicated exclusivity, and sports blackout rules (collectively referred to herein as ''the exclusivity rules''), as applied in the cable context, generally protect exclusive contractual rights that have been negotiated between program providers and broadcasters or other rights holders. These exclusive contractual rights are potentially threatened by cable systems that are capable of importing duplicative programming from distant sources beyond the control of the contracting parties. The cable exclusivity rules provide that specific programs must be deleted from distant television broadcast signals delivered to cable subscribers if the programs are subject to exclusive rights pursuant to contracts with local stations. Additionally, pursuant to the sports blackout rule, sporting events carried on distant stations must be deleted when carriage would violate sporting teams' or leagues' arrangements to protect gate receipts in the local market.

4. Section 339(b)(1)(A) of the Communications Act, as amended by the SHVIA, requires the Commission ''to apply network non-duplication protection (47 CFR 76.92), syndicated exclusivity protection (47 CFR 76.151), and sports blackout protection (47 CFR 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers to subscribers.'' Section 339(b)(1)(B) requires the Commission to ''apply sports blackout protection (47 CFR 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.'' The SHVIA requires that the Commission implement these new rules so that they will be ''as similar as possible'' to the rules applicable to cable operators.

*Summary of Decision*

5. In implementing these sections of the SHVIA, the Commission attempts to be faithful to the clear Congressional intent to place satellite carriers on an equal footing with cable operators, while taking into consideration that the operational structures of these two Multichannel Video Programming Distributors (''MVPD''s) are very different. In the context of the SHVIA, which is fundamentally part of the copyright laws, we are cognizant also of the important protection that the exclusivity rules provide to broadcasters and copyright holders. The SHVIA facilitates satellite carriage of additional broadcast stations through the use of a statutory copyright license. By applying the cable exclusivity rules to satellite carriers, Congress sought to keep the competitive marketplace in balance by protecting the broadcasters' private contractual arrangements and ensuring that satellite carriers have regulatory obligations that are as similar as possible to cable operators. The statutory language unambiguously directs us to apply all three of the cable exclusivity rules to satellite carriers with respect to retransmission of nationally distributed superstations. The SHVIA further requires that only the sports blackout rule be applied to satellite carriers' retransmission of network stations and limits application of the cable rule in this context ''to the extent technically feasible and not economically prohibitive.'' Congressional intent, as expressed in the Joint Explanatory Statement, places a heavy burden on showing that rules similar to the cable rules would be ''economically prohibitive'' for satellite carriers.

6. In general, under the new statutory provisions, the network non-duplication and syndicated exclusivity rules 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. The program may fall under either the definition of network program (delivered simultaneously to more than one broadcast station, (47 CFR 76.5(m)) or the definition of syndicated program (sold, licensed, distributed or sold to licensees in more than one market (47 CFR 76.5(ii)). In addition, the sports blackout rules will apply when a subject sporting event will not be aired live by any local television station, and a satellite carrier retransmits a nationally distributed superstation or a distant network station carrying that sporting event to a household within the zone of protection of the holder of exclusive distribution rights to the event. In all of these cases, the television broadcast station or other rights holder may require the satellite carrier to blackout these particular programs for the satellite subscriber households within the protected zone.

7. In the NPRM we sought comments on how we could follow the Congressional mandate to apply the cable exclusivity rules as closely as possible to satellite carriers while taking account of the differences between the two industries. In general, the comments did not provide specific data on cost or technical difficulties in applying the exclusivity rules to satellite carriers and leave us with the conclusion that, in most cases, these rules can be applied directly to satellite carriers. There is a general consensus, however, that the ''community units'' used for identification of cable systems are inapplicable in the satellite context. We decide here to use zip codes in lieu of community units to define the various zones of protection afforded under the satellite exclusivity rules adopted today. In large part, the notification provisions of the cable exclusivity rules can be applied in the satellite context, except with respect to the sports blackout requirements, for which we have the statutory flexibility and record to support slightly different requirements. In a further effort to provide comparable treatment for the cable and satellite rules, we adapt the exceptions to the cable exclusivity rules for small systems to the satellite context. We also require that the contractual language granting exclusive rights in a market clearly apply to satellite carriage, and we provide a period of time for satellite carriers to phase-in implementation of the new rules. Finally, we decline to take the steps advocated by the National Football League to go beyond the statutory requirements to delete non-duplicating sports programming that is part of a sports program ''unitary'' package because it would unnecessarily and unjustifiably further limit the ability of consumers to view the programming of their choice.

*Statutory Interpretation and Definitional Issues*

8. Section 339(b)(1), as created by the SHVIA, applies to ''satellite carriers.'' Section 339(d)(4) defines ''satellite carrier'' by reference to the Copyright Act definition as

an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing. (17 U.S.C. 119(d)(6))

Contrary to the arguments of several commenters, there is nothing in the SHVIA or the legislative history that suggests that satellite carriers operating in the C-Band were intended to be exempted from the requirements of section 339(b)(1). C-Band satellite carriers are licensed under part 25 of the Commission's rules. We do not agree that an isolated and ambiguous colloquy between two Senators overrides unambiguous statutory language. We recognize, however, that C-Band carriers operate differently from DBS carriers and that the number of C-Band subscribers is steadily decreasing, and to the extent C-Band satellite carriers can be subject to exceptions from any of the exclusivity rules we adopt today, they are specifically described below. In the absence of specific language distinguishing C-Band satellite carriers, references to ''satellite carriers'' in this Order refer to all satellite carriers that meet the definition in the SHVIA.

9. Section 339(b)(1)(A) of the Communications Act requires the Commission to apply network non-duplication protection, syndicated exclusivity protection, and sports blackout protection 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.

Television network means ''a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States'' (47 U.S.C. 339(d)(5)). A ''network station'' is ''(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States'' or ''(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934)'' except that the term does not include ''the signal of the Alaska Rural Communications Service, or any successor entity to that service.'' (17 U.S.C. 119(d)(2).)

10. In the NPRM, we stated 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). KTLA, WPIX and KWGN are all now affiliates of the Warner Brothers Network (''WB''). In addition, WSBK and WWOR currently are affiliated with the UPN Network. WGN is affiliated with WB but provides a different ''syndex/nondupe proof'' signal for uplink and carriage as a superstation. We note that WB and UPN did not qualify as ''television networks'' as of January 1, 1995, the operative date referenced in section 339(d)(2)(A) because they did not satisfy each of the statutory criteria as of that date. We also stated that since no other station could meet these criteria in the future due to the date-specific conditions set forth in the definition, the foregoing constitutes a finite list of the nationally distributed superstations covered by the statute. Commenters directly addressing this issue generally agree with our conclusion that this list of nationally distributed superstations is complete and finite.

11. 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. 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. (An unserved household is defined in part as one that cannot receive over-the-air a signal of Grade B intensity for a primary television network station (17 U.S.C. 119(d)(10)).) Thus, we conclude that as a result of section 1005(b), there is no geographic restriction on the retransmission of ''nationally distributed superstations'' pursuant to the compulsory copyright license.

12. In addition, the SHVIA amended the retransmission consent section of the Communications Act, which generally prohibits MVPDs from retransmitting the signals of a broadcaster absent the broadcaster's written authorization. The SHVIA allows a satellite carrier to retransmit the signal of a superstation outside the station's local market without the station's consent 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 non-duplication, 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 above meet the relevant criteria of either definition, and there are no additional stations that are included or excluded by operation of this third criterion. As discussed in the NPRM, we conclude that, pursuant to these new statutory mandates in the SHVIA, satellite carriers are permitted to retransmit the signals of the nationally distributed superstations covered by section 339(b)(1)(A) outside the station's local market to both served and unserved households without the station's consent and without geographic restriction. In a similar but not identical provision, the SHVIA permits a cable operator or other MVPD (other than a satellite carrier) to retransmit a television broadcast station outside of its local market without its consent, provided the MVPD obtains the signal from a satellite, and the station was a superstation on May 1, 1991 and was retransmitted by a satellite carrier under the Section 119 statutory license as of July 1, 1998.

13. In addition to applying the existing cable exclusivity rules to nationally distributed superstations, Section 339(b)(1)(B) requires the

Commission to apply sports blackout protection 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 television broadcast stations owned or operated by, or affiliated with, 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). In the cable context, the Commission's sports blackout rule applies to any television broadcast station and is not limited to network stations. Consistent with the provisions of the statute, we confine the application of the satellite sports blackout rule to retransmission of network stations. The SHVIA statutory license for satellite carriers applies only to retransmission of distant network stations. Thus it is consistent for the sports blackout provisions to be similarly limited pursuant to Section 339(b)(1)(B).

14. In the NPRM we observed that the title of new Section 339, ''Carriage of Distant Television Stations by Satellite Carriers,'' indicates 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. The cable exclusivity rules were originally created and apply today to address cable importation of distant stations. We conclude, and most commenters agree, that it was Congress' intent to apply the sports blackout rules to retransmission of distant network stations and not to local network stations. We note, too, that the statutory copyright license for satellite carriage of distant network stations relies upon the definition of ''network station'' in the copyright provisions.

15. We also sought comment in the NPRM on whether stations based in foreign countries are affected by the SHVIA provisions requiring application of the cable exclusivity and sports blackout rules to satellite retransmissions. Certain commenters addressing this issue argue that while the blackout protection afforded by the rules should apply to a foreign station's programming carried by a U.S. satellite carrier, a foreign station cannot invoke these protections against satellite importation of programming into its home market. Grupo Televisa, on the other hand, argues that the rules should apply in favor of non-U.S. licensed border stations serving U.S. markets and affiliated with U.S. networks, citing the inclusion of such stations in the compulsory license of Section 1002 of the SHVIA. We agree with MPAA and NHL that foreign stations are beyond our jurisdiction and therefore unable to invoke the protection of the exclusivity and sports blackout rules. With respect to retransmission of a foreign station's programming into U.S. markets by a U.S. licensed satellite carrier, we conclude that the satellite rules will apply as they do with respect to the exclusivity rules governing cable systems. The definition of ''television broadcast station'' in 47 CFR 76.5(b) includes stations licensed by a foreign government but provides that such foreign station not entitled to assert program exclusivity. Also, in the DISCO II Order the Commission explained that it will license the earth stations that use a non-U.S. licensed satellite to provide service to subscribers in the United States, rather than re-license foreign satellite operators. The earth station operators providing service in the United States through these non-U.S. licensed satellites are ''satellite carriers'' as defined in the SHVIA because they are licensed under either part 25 or part 100 of the Commission's rules.

*Section 339(B)(1)(A): Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout to Retransmission of Nationally Distributed Superstations*

16. Section 339(b)(1)(A) requires the Commission to apply network non-duplication protection, syndicated exclusivity protection, and sports blackout protection to the retransmission of signals of nationally distributed superstations by satellite carriers. In this section, we address the application of the network non-duplication and syndicated exclusivity rules to nationally distributed superstations together because these two rules are similar in significant respects.

17. The Commission's cable television network non-duplication rule allows a television broadcast station that has purchased exclusive rights to network programming within a specified area to protect its exclusivity against carriage of duplicating programming on local cable systems. The ''specified'' or ''protected'' zone is the smaller of either the area protected by the terms of the contract or the 35 or 55 mile area designated by the rules. In the satellite rules, this area is generally termed the ''zone of protection'' or protected zone. (47 CFR 76.92). The rule allows 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. ''Network program'' is something of a misnomer in terms of common usage as it appears to suggest a program provided by a recognized network. In fact, it is defined as ''any program delivered simultaneously to more than one broadcast station regional or national, commercial or noncommercial'' (47 CFR 76.5(m)). It is not necessary that the program be delivered by a ''television network.'' (In addition to full power television stations, 100 watt translator stations are allowed to demand network non-duplication protection under certain circumstances. Translator stations are not entitled to syndicated exclusivity protection (47 CFR 76.92(d)). Due to differential carriage rights, we are not replicating this provision in the satellite non-duplication rules.) A station may assert its exclusivity rights regardless of whether its signal is carried by the cable system in question. Under the cable network non-duplication rule, a television station is entitled to assert its exclusivity rights against a cable system serving any ''cable community unit'' within the station's ''specified zone'' that is carrying duplicative programming for which the local station has obtained exclusive distribution rights. (Cable systems are comprised of one or more ''community units'' that correspond to separate and discrete communities or municipal entities. 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 35 mile specified zone, as well as all other mileage zones used in applying the exclusivity rules, is measured from the relevant station's ''reference point'' in its community of license. The rules provide a list of the reference points to identify television market boundaries used for this purpose. See 47 CFR 76.5(e), (dd); 76.53; and 76.92(a).) 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''). 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. Even the use of different camera crews and announcers during the production of an imported program may result in the distant program not being

considered the same, per Major League Baseball, 6 FCC Rcd. 5573 (1991).

18. 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. (A syndicated program is defined as ''any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming. * * *'') This rule is similar in operation to the network non-duplication 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 the television station's city of license. Unlike the network non-duplication 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.

19. As with network non-duplication, 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. As with network non-duplication, the protected zone is the smaller of either the area of exclusivity provided in the contract or the 35 mile area surrounding the relevant reference point(s). 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 non-duplication rules, for syndicated programming to be protected, the programming covered by the contract must be the same as the distant programming. We note that under both of these cable rules, it is not necessary that the broadcast station or rights holder asserting protection actually be carried on the cable system in question, nor is it required that the rights holder asserting its rights actually display the programming for which it asserts protection. These cable rules protect contractual rights and apply even if the programming is not shown at all or if the subscribers subject to the deletion do not have another source to receive the programming.

Separate Satellite Rules

20. Initially, we sought comment on whether we should incorporate the rules we adopt to implement § 339(b)(1)(A) into the existing Commission rules, or whether we should adopt separate rules for satellite carriers. Commenters generally recommend that the Commission adopt separate rules for satellite carriers patterned after the cable exclusivity rules. We concur that, even though Congress specifically cited the existing rule sections in the statute, it will be less confusing and simpler to implement a separate set of rules in the satellite context. We agree with DirecTV that new rules will be easier to understand and comply with if they are contained in a parallel, but distinct, section, which will allow the differences between the rules applicable to the satellite and cable industries to be highlighted. This will enable the Commission to maintain consistency in its rules, while adopting the minor adjustments that are necessary to properly apply the rules to satellite carriers (*e.g.,* application only to nationally distributed superstations). In this regard, we do not agree with WB that the direct references to the corresponding cable rules indicate that Congress intended the rules to be identical. The statutory language directs us to develop rules that apply the exclusivity protections in the satellite context, not merely to add the words ''satellite carriers'' in the existing cable rules. While we are establishing a separate rule section for the exclusivity rules that apply to satellite carriers, these rules will not be substantially different from the equivalent cable rules.

21. Some satellite industry commenters argue that we must take into account the distinctive characteristics of satellite services and the associated issues of technical feasibility and the cost of compliance. EchoStar contends that the rules for satellite carriers should be significantly different from the cable rules due to the characteristics of satellite services and the onerous burdens of compliance. Echostar raises a variety of technical and administrative issues, such as the need to develop a database to determine affected subscribers and the addition of ''untold layers of complexity to its authorization/unscrambling procedures'' to delete different programs in different areas of the country if we merely apply the cable exclusivity rules to satellite without change. EchoStar asserts that unless appropriately mitigated, the rules could lead to the cessation of satellite carriage of superstations, which would contravene the legislative goal of parity between cable and satellite operators. EchoStar also argues that if Congress intended for the Commission to automatically employ the cable rules in the satellite context it would not have directed the Commission to conduct a rulemaking. Alternatively, in support of a separate rule section, DirecTV asserts that, given the technological differences between cable and satellites, in certain situations it does not make sense, or is simply not technologically feasible, to merely ''lift'' the cable rules.

22. We reject the arguments that the satellite exclusivity rules should be substantially different from the cable rules due to technical considerations and the burdens of compliance. Congress directed the Commission to make the rules ''as similar as possible'' to the cable rules and to protect the contractual exclusivity rights purchased by broadcasters and sold by program rights holders. The statute specifically cites the existing network non-duplication and syndicated exclusivity rules as guidance. In particular, the statute does not provide for any exemption from these rules based on technical feasibility or economic hardship as it does for the application of the sports blackout rules to network stations. We believe, however, that in considering the application of these rules to satellite carriers we must consider several modifications that reflect the practical differences between the two industries and the different delivery systems they employ, as detailed herein.

23. Some broadcasters argue that for there to be parity between cable and satellite providers, the Commission should extend the protections of network non-duplication to all distant network carriage to protect emerging networks and notes that the existing cable rules are not statutorily mandated. Because Congress provided for the application of the sports blackout rule to network stations, but not for the network non-duplication or syndicated exclusivity rules, we believe that extending the rules in this manner is beyond what Congress intended. We reject this proposal on the same basis that we reject the satellite industry's request to adopt significantly different rules for satellite carriers due to technical considerations.

Zone of Protection

24. Under the network non-duplication rules, a commercial or noncommercial television station licensed to a major television market may assert exclusivity rights within its specified zone. That zone is generally the 35-mile area surrounding a broadcast television station's community of license. The zone of protection for stations licensed to smaller television markets extends an additional 20 miles (''secondary zone''), for a total of 55 miles surrounding its community of license. Pursuant to the syndicated exclusivity rules, a local commercial television station is entitled to assert its exclusivity rights only within a 35-mile geographic zone. There is no extended zone of protection for smaller market stations. For both rules, a station licensed to a hyphenated television market, as defined in the rules, is entitled to assert exclusivity within 35 miles surrounding each named city. However, the zone of protection may not exceed the area agreed upon between the program supplier or network and the television station nor the area within which the station has acquired broadcast territorial exclusivity rights. For purposes of all of the rules discussed in this Order, we refer generally to a ''zone of protection'' or ''protected zone'' to apply to the entire area protected by the rules' provisions.

25. A majority of commenters support the adoption of the same zones of protection for broadcast stations in this context because they provide a definitive area within which exclusivity rights may be asserted. We agree. We also concur that, as with the cable rules, the zone of protection should be limited by the terms of the contractual agreement between the station and the program rights holder, with the applicable geographic zone set forth in the rules providing an outside limit on the permitted zone of protection. Several commenters mention, but reject, the use of other zones of protection, such as a station's grade B contour or a zone of protection coextensive with the boundaries of ''local market'' for retransmission consent purposes. As Tribune observes, since Congress did not mention a zone different from that of the cable rules, it appears appropriate to use the existing specified zone. We also believe that this conclusion is consistent with the congressional directive to make these rules as similar as possible to the cable rules. We further believe that implementation in the satellite context is feasible because existing methods (*e.g.,* the geocoding techniques used to determine served and unserved households) can be used to determine whether a household is located in a specified zone. Accordingly, local broadcast television stations will be entitled to assert exclusivity protection throughout the same zones of protection as those specified in the cable rules.

26. We reject EchoStar's proposal that a satellite carrier should not be required to comply with requests for exclusivity (either network or syndicated) unless the program deletion is requested by qualified broadcast stations whose geographic zones (not counting overlaps) cover a substantial majority of the nation. The ''geographic zone'' is limited to the 35/55 mile area around the reference point in the community of license. EchoStar argues that this requirement is needed in order to deal with the mosaic of diverse deletion requests for the same feed. EchoStar's proposal ignores the exclusivity rights of individual broadcasters and undermines regulatory objectives, contrary to congressional intent and, in our view, defeats the purpose of the statutory mandate to protect the exclusivity rights of local broadcast stations. Moreover, while EchoStar claims that it would have to develop a huge database to determine whether a subscriber is within the specified zone, we observe that satellite carriers already maintain such databases of subscribers for determining eligibility for local-into-local and network signals, for information on the particular services to which a household subscribes, and for billing purposes. In addition, even though satellite carriers use a nationwide or multi-state footprint to deliver programming, they provide signals on a household-by-household basis that enables them to deliver different programming to different households based upon which programming package the subscriber selects. Satellite carriers currently delete programming when it is required by contracts negotiated in the marketplace. Furthermore, as a practical matter, the programming deletions affect only five of the six nationally distributed superstations because WGN is ''largely, if not completely syndex and nondupe-proof.'' With respect to network program deletions, we expect significant uniformity across markets where affiliates of WB or UPN assert their rights since each superstation is affiliated with one of these networks. With respect to syndicated programming, the superstations are large market stations, which typically acquire the most popular syndicated programming that is sold in the vast majority of markets, making EchoStar's fear of a crazy quilt pattern of deletions largely unfounded. Moreover, the statute unambiguously requires that we apply the exclusivity rules in these situations. Adopting EchoStar's proposal to limit application of the rules to the non-existent circumstance in which the broadcaster's geographic zone would cover most of the nation effectively eliminates the application of the exclusivity rules. The statutory language does not give us this choice. We also reject EchoStar's proposal to establish a procedure to exempt satellite carriers on a case-by-case basis upon a showing of extraordinary hardship. We believe that such a policy is contrary to the intent of the statute to protect the rights of local broadcast licensees. We also note that, in adopting exclusivity rules in 1988, we eliminated a similar waiver process.

Use of Zip Codes To Determine the Location of Affected Households

27. The cable rules apply the exclusivity rules on a community unit basis within a station's zone of protection. Community units are political jurisdictions (*i.e.,* a city, town, or county) or portions of political jurisdictions for which a local government body has granted a franchise to operate a cable system. These separate areas may or may not encompass an entire city or county. Several commenters support the application of these rules on a community unit basis in order that they be as similar as possible to the cable rules and to eliminate the possible confusion to customers in the same neighborhood that would be caused by a program being blacked out if a household subscribed to cable, but not if it subscribed to a satellite service. In order to promote parity between cable operators and satellite carriers, they argue that it is important that the blackout areas for satellite carriers be as congruent as possible with the blackout areas for competing cable systems. They further state that requiring satellite carriers to black out programming on the same community unit basis as is applied to cable is the most easily applied, understood, and enforced approach for providers and residents. Other commenters claim that it is impossible or inappropriate to import the community unit concept from cable to satellite as cable systems have specific, municipally-granted franchises to serve discrete communities, the boundaries of which are difficult to determine and unnecessarily complex to apply. They propose that subscribers

subject to the blackout rules be ascertained by means of their zip code, a method currently used by satellite carriers for other purposes. These commenters argue that since satellite providers do not have identifiers assigned to the communities they serve, as is the case for cable, a comparable method for determining the areas to which the zone of protection applies involves reliance on zip codes. This method, like the use of cable community units, is not a perfect means to achieve congruence between the zip code boundary and that of the specified zone, but it is a workable compromise using a fairly stable identifier. Moreover, in their reply comments, several proponents of the use of community units state that they would be willing to support a zip code approach as a reasonable alternative as long the rules would apply throughout the entire zip code.

28. We conclude that it is appropriate to use zip codes rather than community units in the satellite context. There are approximately 38,000 five-digit zip codes in the United States, compared with nearly 33,000 community units. There is no readily applicable measure that will precisely match specified zones in either the cable or satellite context. However, zip codes are already used by satellite providers to determine the location of subscribers for other purposes and it would be more difficult to determine which satellite subscribers are located within a cable community unit, which is tied to the cable franchise process. As with the cable community unit concept, reliance on zip codes can often be overinclusive of the zone covered by the exclusivity rights to be protected. To closely align the rules for satellite carriers with the cable rules, we have been urged to require a satellite provider to provide protection in all relevant zip codes that fall, in whole or in part, within the zone of protection. We conclude, as described below, that if technology permits satellite carriers to more closely align their deletions to the precise areas of the protected zone, they may do so.

29. Satellite interests generally propose that the broadcaster or rights holder asserting its exclusivity rights provide the satellite carrier with an electronic file of the affected zip codes that corresponds to the specified zone. Alternatively, broadcasters contend that the satellite carriers already have zip code information that they use for other purposes and they should be responsible for determining which subscribers are located in the areas where the programming must be blacked out. Since exclusivity contracts vary in their coverage areas and it is the broadcast station or rights holder that has negotiated such contracts, we conclude that the party seeking exclusivity protection will be responsible for identifying the affected zip code areas along with the other information that must be provided to the satellite carrier. This approach is consistent with our existing cable rules that place the notification burdens on the party seeking to assert its exclusivity rights. We do not believe that this requirement places an undue burden on a broadcaster seeking exclusivity. In many cases, the contracts will provide for exclusivity up to the limits of the specified zone and the broadcaster will only have to determine the appropriate zip codes once to cover such contracts. Accordingly, we will require broadcast stations or rights holders to provide satellite carriers with the list of affected zip codes, although we will not mandate that it be in any specific format (*e.g.,* we will not require an electronic file). We encourage satellite carriers and broadcasters to work together to effectuate the provisions of the statute, even though we place the onus of determining the affected zip codes on the party seeking exclusivity protection. We see no reason to make special or separate provisions for satellite carriers to verify that the list of zip codes is accurate. If it comes to light that the list is inaccurate, the satellite carrier may object to the broadcaster or rights holder.

30. We believe that for purposes of complying with these and other provisions of the SHVIA, satellite operators must generally be aware of the actual physical location of a subscriber. Several commenters express concerns regarding the accurate location of a subscriber whose address is a post office box (*e.g.,* a U.S. Post Office Box or a private post office box) or rural route number, stating that a non-street address makes it impossible to apply any rule that relies on a geographic location. Since accurate addresses are the linchpin of a system that relies on geographic location, they propose that satellite carriers be required to certify that they have no basis for believing that subscribers have provided inaccurate addresses for purposes of evading the rules. In opposition, DirecTV argues that there is no parallel provision in the cable rules to serve as a basis for imposing this additional obligation on satellite carriers. In addition, proposals to impose a number of restrictions on satellite carriers to ''reduce if not obviate both the domestic and external grey marketing'' of satellite programming are rejected as they are beyond the scope of this proceeding.

31. On the basis of the record, there is general agreement that rural route numbers reasonably approximate the actual location of the subscriber and are acceptable because they are generally located close to the residential address where the subscriber receives the satellite programming. Accordingly, we will allow satellite carriers to use the zip codes associated with rural route numbers to determine the location of such subscribers. However, where a subscriber chooses to provide a post office box for a billing address, we will require that satellite carriers obtain a residential street address—or simply a zip code—where the service is actually being received. Upon request, satellite carriers may verify the data provided by broadcasters and vice versa. We decline to adopt the reporting and auditing procedures proposed in the comments, as they would place an undue burden on broadcasters, satellite carriers and the Commission.

32. In addition, MPAA proposes that in instances in which the satellite carriers serve individual households that are within a zip code but outside the specified zone, such subscribers should be permitted to petition for a waiver so that their programming is not blacked out. It contends that, since the satellite rules apply on a household basis, this waiver process would serve the purposes of the statute (*i.e.,* parity with cable and protection of rights holders) without unduly depriving satellite subscribers beyond the specified zone of programming. We acknowledge the cable rules require cable operators to provide exclusivity protection throughout community units, even if some of their subscribers in that unit are located outside the specified zone. This requirement is based on our understanding that it is not technically feasible for cable operators to black out programming to individual households. On the grounds of maintaining regulatory parity, NCTA advocates requiring satellite carriers to delete programming throughout zip code areas that in whole or part overlap the broadcaster's zone of protection. Notwithstanding our general interest in regulatory parity, we are reluctant to require satellite carriers to delete programming beyond the boundaries of the broadcaster's or rights holder's zone of protection if they have the technical capacity to accommodate such fine-tuning. Due to the unavoidable difference in coverage between the zip code areas and the community units, there are likely to be some differences between cable and satellite subscribers

in terms of programming required to be deleted. Therefore, there is no reason to require deletions outside the protected zone on the grounds of parity. The satellite rules provide that satellite carriers must delete protected programming from subscribers within the zone of protection, but need not delete programming from subscribers who live in the part of a zip code area that extends beyond the zone of protection.

Terms of Contractual Agreements

33. Pursuant to § 76.93, television stations are entitled to exercise network non-duplication protection in accordance with their network agreements. The syndicated exclusivity rules allow television stations to exercise exclusivity rights in accordance with their syndicated program license agreement, consistent with the requirements to invoke protection specified in § 76.159. Under § 76.159, to be eligible for syndicated exclusivity protection, a station must have a contract or other written indicia that it holds syndication rights for the programming. Section 76.159 requires that contracts contain special language for the licensee to invoke such protection.

34. We find that the current situation is analogous to that of 1988 when the Commission reinstated syndicated exclusivity rights, and the rule we adopt treats these new rights in the same manner as we did syndicated exclusivity contracts at that time. That is, we will give effect to new or existing contracts that unambiguously grant such rights against satellite carriage and permit existing contracts to be clarified or amended if they are ambiguous or did not anticipate a change in the law.

35. The cable rules do not prescribe specific language needed to invoke network non-duplication protection. Such exclusivity is provided in the contractual provisions of network-affiliate agreements that give individual stations the right to be the exclusive distributor of a network's programming in an area, generally within 35 miles of its city of license. Where a network-affiliation agreement does not provide for network non-duplication protection against satellite carriage of superstations because this right was unanticipated or the contract is ambiguous regarding such rights, parties will be given an opportunity to amend their agreements to include clear, specific language, as described below.

36. Some commenters contend that if the special language required by the cable syndicated exclusivity rules appears in a contract, it is applicable to satellite carriers. They contend that this language invokes the two essential elements for protection—retransmission pursuant to the compulsory license and reference to the Commission's rules. They state that any station with exclusivity rights vis-a-vis cable should be considered to hold the same rights with respect to satellite carriers and that parties should not be required to renegotiate existing exclusivity contracts. We disagree. We cannot assume that the parties to these existing contracts negotiated for protection against satellite carriage when duplicating carriage by satellite was not covered by the Commission's exclusivity rules. We agree with other commenters who counter that the rules should only give effect to contracts that unambiguously grant exclusive rights vis-aa-vis satellite carriers. They assert that existing contracts should not be enforceable against satellite carriers unless it is clear that the licensee or rights holder has negotiated for and received such rights. Until the SHVIA was enacted on November 29, 1999, there was no certainty of satellite exclusivity requirements. Arguably, parties could not have a reasonable expectation of exclusivity protection until the rules adopted by this Order take effect. Accordingly, we conclude that only those exclusive contracts that specifically cover satellite-delivered programming or are broad enough to encompass the delivery of duplicating programming by any delivery means (*e.g.,* cable, satellite, wireless cable) entitle a station to assert exclusivity rights under these rules. Without such specificity, it is not clear whether the party granting the exhibition rights for the programming intended to convey network non-duplication or syndicated exclusivity rights to the broadcaster in the satellite context.

37. In reinstituting the syndicated exclusivity rules in 1988, the Commission allowed an opportunity for parties to amend their contracts to reflect the newly granted rights. Because government protection of both network non-duplication and syndicated exclusivity rights vis a vis satellite retransmission did not exist before November 29, 1999, consistent with this precedent we will provide a transition period of six months to allow parties to amend or clarify their network affiliation or syndicated exclusivity agreements to cover the exclusivity rights provided in § 339(b)(1)(A) and the rules we adopt today. We will require also that contracts entered into after release of this Order must include special words to invoke protection against duplication of programming imported under the satellite statutory copyright license. The special words in the satellite context are similar to those required to assert enforceable cable syndicated exclusivity. Parties may use this statement to reference either or both the cable and satellite network non-duplication and syndicated exclusivity rules, depending upon whether their negotiated exclusivity covers protection against cable, satellite or both. Existing affiliate agreements and other contracts that apply to network program non-duplication only in the cable context need not be revised to be effective to provide non-duplication protection pursuant to § 76.92. These special words shall apply to both the network non-duplication and syndicated exclusivity rules to ensure that, in either instance, the contracting parties contemplated protection from satellite carriage. Where existing contracts expressly provide for exclusivity against satellite carriage, albeit without using these special words, there is no need for renegotiation, nor for a six month period for parties to renegotiate. In these situations of remarkable prescience in the contract terms, the normal notification requirements will apply.

38. We will not require, as Echostar proposes, that the contracts be non-discriminatory or be exercised in a non-discriminatory fashion. We believe that such requirements are inconsistent with the rights of parties to negotiate the extent of exclusivity that they determine to be in their best interests and were not contemplated by the statute. Such requirements would also be inconsistent with the cable exclusivity rules.

Notification Requirements

39. In order to exercise network non-duplication rights, a television station must notify each cable system operator of the protection sought. The syndicated exclusivity rules contain similar notification procedures with respect to broadcasters or distributors notifying cable systems of the exclusivity sought. In both cases, the notices must identify the party seeking non-duplication protection and the affected programming. Notices must be provided within 60 calendar days of the signing of the contract. Exclusivity protection begins on the date specified in the notice or the first day of the calendar week that begins 60 days after the cable operator receives notice from the broadcaster. In addition, cable operators may rely on published information sources (*e.g.,* newspapers) to determine which programs must be deleted or obtain the information from the station seeking protection or the station whose

programming is to be deleted. Furthermore, the rules require that the party exercising its exclusivity rights must provide a copy of the relevant portions of its contract to the cable system, upon request.

40. A number of commenters observe that the current notification procedures have proven workable for the parties in the cable context and generally support the same notification requirements and time periods for satellite carriers. For example, DirecTV states that stations should be required to notify satellite carriers of any exclusivity rights in the same manner required under the cable rules. We agree and will model the satellite notification rules on the cable requirements. We apply the same 60-day notice requirement following the signing of a contract providing exclusivity and impose the same contract disclosure requirements for satellite carriers. As in the cable context, the satellite carrier will have sufficient lead time to act on the exclusivity request. Accordingly, exclusivity protection will beginning on the later of: (a) the date specified in the notice; or (b) the first day of the calendar week (Sunday-Saturday) that begins 60 days following the satellite carrier's receipt of the notice from the broadcaster or other rights holder. Using the same notification periods reduces the administrative burden on rights holders and stations and allows them to send a single set of notices to cable systems and satellite carriers, rather than forcing them to send one notice to cable systems at one time and a virtually identical notice to satellite carriers at another time. In this manner, we also minimize the possibility that protection would be lost inadvertently because of differing requirements. It is also consistent with the general goal of making the cable and satellite rules parallel as much as possible.

41. We will require that the notice asserting exclusivity rights contain the same identifying information about the programming to be deleted and the extent of the exclusivity (*e.g.,* the dates on which exclusivity is to begin and end). As indicated above, the notice must identify the zip codes included in the zone of protection (*i.e.,* the specified zone or other permitted area covered by the exclusivity contract). Satellite carriers may request a copy of the relevant contractual provisions, as cable operators may do, but it is not required in the notice. We adopt the suggestion that the notice should be served on satellite carriers with the carrier having the obligation to disseminate the information to their distributors (distributors include parties with exclusive territories for the sale and service of satellite systems, including those distributors that are authorized by the satellite carrier to authorize or de-authorize programming for subscribers), if necessary, since they are in the best position to know which distributors serve which areas. Several commenters suggest that satellite carriers be required to designate (*e.g.,* on their Web sites) the name, title, and address to whom the notices should be sent, with this information updated as necessary to avoid delay and miscommunications. While we recognize that such information might be useful, it should not be necessary to ensure the compliance with exclusivity requests. We have not required cable systems or operators to provide this information and see no reason to do so in the satellite context. Satellite carriers must promptly direct their mail to the appropriate staff. Notice received by the corporation is considered receipt of the notice for purposes of triggering the deletion requirements, so it will be in the best interests of satellite carriers to assure that broadcasters and rights holders have the necessary current information to reach the right person. We urge stations and rights holders to follow DirecTV's suggestion that exclusivity notices be addressed to the ''Director of Programming Operations'' or marked ''Attention: Program Exclusivity Request'' to assist satellite carriers in ensuring that the information is directed to the proper department.

42. The cable rules provide that to determine the scheduling of programs that must be deleted, cable operators may rely on newspapers and other published sources, the broadcaster seeking exclusivity protection, or the broadcast station subject to the requested deletion. Similarly, the provision we adopt allows satellite carriers to rely on such published sources, the broadcaster seeking protection, or the nationally distributed superstation. We received no comments on this provision and believe the cable model will work as well for satellite carriers.

43. Under the cable syndicated exclusivity rules, ''distributors'' of syndicated programming, who own the rights to the programming for purposes of syndication, are entitled to exercise exclusive rights for a period of one year from the initial broadcast syndication licensing of such programming, although not in areas in which the programming has already been licensed. This cable provision is intended to give holders of syndication rights a one year period in which to negotiate their agreements in each market. It originated with private consensus agreements among rights holders, broadcasters and cable operators in 1971. If the programming in question were shown in the market before the syndicator had an opportunity to negotiate for exclusivity, it would diminish the value of the program. In the NPRM, we requested comment on whether to apply this provision in the satellite context, and whether the rights holder should notify the satellite carrier directly. MPAA contends that allowing rights holders to notify carriers directly, as holders of syndication rights can do with cable systems, gives holders a means to protect the value of their programs as well as providing parity in the operation of the rules in the cable and satellite contexts. DirecTV, however, argues that it is unnecessary to import this rule to the satellite context since the rules will apply to a discrete universe of superstations. We believe that it is appropriate to allow distributors to notify satellite carriers directly. We agree they are often the rights holders with the greatest need and incentive to protect their rights. In the satellite context, syndicated exclusivity protection is limited to the six nationally distributed superstations. Allowing the distributor that has the exclusive syndication rights a one year period to negotiate exclusive arrangements for each market has worked well in the cable context and should be applied here in the absence of a specific reason to treat satellite carriers differently in this regard.

44. We also acknowledge that, as with the cable rules, a broadcast station, syndicator, or other rights holder is entitled to assert exclusivity protection based upon contractual rights, as discussed above. It is not necessary that either the entity requesting protection or the program to be protected actually be carried by the satellite carrier. Thus we recognize that in some cases subscribers will not be able to receive the deleted programming from any television broadcast station carried by the satellite carrier. The Commission's network non-duplication and syndicated exclusivity rules protect contractual rights. The rights may apply even in situations in which the rights holder chooses not to display the protected programming or in which the cable system is not carrying the broadcast station asserting protection. We specifically recognize that in markets in which the satellite carrier chooses not to provide local-into-local carriage, a local station may assert network non-duplication or syndicated exclusivity protection for programming that subscribers in that market cannot

receive via satellite because the station demanding protection is not carried on satellite. Viewers may be able to receive this programming, however, through use of over-the-air antennas or on cable.

Substitute Programming

45. The cable syndicated exclusivity rules expressly allow a cable operator to substitute programming from another television station when programming is required to be deleted, provided carriage is consistent with all the exclusivity rules, such as sports blackout. No comparable provision is included in the network non-duplication rules, but cable operators are free to substitute any programming—broadcast or cable—to which they have the legal rights. Commenters addressing this issue generally support a provision to allow satellite carriers to offer substitute programming for the programming covered by exclusivity agreements. We agree that it is reasonable to permit substitute programming so that viewers need not be faced with a blank screen or a slide stating that contractual limitations require programming to be deleted.

46. Carriage of programming by satellite carriers is governed by a number of laws and regulations, including the Copyright Act, the Communications Act, and Commission rules, which differ from those applicable to cable programming. In reinstating the syndicated exclusivity rules in 1988, the Commission encouraged the substitution of programming in response to consumer demands that a distant program be available in place of the original programming that is deleted. At that time, we also noted that such substitution of programming was consistent with the compulsory license provisions of the Copyright Act and the syndicated exclusivity rules repealed in 1981. Unlike the cable compulsory license, however, the satellite statutory license does not include provisions for the substitution of programming. In considering permissible substitute programming under these rules, we observe that there are statutory provisions that impose a number of limits on the retransmission of signals by satellite carriers. Under these provisions, distant network station signals are limited to two per network per day and restricted to unserved households, local signals may be provided only in their own markets, and the satellite carrier must have retransmission consent for carriage of any local broadcast signal. To the extent that carriage of a program is permissible under these laws and regulations, and the satellite carrier has the authority to offer the programming, we believe that satellite carriers should be permitted to use substitute programming. In addition, commenters ask that we not limit substitute programming to broadcast programming. We see no reason to place such a limit on what is permissible and will allow non-broadcast programming to be used as a substitute, as long as its carriage is consistent with the applicable statutory and regulatory provisions, and it is clear to viewers that the substitute programming is not provided by the same broadcast station as the programming for which it is substituted.

47. We further note that the cable rules do not expressly provide for the substitution of programming when a program is deleted pursuant to network non-duplication protection. The absence of an express provision does not necessarily prevent the cable operator from substituting programming to which it has the rights. However, we recognize that if a cable operator were required to delete network programming from a station, and the network programming subject to deletion constitutes a high percentage of the station's programming, the cable operator would likely drop the entire station from carriage. When the Commission originally adopted the network non-duplication rules, there were only three commercial broadcast networks, and network programming constituted the majority of the programming distributed to viewers by each network affiliate. The superstations affected by these new rules are affiliated with emerging networks (*i.e.,* WB, UPN). These networks distribute significantly fewer hours of programming to their affiliates each day and week than the older commercial networks. Thus, we believe that when, for satellite carriers, the non-duplication rules are applied only to nationally distributed superstations, it is likely that a smaller percentage of the programming will be subject to deletion. It is hoped that satellite carriers will continue to provide the nationally distributed superstations to their subscribers, and, thus, the question of substitution programming is relevant. To prevent the possibility of a blank screen and undesirable disruptions for consumers, we will specifically provide for substitution for non-duplication deletions with any programming that the satellite carrier is authorized to carry. Accordingly, we will adopt rules permitting the use of authorized substitute programming for any programs deleted to comply with network non-duplication or syndicated exclusivity protection, or sports blackout. We note that the copyright laws do not provide a statutory copyright license for substitute programming for satellite carriers as they do for cable operators. Therefore, unless the statutory provisions are changed, satellite carriers may only substitute programming for which they have copyright and retransmission consent, or otherwise have legal rights to carry.

Transition Period

48. When the Commission reinstated the syndicated exclusivity rules, it recognized that cable systems would need several months to implement the new regulatory requirements. Satellite industry commenters in this proceeding requested a similar transition period to implement these new rules. Echostar suggests that broadcasters and other rights holders should submit their deletion requests during the transition period, but satellite carriers' compliance would be tolled for one year. We agree that satellite carriers today, like cable operators in 1988, need time to phase-in compliance with these new exclusivity rules. We reject, however, proposals for a transition period one year in duration. The transition period for cable operators was necessary, in part, to allow time to develop and implement new equipment needed to perform the deletions required by the rule. In this proceeding, apart from the concerns raised by the C-Band carriers and discussed below, the satellite carriers have not asserted that they need time to develop new equipment. In addition, we do not believe that EchoStar's one-year proposal would serve its stated purpose of enabling satellite carriers to review deletion notices and plan a year in advance before the implementing the deletions. We believe rights holders would not bother to submit deletion requests knowing that they will not be acted upon for a year.

49. We will allow satellite carriers a reasonable period of time after the new satellite network non-duplication and syndicated exclusivity rules take effect to adjust to the new requirements, to review the contract language, to ensure that they have adequate equipment and personnel to implement the deletions, and to arrange for programming that can be used to substitute for deleted programming. Normally, as set forth above, exclusivity protection begins, at the earliest, within 60 days of notification. However, as described above, broadcasters will have up to six months from the effective date of this Order to renegotiate contracts, and they

must notify satellite carriers of deletion requests within 60 days of signing the renegotiated contract. When no renegotiation is necessary because the existing contract clearly pertains to satellite as well as cable carriage, broadcasters must notify satellite carriers of their exclusivity protection and deletion requests within 60 days of the effective date of this Order. In these instances, satellite carriers will have 120 days in which to implement deletion requests (*e.g.,* this Order is effective on November 29, 2000, therefore a broadcaster could provide deletion notice on January 8, 2001, and the deletion would take effect on or after May 10, 2001). To provide time for satellite carriers to adjust to the new requirements, for notices provided before June 1, 2001, satellite carriers will have 120 days before they are required to implement the necessary deletions. For notices provided to satellite carriers after June 1, 2001, the normal time requirements will apply.

50. Echostar also proposes, as an alternative or complement to the transition period, a ''grandfathering'' provision that would exempt from application of the network non-duplication and syndicated exclusivity rules all of EchoStar's 700,000 current superstation subscribers. We reject this proposal because there is nothing in the statute to support it, and it is contrary to the letter and the intent of the SHVIA provision requiring the Commission to apply the exclusivity rules to satellite carriers. This proposal is also inconsistent with the goal of placing comparable requirements on cable operators and satellite carriers. Cable subscribers' viewing options are currently subject to the cable exclusivity rules, which allow for the same deletions that affect satellite subscribers. In fact, cable subscribers are generally subject to a greater impact from deletions because the cable rules apply to deletions of programming carried on network stations and other broadcast stations, not only that programming carried on the specially defined six superstations. Adopting EchoStar's proposal would perpetuate the disparity between cable and satellite that Congress clearly sought to eliminate. Moreover, when the Commission implemented the network non-duplication rules and reinstituted the syndicated exclusivity rules with respect to cable operators, it did not provide for grandfathering of existing cable customers. As the Commission explained in those proceedings, the potential impact of the rules is ultimately determined by the negotiations among the parties for exclusivity rights and the decision whether or not to assert them in a given market. Protecting parties' rights to engage in contract negotiations with the knowledge that exclusive agreements would not be abrogated by importation of distant signals was fundamental to the Commission's purpose in creating the exclusivity rules in the cable context, and is relevant today to application of these rules to satellite carriers.

Small System Exception and C-Band Carriers

51. Sections 76.95(a) and 76.156(b) (amended rule § 76.106(b)) provide that small cable systems serving fewer than 1,000 subscribers are exempt from the network non-duplication and syndicated exclusivity requirements, respectively. The Commission originally adopted these exceptions in the mid-1970s to balance the costs of compliance for small cable systems against the impact on broadcast stations. The Commission was concerned that the costs of equipment and manpower needed to comply with the cable exclusivity rules would have a substantial impact on such systems when viewed in relation to their gross revenues. In addition, the Commission concluded that the cumulative number of homes served by small systems nationwide constituted a very small percentage of the total number of television households and there would be no significant adverse economic impact on broadcasters. When the Commission reinstituted the syndicated exclusivity rules and modified the network non-duplication rules in 1988, it again exempted cable systems with fewer than 1,000 subscribers out of the same concern.

52. Some commenters representing the satellite industry seek similar exceptions that take into account the technical feasibility and cost of compliance for satellite carriers. While offering no specific proposal, EchoStar argues that the only way to ensure equivalent protections for satellite operators is to go back to the rationale for the exception. However, since the original rationale for the small system exception was based on the relative cost of compliance compared to such systems' gross revenues, and none of the commenters has provided cost data to justify such an exception, we are unable to conclude that a comparable situation exists in the satellite context. Satellite carriers are among the largest providers of television programming and are not comparable to the ''Mom and Pop'' cable operators for which the small system exception was designed. Each of the satellite carriers serves millions of subscribers nationally, is well-capitalized and capable of purchasing necessary equipment, is managed through centralized control centers, and already blacks out programming consistent with existing contracts and the programming packages selected by individual subscribers. We conclude that, with no specific evidence to the contrary, the costs of compliance with these rules, on a per subscriber basis and relative to total revenues, will be small given the large subscriber base of each DBS satellite carrier.

53. In contrast to DBS carriers, however, we note that C-Band satellite carriers, while still serving 1.3 million subscribers nationwide, are experiencing a steady decline in subscribers from a high in 1995 of nearly 2.4 million. C-Band commenters contend that Congress intended to exempt them from application of the exclusivity rules. However, they offer only an isolated and ambiguous colloquy between two Senators in support of this assertion. C-Band commenters describe their subscribers as primarily rural and note that many live in areas that are not served by cable systems or are beyond the reach of over-the-air broadcasters. They contend that their centralized system of program delivery and authorization would make deletion and substitution of programming economically prohibitive. As these commenters note, in 1991 the Commission considered applying the syndicated exclusivity rules to C-Band retransmission of television broadcast programming. At that time, Congress had directed the Commission to apply the cable syndicated exclusivity rules to C-Band carriers if the Commission found it would be feasible for the C-Band carriers to comply. The Commission sought comment and concluded that the equipment needed for satellite carriers to implement exclusivity protection was not available and could not be developed and implemented before the expiration in 1994 of the interim compulsory copyright license under which C-Band carriers retransmitted broadcast programming. C-Band commenters contend that nothing has changed in their capability of deleting duplicating programming. They argue that network non-duplication requirements may apply to at least 93 markets, 30 weekly programs, with different times for each program. They ask that we either exempt them from application of the cable exclusivity rules or defer application until after 2004.

54. The circumstances today differ significantly from 1991 in that the provision in the SHVIA does not allow for consideration of feasibility. Congress could have provided an exemption for C-Band carriers from application of the exclusivity rules, but did not. Congress did provide a more generous copyright license to C-Band carriers, than to DBS carriers, to retransmit distant network stations to virtually all C-Band subscribers. As noted, the network non-duplication and syndicated exclusivity rules do not apply to satellite retransmission of network stations. Currently, C-Band carriers provide only four of the six nationally distributed superstations (C-Band carries KTLA, WPIX, KWGN, and WGN. WOR–TV (New York) and WSBK–TV (Boston) are no longer available.) One of these, WGN, provides a satellite feed from which all duplicating programming has been deleted. Thus, the burden on C-Band carriers under the new network non-duplication and syndicated exclusivity rules is to delete programming from only three nationally distributed superstations. The information provided by the satellite commenters in this record describes serious technical and economic difficulties in accomplishing deletions and substituting replacement programming. C-Band carriers contend that Geolocs cannot accomplish the numerous simultaneous deletions that the network non-duplication and syndicated exclusivity rules may require. However, it appears that these comments contemplate more widespread deletions and substitutions than the statute calls for and more than we impose here on either C-Band or DBS carriers.

55. Notwithstanding that we may not provide a blanket exemption for C-Band carriers, we have considered their proposal that we defer application of the rules until after 2004 or pending a further rulemaking proceeding. We determine to do neither. We note that the Commission deferred application of the syndicated exclusivity rules in 1991 due to the expectation of full copyright liability in 1994. Now we are urged again, for the same reasons, to defer because the statutory copyright license is set to expire in 2004. We are not willing to defer application until 2004, and then find that the copyright license is again extended and we are faced again with the same issues and arguments. We believe that C-Band carriers will be able to implement these new regulations, in the limited circumstances in which they will apply to C-Band subscribers, using existing technology modified as necessary. We also believe that this proceeding has given all sides on this issue ample opportunity to present evidence and see no need for a further rulemaking. We do note, however, that we can apply to C-Band carriers an exception comparable to the cable exceptions for small systems. C-Band has persuasively argued that the demands of network non-duplication, syndicated exclusivity, and sports blackout, cumulatively, may exceed the capacity of their existing system. In this case, the C-Band carriers would have to develop a new system or substantially modify their existing system. We believe that this can be a costly burden, and that it is appropriate to provide an exception that recognizes the relatively small size of the C-Band carriers, as compared with the DBS carriers. Therefore, insofar as any C-Band carrier has fewer than 1,000 subscribers within the zone of protection, as expressed by zip code areas within the zone, it is not required to delete programming subject to network non-duplication or syndicated exclusivity protection. (See §§ 76.122(l), 76.123(m), and 76.127(e).) The language of these exceptions is not limited to C-Band carriers and may apply, as well, to any satellite carrier with a similarly small subscriber base, such as a new carrier in the future. We will consider, if presented to us, additional information on how best to tailor a small system exemption that would be meaningful for C-Band carriers without being significantly broader than the exemption for small cable systems. Finally, if Congress amends the SHVIA to expressly exempt C-Band carriers from application of any or all of the exclusivity rules (including sports blackout, discussed below), we can conduct a rulemaking proceeding to exempt C-Band from our rules accordingly.

Exceptions Preventing One Local Station From Blacking Out Another

56. The cable rules contain a number of exceptions that prevent one local station from asserting exclusivity protection against another station that has been deemed ''local.'' Often these situations arise because the rules contain several definitions of ''local'' station. These exceptions—for significantly viewed stations, stations whose Grade B includes the community unit to be blacked out, and overlapping specified zones—were adopted to ensure that cable subscribers receive the same programming that would be available to over-the-air viewers in their communities. Consideration of these exceptions in the context of satellite carriage is made more complicated because superstations could have dual identities. In the NPRM, we sought comment on the treatment of superstations within their own markets. We noted that for must carry purposes, superstations are treated as local signals in their local markets (DMAs) and distant signals elsewhere. In its own market, a nationally-distributed superstation acts as any other local station and is treated as a local station within its local market. In the context of satellite retransmission of nationally distributed superstations, however, there is an important difference between a station carried as a superstation or carried as a local station. As described above, satellite carriers are not required to obtain retransmission consent to carry the superstations, but are required to obtain retransmission consent to carry a local station within its local market. The SHVIA, as it amended the retransmission consent provisions in the Communications Act, permits satellite carriers to retransmit the six stations that meet the definition of nationally distributed superstation without their consent provided they are transmitted outside their local markets. We believe that the presence or absence of a requirement for retransmission consent for nationally distributed superstations is key to Congress' determination to apply the cable exclusivity and sports blackout rules in this satellite context. Therefore, within their local markets, the nationally distributed superstations are not subject to deletions because they are carried as local stations. However, when a satellite carrier is retransmitting the station as a nationally distributed superstation, without its retransmission consent, it must be treated as a superstation, and the exclusivity and sports blackout rules will apply. Even in those instances in which the superstation's terrestrial over-the-air signal is significantly viewed, or the protected zone is within its Grade B contour, if the satellite retransmission is outside the station's local market, we will look to the manner of carriage to determine whether the station is treated as a superstation subject to deletions and blackouts, or as a local station that cannot be blacked out by another, overlapping local station. To the extent the exceptions for overlapping areas in the cable exclusivity rules are relevant in the satellite context, we will adopt them, as described below.

57. With respect to the ''significantly viewed signal exception,'' a broadcast television station can be declared ''significantly viewed'' outside what is usually considered its local market on the basis of its over-the-air viewing in a

community. Significantly viewed status confers local treatment on a station under a number of rules and is intended to ensure that cable subscribers have the same local broadcast service that is available to noncable subscribers in their communities. Section 76.92(f) provides that a community unit is not required to delete the duplicating network programming of a significantly viewed signal. Similarly, under Section 76.156 (amended rule § 76.106), syndicated programming covered by an exclusivity agreement need not be deleted from a significantly viewed signal. A few comments note that a superstation could be significantly viewed in areas surrounding its city of license based on over-the-air viewing. DirecTV argues that this exception could only apply in a few cases in which the superstation is functioning as a local station and since local stations are not covered by this section of SHVIA, the significantly viewed exception should not be present in the satellite context. We believe that pursuant to the SHVIA, the local-into-local copyright license can only apply within the station's DMA. Thus, once carried outside the DMA, the station cannot be considered a ''local'' station. Therefore, we believe the significantly viewed and Grade B contour exceptions will rarely, if ever, be applicable in the satellite context.

Overlapping Specified Zones

58. In a related matter, under the network non-duplication rules, if a cable community 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. The NPRM stated that we did not believe that a similar situation could occur in the satellite context and sought comment on this issue. The one commenter addressing this issue contends this exception will not be triggered in the satellite context since superstations do not have specified zones outside their local markets and SHVIA only applies network non-duplication to nationally distributed superstations. As mentioned above, a nationally distributed superstation is a ''local station'' when carried by a satellite carrier within its local market. When carried as a local station, the network non-duplication and syndicated exclusivity rules do not apply to delete its programming. To the extent the overlapping zones situation could occur, it will be covered by the exception for significantly viewed or Grade B contour discussed above.

NCE Must-Carry Exception

59. Under Section 76.92(g) of the rules, a cable community unit is not required to delete the duplicating network programming of any qualified noncommercial educational (''NCE'') broadcast television station that is carried pursuant to the must carry rules. Congress mandated that this provision be added to the cable network non-duplication rules as part of the must carry requirements. Congress recognized that in some situations an NCE station could be considered ''local'' under the must-carry rules, which are based on a 50-mile zone around the station's community of license, and ''distant'' for purposes of the network non-duplication rules, which are based on a 35-mile specified zone. No commenters addressed this issue and we believe that this exception is not relevant in this context. The SHVIA provision applies only to a local station asserting exclusivity rights against one of six nationally distributed superstations, none of which is an NCE licensee.

Section 339(B)(1)(A) and (B): Application of Sports Blackout to Retransmission of Nationally Distributed Superstations and Network Stations

60. In addition to requiring application of the network non-duplication and syndicated exclusivity rules, section 339(b)(1)(A) also requires that we apply the sports blackout rule to retransmission of nationally distributed superstations, and section 339(b)(1)(B) requires that we apply the sports blackout rule to satellite retransmission of network stations. 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. In the case of retransmission of network stations, we are instructed to apply the cable sports blackout rule only ''to the extent technically feasible and not economically prohibitive.

61. 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. The purpose of the sports blackout rule is to ensure 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 a distant station. The cable sports blackout rule is triggered when a subject sporting event will not be aired live by any local television station carried on a community unit cable system. Under the cable sports blackout rule, the holder of the rights to the event (*e.g.,* a sports team or league, rather than a broadcaster) has the power to demand that the local cable system blackout the distant importation of the subject sporting event. 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. The 35 mile zone of protection is measured from a television station's reference point based upon the list of reference points in 47 CFR 76.53. The same reference point applies to all stations licensed to the same community regardless of where their transmitter or studios are located. When sports facilities are located in suburban areas, the downtown reference points may be inappropriate for purposes of calculating the protected zone (*e.g.,* the New England Patriots play mid way between Boston and Providence). Therefore, the Commission has expressed its willingness to consider waivers ''to substitute a zone of protection extending out 35 miles from the site of a sports event for the television station specified zone designated by the rule.'' 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 than for network non-duplication and syndicated exclusivity. Notification for sports blackout can be given as little as 24 hours in advance. Notifications for regularly scheduled events subject to the sports blackout rule must be received no later than the Monday preceding the calendar week during which the deletion is to be made. Notifications for events not regularly scheduled, or when the schedule is revised, must be received within 24 hours after the time of the deleted telecast is known, but in no event less than 24 hours before the event will take place. The sports blackout rule does not apply to any community unit with fewer than 1,000 subscribers. This exemption is based on the cost of the equipment needed to delete programming.

Technical and Economic Effects of Sports Blackout on Satellite Carriers

62. With respect to retransmission of nationally distributed superstations, the SHVIA requires us to apply the sports blackout rule from the cable context to satellite carriers. With respect to retransmission of network stations, however, the SHVIA provides that the sports blackout rules should be applied only to the extent technically feasible and not economically prohibitive. The language limits the application of the sports blackout rules in this narrow circumstance but only if the technical and economic difficulties are serious and harmful to the satellite carriers. In the NPRM we asked for specific information on the technical and economic problems that would be encountered by satellite carriers. We requested per subscriber cost data and asked whether the existing conditional access mechanisms would work for this purpose. We did not receive specific data or descriptions of how the requirement to black out sporting events on network stations would be unfeasible or economically prohibitive to the degree of posing a serious economic threat to the health of satellite carriers.

63. DirecTV argues that the Commission should invoke the technical/economic hardship exception of section 339(b)(1)(B) and not apply any sports blackout requirements on satellite retransmission of network stations but does not explain why the methods it uses to perform the blackouts required by its contracts with sports leagues cannot be used to black out network stations. DirecTV does explain that the actual blackouts are ''manually triggered'' by a person who can watch and monitor only four events at a time. DirecTV states that additional personnel would be needed to monitor and trigger the additional events that will be covered by the sports blackout rule. It asserts there will be ''vast numbers of subscribers'' and ''thousands of blackout requests'' creating a ''monumental, expensive, and time-consuming task.'' There are no specific costs provided. The Echostar comments offer even less specific information. Echostar provides no information about particular burdens that would be imposed by the requirement to black out sport events from network stations.

64. As the Network Affiliates point out, no commenting party explains why it would be infeasible to develop the technology to black out sports programming, if such technology is not already in use, nor does any commenter offer cost figures to demonstrate that the technology would be cost prohibitive. We agree with those commenters that observe that the statutory language and expressions of legislative intent place a high burden to justify not imposing the sports blackout requirements for satellite retransmission of network stations. Such burden cannot be satisfied by the vague assertions and undocumented conclusions offered in this record. In contrast, the record provides unrefuted information that the technology to implement the network station sports blackout exists. Indeed, the satellite carriers currently black out sports programming pursuant to geographic restrictions in their contracts with regional sports networks and sports leagues. Consequently, we find that the heavy burden is not met to justify not applying the sports blackout obligations to satellite carriers with respect to network stations.

Notification

65. In one aspect of the sports blackout rules, however, the timing of notification, we find that the record supports some modification from the notification periods in the cable sports blackout rules. DirecTV and Echostar urge that we lengthen the notification periods with respect to sports blackouts. In this respect, DirecTV describes a blackout system that is notably more complex than that of a cable operator. The cable operator controls the programming at a headend, which facilitates blacking out a particular area of limited geographic size. The satellite carrier, in contrast, is controlling programming on a national basis:

> First the programmer must notify DirecTV and provide information about the program to be blacked out, as well as the areas (by zip code) affected. The information provided by the programmer must then be reformatted for DirecTV compatibility. Traffic department employees must then build the blackout by entering the data into the system and notify the scheduling department. The blackout is then scheduled and the data regarding the blackout is processed. The blackout is checked again for accuracy before it hits the air. Finally the actual blackout itself must be manually triggered, both in and out, by an employee who determines when the actual event begins and ends by watching an actual signal of the event.

DirecTV also notes the difficulty of re-programming the time period that has been blacked out, especially with very short advance notice.

66. While the process generally described by DirecTV does not appear to present such a serious technical or economic burden as to excuse compliance with the sports blackout rules altogether, it does suggest that the challenge of implementing multiple, simultaneous blackouts and identifying and arranging substitute programming is greater for satellite carriers than for cable operators. DirecTV correctly notes that the time frame allowed for notification for sports blackouts is significantly shorter than it is for either network non-duplication or syndicated exclusivity, and recognizes that rights holders may not always have the ability to provide more than 24 hours notice. The cable sports blackout rules require notice for regularly scheduled events to be received on the Monday preceding the calendar week during which the deletion is to be made, and, for events not regularly scheduled or revisions to previously submitted notices, within 24 hours after the time of the telecast is known and no later than 24 hours before the telecast is to occur. This timing was instituted in 1975 to address sports interests' concerns that playoffs and weather cancellations often afford little advance notice of scheduling changes. DirecTV explains that while it may be capable of deleting a sporting event on short notice, it cannot accomplish the reprogramming necessary in such a short period of time. DirecTV proposes a notification period of 60 days prior to the start of a season for sports with a specific season, 60 days prior to the event for nonseasonal but regularly scheduled events, 30 days for events not regularly scheduled, and 10 working days for revisions to previously submitted notices.

67. Commenters respond to DirecTV's proposal that, while they sometimes can provide notice as soon as a season's games are scheduled, the televising schedule may not be set until a later date. We agree that a 60 day advance notice may allow time for the games to be scheduled but not for the telecasts to be arranged. Often the televising schedule is not finally decided until a week before the beginning of the season. We find that the satellite carriers, although not providing sufficient data to warrant an exemption from the sports blackout requirements, have offered reasonable arguments in support of revising the notification periods in the satellite sports blackout rules to the extent possible without depriving the teams and leagues of their contractual rights by establishing time frames that afford no practical protection.

68. In light of the differences in the structure and operation of the satellite and cable industries, we are persuaded that some adjustment in the application of the sports blackout rules is justified and consistent with Congressional recognition of these differences. We find, however, that the lack of specific information in the record limits our ability to finely tailor the requirements

while providing the protection the statute requires. Moreover, we take note that satellite carriers currently comply with contractually mandated blackouts, which require that they delete sporting events and provide subscribers with replacement programming. We believe it is appropriate to adjust the notification requirements for satellite carriers to ensure that the holders of rights to sporting events will provide the required notice as promptly as possible. The sports blackout rules for satellite carriers will, therefore, retain the same advance notice requirements for regularly scheduled events, including those events that have a specific season (notice must be received the Monday before the calendar week in which the deletion is to be made) but will also require that rights holders notify satellite carriers within forty-eight hours of the time the telecast is scheduled. We will not make the same requirement for events not regularly scheduled due to the last minute nature of such events. For these unscheduled events, as well as for last minute revisions to previously scheduled events, we must take into account the realities for the sports interests of last minute revisions, particularly due to weather. Therefore, we retain the 24 hour advance notice minimum to revise previously scheduled deletions. We hope that where satellite carriers have had adequate time to line up substitute programming, they will be able to shift the substitute programming into the revised time slot even with only 24 hours notice. Because this adjustment to the notification requirements reflects legitimate differences between satellite carriers and cable operators, we see no reason to limit this distinction to retransmission of network stations. For purposes of uniformity and clarity, the same notification requirements will apply to all sports blackout requirements imposed on satellite carriers, whether with respect to network stations or nationally distributed superstations.

Use of Zip Codes To Determine the Location of Households Subject to Sports Blackout

69. As with the network non-duplication and syndicated exclusivity rules, most commenters agree that the sports blackout rule can best be applied to satellite carriers by reference to zip codes rather than community units. For the same reasons discussed in connection with network non-duplication and syndicated exclusivity, we agree that the zip codes that comprise the specified zones are appropriate for this purpose. As in the cable sports blackout rule, the holder of the broadcast rights, or its agent, shall be responsible for including the appropriate information identifying areas subject to deletion with its blackout notification to the satellite carrier. The notification must include a list of the appropriate zip codes.

Exception for Small Community Units, as Applied to Satellite Carriers

70. DirecTV advocates excepting satellite carriers from the sports blackout requirement if the blackout would affect fewer than 5% of the television households in the relevant DMA, on a provider-by-provider basis. DirecTV asserts that this would have a *de minimis* impact on rights holders. The holders of rights to sporting events strongly disagree. The Commissioner of Baseball states that satellite subscribers generally constitute less than 5% of households in most DMAs and contends such an exception would eliminate sports blackouts in most cases. We agree that there should be exceptions to the blackout requirements imposed on satellite carriers that are analogous to the exceptions for cable systems. We do not agree that 5% of television households in a DMA (which would include cable subscribers as well as satellite subscribers) is analogous to the small community unit exception for cable systems.

71. The cable sports blackout rule does not apply ''to any community unit having fewer than 1,000 subscribers.'' Much has been made by some commenters of the difference between the language of this small system exception and the small system exceptions for non-duplication and syndicated exclusivity, which specifically exempt cable systems with fewer than 1,000 subscribers. However, there appears to be no basis in past Commission Orders for emphasizing this difference in the rule language. The Commission's rationale for exempting either small systems or small community units is the cost of the equipment for the cable system, and the relatively *de minimis* effect on the protected rights holder of exempting such a small system. Because there is no specific cost information in the record in this proceeding, it is difficult for us to draw a direct connection from the Commission's concerns for small cable systems due to the cost of their blackout equipment to the satellite carriers who, by all reports, already possess the necessary equipment to perform the sports blackouts required by statute.

72. We believe that the same type of exception we apply to the satellite network non-duplication and syndicated exclusivity rules is warranted here. Our primary concern here is for the affected subscribers, as well as the expense imposed upon satellite carriers relative to the number of subscribers who will be blacked out. The Commission has found in previous considerations of the cable sports blackout rule that the effect of excepting up to 1,000 subscribers from a blackout requirement will have a *de minimis* effect on the gate receipts. Insofar as we are using zip codes in lieu of community units, we believe an exception based upon the number of satellite subscribers, per carrier, in the zip codes affected by a sports blackout request is analogous to the exception in the cable sports blackout rule for community units with fewer than 1,000 subscribers. In this satellite context we find again that an exception for fewer than 1,000 subscribers per carrier, per zip code area comprising a protected zone, will not be so detrimental to the sports interests as to warrant the expense to satellite carriers and the loss of sports programming for viewers. We will reexamine this issue if, in the future, we receive information that the loss of 1,000 satellite subscribers is more costly to the sports interests than the comparable loss of 1,000 cable subscribers where the small system exception applies in the cable sports blackout rule.

Other Provisions of Sports Blackout Rule for Satellite Carriers

73. Apart from the changes in the use of zip codes and in the notification requirements described above, we do not change the other provisions of the cable sports blackout rules in their application to satellite carriers. Based upon the general consensus in the comments, the same 35 mile zone of protection that applies to cable systems will apply to satellite carriers, and the same willingness to consider waivers for suburban stadiums applies to the satellite sports blackout rules as well as to the cable sports blackout rules. The rights holder will have the obligation of providing a list of the relevant zip codes to the satellite carrier with its deletion notice. If satellite carriers want to evaluate each subscriber's address and black out only those households within the 35 mile zone, the rules will not prevent them from doing so. For the same reasons cited in the network non-duplication and syndicated exclusivity rules, we will not require an electronic list of zip codes, nor will we require that satellite carriers designate a particular name or address for receipt of the notification. We do not have such a requirement for cable systems, which

are far more numerous and varied, and we see no reason to require it from satellite carriers. As in the cable sports blackout rule, satellite carriers may substitute other programming during the time scheduled for a sporting event that must be blacked out. Satellite carriers may only use substitute programming for which they have copyrights, and, when required, retransmission consent. They may substitute a different distant network station provided they do not retransmit more than two network stations affiliated with the same network in a single day. Of course the substitute programming must also comply with the network non-duplication and syndicated exclusivity rules.

74. In addition, to afford satellite carriers an opportunity to adjust their schedules to these new regulatory requirements, we will require that sports rights holders provide 60 days advance notice for any sports blackout to occur on or before March 31, 2001. As of April 1, 2001, the regular notice requirements, including 24 hour notice for changes in previously scheduled blackouts, will apply. Because satellite carriers are currently complying with contractually required sports blackouts, we do not believe it is necessary to provide the same length of time to phase-in the implementation of the sports blackout rules as we find warranted for the network non-duplication and syndicated exclusivity. We believe that this 60 day period will be adequate for satellite carriers to adjust to the additional sports blackout requests.

*Other Issues*

Digital Signals

75. In the NPRM, we stated that 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. We noted that 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. In the Notice, we repeated our question of whether Congress intended to apply these rules to satellite retransmission of digital broadcast signals. We noted that the SHVIA may be read to apply to both analog and digital broadcast signals. An alternative interpretation we posited was 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 sought 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.

76. The responses we received concerning this matter are aligned by industry. Echostar argues that there is no legislative authority for the extension of the exclusivity rules to digital signals. NAB argues that the SHVIA requires exclusivity and sports blackout protection to apply to both analog and digital signals. Other broadcast groups, such as Tribune, argue that Congress did not indicate an intent that digital signals should be excluded from the new exclusivity rules and therefore that there should be no distinction between analog and digital signals under the new rules. MPAA asserts that syndicated exclusivity should apply to both digital and analog signals, pointing out that Congress made exceptions for digital signals in certain instances but did not do so for syndicated exclusivity.

77. Because digital exclusivity issues are closely related to digital carriage issues, we believe that it would be premature to resolve the matters related to this issue at this time. Exclusivity requirements cannot be fully fashioned until both cable operators and satellite carriers know what their carriage responsibilities will be for digital broadcast television. The digital exclusivity issues should be decided either when the Commission issues a Report and Order in the Digital Must Carry proceeding or in another proceeding that discusses a satellite carrier's digital broadcast signal carriage responsibilities.

78. We do address one aspect of this issue here. We are disinclined, in the early stage of the DTV transition, to allow a broadcaster to use an exclusive contract that applies only to digital programming to prevent a cable system or satellite carrier from providing that programming in analog form to its subscribers. However, to the extent contractual rights protect a broadcaster's exclusivity for both the analog and digital versions of the same program, we see no reason to limit the effectiveness of the contract to protect only analog exclusivity. Therefore, contractual language that expressly applies to analog and digital format of the same program content will be effective to require deletion of both. That is, the rule will provide that neither satellite carriers nor cable operators will be permitted to carry the digital version of a program when the analog version is required to be deleted and the contract expressly provides exclusivity for both, any, or all formats.

NFL Proposal to Expand Exclusivity Rules To Apply to Unitary Program Packages

79. The NPRM sought comment on an additional issue concerning the distribution of sports programming that is 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 non-duplication 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. We sought 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.

80. The NFL asks the Commission to ''complete the work that Congress began'' by applying the network non-duplication and syndicated exclusivity rules to network stations as well as to nationally distributed superstations. The NFL admits that damage to stations' contractual rights is limited because only unserved and grandfathered households can receive such stations but argues that the numbers of viewers involved are significant nonetheless. The NFL further contends that the Commission should also recognize the unitary nature of the NFL or any other regional television plan and allow local affiliates to exercise network non-duplication protections to black out other games played at the same time but broadcast in other regions of the country (*e.g.,* Redskins versus Cowboys could blackout Giants versus Packers). Similarly, the National Hockey League expresses concern that a satellite carrier that offers local-into-local service could have access to the four games that the NHL plans to regionalize on ABC this year and could thereby create a multi-game hockey package to compete unfairly with the ''Center Ice'' package on ABC. We note that in the case of local-into-local carriage, retransmission consent is required, and, presumably, the stations in question could contractually prevent this from occurring.

81. The advocates of this expanded application of network non-duplication have not described why such action would be in the public interest, although we are persuaded it could be in the Leagues' interest. The NFL and other sports interests advocating this change ask us to revise the existing cable rules to require deletion of programming that does not duplicate protected programming. As noted in the discussion of the network non-duplication rules, supra, the Commission has determined in the cable context that the use of different camera crews and announcers for a sporting event results in the distant program not being considered the same as the local program. Here, the NFL asks us to reach a contrary result and decide that a different event between different teams ''duplicates'' the protected event. The NFL and others ask us to expand the scope of the new satellite exclusivity rules beyond what Congress mandated. 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. The NFL asserts that allowing satellite carriers (and, presumably, cable systems as well) to import distant signals carrying different games would undermine the NFL's regional television plan. The NFL cautions that it might ''be forced'' to alter its distribution plan in unspecified ways that would be ''less pro-consumer.'' However, we believe it would not be pro-consumer to take the action the sports interests request. There can be no doubt of the negative impact on viewers of losing access to more and more sports programming. The sports interests have not provided a compelling need for this additional protection, and other commenters have argued that it would deprive viewers unnecessarily. For the reasons given, we decline to expand the exclusivity rules to apply to regional or so-called unitary packages. If the program for which protection is sought is not, in fact, duplicated by the distant programming imported by the cable system or satellite carrier, then neither the network non-duplication nor syndicated exclusivity rules apply.

Two Network Affiliates in One DMA

82. In the NPRM we asked for comment on the possibility and ramifications of a ''two-affiliates-in-one market scenario'' with respect to the sports blackout rule. We described the possibility that, in areas in which there are two affiliates of the same network within the same DMA, a 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 both stations. Thus, in this circumstance, the sports blackout requirement of the SHVIA could, conceivably, apply to retransmission of local, rather than distant, network stations where the geographic area for purposes of the sports blackout zone surrounding one of the affiliates is smaller than the DMA. If one of the affiliates is not carrying the event, the sports blackout rule might be triggered. If the second affiliate is carrying the event, then the satellite carrier might be required to black out the event being transmitted by the second affiliate to subscribers within the 35 mile zone. We received scant response to this scenario. We believe these comments confirm that this situation is unlikely ever to occur because the contractual arrangements allow the rights holder to prohibit both affiliates from broadcasting the event in question. Therefore, we see no reason at this time to provide for this situation in the rules.

Technical Revisions to the Rules: § 76.5(gg)

83. The NPRM identified several of the cable exclusivity rules that contain out-dated cross-references to other sections. We sought comment on how these editorial corrections should be made. In particular, we noted that the cable sports blackout rule (§ 76.67, amended rule § 76.111) contains a cross-reference to § 76.5(gg) to determine when the sports blackout rule is triggered. Section 76.5(gg) was eliminated for reasons unrelated to the operation of the sports blackout rule, and no replacement reference is provided. The NPRM asked whether we should simply reinstate a standard based on the original criteria incorporated into former § 76.5(gg) or adopt a new standard.

84. Former § 76.5(gg) of the Commission's rules referred to the 1972 must carry rules to determine whether a station was considered ''local.'' The cable sports blackout rule is intended to be triggered only when no ''local'' television station carried by a cable system is broadcasting the subject sporting event for which protection is sought. In general, the 1972 must carry rules considered a television station ''local'' if the subject cable community served was located within the station's specified zone. In contrast, the current must carry rules consider a television station ''local'' if it is located in the same DMA as a cable community. The National Hockey League (NHL) maintains that any replacement for § 76.5(gg) should incorporate the 1972 must carry rules definition of a ''local'' television station's market area. We agree. The use of DMA's would unnecessarily undermine the application of the sports blackout rule because DMAs may encompass hundreds of miles. In such a DMA, stations carrying the event located hundreds of miles distant from the relevant protected zone would be considered ''local.'' If considered ''local,'' the holder of the rights to the event could not assert the sports blackout rule without blacking out such distant over-the-air carriage if the station had must carry rights.

85. For the limited purpose of the application of the sports blackout rule, the provisions of the former § 76.5(gg) can be substantially shortened and consolidated. Because the purpose of the sports blackout rule is simply to ensure that the rights holders to local events can exercise their contractual exclusivity rights, it is unnecessary to re-instate the complex definition of ''local'' that was used for the 1972 must carry regime or the 1987 rate regulations. It is not our intention to change the operation of the cable sports blackout rule. This revision merely incorporates within the cable and satellite sports blackout rules the relevant concept from the former § 76.5(gg).

Other Technical Corrections

86. The NPRM also included, in Appendix C, two other provisions that require minor, technical corrections. No comments were received regarding these provisions. In the absence of any objection, we make these modifications, as proposed, including an editorial change to the top 100 market list contained in the rules (correcting the markets listed at § 76.51(a)(2) and (a)(28)), and a correction to § 76.5 to reflect that the reference to § 76.5(o) in § 76.5(ii) should be § 76.5(m).

87. In addition, we note that § 73.658(m) contains a reference to the Arbitron list of smaller markets. As discussed in the Commission's recent Market Modification Order, Arbitron is no longer tracking television viewership. The Nielsen Research Company produces a similar list of markets, which is current. We will, therefore, revise this section of the rules to accomplish this updated cross-reference.

88. We are also taking this opportunity to delete several provisions from the cable exclusivity rules (§§ 76.94, 76.105 (formerly § 76.155), 76.97 and 76.163) that have no further

applicability. We find that notice and comment are unnecessary under section 553(b) of the Administrative Procedure Act because the rules are outdated and have no further applicability.

**Procedural Matters**

89. The SHVIA requires that these rules become effective within one year of enactment. The SHVIA was enacted on November 29, 1999. We find good cause exists under the Administrative Procedure Act (''APA'') to have the rules adopted in this Report and Order take effect with fewer than 30 days advance publication in the **Federal Register** pursuant to section 553(d)(3) of the APA due to the statutory deadline. The APA generally requires publication in the **Federal Register** of substantive rules 30 days prior to their effective date but permits substantive rules to become effective with less than 30 days advance publication for good cause. The Commission has acted expeditiously to adopt these complex rules, and they will be adopted and published in the **Federal Register** before the statutory deadline. We note that the rules contemplate a phase-in period to allow parties to implement the new requirements, and thus parties will have time to consider the effect of the rules before they commence implementation.

**Final Regulatory Flexibility Analysis**

90. As required by the Regulatory Flexibility Act (''RFA''), see 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the NPRM. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. No comments were received on the IRFA. Pursuant to the RFA, see 5 U.S.C. 604, a Final Regulatory Flexibility Analysis is contained in the Report and Order. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

91. Need for, and Objectives of, this Report and Order. Section 339(b) of the Communications Act of 1934, as amended (''Act''), 47 U.S.C. 339(b)(1), directed the Commission to ''complete all actions necessary to prescribe regulations required by this section so that the regulations shall become effective within 1 year after'' enactment of the Satellite Home Viewer Improvement Act of 1999. The relevant provisions concern the application of the cable network non-duplication, syndicated program exclusivity, and sports blackout rules to satellite carriers' retransmission of nationally distributed superstations, and, with respect only to the cable sports blackout rules, to satellite retransmission of network stations.

92. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. We did not receive any comments in direct response to the IRFA. However, we received some comments requesting an exception to the rules analogous to the cable small system exception. As discussed in Sections V.H. and VI.D., we create an exception to the rules that will assist any small entities subject to these rules now or in the future.

93. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' (5 U.S.C. 601(6)) In addition, the term ''small business concern'' has the same meaning as the term ''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 adopt affect television station licensees and satellite carriers.

94. Television Stations: The rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The SBA 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.

95. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

96. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which rules may apply may be over-inclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

97. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the new rules will affect approximately 1,616 television stations; approximately 77%, or 1,230 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.

98. 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 revenue. We address below services individually to provide a more precise estimate of small entities.

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

100. 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.

101. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers 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 possible that some program packagers may be smaller.

102. Description of Projected Reporting, Recordkeeping and other Compliance Requirements. This Report and Order establishes a series of rules implementing the Satellite Home Viewer Improvement Act of 1999. We have adopted a regulatory framework for substantive rules and procedures concerning network non-duplication, syndicated program exclusivity, and sports blackout that is substantially similar to, but separate from, these rules in the cable context. There are certain compliance requirements involving the satellite broadcast signal delivery process. Foremost is satellite carriers will have to delete certain programming from the retransmission of nationally distributed superstations to satellite subscribers within the protected zone of the television broadcast station or other rights holder asserting network non-duplication, syndicated program exclusivity or sports blackout rights. With respect to satellite retransmission of network stations, satellite carriers will be required to delete certain sports events from retransmission to satellite subscribers located within the rights holder's zone of protection. There will be costs relating to the time and effort involved in deleting these superstation signals and replacing the deleted programming. These costs will largely be borne by satellite carriers. We do not believe any satellite carrier currently subject to these rules is classified as a small entity.

103. In terms of recordkeeping, entities will likely have to keep a record of the deletion and blackout requests and entities may be required to maintain such information within their business environment. This information is for business purposes and not required to be provided to the Commission as a matter of course.

104. 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. (5 U.S.C. 603(c).)

105. As indicated above, the Report and Order implements certain aspects of the Satellite Home Viewer Improvement Act of 1999. Among other things, as described in Sections II and IV, the new legislation requires the Commission to apply the cable network non-duplication rules, syndicated program exclusivity rules, and sports blackout rules to satellite carriers within one year of the November 29, 1999 enactment date. This legislation applies to both small and large entities. Because the Commission was instructed to pattern the satellite rules after the cable rules, the best alternative available to assist small entities was to create an exception for satellite carriers that have 1,000 or fewer subscribers within the zip codes areas that comprise the geographic zone protected by these rules. To the extent small entities come within this exception, they are exempt from these rules.

**Ordering Clauses**

106. Accordingly, *It is ordered* that, pursuant authority found in sections 4(i) 4(j), 303(r), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 339, the terms of this Report and Order and rules as set forth in the rule changes *are adopted*. The amendments shall become effective November 29, 2000, provided that this Report and Order (or a summary thereof) and the rules have been published in the **Federal Register** and OMB emergency approval of the information collections has been obtained on or before that date.

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

**List of Subjects in 47 CFR Parts 73 and 76**

Cable television, Satellite carriers, Television broadcast stations.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends Parts 73 and 76 of Title 47 of the Code of Federal Regulations as follows:

## PART 73—RADIO BROADCAST SERVICES

The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

1. Section 73.658(m)(1) is revised to read as follows:

**§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.**

* * * * *

(m) *Territorial exclusivity in non-network arrangements.* (1) No television station shall enter into any contract, arrangement, or understanding, expressed or implied; with a non-network program producer, distributor, or supplier, or other person; which prevents or hinders another television station located in a community over 56.3 kilometers (35 miles) away, as determined by the reference points contained in § 76.53 of this chapter, (if reference points for a community are not listed in § 76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person, except that a television station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in § 76.51 of this chapter for those 100 markets listed, and for markets not listed in § 76.51 of this chapter, the listing as contained in the Nielsen Media Research DMA Rankings for the most recent year at the time that the exclusivity contract, arrangement or understanding is complete under practices of the industry. As used in this paragraph, the term ''community'' is defined as the community specified in the instrument of authorization as the location of the station.

* * * * *

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

2. The authority citation for Part 76 is revised to read as follows:

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

3. Section 76.5(ii) is revised to read as follows:

**§ 76.5 Definitions**

* * * * *

(ii) A *syndicated program* is any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming as defined in § 76.5(m).

4. Section 76.51 is amended by revising the entries for paragraphs (a)(2) and (a)(28) to read as follows:

**§ 76.51 Major television markets.**

* * * * *

(a) * * *

(2) Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif.

* * * * *

(28) Tampa-St. Petersburg-Clearwater, Florida.

* * * * *

**§ 76.67 [Removed]**

5. Remove § 76.67.

6. Revise Part 76, subpart F to read as follows:

## Subpart F—Network Non-duplication Protection, Syndicated Exclusivity and Sports Blackout

Sec.



**§ 76.92 Cable network non-duplication; extent of protection.**

(a) Upon receiving notification pursuant to § 76.94, a cable community unit located in whole or in part within the geographic zone for a network program, the network non-duplication rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

(b) For purposes of this section, the order of nonduplication priority of television signals carried by a community unit is as follows:

(1) First, all television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;

(2) Second, all smaller market television broadcast stations within whose secondary zone the community of the community unit is located, in whole or in part.

(c) For purposes of this section, all noncommercial educational television broadcast stations licensed to a community located in whole or in part within a major television market as specified in § 76.51 shall be treated in the same manner as a major market commercial television broadcast station, and all noncommercial educational television broadcast stations not licensed to a community located in whole or in part within a major television market shall be treated in the same manner as a smaller market television broadcast station.

(d) Any community unit operating in a community to which a 100-watt or higher power translator is located within the predicted Grade B signal contour of the television broadcast station that the translator station retransmits, and which translator is carried by the community unit shall, upon request of such translator station licensee or permittee, delete the duplicating network programming of any television broadcast station whose reference point (See § 76.53) is more than 88.5 km (55 miles) from the community of the community unit.

(e) Any community unit which operates in a community located in whole or in part within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any major market television broadcast station whose reference point (See § 76.53) is also within 88.5 km (55 miles) of the community of the community unit.

(f) A community unit is not required to delete the duplicating network programming of any television broadcast station which is significantly viewed in the cable television community pursuant to § 76.54.

(g) A community unit is not required to delete the duplicating network programming of any qualified NCE television broadcast station that is carried in fulfillment of the cable television system's mandatory signal carriage obligations, pursuant to § 76.56.

**Note:** With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority of shall be that geographic area agreed upon between the network and the

television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter, except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this Chapter for each named community in that market.

**§ 76.93 Parties entitled to network non-duplication protection.**

Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.92 in accordance with the contractual provisions of the network-affiliate agreement.

**§ 76.94 Notification.**

(a) In order to exercise non-duplication rights pursuant to § 76.92, television stations shall notify each cable television system operator of the non-duplication sought in accordance with the requirements of this section. Except as otherwise provided in paragraph (b) of this section, non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;

(2) The name of the program or series (including specific episodes where necessary) for which protection is sought; and

(3) The dates on which protection is to begin and end.

(b) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected cable systems within 60 calendar days of the signing of such a contract. In the event the broadcaster is unable based on the information contained in the contract, to furnish all the information required by paragraph (a) of this section at that time, the broadcaster must provide modified notices that contain the following information:

(1) The name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster;

(2) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non-duplication protection is requested; and

(3) The duration and extent (*e.g.,* simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster.

(c) Except as otherwise provided in paragraph (d) of this section, a broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice (as described in paragraphs (a) or (b) of this section, whichever is applicable) to the cable television system; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the cable television system receives notice from the broadcaster.

(d) A broadcaster shall provide the following information to the cable television system under the following circumstances:

(1) In the event the protection specified in the notices described in paragraphs (a) or (b) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to paragraph (b) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished ''as soon as possible'' under this paragraph shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

(2) In the event the protection specified in the modified notices described in paragraph (b) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

(e) In determining which programs must be deleted from a television signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available:

(1) Newspapers or magazines of general circulation.

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The broadcaster requesting exclusivity.

(f) A broadcaster exercising exclusivity pursuant to § 76.92 shall provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.

**§ 76.95 Exceptions.**

(a) The provisions of §§ 76.92 through 76.94 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

(b) Network non-duplication protection need not be extended to a higher priority station for one hour following the scheduled time of completion of the broadcast of a live sports event by that station or by a lower priority station against which a cable community unit would otherwise be required to provide non-duplication protection following the scheduled time of completion.

**§ 76.101 Cable syndicated program exclusivity: extent of protection.**

Upon receiving notification pursuant to § 76.105, a cable community unit located in whole or in part within the geographic zone for a syndicated program, the syndicated exclusivity rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

**Note:** With respect to each syndicated program, the geographic zone within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter. To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under

§ 73.658(m) of this Chapter for each named community in that market.

**§ 76.103 Parties entitled to syndicated exclusivity.**

(a) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to § 76.101 in accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.109.

(b) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to § 76.101 for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

**§ 76.105 Notification.**

(a) In order to exercise exclusivity rights pursuant to § 76.101, distributors or television stations shall notify each cable television system operator of the exclusivity sought in accordance with the requirements of this section. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2) The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3) The dates on which exclusivity is to begin and end.

(b) Broadcasters entering into contracts on or after August 18, 1988, which contain syndicated exclusivity protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. Broadcasters who have entered into contracts prior to August 18, 1988, and who comply with the requirements specified in § 76.109 shall notify affected cable systems on or before June 19, 1989. A broadcaster shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the cable television system; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the cable television system receives notice from the broadcaster;

(c) In determining which programs must be deleted from a television broadcast signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available.

(1) Newspapers or magazines of general circulation;

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The distributor or television station requesting exclusivity.

(d) In the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Notice to be furnished ''as soon as possible'' under this paragraph shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

**§ 76.106 Exceptions.**

(a) Notwithstanding the requirements of §§ 76.101 through 76.105, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal's grade B contour, or when the signal is significantly viewed pursuant to § 76.54 in the cable community.

(b) The provisions of §§ 76.101 through 76.105 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

**§ 76.107 Exclusivity contracts.**

A distributor or television station exercising exclusivity pursuant to § 76.101 shall provide to the cable system, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

**§ 76.108 Indemnification contracts.**

No licensee shall enter into any contract to indemnify a cable system for liability resulting from failure to delete programming in accordance with the provisions of this subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this subpart.

**§ 76.109 Requirements for invocation of protection.**

For a station licensee to be eligible to invoke the provisions of § 76.101, it must have a contract or other written indicia that it holds syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after August 18, 1988, must contain the following words: ''the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Compulsory Copyright License, as provided in § 76.101 of the FCC rules [or 'as provided in the FCC's syndicated exclusivity rules'].'' Contracts entered into prior to August 18, 1988, must contain either the foregoing language or a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against cable television broadcast signal carriage by the cable system in question upon the contingency that the government reimposed syndicated exclusivity protection. In the absence of such a specific reference in contracts entered into prior to August 18, 1988, the provisions of these rules may be invoked only if the contract is amended to include the specific language referenced in this section or a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of

exclusive rights to a broadcaster where such rights are not agreed to by the parties.

**§ 76.110 Substitutions.**

Whenever, pursuant to the requirements of the syndicated exclusivity rules, a community unit is required to delete a television program on a broadcast signal that is permitted to be carried under the Commission's rules, such community unit may, consistent with these rules and the sports blackout rules at § 76.111, substitute a program from any other television broadcast station. Programs substituted pursuant to this section may be carried to their completion.

**§ 76.111 Cable sports blackout.**

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast station meeting the criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this section shall include the following information:

(1) As to programming to be deleted from television broadcast signals regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(iii) The call letters of the television broadcast station(s) from which the deletion is to be made.

(2) As to programming to be deleted from television broadcast signals not regularly carried by the community unit:

(i) The name and address of the party requesting the program deletion;

(ii) The date, time and expected duration of the sports event the television broadcast of which is to be deleted.

(c) Notifications given pursuant to this section must be received, as to regularly scheduled events, no later than the Monday preceding the calendar week (Sunday through Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) Whenever, pursuant to this section, a community unit is required to delete a television program on a signal regularly carried by the community unit, such community unit may, consistent with the rules contained in subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the community unit need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(e) The provisions of this section shall not be deemed to require the deletion of any portion of a television signal which a community unit was lawfully carrying prior to March 31, 1972.

(f) The provisions of this section shall not apply to any community unit having fewer than 1,000 subscribers.

**§ 76.120 Network non-duplication protection, syndicated exclusivity and sports blackout rules for satellite carriers: Definitions.**

For purposes of §§ 76.122–76.130, the following definitions apply:

(a) *Satellite carrier.* The term ''satellite carrier'' means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

(b) *Nationally distributed superstation.* The term ''nationally distributed superstation'' means a television broadcast station, licensed by the Commission, that—

(1) 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;

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

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

(c) *Television network.* The term ''television network'' means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(d) *Network station.* The term ''network station'' means—

(1) A television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(2) A noncommercial educational broadcast station (as defined in Section 397 of the Communications Act of 1934); except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.

(e) *Zone of protection.* The term ''zone of protection'' means—

(1) With respect to network non-duplication, the zone of protection within which the television station is entitled to enforce network non-duplication protection shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter, except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this Chapter for each named community in that market.

(2) With respect to each syndicated program, the zone of protection within

which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m) of this Chapter. To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) of this chapter for each named community in that market.

(3) With respect to sports blackout, the zone of protection is the ''specified zone'' of a television broadcast station, as defined in § 76.5(e). If there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

**§ 76.122 Satellite network non-duplication.**

(a) Upon receiving notification pursuant to paragraph (c) of this section, a satellite carrier shall not deliver, to subscribers within zip code areas located in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation when the network non-duplication rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (j), (k) or (l) of this section.

(b) Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.122 in accordance with the contractual provisions of the network-affiliate agreement, and as provided in § 76.124.

(c) In order to exercise non-duplication rights pursuant to § 76.122, television stations shall notify each satellite carrier of the non-duplication sought in accordance with the requirements of this section. Non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;

(2) The name of the program or series (including specific episodes where necessary) for which protection is sought;

(3) The dates on which protection is to begin and end;

(4) The name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster;

(5) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non-duplication protection is requested;

(6) The duration and extent (*e.g.,* simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster; and

(7) A list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.

(d) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected satellite carriers within 60 calendar days of the signing of such a contract; provided, however, that for such contracts signed before November 29, 2000, the broadcaster may provide notice on or before January 31, 2001, or with respect to pre-November 29, 2000 contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment.

(e) Except as otherwise provided in this section, a broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice to the satellite carrier; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the satellite carrier receives notice from the broadcaster; Provided, however, that with respect to notifications given pursuant to this section prior to June 1, 2001, a satellite carrier is not required to provide non-duplication protection until 120 days after the satellite carrier receives such notification.

(f) A broadcaster shall provide the following information to the satellite carrier under the following circumstances:

(1) In the event the protection specified in the notices described in paragraph (c) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the satellite carrier in a notice pursuant to paragraph (c) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. Notice to be furnished ''as soon as possible'' under this paragraph shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means.

(2) In the event the protection specified in the notices described in paragraph (c) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each satellite carrier that has previously received notice of all changes from the original notice.

(g) In determining which programs must be deleted from a television signal, a satellite carrier may rely on information from newspapers or magazines of general circulation, the broadcaster requesting exclusivity protection, or the nationally distributed superstation.

(h) If a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall answer the request:

(i) Within ten business days following its receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast, whichever comes later.

(i) A broadcaster exercising exclusivity pursuant to this section shall provide to the satellite carrier, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.

(j) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64

(i) Within the station's local market;

(ii) If the station is ''significantly viewed,'' pursuant to § 76.54, in zip code areas included within the zone of protection; or

(iii) If the zone of protection falls, in whole or in part, within that signal's grade B contour.

(k) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation from an individual

subscriber who is located outside the zone of protection, notwithstanding that the subscriber lives within a zip code provided by the broadcaster pursuant to paragraph (c) of this section.

(l) A satellite carrier is not required to delete programming if it has fewer than 1,000 subscribers within the relevant protected zone who subscribe to the nationally distributed superstation carrying the programming for which deletion is requested pursuant to paragraph (c) of this section.

**§ 76.123 Satellite syndicated program exclusivity.**

(a) Upon receiving notification pursuant to paragraph (d) of this section, a satellite carrier shall not deliver, to subscribers located within zip code areas in whole or in part within the zone of protection of a commercial television station licensed by the Commission, a program carried on a nationally distributed superstation when the syndicated program exclusivity rights to such program are held by the commercial television station providing notice, except as provided in paragraphs (k), (l) and (m) of this section.

(b) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to this Section in accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.124.

(c) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to this Section for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

(d) In order to exercise exclusivity rights pursuant to this Section, distributors of syndicated programming or television broadcast stations shall notify each satellite carrier of the exclusivity sought in accordance with the requirements of this paragraph. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2)The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3)The dates on which exclusivity is to begin and end; and

(4) A list of the U.S. postal zip code(s) that encompass the zone of protection under these rules.

(e) A distributor or television station exercising exclusivity pursuant to this Section shall provide to the satellite carrier, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

(f) Television broadcast stations or distributors entering into contracts on or after November 29, 2000, which contain syndicated exclusivity protection with respect to satellite retransmission of programming, shall notify affected satellite carriers within sixty calendar days of the signing of such a contract. Television broadcast stations or distributors who have entered into contracts prior to November 29, 2000, and who comply with the requirements specified in § 76.124 shall notify affected satellite carriers on or before January 31, 2001; provided, however, that with respect to pre-November 29, 2000 contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment.

(g) Except as otherwise provided in this section, a television broadcast station shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the satellite carrier; or

(2) The first day of the calendar week (Sunday through Saturday) that begins 60 days after the satellite carrier receives notice from the broadcaster.

Provided, however, that with respect to notifications given pursuant to this section prior to June 1, 2001, a satellite carrier is not required to provide syndicated exclusivity protection until 120 days after the satellite carrier receives such notification.

(h) In determining which programs must be deleted from a television broadcast signal, a satellite carrier may rely on information from the distributor or television broadcast station requesting exclusivity; newspapers or magazines of general circulation; or the nationally distributed superstation whose programs may be subject to deletion.

(i) If a satellite carrier asks a nationally distributed superstation for information about its program schedule, the nationally distributed superstation shall answer the request:

(1) Within ten business days following the its receipt of the request; or

(2) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(j) In the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each satellite carrier that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the satellite carrier of the occurrence of the relevant contingency. Notice to be furnished ''as soon as possible'' under this Subsection shall be furnished by telephone, telegraph, facsimile, e-mail, overnight mail or other similar expedient means.

(k) A satellite carrier is not required to delete the programming of any nationally distributed superstation that is carried by the satellite carrier as a local station with the station's retransmission consent pursuant to § 76.64:

(1) Within the station's local market;

(2) If the station is ''significantly viewed,'' pursuant to § 76.54, in zip code areas included within the zone of protection; or

(3) If the zone of protection falls, in whole or in part, within that signal's grade B contour.

(l) A satellite carrier is not required to delete the duplicating programming of any nationally distributed superstation from an individual subscriber who is located outside the zone of protection, notwithstanding that the subscriber lives within a zip code provided by the broadcaster pursuant to paragraph (d) of this section.

(m) A satellite carrier is not required to delete programming if it has fewer than 1,000 subscribers within the relevant protected zone who subscribe to the nationally distributed superstation carrying the programming for which deletion is requested pursuant to paragraph (d) of this section.

**§ 76.124 Requirements for invocation of protection.**

For a television broadcast station licensee or distributor of syndicated programming to be eligible to invoke the provisions of § 76.122 or § 76.123 of this subpart, it must have a contract or other written indicia that it holds network program non-duplication or syndicated

exclusivity rights for the exhibition of the program in question. Contracts entered on or after November 29, 2000, must contain the following words: ''the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Statutory Copyright License, as provided in § 76.122 or § 76.123 of the FCC rules [or 'as provided in the FCC's satellite network non-duplication or syndicated exclusivity rules'].'' Contracts entered into prior to November 29, 2000, must contain the foregoing language plus a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against signal carriage by the satellite carrier in question, or by satellite carriage in general in a protected, geographic or specified zone. In the absence of such a specific reference in contracts entered into prior to November 29, 2000, the provisions of these rules may be invoked only if the contract is amended to include the specific language referenced in this section or a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

**§ 76.125 Indemnification contracts.**

No television broadcast station licensee shall enter into any contract to indemnify a satellite carrier for liability resulting from failure to delete programming in accordance with the provisions of this Subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this Subpart.

**§ 76.127 Satellite sports blackout.**

(a) Upon the request of the holder of the broadcast rights to a sports event, or its agent, no satellite carrier shall retransmit to subscribers within the area comprising the specified zone a ''nationally distributed superstation'' or ''network station'' carrying the live television broadcast of a sports event if the event is not available live on a television broadcast station meeting the criteria specified in § 76.128. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

(b) Notification of the programming to be deleted pursuant to this Section shall include the following information:

(1) The name and address of the party requesting the program deletion;

(2) The date, time and expected duration of the sports event the television broadcast of which is to be deleted;

(3) The call letters of the nationally distributed superstation or network station(s) from which the deletion is to be made;

(4) The U.S. postal zip codes that encompass the specified zone.

(c) Notifications given pursuant to this section must be received by the satellite carrier, as to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known, and no later than the Monday preceding the calendar week (Sunday through Saturday) during which the program deletion is to be made. Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

(d) A satellite carrier is not required to delete a sports event from an individual subscriber who is located outside the specified zone, notwithstanding that the subscriber lives within a zip code provided by the holder of the broadcast rights pursuant to paragraph (b) of this section.

(e) A satellite carrier is not required to delete a sports event if it has fewer than 1,000 subscribers within the relevant specified zone who subscribe to the nationally distributed superstation or network station carrying the sports event for which deletion is requested pursuant to paragraph (b) of this section.

(f) Notwithstanding paragraph (c) of this section, for sports events to be deleted on or before March 31, 2001, notification must be received by satellite carriers at least 60 full days prior to the day the telecast is to be deleted.

**§ 76.128 Application of sports blackout rules.**

The cable and satellite sports blackout rules (§§ 76.111 and 76.127) may apply when the sports event is not available live on any of the following television broadcast stations carried by a cable system or other MVPD:

(a) Television broadcast stations within whose specified zone the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;

(b) Television broadcast stations within whose Grade B contours the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;

(c) Television broadcast stations licensed to other designated communities which are generally considered to be part of the same television market (Example: Burlington, Vt.-Plattsburgh, N.Y. or Cincinnati, Ohio-Newport, Ky., television markets);

(d) Television broadcast stations that are significantly viewed, pursuant to § 76.54, in the community unit or community within the specified zone.

**§ 76.130 Substitutions.**

Whenever, pursuant to the requirements of the network program non-duplication, syndicated program exclusivity, or sports blackout rules, a satellite carrier is required to delete a television program from retransmission to satellite subscribers within a zip code area, such satellite carrier may, consistent with this Subpart, substitute a program from any other television broadcast station for which the satellite carrier has obtained the necessary legal rights and permissions, including but not limited to copyright and retransmission consent. Programs substituted pursuant to this section may be carried to their completion.

[FR Doc. 00–29028 Filed 11–13–00; 8:45 am]

BILLING CODE 6712–01–U

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. NHTSA–2000–8258]**

**RIN No. 2127–AI10**

### Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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