

§ 54.313 State certification.

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(c) *Filing Deadlines.* In order for a non-rural incumbent local exchange carrier in a particular State, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive federal high-cost support, the State must file an annual certification, as described in paragraph (b), with both the Administrator and the Commission. Support shall be provided in accordance with the following schedule:

(1) *First Program Year (January 1, 2000–December 31, 2000).* During the first program year (January 1, 2000–December 31, 2000), a carrier in a particular State shall receive support pursuant to § 54.311 of this subpart. If a State files the certification described in this section during the first program year, carriers eligible for support pursuant to § 54.309 shall receive such support pursuant to the following schedule:

(i) *Certifications filed on or before April 1, 2000.* Carriers subject to certifications that apply to the first and second quarters of 2000, and are filed on or before April 1, 2000, shall receive support pursuant to § 54.309 of this subpart for the first and third quarters of 2000 in the third quarter of 2000, and support for the second and fourth quarters of 2000 in the fourth quarter of 2000. Such support shall be net of any support provided pursuant to § 54.311 of this subpart for the first or second quarters of 2000.

(ii) *Certifications filed on or before July 1, 2000.* Carriers subject to certifications filed on or before July 1, 2000, shall receive support pursuant to § 54.309 of this subpart for the fourth quarter of 2000 in the fourth quarter of 2000.

(iii) *Certifications filed after July 1, 2000.* Carriers subject to certifications filed after July 1, 2000, shall not receive support pursuant to § 54.309 of this section in 2000.

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[FR Doc. 99–33766 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73****[CS Docket No. 98–201; FCC 99–278]****Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: This document revises the rule applicable to the antenna and equipment testing procedure of the collection of field strength data to determine television broadcast signal intensity at individual locations. The action was taken in response to petitions filed by DIRECTV and EchoStar in connection with the Satellite Home Viewer Act. This action is intended to allow for flexibility in testing and reduced cost to the public.

DATES: Effective December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Jay Heimbach at (202) 418–7200 or via Internet at jheimbac@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration, FCC 99–278, CS Docket No. 98–201, adopted October 5, 1999 and released October 7, 1999. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at www.fcc.gov/csb. For copies in alternative formats, such as Braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act: The requirements adopted in this Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose no new or modified information collection requirements on the public.

Synopsis of Report and Order**Introductory Background**

1. In this proceeding, we address an issue involving petitions filed by two satellite carriers, DIRECTV and EchoStar, for reconsideration of the Commission's February 1, 1999 *Report and Order* concerning the 1988 Satellite Home Viewer Act ("SHVA") (47 CFR 73). That Order addressed an issue

involving the television broadcast industry, the direct-to-home satellite industry, and consumers who subscribe to satellite services for their broadcast network television programming.

2. Broadly stated, the issue is whether and where home satellite carriers may retransmit television broadcast network signals under the SHVA. Federal copyright law, which the SHVA is a part of, contains a copyright compulsory license authorizing the carriage of certain network broadcast signals by home satellite carriers. (17 U.S.C. 119(a)(2)(A)) The compulsory license is limited, however, because it does not permit satellite carriers to retransmit a particular network's signal to a subscriber unless the subscriber is "unserved" by the local affiliate of the network. (17 U.S.C. 119(a)(2)(B)) "Unserved" is defined in the SHVA as a household that cannot receive an adequate television signal (defined as a signal of "Grade B" intensity) using a conventional outdoor rooftop antenna. The Grade B values (which represent the required field strength in dB above one micro-volt per meter) are defined for each over-the-air television channel in the Commission's rules. (47 CFR 683) There are also Grade A and "city grade" field strength values, which represent stronger signals.

(In dBu's)

	Grade B	Grade A	City grade
Channels 2–6 ...	47	68	74
Channels 7–13	56	71	77
Channels 14–69	64	74	80

Several judicial proceedings involving the SHVA have resulted in findings that some satellite carriers have violated that statute and have highlighted the significant disputes between broadcast networks and satellite carriers over which consumers are eligible to receive satellite-delivered network programming.

3. The *SHVA Report and Order* sought to help the consumers caught in these disputes by refining two tools to more accurately determine whether a household is truly unserved. The first tool is an on-site (or at-home) signal measurement test to determine the strength of a television signal at a consumer's household. The second tool is a computer-generated prediction model that might obviate the need for large numbers of on-site tests and that could be used by consumers when first signing up for satellite service (at the

“point of sale”). This Individual Location Longley-Rice (“ILLR”) model is a variation of the core Longley-Rice model that the Commission has long used to determine signal propagation. The ILLR is specifically designed to predict the strength of a television signal at an individual location, such as a consumer’s home, by considering what happens to the signal as it travels from the transmitter to the home. The model accounts for the effects that signal interference and terrain have on signal strength. We concluded that other factors, specifically vegetation and buildings, can also affect the strength of television signals received at a home. However, the rulemaking record did not contain information sufficient for us to identify, endorse, or develop a way to apply these land use and land cover (“LULC”) factors in an application that would be “accepted by the technical and scientific community.” We noted that LULC data are available from the United States Geological Survey (“USGS”) and asked interested parties to develop an application for incorporating that data into the ILLR.

4. DIRECTV and EchoStar separately petitioned the Commission to reconsider parts of the Order regarding the eligibility of satellite subscribers to receive broadcast network signals through home satellite dishes. The National Association of Broadcasters (“NAB”), Entravision Holdings, and affiliates of ABC, NBC, CBS, and Fox (the “Affiliates”) opposed the petitions. The National Rural Telecommunications Cooperative (“NRTC”) expressed its support for the petitions.

5. The Communications Act and our own rules govern our response to the petitions. (47 CFR 1.429) Reconsideration of a Commission decision is warranted only if the petitioner cites a material error of fact or law or presents additional facts and circumstances which raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. For the reasons stated herein, the Order on Reconsideration affirms the decisions in the *SHVA Report and Order* and denies DIRECTV’s Petition. The Order denies in part and grants in part EchoStar’s Petition.

The Petitions for Reconsideration

DIRECTV’s Petition

6. DIRECTV’s Petition asks the Commission to allow satellite carriers to

include the effects of land use and land cover in the ILLR prediction model now. The Petition contends that there are “a variety of scientifically accepted means” of including USGS data into the model using commercially available mapping software and emphasizes that DIRECTV itself is developing software. However, DIRECTV did not identify these means in any detail. In an accompanying statement, DIRECTV’s expert states that the military targets cruise missiles using “a comparison of data available through the Global Positioning System (“GPS”) and USGS LULC data,” but does not specifically identify the procedure used by the military, nor does it identify any other procedure or software application. DIRECTV’s Reply offers some information on the specific LULC application it supports, but still does not offer the application itself. According to DIRECTV, their engineering consultants are actively in the process of developing an LULC loss algorithm implementation that can be “readily achieved using the USGS database.”

7. Broadcasting interests, led by the NAB and the Affiliates, opposed the Petition and argued that DIRECTV is trying unilaterally to create and use an LULC application in direct contravention of the Commission’s Order. ABC, CBS, and Fox affiliates go one step further by stating that overlaying LULC data in the ILLR would amount to “double-counting” the effects of trees and buildings. They contend that the core Longley-Rice programming language (on which the ILLR is based) already incorporates some LULC data into its calculations. The Affiliates also questioned using the USGS database, asserting that it covers too much land per grid area (200 meters) to be accurate for the purposes here involved. Both the NAB and the Affiliates emphasized that DIRECTV has not offered a specific software package for applying LULC data to the predictive model. When it does, the NAB asserts that it would support an expedited review by the Commission. On the other hand, the NRTC supported DIRECTV’s Petition and asked the Commission for “practical rules and recommendations * * * to use in determining a household’s eligibility to receive distant network signals by satellite.”

8. The Commission believes that consumers will benefit when the effects of trees and buildings on a television signal are included in the ILLR prediction model. We stated in the *SHVA Report and Order*:

While we expect the model to include land use and land cover, we are not aware of a standard means of including such information in the ILLR that has been accepted by the technical and scientific community. When an appropriate application has been developed and accepted, this information will be included in the ILLR.

The Commission specifically invited interested parties to develop such an application. Before such an application can be used, however, it is necessary that some consensus be developed as to the specifics of the technique involved so that the process is generally understood, the results can be replicated by all who would use the process, and any disputes as to accuracy of the technique can be addressed. Neither DIRECTV, nor any other party, may unilaterally incorporate LULC data into the Commission’s ILLR until an application has been publicly reviewed. The Commission again encourages any interested party to develop an application and offer it for comment. Because DIRECTV has not fully offered the details of its application, such review is not possible here. The Order on Reconsideration therefore denies DIRECTV’s Petition for Reconsideration.

EchoStar’s Petition

9. EchoStar, in its Petition, first argued that the Commission could have and should have adopted a new definition of Grade B intensity specifically for SHVA purposes. The Petition, however, does not propose a new definition or standard. Second, EchoStar argued that the Commission should consider the effects of “ghosting” in a television picture, caused by signal “multipathing,” when determining who is unserved. Third, EchoStar took issue with several elements of the Commission’s new on-site testing methodology, including (a) whether measurements should be taken at a house’s roof or at the television set, (b) the orientation of the testing antenna, (c) the type of testing antenna that should be used, and (d) the number and location of the tests. Finally, EchoStar asked the Commission to raise the confidence factor in the predictive model from 50% to 90%, arguing that the latter is more consumer-friendly and, therefore, consistent with the SHVA’s purposes.

10. The Order concludes that the record provided an inadequate basis for changing the Grade B signal intensity values either generally or for purposes of the SHVA specifically, and therefore, declined to change the definition of Grade B signal intensity. EchoStar disagreed with these conclusions, but

presented no new arguments or facts that warrant revisiting this issue. The Commission stands by the conclusions in the *SHVA Report and Order* and denies EchoStar's petition on this issue.

11. EchoStar contends that the Order did not specifically take account of the effects of multipathing and asks the Commission to do so now. Multipathing is the reflection of a single television signal off of buildings or other objects. It causes several transmissions of the same signal to arrive at a television at slightly different times, leading to "ghosting" on the screen (one fainter "ghost" picture superimposed on the main picture). Importantly, multipathing can affect picture quality on a consumer's television set even when a Grade B signal exists at the consumer's rooftop. EchoStar asked the Commission to institute proceedings to account for the effects of multipathing. The NRTC supported EchoStar's position, arguing that "consumers want and deserve the best quality television picture available, and if ghosting or other environmental factors degrade picture quality * * * the Commission should recognize and incorporate these factors in the predictive model and testing methodology." The NAB and the Affiliates rejected the satellite carriers' position, noting that the SHVA speaks of Grade B intensity, an objective standard for determining who is unserved, rather than a subjective picture quality standard that would be very difficult to enforce and implement. Therefore, the broadcasters claimed that the Commission "unquestionably lacks authority to alter the SHVA eligibility standard to deal with ghosting." EchoStar replied that ghosting is not so subjective that it is impossible to determine: "Ghosting either exists or it does not, it is objectively ascertainable."

12. The Order addressed multipathing in several places and, as with the Grade B definition issue, EchoStar has not offered any additional facts or new arguments that warrant a change in our conclusions. We recognize that ghosting is a problem that affects television pictures but note, as we did in the Order, that there is no simple solution. For example, raising the Grade B values to give a consumer a stronger television signal could actually exacerbate the problem of multipathing. As the signal strength increases, "noise" or "snow" in a television picture may be reduced, but the chance of ghosting increases. Moreover, the multipath "interference" created by the same signal is very difficult to measure objectively.

13. While the Commission welcomes concrete solutions to the ghosting problem, any solution must be objective

and verifiable. EchoStar has not offered any new facts or arguments that describe how to predict or measure multipathing or even permit it to be taken into account under the current language in the SHVA. The Order on Reconsideration therefore denies EchoStar's petition on this issue.

14. EchoStar believes the Commission's on-site measurement test is too complicated and costs too much (estimates are \$99 to \$119 per on-site test for four networks). In its comments to the petition, the NRTC agreed. EchoStar also suggested that the SHVA does not require signal measurements at a house's rooftop and that any such conclusion is merely "a legal fallacy, propagated by the broadcasters." Instead, EchoStar argued that signal strength should be measured at the television set. Alternatively, EchoStar suggested changing several requirements mandated for the outdoor, on-site tests: (1) Eliminate the requirement that the testing antenna be oriented separately for each station being measured; (2) require fewer testing locations and measurements (for each station, replace 1 test at 5 locations with 3 tests at 1 location); (3) allow parties to choose the type of testing antenna, either a half-wave dipole (as the *SHVA Report and Order* required) or gain antenna; (4) clarify that the half-wave dipole required for testing in the Order can be of fixed length. The NAB rejected EchoStar's suggestions, except that it does admit that a properly calibrated gain antenna could be used to conduct signal intensity measurements. In a "Revised Engineering Statement," however, the NAB added that a simple gain antenna is not sufficient and recommends that the Commission specify and endorse particular brands and models of antenna. Specifically, NAB's engineering expert, Jules Cohen, recommended that "antennas with a relatively large number of elements are more likely to have a more consistent input impedance than the simpler types." He further notes that the Channel Master Model 3016 is such an antenna and added that similar antennas would be suitable "if channel-by-channel gain figures are provided and certified by the manufacturer together with the antenna's input impedance characteristics." The Affiliates stated that EchoStar's suggestions, as a group, would reduce accuracy with very little cost savings and asserted that the Commission gave full and detailed attention to the creation of the new measurement methodology. In its Reply, EchoStar countered that any additional

inaccuracies created by a less complex test would fall equally on broadcasters and satellite carriers.

15. When the Commission created the on-site test in the *SHVA Report and Order*, it was faced with balancing the cost of the test with the accuracy and objectivity that would result. In the end, the Order thoroughly considered and discussed many different issues. The Order on Reconsideration reiterates the Commission's intent that the test should be relatively inexpensive, simple enough so that an average antenna installer can conduct it, and objective enough so that the test results will not constantly fall in doubt. EchoStar offered neither new evidence nor new arguments with respect to orientation of the test antenna and the number of test measurements. EchoStar provided new information in its request that the rules permit testers to use either a half-wave dipole or an antenna with gain to conduct the tests. In the rulemaking, broadcasters also supported the use of a gain antenna, albeit with the recent qualification that the test antenna should have multiple elements to ensure proper calibration. Because a gain antenna is able to accurately measure the intensity of a television signal and because it will provide additional flexibility for technicians who conduct tests, we amend the testing rule to allow the use of either a gain antenna with several elements or the half-wave dipole that we originally endorsed. In response to the concerns raised by the NAB, the revised rule maintains an impedance match at the antenna at all frequencies. We believe this approach is preferable to endorsing a particular brand or model or requiring use of an expensive test antenna. In addition, we will amend the rule to allow use of signal level test instruments with a bandwidth of 200 kHz through one megahertz (1,000 kHz), rather than requiring a bandwidth of at least 450 kHz. (47 CFR 73.686(d)(2)(i)) We believe that this amendment will reduce the cost of the tests by permitting technicians to use test equipment they have on hand and not require them to purchase new equipment.

16. EchoStar asked the Commission to revisit the confidence factor used in the ILLR prediction methodology, an issue that the SHVA Report and Order addressed more exhaustively than any other in the proceeding. EchoStar contended that the Commission's decision to set the ILLR's confidence factor at 50% "penalizes the consumer and errs in favor of some policy of 'belt-and-suspenders' over-protection for the broadcaster's local franchise." Instead, the satellite carrier asserted that the

Commission should set the confidence factor at 90% because consumers' rights to a good television picture, not broadcasters' copyrights, must be "the cornerstone of a predictive model." To prevent alleged "overprediction" of unserved households, EchoStar proposes a "cap" that would cut off eligibility for distant network satellite service if a household cannot be predicted (with 90% confidence) to receive 70.75 dBu or less. EchoStar essentially suggested a floor and ceiling for determining whether a household is unserved—the household should receive (a) at least a signal of 47 dBu with 90% confidence, and (b) less than a signal of 70.75 dBu with 90% confidence.

17. The Order on Reconsideration declines EchoStar's request to revisit the confidence factor issue. The SHVA Report and Order thoroughly considered and addressed the issues surrounding the confidence factor and EchoStar has offered no new arguments or facts that warrant a change in our conclusions. Its suggestion that we adopt a floor-and-ceiling approach to determining unserved households is legally untenable. EchoStar's suggested ceiling of 70.75 dBu would change the SHVA's definition of unserved household, which is defined only as a household that does not receive a signal of at least Grade B intensity, not as a household that also receives less than a signal of some other level. (17 U.S.C. 119(d)(10))

18. In any action brought under the SHVA, the burden of proof lies with the satellite carriers to demonstrate that a particular household is unserved. (17 U.S.C. 119(d)(5)(D)) To be useful in carrying this burden, any prediction system must demonstrate with a sufficient degree of confidence to be acceptable in a judicial proceeding which households are unserved. Conversely, it is not sufficient to demonstrate with confidence which households are served. Because of the statistical factors underlying the prediction system, which have not changed since the SHVA Report and Order, there is a considerable difference between demonstrating with confidence which households are served and which are unserved. EchoStar's suggestions did not advance the goal of more accurately identifying unserved households and its Petition with respect to the confidence factor must be denied.

Supplemental Final Regulatory Flexibility Analysis

Background

19. As required by the Regulatory Flexibility Act (RFA), (5 U.S.C. 603) an

Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *Notice of Proposed Rulemaking* in this proceeding. (CS Docket No. 98-201, FCC 98-302, 63 FR 67439 (December 7, 1998)) The Commission sought written public comment on the expected impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. The Commission included a Final Regulatory Flexibility Analysis ("FRFA") into the *SHVA Report and Order*. While no petitioners seeking reconsideration of the Order raised issues directly related to the FRFA, the Commission is amending the rules in a manner that may affect small entities, although only in a minor way. Accordingly, this Supplemental Regulatory Flexibility Analysis ("Supplemental FRFA") addresses those amendments and conforms to the RFA.

Need for and Objective of the Rules

20. In both the *SHVA Report and Order* and this Order on Reconsideration, the Commission has addressed methods for determining whether a household is "unserved" by network television stations for purposes of the 1988 Satellite Home Viewer Act. (17 U.S.C. 119) Our goal was to provide relatively simple and inexpensive prediction and testing methodologies to determine the intensity of a television signal at a consumer's household. The changes to the on-site test outlined in the current Order on Reconsideration clarify and simplify the rule and its implementation and, therefore, serve our objectives.

Legal Basis

21. This Order on Reconsideration is authorized under Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j) and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a).

Summary of Significant Issues Regarding FRFA Raised in Petitions for Reconsideration

22. No parties address the FRFA in their petitions for reconsideration, or any subsequent filings. The Commission has, however, addressed, on its own motion, steps taken to further minimize the effect of these requirements on small entities.

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

23. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the

proposed action. (5 U.S.C. 604(a)(3)) The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. (5 U.S.C. 604(a)(3)) 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 SBA. (15 U.S.C. 632) The action taken in this Order will affect television broadcasting licensees and DTH satellite operators.

24. The rule developed in the *SHVA Report and Order* and reconsidered in this Order on Reconsideration will apply to television broadcasting licensees, and potential licensees of television service. The SBA defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business. (13 CFR 121.201, Standard Industrial Code ("SIC") 4833 (1996)) Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and that produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television broadcasting stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998. In addition, as of October 31, 1997, there were 1,880 low power television broadcasting ("LPTV") broadcasting stations that may also be affected by our proposed rule changes. For 1992 the number of television broadcasting stations that produced less than \$10.0 million in revenue was 1,155 establishments. The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

25. The Commission has not developed a definition of small entities

applicable to geostationary or non-geostationary orbit fixed-satellite or DBS service applicants or licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with \$11.0 million or less in annual receipts. (13 CFR 121.201, SIC Code 4899) The number of employees working for a "small entity" must be 750 or fewer. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified that could potentially fall into the DTH category. Of those, approximately 775 reported annual receipts of \$11 million or less and qualify as small entities. The action in the *SHVA Report and Order* and reconsidered in this Order on Reconsideration applies to entities providing DTH service, including licensees of DBS services and distributors of satellite programming. There are four licensees of DBS services under Part 100 of the Commission's rules. (47 CFR 100 *et seq.*) Three of those licensees are currently operational, and each of those licensees has annual revenues in excess of the threshold for a small business.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. The Commission did not prescribe reporting requirements in the original Order and do not do so in this Order on Reconsideration. As noted in the Order, parties who choose to conduct individual household measurements are required to memorialize their test observations and results.

Steps Taken To Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered

27. In formulating the testing rule in the Order, the Commission sought to minimize the effect on small entities while ensuring accurate determinations of signal intensity at individual locations such as households. These efforts are consistent with the Congress' goal of ensuring that "unserved" consumers are able to receive network broadcast signals through a home satellite dish. The actions the Commission is taking on reconsideration further refine the rule so as to advance this goal and further minimize unnecessary burdens on small entities.

28. Specifically, the Order only allows the use of one type of testing antenna. Here, on reconsideration, the

Commission has increased test-takers' flexibility by allowing the use of a second type of antenna. Additionally, the Commission has amended its rule to allow use of signal level test instruments with a bandwidth of 200 kHz through one megahertz (1,000 kHz), rather than requiring a bandwidth of at least 450 kHz, because the Commission wishes to reduce the cost of the test by permitting technicians to use test equipment they have on hand and not require them to purchase new equipment.

Report to Congress

29. The Commission will send a copy of the Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. (5 U.S.C. 801(a)(1)(A)) In addition, the Commission will send a copy of the Order on Reconsideration, including Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. (5 U.S.C. 604(b))

Paperwork Reduction Act of 1995 Analysis

30. This Order on Reconsideration has been analyzed with respect to the Paperwork Reduction Act of 1995 and has been found to contain no new or modified information collection requirements on the public.

Ordering Clauses

31. Pursuant to Section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and Section 1.429 of the Commission's rules, 47 CFR 1.429, DIRECTV's Petition for Reconsideration is denied.

32. Pursuant to Section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and Section 1.429 of the Commission's rules, 47 CFR 1.429, EchoStar's Petition for Reconsideration is granted in part and denied in part.

33. The NAB Motion for Leave to File Corrected Engineering Statement is granted.

34. Under authority of Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j), part 73 of Title 47 of the Code of Federal Regulations is amended as indicated in the Appendix.

35. The Commission's Office of Media Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration, including the Initial Regulatory Flexibility Analysis, to the

Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 73

Communications equipment, Television.

Federal Communications Commission.

William F. Caton,
Deputy Secretary.

Rule Changes

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 and 336.

Subpart E—Television Broadcast Stations

2. Section 73.686(d) is revised to read as follows:

§ 73.686 Field strength measurements.

* * * * *

(d) Collection of field strength data to determine 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 visual carrier frequency of the channel being measured 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 location, 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 the 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 dBu) and report it as the measurement result.

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

(2) Measurement procedure.

Measurements shall be made in accordance with good engineering practice and in accordance with this section of the Rules. At each measuring location, the following procedure shall be employed:

(i) **Testing equipment.** Measure the field strength of the visual carrier with a calibrated instrument with an i.f. bandwidth of at least 200 kHz, but no greater than one megahertz (1,000 kHz). Perform an on-site calibration of the instrument in accordance with the manufacturer's specifications. The instrument must accurately indicate the peak amplitude of the synchronizing signal. 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 unbalanced line, employ a suitable balun. Take account of the transmission line loss for each frequency being measured.

(ii) **Weather.** Do not take measurements in inclement weather or when major weather fronts are moving through the measurement area.

(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 dBu and 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 229

[Docket No. 991222346-9346-01; I.D. 031997B]

RIN 0648-AN40

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Suspension of Effectiveness of Gear Marking Requirements for Northeast U.S. Fisheries

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

ACTION: Final rule; suspension.

SUMMARY: On February 16, 1999, NMFS issued a final rule implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). This suspends the gear marking requirements for northeast U.S. fisheries contained in that rule. The other provisions of that rule, including the gear marking requirements for southeast U.S. (SEUS) fisheries under the ALWTRP, remain in effect. The current gear marking requirements for northeast U.S. fisheries under the rule are unlikely to provide useful information. The purpose of this suspension is to spare fishermen from unnecessary expenses while a better gear marking system is devised and implemented.

DATES: Effective December 30, 1999 50 CFR 229.32 (b), (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), and (d)(5)(ii) are suspended until November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Douglas Beach, NMFS, Northeast Region, 978-281-9254; or Gregory Silber, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1999, NMFS published a final rule (64 FR 7529) implementing the ALWTRP. Among other measures, the final rule required gear marking in all fisheries under the ALWTRP by April 1, 1999.

The Atlantic Large Whale Take Reduction Team (ALWTRT) met on February 8-10, 1999, discussed the gear marking scheme in detail, and recommended by consensus (with the NMFS members abstaining) that NMFS suspend the implementation of the gear marking requirement until November 1, 1999, or until a better system is designed. In order to provide an appropriate gear marking scheme that could be implemented by NMFS by November 1, 1999, the ALWTRT asked that the Gear Advisory Group (GAG) be reconvened quickly to design a better system for approval by the ALWTRT. The criteria established by the ALWTRT for the better gear marking system were that the system should: (1) identify the buoy lines by individual fishermen; (2) apply to all waters affected by the ALWTRP; (3) be easily implemented by the affected fisheries; (4) allow identification of gear type from a photograph so that it can be identified without being removed from a whale; and (5) allow identification of where the gear had been set.

In March 1999, an ad hoc group of ALWTRT members representing the scientific, conservation and state and Federal fishery managers of the northeastern area met to discuss gear marking. The group recognized many of the points discussed here and agreed that, under the gear marking requirements then in effect, it was highly probable that gear recovered from animals could be identified to the individual fisherman, thus allowing details on the gear (i.e., gear type, and date and location of set) to be determined in most cases. NMFS then changed the effective date of the gear marking measures contained in the final rule to November 1, 1999 (64 FR 17292, April 9, 1999), and tasked the GAG and the ALWTRT with reviewing the final rule's gear scheme. NMFS committed to revise the final rule's gear marking scheme if the GAG and ALWTRT reached consensus on an appropriate gear marking scheme.

Three GAG meetings were held in April at Sandwich, Massachusetts; Portsmouth, New Hampshire; and Ellsworth, Maine to gather the fishermen's perspectives from each region. A summary of the three GAG meetings is available upon request from