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## Congress Passes Satellite Television Extension and Localism Act of 2010

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*The long strange trip of the Satellite Television Extension and Localism Act ("STELA" for short) seems finally to be ending. After satellite carriers' ability to import distant broadcast signals into stations' local markets expired on December 31, 2009, Congress passed a number of short-term extensions of the predecessor law, SHVERA. The Senate passed three different versions of the bill since late 2009. The House, with a lightning fast voice vote, accepted the Senate's last version unchanged and sent the legislation to the White House for a signature from the President. The President is expected to sign the bill shortly.*

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### Reauthorization of Distant Signal Carriage For Five Years

STELA reauthorizes the provisions of SHVERA which allow satellite carriers to offer the signals of network stations from other markets to subscribers unable to receive their local network-affiliated stations over the air. It also updates the law to reflect the transition to digital television.

### Expansion of Distant Signal Carriage Rights of Satellite Providers

A number of subtle revisions to the existing distant signal carriage provisions work together to increase the area into which satellite operators can import distant signals, and conversely, the area in which a local broadcaster can enjoy exclusive rights in the programming for which it has contracted with its program suppliers.

- **Definition of Unserved Household:** Currently, a household is considered unserved, and therefore eligible to receive distant network signals, if it cannot receive a signal of specified intensity from its local affiliate by using "a conventional, stationary, outdoor rooftop receiving antenna." Under STELA, a household can be considered unserved if it is unable to receive a signal using any antenna, which

presumably includes an indoor antenna such as "rabbit ears." This provision will likely increase the number of households entitled to receive competing network signals.

- **Signal Intensity Prediction Methods:** STELA also provides more methods by which a subscriber can prove it is unserved. Currently, when a subscriber requests a waiver so it can receive distant network signals, the parties use the Individual Location Longley-Rice ("ILLR") signal prediction methodology to make the initial determination as to whether the household can receive the local signal. If a party disagrees with the ILLR results, actual measurements on site can be made, with the cost of those measurements borne by the losing party. Under STELA, the party seeking a waiver can choose to make its initial showing by either the ILLR prediction methodology, or actual measurements, and presumably will choose the more beneficial one at the outset.
- **"More Accurate" Prediction Method:** STELA also directs the FCC to devise a "more accurate" method of predicting which households meet the definition of "unserved". To the extent that the predictive method no longer assumes the existence of an outdoor antenna, it might increase the number of households able to demonstrate that they are unserved using the predictive model. That, in turn, may have the effect of increasing the burden on the local broadcast station of conducting onsite tests to disprove the prediction model. The FCC is required to undertake a rulemaking proceeding and conclude it within 270 days of the effective date of STELA to accomplish this task. The FCC is also tasked with determining ways to reduce the burden on subscribers with regard to onsite tests.
- **Significantly Viewed Signals:** STELA modifies the provisions applicable to the importation of stations that are distant, but significantly viewed, in the subscriber's county. The modifications allow DISH Network to take advantage of those provisions, despite a court injunction against it for improperly importing distant signals into local stations' markets. STELA provides that a distant HD signal can only be imported if the satellite carrier also carries the local station's HD signal. The FCC must conclude a rulemaking proceeding within 270 days of enactment of STELA to address the significantly viewed carriage issue.
- **DMA-wide carriage for Class A and LPTV Stations:** STELA provides that, where a satellite carrier carries an LPTV or Class A station, it may do so throughout the entire DMA in which the station is located. Previously, carriage of these stations was limited to a zone of 20 or 35 miles from their community of license, depending on the size of the market. However, to qualify, the LPTV or Class A station cannot retransmit the signal of another station for more than two hours per day.

### Protection for Multicast Streams

STELA provides that a distant network signal cannot be imported into a market if the subscriber can receive the signal of an in-market affiliate, whether that programming is carried on the in-market station's primary or multicast streams. This protection does not begin immediately. Stations whose multicast streams included a network signal as of March 31, 2010 will be protected as of October 1, 2010. For those stations that add a network multicast stream later in 2010, protection begins as of January 1, 2011.

### Special Provisions Applicable to DISH Network

STELA provides a path by which DISH Network can be relieved of the court injunction against it regarding importation of distant signals. To take advantage of this path, DISH Network must extend local into local carriage to all 210 DMAs in the country.

### Studies and Rulemakings to Eliminate Compulsory License Altogether

Finally, STELA requires the Registrar of Copyrights, in consultation with the FCC, to submit a report to Congress within 18 months from enactment of the law proposing methods and recommendations for phasing out the law altogether and implementing a procedure whereby copyright licenses would be negotiated directly between the copyright holders and the satellite carriers. The Registrar issued a report recommending elimination of the compulsory license in 2008, but no further action has occurred in that regard.

As indicated, STELA requires the FCC to undertake a number of rulemaking proceedings and to conclude some which are already underway, all by early 2011. Those rulemaking proceedings will address many of the questions left unanswered by the legislation itself. Broadcasters should be alert to the release of the required Notices of Proposed Rulemaking and actively participate in the proceedings to be sure that the often unique circumstances affecting their markets are reflected in the final rules.

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Should you have any questions regarding this matter, please contact any of the attorneys in the Communications Practice.

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