

certification, the Commission may take action on the application.

\* \* \* \* \*

(k) \* \* \*

(4) Certifying that for applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system the applicant is not required to submit a consistency certification to any state pursuant to section 1456(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456.

**Note to paragraph (k)(4)**—Streamlining of cable landing license applications will be limited to those applications where all potentially affected states, having constructive notice that the application was filed with the Commission, have waived, or are deemed to have waived, any section 1456(c)(3)(A) right to review the application within the thirty-day period prescribed by 15 CFR 930.54.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[ET Docket No. 06-94; FCC 10-195]

#### Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission amends its rules to include measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures will be used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers, pursuant to the provisions of the Satellite Television Extension and Localism Act of 2010 (STELA).

**DATES:** Effective January 27, 2011, except for amendment to § 73.686(e), which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for that amendment.

**FOR FURTHER INFORMATION CONTACT:** Ira Keltz, Office of Engineering and Technology, (202) 418-0616, e-mail: [Ira.Keltz@fcc.gov](mailto:Ira.Keltz@fcc.gov), TTY (202) 418-2989.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, ET Docket No. 06-94, FCC 10-195, adopted November 22, 2010 and released November 23, 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: [www.fcc.gov](http://www.fcc.gov).

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#### Summary of Report and Order

1. In accordance with the provisions of the STELA, the Commission amends its rules to include measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures will be used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers, pursuant to the provisions of the Satellite Television Extension and Localism Act of 2010 (STELA). The *Report and Order* implements DTV signal measurement procedures proposed in the Commission's *Notice of Proposed Rulemaking (SHVERA NPRM)*, 75 FR 46885, August 4, 2010, and *Further Notice of Proposed Rulemaking (STELA FNRPM)* in this proceeding with minor modifications. The rules adopted herein were developed based on our recommendations in the *SHVERA Report* and comments received in response to the *SHVERA NPRM* and the *STELA FNRPM*. They largely rely on existing proven methods the Commission has already established for measuring analog television signal strength at any individual location, as set forth in § 73.686(d) of the existing rules, but include modifications as necessary to accommodate the inherent differences between analog and digital TV signals. The new digital signal measurement procedures include provisions for the location of the measurement antenna, antenna height,

signal measurement method, antenna orientation and polarization, and data recording.

2. On December 2004, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), which amended the Copyright Act and the Communications Act to further aid the competitiveness of satellite carriers and expand program offerings for satellite TV subscribers while protecting localism. The SHVERA included new provisions for distant digital signal reception and amended section 339 of the Communications Act and section 119 of the Copyright Act to provide three methods by which a subscriber can establish eligibility to receive such signals. First, a subscriber would be eligible to receive the distant digital signal of a particular network if his or her household was predicted by the Satellite Home Viewer Act (SHVA) ILLR model to be unserved by the over-the-air analog signal of any affiliate of that network (not necessarily the local affiliate). Second, a subscriber whose household was predicted to be served by a local station's analog signal could request an on-site signal strength test to determine if his or her household is unable to receive that station's digital signal. Third, a satellite subscriber could receive distant digital signals if the television network station granted a waiver to allow satellite retransmission of the relevant network from a distant station.

3. Section 204 of the SHVERA also directed the Commission to conduct an inquiry regarding whether the Commission's digital TV signal strength standards and signal measurement procedures for determining if a household is "unserved" by local signals should be revised. Section 204 of SHVERA further directed the Commission to provide Congress with a Report on its findings and recommendations for any revisions that might be necessary for implementing DTV measurement standards and procedures. Pursuant to this requirement, the Commission issued a Notice of Inquiry and, on December 8, 2005, issued the *SHVERA Report* to Congress that, in relevant part, stated that the Commission generally believes that the digital television measurement procedures should be similar to the Commission's current procedures for measuring the field strength of analog television stations in § 73.686(d) of the rules, but with certain modifications to address the differences between analog and digital TV signals. The Commission also stated that no changes are needed to the digital television field strength standards and/or planning factors for

purposes of determining whether a household is eligible to receive retransmitted distant network television signals.

4. The Commission subsequently adopted the *SHVERA NPRM*, 75 FR 46885, August 4, 2010, in which it proposed measurement standards for digital television signals as recommended in the *SHVERA Report*. The Commission specified that it would rely on the proposed DTV measurement procedures for evaluating DTV signal strength pending the adoption of final rules. These interim procedures have been in effect since adoption of the *SHVERA NPRM* in April, 2006, and to date the Commission has not received any reports of problems or difficulties with their use.

5. The Satellite Television Extension and Localism Act of 2010 (STELA) retains the *SHVERA* framework of three methods for establishing subscriber eligibility to receive distant digital signals: Predictive model; on-site testing; and waiver. Following the STELA's enactment, the Commission adopted the *STELA FNPRM* to address provisions of the STELA regarding the second method, digital signal measurement procedures. The Commission explained in the *STELA FNPRM* that the STELA raised three new issues not addressed in the *SHVERA NPRM*: (1) Which station signals are to be measured; (2) what type of antenna is to be used in performing on-location testing; and (3) which program stream from a station in the local market is to be measured. The Commission sought comment on these issues and more generally to refresh the record in response to the *SHVERA NPRM*.

6. *Stations to be Tested*. The Commission adopts its proposal that measurements for distant network signal eligibility only include stations located within the same DMA as the satellite subscriber's household. 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. Under the *SHVIA*, Congress defined an "unserved household," with respect to a particular television network, to mean "a household that— cannot receive \* \* \* an over-the-air signal of a primary network station affiliated with that network \* \* \*" This definition was not altered in the *SHVERA*. However, in the STELA, Congress modified the definition of an "unserved household" to mean a household that "cannot receive \* \* \* an over-the-air signal

containing the primary stream, or \* \* \* the multicast stream, originating in that household's *local market* and affiliated with that network \* \* \*" Under the rules for analog TV measurements, 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. Thus, the Commission proposed in the *STELA FNPRM* 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 did not receive any comment on this issue and accordingly adopts its proposals without change. The Commission noted that, consistent with section 204(b)(2) of the STELA, this rule change could reduce burdens on both testers and consumers as fewer stations would need to be tested, potentially resulting in lower costs for consumers and saving time.

7. *Indoor Measurements*. The Commission adopted its proposal to continue to rely on an outdoor signal intensity test for purposes of determining subscriber eligibility to receive distant network signals. The current measurement rules for analog signals specify the use of an outdoor antenna, consistent with the provisions of the *SHVERA*. The STELA modified the statute's wording to replace the term "conventional, stationary, outdoor rooftop receiving antenna" with the term "antenna." In light of the amended statutory language, we invited comment on the potential use of moveable indoor antennas in our digital signal measurement procedures, but for several reasons declined to propose rules for indoor measurements. First, in the *SHVERA Report*, the Commission concluded that many 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 that will provide accurate, reliable and repeatable results. There are no standard models or 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 in different rooms such that it is not apparent where the measurement antenna should be placed. In light of these considerations, the Commission requested comments in the *STELA FNPRM* on alternative approaches for making eligibility determinations in situations where consumers are not able to use an outdoor antenna to receive local television signals. It also noted that the signal intensity standard in § 73.622(e)(1), which specifies the signal level that constitutes service, assumes an outdoor antenna, as it relies on the methodology of the Commission's OET Bulletin No. 69, which in turn relies on the DTV planning factors, including an outdoor antenna. The Commission is not persuaded by the Broadcasters' assertion that the STELA requires the Commission to continue to rely on an outdoor antenna for conducting measurements. Instead, it believes that the change in statutory language simply affords that Commission latitude to consider all types of antennas. As observed in the *SHVERA Report*, the Commission has always assumed that households will use the type of antenna that they need to achieve service; if an indoor antenna is insufficient for a particular household, it will generally rely on a rooftop antenna. Nothing in the STELA reflects that Congress wished to alter that assumption. On the contrary, the STELA specifies use of the digital television signal strength standard in § 73.622(e)(1) of the rules, which is derived from the assumptions in the digital television planning factors set forth in OET Bulletin No. 69, including the assumption of use of an outdoor antenna. The Commission does not believe that Congress would have incorporated this assumption into the STELA if it intended use of an indoor antenna standard.

8. The Commission also finds that continued use of an outdoor antenna standard for signal strength measurements is the best means of achieving the directives for digital TV signal strength measurements set forth in the STELA. The STELA specifies use of the digital television signal strength standard in § 73.622(e)(1) of the rules as the threshold metric against which to compare measurements to determine whether households are "served" or "unserved." That signal strength standard is important because it serves to define the service boundary or "service contour" of a digital television station and the threshold at which a

station's service is considered to be available in areas within that service contour. That standard, in turn, is premised on use of an outdoor antenna through the digital television planning factors set forth in OET Bulletin No. 69. To provide for meaningful comparisons between that standard and digital TV signal strength measurements, the Commission finds that it is appropriate to specify use of an outdoor antenna, so that the signals whose strengths are being measured have the same qualities as the signal specified in the standard.

9. *Multicast Signals.* The Commission adopted its tentative conclusion not to make any special provisions for multicast signals in our modified digital signal strength measurement procedures. The Commission's tentative conclusion in the *STELA FNPRM* was based on the recognition that the testing protocol measures a station's signal at the subscriber location and that all program streams are equally available on a signal. Whether the station's signal includes one or more program streams or networks does not necessitate a change in the test employed because the presence of multiple streams has no bearing on the signal intensity or receivability, *i.e.*, the bit stream of a single TV signal can be decoded into multiple program streams, but there is only a single TV signal to measure. The Commission stated its belief that 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 any and all 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. Only the Broadcasters commented on our tentative proposal, stating that multicast streams should be treated equally. Accordingly, the Commission adopted its tentative conclusion not to make any special provisions for multicast signals.

10. *DTV Signal Measurement Procedures.* The Commission adopted the proposal in the *SHVERA NPRM* to continue using the same rules for measuring DTV signals as the Commission uses for measuring analog TV signals, with the modifications identified. Under the current rules, measurements are to be made as close as possible to the specific site where the

household's receiving antenna is located or in the case when there is no receiving antenna at the site, measurements are to be made at locations as close as possible to a reasonable and likely spot for the antenna. Further, the current rules require that five cluster measurements be taken, each at least 3 meters apart, and if possible, the first testing point should be the center of a square whose corners are the four other locations. EchoStar commented that these requirements make good sense and provide a fair degree of flexibility to the tester to adapt to the subscriber's location. However, EchoStar asked for clarification that it is not necessary to choose locations in the shape of a square, but only that the testing locations be as close as possible to the likely antenna site. Similarly DirecTV and Dish Network argue in response to the *STELA FNPRM* that the current cluster measurement is needlessly involved. As an alternative, they state that the locations should be in an area encompassed by a square, circle, or semicircle, as possible, with 3 meter separation and with one measurement in the center representing the nominal television receive location. No other parties commented on this issue. The Commission clarifies that the existing rule provides that measurements should be made in the form of a square "if possible," but does not require that the square pattern be used. Testers have always had the flexibility to adjust the measurement locations in order to conduct them in a safe and economically feasible manner while still obtaining the most accurate measurements possible. Thus, the Commission does not believe any additional clarification or change on this issue is necessary. The Commission also adopted its proposal that measurements of DTV signals be taken by elevating the antenna to 6.1 meters (20 feet) above the ground for one story buildings and to 9.1 meters (30 feet) above the ground for structures taller than one story. Again, this procedure is identical to the current rules for analog TV signal measurements and is consistent with the DTV planning factors. EchoStar, arguing that this height requirement may lead to lengthy tests as the antenna has to be raised, lowered and reset repeatedly, asks that the Commission allow measurements to be made at a lower height and then corrected to reflect the signal strength at 20 or 30 feet. It suggests that such a change may increase the pool of qualified testers who have the necessary equipment to conduct signal strength tests. In opposition, the Broadcasters

assert that the rationale underlying the Commission's height rules—to simulate the roof-top antenna mount of a 20 foot one-story house, or a 30 foot tall two-story house—applies equally to digital and analog signals. The Commission agrees with the Broadcasters. This rule was devised as a way to account for most households in the country while maintaining an easy-to-administer standard and the Commission is not persuaded that it should modify it now. Further, no evidence was presented showing that a reduction in the required antenna height requirement would significantly increase the pool of available testers.

11. *Measurement Instrumentation.* The Commission adopted rules requiring that the tests measure the integrated average power over the signal's entire 6 megahertz bandwidth and recommending that the measurement instrumentation use an intermediate frequency (i.f.) bandwidth of 100 kilohertz unless the instrumentation is specifically designed to use an alternative i.f. bandwidth. Additionally, the rules continue to require testers to use good engineering practice, including proper choice and use of instrumentation to ensure accurate results. The Commission had proposed that the tests measure the integrated average power over the signal's entire 6 megahertz bandwidth, and that the intermediate frequency (i.f.) bandwidth of the measuring instrumentation be no greater than 6 megahertz so that the measurement method would conform to the format of the DTV signal. Commenters unanimously agreed with our proposal to measure total integrated power over the 6 megahertz bandwidth, but Broadcasters sought more specificity regarding the restriction of the i.f. bandwidth. They stated that a large i.f. bandwidth, such as 6 megahertz, could produce inaccurate results and recommended that the Commission require an i.f. bandwidth of less than 100 kHz. The Commission does not believe the Broadcaster's concern is significant as most measurements could not be taken using a 6 megahertz i.f. bandwidth because such a setting is not available on most measurement instruments. While we believe most instruments are capable of i.f. bandwidth settings of 100 kHz or less, some may not have this capability, which could potentially reduce the number of parties that have the equipment needed to perform these measurements. Further, measurement instruments with an i.f. bandwidth greater than 100 kHz can yield accurate

results if used properly. Accordingly, the Commission amended its proposal to recommend, but not require an i.f. bandwidth of 100 kHz.

12. The Commission also adopted its remaining proposals regarding measurement procedure: To use a shielded transmission line; to match the antenna impedance to the transmission line at all frequencies measured; to employ a suitable balance when an unbalanced line is used; to measure transmission line loss for each frequency; to use a horizontally polarized antenna; and to orient the testing antenna so that its maximum gain (over an isotropic antenna) faces the strongest signal coming from the transmitter being tested. All of these procedures are identical to those currently used for analog TV measurement. No parties commented on these proposals. The Commission continues to believe that these procedures are appropriate for measurement of digital television signals and thus, it adopts them as proposed.

13. *Measurement Antenna.* The Commission adopted rules to provide testers flexibility to choose either a half-wave dipole or a gain antenna when conducting DTV measurements. In the *SHVERA NPRM*, the Commission proposed to allow use of either type of antenna for testing the signal strength of DTV signals. In making this proposal, the Commission recognized that both of these types of antennas are permitted for analog TV signal measurements. Under this regime, the on-site tester will have flexibility to determine the best antenna to employ when conducting field strength measurements.

14. The Commission rejects the Broadcasters' arguments against use of dipole antennas. Half-wave dipole antennas and gain antennas each have various advantages and disadvantages. For accuracy, half-wave dipole antennas generally must be retuned for each frequency when making measurements. However, half-wave dipole antennas can be calibrated easily and reliably. Gain antennas do not require retuning and can boost the signal in the direction they are pointed while reducing interfering signals from other directions. On the other hand, gain antennas can be a little more difficult to calibrate precisely and maintain in calibration. The Commission continues to believe that both half-wave dipole and gain antennas will provide reliable, accurate test results, so long as the tester is diligent and takes care to ensure that good engineering practice is followed, as required by the rules. Both types of antennas are permitted for testing

analog signals and the Commission will similarly permit both for measuring digital signals. Thus, each tester, based on experience, availability of equipment, and local conditions, will be permitted to decide which antenna would be best for measuring digital TV signals.

15. *Weather.* The Commission adopts its proposal to prohibit digital television signal strength measurements being made during inclement weather. Inclement weather can generally be defined as unfavorable atmospheric conditions such as, but not limited to heavy rainfall, snowfall accumulation, high windspeed, or any combination thereof. As the Commission noted in making this proposal, while in general weather conditions do not have an appreciable effect on the reception of broadcast television signals, heavy precipitation and the movement of major weather fronts through the measurement area could impact the signal strength measurements. No commenter objected to this proposal and the Commission adopted it as proposed.

16. *Data Recording.* The Commission adopts its proposal to apply the same recording requirements for DTV signal strength measurements as are used for analog measurements. In general, the existing rules require that the recorded data contain a list of calibrated equipment along with a description of the calibration, a description of the environment, such as topography, vegetation, buildings, etc., as well as the location and value of the actual measurements. There were no objections to this proposal and the Commission adopted the rules in this regard as proposed.

17. *Other Matters.* EchoStar observes that the Commission's rules define the digital television service area as the noise-limited contour based on criteria that the specified signal level is predicted to be exceeded at 50% of the locations, 90% of the time (using F(50,90) curves and the Longley-Rice terrain prediction model). EchoStar proposes that the time variability factor be adjusted from 90% to 50% (*i.e.* to the F(50, 50) level) for comparison to a median measured value. Similarly, DirecTV and Dish Network state that the Commission should either develop a conversion factor or use a standard method such as Rayleigh, which describes an increase in necessary power from the mean to 99% of 20dB. The comments do not state how this conversion would be used, but the Commission presumes it would be intended as a correction factor to reduce the measured signal strength value. The

Commission notes that it rejected this same request in the *SHVERA Report* and that EchoStar has not provided any new information regarding this issue. Accordingly, the Commission will not make any adjustments to the signal strength standard.

18. Finally, in the *SHVERA NPRM*, we asked if there are steps the Commission can take in this proceeding that will facilitate or enhance tester competence and availability. The Commission did not receive any suggestions on this issue. As noted, the Commission has provided flexibility for the conduct of DTV measurement tests, such as the rules requiring good engineering practice, which provides for testers to use antennas and measurement instrumentation with which they are familiar to endure accurate results. The Commission believes that by bestowing this flexibility to testers, it will maximize the number of qualified testers available.

#### Procedural Matters

19. *Final Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")<sup>1</sup> an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking* (NPRM) to this proceeding.<sup>2</sup> 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.<sup>3</sup>

A. *Need for and Objectives of the Report and Order.* This Report and Order ("R&O") adopts rules to implement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These rules implement our recommendations for DTV measurement procedures presented in the Commission's *Report to Congress* (SHVERA Report) pursuant to section 204(b) of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA).<sup>4</sup> The rules provide procedures to determine whether households are eligible to receive

<sup>1</sup> See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Public Law No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

<sup>2</sup> *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 20 FCC Rcd 2983, Appendix C (2005) (NPRM).

<sup>3</sup> See 5 U.S.C. 604.

<sup>4</sup> See *SHVERA Report*, *supra* n.1.

distant DTV network signals retransmitted by satellite communications providers. In December 2004, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act of 2004,<sup>5</sup> pursuant to which, the Commission conducted an Inquiry<sup>6</sup> (*SHVERA Inquiry*) and on December 9, 2005, released the *SHVERA Report*. In relevant part, the *SHVERA Report* stated that the Commission intended to conduct a rulemaking proceeding to specify procedures for measuring the field strength of digital television signals at individual locations.<sup>7</sup> The Report also stated that the digital television measurement procedures should be similar to the current procedures for measuring the field strength of analog television stations in § 73.686(d) of the rules, but with certain modifications to address the differences between analog and digital TV signals.<sup>8</sup>

Wherever possible, the adopted digital signal strength measurement procedures rely on the existing, proven methods the Commission has established for measuring analog television signal strength at any individual location.<sup>9</sup> We also note that the *SHVERA* statute provided that testing of digital signal strength for this purpose could have begun as early as April 30, 2006.<sup>10</sup>

<sup>5</sup> See *id.*

<sup>6</sup> See *In the Matter Of Technical Standards For Determining Eligibility For Satellite-Delivered Network Signals Pursuant To The Satellite Home Viewer Extension and Reauthorization Act*, ET Docket No. 05-182, *Notice of Inquiry*, 20 FCC Rcd. 9349 (2005), (*SHVERA Inquiry*).

<sup>7</sup> See *SHVERA Report*, *supra*, note 4.

<sup>8</sup> *Id.*

<sup>9</sup> See generally, 47 CFR 73.686(d).

<sup>10</sup> 47 U.S.C. 339(a)(2)(D)(vii) provides trigger dates for testing. Generally, subscribers in the top 100 television markets will be able to request a digital signal strength test after April 30, 2006 and subscribers in other markets will be able to request a test after July 15, 2007. Only network stations that have received a tentative digital channel designation that is the same as such stations' current digital channel, or that have lost interference protection, are subject to the April 30, 2006 commencement date for signal strength testing. Network stations in the top 100 markets without tentative channel designations on their DTV channels, as well as all network stations not in the top 100 markets, will be subject to signal strength testing beginning July 15, 2007, unless the Commission grants the station a waiver. 47 U.S.C. 339(a)(2)(D)(vii)(I)(aa)(bb).

Waiver requests by stations subject to the testing commencement date of April 30, 2006 were required to be submitted by November 30, 2005. To be grantable, waiver requests must provide "clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the following: (1) The need for international coordination or approvals; (2) clear zoning or environmental legal impediments; (3) force majeure; (4) the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using

B. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the IRFA.

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.<sup>11</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>12</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>13</sup> 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).<sup>14</sup>

The rules adopted in this Report and Order 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, rules adopted will also directly affect those local digital television stations that broadcast network programming.

a side-mounted antenna; (5) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or (6) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 in the local market." The Act further provides that "under no circumstances may such a waiver be based upon financial exigency." Waiver requests by stations subject to the testing commencement date of July 15, 2007 had to be submitted to the Commission no later than February 15, 2007. See Public Notice DA No. 05-2979 (rel. Nov. 17, 2005). See generally, 47 U.S.C. 339(a)(2)(D)(vii)-(viii).

<sup>11</sup> 5 U.S.C. 603(b)(3), 604(a)(3).

<sup>12</sup> *Id.* 601(6).

<sup>13</sup> 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 definitions(s) in the Federal Register."

<sup>14</sup> 15 U.S.C. 632.

Therefore, in this FRFA, 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.<sup>15</sup> A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>16</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>17</sup> 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."<sup>18</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>19</sup> We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."<sup>20</sup> 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

<sup>15</sup> See SBA, Office of Advocacy, "Frequently Asked Questions," <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

<sup>16</sup> 5 U.S.C. 601(4).

<sup>17</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>18</sup> 5 U.S.C. 601(5).

<sup>19</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>20</sup> 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.*

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 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.<sup>21</sup> Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”<sup>22</sup> The Commission has estimated the number of licensed commercial television stations to be 1,392.<sup>23</sup> 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 stations<sup>24</sup> (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 (NCE) television stations to be 390.<sup>25</sup> We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>26</sup> 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

<sup>21</sup> See 13 CFR 121.201, NAICS Code 515120.

<sup>22</sup> *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.

<sup>23</sup> See News Release, “Broadcast Station Totals as of December 31, 2009,” 2010 WL 676084 (F.C.C.) (dated Feb. 26, 2010) (Broadcast Station Totals); also available at <http://www.fcc.gov/mb/>.

<sup>24</sup> 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.

<sup>25</sup> See *Broadcast Station Totals*, *supra* note 239.

<sup>26</sup> “[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).

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 adopted in this Report and Order 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.<sup>27</sup> Currently, there are approximately 537 licensed Class A stations, 2,386 licensed LPTV stations, and 4,359 licensed TV translators.<sup>28</sup> 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.

<sup>27</sup> See 13 CFR 121.201, NAICS Code 515120.

<sup>28</sup> See *Broadcast Station Totals*, *supra* note 239.

D. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The rules in this *Report & Order* establish procedures for measuring digital television signal strength at any specific location. These measurement procedures will be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by DBS providers. These procedures are similar to the ones used for measuring analog television signal strength for like purposes, with only those revisions necessary to account for the difference between digital and analog signals. 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. We sought but did not receive comment on the types of burdens direct broadcast satellite service providers and digital television broadcast stations may 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: (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.<sup>29</sup>

Since the adoption of analog television signal strength procedures in 1999, the number of analog TV signal strength measurements taken in order to determine household eligibility to receive distant analog TV network signals has been infrequent. For example, DIRECTV, in comments filed in ET Docket No. 05–182, Notice of Inquiry on Technical Standards for Determining Eligibility for Satellite-Delivered Network Signals Pursuant to

the Satellite Home Viewer Extension and Reauthorization Act, 20 FCC Rcd 9349 (2005), stated that in the last five years only 1400 DIRECTV subscribers received onsite tests to determine eligibility to receive distant network television signals. In that proceeding, both DIRECTV and EchoStar indicated that they generally declined to perform or arrange for a test and instead refused to offer distant signals when subscribers were predicted to be “served” and the relevant network stations refused to grant a waiver.

As TV stations transition from analog transmissions to DTV, we anticipate that the combined number of analog and digital measurements will not increase substantially. This is because, as part of the DTV transition, television stations will be ceasing the transmission of analog signals and households seeking to receive retransmitted DTV network signals will not be seeking to receive analog signals. In other words, digital measurements will replace analog measurements. Also, as direct broadcast stations increasingly offer local-to-local service to households pursuant to SHVERA, those households will not be eligible to receive retransmitted distant signals and therefore DTV signal strength measurements for this purpose will not be necessary.

Finally, the *Report & Order* will allow measurements to be taken using either a standard half-wave dipole antenna or a gain antenna with a known antenna factor for the channel(s) that are to be tested for digital measurements, this approach would allow the tester flexibility in performing the test while still providing for accurate results. The *Report & Order* does not require the use of a gain antenna only. Commenters provided information regarding differences in ease of use of gain antennas as compared to the use of half-wave dipole antennas. The Commission received comments on what rules it should propose, if any, that would address the apparent lack of qualified, independent testers to perform signal strength tests. Commenters indicated that there is no feasible regulatory solution to increasing the number of qualified testers available. No alternative methods that would reduce the cost of performing a test while retaining or improving on the accuracy of the proposed method was submitted.

20. *Report to Congress:* 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.<sup>30</sup> 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.

21. *Final Paperwork Reduction Act of 1995 Analysis.* This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It 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 are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), 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.” In this present document, we have assessed the effects of our requirement that testers adhere to the data recording requirements of § 73.686(e)(3) and described in paragraph 11, *supra*, of the *Report and Order*, and find that these requirements will not impose burdens to businesses with fewer than 25 employees as we are adopting the identical data recording requirements that have been used for analog TV measurements for many years.

#### Ordering Clauses

22. Pursuant to sections 4(i), 4(j), 303 and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303 and 339, and section 204 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified at 47 U.S.C. 339(a)(2)(D)(vi), that this *Report and Order* is *hereby adopted*.

23. Section 73.686(e) of the Commission's rules, *is amended* as set forth in Appendix A of the *Report and Order*. The rules adopted in this *Report and Order* contains information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13, which will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing OMB approval and the effective date of the rules adopted herein.

24. 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 Government Accountability Office

<sup>29</sup> See 5 U.S.C. 603(c).

<sup>30</sup> See 5 U.S.C. 801(a)(1)(A).

pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Communications equipment, Reporting and recordkeeping requirements, 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 73 as follows:

#### 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 73.686 is amended by revising the heading of paragraph (d) and by adding a new paragraph (e) to read as follows:

#### § 73.686 Field strength measurements.

\* \* \* \* \*

(d) *NTSC—Collection of field strength data to determine NTSC television signal intensity at an individual location—cluster measurements—*

\* \* \* \* \*

(e) *DTV—Collection of field strength data to determine digital television signal intensity at an individual location—cluster measurements—(1) Preparation for measurements—*

(i) *Testing antenna.* The test antenna shall be either a standard half-wave dipole tuned to the center frequency of the channel being tested or a gain antenna provided its antenna factor for the channel(s) under test has been determined. Use the antenna factor supplied by the antenna manufacturer as determined on an antenna range.

(ii) *Testing locations.*—At the test site, choose a minimum of five locations as close as possible to the specific site where the site's receiving antenna is located. If there is no receiving antenna at the site, choose a minimum of five locations as close as possible to a reasonable and likely spot for the antenna. The locations shall be at least three meters apart, enough so that the testing is practical. If possible, the first testing point should be chosen as the center point of a square whose corners are the four other locations. Calculate the median of the five measurements (in units of dBμ) and report it as the measurement.

(iii) *Multiple signals.*—

(A) If more than one signal is being measured (*i.e.*, signals from different transmitters), use the same locations to measure each signal.

(B) For establishing eligibility of a satellite subscriber to receive distant network signals, only stations affiliated with the network in question that are located in the same Nielsen Designated Market Area (DMA) as the test site may be considered and tested.

(2) *Measurement procedure.* Measurements shall be made in accordance with good engineering practice and in accordance with this section of this chapter. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Perform an on-site calibration of the test instrument in accordance with the manufacturer's specifications. Tune a calibrated instrument to the center of the channel being tested. Measure the integrated average power over the full 6 megahertz bandwidth of the television signal. The intermediate frequency of the instrument should be set to 100 kilohertz unless the instrument is specifically designed by the manufacturer to use an alternative i.f. setting. The instrument must be capable of integrating over the selected i.f. for the 6 megahertz channel bandwidth. Take all measurements with a horizontally polarized antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line at all frequencies measured, and, if using an un-balanced line, employ a suitable balance. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements during periods of inclement weather, including, but not limited to, periods of heavy rainfall, snowfall accumulation, high windspeed, or any combination thereof.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station's signal is being measured, orient the testing antenna separately for each station.

(3) Written record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for each instrument specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBμ after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 101029427-0609-02]

RIN 0648-XY82

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Summer Flounder, Scup, and Black Sea Bass Specifications; Preliminary 2011 Quota Adjustments; 2011 Summer Flounder Quota for Delaware

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2011 summer flounder, scup, and black sea bass fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including commercial scup possession limits. This action prohibits Federally permitted commercial fishing vessels