significant individual or cumulative effect on the human environment and therefore requires neither an environmental assessment nor an environmental impact statement.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. This final rule is a purely administrative regulatory action having no effect upon the public or the environment and it has been determined that the rule will not have a significant effect on the economy or small entities.

Small Business Regulatory Enforcement Fairness Act

This final rule is a purely administrative regulatory action having no effects upon the public or the economy. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule will not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to complete with foreign-based enterprises.

Unfunded Mandate Reform Act

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995 because the rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this final rule will not significantly or uniquely affect small governments. It does not require action by any non-Federal government entity. Therefore, the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), is not required.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

As required by Executive Order 12630, the Department of the Interior has determined that this rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports an address change for the Eastern States Office. The Department therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

This final rule does not have substantial direct effects on the States, on the relationship between the national governments and the States, or the distribution of power and the responsibilities among the various levels of government. This final rule does not preempt State law.

Executive Order 12988, Civil Justice Reform

This final rule is a purely administrative regulatory action having no effects upon the public. It will not unduly burden the judicial system, and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the Executive Order 13175, the BLM finds that this rule does not include policies that have tribal implications. This final rule is purely an administrative action having no effects upon the public or the environment, imposing no costs, and merely updates the Eastern States Office address included in the Code of Federal Regulations.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that this final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This final rule is a purely administrative action and has no implications under Executive Order 13211.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Archives and records, Public lands.

Dated: September 19, 2015.

Janice M. Schneider,

Assistant Secretary, Land and Minerals Management.

For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. Amend § 1821.10 in paragraph (a) by revising the entry for the Eastern States Office to read as follows:

§ 1821.10 Where are BLM offices located?

(a) * * *

State Offices and Areas of Jurisdiction

* * * * *

Eastern States Office, 20 M Street SE., Suite 950, Washington, DC 20003—Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River.

* * * * *

[FR Doc. 2015–25027 Filed 10–1–15; 8:45 am]

BILLING CODE 4310–GJ–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 15–71; FCC 15–111]

Television Market Modification; Statutory Implementation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts satellite television market modification rules to implement section 102 of the Satellite Television Extension and Localism Act Reauthorization (STELAR) Act of 2014. The STELAR gives the Commission authority to modify a commercial television broadcast station's local television market for purposes of satellite carriage rights. In this document, the Commission revises the current cable market modification rule

to apply also to satellite carriage, while adding provisions to address the unique nature of satellite television service. The document also makes conforming and other minor changes to the cable market modification rules.

DATES: Effective November 2, 2015, except §§ 76.59(a) and (b) which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing when OMB approval for this information collection has been received and these rules will take effect.

FOR FURTHER INFORMATION CONTACT: Evan Baranoff, *Evan.Baranoff@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 15–111, adopted and released on September 2, 2015. The full text of this document is available electronically via the FCC's Electronic Comment Filing System (ECFS) Web site at *http://fjallfoss.fcc.gov/ecfs2/* or via the FCC's Electronic Document Management System (EDOCS) Web site at *http://fjallfoss.fcc.gov/edocs_public/.* (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC, 20554. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. Introduction

1. In this Report and Order, the Commission adopts rules to enable commercial television stations, satellite carriers and cable operators to better serve the interests of their local communities. These rules implement an important provision in the Satellite Television Extension and Localism Act Reauthorization Act of 2014 (''STELAR'') to promote carriage of in-state and other relevant local television programming. Specifically, in the STELAR, Congress recognized that satellite subscribers in some communities across the country are not able to access broadcast stations in their own states via the local television packages offered by satellite carriers. This problem results from the way TV stations are defined as ''local'' for purposes of satellite carriage. In some cases, subscribers may be included in a local television programming market that is served exclusively, or almost exclusively, by television stations in a neighboring state. As a result, these subscribers are not receiving news, politics, sports, emergency information and other television programming relevant to their home state. The STELAR seeks to address this problem by changing the laws to provide for ''market modifications'' that add flexibility to the current definition of a local television programming market. Market modifications allow the Commission, upon request, to modify the local market assignment of a station to include such neighboring communities that are located in the same state as the station. As required by the STELAR, the Commission determines whether to grant a market modification based on consideration of five statutory factors that allow petitioners to demonstrate that they provide local service to the community. Significantly, in the STELAR, Congress included a factor requiring consideration of access to television stations that are located in the same state as the community considered for modification. Congress also added this factor to the existing market modification statutory factors applicable to cable operators. Our rules implement the STELAR to achieve the goal of better service for consumers. Finally, Congress recognized that satellite carriage of additional stations might be technically or economically infeasible in some circumstances. Accordingly, our rules implement this exception to the carriage requirements that would otherwise apply for modified markets. We recognize that the ability of the market modification rules to successfully address the problem of consumer access to in-state stations will depend in large part on broadcasters' willingness to grant retransmission consent to be carried in the new community and satellite carriers' technical ability to provide the in-state stations in the new community. Therefore, we strongly urge broadcasters and satellite carriers to work together to provide relief to consumers and achieve the goals of the STELAR (to promote access to in-state programming) in cases where carriage is technically feasible.

2. In this Report and Order, we adopt satellite television market modification rules to implement section 102 of the STELAR.[1] The STELAR amended the Communications Act (''Act'') and the Copyright Act to give the Commission authority to modify a commercial television broadcast station's local television market for purposes of satellite carriage rights.[2] The Commission previously had such authority to modify markets only in the cable carriage context.[3] With section 102 of the STELAR, Congress provides regulatory parity in this regard in order to promote consumer access to in-state and other relevant television programming.[4]

3. Section 102 of the STELAR, and the Commission's actions in this Report and

[1] The STELA Reauthorization Act of 2014 (STELAR), sec. 102, Pub. L. 113–200, 128 Stat. 2059, 2060–62 (2014) (codified at 47 U.S.C. 338(l)). The STELAR was enacted on December 4, 2014 (H. R. 5728, 113th Cong.). This proceeding implements STELAR section 102 (titled ''Modification of television markets to further consumer access to relevant television programming''), 128 Stat. at 2060–62, and the related statutory copyright license provisions in STELAR sec. 204 (titled ''Market determinations''), 128 Stat. at 2067 (codified at 17 U.S.C. 122(j)(2)(E)).

[2] STELAR secs. 102, 204, 128 Stat. at 2060–62, 2067. STELAR section 102(a) amends section 338 of the Act by adding a new paragraph (l), titled ''Market Determinations.'' 47 U.S.C. 338(l). STELAR section 102(b) also makes conforming amendments to the cable market modification provision at 47 U.S.C. 534(h)(1)(C). STELAR sec. 204 amends the statutory copyright license for satellite carriage of ''local'' stations in 17 U.S.C. 122 to cover market modifications in accordance with 47 U.S.C. 338(l). 17 U.S.C. 122(j)(2)(E). We note that, like the existing cable provision, the STELAR provision pertains only to ''commercial'' stations, thus excluding noncommercial stations from seeking market modification. *See* 47 U.S.C. 338(l)(1).

[3] *See* 47 U.S.C. 534(h)(1)(C). This section was added to the Act by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102–385, 106 Stat. 1460 (1992), as part of the cable must-carry/retransmission consent regime for carriage of local television stations. *See also* 47 CFR 76.59.

[4] *See* title of STELAR section 102, ''Modification of Television Markets to Further Consumer Access to Relevant Television Programming.'' *See also* 47 U.S.C. 534(h)(1)(C)(ii)(III) (directing the Commission to consider whether a market modification would ''promote consumers' access to television broadcast station signals that originate in their State of residence''). There was no final Report issued to accompany the final version of the STELAR bill (H. R. 5728, 113th Cong.) as it was enacted. Because section 102 of the STELAR was added from the Senate predecessor bill (S. 2799, the Satellite Television Access and Viewer Rights Act (STAVRA)), we therefore look to the Senate Report No. 113–322 (dated December 12, 2014) accompanying this predecessor bill for the relevant legislative history for this provision. *See* Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113–322 (2014) (''*Senate Commerce Committee Report*'').

Order, seek to establish a market modification process for the satellite carriage context and, to the extent possible, address satellite subscribers' inability to receive in-state programming in certain areas, sometimes called ''orphan counties.'' [5] In this Report and Order, consistent with Congress' intent that the Commission model the satellite market modification process on the current cable market modification process, we implement section 102 of the STELAR by revising the current cable market modification rule, section 76.59, to apply also to satellite carriage, while adding provisions to the rules to address the unique nature of satellite television service.[6] In addition to authorizing satellite market modifications, section 102 of the STELAR makes certain conforming amendments to the cable market modification statutory provision [7] and also directs the Commission to consider whether to make other changes to the cable market modification rules.[8] Accordingly, as part of our implementation of the STELAR, we make conforming and other minor changes to the cable market modification rules.

4. The following are among the key conclusions adopted in this Report and Order:

- We amend the cable market modification rule, section 76.59 of our rules, to apply also to satellite market modifications, and amend the rule to reflect the STELAR provisions that uniquely apply to satellite carriers, such as an exception if the resulting carriage is ''not technically and economically feasible.''
- We conclude that the involved commercial broadcast station, satellite carrier, and county government have standing to file a satellite market modification petition. Petitions must be filed in accordance with the procedures for filing Special Relief petitions in section 76.7 of our rules.
- We conclude that the new in-state factor,[9] when applicable, favors any market modification that would promote consumers' access to an in-state station. When applicable, this in-state factor serves as an enhancement, the particular weight of which depends on the strength of showing by the petitioner.
- We conclude that the evidentiary requirements for cable market modifications will apply to satellite market modifications. In addition, to satisfy the new in-state factor when applicable, we require a petitioner to make a statement in its petition that the station is licensed to a community within the same state as the new community.
- We conclude that market modifications will be considered separately in the cable and satellite contexts and that, in the satellite context, market modifications will apply only to the specific stations, satellite carriers, and communities addressed in a particular market modification petition.
- We conclude that prior cable market modification determinations will not automatically apply in the satellite context, nor will such prior decisions be afforded a presumption; however, we note that we are required to consider historic carriage under the first statutory factor.
- We conclude that a television broadcast station that becomes eligible for mandatory satellite carriage by operation of a market modification may elect retransmission consent or mandatory carriage with respect to a satellite carrier within 30 days after the market determination. We conclude that a satellite carrier must commence carriage within 90 days after receiving the station's request for carriage.
- We conclude that it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is outside of the relevant spot beam on which that station is currently carried.
- We conclude that, if a satellite carrier can provide the station at issue in a market modification request to only part of a new community, then it must do so.
- We conclude that the satellite carrier has the burden to demonstrate that the resulting carriage from a market modification is technically and economically infeasible.
- We will allow satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed certification under penalty of perjury.
- We conclude that a satellite carrier must raise any technical or economic impediments either in the market modification proceeding or prior to such proceeding in response to a prospective petitioner's inquiry about feasibility of carriage resulting from a contemplated market modification.
- We establish a process that will allow a prospective petitioner to obtain a certification from a satellite carrier about whether or not (and to what extent) it is technically and economically feasible for the carrier to provide the station to a new community. We will not grant a market modification petition if such grant could not create a new carriage obligation for the carrier at that time due to a finding of technical or economic infeasibility.
- We recognize that there may be other bases than spot beam coverage for a carrier to assert that carriage would be technically or economically infeasible and will review these assertions on a case-by-case basis.
- We define a ''satellite community'' as a county for purposes of a satellite market modification. We retain our existing definition of a ''cable community'' for purposes of a cable market modification.

II. Background

5. The STELAR, enacted December 4, 2014, is the latest in a series of statutes that have amended the Communications Act and Copyright Act to set the parameters for the satellite carriage of television broadcast stations. The 1988 Satellite Home Viewer Act (SHVA) first established a ''distant'' statutory copyright license to enable satellite

[5] The Commission has sometimes referred to the situation in which a county in one state is assigned to a neighboring state's local television market and, therefore, satellite subscribers residing in such county cannot receive some or any broadcast stations that originate in-state as the ''orphan county'' problem. *See, e.g., Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA),* MB Docket No. 10–148, Report and Order and Order on Reconsideration, FCC 10–193, para. 48, 75 FR 72968, Nov. 29, 2010 *(STELA Significantly Viewed Report and Order).* The inability of satellite subscribers located in ''orphan counties'' to access in-state programming has been the subject of some congressional interest. *See, e.g.,* Orphan County Telecommunications Rights Act, H.R. 4635, 113th Cong. (2014); Colorado News, Emergency, Weather, and Sports Act, S. 2375, 113th Cong. (2014); Four Corners Television Access Act, H.R. 4469, 112th Cong. (2012); Letting Our Communities Access Local Television Act, S. 3894, 111th Cong. (2010); Local Television Freedom Act, H.R. 3216, 111th Cong. (2009).

[6] *See* 47 CFR 76.59. As discussed herein, we revise section 76.59 of our rules to apply to both cable systems and satellite carriers. *See* Final Rules. We note Congress' intent that the process established by the Commission under the section 102 of the STELAR be ''modeled'' on the current cable market modification process. *See Senate Commerce Committee Report* at 10. However, the STELAR recognizes the inherent difference between cable and satellite television service with provisions specific to satellite. *See* 47 U.S.C. 338(l)(3)(A), (5).

[7] *See* STELAR sec. 102(b) (amending 47 U.S.C. 534(h)(1)(C)(ii)).

[8] STELAR section 102(d) directs the Commission to consider as part of this rulemaking whether the ''procedures for the filing and consideration of a written request under sections 338(l) and 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 338(l); 534(h)(1)(C)) fully effectuate the purposes of the amendments made by this section, and update what it considers to be a community for purposes of a modification of a market under section 338(l) or 614(h)(1)(C) of the Communications Act of 1934.''

[9] 47 U.S.C. 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III) (''whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence'').

carriers to offer subscribers who could not receive the over-the-air signal of a broadcast station access to broadcast programming via satellite.[10] The 1999 Satellite Home Viewer Improvement Act (SHVIA) established a ''local'' statutory copyright license and expanded satellite carriers' ability to offer broadcast television signals directly to subscribers by permitting carriers to offer ''local'' broadcast signals.[11] The 2004 Satellite Home Viewer Extension and Reauthorization Act (SHVERA) reauthorized the distant signal statutory copyright license until December 31, 2009 and expanded that license to allow satellite carriers to carry ''significantly viewed'' stations.[12] The 2010 Satellite Television Extension and Localism Act (STELA) extended the distant signal statutory copyright license through December 31, 2014,[13] moved the significantly viewed station copyright provisions to the local statutory copyright license (which does not expire), and revised the ''significantly viewed'' provisions to facilitate satellite carrier use of that option.[14] With the STELAR, Congress extended the distant signal statutory copyright license for another five years, through December 31, 2019, and, among other things, authorized market modification in the satellite carriage context and revised the market modification provisions for cable to promote parity for satellite and cable subscribers and competition between satellite and cable operators.[15]

6. Section 338 of the Communications Act authorizes satellite carriage of local broadcast stations into their local markets, which is called ''local-into-local'' service.[16] Specifically, a satellite carrier provides ''local-into-local'' service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.[17] Generally, a television station's ''local market'' is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company (Nielsen).[18] DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.[19] The United States is divided into 210 DMAs.[20] Unlike cable operators, satellite carriers are not required to carry local broadcast television stations. However, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the statutory copyright license, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage.[21] This is commonly referred to as the ''carry one, carry all'' requirement. If a broadcaster elects retransmission consent, the satellite carrier and broadcaster negotiate the terms of a retransmission consent agreement. With respect to those stations electing mandatory carriage, satellite carriers are generally not required to carry a station if the station's programming ''substantially duplicates'' [22] that of another station

[10] Satellite Home Viewer Act of 1988 (SHVA), Public Law 100–667, 102 Stat. 3935, Title II (1988); 17 U.S.C. 119 (distant statutory copyright license). In addition to allowing satellite carriers to retransmit television signals of distant network stations to ''unserved'' subscriber households, the SHVA also permitted satellite carriers to retransmit distant superstations (non-network stations) to any subscriber household. *See* 17 U.S.C. 119(d)(2) (defining ''network station''), (d)(9) (defining ''non-network station,'' previously ''superstation'') and (d)(10) (defining ''unserved household''). The 1994 Satellite Home Viewer Act reauthorized the distant statutory copyright license for five years and made other changes to the distant statutory copyright license but did not amend the Communications Act or otherwise alter satellite carriage rights. Satellite Home Viewer Act of 1994, Public Law 103–369, 108 Stat. 3477 (1994). Each successive statute in the SHVA progeny has reauthorized the distant statutory copyright license.

[11] Satellite Home Viewer Improvement Act of 1999 (SHVIA), Public Law 106–113, 113 Stat. 1501 (1999); 17 U.S.C. 122 (local statutory copyright license). The local statutory copyright license makes no distinction between network and non-network signals or served or unserved households. *See id.* Local stations may elect mandatory carriage or carriage pursuant to retransmission consent. 47 U.S.C. 325, 338. *See* 47 CFR 76.66(c). Unlike the distant license, the local statutory copyright license does not expire.

[12] Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Public Law 108–447, 118 Stat 2809 (2004). Significantly viewed stations are television broadcast stations that the Commission has determined have sufficient over-the-air (*i.e.,* non-cable and non-satellite) viewing to be treated as local stations with respect to a particular satellite community in another market, thus, allowing them to be carried by the satellite carrier in that community in the other market. For copyright purposes, significantly viewed status entitles satellite carriers to carry the out-of-market but significantly viewed station with the reduced copyright payment obligations applicable to local (in-market) stations. *See* 17 U.S.C. 122(a)(2). Satellite carriers are not required to carry out-of-market significantly viewed stations. If they do carry such significantly viewed stations, retransmission consent is required. *See* 47 U.S.C. 340(d).

[13] The Satellite Television Extension and Localism Act of 2010 (STELA), Public Law 111–175, 124 Stat. 1218, 1245 (2010). Congress passed four short-term extensions of the distant signal statutory copyright license (on December 19, 2009, March 2, March 26 and April 15, 2010) before passing the STELA to reauthorize the distant signal statutory copyright license for a full five years, until December 31, 2014. STELA sec. 107(a). *See* Department of Defense Appropriations Act, 2010, sec. 1003(b), Public Law 111–118, 123 Stat 3409, 3469 (2009) (extending distant license until February 28, 2010); Temporary Extension Act of 2010, sec. 10, Public Law 111–144, 124 Stat 42, 47 (2010) (extending license until March 28, 2010); Satellite Television Extension Act of 2010, Public Law 111–151, 124 Stat 1027 (2010) (extending license until April 30, 2010); Continuing Extension Act of 2010, sec. 9, Public Law 111–157, 124 Stat 1116 (2010) (extending license until May 31, 2010).

[14] As noted, the STELA reauthorized the statutory copyright license for satellite carriage of significantly viewed signals and moved that license from the distant signal statutory copyright license provisions in 17 U.S.C. 119(a)(3) to the local signal statutory copyright license provisions in 17 U.S.C. 122(a)(2). STELA sec. 103. By doing so, Congress defined significantly viewed signals as another type of local signal, rather than as an exception to distant signal status. The move to the local license also meant that the significantly viewed signal license would not expire. STELA sec. 107(a). In the *STELA Significantly Viewed Report and Order,* the Commission revised its satellite television significantly viewed rules to facilitate satellite carriage of significantly viewed stations and thereby provide satellite subscribers with greater choice of programming and to improve parity and competition between satellite and cable carriage of broadcast stations. *STELA Significantly Viewed Report and Order,* para. 55.

[15] In section 102 of the STELAR, Congress intended to ''create a television market modification process for satellite carriers similar to the one already used for cable operators.'' *Senate Commerce Committee Report* at 6. The STELAR also makes a variety of reforms to the video programming distribution laws and regulations that are not relevant to our implementation here of this section.

[16] *See* 47 U.S.C. 338(a)(1).

[17] 47 CFR 76.66(a)(6).

[18] *See* 17 U.S.C. 122(j)(2); 47 CFR 76.66(e) (defining a television broadcast station's local market for purposes of satellite carriage as the DMA in which the station is located). We note that a commercial television broadcast station's local market for purposes of cable carriage is also generally defined as the DMA in which the station is located. *See* 47 U.S.C. 534(h)(1)(C); 47 CFR 76.55(e)(2).

[19] The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to one market based on measured viewing patterns both off-air and via MVPD distribution. Generally, each U.S. county is assigned exclusively to the market whose stations receive the preponderance of the audience in that county. However, in a few cases where a county is large and viewing patterns differ significantly between parts of the county, a portion of the county is assigned to one television market and another portion of the county is assigned to another market. Several counties in Alaska are not assigned to any DMA. *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004,* 2005 WL 2206070, at para. 53, n.177 (Sept. 8, 2005) (*SHVERA Report*); *see also* Nielsen Media Research, Glossary of Media Terms, at *http://www.nielsenmedia.com/glossary/.*

[20] DMAs frequently cross state lines and thus may include counties from multiple states.

[21] *See* 17 U.S.C. 122; 47 U.S.C. 338(a)(1); 47 CFR 76.66(b)(1). DISH Network currently provides local service to all 210 DMAs, and DIRECTV currently provides local service to 198 DMAs, according to the most recent Local Network Channel Broadcast Reports filed by these satellite carriers. 47 U.S.C.A. 338 Note. These annual reports were initially required for five years by section 305 of the STELA and were continued to be required for another five years by section 108 of the STELAR.

[22] ''A commercial television station substantially duplicates the programming of another commercial television station if it simultaneously broadcasts the identical programming of another station for more than 50 percent of the broadcast week.'' 47 CFR 76.66(h)(6). ''A noncommercial television station substantially duplicates the programming of another noncommercial station if it simultaneously broadcasts the same programming as another

carried by the satellite carrier in the DMA,[23] and satellite carriers are not required to carry more than one affiliate station of a particular network in a DMA (even if the affiliates do not substantially duplicate their programming), unless the stations are licensed to communities in different states.[24] Satellite carriers are also not required to carry an otherwise qualified station if the station fails to provide a good quality signal to the satellite carrier's local receive facility.[25]

7. STELAR section 102, which adds section 338(l) of the Act, creates a satellite market modification regime very similar to that in place for cable, while adding provisions to address the unique nature of satellite television service.[26] Market modification, which has been available in the cable carriage context since 1992,[27] will allow the Commission to modify the local television market of a commercial television broadcast station to enable those broadcasters and satellite carriers to better serve the interests of local communities.[28] Market modification provides a means to avoid rigid adherence to DMA designations and to promote consumer access to in-state and other relevant television programming.[29] To better reflect market realities and effectuate these purposes, section 338(l), like the corresponding cable provision in section 614(h)(1)(C), permits the Commission to add communities to, or delete communities from, a station's local television market following a written request.[30] Furthermore, as in the cable carriage context, the Commission may determine that particular communities are part of more than one television market.[31] As in the cable carriage context, when the Commission modifies a station's market to add a community for purposes of carriage rights, the station is considered local and is covered by the local statutory copyright license and may assert mandatory carriage (or pursue retransmission consent) by the applicable satellite carrier in the local market.[32] Conversely, if the Commission modifies a station's market to delete a community, the station is considered ''distant'' and loses its right to assert mandatory carriage (or retransmission consent) on the applicable satellite carrier in the local market.[33] We note that, in the cable carriage context, market modifications pertain to individual stations in specific cable communities and apply only to the particular cable system named in the petition.[34]

8. Section 338(l) states that, in ruling on requests for market modifications for purposes of satellite carriage, the Commission must afford particular attention to the value of localism by taking into account the following five factors:

(1) Whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;

(2) Whether the television station provides coverage or other local service to such community;

(3) Whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;

(4) Whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(5) Evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.[35]

These statutory factors largely mirror those originally set forth for cable in section 614(h)(1)(C)(ii) of the Act. To the extent the factors differ from the previous factors applicable to cable, the STELAR section 102 makes conforming changes to the cable factors.[36] These include adding a fifth factor (inserted as factor number three) to section 614(h)(1)(C)(ii) to ''promote consumers' access to television broadcast station signals that originate in their State of residence.'' [37] Thus, STELAR creates parallel factors for satellite and cable.[38]

noncommercial station for more than 50 percent of prime time, as defined by [47 CFR] 76.5(n), and more than 50 percent outside of prime time over a three month period, provided, however, that after three noncommercial television stations are carried, the test of duplication shall be whether more than 50 percent of prime time programming and more than 50 percent outside of prime time programming is duplicative on a non-simultaneous basis.'' 47 CFR 76.66(h)(7).

[23] 47 U.S.C. 338(c)(1); 47 CFR 76.66(h)(1). ''A satellite carrier may select which duplicating signal in a market it shall carry.'' 47 CFR 76.66(h)(2).

[24] 47 U.S.C. 338(c)(1); 47 CFR 76.66(h)(1). ''A satellite carrier may select which network affiliate in a market it shall carry.'' 47 CFR 76.66(h)(3). However, a satellite carrier must carry network affiliated television stations licensed to different states, but located in the same market, even if the stations meet the definition of substantial duplication under the Commission's rules. *See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues,* CS Docket Nos. 00–96 and 99–363, Report and Order, FCC 00–417, para. 80, 66 FR 7410, Jan. 23, 2001 (*DBS Broadcast Carriage Report and Order*). If two stations located in different states (but within the same local market) duplicate each other, but are not network affiliates, the satellite carrier only has to carry one. *Id.*

[25] 47 U.S.C. 338(b)(1); 47 CFR 76.66(g)(1). A television station asserting its right to carriage is required to bear the costs associated with delivering a good quality signal to the designated local-receive-facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market. *Id.*

[26] *See* 47 U.S.C. 338(l), 534(h)(1)(C).

[27] *See* 47 CFR 76.59.

[28] *See In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010,* MB Docket No. 10–238, Report, DA 11–1454, paras. 55–59 (MB rel. Aug. 29, 2011) (*In-State Programming Report*) (stating that ''market modifications could potentially address special situations in underserved areas and facilitate greater access to local information''). *See also Broadcast Localism*, MB Docket No. 04–233, Report on Broadcast Localism and Notice of Proposed Rulemaking, FCC 07–218, paras. 49–50, 73 FR 8255, Feb. 13, 2008 (*Broadcast Localism Report*).

[29] *Broadcast Localism Report,* para. 50. The Commission has observed that, in some cases, general reliance on DMAs to define a station's market may not provide viewers with the most local programming. *Id.* at paras. 49–50. Certain DMAs cross state borders and, in such cases, current Commission rules sometimes require carriage of the broadcast signal of an out-of-state station rather than that of an in-state station. *Id.* The Commission has observed that such cases may weaken localism, since viewers are often more likely to receive information of local interest and relevance—particularly local weather and other emergency information and local news and electoral and public affairs—from a station located in the state in which they live. *Id.*

[30] 47 U.S.C. 338(l)(1), 534(h)(1)(C).

[31] 47 U.S.C. 338(l)(2)(A).

[32] Section 204 of the STELAR amends the local statutory copyright license in 17 U.S.C. 122 to the effect that when the Commission modifies a station's market for purposes of satellite carriage rights, the station is considered local and is covered by the local statutory copyright license. *See* 17 U.S.C. 122(j)(2)(E) (as amended by STELAR sec. 204); 47 U.S.C. 338. *See also* 17 U.S.C.U.S.C. 111(f)(4) (defining ''local service area of a primary transmitter'' for cable carriage copyright purposes); 47 U.S.C. 534(h)(1)(C).

[33] See id.

[34] *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues,* MM Docket No. 92–259, Report and Order, FCC 93–144, para. 47, 58 FR 17350, April 2, 1993 (*Must Carry Order*) (stating that ''the statute is intended to permit the modification of a station's market to reflect its individual situation''); 47 CFR 76.59.

[35] 47 U.S.C. 338(l)(2)(B)(i) through (v) (discussed in section III.B. below).

[36] *See* 47 U.S.C. 534(h)(1)(C)(ii), as amended by STELAR sec. 102(b).

[37] *See* 47 U.S.C. 534(h)(1)(C)(ii)(III) (''whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence'').

[38] Shortly after our final rules are published in the **Federal Register**, we will implement section 102(c)

Continued

9. The STELAR, however, provides a unique exception applicable only in the satellite context, providing that a market modification:

> shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.[39]

Also unique to satellite, the STELAR provides that a market modification will not have ''any effect on the eligibility of households in the community affected by such modification to receive distant signals pursuant to section 339 [of the Act].'' [40] Like the cable provision, section 338(l) gives the Commission 120 days to act on a request for market modification and does not allow a carrier to delete from carriage the signal of a commercial television station during the pendency of any market modification proceeding.[41]

10. On March 26, 2015, we began this proceeding by issuing a Notice of Proposed Rulemaking (NPRM).[42] We received 12 comments and five reply comments in response. With this Report and Order, we satisfy the STELAR's mandate that the Commission adopt final rules in this proceeding on or before September 4, 2015.[43]

III. Discussion

11. Consistent with the STELAR's goal of regulatory parity, we largely model the satellite market modification process on the existing process for cable and adopt our proposal to amend section 76.59 of our rules—the current cable market modification rule—to apply in both the cable and satellite contexts.[44] We also adopt our proposal to amend section 76.59 to reflect the STELAR provisions that apply uniquely to satellite carriers, such as affording carriers with an exception if the resulting carriage is ''not technically and economically feasible .'' Finally, we define a ''satellite community'' for purposes of market modification and retain our existing definition of a ''cable community.''

A. Standing and Procedures To Request Market Modification

12. We conclude that the involved broadcaster, satellite carrier and county government may file a satellite market modification petition.[45] We choose a slightly modified alternative to the procedure proposed in the NPRM,[46] and deviate from the cable rule which allows only the involved broadcaster and cable operator to file cable petitions, in order to more fully effectuate the core purpose of this provision of the STELAR to promote consumer access to in-state and other relevant programming.

13. Section 338(l)(1) of the Act permits the Commission to modify a local television market ''following a written request,'' but does not specify the appropriate party to make such requests.[47] The corresponding cable statutory provision in section 614(h)(1)(C)(i) of the Act contains nearly identical language in this regard.[48] In interpreting the cable provision, the Commission concluded that the involved broadcaster and cable operator are the only appropriate parties to file market modification requests.[49] Section 102(d) of the STELAR, however, directs the Commission to ensure in both the cable and satellite contexts that ''procedures for the filing and consideration of a written request . . . fully effectuate the purposes of the amendments made by this section.'' [50] In the NPRM, consistent with the cable rule, we proposed to allow only the involved commercial broadcast station or the satellite carrier to file a satellite market modification request because only these entities have carriage rights or obligations at stake.[51] The NPRM sought comment on any alternative approaches and observed that some local governments had previously sought the ability to petition for market modifications on behalf of their citizens.[52] The NPRM tentatively concluded to limit the participation of local governments and individuals to filing comments in support of, or in opposition to, particular market modification requests and sought comment on this tentative conclusion.[53] Broadcasters and the satellite carriers supported the NPRM's proposal, asserting that only the involved station or satellite carrier ''have rights or obligations that are directly affected by a market modification'' and therefore only such entities should have standing to file requests to modify these rights or obligations.[54] Some commenters, however, advocate that county governments should be allowed to

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of the STELAR by creating a consumer guide that will explain the market modification rules and procedures as revised and adopted in this proceeding, and by posting the guide on the Commission's Web site. Section 102(c) requires the Commission to ''make information available to consumers on its Web site that explains the market modification process.'' STELAR 102(c); 47 U.S.C.A. 338 Note. Such information must include: ''(1) who may petition to include additional communities within, or exclude communities from, a—(A) local market (as defined in section 122(j) of title 17, United States Code); or (B) television market (as determined under section 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C))); and (2) the factors that the Commission takes into account when responding to a petition described in paragraph (1).'' *See* 47 U.S.C. 338(l)(2)(B)(i) through (v); 47 U.S.C. 534(h)(1)(C)(ii)(I) through (V).

[39] 47 U.S.C. 338(l)(3)(A) (discussed in section III.D. below).

[40] 47 U.S.C. 338(l)(5) (discussed in section III.E. below). Section 339 of the Act provides for the satellite carriage of distant stations under certain conditions. *See* 47 U.S.C. 339.

[41] 47 U.S.C. 338(l)(3)(B), (4).

[42] *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014;* MB Docket No. 15–71, Notice of Proposed Rulemaking, FCC 15–34, 80 FR 19594, Apr. 13, 2015 (NPRM).

[43] STELAR sec. 102(d)(1).

[44] *See* 47 CFR 76.59.

[45] *See* 47 CFR 76.59(a).

[46] *NPRM,* para. 8.

[47] 47 U.S.C. 338(l)(1).

[48] 47 U.S.C. 338(l)(1) (''Following a written request, the Commission may, with respect to a particular commercial television broadcast station, include additional communities within its local market or exclude communities from such station's local market to better effectuate the purposes of this section.) *See* 47 U.S.C. 534(h)(1)(C)(i) (''For purposes of this section, a broadcasting station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. . . .'').

[49] *See Must Carry Order,* para. 46; *John Wiegand* v. *Post Newsweek Pacifica Cable, Inc.,* CSR 4179–M, Memorandum Opinion and Order, FCC 01–239 (rel. Aug. 24, 2001) (*Wiegand* v. *Post Newsweek*) (limiting standing in the must carry and market modification contexts to the affected broadcaster or cable operator). The Commission reasoned that ''the fact that Congress made must carry an elective choice for broadcasters diminishes the argument that third parties have standing to demand carriage of a broadcast station on a cable system. A subscriber's ability to receive the benefits provided from must carry is predicated upon a station's election to exercise its rights under the statute. No statute or Commission rule requires a broadcaster to allow its signal to be carried on a local cable system because another party wishes to view it. Instead, broadcasters are given a choice whether to demand carriage under must carry, to negotiate carriage under the retransmission consent provisions, or not to be carried on a particular cable system at all.'' *See Wiegand* v. *Post Newsweek,* para. 10.

[50] STELAR sec. 102(d)(2) directs the Commission to consider as part of this rulemaking whether the ''procedures for the filing and consideration of a written request under sections 338(l) and 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 338(l); 534(h)(1)(C)) fully effectuate the purposes of the amendments made by this section.'' *See* 47 U.S.C.A. 338 Note.

[51] *NPRM,* para. 8.

[52] *NPRM,* para. 9. *See In-State Programming Report,* para. 58.

[53] *Id.* The *NPRM* also asked ''how else satellite subscribers or their representatives can meaningfully advocate for the receipt of in-state programming via satellite.'' *Id.*

[54] DIRECTV Comments at 7, n.20; DISH Comments at 3; NAB Comments at 3–4. *See NPRM,* para. 8.

petition for market modifications on behalf of their citizens.[55]

14. Upon further consideration pursuant to section 102(d) of the STELAR, we conclude that we will better effectuate the purposes of the STELAR (to promote consumer access to in-state programming) by also permitting a county governmental entity (such as a county board, council, commission or other equivalent subdivision) to file a satellite market modification petition, as advocated by some commenters.[56] Allowing a county government to petition for market modification for its community is appropriate given our decision to define a satellite community on a county basis.[57] We also are mindful of the record in the *In-State Programming Report* proceeding, which reflects numerous examples of counties in which consumers have little or no access to in-state broadcast stations.[58] We acknowledge that station carriage relies in part on business decisions involving broadcasters and satellite carriers and that without the willing participation of the affected broadcaster, modifying the market of a particular television station, in itself, would not result in consumer access to that station.[59] However, by allowing a county government to file a satellite market modification on behalf of its residents, we seek to empower orphan counties to eliminate certain legal barriers which may have deprived local residents of the cultural, sports, political and local news relevant to the state in which they reside.[60] We recognize that our rules require petitioners to provide specific evidence to demonstrate the five statutory factors and that much of this information may not be easily obtained by county governments.[61] To avoid dismissal based on a failure to meet our specific evidentiary requirements, we strongly encourage county government petitioners to enlist the aid and cooperation of the station they wish to bring to their county. Moreover, to the extent the involved station opposes carriage in the county, a county government may not want to go through the time and expense of filing a petition to expand such station's market to include its county.

15. We acknowledge that we are implementing a procedural aspect of section 338(l)(1) in a manner that differs from our implementation of section 614(h)(1)(C)(i), despite the nearly identical language of the two provisions.[62] We find that a different procedure is appropriate to implement STELAR's directive in section 102(d) for purposes of filing a market modification petition in the satellite context. Significantly, the record and case studies in the 2011 *In-State Programming Report* show that the problem of subscriber access to in-state stations disproportionately affects satellite subscribers.[63] Notably, the Commission frequently receives satellite consumer calls about this problem and other complaints about not receiving the consumers' desired local station via satellite, while cable consumers rarely complain about this issue.[64] This may be a product of the localized nature of cable systems as opposed to the national

[55] *See* Letter from Michael F. Bennet, U.S. Senator, Colo.; Cory Gardner, U.S. Senator, Colo.; and Scott Tipton, U.S. Representative, Colo. to Tom Wheeler, Chairman, FCC, dated April 14, 2015 at (''Sen. Bennet *et al.* Letter''). *See also* Letter from Mike D. Rogers, U.S. Representative, Ala.; Robert Aderholt, U.S. Representative, Ala. to Tom Wheeler, Chairman, FCC dated May 12, 2015 at 1 (''Rep. Rogers *et al.* Letter'') (seeking role in market modification process for Counties, Parishes or the equivalent political subdivisions). Although no local government comments were filed in this docket, commenters in the docket relating to the STELA *In-State Programming Report* advocated to allow consumer concerns to be addressed more directly by permitting local governments to petition for market modifications on behalf of their citizens. *See In-State Programming Report,* para. 58.

[56] *See id.*

[57] *See infra* section III.F. (Definition of Community). We note that a county (or its political equivalent) was the only jurisdictional definition for which commenters in this proceeding sought the ability to file market modification petitions.

[58] *See In-State Programming Report,* at App. F (Case Studies) (discussing 35 counties in 13 DMAs with little or no access to in-state broadcast stations via satellite service). The *In-State Programming Report,* also described the impact on consumers in these orphan counties. *See id.* at para. 18 (''Because the DMA may include one or more counties located in a different state from that of the DMA's principal city or cities where most of the local television stations originate, some consumers through their MVPD, may receive only out-of-state stations and thereby lack access to in-state programming, including political and election coverage, public affairs programming, and weather and other emergency information. Consumers from disparate areas throughout the nation comment that they are deprived of vital information that is overwhelmingly available to other households across the country. Consumers in affected areas typically do not have access to programming content from in-state local television stations that cover the issues emanating from their state capitals and, as a result, believe they are less well served by the broadcast programming they are able to receive. Without such state-focused information and programming content, consumers express frustration at their inability to make informed election and other civic decisions. Additionally, some consumers indicate that they would prefer television advertising that supports their state economies rather than the out-of-state advertisements that air on the in-market stations they receive. Commenters opine that their inability to access in-state advertising has a continuing negative impact on their communities through the loss of revenue.''). We also note that consumers have raised similar concerns in the record for the Commission's pending Report to Congress on DMAs required by section 109 of the STELAR. *See, e.g.,* Leroy Axtell Comments (seeking in-state stations for Fairfield County, CT); Spencer Karter Comments (seeking in-state stations for Greenville County, SC); Richard Bolt Comments in MB Docket No. 15–43 (filed May 15, 2015) (seeking in-state stations for Garrett County, MD); Kyle Ramie Comments in MB Docket No. 15–43 (filed May 6, 2015), Timothy Brastow Comments in MB Docket No. 15–43 (filed Mar. 24, 2015) and Jerome Gibbs Comments in MB Docket No. 15–43 (filed Jun. 2, 2015) (each seeking in-state stations for Bristol County, MA).

[59] *NPRM,* para. 9. *See Wiegand* v. *Post Newsweek,* para. 11(''[t]he granting of a request to expand the market of a television station merely allows a broadcaster the option to seek must carry status on cable systems added to its market. A broadcaster is not required to seek carriage of its signal on all of the cable systems in its market.''). Likewise, in the satellite context, the granting of a request to expand the market of a television station merely allows a broadcaster the option to seek mandatory carriage with respect to the new community, but does not require the broadcaster grant retransmission consent for it to be carried in the new community. Thus, our decision here about standing to file a satellite market modification should not be construed as affording a county government a right to demand carriage of a particular station via satellite in its county. Notwithstanding the grant of a petition to modify a market, a local broadcast station that elects retransmission consent with respect to the new community may not be carried without its express written consent. *See* 47 U.S.C. 325(b)(1) (''No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except (A) with the express authority of the originating station''); 47 CFR 76.66.

[60] *See* Sen. Bennet *et al.* Letter at 1 (seeking to ''facilitate the ability of a community to voice its own opinion about the local television content that it would prefer to access''). We also note that local government and consumer comments in a market modification proceeding can help demonstrate a station's nexus to the community at issue. *See* Sen. Bennet *et al.* Letter at 1; Rep. Rogers *et al.* Letter at 1 (seeking to ''allow Counties, Parishes or the equivalent political subdivisions to make public comments about the television content their community prefers.''). For example, the Commission can consider consumer comments pursuant to the second statutory factor relating to a station's local service to a community. *See* 47 U.S.C. 338(l)(2)(B)(ii), 534(h)(1)(C)(ii)(II); *Tennessee Broadcasting Partners,* CSR 7596–A, Memorandum Opinion and Order, DA 08–542, paras. 22–37 (MB rel. Mar. 10, 2008) (considering statements made by local officials).

[61] *See infra* at para. 20 (Evidentiary Requirements). For example, a petitioner must provide contour maps and published audience data for the involved broadcast station.

[62] *See* 47 U.S.C. 338(l)(1); 47 U.S.C. 534(h)(1)(C)(i).

[63] *See In-State Programming Report,* at App. F (Case Studies) (discussing 35 counties in 13 DMAs with little or no access to in-state broadcast stations via satellite service). The BIA/Kelsey study submitted by NAB in the *In-State Programming Report* docket also illustrates this point, estimating that 0.1 percent of cable subscribers do not receive at least one in-state television station, while 2.2 percent of DISH subscribers do not receive at least one in-state television station and 6.1 percent of DIRECTV subscribers do not receive at least one in-state TV station. *In-State Programming Report,* para. 44.

[64] According to staff review, at least 165 consumers have called the Commission's call center in 2015 to complain that their satellite carrier does not carry a particular station. *See also, e.g.,* Leroy Axtell Comments at 1 (Fairfield County, Connecticut resident explaining that ''Comcast and Frontier cable carry New York and Hartford/New Haven television channels,'' while ''Directv and Dish can presently carry only New York channels.'')

nature of satellite service.[65] The remote geographic location of orphan counties also contributes to the disproportionate impact on satellite subscribers. In the *In-State Programming Report* record, DIRECTV observed that ''[b]ecause many orphan counties tend to be isolated, their residents tend to rely more on satellite than on cable for access to television programming.''[66] We also observe that the cable market modification process has worked well for more than 20 years and there is nothing in the record to suggest that changing the cable petition process to include local governments is necessary to effectuate the goals of the STELAR (to promote access to in-state programming) at this time.

16. We adopt our proposal to require petitioners (*i.e.,* broadcast stations, satellite carriers and county governments) to file market modification requests for satellite carriage purposes in accordance with the procedures for filing Special Relief petitions in section 76.7 of the rules.[67] Commenters on this issue generally support our proposal.[68] Consistent with section 76.7, a petitioner must serve a copy of its market modification request on any MVPD operator, station licensee, permittee, or applicant, or other interested party who is likely to be directly affected if the relief requested is granted, and we amend section 76.7(a)(3), accordingly, to reference ''any MVPD operator.''[69] The NPRM sought comment on whether franchising authorities or certain local government entities (such as cities, counties, or towns) that may represent subscribers and local viewers in affected communities should be considered ''interested parties'' and served with market modification petitions.[70] Consistent with our decision above to permit a county government to file a petition, we find that the relevant county government is an ''interested party'' that must also be served with a satellite market modification petition.[71]

B. Statutory Factors and Evidentiary Requirements

17. As discussed above, the purpose of market modification is to permit adjustments to a particular station's local television market (which is initially defined by the DMA in which it is located) to better serve the value of localism by ensuring that satellite subscribers receive the broadcast stations most relevant to them.[72] To this end, the STELAR requires the Commission to consider five statutory factors when evaluating market modification requests.[73] As noted, the STELAR added a fifth factor (inserted as the new third statutory factor) for both cable and satellite to ''promote consumers' access to television broadcast station signals that originate in their State of residence.''[74] In the NPRM, we tentatively concluded that this new third statutory factor is intended to favor a market modification to add a new community[75] if doing so would increase consumer access to in-state programming.[76] In the record, NAB and DISH appear to support this general conclusion; however, DISH states that we should consider under this factor whether the new community lacks any (or an adequate number of) in-state stations, while NAB states that the statutory language imposes no such requirement.[77] In addition, NCTA expresses concerns about how we may evaluate market modification petitions under this new in-state factor, particularly in situations that would grant cable carriage rights to previously uncarried in-state stations.[78]

18. We conclude that the in-state factor favors any market modification that would promote consumers' access to an in-state station.[79] The language of this new statutory factor speaks clearly in this regard.[80] Therefore, a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.[81] We disagree with those commenters that sought a requirement for more substantial showings, such as the lack of in-state stations in the new community, in order to get credit for satisfying this factor.[82] We find that such additional showings are not necessary to satisfy this factor. We read the statutory language—in requiring the Commission to consider whether the prospective modification would ''promote'' consumers' access to television broadcast station ''signals'' that originate in their state of residence—as applying to any situation that would increase access to in-state stations, regardless of whether there are other in-state stations present in the new community.[83] However, we find that such additional showings can increase the weight afforded to this factor. For example, this factor may be found to weigh more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers' state of residence, and may be given even more weight if such subscribers in the new community had little (or no) access

[65] *See Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act,* MB Docket No. 05–49, Report and Order, FCC 05–187, para. 44, 70 FR 76504, December 27, 2005 (2005) (*SHVERA Significantly Viewed Report and Order*).

[66] DIRECTV Comments in MB Docket No. 10–238 (filed Jan. 24, 2011) at 3–4, n.8.

[67] *NPRM,* para. 10. *See* 47 CFR 76.59(b). A fee is generally required for the filing of Special Relief petitions; 47 CFR 1.1104, 1.1117, 76.7. We remind filers that Special Relief petitions must be submitted electronically using the Commission's Electronic Comment Filing System (ECFS). *See Media Bureau Announces Commencement of Mandatory Electronic Filing for Cable Special Relief Petitions and Cable Show Cause Petitions Via the Electronic Comment Filing System,* Public Notice, DA 11–2095 (MB rel. Dec. 30, 2011). Petitions must be initially filed in MB Docket No. 12–1. *Id.*

[68] NAB Comments at 3.

[69] *See* 47 CFR 76.7(a)(3).

[70] *See NPRM,* para. 10. No parties filed comments advocating that cable franchise authorities be served with satellite market modification requests. We decline to require such notifications, given that cable franchising authorities have no role in satellite regulation. *See* DIRECTV Comments at 7, n.20; UCC Comments at 8.

[71] If after due diligence, a petitioner is unable to identify the appropriate county government on which to serve its petition, the petitioner should request Commission staff assistance in this regard.

[72] *See* 47 U.S.C. 338(l)(2)(B), 534(h)(1)(C)(ii) (requiring the Commission to ''afford particular attention to the value of localism'' by taking into account the five statutory factors).

[73] *See supra* para. 8. The Commission must also consider other relevant information to develop a result that is designed to ''better effectuate the purposes'' of the law. *See* 47 U.S.C. 338(l)(1); *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules,* CS Docket No. 95–178, Order on Reconsideration and Second Report and Order, FCC 99–116, para. 53, 64 FR 33788, Jun. 24, 1999 (*Cable Market Modification Second Report and Order*).

[74] 47 U.S.C. 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III). We will refer to this new third statutory factor as the ''in-state factor.''

[75] For purposes of our discussion, by ''new community'' we refer to a new community to be added to a station's local television market by grant of the prospective market modification.

[76] *NPRM,* para. 11. The *NPRM* also asked if we should ''require the petitioner to show that the station at issue is licensed to a community within the state in which the modification is requested and that the DMA at issue lacks any (or an adequate number of) in-state stations?'' *NPRM,* para. 13.

[77] *See* DISH Comments at 3–4; NAB Comments at 5.

[78] *See* NCTA Reply at 2–4.

[79] *See* 47 U.S.C. 338(l)(2)(B)(iii) (''whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence'').

[80] *See id. See also* NAB Comments at 5.

[81] *See infra* at para. 20 (Evidentiary Requirements).

[82] *See* DISH Comments at 4 (stating ''a petitioner should have to 'show . . . that the DMA at issue lacks any (or an adequate number of) in-state stations'''); NCTA Comments at 3 (stating ''the Commission should assess whether cable customers already receive television stations that provide in-state coverage'').

[83] *See* NAB Comments at 5 (''The statute does not suggest that the Commission should take into account only those in-state market modification requests that would help to remedy a complete absence—or some minimum number—of in-state broadcast stations.'').

to such in-state programming.[84] We find that this interpretation of the factor will better effectuate its purpose, observing that the legislative history expresses Congress' concern that ''many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances,'' may ''lack access to local television programming that is relevant to their everyday lives'' and indicates Congress' intent that the Commission ''consider the plight of these consumers when judging the merits of a [market modification] petition . . .'', even if granting such modification would pose an economic challenge to various local television broadcast stations.'' [85] We clarify, however, that this new factor is not universally more important than any of the other factors and its relative importance will vary depending on the circumstances in a given case.[86] In sum, in market modification petitions involving the addition of an in-state broadcaster, the in-state factor does not serve as a trump card negating the other four statutory factors. Instead, where applicable, we believe the in-state factor serves as an enhancement, the particular weight of which depends on the strength of showing by the petitioner. Ultimately, each petition for market modification will turn on the unique facts of the case.[87]

19. We adopt our tentative conclusion that the new in-state factor is not intended to bar a market modification simply because it would not result in increased consumer access to an in-state station's programming.[88] In such cases, we find that this new in-state factor would be inapplicable and the modification request would be evaluated based on the other statutory factors.[89] Commenters on this issue support these tentative conclusions.[90] We agree with commenters that the statute intended to promote access to in-state programming, but did not intend to disfavor other market modification requests.[91]

20. *Evidentiary Requirements.* We adopt our proposal to apply the evidentiary requirements for cable market modifications to satellite market modifications.[92] Commenters on this issue support this proposal.[93] We find it appropriate, and that it promotes parity, to apply the same evidentiary requirements in both contexts, particularly given the same language is used in both the cable and satellite statutory factors and the record provides no basis for adopting a different interpretation in the satellite versus cable context.[94] In addition, to implement our decision (above) that the in-state factor favors any market modification that would promote consumers' access to an in-state station, we require the petitioner to make a statement in its petition whether or not the station is licensed to a community within the same state as the new community.[95] We find this sufficient evidence to show that a station's petition satisfies this factor. Accordingly, market modification requests for both satellite carriers and cable system operators must include the following evidence: [96]

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;

(2) Noise-limited service contour maps (for full-power digital stations) or protected contour maps (for Class A and low power television stations)

[84] *See* NAB at 5 (''Consideration of the 'in-state signal' statutory factor also could involve an evaluation of programming or advertising on that station.'') We note that our analysis of the in-state nature of the programming would be similar to our analysis of the local nature of the programming under the second statutory factor and would consider whether the television station provides programming specifically related to the subscribers' state of residence. For example, under factor two, we consider whether the station has aired programming, such as news, politics, sports, weather and other emergency information, specifically targeted to the community at issue (*e.g.,* town council meeting, news or weather event that occurred in the community, local emergencies, etc.). Under factor three, we would consider whether the station has aired programming, such as news, politics, sports, emergency information, specifically related to the state in which the community is located (*e.g.,* coverage of state politics and legislative matters, state sports team coverage, state emergency information, etc.).

[85] *Senate Commerce Committee Report* at 11.

[86] *See Cable Market Modification Second Report and Order,* para. 59 (stating that ''it is inappropriate to state that one factor is universally more important than any other, as each is valuable in assessing whether a particular community should be included or excluded from a station's local market, and the relative importance of particular factors will vary depending on the circumstances in a given case''). *See also, e.g.,* NCTA Reply at 2 (stating that ''[w]hile promoting access to in-state programming is one factor in the market modification process, Congress preserved the other four factors as well. In evaluating any market modification petitions going forward, therefore, the Commission must consider all of the factors.''); UCC Comments at 6 (stating that ''the laudable goal of providing satellite subscribers with access to the signals of some television stations licensed to communities within the same state should not trump the value of local coverage provided by stations that happen to be licensed to communities in a different state so as to deprive satellite customers of access to the signals of those stations that are more truly 'local' than the more distant same-state stations.'').

[87] For example, we agree with NCTA that we should consider the potential disruption to customers if grant of the modification request would displace service from a long-established network station. *See* NCTA Comments at 3–4 (stating ''the Commission should consider the potential disruption to cable customers that could be caused by wholesale changes to markets. Market changes that would require operators to delete one group of broadcast stations in favor of another could upset long-established cable customer viewing patterns.''). The Bureau has previously considered, in the cable context, whether grant of the market modification would ''upset the economic marketplace expectations underlying the network-affiliate relationship.'' *See, e.g., Broad Street Television, L.P.,* CSR–3868–A, Memorandum Opinion and Order, DA 95–1106, para. 12 (CSB rel. May 25, 1995); *Guy Gannett Communications, Inc.,* CSR–5289–A, Memorandum Opinion and Order, DA 98–2464, para. 21 (CSB rel. Dec. 4, 1998), *aff'd,* Order on Reconsideration, DA 00–1325 (CSB rel. Jun. 19, 2000); *Pacific & Southern Co., Inc.,* CSR–5326–A, Memorandum Opinion and Order, DA 99–628, para. 25 (CSB rel. Apr. 2, 1999); *Harron Communications Corp.,* CSR–5325–A, Memorandum Opinion and Order, DA 99–627, para. 26 (CSB rel. Apr. 2, 1999); *Free State Communications, LLC,* CSR–8121–A, Memorandum Opinion and Order, DA 09–1206, para. 22 (MB rel. May 28, 2009). We note that, for must carry purposes, although cable operators are not required to carry duplicating stations or more than one local station affiliated with a particular network, if a cable system declines to carry duplicating stations, it must carry the station closest to the principal headend of the cable system, even if that station is from another state. *See* 47 CFR 76.56(b)(5). By contrast, in the satellite carriage context, a satellite carrier must carry two stations affiliated with the same network if they are from different states, *see* 47 U.S.C. 338(c)(1); 47 CFR 76.66(h)(1), and otherwise may select which duplicating station or network affiliate in a market it will carry. *See* 47 CFR 76.66(h)(2) through (3). Thus, the potential for market disruption is lower in the satellite context.

[88] *NPRM,* para. 11.

[89] *Id.*

[90] *See* UCC Comments at 6–7; WVIR–TV Comments at 4; Tracy Comments at 1.

[91] *See* UCC Comments at 6–7 (''STELAR did not intend to forestall market modification requests that would not have the effect of supplying in-state programming to residents of 'orphan counties.' ''); WVIR–TV Comments at 4 (asking Commission ''not to confine any new rules to situations where a subscriber's community or county is assigned to an out-of-state DMA by Nielsen''); Tracy Comments at 1.

[92] *NPRM,* para. 12.

[93] *See* NAB Comments at 4–5; DISH Comments at 3–4.

[94] 47 U.S.C. 338(l)(2)(B)(i) through (v), 534(h)(1)(C)(ii)(I) through (V).

[95] *See* 47 CFR 76.59(b)(7). As noted above (*see supra* para. 18), to better effectuate the purpose of the law, we will consider (but not require) additional evidence showing the relevance of the in-state programming (including advertising) to the new community, as well as the absence of other in-state stations in the new community, to evaluate the strength afforded to this factor.

[96] *See* 47 CFR 76.59(b)(1) through (7). To make section 76.59(b)(6) consistent with the language of the STELAR, we are also updating the rule to reflect the change from ''evidence of viewing patterns in *cable and noncable households* . . .'' to ''evidence of viewing patterns in *households that subscribe and do not subscribe to the services offered by multichannel video programming distributors''* in the fifth statutory factor (*emphasis* added). *See* 47 U.S.C. 338(l)(2)(B)(v), 534(h)(1)(C)(ii)(V).

delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.,* the reported audience averaged over Sunday–Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

(7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.

As discussed above, DISH and NCTA sought additional evidentiary requirements for a petitioner to satisfy the in-state factor.[97] Because we decide that the in-state factor generally favors any market modification that would promote consumers' access to an in-state station, we reject the suggestions by DISH and NCTA to require more evidence in this regard. As explained above, however, a petitioner may offer evidence concerning whether the television station provides programming specifically related to the subscribers' state of residence, as well as the lack of other in-state stations providing service to subscribers in the new community, to demonstrate that the in-state factor should be afforded even greater weight.[98]

21. In addition, we adopt our proposal to revise section 76.59(b)(2) of the rules to add a reference to the digital noise-limited service contour (NLSC), which is the relevant service contour for a full-power station's digital signal.[99] NAB, the only commenter on this issue, supports our proposal.[100] Section 76.59(b)(2) requires petitioners seeking a market modification to provide Grade B contour maps delineating the station's technical service area;[101] however the Grade B contour defines an analog television station's service area.[102] Since the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations and, therefore, the Commission uses the NLSC set forth in 47 CFR 73.622(e),[103] in place of the analog Grade B contour set forth in 47 CFR 73.683(a), to describe a full power station's technical service area.[104] Since the DTV transition, the Media Bureau has required full power stations to provide NLSC maps, in place of Grade B contour maps, for purposes of cable market modifications.[105] Therefore, we adopt our tentative conclusion that section 76.59(b)(2) should be updated for purposes of market modifications in both the cable and satellite contexts. We also delete the reference in the rule to the Grade B contour because that reference has no relevance in the absence of full-power analog stations. We observe that, in the rare situation in which a Class A or LPTV station might seek a market modification, the relevant service contour for such stations would be its ''protected contour.'' [106] Accordingly, we revise our rule to reflect this contour.

22. Consistent with the cable carriage rule, we adopt our proposals that satellite market modification requests that do not include the required evidence be dismissed without prejudice and that they may be supplemented and re-filed at a later date with the appropriate filing fee.[107] In addition, consistent with the cable carriage rule, we adopt our proposal that, during the pendency of a market modification petition before the Commission, satellite carriers will be required to maintain the status quo with regard to signal carriage and must not delete from carriage the signal of an affected commercial television station.[108] NAB, the only commenter on these issues, supports our proposals.[109] We adopt our proposals, which create regulatory parity with cable.

C. Market Determinations

23. We adopt our tentative conclusion that market modifications in the satellite

[97] *See* DISH Comments at 4 (suggesting that petitioners be required to ''submit evidence to demonstrate that a substantial portion of the population in the geographic area covered by the request supports the change''); NCTA Reply at 3 (suggesting that petitioning broadcasters ''should demonstrate a historical pattern of providing significant in-state programming that is not otherwise available on the local DMA broadcast stations (or on any other station already carried on the system)''). WVIR–TV opposed the DISH proposal, stating ''DISH's suggestion that a broadcaster seeking to be added to a market provide evidence of popular demand by viewers goes far beyond what is required in the cable context and should not be adopted.'' WVIR–TV Reply at 5.

[98] *See supra* para. 18.

[99] *NPRM,* para. 14; 47 CFR 76.59(b)(2).

[100] NAB Comments at 4.

[101] 47 CFR 76.59(b)(2).

[102] *See* 47 CFR 73.683(a).

[103] As set forth in section 73.622(e), a full-power station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level. *See* 47 CFR 73.622(e).

[104] *See STELA Significantly Viewed Report and Order,* para. 51 (stating that the digital NLSC is ''the appropriate service contour relevant for a station's digital signal''); *2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09–182, Notice of Inquiry, FCC 10–92, para. 103, 75 FR 33227, June 11, 2010 (stating that the Commission developed the digital NLSC to approximate the same probability of service as the Grade B contour and has stated that the two are roughly equivalent); Report To Congress: The Satellite Home Viewer Extension And Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures; ET Docket No. 05–182, FCC 05–199, para. 111 (rel. Dec. 9, 2005). Since the DTV transition, the Media Bureau has used the digital NLSC in place of the analog Grade B contour in the cable context. *See, e.g., KXAN, Inc.,* CSR–7825–N, Memorandum Opinion and Order, DA 10–589, para. 8 n.32 (MB rel. Apr. 1, 2010) (using the NLSC in place of the Grade B contour for purposes of the cable network non-duplication and syndicated program exclusivity rules). Congress has also acted on the presumption that the two standards are roughly equivalent, by adopting parallel definitions for households that are ''unserved'' by analog (measured by Grade B) or digital (measured by NLSC) broadcasters in the STELA legislation enacted after the DTV transition. *See* 17 U.S.C.U.S.C. 119(d)(10)(A)(i).

[105] *See, e.g., Tennessee Broadcasting Partners,* CSR–7596–A, Order on Reconsideration, DA 10–824, para. 6, n.14 (MB rel. May 12, 2010) (stating, in a market modification order, that the Commission has treated a digital station's NLSC as the functional equivalent of an analog station's Grade B contour); *Lenfest Broadcasting, LLC,* CSR–6278–A, Memorandum Opinion and Order, DA 04–1414, para. 7, n.27 (MB rel. May 20, 2004).

[106] The relevant technical service area for Class A and LPTV stations is defined by their protected contour, as defined in sections 73.6010 (Class A), 74.707 (analog LPTV) and 74.792 (digital LPTV) of the rules; 47 CFR 73.6010, 74.707, 74.792. Although LPTV stations are not entitled to mandatory satellite carriage, *see* 47 U.S.C. 338(a)(3), LPTV stations may be entitled to mandatory cable carriage, but only in limited circumstances. Both the Communications Act and the Commission's rules mandate that only a minimum number of qualified low power stations must be carried by cable systems, *see* 47 U.S.C. 534(c)(1); 47 CFR 76.56(b)(3), and, in order to qualify, such stations must meet several criteria. *See* 47 U.S.C. 534(h)(2)(A) through (F); 47 CFR 76.55(d)(1) through (6). Class A stations have the same limited must carry rights as LPTV stations; in other words, they are ''low power stations'' for mandatory carriage purposes. *See Establishment of a Class A Television Service,* MM Docket No. 00–10, Memorandum Opinion and Order on Reconsideration, FCC 01–123, paras. 40–42, 66 FR 21681, May 1, 2001. Finally, we note that the Media Bureau recently suspended the September 1, 2015 digital transition deadline for LPTV stations. (The Bureau's action did not affect the September 1, 2015 digital transition deadline for Class A stations.) *See Suspension of September 1, 2015 Digital Transition Date for Low Power Television and TV Translator Stations,* MB Docket No. 03–185, Public Notice, DA 15–486, 80 FR 27862, May 15, 2015.

[107] *NPRM,* para. 15. *See* 47 CFR 76.59(c).

[108] *NPRM,* para. 15. *See* 47 CFR 76.59(d). *See also* 47 U.S.C. 338(l)(3)(B), 534(h)(1)(C)(iii); *Must Carry Order,* para. 46.

[109] NAB Comments at 4.

carriage context will apply only to the specific stations and communities addressed in a particular market modification petition.[110] NAB, the only commenter on this issue, supports our conclusion.[111] Our conclusion is consistent with the cable carriage rules [112] and is based on the statute's language granting authority to modify markets ''with respect to a particular commercial television broadcast station.'' [113] It is also reasonable because market modification determinations are highly fact-specific and turn on whether a particular commercial television broadcast station serves the needs of a specific community.

24. We also adopt our tentative conclusion that we will consider market modification requests separately in the cable and satellite contexts.[114] NAB and DISH, the only commenters on this issue, support our conclusion.[115] We find this preferable given the differences in service area and community sizes between cable systems and satellite carriers.[116] In contrast to the cable context, we must also consider the technical and economic capability of the satellite carriers at issue to effectuate a satellite market modification.[117]

25. Finally, we adopt our tentative conclusion that market modification requests will apply only to the satellite carrier or carriers named in the request.[118] NAB and DISH support our conclusion,[119] although DIRECTV believes this is unnecessary if we allow each satellite carrier to carry a station based on its respective spot beam coverage.[120] We disagree with DIRECTV that this is unnecessary. Instead, we find that a modification may not always appropriately apply to both carriers. For example, the carriers' spot beams may be different, even though they are serving the same market, and thus one may have an infeasibility defense while the other may not.

26. *Prior Determinations.* We adopt our tentative conclusion that prior cable market modification determinations will not automatically apply in the satellite context.[121] We also decline to establish a presumption that prior cable determinations should apply to satellite markets.[122] DISH, NAB, and DIRECTV support these conclusions,[123] while Gray proposes that we establish a presumption that prior cable market modification determinations should apply to satellite markets.[124] We find the same reasoning that requires us to consider market modification requests separately in the cable and satellite contexts also makes it inadvisable to apply prior cable market determinations to satellite markets. As discussed above, market modifications are specific to the stations, operators/carriers, and communities addressed in a particular market modification petition, as of the time of the petition. Given the differences in service areas and community sizes between cable systems and satellite carriers, and changes that may have occurred since the time of the cable petition, we conclude that it would not be reasonable to automatically apply prior cable market determinations to satellite carriers or establish a rebuttable presumption. We note that Gray's proposal would have us establish a presumption for an entire county based on a finding with respect to a single cable community or several cable communities within a county.[125] Moreover, we note that satellite carriers did not have the opportunity to participate in these prior market modification proceedings.[126] We also agree with DIRECTV that establishing a presumption would be inconsistent with our statutory obligation to evaluate modifications based on the statutory factors.[127] However, as noted in the NPRM, historic carriage is one of the five factors the Commission must consider in evaluating market modification requests and would carry weight in a market modification determination in the satellite context.[128] We agree with NAB that consideration of this factor will give sufficient weight to prior decisions without the need to establish a presumption.[129]

27. *Carriage after a market modification.* We adopt our tentative conclusion that television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to section 76.66 of the rules) by virtue of a change in the market definition (by operation of a market modification pursuant to section 76.59 of the rules) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier.[130] This is consistent with the cable rule.[131] NAB and Gray support this conclusion,[132] while DISH expresses concern that, as a result of a market modification (and an existing retransmission consent agreement with the involved station), it could have to carry and pay retransmission consent fees to two stations from different states but that are affiliated with the same network.[133] DISH proposes that a station's election with respect to the communities added by a market modification should be limited to must-carry for the remainder of the carriage election cycle.[134] NAB responds that

[110] *NPRM,* para. 16.

[111] NAB Comments at 5.

[112] *See Must Carry Order,* para. 47 n.139 (stating that ''the statute is intended to permit the modification of a station's market to reflect its individual situation''); 47 CFR 76.59. We note that this is also consistent with the Commission's previous determination that stations may make a different retransmission consent/mandatory carriage election in the satellite context from that made in the cable context. *See DBS Broadcast Carriage Report and Order,* para. 23.

[113] 47 U.S.C. 338(l)(1).

[114] *NPRM,* para. 16. This is consistent with our conclusion below that *prior* cable market modification determinations will not automatically apply in the satellite context; *see infra* para. 26.

[115] DISH at Comments 4; NAB Comments at 5–6.

[116] *See* DISH Comments at 4. *See also infra* section III.F. (deciding that a ''satellite community'' for market modification purposes can be defined by a county).

[117] *See* DISH Comments at 4–5.

[118] *NPRM,* para. 16. This is also consistent with the satellite carriage election process. *See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues,* CS Docket No. 00–96, Order on Reconsideration, FCC 01–249, para. 62, 66 FR 49124, Sept. 26., 2001 (*DBS Must Carry Reconsideration Order*) (''where there is more than one satellite carrier in a local market area, a television station can elect retransmission consent for one satellite carrier and elect must carry for another satellite carrier'').

[119] DISH at Comments 5; NAB Comments at 5.

[120] DIRECTV Comments at 9.

[121] *NPRM,* para. 17.

[122] *NPRM,* para. 17.

[123] *See* DISH Comments at 4–5; NAB at 5–6; DIRECTV Reply at 9–10. *See also* DIRECTV *ex parte* (dated June 11, 2015) at 2; DISH *ex parte* (dated June 11, 2015) at 2.

[124] Gray Comments at 4–5 (''When a satellite market modification is requested for a county or counties where a previous cable market modification has been granted, the FCC should require only that a petitioner file a simple request that the station's satellite market be modified to include the counties that include the communities associated with the earlier modification. Any party opposing the modification would have the burden of demonstrating that, notwithstanding the outcome of the earlier proceeding, the statutory factors do not support a market modification in the satellite context.'').

[125] Gray Comments at 4–6 (''If a previous market modification proceeding has resulted in the assignment of additional communities to a television station's cable carriage market, the FCC should presume that the county or counties in which those communities are located should be added to the station's DBS market.'').

[126] DIRECTV correctly observes that there is no official list of previously-granted modifications. DIRECTV *ex parte* (dated June 11, 2015) at 2.

[127] DIRECTV Reply at 9.

[128] *See* 47 U.S.C. 338(l)(2)(B)(i)(I) (whether the station, or other stations located in the same area—''have been historically carried on the cable system or systems within such community'').

[129] NAB Comments at 6.

[130] *NPRM,* para. 18. *See* 47 CFR 76.66(d)(6).

[131] *See* 47 CFR 76.64(f)(5).

[132] NAB Comments at 6; Gray Comments at 8; NAB Reply at 3.

[133] *See* DISH Comments at 9–10.

[134] *See* DISH *ex parte* (dated June 11, 2015) at 2. We note that DISH initially agreed that a station should elect either retransmission consent or must-

Continued

''[s]atellite carriers cannot lawfully obtain a 'free pass' to carry retransmission consent stations without negotiating the prices, terms and conditions of such consent in any geographic area.[135] Alternatively, DISH asks the Commission to ''clarify that notwithstanding any retransmission consent agreements that would automatically entitle the station to carriage in additional geographic areas due to a market modification, the station must negotiate a new retransmission consent agreement for the new areas.''[136] NAB responds that ''DISH and other satellite carriers must abide by provisions of the Communications Act and FCC rules governing retransmission consent and must-carry within a station's market, including areas affected by a market modification.'' [137]

28. We reject DISH's proposal to mandate a must-carry election for the remainder of the current election cycle because it directly contravenes section 325 of the Act and would be inconsistent with our satellite carriage rules.[138] As with any other election for satellite carriage, we find that when a station's market is modified for purposes of satellite carriage, then the station is entitled to elect either retransmission consent pursuant to section 325 or mandatory carriage pursuant to section 338 with respect to the new community or communities added to its market by the modification.[139] This is also consistent with the cable market modification process [140] and, moreover, is required by application of sections 325 and 338 of the Act.[141] Section 338(a)(1) requires that a satellite carrier must carry upon request all local television stations seeking carriage in any market in which the carrier provides local-into-local service, subject to section 325(b) of the Act.[142] Section 325(b)(1) prohibits an MVPD from retransmitting the signal of a broadcast station except ''with the express authority of the originating station.'' [143] The statute provides for no exception in the market modification context to the retransmission consent requirement. Thus, we reject DISH's argument that the silence of section 102 of the STELAR with respect to retransmission consent means that Congress could not have intended retransmission consent to apply to the carriage of stations in communities added by market modification.[144] To the contrary, considering the provisions together in context, we believe the better reading of the statute is that the retransmission consent requirement applies in this context given the absence of an express indication otherwise in either section 102 of STELAR or the retransmission consent provisions.[145] We note that, while the network programming may be the same, the two stations would likely be providing very different local programming (*e.g.,* different news, sports, advertising and political programming), each of which may be of interest to the new community, because the stations are licensed to different communities and particularly if the stations are located in different states. Finally, with respect to DISH's proposal that we prevent application of an existing retransmission consent agreement containing a provision requiring carriage pursuant to its terms in the event the Commission modifies a given market, DISH provides no reasoning that persuades us to abrogate a bargained-for and agreed-to contractual provision between a broadcaster and a satellite carrier that expressly contemplates the addition of communities through the market modification process.[146] We note, however, that the very purpose of this provision of the STELAR is to provide consumers with access to news, politics, sports, emergency and other programming specifically related to their home state.[147] Accordingly, we expect broadcasters and satellite carriers alike will make the needs and expectations of orphan county consumers the priority in negotiating retransmission consent following a successful modification petition.[148] We will monitor this situation closely and will take further action if such monitoring indicates that the purpose of this provision is not being effectuated.

29. We also adopt our tentative conclusion that a satellite carrier must commence carriage within 90 days of receiving the request for carriage from the television broadcast station.[149] In the record, NAB and Gray support the 90-day deadline,[150] while DISH asks for 120 days.[151] The 90-day deadline is consistent with our cable rules,[152] as well as with existing carriage procedures involving the addition of a new station to a carrier's lineup [153] and we see no reason to deviate from the 90-day deadlines in these similar contexts.[154] Thus, we conclude that 90

carry with the applicable satellite carriers for the new geographic area within 30 days of the market modification order. DISH Comments at 5.

[135] NAB Reply at 2.

[136] DISH *ex parte* (dated June 11, 2015) at 2. DISH's proposal recognizes that its concern is a short-term problem that would last for the length of any existing retransmission consent agreement. *Id.* In DISH's scenario, after expiration of the existing agreements with the two same-network affiliates, we expect the marketplace would resolve this concern.

[137] NAB Reply at 1, 3–5. *See also* 47 U.S.C. 325, 338 and 47 CFR 76.64 through 76.66.

[138] *See* 47 U.S.C. 325(b) and 47 CFR 76.66.

[139] *See* 47 CFR 76.66(c) (''In television markets where a satellite carrier is providing local-into-local service, a commercial television broadcast station may elect either retransmission consent, pursuant to section 325 of title 47 United States Code, or mandatory carriage, pursuant to section 338, title 47 United States Code.''). We thus agree with NAB that ''a station electing retransmission consent with regard to a community or communities that become part of its defined market following a modification request is the same as any other station making a retransmission consent election.'' NAB Reply at 3.

[140] *See* 47 CFR 76.64(f)(5).

[141] *See* 47 U.S.C. 325, 338.

[142] 47 U.S.C. 338(a)(1).

[143] 47 U.S.C. 325(b)(1).

[144] *See* DISH Comments at 9–10. DISH also appears to argue that, because STELAR provides that a market modification could operate both to add communities to, and delete communities from, a station's local market, the Commission could delete the community at issue from the existing network affiliate's local market at the same time that it adds the new community to the local market of the same-network station seeking the market modification. *Id.* at 10. Under current rules, however, to delete the community at issue from the existing network station's local market, DISH would have to file a separate petition to modify that station's local market, based on the statutory factors. There is nothing in the record that persuades us to alter the existing process.

[145] *See* STELAR section 102. *See also* 47 U.S.C. 325(b), 338(c)(1). We also disagree with Gray's argument that the ''substantial duplication'' exceptions to the satellite mandatory carriage rules should not apply to stations in communities that have been added to their markets via the market modification process. Gray Comments at 8. Section 338(c)(1) speaks clearly on this point in permitting but not requiring a satellite carrier to carry more than one network affiliate licensed to the same state. 47 U.S.C. 338(c)(1).

[146] *See* DISH *ex parte* (dated June 11, 2015) at 2 (stating that ''[m]any retransmission consent contracts require DBS providers to carry a station's signal throughout its local market, even if that local market's boundary is changed by FCC action—meaning the DBS provider could be obligated to pay retransmission consent fees to two network-affiliated stations in a given area pursuant to a market modification, even if these stations duplicate one another.''). *See also* NAB Reply at 3 (opposing DISH's various proposals to avoid paying retransmission consent fees).

[147] *See Senate Commerce Committee Report* at 11.

[148] *See supra* note 59 (describing the impact on consumers of residing in orphan counties) and note 65 (noting Commission receipt of at least 165 consumer complaints in 2015 that their satellite carrier does not carry a particular station).

[149] *NPRM,* para. 18.

[150] NAB Comments at 6; Gray Comments at 8; NAB Reply at 3.

[151] DISH Comments at 5–6. We note that 120 days is inconsistent with DISH's proposal that requests for carriage use the procedures governing carriage of new stations. DISH Comments at 5.

[152] *See* 47 CFR 76.64(f)(5).

[153] *See* 47 CFR 76.66(d)(3). We note that DISH's proposal for 120 days to commence carriage is inconsistent with DISH's proposal that requests for carriage use the procedures governing carriage of new stations. *See* DISH Comments at 5.

[154] DISH speculates that ''there may be time-consuming technical or billing changes, among other things, necessary for the satellite carrier to undertake'' in order to effectuate carriage of a market modification. DISH Comments at 5–6. We

days is an appropriate amount of, time for satellite carriers to commence carriage. We note that, as is the case in the cable context, the filing of a petition for reconsideration or application for review does not automatically stay the effect of a Bureau order to *add* a station to a new community; however, based on the directive in section 338(l)(3)(B)—the satellite counterpart to cable's section 614(h)(1)(C)(iii)—a petition for reconsideration or application for review would automatically stay a Bureau order to *delete* a station in a community.[155] Finally, we adopt our tentative conclusion that the carriage election must be made in accordance with the procedures set forth in section 76.66(d)(1).[156]

D. Technical or Economic Infeasibility Exception for Satellite Carriers

30. We adopt our proposal to codify the language of section 338(l)(3), which provides that ''[a] market determination . . . shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.'' [157] In enacting this provision, Congress recognized that the unique nature of satellite television service may make a particular market modification difficult for a satellite carrier to effectuate and, thus, exempted the carrier from the resulting carriage obligation.[158] According to the record, spot beam coverage and capacity constraints (discussed below) are the primary technical and economic impediments to carriage facing both satellite carriers. Based on the constraints described in the record, we conclude that it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community [159] that is, or to the extent to which it is,[160] outside the relevant spot beam [161] on which that station is currently carried.[162] We adopt our tentative conclusion that the satellite carrier has the burden to demonstrate that the resulting carriage from a market modification ''is not technically and economically feasible . . . by means of [a carrier's] satellites in operation.'' [163] In this regard, we will allow satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury (as described herein).[164] In addition, with respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible, such as costs associated with changes to customer satellite dishes to accommodate reception from different orbital locations, we will review these assertions on a case-by-case basis. To avoid unnecessary burdens on broadcasters, satellite carriers, county governments and the Commission, we establish a process for prospective petitioners to obtain information from a satellite carrier regarding feasibility of carriage by the carrier prior to the filing of a market modification petition. We require satellite carriers to respond to broadcaster and county government requests for information about the feasibility of prospective market modifications with certifications and afford prospective petitioners with a process for Commission review of such certifications before filing a market modification petition. The Commission

see no evidence in the record to suggest that commencement of carriage after a market modification is more difficult or complicated in the satellite context or more difficult or complicated than adding a new station to a carrier's lineup.

[155] *See* NAB Comments at 6–7 (seeking clarification that ''the filing of a petition for reconsideration or application for review does not relieve a cable or satellite provider of its obligation to commence carriage pursuant to a broadcaster's must carry election or begin retransmission consent negotiations consistent with good faith requirements''). In the *Cable Market Modification Second Report and Order,* paras. 63–64, the Commission found that section 614(h)(1)(C)(iii)—the cable counterpart to section 338(l)(3)(B)—''prohibits cable operators from deleting from carriage commercial broadcast stations during the pendency of a market modification request but does not address maintaining the status quo with respect to additions. Given the absence of a parallel statutory directive with respect to channel additions, we see no reason to depart from the general presumption that a decision is valid and binding until it is stayed or overruled. To the extent the process aids broadcast stations in both retaining and obtaining cable carriage rights, that appears to be the result intended by the statutory framework adopted.'' *See Cablevision Systems Corporation,* CSR–3873–A, Memorandum Opinion and Order, DA 96–1231, para. 11 (CSB, rel. Aug. 2, 1996) (explaining that ''if we were to accept the general arguments for granting the stay raised by Time Warner and Cablevision, every initial market modification decision adverse to any cable operator would be postponed while either the Bureau or Commission acts on the petition for reconsideration or application for review. Such a result would unduly delay qualified television stations from realizing their statutory cable carriage rights.''). *See also Dynamic Cablevision of Florida Ltd., et al.,* CSR–4722–A, CSR–4707–A, Memorandum Opinion and Order, FCC 97–191, para. 20 (rel. Jul. 1, 1997) (''hold[ing] that a commercial television station may not be deleted from a cable system until the Commission has completed all administrative proceedings pertaining to a particular market redefinition . . . . There can be no question that Commission reconsideration or review of a Bureau market redefinition ruling is a 'proceeding' pursuant to the market re-definition section.'').

[156] *NPRM,* para. 18. Section 76.66(d)(1) requires that an election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested. 47 CFR 76.66(d)(1)(ii). The rule requires that a television station's written notification shall include the following information: (1) Station's call sign; (2) Name of the appropriate station contact person; (3) Station's address for purposes of receiving official correspondence; (4) Station's community of license; (5) Station's DMA assignment; and (6) Station's election of mandatory carriage or retransmission consent. 47 CFR 76.66(d)(1)(iii). The rule also requires that, within 30 days of receiving the request for carriage from the television broadcast station, a satellite carrier must notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station. 47 CFR 76.66(d)(1)(iv). DISH proposes that requests for carriage follow the procedures outlined in 47 CFR 76.66(d)(3), which governs written requests for carriage by new stations. DISH Comments at 5. However the carriage election procedures outlined in 47 CFR 76.66(d)(3) expressly refer to the procedures set forth in 47 CFR 76.66(d)(1). *See* 47 CFR 76.66(d)(1)(ii) through (iii) and (d)(3)(ii). The only difference is timing and even DISH agrees with the filing of an election within 30 days of the market modification order which is consistent with the 30 days in 47 CFR 76.66(d)(1).

[157] 47 U.S.C. 338(l)(3). *See* 47 CFR 76.59(e).

[158] *Senate Commerce Committee Report* at 11 (recognizing ''that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate.'').

[159] For purposes of our discussion, by ''new community'' we refer to a new community to be added to a station's local television market by grant of the prospective market modification. As discussed below in section III.F., a ''community'' for purposes of a satellite market modification is defined as a county.

[160] This *per* se exemption is limited to areas outside the carrier's spot beam. Thus, a satellite carrier will be required to carry the station to those areas inside the relevant spot beam even if part of the new community (*i.e.,* county) is outside the relevant spot beam, in the absence of additional evidence of infeasibility. *See infra* paras. 34–35 (Partial Spot Beam Coverage).

[161] Satellite carriers use spot beams to offer local broadcast stations. DIRECTV Comments at 2. DIRECTV explains that ''[s]pot-beam technology divides up a portion of the bandwidth available to a satellite into beams that cover limited geographic areas. Doing so allows particular sets of frequencies to be reused many times. This spectral efficiency unlocked the potential for satellite carriers to offer local broadcast signals in the late 1990s, and it enables satellite carriers to offer local service today.'' *Id.*

[162] *See* DIRECTV Comments at 9 (asking the Commission to find that ''it is *per se* technically and economically infeasible for a satellite carrier to provide a station to subscribers who live in an area outside of the spot beam on which that station is currently carried.''). For purposes of our discussion, we will refer to the spot beam on which the station is currently carried as the ''relevant spot beam.''

[163] *NPRM,* para. 19. *See* 47 U.S.C. 338(l)(3). The legislative history also indicates ''that claims of the existence of such difficulties should be well substantiated and carefully examined by the [Commission] as part of the petition consideration process.'' *Senate Commerce Committee Report* at 11.

[164] We will refer to this as the ''detailed certification.'' *See infra* at section III.D.2. We base our proposal on DIRECTV's suggested certification, which we find would meet the carrier's burden to demonstrate spot beam coverage infeasibility. *See* DIRECTV *ex parte* (dated Jul. 9, 2015) at 3–4. To ensure the ongoing accuracy and veracity of the spot beam coverage infeasibility certification process, we may, in particular cases, require a satellite carrier to provide us with supporting documentation for the certification. 47 U.S.C. 154(i), 154(j), 308(b), 403.

will not proceed to evaluate the five factors for a market modification with respect to a particular satellite carrier where it is shown that the resulting carriage obligation would not be technically and economically feasible at the time of the market determination.

1. Technical or Economic Impediments to Carriage

31. The NPRM sought comment on the types of technical or economic impediments contemplated by section 338(l)(3) that would make satellite carriage infeasible in a new community.[165] The NPRM also sought comment on any objective criteria by which the Commission could determine technical or economic infeasibility, such as spot beam coverage constraints.[166] In response, we received very few comments on potential impediments except infeasibility due to insufficient spot beam coverage and due to costs of making changes to customer satellite dishes. DIRECTV described spot beam coverage and capacity constraints as being the key technical and economic impediments to carriage.[167] DIRECTV asserted, and DISH agreed, that carriage should be considered *per se* infeasible if the new community is outside the coverage of the spot beam that carries the station.[168] The carriers explain that if the spot beam on which a station is being carried does not cover the new community, a satellite carrier ''has no good [carriage] options available to it.'' [169] Even if the spot beam on which a station is being carried covers the new community, DISH adds that carriage of the station may be infeasible if the station is carried on a different satellite at a different orbital position than the satellite providing the existing local broadcast stations to the market.[170] DISH explains that ''it is possible'' that this situation could require DISH to make equipment changes at ''all or most households'' in the new community.[171] The broadcast comments do not substantively refute spot beam coverage and capacity constraints as legitimate technical or economic impediments, except to say that such constraints must be appropriately demonstrated, consistent with the statute and legislative history.[172]

32. We are persuaded by the satellite carriers that if the relevant spot beam does not cover the new community, then it is not technically and economically feasible for the carrier to provide the station to such new community.[173] In such a scenario, the only available options would be to place the station on the satellite carrier's CONUS beam [174] to reach subscribers in the new community, redirect each and every spot beam on the satellite in order to enable the relevant spot beam to cover the new community,[175] or place the station on a second, neighboring spot beam that does cover the new community, if such a beam exists and has capacity. DIRECTV argues that it would be an ''inefficient use of resources to devote a CONUS beam, which can be seen throughout the United States, to provide coverage to a single or handful of communities.'' [176] Next, DIRECTV argues that, if the new community is covered by a different, neighboring spot beam than the one on which the station is carried, it would almost always lack space on such neighboring spot beam.[177] Moreover, DIRECTV explains that, even if there were space, it ''would have to reserve capacity on the entire 'neighboring' spot beam—capacity that could otherwise be used for a new station or a multicast signal carried throughout the neighboring market.'' [178] Thus, it would be inefficient for the carrier to use that space on the neighboring spot beam for a station that could only be received by subscribers in a small part of the local market served by such spot beam.[179]

[165] In particular, the *NPRM* sought comment on whether spot beam contour diagrams should be required to demonstrate spot beam coverage limitations. *NPRM,* para. 20 (''Should we require satellite carriers claiming infeasibility due to insufficient spot beam coverage to provide spot beam contour diagrams to show whether a particular spot beam can be used to cover a particular community? '').

[166] *NPRM,* para. 20 (asking ''Are there any objective criteria by which the Commission could determine technical or economic infeasibility? For example, the Commission has recognized that spot beam coverage limitations, in the provision of local-into-local service context, may be a legitimate technical impediment. Under what circumstances would the limitations or coverage of a spot beam be a sufficient basis for a satellite carrier to prove that carriage of a station in the community at issue is not technically and economically feasible?'').

[167] *See* DIRECTV Comments at 3–4, 8–9. In its comments, DISH generally observed that a satellite carrier may be unable as a technical or financial matter to comply with a market modification. DISH Comments at 7.

[168] *See* DIRECTV Reply at 7; DISH *ex parte* (dated Jun. 11, 2015) at 3.

[169] DISH *ex parte* (dated Jun. 11, 2015) at 3.

[170] *See* DISH *ex parte* (dated Jun. 11, 2015) at 3; DISH *ex parte* (dated Jul. 8, 2015) at 1.

[171] DISH *ex parte* (dated Jun. 11, 2015) at 3; DISH *ex parte* (dated Jul. 8, 2015) at 1 (explaining that ''DISH offers local broadcast stations on spot beams on several satellites at a variety of different orbital locations. Therefore, it is possible that households in a given local market might be unable to receive a new broadcast station that was assigned by Nielsen to a different market unless the households, among other things, have a second satellite dish installed, have an existing satellite dish replaced, or have an existing satellite dish repositioned. Where this is the case, it is possible that all or most households in the geographic area impacted by a market modification would require a DISH technician to visit their home to make these equipment changes, which would be technically and economically infeasible.''). (DIRECTV does not indicate that it would have this same problem.)

[172] *See* Gray Comments at 6–7 (''Gray understands and appreciates the technical burdens that satellite operators face in adding signals to their satellite systems, but . . . Satellite operators therefore should be permitted to claim this exemption only in limited circumstances''); NAB Comments at 9 (''NAB urges the Commission to require satellite carriers claiming infeasibility due to insufficient spot beam coverage to provide spot beam contour diagrams to show whether a particular spot beam can be used to cover a particular community''); NAB Reply at 2–3 (saying that claims of infeasibility must be ''well substantiated and carefully examined''); WVIR–TV Reply at 2, para. 2 (asserting that the purpose of STELAR would be defeated if satellite operators do not ''bear the burden of proving the validity of an assertion of infeasibility''); WVIR–TV *ex parte* (dated Jul. 2, 2015) at 2 (same).

[173] *See* DIRECTV Reply at 7; DISH *ex parte* (dated Jun. 11, 2015) at 3.

[174] DIRECTV carries all of its national programming on satellite beams that cover the entire contiguous United States (''CONUS''). DIRECTV Comments at 2. ''DIRECTV carries New York and Los Angeles stations on CONUS beams, but only because those stations are offered throughout the country as distant signals pursuant to 17 U.S.C. 119 and 47 U.S.C. 339.'' DIRECTV Comments at 2, n.3.

[175] *See* DIRECTV Comments at 6–7, n.16.

[176] DIRECTV Reply at 7; DIRECTV Comments at 8. The Commission has previously recognized that ''to carry a local channel on a transponder designated for CONUS would be particularly inefficient as that channel could only be permissibly viewed in a single DMA.'' *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues,* CS Docket No. 00–96, Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, FCC 08–86, para. 11, 73 FR 24502, May 5, 2008 (*Satellite DTV Carriage Order*). We note, however, that if the station seeking the market modification was already being carried on a CONUS satellite (*e.g.,* the New York or Los Angeles stations), then carriage of such station would not be *per se* infeasible in a new community.

[177] DIRECTV explains that it ''has designed its spot beams to carry only the primary signals of stations within the local markets they cover. The vast majority of its spot beams are now currently full. In most cases, DIRECTV could not add a station to a 'neighboring' spot beam without removing one of the stations already on that beam.'' DIRECTV Comments at 8, n.24.

[178] DIRECTV Comments at 9 (explaining that ''[r]eserving spot-beam capacity for a station that could only be received in at most a handful of communities would represent a significant waste of spectral resources.''); DIRECTV Reply at 8 (explaining that devoting capacity to the station on a neighboring spot beam ''could preclude DIRECTV from carrying a new station that later commences service'' and also ''would certainly preclude DIRECTV from using the capacity in question to benefit viewers throughout the [local television market at issue],'' such as by adding a multicast feed from a local station.).

[179] We thus disagree with NAB that a satellite carrier should be required to show that the station could not be added to a spot beam different than the one on which the station is currently carried that does cover the new community. NAB *ex parte* (dated Jul. 15, 2015) at 3 (arguing that ''the DBS carrier should be required to certify that the spot beam that does serve the affected communities does not have the capacity to carry the station unless

Finally, DIRECTV argues that redirecting the entire array of spot beams on the satellite, would cause unacceptable consequences to existing local service.[180] We agree with these points and conclude that each of these options are *per se* technically and economically infeasible.[181] Accordingly, we conclude that ''it is *per se* technically and economically infeasible for a satellite carrier to provide a station to subscribers who live in an area outside of the spot beam on which that station is currently carried.'' [182] This conclusion is consistent with the Commission's past recognition and acceptance of the service constraints associated with the use of spot beams.[183] This means that, if a carrier shows that the relevant spot beam does not provide coverage to the new community, then that is a *per se* demonstration of infeasibility. Thus, for example, a carrier would not need to show that there is no space on a neighboring spot beam or that it cannot reconfigure a spot beam to effectuate carriage.

33. We recognize that there may be other technical or economic impediments to carriage that could qualify for the infeasibility exception. For example, DISH explains that it provides local broadcast stations from spot beams on several satellites at a variety of different orbital locations and that each subscriber's satellite dish must be pointed and configured to receive signals from a particular orbital location.[184] Therefore, even if the station is on a spot beam that covers the new community, carriage of the station in the new community could still be infeasible if the station is carried on a different satellite at a different orbital location than the satellite providing local service to that community, because such carriage would require DISH to install a second satellite dish, replace an existing satellite dish, or reposition an existing satellite dish, at ''all or most households'' in the new community.[185] We do not have sufficient information in the record to determine that the costs of customer equipment changes to accommodate reception from different orbital positions should be treated as *per se* infeasible. We will therefore consider assertions of this and other types of infeasibility on a case-by-case basis.

34. *Partial Spot Beam Coverage.* The NPRM sought comment on how to handle a situation in which only part of a community could be served with the relevant spot beam.[186] The satellite carriers oppose having to serve part of a community if the entire community is not covered by the spot beam, [187] but DIRECTV says it determines spot-beam coverage based on zip codes and asserts that it would be able to serve a community defined as a county based on those zip codes within the county.[188] NAB argues, however, that if carriage is viable within portions of a community that is the subject of a market modification request, then satellite carriers should be required to carry the station in those areas.[189] We conclude that, if a satellite carrier can provide the station to only part of a new community, then it must do so.

35. As discussed above, the statute requires a satellite carrier to carry a station pursuant to a market modification, unless it is not technically and economically feasible for the carrier to do so. Given the relatively large size of many counties, we conclude that it would be a disservice to consumers, and would not fully effectuate the mandate of the satellite market modification provisions of the STELAR, to presume that partial carriage to a county-defined community is *per se* infeasible. We are not persuaded by DISH that requiring such partial coverage of a county would necessarily ''be burdensome and cause customer confusion for a satellite carrier to target the carriage of a station down to such a granular level, for example by providing a different local broadcast station to a subset of subscribers.'' [190] DISH provides no evidence of the burdens associated with partial carriage. Any ''confusion'' is outweighed by the benefits of providing the added station to the customers who can receive it, consistent with Congressional intent in expanding market modification to satellite carriage. On a case-by-case basis, we will consider whether the area of a new community in which service is feasible is so *de minimis* that addition of that community to the station's market is effectively infeasible. We also disagree with DIRECTV to the extent that it claims that ''there is no underlying requirement to provide service in any particular area to begin with,'' and therefore ''the Commission need not 'excuse' any particular [market modification].'' [191] Pursuant to the ''carry one, carry all'' statutory requirement, a satellite carrier must carry, on request, all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.[192]

another channel is deleted (or other technical or economic reason)''). We find that the financial and opportunity costs associated with requiring a carrier to use scarce capacity on a second spot beam for a station that could only be received by subscribers in a small part of the local market served by such spot beam makes carriage on such spot beam *per se* infeasible. *See* DIRECTV Reply at 9.

[180] *See* DIRECTV Comments at 6–7, n.16 (explaining that it generally cannot ''move'' spot beams on a satellite—except for SPACEWAY satellites which are being replaced—and that it could ''slightly adjust the entire array of spot beams on the satellite simultaneously,'' but this would affect the local service provided by all of the spot beams on the satellite, thus ''disrupt[ing] [local] service across dozens of markets and negat[ing] DIRECTV's efforts to optimize population coverage.''); DIRECTV Reply at 7 (''moving the entire array of spot beams means subscribers in portions of the [local television market at issue] and many other markets would lose all the local stations they now receive.'').

[181] *See* DIRECTV Reply at 7–9; DISH *ex parte* (dated Jun. 11, 2015) at 3.

[182] DIRECTV Comments at 9; DISH *ex parte* (dated Jun. 11, 2015) at 3.

[183] In the *DBS Broadcast Carriage Report and Order,* the Commission allowed satellite carriers to use spot beam technology to provide local-into-local service, even if the spot beam did not cover the entire market. *DBS Broadcast Carriage Report and Order,* para. 42. The Commission ''observe[d] that section 338 does not require a satellite carrier to serve each and every county in a television market. Rather, it requires that in the areas it does provide local-into-local service, it must carry all local television stations subject to carriage under the statute.'' *Id.* The Commission ''recognize[d] that there are some markets, such as the Denver DMA encompassing counties in four states, that are geographically expansive'' and that ''[a] spot beam may not be able to cover the entire DMA in these instances, and to make the satellite carrier reconfigure its spot beam may deprive it of capacity to serve additional markets with local-into-local coverage.'' *Id.*

[184] DISH *ex parte* (dated Jul. 8, 2015) at 1; DISH *ex parte* (dated Jun. 11, 2015) at 3.

[185] *See* DISH *ex parte* (dated Jul. 8, 2015) at 1; DISH *ex parte* (dated Jun. 11, 2015) at 3 (arguing such situation ''would impose very significant costs'' and should constitute economic infeasibility). In this presumably rare situation, the station at issue is on a spot beam that covers the new community, but this spot beam is different than the spot beam providing local service to the new community. (In other words, there are two spot beams that cover, to some extent, the new community at issue.) In addition, the two spot beams are on different satellites located at different orbital positions and, therefore, subscribers in the new community will need two satellite dishes pointed in different directions to get both the original local stations from one spot beam and the new local station from the second spot beam.

[186] *NPRM,* para. 20 (''To the extent that a satellite carrier can provide the station at issue to some, but not all, subscribers in the community, should we allow or require the carrier to deliver the station to subscribers in the community who are capable of receiving the signal?'').

[187] *See* DISH Comments at 8–9 (arguing that ''any finding of technical or economic infeasibility should excuse a satellite carrier entirely from accommodating a market modification request, even if the satellite carrier can provide the station at issue to some, but not all, relevant subscribers''); DIRECTV Reply at 11, n.36 (agreeing with DISH).

[188] *See* DIRECTV Reply at 11–12.

[189] *See* NAB Comments at 9.

[190] DISH Comments at 8–9.

[191] DIRECTV Reply at 11, n.36.

[192] *See* 47 U.S.C. 338. This requirement is subject to exceptions for duplicating stations and lack of good quality signal, as specified by statute and

Continued

Furthermore, the statutory language of the infeasibility exception in section 338(l)(3) contemplates that a carriage obligation would result from a market modification.[193] If carriage were merely discretionary for the carrier, then there would be no need for the infeasibility exception to relieve the carrier of a carriage obligation. Therefore, if the carrier is providing local television broadcast stations to the new community pursuant to the local statutory copyright license, then it must also provide a station that becomes eligible for carriage as a local station in the new community by operation of the market modification.[194]

2. Demonstrating Infeasibility

36. Based on the record, we expect the vast majority of satellite carrier claims of infeasibility will be related to insufficient spot beam coverage. Because of the technical complexities involved in demonstrating spot beam coverage infeasibility, including the use of proprietary confidential information, we establish a streamlined process for carriers to demonstrate spot beam coverage infeasibility through the use of detailed certifications under penalty of perjury, based on a proposal by DIRECTV. Because of the limited record with respect to other possible claims of infeasibility, and our expectation that such other claims will be relatively rare, we do not at this time establish a detailed certification process for demonstrating other types of infeasibility. Instead, carriers will be required to demonstrate other types of infeasibility through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible. Although prospective petitioners will have two options for seeking a Commission determination about the carrier's claim of infeasibility (*i.e.,* filing a market modification petition or filing a separate petition beforehand solely with respect to the infeasibility issue), the requirements for demonstrating infeasibility are the same for both options.

37. The NPRM tentatively concluded that the satellite carrier has the burden to demonstrate technical or economic infeasibility and invited comment on the type of evidence needed to prove such infeasibility claims.[195] Most commenters, including the broadcasters and DISH, agree that the statute places the burden on satellite carriers to demonstrate infeasibility;[196] however, satellite carriers contend that a certification should be sufficient to meet its burden,[197] while broadcasters say an ''unverifiable'' certification would be inadequate to meet their burden under the statute and that a carrier should be required to provide documentation that demonstrates infeasibility.[198]

38. We adopt our tentative conclusion that the statute places the burden on satellite carriers to demonstrate infeasibility if they assert that carriage of a station in a new community would be technically or economically infeasible. Our conclusion is consistent with the legislative history that claims of infeasibility be ''well substantiated and carefully examined by the [Commission].'' [199] Moreover, we agree with commenters that, as a practical matter, only the satellite carriers have the specific information necessary to determine if the carriage contemplated in a market modification would not be technically and economically feasible by operation of their satellites.[200]

39. We adopt a certification process for carriers to demonstrate spot beam coverage infeasibility that should avoid imposing undue expense on, or compromising the confidential business information of, the satellite carriers while also providing the Commission with an appropriate basis for making market modification determinations. We conclude that a detailed certification submitted under penalty of perjury would satisfy the carrier's burden under the statute to substantiate their claims of insufficient spot beam coverage and allow us to carefully examine such claims of infeasibility.[201] Broadcasters argue that ''the mere 'certification' proposed by satellite carriers would not comport with the legislative intent of the technical and economic infeasibility provision'' and that ''an approach that involves only an unverifiable certification would be inadequate.'' [202] Instead, broadcasters argue that satellite carriers should be required to make detailed technical showings related to spot-beam coverage.[203] NAB argues that if the Commission chooses to use a certification approach, then we should at least require certain supporting documentation be provided with the certification or in the event of a Commission audit of a certification.[204]

regulation. *See* 47 U.S.C. 338(b)(1), (c)(1); 47 CFR 76.66(g)(1), (h)(1) through (2).

[193] *See* 47 U.S.C. 338(l)(3) (''[a] market determination . . . shall not create additional carriage obligations . . .'' if carriage ''is not technically and economically feasible. . .'').

[194] *See* 47 U.S.C. 338(a). We note that, by operation of the market modification, the station will be afforded ''carry one, carry all'' carriage rights in the area of the new community in which a carrier provides the other local broadcast stations to the extent the spot beam on which it is carried covers such area of the new community. *See id.* If the spot beam on which the new local station is carried is different than the one providing local-into-local service to the new community, and therefore the spot beam coverage for the two beams will be different, there may be an area in the new community that had not been receiving local-into-local service, but could receive the new local station. In this situation, the new station by operation of the market modification would be eligible for carriage as a local station in such area of the new community, pursuant to 47 U.S.C. 338(a) (''carry one, carry all'').

[195] *NPRM,* paras. 19–20.

[196] DISH Comments at 7; Gray Comments at 6–7; NAB Comments at 7; WVIR–TV Reply at 1.

[197] DIRECTV *ex parte* (dated Jun. 11, 2015) at 1 (stating that its proposed detailed certification would ''easily satisfy any requirement that satellite carriers 'substantiate' and the Commission 'examine' the technical and economic infeasibility of spot-beam carriage in these areas, even though no such requirement appears in the statute itself.''); DISH Comments at 7 (''the Commission should limit the required showing to a certification from the satellite carrier that it has analyzed the proposed market modification and has determined that it is not technically and economically feasible for such carrier to accomplish such carriage. A certification should be sufficient, because the types of evidence that the Commission might request could be technically or competitively sensitive, such as spot beam contour maps, cost of equipment upgrades, and subscriber numbers in a given geographic area.'').

[198] *See* NAB Reply at 2 (quoting legislative history that ''Congress intended satellite carrier claims of technical and economic infeasibility 'should be well substantiated and carefully examined by the [Commission] as part of the petition consideration process.' ''); WVIR–TV Reply at 2 (arguing that the purpose of STELAR is frustrated if satellite carriers are not required to actually prove infeasibility). *See also* NAB Reply at 3 (''an approach that involves only an unverifiable certification would be inadequate''); Gray Comments at 6 (arguing that satellite carrier claims of infeasibility must be ''conclusively demonstrated'').

[199] *Senate Commerce Committee Report* at 11.

[200] *See* DISH Comments at 7; WVIR–TV Reply at 1.

[201] DIRECTV *ex parte* (dated Jun. 11, 2015) at 1.

[202] NAB Reply at 2. See also WVIR–TV Reply at 2 (opposing DISH's proposal to ''self-certify'' without providing supporting documentation). WVIR–TV explains that ''[s]ince information about feasibility is entirely within the possession of the DBS operator, the DBS operator should bear the burden of proving the validity of an assertion of infeasibility. Otherwise, broadcasters will be completely at the mercy of DBS operators who oppose market modifications, largely defeating the purpose of the STELAR statute, if not rendering it a nullity.'' *Id.* NAB also argues that a certification approach ''would also be inconsistent with the Commission's longstanding approach to market modification requests in the cable context, which involve a substantial evidentiary showing.'' NAB Reply at 2–3. The issue of infeasibility, however, is separate from our analysis of the merits of modifying a market under the statutory factors.

[203] *See* NAB Comments at 9 (asking the Commission ''to require satellite carriers claiming infeasibility due to insufficient spot beam coverage to provide spot beam contour diagrams to show whether a particular spot beam can be used to cover a particular community'' and ''to document that reconfiguring a spot beam, or adding a station to another spot beam that does cover an affected community would be technically or economically infeasible''); Gray Comments at 6 (arguing that satellite carriers should ''be required to conclusively demonstrate technical infeasibility'').

[204] *See* NAB *ex parte* (dated Jul. 15, 2015) at 1–2.

We agree that a simple certification would not be appropriate, but we also agree with DIRECTV that it would be anomalous to require compendious and detailed evidentiary showings for spot beam coverage of *modified* local markets when such showings are not (and have never been) required for the provision of local service to *unmodified* local markets.[205] Therefore, we adopt a certification process that requires satellite carriers to evaluate the feasibility of providing the station to the new community in the same manner that it currently uses to determine where in the relevant DMA it can provide the current local broadcast stations.[206] These ''detailed certifications'' about spot beam coverage infeasibility must contain sufficient detail to ensure that the analysis performed by the carrier was appropriate and valid, and they will be subject to penalties for perjury to ensure its reliability. The Commission's review of the detailed certification will generally be limited to determining whether it satisfies the procedural and content requirements described herein.[207] Although we will not require carriers to provide supporting documentation as part of their certification, as an additional check the Commission may decide to look behind any certification and require supporting documentation when we deem it appropriate, such as when there is evidence that the certification may be inaccurate.[208]

40. *Supporting Documentation.* In the event that we require supporting documentation, we will require a satellite carrier to provide its ''satellite link budget'' calculations that were created for the new community. DIRECTV explains that a ''satellite link budget is a calculation that accounts for certain factors that affect a radio signal as it travels from an uplink earth station to a space station and back down through the atmosphere to the customer's earth station receiver'' and that this technical document ''generally takes the form of a table, with entries that include (among other things) transmit power from the uplink earth station and from the satellite, antenna gains, system noise, intersystem interference, and atmospheric attenuation including the effects of 'rain fade.' '' [209] DIRECTV states that the net result of this satellite link budget calculation ''is an estimation of end-to-end satellite link performance.'' [210] DIRECTV pointed out that the supporting materials suggested by NAB are in fact inputs for ''link budgets.'' [211] We agree with DIRECTV and NAB that it would be appropriate to require a carrier to submit satellite link budget information if the Commission were to determine in a given case that supporting documentation should be provided to support a detailed certification.[212] Thus, we require satellite carriers to retain such supporting documentation in the event that the Commission determines further review by the Commission is necessary. Satellite carriers must retain such supporting documentation throughout the pendency of Commission or judicial proceedings involving the certification and any related market modification petition.[213] We find this retention period will provide parties with a reasonable amount of time to challenge certifications. If satellite carriers have concerns about providing proprietary and confidential information underlying their analysis, they may request confidentiality.[214]

41. *Content of Spot Beam Coverage Infeasibility Detailed Certification.* Based on DIRECTV's proposed detailed certification,[215] a satellite carrier's certification of infeasibility due to insufficient spot beam coverage must contain the following elements in order to be used and relied upon as evidence to demonstrate carrier claims of technical and economic infeasibility. First, the detailed certification must explain why carriage is not technically and economically feasible, including a detailed explanation of the ''process by which a satellite carrier has determined whether or not the spot beam in question covers the geographic area at issue.'' [216] Second, to ensure equal treatment to all stations, the detailed certification must state that the satellite carrier ''has conducted this analysis in substantially the same manner and using substantially the same parameters used to determine the geographic area in which it currently offers stations carried on the spot beam.'' [217] Finally, the satellite carrier must support its detailed certification with an affidavit or declaration under penalty of perjury, as contemplated under section 1.16 of the Commission's rules and 28 U.S.C. 1746,[218] signed and dated by an authorized officer of the satellite carrier with personal knowledge of the representations provided in the certification, verifying the truth and accuracy of the information therein.[219]

42. We will consider on a case-by-case basis other claims of technical or economic infeasibility, such as DISH's

[205] DIRECTV *ex parte* (dated Jun. 11, 2015) at 1. In other words, because a carrier does not normally have to demonstrate insufficient spot beam coverage with respect to the provision of local service to a local television market (*i.e.,* a carrier provides local service in the areas of the market covered by the relevant spot beam), it would be inconsistent to require a carrier to make a detailed demonstration of insufficient spot beam coverage with respect to the provision of local service to a new community added to such market. *See DBS Broadcast Carriage Report and Order,* para. 42 (allowing satellite carriers to use spot beam technology to provide local-into-local service, even if the spot beam did not cover the entire market).

[206] We note that this certification process will be explained in the consumer guide that we create to comply with the STELAR section 102(c).

[207] *See infra* at para. 41 (Content of Spot Beam Coverage Infeasibility Detailed Certification).

[208] 47 U.S.C. 154(i), 154(j), 308(b), 403. If we find that a satellite carrier is claiming infeasibility with respect to a significant number of requests, we may decide to start routinely requiring that carrier to provide supporting documentation with its certification. *See infra* at para. 40 (Supporting Documentation). *See also* NAB *ex parte* (dated Jul. 15, 2015) at 2 (urging the Commission to require carriers to file certain materials supporting certifications).

[209] DIRECTV *ex parte* (dated Jul. 23, 2015) at 1.

[210] *Id.*

[211] *Id.* NAB stated that detailed certifications provided by the carrier to demonstrate spot beam coverage infeasibility should be supported by the following documentation: ''(1) the latitude and longitude of the calculation point used for each zip code in analyzing (a) the measured performance of the spot beam covering station's local market; (b) the estimated atmospheric effects for reception of the signal; and (c) the estimated levels of interference]; (2) predicted clear-sky signal level based on actual spot beam performance; (3) rain fade statistics and predicted reductions in signal level; (4) predicted levels of inter-system interference; and (5) determination of service or ''no service'' at the calculation point (in map form with county boundaries shown).'' *See* NAB *ex parte* (dated Jul. 15, 2015) at 2.

[212] *See* NAB *ex parte* (dated Jul. 15, 2015) at 2; DIRECTV *ex parte* (dated Jul. 23, 2015) at 1 (''if a satellite carrier were to certify that it could not serve some or all of a proposed modified area, and Commission staff were to find a genuine dispute of fact related to such certification, the Commission could require the satellite carrier to submit a representative link budget for the area in question for staff review on a confidential basis.'').

[213] *See* NAB *ex parte* (dated Jul. 15, 2015) at 2 (seeking carrier retention of supporting material ''for a period of either: (i) Two years; or (ii) throughout the pendency of Commission or judicial proceedings involving the certification and any related market modification petition, whichever is longer''); DIRECTV *ex parte* (dated Jul. 23, 2015) at 2. (''Satellite carriers could be required to preserve records sufficient to generate such a representative link budget, presumably during the pendency of any market modification proceeding.'').

[214] *See* 47 CFR 0.457, 0.459, 76.9.

[215] *See* DIRECTV *ex parte* (dated Jul. 9, 2015) at 3–4. We find that DIRECTV's proposed detailed certification would meet a satellite carrier's burden to demonstrate spot beam coverage infeasibility.

[216] DIRECTV *ex parte* (dated Jun. 23, 2015) at 1.

[217] DIRECTV *ex parte* (dated Jul. 9, 2015) at 4.

[218] 47 CFR 1.16 (Declarations under penalty of perjury in lieu of affidavits). *See* 28 U.S.C. 1746.

[219] We further note that willful false statements in a certification are punishable by fine and/or imprisonment pursuant to 18 U.S.C. 1001, may result in loss of a satellite carrier's licenses and authorizations (47 U.S.C. 312), and may subject the satellite carrier to forfeiture (47 U.S.C. 503). *See also* 47 CFR 1.17. *See* NAB *ex parte* (dated Jul. 15, 2015) at 2–3.

claim of infeasibility due to the costs associated with changing customer satellite dishes to accommodate reception from different orbital locations. In addition, there may be circumstances of technical and economic infeasibility not yet contemplated. As discussed above, a satellite carrier bears the burden of demonstrating that the carriage contemplated in a market modification would not be technically and economically feasible by operation of its satellites. To demonstrate such infeasibility, a carrier must provide detailed technical or economic information to substantiate its claim of infeasibility.

3. Infeasibility Determinations

43. We will resolve disputes about carrier claims of infeasibility either in the context of a market modification proceeding or, at a prospective petitioner's option, in a separate proceeding before a market modification petition is filed. Thus, a prospective petitioner has two options. First, a prospective petitioner may file its market modification petition. In such cases, a satellite carrier would raise any claim of infeasibility in response to the petition and we would make a determination about the validity of such claim (and would not further process a petition for which the resulting carriage is infeasible). We recognize that prospective petitioners may want to know about carrier's claims of infeasibility, and may want a Commission determination about the validity of such claim, before filing a market modification petition. Therefore, a prospective petitioner's second option is to initiate the pre-filing coordination process (described below). Through this process, a prospective petitioner would request information from a carrier about infeasibility and a carrier would raise any claim of infeasibility in response to this request in the form of a certification. A carrier claiming spot beam coverage infeasibility must provide the detailed certification (described above). For all other claims of infeasibility, the certification provided for here is for the purpose of a carrier to notify the prospective petitioner about the carrier's claim of infeasibility prior to a petition being filed. The prospective petitioner can then decide whether it would like to file a special relief petition to obtain a Commission determination about the validity of the carrier's claim of infeasibility.[220]

44. The NPRM tentatively concluded that a satellite carrier must raise any technical or economic impediments in the market modification proceeding.[221] The NPRM sought comment on whether the Commission, in the case of satellite market modifications, should require or encourage stations seeking market modifications to contact a satellite carrier before filing a market modification request in order to get an initial determination of whether the carrier considers the request technically and economically feasible.[222] The NPRM observed that such an initial inquiry might save some broadcasters the time and expense of compiling the standardized evidence for a modification that is not technically and economically feasible by alerting them to the technical or economic issue, which they could then take into account in deciding whether to file the request.[223]

45. Most commenters support addressing satellite carrier claims of infeasibility before a broadcaster files a prospective market modification petition;[224] however, NAB argues that a satellite carrier's claim of infeasibility should not preclude the filing of a market modification petition.[225] Commenters seem to agree that satellite carriers generally must raise claims of technical and economic infeasibility during, if not before, the market modification proceeding.[226] Broadcasters, however, argue that a satellite carrier should be deemed to have waived technical and economic infeasibility claims if not raised in or before a market modification proceeding,[227] while DIRECTV argues that satellite carriers should not be precluded from raising future claims of infeasibility, such as technical infeasibility due to reduced spot beam coverage.[228]

46. We conclude that it is most efficient and practical for stakeholders to consider and resolve satellite carrier claims of technical or economic infeasibility before petitioners go through the time and expense of seeking a prospective market modification and before the Commission uses administrative resources to evaluate the merits of a prospective market modification petition under the five statutory factors. Therefore, we slightly modify our tentative conclusion and proposal.[229] We conclude that a satellite carrier must raise any technical or economic impediments either in the market modification proceeding or prior to the market modification proceeding in response to a broadcaster or county government inquiry about feasibility of carriage resulting from a prospective market modification.[230]

47. *Pre-Filing Coordination Process.* We establish a process that will allow a prospective petitioner (broadcaster or county government), at its option, to obtain a certification from a satellite carrier about whether or not (and to what extent) carriage resulting from a contemplated market modification is technically and economically feasible for such carrier before the prospective petitioner undertakes the time and expense of preparing and filing a market modification petition.[231] To initiate this

[220] As discussed above, in cases other than spot beam coverage infeasibility, a carrier will be required to provide evidence to support its claim of infeasibility. In the case of a claim of spot beam coverage infeasibility, the Commission's review of the certification will generally be limited to determining whether it meets with the requirements for a ''detailed certification.'' *See supra* section III.D.2.

[221] *NPRM,* para. 19. The *NPRM* further considered whether the satellite carrier should be deemed to have waived technical or economic infeasibility arguments if not raised in response to the market modification request (and, thus, be prohibited from raising such a claim after a market determination, such as in response to a station's request for carriage). *Id.*

[222] *NPRM,* para. 21.

[223] *NPRM,* para. 21.

[224] DIRECTV Comments at 11; Gray Comments at 6; WVIR–TV Reply at 2 n.1.

[225] NAB Comments at 9–10.

[226] *See* NAB Comments at 7 (stating that ''the statute requires satellite carriers to raise any technical or economic impediments in the context of the market modification proceeding''); Gray Comments at 6 (stating ''the rules should require satellite providers to assert technical infeasibility before broadcasters go through the trouble and expense of preparing a market modification petition''); DIRECTV Comments at 11 (stating that it would be willing to provide a certification to broadcasters about ''whether DIRECTV's spot beam covers the communities they would like to add to their local markets'' before a broadcaster seeks a prospective market modification because ''[s]uch information . . . would prove of most value to stations before they undergo the time and effort of filing a market modification petition.'').

[227] NAB Comments at 7 (stating that ''that a satellite carrier be deemed to have waived technical and economic infeasibility arguments if they are not raised during a market modification proceeding''); Gray at 6 (asserting that ''[f]ailure to assert 'technical infeasibility' at this stage of the process would foreclose the satellite provider from later claiming technical infeasibility.'').

[228] DIRECTV Comments at 10 n.28 (''The possibility of technical problems reducing spot-beam coverage serves as yet another reason why satellite carriers should not lose 'rights' to assert feasibility issues if they do not raise them during a market modification proceeding'').

[229] *NPRM,* para. 19.

[230] In the event that a previously feasible market modification were to later become infeasible (*e.g.,* due to reduction of spot beam coverage), the satellite carrier must file a petition for market modification to delete the previously added new community from the station's local market and provide evidence of infeasibility (*e.g.,* spot beam infeasibility certification). *See* DIRECTV Comments at 10 n.28.

[231] *See* Gray Comments at 7 (stating ''there should be a procedure for resolving disputes over technical

process, a prospective petitioner may make a request in writing to a satellite carrier for the carrier to provide the certification about the feasibility or infeasibility of carriage. A satellite carrier must respond to this request within a reasonable amount of time by providing a feasibility certification to the prospective petitioner. A satellite carrier must also file a copy of the correspondence [232] and feasibility certification it provides to the prospective petitioner in this docket electronically via ECFS [233] so that the Media Bureau can track these certifications and monitor carrier response time. If the carrier is claiming spot beam coverage infeasibility, then the certification provided by the carrier must be the same type of detailed certification that would be required in response to a market modification petition (discussed above).[234] For any other claim of infeasibility, the carrier's feasibility certification must explain in detail the basis of such infeasibility [235] and must be prepared to provide documentation in support of its claim, in the event the prospective petitioner decides to seek a Commission determination about the validity of the carrier's claim. If carriage is feasible, a statement to that effect must be provided in the certification. To obtain a Commission determination about the validity of the carrier's claim of infeasibility, a prospective petitioner must either file a (separate) petition for special relief [236] or its market modification petition.[237]

48. For purposes of determining a reasonable amount of time for a carrier to respond to a request for a feasibility certification, we find a carrier should generally respond within 45 days of receipt of a prospective petitioner's written request; [238] however, we find that it would be reasonable for the carrier to respond in 90 days if the carrier has to process several requests at the same time.[239] If the response is after 45 days, the carrier must provide an explanation for the longer time period in its certification (*e.g.*, having to respond to multiple simultaneous requests).[240] With this process, we are trying to balance the need to provide broadcasters' with as fast a response as possible, while recognizing that satellite carriers may have difficulty responding to numerous requests at once.

49. The NPRM proposed that a meritorious market modification request would be granted even if such grant would not create a new carriage obligation at that time, for example, due to a finding of technical or economic infeasibility.[241] The NPRM explained that this would ensure that, if there is a change in circumstances such that it later becomes technically and economically feasible for the satellite carrier to carry the station, then the station could assert its carriage rights pursuant to the earlier market modification.[242] The NPRM also sought comment on whether to impose a reporting requirement on satellite carriers to notify the affected broadcaster if circumstances change at a later time making it technically and economically feasible for the carrier to carry the station.[243] NAB supports the proposal to grant a meritorious market modification request, even if the grant would not create a new carriage obligation at that time because of a finding of technical or economic infeasibility.[244] Commenters split regarding whether to require satellite carriers to provide notice if and when carriage later becomes feasible. Broadcasters support such a requirement,[245] while satellite carriers oppose it.[246]

50. We conclude that we will not grant a market modification petition that could not create a new carriage obligation at that time due to a finding of technical or economic infeasibility. We find that our conclusion is more consistent with the statute's requirement that a market modification ''shall not create additional carriage obligations for a satellite carrier'' if it is infeasible ''at the time of the determination.'' [247] We also note that

infeasibility before broadcasters invest in making the necessary market modification showing''); DIRECTV Comments at 11 (''the most efficient process regarding feasibility would be for a station that is considering filing a market modification petition to first ask the two satellite carriers if they can provide the station in the communities proposed''). Although we encourage prospective petitioners to utilize the optional procedure for obtaining information and, if necessary, Commission determinations regarding carrier claims of infeasibility, we decline to require this preliminary procedure in order to provide petitioners with flexibility to decide which procedure is best suited for their situation.

[232] Correspondence would include, for example, a brief cover letter and the prospective petitioner's initiating request for the feasibility certification provided.

[233] A satellite carrier must file the correspondence and feasibility certification electronically into this docket through the Commission's Electronic Comment Filing System (''ECFS'') using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* . The filing must be clearly designated as a ''STELAR feasibility certification'' and must clearly reference this proceeding and docket number (MB Docket No. 15–71).

[234] *See supra* at paras. 39–41. NAB *ex parte* (dated Jul. 15, 2015) at 2 (with respect to a ''pre-filing process,'' stating that ''the satellite carrier should be required to undertake the same steps and make the same certification that would be involved in connection with an actual petition'').

[235] The carrier must state in its certification that the new community is covered by the relevant spot beam, but carriage is nevertheless infeasible and explain why.

[236] *See* 47 CFR 76.7.

[237] The Bureau may on its own motion review the adequacy of a certification filed in the docket, but generally a prospective petitioner must request such review by filing a petition for special relief; 47 CFR 76.7. *See* Gray Comments at 7 (stating ''[i]f a broadcaster wishes to challenge the satellite operator's showing, it should be permitted to do so either before filing a market modification petition or concurrent with a petition as part of the market modification proceeding.''); NAB *ex parte* (dated Jul. 15, 2015) at 2 (stating that ''the satellite carrier's determination should be reviewable by the FCC and result in a final FCC action that could be the subject of a petition for reconsideration, applications for review (and ultimately, court review'').

[238] *See* Gray Comments at 6 (stating that satellite carriers should be required to respond to requests about spot-beam coverage within a ''specified period'' such as 30 or 45 days).

[239] DIRECTV explains that ''while DIRECTV will endeavor to respond to any and all requests as soon as it can, it should not be required to do so in fewer than 90 days, particularly if required to respond to multiple simultaneous requests.'' DIRECTV Reply at 10.

[240] If the Media Bureau finds that a carrier is routinely taking up to 90 days to respond or is not providing a reasonable explanation for when it takes 90 days to respond, the Bureau may order such carrier to respond to future requests in a shorter time period or may take other enforcement action.

[241] *NPRM*, para. 19. The *NPRM* noted that this is consistent with the cable carriage context, in which the Commission might grant a market modification, even if such grant would not result in a new carriage obligation at that time, for example, due to the station being a duplicating signal. *See* 47 CFR 76.56(b)(5).

[242] *NPRM*, para. 19. This concept is similar to the duplicating signals situation, in which a satellite carrier must add a television station to its channel line-up if such station no longer duplicates the programming of another local television station. *See* 47 CFR 76.66(h)(4). Alternatively, the *NPRM* sought comment on whether we should deny a market modification request that would not create a new carriage obligation at the time of the determination. *NPRM,* para. 19.

[243] *NPRM*, para. 20. The *NPRM* asked ''Would such changes in circumstances be sufficiently public so as to not necessitate the burden of such a reporting requirement? If not notified by the carrier, how else could a broadcaster find out about such a change in the feasibility of carriage?'' *Id.*

[244] NAB Comments at 7–8.

[245] *See* Gray Comments at 7 (''Satellite operators likewise should be required to notify broadcasters and the FCC within sixty days of any change that results in previously infeasible carriage becoming feasible.''); NAB Comments at 8; WVIR–TV Reply at 3. Gray suggests that this requirement include notice to the broadcaster and the Commission within sixty days of feasibility, as well as periodic reports affirming continued infeasibility. Gray Comments at 7.

[246] *See* DISH Comments at 8 (arguing that ''a [reporting] requirement would be unduly burdensome for the satellite carrier because it would require a carrier to constantly track and reevaluate an unknown number of market modification requests.''); DIRECTV Comments at 10 (''the Commission should not require ongoing monitoring or reporting of spot beam issues. . . . [A]bsent technical problems reducing spot-beam coverage, spot beams remain static for the life of the satellite.'').

[247] *See* 47 U.S.C. 338(l)(3). *See also Senate Commerce Committee Report* at 11 (indicating an

Continued

claims of infeasibility related to a carrier's satellites are not likely to change for the life of a satellite, which can be as long as 15 years.[248] Because we will not grant a market modification for which carriage would be infeasible, we find it unnecessary to require satellite carriers to provide notice if and when carriage later becomes feasible. Instead, a petitioner may re-initiate the process if at a later time a satellite carrier has deployed new satellites that could change this feasibility determination.

E. No Effect on Eligibility To Receive Distant Signals via Satellite

51. We adopt our proposal to codify the language of section 338(l)(5), which provides that ''[n]o modification of a commercial television broadcast station's local market pursuant to this subsection shall have any effect on the eligibility of households in the community affected by such modification to receive distant signals pursuant to section 339, notwithstanding subsection (h)(1) of this section.'' [249] We also adopt our interpretation of this provision as an exception to the restrictions on a satellite subscriber's eligibility to receive ''distant'' (out-of-market) signals.[250] Commenters on this issue supported our proposal.[251]

52. The Communications Act and copyright laws set out two key restrictions on a satellite subscriber's eligibility to receive ''distant'' (out-of-market) signals.[252] First, subscribers are generally eligible to receive a distant station from a satellite carrier only if the subscriber is ''unserved'' over the air by a local station of the same network.[253] Second, even if ''unserved,'' a subscriber is not eligible to receive a distant station from a satellite carrier if the carrier is making ''available'' to such subscriber a local station of the same network.[254] We conclude that section 338(l)(5) is largely intended as an exception to these two subscriber eligibility requirements. In other words, we find that the addition of a new local station to a local television market by operation of a market modification (which might otherwise restrict a subscriber's eligibility to receive a distant station) would not disqualify an otherwise eligible satellite subscriber from receiving a distant station of the same network. For example, a subscriber may be receiving a distant station because the subscriber resides in a ''short market,'' [255] has obtained a waiver from the relevant network station,[256] or is otherwise eligible to receive distant signals pursuant to section 339. That subscriber will continue to be eligible to receive the distant station after a market modification that adds a new local station of the same network.

53. The NPRM sought comment on whether section 338(l)(5) also means that the deletion of a local station from a local television market by operation of a market modification would not make otherwise ineligible subscribers now eligible to receive a distant station of the same network.[257] We agree with DIRECTV that this provision ''was meant to ensure that households would not lose eligibility for distant signals for which they were eligible prior to modification'' and should not ''be interpreted as denying distant signals to subscribers who newly become eligible for them because they have lost their local signals through market modification.'' [258] Thus, the deletion of a local network station from a community by operation of a market modification may allow a satellite carrier to import a distant station of the same network into such community, provided subscribers in such community would now satisfy the requirements for receipt of distant stations (pursuant to section 339).

F. Definition of Community

54. For purposes of a satellite market modification, we define a ''satellite community'' as a county, which is supported by all commenters on this issue.[259] Consistent with the cable context, in a market modification request, the petitioner will define the satellite community (or communities) to be added or deleted from a particular station's local television market. We also retain our existing definition of a ''cable community'' for purposes of a cable market modification, having received no comment on this issue.

55. In the NPRM, as directed by the STELAR,[260] we sought comment on how to define a ''community'' for purposes of market modification in both the cable and satellite contexts.[261] The concept of a ''community'' is important in the market modification context because the term describes the geographic area that will be added to or deleted from a station's local television market (based on the statutory factors), which in turn determines the stations that must be carried by a cable operator or a satellite carrier to subscribers in

expectation that ''a petitioner may refile its petition if at a later time a satellite carrier has deployed new satellites that could change this feasibility determination'').

[248] *See* DIRECTV Comments at 10 (''absent technical problems *reducing* spot-beam coverage, spot beams remain static for the life of the satellite''); DIRECTV *ex parte* (dated Jul. 9, 2015) at 2 (''While the figure varies for individual satellites, 15 years represents a good 'rule of thumb' for the life of a direct-to-home geostationary satellite.''). *See also Amendment of Commission's Space Station Licensing Rules and Policies*, IB Docket No. 00–248, First Report and Order, FCC 02–45, para. 143, 67 FR 12485, Mar. 19, 2002.

[249] 47 U.S.C. 338(l)(5); *NPRM*, para. 22. *See* 47 CFR 76.59(f).

[250] *NPRM*, para. 22.

[251] *See* DIRECTV Comments at 8 n.21; DISH Comments at 6.

[252] *See* 17 U.S.C. 119; 47 U.S.C. 339. Generally, a station is considered ''distant'' with respect to a subscriber if such station originates from outside of the subscriber's local television market (or DMA). *See id.*

[253] The Copyright Act defines an ''unserved household,'' with respect to a particular television network, as ''a household that cannot receive, through the use of an antenna, an over-the-air signal containing the primary stream, or, on or after the qualifying date, the multicast stream, originating in that household's local market and affiliated with that network—(i) if the signal originates as an analog signal, Grade B intensity as defined by the Federal Communications Commission in section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999; or (ii) if the signal originates as a digital signal, intensity defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission (section 73.622(e) of title 47, Code of Federal Regulations), as such regulations may be amended from time to time. 17 U.S.C. 119(d)(10)(A). An unserved household can also be one that is subject to one of four statutory waivers or exemptions. *See* 47 U.S.C. 119(d)(10)(B) through (E).

[254] *See* 47 U.S.C. 339(a)(2); 17 U.S.C. 119(a)(3). This second restriction on eligibility is commonly referred to as the ''no distant where local'' rule. A satellite carrier makes ''available'' a local signal to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zip code as that subscriber or person. 47 U.S.C. 339(a)(2)(H). *See also* 17 U.S.C. 119(a)(3)(F).

[255] *See* 47 U.S.C. 339(a)(2)(C); 17 U.S.C. 119(d)(10). By a ''short market,'' we refer to a market in which one of the four major television networks is not offered on the primary stream of a local broadcast station, thus permitting satellite carriers to deliver a distant station affiliated with that missing network to subscribers in that market.

[256] *See* 47 U.S.C. 339(a)(2)(E).

[257] *NPRM*, para. 22.

[258] DIRECTV Comments at 7–8, n.21.

[259] *See* 47 CFR 76.5(gg)(2). *See* DISH Comments at 6; Gray Comments at 3; UCC Comments at 8; Sen. Bennet *et al.* Letter at 1. *See also* DIRECTV Reply at 11–12 (stating a county-based definition was acceptable, if certain conditions were met).

[260] Section 102(d)(2) of the STELAR requires the Commission to ''update what it considers to be a community for purposes of a modification of a market'' in both the satellite and cable contexts. *See* STELAR sec. 102(d)(2); 47 U.S.C.A. 338 Note. The legislative history indicates Congress' intent for the Commission ''to consider alternative definitions for community that could make the market modification process more effective and useful.'' *Senate Commerce Committee Report* at 12.

[261] *See NPRM*, para. 23. In considering how to define a ''satellite community'' for purposes of a satellite market modification, the *NPRM* sought comment on whether to use a cable community-based definition (as was done in the significantly viewed context; *see* 47 CFR 76.5(gg)), a zip code-based definition, and/or a county-based definition. *See NPRM*, para. 25.

that community.[262] Because of the localized nature of cable systems, cable communities are usually easily defined by the geographic boundaries of a given cable system, which are often, but not always, coincident with a municipal boundary and may vary as determined on a case-by-case basis.[263] In the cable carriage context, the Commission considers market modification requests on a community-by-community basis [264] and defines a community unit in terms of a ''distinct community or municipal entity'' where a cable system operates or will operate.[265] A ''satellite community,'' however, is not as easily defined as a cable community. Unlike cable service, which reaches subscribers in a defined local area via local franchises, satellite carriers offer service on a national basis, with no connection to a particular local community or municipality. Moreover, satellite service is sometimes offered in areas of the country that do not have cable service, and thus cannot be defined by cable communities.

56. *Satellite Community.* We define a ''satellite community'' on a county basis. All commenters on this issue support this definition.[266] DISH and Gray assert that the use of a county definition will better address the orphan county problem.[267] In addition, UCC observes that ''[c]ounty-wide data is more easily available than community-specific data.'' [268] We agree. DIRECTV, who initially supported only zip codes, stated in its reply that it could support a county-based definition, as long as satellite carriers are not required to provide service to the parts of a modified market outside the market's spot beam.[269] We agree with commenters that a county definition is better suited for the national nature of satellite service and will most effectively promote access to in-state programming for subscribers in orphan counties. In addition, we agree that county-wide data will work effectively and is easily available. We also take note of the support for a county definition from both broadcasters and satellite carriers. Thus, we are persuaded that allowing satellite market modifications on a county basis would best effectuate the satellite market modification provision.

57. We find this approach preferable to defining a ''satellite community'' on a cable community [270] or zip code basis. In the NPRM, we considered a cable community and/or a zip code as two possible definitions of a satellite community for purposes of market modification.[271] No commenters supported the cable community-based definition. We observed the Commission's use of a cable community-based definition in the significantly viewed context.[272] As noted above, satellite carriers, unlike cable systems, have no connection to a particular local community or municipality. Given this fact, and based on the absence of any support for this definition, we reject a cable community-based definition for the satellite market modification context. DIRECTV supports the use of zip codes, explaining it determines spot-beam coverage based on zip codes, but (as noted above) expressed qualified support for a county-based definition.[273] DISH opposes the use of zip codes, explaining that its systems recognize DMA boundaries based on counties, and that it would be burdensome to do zip-code-based modifications.[274] Given DIRECTV's qualified support for a county-based definition and DISH's difficulties associated with the use of zip codes, we reject a zip-code-based definition for the satellite market modification context.

58. *Definition of ''Cable Community'' for Cable Market Modifications.* We adopt our tentative conclusion to retain the existing definition of a ''cable community.'' [275] No comments were filed on this issue. Section 76.5(dd) of the rules defines a ''community unit'' as ''[a] cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).'' [276] We conclude that this definition has worked well in cable market modifications for more than 20 years and should not be changed. We find that retaining the cable definition best effectuates the cable market modification provision. Although (as discussed herein) we allow a satellite community to be defined on a county basis, we see no reason to change the definition to allow cable modifications on a county basis. Despite our objective of treating satellite market modifications and cable market modifications similarly where feasible, we find that practical differences justify different treatment on this issue.

IV. Procedural Matters

A. Final Regulatory Flexibility Act Analysis

59. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[277] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in this

[262] *See NPRM,* para. 24. *See also* 47 U.S.C. 338(a)(1); 47 CFR 76.66(b)(1).

[263] *See Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems,* Docket No. 20561, First Report and Order, FCC 77–205, para. 20 n.5, 42 FR 19329, Apr. 13, 1977 (*1977 Cable Order*) (citing *Amendment of Parts 21, 74, and 91 to Adopt Rules and Regulations Relating to the Distribution of Television Broadcast Signals By Community Antenna Television Systems, and Related Matters,* Docket Nos. 14895, 15233, 15971, Second Report and Order, FCC 66–220, para. 149, 31 FR 4540, Mar. 17, 1966 (''community'' as used in the rules must be determined case-by-case depending on the circumstances involved).

[264] *See 1977 Cable Order*, para. 22 (explaining that the cable carriage rules apply ''on a community-by-community basis''). *See also* 47 CFR 76.5(dd), 76.59.

[265] *See* 47 CFR 76.5(dd). A cable system community is assigned a community unit identifier number (''CUID'') when registered with the Commission, pursuant to section 76.1801 of the rules. 47 CFR 76.1801.

[266] *See* DISH Comments at 6; Gray Comments at 3; UCC Comments at 8; Sen. Bennet *et al.* Letter at 1. *See also* DIRECTV Reply at 11–12 (stating a county-based definition was acceptable, if certain conditions were met).

[267] *See* DISH Comments at 6 (''a county-based definition will most effectively promote consumer access to in-state programming''); Gray Comments at 3 (''county-by-county approach would best carry out Congress' intent to give the FCC the tools necessary to solve the 'orphan county' problem in appropriate cases''). Gray also states that ''a county-by-county approach better suits the way that satellite providers actually provide service.'' Gray Comments at 3–4. DISH also observes that ''[t]his approach mirrors the existing statutory special exceptions in section 122 designed to address orphan counties, such as the provision allowing a satellite carrier to provide in-state local broadcast stations to two counties in Vermont that are assigned to out-of-state DMAs.'' DISH Comments at 6 (citing 17 U.S.C. 122(a)(4)(B)).

[268] UCC Comments at 8.

[269] DIRECTV Reply at 11–12. DIRECTV initially conditioned its support for a county-based definition on our requiring broadcasters to provide the zip codes corresponding with the county in the market modification petition. *Id.* DIRECTV later clarified that ''it should be a relatively easy task for either satellite carriers or broadcasters to associate zip codes with particular market modification requests.'' DIRECTV *ex parte* (dated July 9, 2015) at 2.

[270] The *NPRM* considered the ''satellite community'' definition in the significantly viewed context, which is based on the definition of a ''cable community.'' *NPRM*, para. 25. *See* 47 CFR 76.5(gg) (defining a ''satellite community'' for the significantly viewed context).

[271] *See NPRM*, para. 25.

[272] *See* 47 CFR 76.5(gg).

[273] DIRECTV Comments at 12; DIRECTV Reply at 11.

[274] DISH *ex parte* (dated June 11, 2015) at 3.

[275] *See NPRM,* para. 23.

[276] 47 CFR 76.5(dd).

[277] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

proceeding.[278] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[279]

1. Need for, and Objectives of, the Rules

60. This Report and Order adopts rules to implement section 102 of the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (''STELA Reauthorization Act'' or ''STELAR'').[280] The STELAR amended the Communications Act and the Copyright Act to give the Commission authority to modify a commercial television broadcast station's local television market for purposes of satellite carriage rights.[281] The Commission previously had the authority to modify markets only in the cable carriage context.[282] With section 102 of the STELAR, Congress provides regulatory parity in this regard in order to promote consumer access to in-state and other relevant television programming. Significantly, the STELAR added a new factor for the Commission to consider when evaluating a market modification petition—''whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence.'' [283] Section 102 of the STELAR, and the Commission's actions in this Report and Order, seek to establish a market modification process for the satellite carriage context and, to the extent possible, address satellite subscribers' inability to receive in-state programming in certain areas. In this Report and Order, consistent with Congress' intent that the Commission model the satellite market modification process on the current cable market modification process, the Commission adopts rules to implement section 102 of the STELAR by revising the current cable market modification rule, section 76.59, to apply also to satellite carriage, while adding provisions to the rules to address the unique nature of satellite television service.[284] For example, the STELAR recognizes that satellite carriage of additional stations pursuant to a market modification might be technically and economically infeasible in some circumstances.[285] In addition to establishing rules for satellite market modifications, section 102 of the STELAR directs the Commission to consider whether it should make changes to the current cable market modification rules,[286] and it also makes certain conforming amendments to the cable market modification statutory provision.[287] Accordingly, as part of the implementation of the STELAR, the Commission makes conforming and other minor changes to the cable market modification rules.

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

61. No public comments were filed in response to the IRFA.

62. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[288] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

3. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

63. The RFA directs agencies to provide a description of and an estimate of the number of small entities to which the rules will apply.[289] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [290] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[291] 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 SBA.[292] The rule changes adopted herein will directly affect small television broadcast stations, small MVPD systems, which include cable system operators and satellite carriers and small county governmental jurisdictions. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

64. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [293] Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.[294] We estimate that, of this total, a substantial majority may qualify as ''small governmental jurisdictions.'' [295] Thus,

[278] *See Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014;* MB Docket No. 15–71, Notice of Proposed Rulemaking, FCC 15–34, 80 FR 19594, Apr. 13, 2015 (NPRM).

[279] *See* 5 U.S.C. 604.

[280] The STELA Reauthorization Act of 2014 (STELAR), sec. 102, Public Law 113–200, 128 Stat. 2059, 2060–62 (2014) (codified at 47 U.S.C. 338(l)). The STELAR was enacted on December 4, 2014 (H. R. 5728, 113th Cong.). *See* Report and Order, para. 1.

[281] STELAR secs. 102, 204, 128 Stat. at 2060–62, 2067.

[282] *See* 47 U.S.C. 534(h)(1)(C). *See also* 47 CFR 76.59.

[283] *See* 47 U.S.C. 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

[284] *See* 47 CFR 76.59. The Commission revises section 76.59 of the rules to apply to both cable systems and satellite carriers.

[285] 47 U.S.C. 338(l)(3) (stating that ''[a] market determination . . . shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.'').

[286] STELAR sec. 102(d).

[287] *See* STELAR sec. 102(b) (amending 47 U.S.C. 534(h)(1)(C)(ii)).

[288] *See* 5 U.S.C. 604(a)(3).

[289] 5 U.S.C. 604(a)(4).

[290] 5 U.S.C. 601(6).

[291] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). 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 Small Business Administration 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**.'' 5 U.S.C. 601(3).

[292] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[293] 5 U.S.C. 601(5).

[294] U.S. Census Bureau, Statistical Abstract of the United States: 2011, Table 427 (2007).

[295] The 2007 U.S Census data for small governmental organizations indicate that there were 89,476 local governments in 2007. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Table 428. The criterion by which the size of such local governments is determined to be small is a population of fewer than 50,000. 5 U.S.C. 601(5). However, since the Census Bureau, in compiling the cited data, does not state that it applies that criterion, it cannot be determined with precision how many such local governmental organizations are small. Nonetheless, the inference seems reasonable that a substantial number of these governmental organizations have a population of fewer than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census's Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many sub-entities that may well be small are included in the 89,476 local governmental organizations, *e.g.*, county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of fewer than 50,000, many of the cited sub-entities in this category seem more likely

we estimate that most governmental jurisdictions are small.

65. *Wired Telecommunications Carriers.* The North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' [296] The SBA has developed a small business size standard for wireline firms for the broad economic census category of ''Wired Telecommunications Carriers.'' Under this category, a wireline business is small if it has 1,500 or fewer employees.[297] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[298] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[299] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

66. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above.[300] The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees.[301] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[302] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[303] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

67. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rate regulation rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[304] According to the Television and Cable Factbook, there are 856 cable operators.[305] Of this total, all but 10 incumbent cable companies are small under this size standard.[306] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[307] Current Commission records show 4,562 cable systems nationwide.[308] Of this total, 4,000 cable systems have fewer than 20,000 subscribers, and 562 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

68. *Cable System Operators* (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [309] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[310] Based on available data, we find that all but 10 incumbent cable operators are small under this size

than larger county-level governmental organizations to have small populations. Accordingly, of the 89,746 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority are small.

[296] U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.* Examples of this category are: broadband Internet service providers (*e.g.,* cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (''CCTV'') services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (''DTH'') services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (''MMDS'').

[297] 13 CFRCFR 121.201; NAICS code 517110.

[298] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[299] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[300] *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[301] 13 CFR 121.201; NAICS code 517110.

[302] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[303] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[304] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92–266, MM Docket No. 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, FCC 95–196, 60 FR 35854, July 12, 1995.

[305] *See* Warren Communications News, ''Television and Cable Factbook 2015'', Cable Volume 2, at D–1073—D–1120. We note that, according to NCTA, there are 660 cable systems. *See* NCTA, Industry Data, Number of Cable Operators and Systems, *http://www.ncta.com/Statistics.aspx* (visited Aug. 6, 2015). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming,* MB Docket No. 12–203, Fifteenth Report, FCC 13–99, para. 24 (rel. July 22, 2013) (*15th Annual Competition Report*).

[306] SNL Kagan, U.S. Multichannel Top Cable MSOs, *http://www.snl.com/interactivex/TopCableMSOs.aspx* (visited June 26, 2014). We note that when this size standard (*i.e.,* 400,000 or fewer subscribers) is applied to all MVPD operators, all but 14 MVPD operators would be considered small. *15th Annual Competition Report,* paras. 27–28 (subscriber data for DBS and Telephone MVPDs). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. *See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act,* MB Docket No. 11–93, Report and Order, FCC 11–182, para. 37, 77 FR 40276, July 9, 2012 (*CALM Act Report and Order*) (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

[307] 47 CFR 76.901(c).

[308] The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on August 6, 2015. A cable system is a physical system integrated to a principal headend. We note that, according to NCTA, there are 5,208 cable systems. *See* NCTA, Industry Data, Number of Cable Operators and Systems, *http://www.ncta.com/Statistics.aspx* (visited Aug. 6, 2015).

[309] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[310] 47 CFR 76.901(f); *see* Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01–158 (CSB, rel. Jan. 24, 2001) (establishing the threshold for determining whether a cable operator meets the definition of small cable operator at 677,000 subscribers and stating that this threshold will remain in effect for purposes of section 76.901(f) until the Commission issues a superseding public notice). We note that current industry data indicates that there are approximately 54 million incumbent cable video subscribers in the United States today and that this updated number may be considered in developing size standards in a context different than section 76.901(f). NCTA, Industry Data, Cable's Customer Base (June 2014), *https://www.ncta.com/industry-data* (visited June 25, 2014).

standard.[311] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[312] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable to estimate with greater precision the number of cable system operators that would qualify as small cable operators under this definition.

69. *Satellite Carriers.* The term ''satellite carrier'' means an entity that uses the facilities of a satellite or satellite service licensed under Part 25 of the Commission's rules to operate in the Direct Broadcast Satellite (DBS) service or Fixed-Satellite Service (FSS) frequencies.[313] As a general practice (not mandated by any regulation), DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.[314] The Commission has concluded that the definition of ''satellite carrier'' includes all three of these types of entities.[315]

70. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers,[316] which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[317] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[318] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[319] Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled ''Cable and Other Program Distribution.'' The definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts.[320] Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.[321] Each currently offers subscription services. DIRECTV and DISH Network each reports annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

71. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers,[322] which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[323] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[324] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[325] Therefore, under this size standard, the majority of such businesses can be considered small.

72. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired

[311] *See* SNL Kagan, U.S. Multichannel Top Cable MSOs, *http://www.snl.com/interactivex/TopCableMSOs.aspx* (visited June 26, 2014).

[312] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to [47 CFR] 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

[313] The Communications Act defines the term ''satellite carrier'' by reference to the definition in the copyright laws in title 17. *See* 47 U.S.C. 340(i)(1) and 338(k)(3); 17 U.S.C.119(d)(6). Part 100 of the Commission's rules was eliminated in 2002 and now both FSS and DBS satellite facilities are licensed under Part 25 of the rules. *Policies and Rules for the Direct Broadcast Satellite Service*, FCC 02–110, 67 FR 51110, August 7, 2002; 47 CFR 25.148.

[314] See, *e.g.*, Application Of DIRECTV Enterprises, LLC, Request For Special Temporary Authority for the DIRECTV 5 Satellite; Application Of DIRECTV Enterprises, LLC, Request for Blanket Authorization for 1,000,000 Receive Only Earth Stations to Provide Direct Broadcast Satellite Service in the U.S. using the Canadian Authorized DIRECTV 5 Satellite at the 72.5° W.L. Broadcast Satellite Service Location, Order and Authorization, DA 04–2526 (Sat. Div. rel. Aug. 13, 2004).

[315] SHVERA Significantly Viewed Report and Order, FCC 05–187, paras. 59–60.

[316] This category of Wired Telecommunications Carriers is defined above (''By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''). U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[317] 13 CFR 121.201; NAICS code 517110.

[318] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[319] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[320] 13 CFR 121.201; NAICS code 517510 (2002).

[321] S*ee 15th Annual Competition Report,* at para. 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at paras. 27, 110–11.

[322] This category of Wired Telecommunications Carriers is defined above (''By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''). U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[323] 13 CFR 121.201; NAICS code 517110.

[324] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[325] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

Telecommunications Carriers.[326] The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.[327] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[328] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[329] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

73. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[330] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[331] OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers.[332] The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.[333] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[334] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[335] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[336] Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises.[337] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

74. *Wireless cable systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS) [338] and Educational Broadband Service (EBS) [339] to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[340] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[341] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[342] The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.[343] Auction 86 concluded in 2009 with the sale of 61 licenses.[344] Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

75. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers,[345]

[326] This category of Wired Telecommunications Carriers is defined above (''By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''). U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[327] 13 CFR 121.201; NAICS code 517110.

[328] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[329] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[330] 47 U.S.C. 571(a)(3) through (4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* MB Docket No. 06–189, Thirteenth Annual Report, FCC 07–206, para. 135, 74 FR 11102, March 16, 2009 (2009) (''*Thirteenth Annual Cable Competition Report''*).

[331] *See* 47 U.S.C. 573.

[332] This category of Wired Telecommunications Carriers is defined above. *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[333] 13 CFR 121.201; NAICS code 517110.

[334] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[335] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[336] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[337] *See Thirteenth Annual Cable Competition Report,* para. 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[338] BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). *See Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131, PP Docket No. 93–253, Report and Order, FCC 95–230, para. 7, 60 FR 36524, Jul. 17, 1995.

[339] EBS was previously referred to as the Instructional Television Fixed Service (ITFS). *See id.*

[340] 47 CFR 21.961(b)(1).

[341] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1,500 or fewer employees.

[342] *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86,* AU Docket No. 09–56, Public Notice, DA 09–1376 (WTB rel. Jun. 26, 2009).

[343] *Id.*

[344] *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period,* Public Notice, DA 09–2378 (WTB rel. Nov. 6, 2009).

[345] This category of Wired Telecommunications Carriers is defined above. *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

which was developed for small wireline businesses. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees.[346] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[347] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[348] Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.[349] The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.[350]

76. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers.[351] Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[352] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[353] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[354] Therefore, under this size standard, the majority of such businesses can be considered small.

77. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [355] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[356] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

78. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers.[357] Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[358] Census data for 2007 shows that there were 3,188 firms that operated for the entire year.[359] Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.[360] Therefore, under this size standard, the majority of such businesses can be considered small.

79. *Television Broadcasting.* This economic census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' [361] The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts.[362] The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of $25,000,000 or less, and 99 had annual receipts of more than $25,000,000.[363] Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

80. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,390 stations.[364] Of this total, 1,221 stations (or about 88 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395.[365] NCE stations are non-profit, and therefore considered to be small entities.[366] Therefore, we estimate that

[346] 13 CFR 121.201; NAICS code 517110.

[347] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[348] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[349] *http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp.*

[350] The term ''small entity'' within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of fewer than 50,000). 5 U.S.C. 601(4) through (6).

[351] This category of Wired Telecommunications Carriers is defined above. *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[352] 13 CFR 121.201; NAICS code 517110.

[353] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[354] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[355] 15 U.S.C. 632.

[356] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[357] This category of Wired Telecommunications Carriers is defined above. *See also* U.S. Census Bureau, 2012 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[358] 13 CFR 121.201; NAICS code 517110.

[359] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, ''Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,'' NAICS code 517110, Table EC0751SSSZ5; available at *http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.*

[360] *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

[361] U.S. Census Bureau, 2012 NAICS Definitions, ''515120 Television Broadcasting,'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.''

[362] 13 CFR 121.201; 2012 NAICS code 515120.

[363] U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2007* (515120), *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.*

[364] *See Broadcast Station Totals as of December 31, 2014,* Press Release (MB rel. Jan. 7, 2015) (*Broadcast Station Totals*) at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-331381A1.pdf.*

[365] *See Broadcast Station Totals, supra.*

[366] *See generally* 5 U.S.C. 601(4), (6).

the majority of television broadcast stations are small entities.

81. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [367] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

82. *Class A TV and LPTV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations and low power television (LPTV) stations, as well as to potential licensees in these television services. As noted above, the SBA has created the following small business size standard for this category: those having $38.5 million or less in annual receipts.[368] The Commission has estimated the number of licensed Class A television stations to be 431.[369] The Commission has also estimated the number of licensed LPTV stations to be 2,003.[370] Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

83. The Report and Order revises section 76.59 of the rules to apply also to the satellite television context. The new satellite rules permit commercial television broadcast stations, satellite carriers and county governments to file petitions seeking to modify a commercial television broadcast station's local television market for purposes of satellite carriage rights.[371] Under section 76.59 of the rules, commercial TV broadcast stations and cable system operators may already file such requests for market modification for purposes of cable carriage rights. Consistent with the current cable requirements, the adopted rules require petitioners to file market modification requests and/or responsive pleadings in accordance with the procedures for filing Special Relief petitions in section 76.7 of the rules.[372] Consistent with the current cable requirements, the adopted rules require petitioners to provide specific forms of evidence to support market modification petitions, should they ch0ose to file such petitions.[373] A television broadcast station that becomes eligible for mandatory satellite carriage by operation of a market modification may elect retransmission consent or mandatory carriage with respect to a satellite carrier within 30 days of the market determination.[374] A satellite carrier must commence carriage within 90 days of receiving the station's request for carriage.[375]

84. The Report and Order establishes a process that will allow a prospective petitioner (*i.e.,* broadcaster or county government) to obtain a certification from a satellite carrier about whether or not (and to what extent) carriage resulting from a contemplated market modification is technically and economically feasible for such carrier before the prospective petitioner undertakes the time and expense of preparing and filing a market modification petition.[376] To initiate this process, a prospective petitioner may make a request in writing to a satellite carrier for the carrier to provide the certification about the feasibility or infeasibility of carriage. A satellite carrier must respond to this request within a reasonable amount of time by providing a feasibility certification to the prospective petitioner.[377] A satellite carrier must also file a copy of the correspondence and feasibility certification it provides to the prospective petitioner in this docket electronically via ECFS so that the Media Bureau can track these certifications and monitor carrier response time. If the carrier is claiming spot beam coverage infeasibility, then the certification provided by the carrier must be the same detailed certification that would be required in response to a market modification petition.[378] For any other claim of infeasibility, the carrier's feasibility certification must explain in detail the basis of such infeasibility and must be prepared to provide documentation in support of its claim, in the event the prospective petitioner decides to challenge the carrier's claim.[379] If carriage is feasible, a statement to that effect must be provided in the certification.[380] If a broadcaster or county government has concerns about the adequacy of the carrier's certification, or has some reason to question the validity of the carrier's certification, the broadcaster or county government may raise such concerns in a (separate) petition for special relief or its market modification petition.[381]

85. The adopted rules require a satellite carrier to provide a detailed and specialized certification to demonstrate its claim that satellite carriage resulting from a market modification would be technically or economically infeasible due to insufficient spot beam coverage.[382] Satellite carriers will be required to provide supporting

[367] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[368] 13 CFR 121.201; NAICS code 515120.

[369] *See Broadcast Station Totals, supra.*

[370] *See Broadcast Station Totals, supra.*

[371] *See* Report and Order para. 9.

[372] *See* Report and Order paras. 12–13. Broadcasters and satellite carriers that want to oppose market modification requests would need to file responsive pleadings in accordance with 47 CFR 76.7.

[373] *See* Report and Order para. 17 (discussing evidentiary requirements for filing market modification petitions). These requirements are codified in 47 CFR 76.59.

[374] *See* Report and Order at para. 24. Carriage elections must be made in accordance with the procedures set forth in section 76.66(d)(1). *See* Report and Order at para. 26. Section 76.66(d)(1) requires that an election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested. 47 CFR 76.66(d)(1)(ii). The rule requires that a television station's written notification shall include the following information: (1) Station's call sign; (2) Name of the appropriate station contact person; (3) Station's address for purposes of receiving official correspondence; (4) Station's community of license; (5) Station's DMA assignment; and (6) Station's election of mandatory carriage or retransmission consent. 47 CFR 76.66(d)(1)(iii).

[375] *See* Report and Order at para. 25.

[376] *See* Report and Order para. 45.

[377] *Id.* With respect to what would be a reasonable amount of time for a carrier to respond to a request for a feasibility certification, we expect carriers will generally be able to respond within 45 days of receipt of a prospective petitioner's written request; however, we find that it would be reasonable for the satellite carrier to respond in 90 days if the carrier has to process several requests at the same time. If the response is after 45 days, the carrier must provide an explanation for the longer time period in its certification (*e.g.,* having to respond to multiple simultaneous requests). If the Media Bureau finds that a carrier is routinely taking up to 90 days to respond or is not providing a reasonable explanation for when it takes 90 days to respond, the Bureau may order such carrier to respond to future requests in a shorter time period or may take other enforcement action. With this process, we are trying to balance the need to provide broadcasters' with as fast a response as possible, while recognizing that satellite carriers may have problems responding to numerous requests at once.

[378] *See* Report and Order paras. 37–39.

[379] *See* Report and Order para. 45.

[380] *See* Report and Order para. 45.

[381] *See* Report and Order para. 45.

[382] *See* Report and Order paras. 35–36.

documentation upon request by the Commission and must therefore retain such supporting documentation substantiating potential review by the Commission.[383] As noted in section C of this FRFA, neither one of the satellite carriers, DISH nor DIRECTV, qualify as a small entity and small businesses do not generally have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services.

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

86. The RFA requires an agency to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[384]

87. Consistent with the statute's goal of promoting regulatory parity between cable and satellite service, the Report and Order applies the existing cable market modification rules to the satellite context, while adding provisions to the rules to address the unique nature of satellite television service. Therefore, the adopted rules for the first time allow a commercial television broadcast station to request a modification of its local television market for purposes of satellite carriage. Small TV stations that choose to file satellite market modification petitions must comply with the associated filing and evidentiary requirements (explained in section D of the FRFA); however, the filing of such petitions is voluntary. In addition, small TV stations may want to respond to a petition to modify its market (or the market of a competitor station) filed by a satellite carrier or a competitor station; however, there are no standardized evidentiary requirements associated with such responsive pleadings. Through a market modification process, a small TV station may gain or lose carriage rights with respect to a particular community, based on the five statutory factors, to better reflect localism.[385]

88. In the IRFA, we invited small TV stations to comment on whether they are more or less likely, on the whole, to benefit from market modifications.[386] In addition, we invited comment on whether there are any alternatives we should consider to the Commission's proposed implementation of section 102 of the STELAR that would minimize any adverse impact on small TV stations, but which are consistent with the statute and its goals, such as promoting localism and regulatory parity.[387] We received no comments in direct response to these inquiries. In comments to the NPRM, Gray Television, Inc. (''Gray'') proposed that the Commission should establish a presumption in favor of applying prior cable market modification determinations to satellite markets to lower the burden on television broadcast stations, including small stations.[388] In the Report and Order, the Commission rejected Gray's proposal, finding it was inconsistent with the statute's requirement to apply the statutory factors to each market modification petition.[389] The Commission did observe, however, that consideration of historic carriage is one of the five statutory factors that the Commission is required to consider in evaluating market modification requests and explained that consideration under such factor would ''give sufficient weight to prior decisions without the need to establish a presumption.'' [390]

89. Unique to satellite market modifications, the STELAR provides that a satellite carrier is not required to carry a station pursuant to a market modification if it is not technically and economically feasible for the carrier to do so.[391] The Report and Order allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification under penalty of perjury.[392] To avoid unnecessary burdens on broadcasters, satellite carriers, and the Commission, the Report and Order established a process for the parties to exchange information regarding feasibility of carriage prior to the filing of a prospective market modification petition.[393] The adopted rules allow TV broadcast stations to request a certification regarding claims of technical or economic infeasibility from a satellite carrier before filing a prospective market modification petition, and the station may seek review of such certification by filing a petition for special relief before filing a prospective petition for market modification.[394] This process will particularly benefit small stations, allowing them to avoid the time and expense of filing a market modification petition that could not result in carriage of the station. In comments to the NPRM, the Virginia Broadcasting Corp. (''WVIR–TV'') expressed concern that a certification approach would not provide broadcasters with sufficient information to challenge the validity of the satellite carrier's claim of infeasibility.[395] The Report and Order addressed this concern by requiring a detailed and specialized certification that is subject to penalties for perjury and which would contain sufficient detail to ensure that the analysis performed by the satellite carrier was appropriate and valid.[396]

[383] *See* Report and Order para. 35.

[384] 5 U.S.C. 604(a)(6).

[385] *See* Report and Order para. 6. Section 338(l) of the Act provides that, in deciding requests for market modifications, the Commission must afford particular attention to the value of localism by taking into account the following five factors: (1) Whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community; (2) whether the television station provides coverage or other local service to such community; (3) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence; (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community. 47 U.S.C. 338(l)(2)(B)(i) through (v). *See also* discussion at Report and Order at section III.B.

[386] *NPRM,* para. 25.

[387] *Id.*

[388] Comments of Gray Television, Inc., MB Docket No. 15–71, at 4–5 (filed May 13, 2015) (Gray Comments).

[389] *See* Report and Order para. 23 (explaining the reasons for not establishing a presumption that prior cable market determinations should apply to satellite markets).

[390] *Id.*

[391] *See* 47 U.S.C. 338(l)(3) (providing that ''[a] market determination . . . shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.''). *See also* discussion in Report and Order at section III.D.

[392] *See* Report and Order para. 36.

[393] *See* section D of this FRFA.

[394] *See* Report and Order paras. 39–40.

[395] Reply Comments of Virginia Broadcasting Corp., MB Docket No. 15–71, at 1 (filed May 28, 2015) (WVIR–TV Reply) (urging the Commission ''to reject suggestions by DBS operators that would impose heavy burdens on broadcasters seeking market modifications—burdens that would be particularly onerous for small market television stations—by withholding information that is uniquely in their possession regarding technical and economic infeasibility or by requiring broadcasters to provide support for market modification requests that goes well beyond what is required in the cable television context.'').

[396] See Report and Order paras. 35–36.

90. The adopted rules, for the first time, allow satellite carriers to request market modifications. The adopted rules also allow satellite carriers to assert claims of infeasibility by certification, which will minimize the burden on them, although the Commission may require satellite carriers to provide documentation upon request.[397] As previously discussed, only two entities—DIRECTV and DISH Network—provide direct broadcast satellite (DBS) service, which requires a great investment of capital for operation. As noted in section C of this FRFA, neither one of these two entities qualify as a small entity and small businesses do not generally have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services.

6. Report to Congress

91. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[398] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[399]

B. Final Paperwork Reduction Act Analysis

92. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[400] The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA),[401] we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Congressional Review Act

93. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.[402]

V. Ordering Clauses

94. Accordingly, *it is ordered* that, pursuant to section 102 of the STELA Reauthorization Act of 2014 (STELAR), Public Law 113–200, 128 Stat. 2059 (2014), and sections 1, 4(i), 303(r), 325, 338 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), 325, 338 and 534, this Report and Order *is hereby adopted,* effective thirty (30) days after the date of publication in the **Federal Register.**

95. *It is further ordered* that the Commission's rules *are hereby amended* as set forth in Appendix B of the Report and Order and *will become effective* November 2, 2015, except for 47 CFR 76.59(a) and (b), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

96. *It is further ordered* that the Commission's Consumer and Governmental Affairs 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 Part 76

Broadcast television, Cable television, Satellite television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

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

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.5 is amended by revising paragraph (gg) to read as follows:

§ 76.5 Definitions.

* * * * *

(gg) *Satellite community.* (1) For purposes of the significantly viewed rules (see § 76.54), a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). The boundaries of any such unincorporated community may be defined by one or more adjacent five-digit zip code areas. Satellite communities apply only in areas in which there is no pre-existing cable community, as defined in paragraph (dd) of this section.

(2) For purposes of the market modification rules (see § 76.59), a county.

* * * * *

■ 3. Section 76.7 is amended by revising paragraph (a)(3) to read as follows:

§ 76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

(a) * * *

(3) *Certificate of service.* Petitions and Complaints shall be accompanied by a certificate of service on any cable television system operator, multichannel video programming distributor, franchising authority, station licensee, permittee, or applicant, or other interested person who is likely to be directly affected if the relief requested is granted.

* * * * *

■ 4. Section 76.59 is amended by revising paragraphs (a), (b)(1) and (2), and (b)(5) and (6), adding paragraph (b)(7), revising paragraph (d), and adding paragraphs (e) and (f) to read as follows:

§ 76.59 Modification of television markets.

(a) The Commission, following a written request from a broadcast station, cable system, satellite carrier or county government (only with respect to satellite modifications), may deem that the television market, as defined either by § 76.55(e) or § 76.66(e), of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market. In this respect, communities may be considered part of more than one television market.

(b) * * *

(1) A map or maps illustrating the relevant community locations and

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[397] *See* Report and Order para. 35.

[398] *See* 5 U.S.C. 801(a)(1)(A).

[399] *See* 5 U.S.C. 604(b).

[400] The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.). *See* OMB Control Number 3060–0546. The Commission received pre-approval for this modified collection on June 17, 2015; however, we are making additional modifications to this collection in this Report and Order.

[401] The Small Business Paperwork Relief Act of 2002 (SBPRA), Publaw 107–198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). *See* 44 U.S.C. 3506(c)(4).

[402] *See* 5 U.S.C. 801(a)(1)(A).

geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Noise-limited service contour maps (for full-power digital stations) or protected contour maps (for Class A and low power television stations) delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.

Note to paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.

* * * * *

(5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.,* the reported audience averaged over Sunday–Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

(7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.

* * * * *

(d) A cable operator or satellite carrier shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this section.

(e) A market determination under this section shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.

(f) No modification of a commercial television broadcast station's local market pursuant to this section shall have any effect on the eligibility of households in the community affected by such modification to receive distant signals from a satellite carrier pursuant to 47 U.S.C. 339.

■ 5. Section 76.66 is amended by adding paragraph (d)(6) and revising paragraph (e)(1) introductory text to read as follows:

§ 76.66 Satellite broadcast signal carriage.

* * * * *

(d) * * *

(6) *Carriage after a market modification.* Television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to § 76.66) due to a change in the market definition (by operation of a market modification pursuant to § 76.59) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier. A satellite carrier shall commence carriage within 90 days of receiving the carriage election from the television broadcast station. The election must be made in accordance with the requirements in paragraph (d)(1) of this section.

(e) *Market definitions.* (1) A local market, in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, unless such market is amended pursuant to § 76.59, and

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BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

Hours of Service for Drivers: Regulatory Guidance Concerning the Editing of Automatic On-Board Recording Device (AOBRD) Information

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance.

SUMMARY: FMCSA issues regulatory guidance concerning the editing of records created by automatic on-board recording devices (AOBRDs). The guidance makes clear that, within certain limits, a driver must be allowed to review his or her AOBRD records, annotate and correct inaccurate records, enter any missing information, and certify the accuracy of the information. The AOBRD must retain the original entries, and reflect the date, time, and name of the person making edits to the information. Drivers' supervisors may request that a driver make edits to correct errors, but the driver must accept or reject such requests. Driving time may not be edited except in the case of unidentified or team drivers, and when driving time was assigned to the wrong driver or no driver. All prior Agency interpretations and regulatory guidance on this subject, including memoranda and letters, may no longer be relied upon to the extent they are inconsistent with this guidance.

DATES: This regulatory guidance is effective October 2, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, phone (202) 366–4325, email *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (1984 Act), as amended (codified at 49 U.S.C. 31136(a)) authorizes the Secretary of Transportation to regulate commercial motor vehicles (CMVs) and equipment, and the drivers and motor carriers that operate them. Section 211 of the 1984 Act also gives the Secretary broad power to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10)). The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to CMV programs and safety regulation.

Background

Motor carriers began to use automated hours-of-service (HOS) recording devices in the mid-1980s to replace paper records. The Federal Highway Administration, the agency then responsible for the motor carrier safety regulations, published a final rule in 1988 that defined Automatic On Board Recording Devices (AOBRDs) and set forth performance standards for their use (53 FR 38670, September 30, 1988, codified at 49 CFR 395.15).

Question 2 of the regulatory guidance for § 395.15 prohibits CMV drivers from ''amending'' AOBRD records of duty status (RODS) during a trip; the guidance was published on April 4, 1997 (65 FR 16370, at 16426). The reason for the prohibition—''If drivers, who use automatic on-board recording devices, were allowed to amend their record of duty status while in transit,