

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 10–152; FCC 10–133]

Satellite Television Extension and Localism Act of 2010 and Satellite Home Viewer Extension and Reauthorization Act of 2004

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission proposes to implement provisions of the “Satellite Television Extension and Localism Act of 2010” (STELA) that require the Commission, within 270 days after the date of its February 27, 2010 enactment, to “develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through the use of an antenna, to receive signals in accordance with the signal intensity standard in Section 73.622(e)(1) of [our rules], or a successor regulation, including to account for the continuing operation of translator stations and low power television stations,” and to issue an order completing its rulemaking to establish a procedure for on-site measurement of digital television signals in ET Docket No. 06–94. The Commission previously sought comment on a variety of issues related to establishment of a procedure for on-location measurements pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), but has not yet adopted final rules specifying such a procedure.

DATES: Comments must be filed on or before August 24, 2010, and reply comments must be filed on or before September 3, 2010.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 418–2925, e-mail: Alan.Stillwell@fcc.gov, TTY (202) 418–2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 10–152, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission’s Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.

- *Mail:* [Optional: Include the mailing address for paper, disk or CD-ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary’s mailing address here.]

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Notice of Proposed Rule Making*, ET Docket No. 10–152, FCC 10–33, adopted July 28, 2010, and released July 28, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission’s copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Notice of Proposed Rulemaking

1. The Satellite Television Extension and Localism Act of 2010 (STELA) reauthorizes the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) by extending the effectiveness and amending certain provisions in the Communications Act and the Copyright Act. These provisions govern the delivery of distant network-affiliated broadcast television station signals by satellite providers. To implement the new statutory regime, the STELA, *inter alia*, requires the Commission, within 270 days after the date of its February 27, 2010 enactment, to (1) “develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through the use of an antenna, to receive signals in accordance with the signal intensity standard in § 73.622(e)(1) of [the Commission’s rules], or a successor regulation, including to account for the continuing operation of translator stations and low power television stations,” and (2) issue an order completing its rulemaking to establish a procedure for on-site measurement of digital television signals in ET Docket No. 06–94.

2. In the Notice of Proposed Rulemaking (NPRM) portion of this action, the Commission proposes to prescribe a point-to-point predictive model for determining the ability of individual locations to receive an over-the-air digital television broadcast signal at the intensity level needed for service

through the use of an antenna, as required by the STELA. Our goal in proposing this model is to provide a means for reliably and presumptively determining whether the over-the-air signals of television stations, including low power stations, can be received at individual locations for purposes of establishing the eligibility of individual households to receive the signals of distant television broadcast network stations from their satellite carriers. The Commission believes that the proposed predictive model, which is based on the current model for predicting the intensity of analog television signals at individual locations, will allow such determinations to be made in a timely and cost effective manner for all parties involved, including network TV stations, satellite carriers and satellite subscribers.

3. In the Further Notice of Proposed Rulemaking (FNPRM), the Commission seeks information to update the record in ET Docket No. 06–94, based on which it intends to prescribe rules for determining eligibility of satellite subscribers for receiving distant network signals from their satellite TV provider using on-location testing/measurements. The Commission previously sought comment on a variety of issues related to establishment of a procedure for on-location measurements pursuant to the SHVERA, but has not yet adopted final rules specifying such a procedure. In the STELA, Congress modified some of the testing requirements set forth in the SHVERA. The Commission is now addressing these modifications to both refresh the record and obtain additional information and comment on STELA requirements that differ from the SHVERA requirements.

Predictive Model—Notice of Proposed Rulemaking

4. As recognized and directed by Congress in the STELA, a predictive model is needed to provide presumptive determinations as to whether a household is unserved by local network-affiliated digital full service and digital low power TV and digital TV translator stations. The STELA revises the definition of “unserved household” in three potentially significant ways: (1) The network stations whose signals are to be considered are now limited to those network affiliates in the same DMA as the subscriber; (2) the definition of “unserved household” now references an “antenna” without specifying what kind of antenna or where it is located; and (3) the definition specifically recognizes both a “primary stream” and a “multicast

stream” affiliated with a network. The Commission believes the existing model for predicting the availability of analog TV signals, known as the Satellite Home Viewing Improvement Act Individual Location Longley-Rice model (SHVIA ILLR model), can be readily modified to predict digital TV signal strengths at individual locations under the new STELA regime and thereby provide presumptive determinations of eligibility for delivery of distant digital signals by satellite carriers in the same manner as it currently provides for analog signals. Use of this model with appropriate modifications for digital signals would also comply with the intent of Congress in the STELA that we rely on the ILLR model as previously revised for analog signals and the Commission’s recommendation in its *2005 Report to Congress* for use in making determinations of eligibility for satellite delivery of distant network signals. The SHVIA ILLR model has proven over time to be an accurate and reliable predictor of analog TV signal strength and has been well accepted by both the broadcast and DBS industries. Through use of this model, consumers, broadcast television stations and satellite television carriers have avoided the need to conduct an actual measurement test every time a satellite customer believes that he or she is unable to receive an adequate signal off-the-air from a local television network-affiliated station. The Commission expects the revised model to provide these same benefits in the digital television environment. The Commission will discuss its proposal for the digital signal predictive model in the following paragraphs.

5. The Commission notes that, with the anticipated launch of local-into-local service in all 210 DMAs by Dish Network, the circumstances in which a subscriber would need, or be eligible for, distant signals will be significantly reduced. It therefore anticipates that the predictive model will be used far less frequently than in previous years.

6. *Digital TV ILLR Model Proposal.* The Commission proposes to modify the SHVIA ILLR model to make it capable of reliably and accurately predicting the field strength of digital television stations and to establish the modified version in its rules as the point-to-point model for determining the ability of individual locations to receive with an antenna the digital television signals of full service television stations, digital low power television stations (including digital Class A stations), and digital TV translator stations. Specifically, the Commission proposes to adopt the Individual Location Longley-Rice model

set forth in CS Docket No. 98–201 as revised for analog signals in the SHVIA proceeding, *i.e.*, the SHVIA ILLR model, with appropriate modifications, as the method for prediction of digital television signal strengths. Consistent with the STELA, the Commission is also proposing to use the DTV noise-limited service contour values in § 73.622(e)(1) as the standard for determining whether a predicted field strength is sufficient for reception of a signal at an individual location. This “digital TV ILLR model” and standard will be specified as the required method for making presumptive determinations of an individual household’s eligibility for satellite retransmission of the distant network signals. The Commission requests comment on the proposals for a digital TV ILLR model as set forth herein.

7. The prediction model proposed addresses the statutory change in the definition of an unserved household from an “outdoor antenna” to an “antenna” and takes into account terrain, morphology (buildings and similar man-made land uses), and other land cover variations, some of which were recognized in our development of the SHVIA ILLR model but still are yet to be evaluated and accepted by the scientific and technical community. Inasmuch as the digital signals of digital low power TV (including digital Class A) and digital TV translator stations use the same transmission standard as full service stations, the Commission believes that the same model will be capable of serving to provide predictions of the signal strengths of all types of digital TV stations. That is, the Commission tentatively concludes that the same digital TV model will provide predictions that are equally reliable and accurate for full service, low power and TV translator digital signals. The Commission therefore proposes to use the new digital TV ILLR model for prediction of the signal strengths of all three of these types of digital TV stations. It also believes that this model will account for multicast as well as primary streams that are transmitted by a station and affiliated with one or more networks. The Commission requests comment on this proposal and its tentative conclusion. The Commission also proposes to establish a procedure through which parameters used in the digital TV ILLR model can be adjusted based on new information that may become available and other refinements. This process will provide for continued refinement of the model on the basis of reliable technical information, as it becomes available.

8. The analog SHVIA ILLR model that will serve as the basis for our digital TV ILLR model is similar to the service coverage predictive model that the Commission established for evaluating television coverage and interference prediction, as set forth in its Office of Engineering and Technology's (OET) OET Bulletin No. 69. However, whereas the Longley-Rice model for coverage and interference prediction provides estimates of aggregate service availability (including losses due to interference), the SHVIA ILLR model provides estimates only of field strength at individual locations (and it does not include consideration of interference). The SHVIA ILLR model does not replace the current Commission rules for field strength contours in § 73.683 or for prediction of coverage for non-satellite distant signal eligibility purposes in § 73.684. In fact, the SHVIA ILLR model could identify unserved households lying within a station's former Grade B contour and, likewise, identify served households outside that contour.

9. The SHVIA ILLR model incorporates features to account for the radio propagation environment and the receiving system conventionally assumed to be used by viewers to achieve service with an antenna. Given that digital and analog television signals are transmitted in the same frequency bands, the factors affecting propagation of signals using the two different modulation methods and the background noise level are the same. The Commission does not believe that it needs to modify any of the features of the SHVIA ILLR model that describe propagation and the background noise levels and is not proposing to modify those elements of the model. The Commission also observed that the "planning factors" that describe a set of assumptions for the television reception system are different in some important respects for analog and digital signals. However, with the exception of antenna location and performance and certain other factors relating to propagation that are discussed in the following paragraphs, the Commission does not believe that it needs to consider those differences for purposes of the proposed digital TV ILLR model because they are incorporated into the threshold signal level for reception for service, which the STELA directs to be set at the noise-limited levels specified in § 73.622(e)(1).

10. The Commission also does not see any need for changing the model to reflect the added reference to network affiliated multicast streams. The prediction for a television broadcast signal applies regardless of the content.

If a household is predicted to receive a station, then all of that station's broadcast streams would be received. Therefore, the Commission proposes to make no special adjustment in the model to implement this change in the definition of unserved households. The Commission requests comment on these aspects of the proposed digital TV ILLR model.

11. The aspects of the SHVIA ILLR model that are different for digital and analog signals and that the Commission needs to modify or consider modifying in the new point-to-point predictive model for digital signals include antenna location (outdoor vs. indoor) and performance, time and location variability factors, and land use and land cover. The Commission discusses its proposals for changes to the SHVIA ILLR model to address these aspects of the new digital TV ILLR model for prediction of DTV signal strengths and its proposal for a procedure for the continued refinement of the model as new information may become available in the following sections. The proposed amendments to the Commission's rules to implement the new digital TV ILLR model are set forth in Appendix A in the NPRM, and the proposed digital TV ILLR model will be described in a new OET Bulletin No. 73, a draft of which is attached as Appendix B in the NPRM and NOI.

12. The Commission proposes to uphold any previous findings of eligibility for delivery of distant signals based on the digital TV ILLR predictive model, in the event that it updates that model at some point in the future and a prediction from the updated model indicates that the location can receive service from a local network station. The Commission believes that "grandfathering" the eligibility of households in such cases would be appropriate to avoid disruption of the existing services to which households have been accustomed.

13. *Antenna Location and Performance.* The Commission believes that the current standard for an outdoor antenna as specified in the DTV planning factors in OET Bulletin No. 69 should be used in predicting digital television signal strengths at individual locations. As indicated above, the STELA revises the definition of an unserved household by changing the reference to the antenna used to receive service from a "conventional, stationary outdoor rooftop antenna" to an "antenna." The reception model (planning factors) for digital television service assumes that a viewer uses an outdoor antenna with a certain level of gain mounted at 10 meters (33 feet)

above ground (roof-top level). Those antenna location and performance parameters are reflected in the field strength values defining the analog Grade B and digital noise-limited contours in §§ 73.683(a) and 73.622(e)(1), respectively. The STELA mandates use of the digital television signal strength standard in § 73.622(e)(1) or a successor regulation. Thus, we believe that STELA's specification of the signal strength intensity standard incorporated into our rules implies use of an outdoor antenna to receive service.

14. However, the Commission believes that Congress's use of the term "antenna" in the STELA grants the Commission greater flexibility to take into account different types of antennas than was previously available. In addition, Congress and representatives of the direct broadcast satellite industry have previously raised concerns as to whether the Commission should consider certain issues relating to the location and performance of actual antennas consumers use to receive DTV signals. In the SHVERA, Congress directed the Commission to investigate whether the noise-limited DTV service standard should be revised to take into account the types of antennas that are available to consumers. The Commission concluded in the *2005 Report to Congress* that the existing DTV planning factor assumptions for antenna gain, orientation, and placement were appropriate and should not be altered. It also specifically concluded that the digital television signal strength standards in the Commission's rules should not be modified to account for the fact that an antenna can be mounted on a roof or placed within a home and can be fixed or capable of rotating. In this regard, it concluded that it would be impractical to attempt to account for indoor reception conditions in the DTV planning factors and also stated that it would be impracticable to establish a regime whereby households with indoor antennas are subject to different signal strength standards than those with outdoor antennas. It noted that difficulty would arise in setting and applying standards for situations in which a household could not use an outdoor antenna.

15. In view of the Commission's findings in the *2005 Report to Congress* and the relevance of those findings to the digital signal intensity standard that Congress specified in the STELA, the Commission believes that the current standard for an outdoor antenna as specified in the DTV planning factors should be used in predicting digital television signal strengths at individual locations. The Commission therefore

proposes to include that outdoor antenna standard (with some adjustments for height consistent with the analog ILLR model) in the new digital TV ILLR model that will be used in making distant signal eligibility determinations under the STELA. The Commission also believes that it would be appropriate to use the receive antenna gain and front-to-back ratios specified in the planning factors for the performance capabilities of the outdoor receive antenna used in making predictions, as those values are consistent with the DTV noise-limited service contour standard in § 73.622(e)(1) and outdoor antennas performing at (or better) than those values are readily available. The Commission requests comment on these proposals, including whether it should adopt gain and front-to-back specifications for the receive antenna that are different from those set forth in the planning factors.

16. Using the outdoor model may result in instances where a consumer who either cannot use an outdoor antenna or cannot receive or cannot receive service using an outdoor antenna and is not able to receive a station's service with an indoor antenna will be found ineligible for satellite delivery of a distant network signal. The Commission remains concerned about such instances, and therefore is again inviting comment and suggestions and new information that would provide a solution for those satellite television subscribers who either are not able to use an outdoor antenna or cannot receive service using an outdoor antenna and cannot receive service with an indoor antenna. In this regard, the Commission is particularly interested in new ideas and information that have been developed in the time since the *2005 Report to Congress*. For commenters who advocate including an indoor antenna in the model, the Commission requests detailed technical information regarding the specific standards to be used for all aspects of the transmission path including antenna characteristics, building penetration loss, multipath effects, etc. In addition, such commenters should provide detailed information regarding how those parameters should be applied within a standard model given the variety of situations that could arise, and how to develop a model that would also be valid for consumers with outdoor antennas. The Commission seeks comment on how to develop a model that could vary depending on whether the subscriber lives in a multiple dwelling unit or a single family

home, or whether the household is in an urban area or in a rural area. Further, the Commission seeks comment on how to ensure that such a flexible model would not be abused by specification of incorrect parameters describing the location for which a prediction is to be made.

17. *Time and Location Variability Factors*. Consistent with its findings in the *2005 Report to Congress*, the Commission proposes to modify the time variability factor of the SHVIA ILLR model to 90% as used in the DTV planning factors and to continue to use 50% as the location variability in the digital TV ILLR model. The Commission requests comment on these proposals. Parties commenting on this issue who believe that alternative specifications for the time and location variability factors should be used are requested to provide new information, data and analyses that were not available at the time of the Inquiry to support their positions.

18. The field strength of television signals, like that of other radiofrequency signals, varies with time and location. That is, television signal strengths vary over time at the same location and also vary from location to location, often very short distances apart, when observed at the same time. These variations of field strength with time and location are incorporated into the television planning models. For analog TV, the SHVIA ILLR model defines service using the F(50,50) field strength curves in § 73.699 of the Commission's rules. The Commission notes that DTV service differs in that it is based on use of F(50,90) field strength curves, as derived from the F(50,50) and F(50,10) field strength curves in § 73.699 of our rules, to define a DTV station's noise-limited contour. The F(50,90) service contour means at least 50% of the locations can be expected to receive a signal that exceeds the field strength value at least 90% of the time. The Commission also notes that the field strength standard for analog reception (the Grade B contour value) incorporates an adjustment to raise the F(50,50) values to F(50,90).

19. In the Inquiry that provided information used in the *2005 Report to Congress*, the Commission did not find EchoStar's and H&E's position on changing the time variability factor values for DTV persuasive. In this regard, it noted that radiofrequency signal propagation is always statistical in nature and that the power and/or antenna height needed to approach 100% reliability increases in a non-linear manner. The Commission also observed that the current values were established based on an industry-

Government consensus that relied on the traditional TV service model that worked well for analog TV service and that, as argued by the broadcasters, changing the time variability factor values to 99% reliability would greatly shrink local DTV service areas. It further observed, as pointed out by Meintel, Sgrignoli and Wallace, consulting engineers, that the assumed 10% reduction in service availability occurs at the outermost limit of a station's service area and is not the typical figure for time reliability across a station's entire service area. As the distance to a station's transmitter decreases, time availability increases. The Commission stated that households at the edge of a station's service area could also improve their reception (and thereby reduce or eliminate periods when the station's signal is not available) by mounting their antennas higher, using higher gain antennas, or using low-noise pre-amplifiers at their antennas. No commenter suggested changing the location variability factor and the Commission stated that it knew of no considerations that would lead it to recommend changing from the current median value for this factor. The Commission seeks comment on whether there should be any changes to this factor in the context of digital signals, which are subject to the so-called cliff effect that results in full loss of service if the signal falls below a small amount below the service threshold.

20. *Land Use and Land Cover Factors*. The land use and land cover ("LULC") data provides information on building structures and other man-made terrestrial features and on other land cover variations such as forests and open land that can affect radio propagation. Inclusion of this data in the prediction methodology of the SHVIA ILLR TV computer model significantly enhanced the accuracy and reliability of its signal strength predictions. The method for considering these land cover factors is to assign certain signal loss values, in addition to those already implicit in the model, as a function of the LULC category of the reception point. More specifically, the field strength predicted by the basic Longley-Rice model is reduced by the clutter loss value associated with the respective LULC category for the location. Reception point environments at individual locations are classified in terms of the codes used in the LULC database of the United States Geological Survey (USGS).

21. The Commission proposes to continue to apply the LULC categories and clutter loss values for describing land use and land cover features in the

digital TV ILLR model in the same manner as currently incorporated into the SHVIA ILLR model. These values were specified in the *SHVIA First Report and Order*. We recognize that these parameters were the subject of differing views in the inquiry we conducted in preparing the *2005 Report to Congress*. Therein, it was concluded that the clutter loss values used in the current SHVIA ILLR model strike the correct balance, noting that this has been borne out by the data on the model's performance, which shows that using the values adopted by the Commission for the SHVIA ILLR model produce approximately an equal number of over-predictions as under-predictions. Thus, we have found a range of values, including zero, that correspond to different land cover types are valid. We also observe that the Commission further indicated that it believed that for any digital model that may be developed, the values currently in use for the analog model would similarly yield accurate results. The Commission requests comment on the appropriate clutter loss values for predicting digital television field strengths. It is particularly interested in new information and data that may have been developed since 2005. In this regard, the Commission also requests comment and information regarding any of the additional LULC categories and data that, at the time of our development of the SHVIA ILLR model, were yet to be evaluated and accepted by the scientific and technical community and have since become accepted by that community.

22. Analog Low Power TV and TV Translator Stations. With respect to the continued operation of analog Low-Power Television (LPTV), Class A, and TV Translator stations that retransmit in analog format the content of local digital network-affiliated television stations, the Commission tentatively concludes that the existing predictive methods specified in FCC OET Bulletin No. 72 should continue to apply. The STELA requires the Commission “* * * to account for the continuing operation of translator stations and low power television stations.” Although all full-service television stations were converted fully to digital operation by June 12, 2009, LPTV, Class A, and TV Translator stations were not required to convert and most of those stations continue to broadcast in analog format. For those stations, the Commission believes that there is no reason to change the SHVIA ILLR model that has been in use for several years, and so proposes to continue to specify the

procedure described in OET-72 for determining the eligibility of viewers with respect to those analog stations.

23. Procedure for Continued Refinement of the Digital TV ILLR Model. As indicated, the STELA requires that the Commission establish procedures for continued refinement in the application of the digital TV ILLR model through use of additional data as it becomes available. The Commission believes the most efficient, effective, fair, transparent and timely approach for revising the digital TV ILLR model if new information becomes available is to hold open the docket in this proceeding and conduct further rule making to consider possible changes to OET Bulletin No. 73 (which will describe the model and be referenced in our rules) to implement improvements to the model. This proposal is consistent with the Commission's past action concerning the SHVIA model. Given that the digital TV ILLR model will be incorporated into its rules, the Commission believes that this proposal also is consistent with the requirements of Section 553 of the Administrative Procedures Act. Under this proposal, parties with new data, analysis or other information relating to improving the predictive model could submit requests to modify the model under the instant docket. OET would evaluate such requests and prepare a Notice of Proposed Rulemaking for consideration by the Commission. The Commission also could initiate rulemaking action on its own motion. The Commission invites comment on this proposal to use its standard notice and comment rulemaking procedure for updating the digital TV ILLR model and its applications and also asks for suggestions for modifications and alternative plans.

24. Stations to Consider for Distant Signals. The Commission does not propose to modify the proposed digital TV ILLR model to address the STELA provision that a subscriber is eligible for delivery of distant network signals only if he or she is unserved by stations located in the same DMA. Under the SHVIA and the SHVERA, the predicted signal strengths of all the stations affiliated with the same network were considered, regardless of those stations' DMAs. That is, if a satellite subscriber wanted to receive the distant signal of the XYZ network, then the predicted results from any XYZ network affiliated stations would be analyzed for that subscriber's location and if one or more of those affiliated stations were predicted to deliver a signal of the requisite intensity, the subscriber would be predicted “served” by that network and not eligible for a distant signal from

that network unless each of the stations predicted to serve the subscriber granted a waiver. The STELA changes this regime by specifying that only “local” stations are to be considered, *i.e.*, stations that are located in the same DMA as the satellite subscriber instead of examining any station of the same network regardless of DMA.

25. Rather than modify the proposed digital TV ILLR model itself to address this change, the Commission proposes to change the way the model's results are to be used. That is, instead of considering any network station that the model predicts to be available in the determination of a subscriber's eligibility for a distant signal, we propose to require satellite carriers to consider only the signals of network stations located in the subscriber's DMA. The Commission seeks comment on this proposal. It notes that this statutory change to consideration of only local network affiliated stations will reduce the number of stations that need to be considered when determining eligibility for distant network signals and thereby also reduce the burden associated with waiver requests by reducing the number of stations from which a waiver would have to be requested. As noted, this statutory change will also reduce the testing burden. The Commission also seeks comment on any other methodological or other changes it should consider to minimize consumer burdens.

On-Site Signal Measurement—Further Notice of Proposed Rulemaking

26. The STELA, similar to the SHVERA, provides that if the ILLR model predicts that a satellite subscriber receives a local network station of sufficient field strength, the subscriber may request an on-site signal strength test to determine definitively whether a local signal can be received at his/her location at the specified signal intensity and directs the Commission to complete its rulemaking proceeding in ET Docket No. 06-94 on establishment of a measurement procedure. The measurement procedure is to be used to determine whether the signal of a network-affiliated station is of sufficient intensity (field strength) to be received at the subscriber's location, *i.e.*, meets or exceeds the standard in § 73.622(e)(1) of the Commission's rules. Essentially, the measurement procedure provides an option for obtaining an empirical, rather than predictive, determination of the signal strength available at a location. The results of measurements would be considered more accurate than the results of the predictive model in all

cases. Because the measurement procedure and predictive model are both intended to determine the same issue, the underlying service model and planning factors on which each is based need to be consistent (and the Commission's proposals for the predictive model herein and for the measurement procedure in the *SHVERA NPRM* use the same service model/planning factors).

27. The STELA raises three issues regarding the measurement procedure not addressed in the *SHVERA NPRM*: (1) The stations whose signals are to be measured; (2) the antenna to use in performing on-location testing; and (3) the program stream from a station in the market to be measured. Generally, the commenting parties in ET Docket No. 06–94 agreed with our proposals to largely base the measurement procedures for digital television signals on those already in use for measuring analog signals with specific modifications to account for the differences between analog and digital television signals. The Commission seeks comment on any new developments or changed positions in order to update the record. To the extent that commenters' positions remain the same, they need not submit additional or repetitive comments reiterating information and positions that were previously filed.

28. *Stations to be Tested.* As indicated, the STELA differs from the SHVIA and SHVERA in that it specifies that only "local" stations, *i.e.*, stations located within the same DMA as the subscriber's household, are to be considered in determining a subscriber's eligibility. This change similarly affects the measurement procedures. Previously, a testing entity had to measure the signals of all stations affiliated with a specific network. However, under the STELA, a testing entity is to consider only the signals of those network-affiliated stations that are located in the same DMA as the satellite subscriber. The Commission proposes to modify its proposed rules for measurement of DTV signals for purposes of determining eligibility for delivery of distant network signals by satellite providers to incorporate this change. The Commission seeks comment on this proposal. As noted, the statutory change could reduce burdens on both testers and consumers as fewer stations would need to be tested, which should result in lower costs for consumers and consume less time. Consistent with the STELA's direction that it seek ways to minimize consumer burdens associated with on-location testing, the Commission requests

comment and suggestions regarding steps it could take to further minimize the burden of on-location testing on consumers.

29. *Indoor Measurements.* The Commission proposes to adopt the same approach with regard to measurement of digital television signal strengths as it proposed with regard to the digital TV ILLR model: to limit measurement to outdoor antennas. The discussion in the *SHVERA NPRM* only addressed outdoor signal measurements, as the SHVERA specified use of an outdoor antenna. In view of the discussed change in the STELA from the term "conventional, stationary, outdoor rooftop receiving antenna" to the term "antenna," we are revisiting the issue of the antenna to be used in testing. The principal alternative to a conventional, stationary outdoor antenna that is currently used by consumers is a moveable indoor antenna. As noted in the NPRM discussion, in the *2005 Report to Congress* the Commission concluded that many factors make it impractical to develop a simple, reliable and accurate model of indoor television reception. Those same factors, including the performance expected of an indoor antenna, the placement of the antenna, and the location within a structure or room where the antenna is located make it difficult to develop an indoor television signal measurement procedure. First, because of the variability of indoor reception conditions across different structures and in different rooms and locations within the same structure, there is no standard model and planning factors for indoor reception, and in particular there is no standard antenna specification for such reception. The wide variation in indoor viewing situations makes it difficult to specify a standard model that meaningfully relates to any typical indoor viewing location. In addition, the performance of indoor antennas available to consumers varies significantly. Second, signal strengths typically vary significantly at different locations within a room and so there is the question of where to place the antenna—should it be in the center of the room, next to a wall or a window, or at the location of the television? What if the consumer changes the location of the television in the future? Also, there are questions regarding antenna height. Should the testing antenna be placed one or two meters or some other distance above the floor?

30. In addition to the practical difficulties of specifying a standard model for indoor reception, as discussed, the signal intensity standard in § 73.622(e)(1) assumes an outdoor

antenna. For these reasons, the Commission proposes not to specify a procedure for indoor measurement of DTV signal strengths. It is, however, requesting comments and suggestions for alternative approaches for making eligibility determinations for situations where consumers are not able to use an outdoor antenna to receive local television signals. Such approaches could include options for measurement of signals indoors. Commenters advocating development of a procedure for indoor measurement of DTV signals should provide detailed technical information on all aspects of such procedures, including a standard indoor antenna and specific measurement procedures that address the considerations indicated above. Such parties are also requested to specify proposals for indoor measurement that would be suitable for adoption into our rules.

31. *Multicast signals.* The Commission tentatively concludes not to adopt special testing procedures to measure network signals that are transmitted on multicast streams, rather than on a primary stream. The testing protocol measures a station's signal at the subscriber location. Whether the station's signal includes one or more program streams or networks, there is no change needed in the test employed because the presence of multiple streams has no bearing on the signal intensity or receivability. The Commission believes the tester, the satellite carrier and the network affiliate involved in the conduct of the test will be able to identify the network affiliates in the broadcast signal. If the signal is found to be available at the subscriber location at the requisite intensity, then any and all of the networks in that signal will likewise be available. If the station's signal is not found to be present at the requisite intensity, the subscriber will be unserved with respect to the networks broadcast on the streams in that signal, unless the subscriber receives a signal of sufficient strength from another local station affiliated with the same network or networks. The Commission seeks comment on this tentative conclusion.

Initial Regulatory Flexibility Certification

32. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ requires that an initial regulatory flexibility analysis be prepared for notice and comment

¹ The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵

33. In the NPRM, the Commission proposed to amend its rules to prescribe a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through use of an antenna, to receive signals in accordance with the signal intensity standard in § 73.622(e)(1) of the Commission’s rules, 47 CFR 73.622(e)(1), or a successor regulation, including the ability to account for the continuing operation of low power television and TV translator stations.

34. Television station licensees, Direct Broadcast Satellite (DBS) operators, and other Direct to Home (DTH) Satellite operators may use the proposed technique to establish the eligibility or non-eligibility of individual households for satellite delivery of distant television programming. These determinations will usually be made at the point of sale of satellite receiving equipment for homes and will tend to increase the number of eligible customers. The changes proposed are of a technical, scientific nature, without a substantial economic impact. In addition, the primary economic impact of these proposals will be their indirect effect on individual consumers.

35. Therefore, we certify that the proposals in this Notice of Proposed Rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals

discussed in the Notice require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the Notice, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA.⁶

Further Initial Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁷ the Commission has prepared this present Further Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking. (FNPRM). Written public comments are requested on this Further IRFA. Comments must be identified as responses to the Further IRFA and must be filed by the deadlines specified on the first page of this NPRM and FNPRM. The Commission will send a copy of this NPRM and FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁸

A. Need for and Objectives of the Proposed Rules. In the NPRM portion of this action, we seek comment on proposals for establishing a predictive model for determining the signal strength of digital television signals, including low power TV stations (Class A, LPTV and TV translator stations), at individual locations and for using that model to determine eligibility for delivery of distant network-affiliated television broadcast signals by direct broadcast satellite services. In addition, we seek comment on our proposal to continue to use the current standard for an outdoor antenna as specified in the DTV planning factors in predicting digital television signal strengths at individual. In the FNPRM discussion, we seek comment on two additional proposals relating to our proposed procedure for measurement of the strength of digital television signals at individual locations in ET Docket No 06–94. First, consistent with the new STELA provisions for eligibility, we propose to specify that a testing entity is to consider and test only the signals of those network affiliated stations that are located in the same DMA as the satellite subscriber. Second, we propose

to specify the use of an outdoor antenna in measuring digital television signal strengths and, consistent with the change in the STELA to specifying an “antenna” rather than an “outdoor antenna,” we also will consider comments and suggestions for solutions for situations where consumers are not able to use an outdoor antenna to receive local television signals. We indicate that such solutions could include options for measurement of signals indoors. This NPRM and FNPRM begins the process of implementing requirements of the Satellite Television Extension and Localism Act of 2010 (STELA).⁹

B. Legal Basis: The legal basis for the rule changes proposed in the NPRM and FNPRM is contained in Sections 1, 4(i) and (j), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 339 (including amendments enacted in the Satellite Television Extension and Localism Act of 2010).

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in this Notice may apply. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.¹⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹³

The proposed rules contained in the *Further NPRM* seek comment on and

⁹ See Satellite Television Extension and Localism Act of 2010, Title V of the “American Workers, State, and Business Relief Act of 2010,” Public Law 111–175, 124 Stat. 1218 (2010) relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered sections of 17 and 47 U.S.C.

¹⁰ 5 U.S.C. 603(b)(3), 604(a)(3).

¹¹ *Id.*, 601(6).

¹² 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 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 terms which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.”

¹³ 15 U.S.C. 632.

² 5 U.S.C. 605(b).

³ 5 U.S.C. 601(6).

⁴ 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 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 15 U.S.C. 632.

⁶ See 5 U.S.C. 605(b).

⁷ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Public Law 104–121, Title II, 110 Stat. 857 (1996).

⁸ See 5 U.S.C. 603(a).

modify previous proposals to measure the strength of digital television signals at any particular location, as a means of determining whether any particular household is “unserved” by a local DTV network station and is therefore eligible to receive a distant DTV network signal retransmitted by a Direct Broadcast Satellite (DBS) service provider. Therefore, DBS providers will be directly and primarily affected by the proposed rules, if adopted. In addition, the proposed rules, if adopted, will also directly affect those local digital television stations that broadcast network programming. Therefore, in this Further IRFA, we consider, and invite comment on, the impact of the proposed rules on small digital television broadcast stations, small DBS providers, and other small entities. A description of such small entities, as well as an estimate of the number of such small entities, is provided in the following paragraphs.

Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.¹⁴ A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁵ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹⁶ The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁷ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁸ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹⁹ Thus, we estimate that most governmental jurisdictions are small.

Cable Television Distribution Services. The “Cable and Other Program Distribution” census category includes cable systems operators, closed circuit television services, direct broadcast

satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined 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.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, the majority of these firms can be considered small.

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. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Wired Telecommunications Carriers. However, as discussed above, the Commission relies on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with \$13.5 million or less in annual receipts. Currently, only two operators—DirecTV and EchoStar

Communications Corporation (EchoStar)—hold licenses to provide DBS service, which requires a great investment of capital for operation. Both currently offer subscription services and report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, the Commission acknowledges the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

Television Broadcasting. The proposed rules and policies apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than \$14 million in annual receipts.²⁰ Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”²¹ The Commission has estimated the number of licensed commercial television stations to be 1,392.²² According to Commission staff review of the BIA/Kelsey, MAPro Television Database (“BIA”) as of April 7, 2010, about 1,015 of an estimated 1,380 commercial television stations²³ (or about 74 percent) have revenues of \$14 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed non-commercial educational

²⁰ See 13 CFR 121.201, NAICS Code 515120.

²¹ *Id.* 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.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

²² See News Release, “Broadcast Station Totals as of December 31, 2009,” 2010 WL 676084 (FCC) (dated Feb. 26, 2010) (“*Broadcast Station Totals*”); also available at <http://www.fcc.gov/mb/>.

²³ We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra* note 446; however, we are using BIA’s estimate for purposes of this revenue comparison.

¹⁴ See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

¹⁵ 5 U.S.C. 601(4).

¹⁶ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁷ 5 U.S.C. 601(5).

¹⁸ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

¹⁹ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

(NCE) television stations to be 390.²⁴ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²⁵ 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. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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 estimates of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Class A TV, LPTV, and TV translator stations. The rules and policies proposed in this Notice include licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$14 million in annual receipts.²⁶ Currently, there are approximately 537 licensed Class A stations, 2,386 licensed LPTV stations, and 4,359 licensed TV translators.²⁷ Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA’s definition, revenue of

affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$14 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirement for Small Entities. The rules proposed in this Further Notice would modify previously proposed rules for measuring digital television signal strength at any specific location. These measurement procedures would be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by DBS providers. Section 339(a)(2)(D)(vi) of the Communications Act (47 U.S.C. 339(a)(2)(D)(vi)) delineates when measurements are necessary and when the satellite communications provider, the digital television broadcast station, or the consumer is responsible for bearing their cost. No reporting requirement is proposed. In this Further IFRA, we seek comment on the types of burdens direct broadcast satellite service providers and digital television broadcast stations will face in complying with the proposed requirements. Entities, especially small businesses and, more generally, small entities are encouraged to quantify the costs and benefits of the proposed reporting requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from

coverage of the rule, or any part thereof, for small entities.²⁸

The Further Notice examines only two issues related to our previous proposals regarding DTV signal measurement procedures. As noted in the text, the proposal related to which stations need to be tested would reduce burdens both on businesses that conduct tests and on consumers. This is because the STELA limits the broad universe of stations that need to be tested to only a handful that are located in the same market at the satellite subscriber. This could reduce the amount and complexity of the equipment necessary to conduct a test as well as reduce the complexity of actually conducting the test as fewer stations need to be measured. This should have an accompanying cost savings to consumers as the tests should be less complex. We seek comment on this tentative conclusion especially from small entities.

F. Federal Rules that Might Duplicate, Overlap, or Conflict with the Proposed Rules. None.

Ordering Clauses

37. Pursuant to Sections 1, 4, 301, and 339(c)(3) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 301, 339(c)(3), and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a), this *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking is hereby adopted.*

38. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, and Further IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Communications equipment, Radio and Television.

Federal Communications Commission.

Bulah P. Wheeler,
Deputy Manager.

Proposed Rules Changes

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend part 73 of title 47 of the Code of Federal Regulations to read as follows:

²⁸ 5 U.S.C. 603(c).

²⁴ See *Broadcast Station Totals*, *supra* note 239.

²⁵ “[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 the power to control both.” 13 CFR 121.103(a)(1).

²⁶ See 13 CFR 121.201, NAIGS Code 515120.

²⁷ See *Broadcast Station Totals*, *supra* note 239.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

2. Section 73.683(d) is revised to read as follows:

§ 73.683 Field strength contours and presumptive determination of field strength at individual locations.

* * * * *

(d) For purposes of determining the eligibility of individual households for satellite retransmission of distant network signals under the copyright law provisions of 17 U.S.C. 119(d)(10)(A), field strength shall be determined by the Individual Location Longley-Rice (ILLR) propagation prediction model. Guidance for use of the ILLR model for these purposes in predicting the field strength of analog television signals is provided in OET Bulletin No. 72 (stations operating with analog signals include some Class A stations licensed under part 73 of this chapter and some low power TV and TV translator stations licensed that operate under Part 74 of this chapter). Guidance for use of the ILLR model for these purposes in predicting the field strength of digital television signals is provided in OET Bulletin No. 73 (stations operating with digital signals include all full service stations and some Class A stations that operate under part 73 of this chapter and some low power TV and TV translator stations that operate under part 73 or Part 74 of this chapter). OET Bulletin No. 72 and OET Bulletin No. 73 are available at the FCC's Headquarters Building, 445 12th St., SW., Reference Information Center, Room CY-A257, Washington, DC, or at the FCC's Office of Engineering and Technology (OET) Webs site: <http://www.fcc.gov/oet/info/documents/bulletins/>.

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[FR Doc. 2010-19294 Filed 8-3-10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

**[Docket No. FWS-R2-ES-2010-0045]
[MO 92210-0-0008]**

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Mexican Gray Wolf as an Endangered Subspecies With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status and critical habitat review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on two petitions to list the Mexican gray wolf (*Canis lupus baileyi*) (Mexican wolf) as an endangered subspecies and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). Although not listed as a subspecies, the Mexican wolf is currently listed as endangered within the broader listing of gray wolves. Based on our review, we find that the petitions present substantial scientific or commercial information indicating that the Mexican wolf subspecies may warrant listing such that reclassifying the Mexican wolf as a separate subspecies may be warranted. One of the petitions also requested listing of the Mexican wolf as an endangered Distinct Population Segment (DPS). While we have not addressed the DPS portion of the petition in this finding, we will further evaluate that information during the status review. Therefore, with the publication of this notice, we are initiating a review of the status of the Mexican wolf subspecies to determine if listing the Mexican wolf as a subspecies or DPS is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the Mexican wolf. Based on the status review, we will issue a 12-month finding on the petitions, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before October 4, 2010. After this date, you must submit information directly to the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate

information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for docket FWS-R2-ES-2010-0045 and then follow the instructions for submitting comments.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R2-ES-2010-0045; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Information Solicited** section below for more details).

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113, by telephone (505-346-2525) or by facsimile (505-346-2542). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:
Information Requested**

When we make a finding that a petition presents substantial information indicating that listing an entity may be warranted, we are required to promptly review the status of that entity (status review). To ensure that the status review is complete and based on the best available scientific and commercial information, we request information on the status of the Mexican wolf. We request information from the public, other governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the status of the Mexican wolf. We seek information on:

(1) The historical and current status and distribution of the Mexican wolf, its biology and ecology, taxonomy, and ongoing conservation measures for the subspecies and its habitat in the United States and Mexico; and

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;