

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Daytona Beach Shores, Channel 258A.

Federal Communications Commission.

**John A. Karousos,**

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 73 and 76**

[FCC 05–81]

**Implementation of SHVERA: Procedural Rules**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts procedural rules in compliance with requirements in the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA). The Commission first prescribes rules for carriage elections on a county basis, unified retransmission consent negotiations, and notifications by satellite carriers to local broadcasters concerning carriage of significantly viewed signals. The Commission also revises the rules for satellite carriers' notices to station licensees when the carrier is going to initiate new local service. Finally, the Commission adopts a procedural rule which exempts satellite carriers from the signal testing requirements of section 339(c)(4) of the Communications Act of 1934, as amended, when local-into-local service is available.

**DATES:** Effective May 27, 2005, except for §§ 76.66(d)(2)(i), (ii) and 76.66(d)(5) which contain Paperwork Reduction Act 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 those sections.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Lewis, Media Bureau, (202) 418–2622 or [Kenneth.lewis@fcc.gov](mailto:Kenneth.lewis@fcc.gov). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918 or via Internet at [cathy.williams@fcc.gov](mailto:cathy.williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act of 1995 Analysis**

This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this *Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 27, 2005, except for sections 76.66(d)(2) and 76.66(d)(5) which contain Paperwork Reduction Act 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 those sections. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we have not previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. However, this information collection does not affect businesses with fewer than 25 employees. Accordingly, there is no impact pursuant to the Small Business Paperwork Relief Act of 2002.

This is a synopsis of the Media Bureau's *Order* in FCC 05–81, adopted March 28, 2005, and released on March 30, 2005. The full text of this *Order* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcp.com>, or call 1–800–378–3160.

**Synopsis of Order**

1. The Commission, in this *Order*, adopts procedural rules in compliance with requirements in the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA).<sup>1</sup> The SHVERA amends the 1988 copyright laws (17 U.S.C. 119 and 122) and the Communications Act of 1934, as amended (Act) to further aid competition in the multichannel video programming distribution market and provide more video programming

options for satellite subscribers. The *Order* is one of several actions the Commission is taking to implement SHVERA. The other proceedings will follow according to timeframes set forth in the SHVERA, to be undertaken and largely completed in 2005.

2. The *Order* first implements procedural rule revisions required by section 340(h) of the Act. Section 202 of the SHVERA requires the Commission to add new section 340 of the Act, which provides for satellite carriage of “significantly viewed” broadcast signals.<sup>2</sup> Accordingly, in February 2005, the Commission adopted a *Notice of Proposed Rulemaking* to implement new section 340 of the Act. This decision may be found at 70 FR 11313, March 8, 2005. Section 340(h) prescribes rules for carriage elections on a county basis, unified retransmission consent negotiations, and notifications by satellite carriers to local broadcasters concerning carriage of significantly viewed signals.

3. Additionally, section 205 of the SHVERA amends section 338(h)(2) of the Act to add subsection 338(h) which instructs the Commission to amend § 76.66(d)(2) of the Commission's rules concerning satellite carrier notification to television broadcast stations in new local-into-local markets. The *Order*, as required by the SHVERA, mandates that the carrier's notice be sent to each station in a local market in which the carrier proposes to commence local-into-local service not later than 60 days before the local-into-local service will begin and also specifies the information that must be included in the notice and that the notice be sent via certified mail to the television station licensee's address listed in the Commission's consolidated database. The purpose is to ensure that notices clearly indicate to local broadcasters the rights and responsibilities that they have under the carry-one, carry-all provisions of the Act and Commission regulations.

4. Finally, section 209 of the SHVERA creates new section 339(c)(4)(D) of the Act, which requires that the Commission exempt satellite carriers from the signal testing requirements of section 339(c)(4)(A) of the Commission's rules when the request comes from a

<sup>2</sup> The Commission, in 1972, adopted the concept of “significantly viewed” signals to differentiate between out-of-market television stations that “have sufficient audience to be considered local and those that do not.” The significantly viewed concept has applied to the cable industry for more than 30 years, and the SHVERA applies those rules to satellite providers. The designation is salient because it has enabled cable stations assigned to one market to be treated as “local” stations with respect to a particular cable community in another market.

<sup>1</sup> The SHVERA was enacted on December 8, 2004, as part of the Consolidated Appropriations Act of 2005, Public Law 108–447, section 202, 118 Stat. 2809 3393 (2004) (to be codified at 47 U.S.C. 340).

satellite subscriber in a market in which local-into-local service is offered. The *Order* implements this change.

5. The Commission adopts these rule amendments without providing prior public notice and comment because these amendments merely implement the provisions of the SHVERA that direct the Commission to revise its rules as specified in the legislation. The Commission's action involves no discretion. Accordingly, notice and comment would serve no purpose and is thus unnecessary, and this action falls within the "good cause" exception of the Administrative Procedure Act.

6. The Commission will send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### Ordering Clauses

7. Accordingly, *it is ordered* that pursuant to section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified as section 340(h) of the Communications Act of 1934, as amended, 47 U.S.C. 340(h), part 76.66(d)(5) is added as reflected in the rule changes portion of this document.

8. *It is further ordered* that pursuant to section 205 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified as section 338(h) of the Communications Act of 1934, as amended, 47 U.S.C. 338(h), part 76.66(d)(2) is amended as set forth in the rule changes portion of this document.

9. *It is further ordered* that pursuant to section 209 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, codified as section 339(c)(4)(D) of the Communications Act of 1934, as amended, 47 U.S.C. 339(c)(4)(D), section 73.683(f) is added as set forth in the rule changes portion of this document.

#### List of Subjects

47 CFR Part 73

Television.

47 CFR Part 76

Cable television, reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

#### Rule Changes

■ For the reasons discussed in the preamble, parts 73 and 76 of Title 47 of the Code of Federal Regulations is revised to read as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 is revised to read as follows:

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

■ 2. Section 73.683 is amended by adding paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) A satellite carrier is exempt from the verification requirements of 47 U.S.C. 339(c)(4)(A) with respect to a test requested by a satellite subscriber to whom the retransmission of the signals of local broadcast stations is available under 47 U.S.C. 338 from such carrier. The definitions of satellite carrier, subscriber, and local market contained in 47 CFR 76.66(a) apply to this paragraph (f).

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 3. The authority citation for part 76 is revised to read as follows:

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

■ 4. Section 76.1 is amended by adding a sentence to the end of the paragraph to read as follows:

##### § 76.1 Purpose.

\* \* \* The rules and regulations in this part also describe broadcast carriage requirements for cable operators and satellite carriers.

■ 5. Sections 76.66 is amended by revising paragraphs (d)(2)(i) and (d)(2)(ii) and by adding paragraph (d)(5) to read as follows:

##### § 76.66 New local-into-local service.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) A new satellite carrier or a satellite carrier providing local service in a market for the first time after July 1, 2001, shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage

(A) Of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the

carrier's proposed local receive facility for that local market;

(B) Of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

(C) That such licensee has 30 days from the date of the receipt of such notice to make such election; and

(D) That failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

(ii) Satellite carriers shall transmit the notices required by paragraph (d)(2)(i) of this section via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

\* \* \* \* \*

##### (5) Elections in Markets in which Significantly Viewed Signals are Carried.

(i) Beginning with the election cycle described in § 76.66(c)(2), the retransmission of significantly viewed signals pursuant to § 76.54 by a satellite carrier that provides local-into-local service is subject to providing the notifications to stations in the market pursuant to paragraphs (d)(5)(i)(A) and (B) of this section, unless the satellite carrier was retransmitting such signals as of the date these notifications were due.

(A) In any local market in which a satellite carrier provided local-into-local service on December 8, 2004, at least 60 days prior to any date on which a station must make an election under paragraph (c) of this section, identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle and the communities into which the satellite carrier reserves the right to make such retransmissions;

(B) In any local market in which a satellite carrier commences local-into-local service after December 8, 2004, at least 60 days prior to the commencement of service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under § 76.66(c) or (d)(2), identify each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle.

(ii) A television broadcast station located in a market in which a satellite carrier provides local-into-local television service may elect either retransmission consent or mandatory

carriage for each county within the station's local market if the satellite carrier provided notice to the station, pursuant to paragraph (d)(5)(i) of this section, that it intends to carry during the next election cycle, or has been carrying on the date notification was due, in the station's local market another affiliate of the same network as a significantly viewed signal pursuant to § 76.54.

(iii) A television broadcast station that elects mandatory carriage for one or more counties in its market and elects retransmission consent for one or more other counties in its market pursuant to paragraph (d)(5)(ii) of this section shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.

(iv) A television broadcast station that receives a notification from a satellite carrier pursuant to paragraph (d)(5)(i) of this section with respect to an upcoming election cycle may choose either retransmission consent or mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

\* \* \* \* \*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[WT Docket No. 96-86; FCC 05-9]

#### Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission takes certain actions intended to encourage the transition to narrowband technology in the 764-776 MHz and 794-806 MHz public safety bands (700 MHz Public Safety Band).

**DATES:** Effective May 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Technical Information: Brian Marenco, [Brian.Marenco@FCC.gov](mailto:Brian.Marenco@FCC.gov), Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233. Legal Information: Roberto Mussenden, Esq., [Roberto.Mussenden@FCC.gov](mailto:Roberto.Mussenden@FCC.gov), Public Safety and Critical Infrastructure Division, Wireless Telecommunications

Bureau (202) 418-0680, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Fifth Memorandum Opinion and Order*, FCC 05-9, adopted January 5, 2005 and released on January 7, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

1. In the *Fifth Memorandum Opinion and Order*, the Commission takes the following actions:

- defers the ban on the marketing, manufacture and importation of equipment solely capable of utilizing 12.5 kHz bandwidth when operating in the voice mode in the 700 MHz Public Safety Band (12.5 kHz equipment) from December 31, 2006 until December 31, 2014; and
- defers the prohibition on filing applications for new systems that operate utilizing 12.5 kHz voice channels from December 31, 2006 until December 31, 2014.

#### I. Procedural Matters

##### A. Paperwork Reduction Act Analysis

2. The order does not contain any new or modified information collection.

##### B. Regulatory Flexibility Act

3. A Supplemental Final Regulatory Flexibility Analysis with respect to the *Fifth Memorandum Opinion and Order* has been prepared and is set forth below.

##### C. Report to Congress

4. The Commission will send a copy of this *Fifth Memorandum Opinion and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

##### D. Supplemental Final Regulatory Flexibility Analysis

5. In view of the fact that the Commission has adopted further rule amendments in the *Fifth Memorandum Opinion and Order*, the Commission has included this Supplemental Final

Regulatory Flexibility Analysis (SFRFA). This SFRFA conforms to the RFA. *Need for, and Objectives of the Fifth Memorandum Opinion and Order:*

6. The *Fifth Memorandum Opinion and Order* adopts rules to promote the transition to dual mode equipment and 6.25 kHz equipment in the 700 MHz Public Safety band operating in the General Use and State License channels. Specifically, we amend our rules to delay the ban on the marketing, manufacture, and importation of 12.5 kHz equipment until December 31, 2014. In addition, we amend our rules to delay until December 31, 2014, the cut-off for accepting applications for new systems operating in the General Use and State License channels that use 12.5 kHz equipment. These actions will effect a transition to a narrowband channel plan. The resulting gain in efficiency will ease congestion on the General Use and State License channels in these bands. Delaying this transition, however, will ease the economic burden on small businesses by allowing them to make this transition over a longer period of time.

*Summary of Significant Issues Raised by Public Comments in Response to the FRFA:*

7. No comments or reply comments were filed in direct response to the FRFA. The Commission has, however, reviewed the general comments that may impact small businesses. Much of the potential impact on small businesses arises from the mandatory migration to 6.25 kHz or dual mode technology beginning on December 31, 2014; the ban on marketing, importation and manufacture of 12.5 kHz equipment after December 31, 2014; and the freeze on new 12.5 kHz applications. The costs associated with replacement of current systems were cited in opposition to mandatory conversion proposals.

*Description and Estimate of the Number of Small Entities to Which the Rules Apply:*

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business