FCC Seeks Comment on Revising Its Method of Determining Satellite Subscribers' Eligibility to Receive Imported Distant Signals in Response to STELA

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Comments due August 24; Reply Comments due September 3.

The Federal Communications Commission has released a Notice of Proposed Rulemaking (NPRM) seeking comment on the method it uses to predict whether a satellite television subscriber can receive the over the air signal of its local network affiliate. This predictive model determines in the first instance whether the subscriber is eligible to receive the imported signal of a distant network affiliate. The FCC is also inquiring into the appropriate methodology for making actual on-site measurements at the subscriber's location, which can be used to challenge the results of the predictive model. In enacting the Satellite Television Extension and Localism Act of 2010 (STELA), Congress directed the Commission to undertake this rulemaking inquiry and to complete it by November 2010. Accordingly, the comment timeframe is very brief.

Background

Beginning with the Satellite Home Viewer Act of 1998 (SHVA), and continuing in each new piece of legislation that extended and modified the original SHVA, Congress granted satellite carriers the right to import the signals of distant network-affiliated television stations into the local markets of affiliates of the same network. To be eligible to receive the signal of a distant network affiliate, the subscriber must generally live in an "unserved household," that is, a household that is unable to receive an over the air signal from its local network-affiliated station. Congress directed the FCC to establish a predictive method of determining in the first instance whether a household should be deemed unserved. The FCC developed the Individual Location Longley-Rice (ILLR) model, a computer program that predicts the strength of an analog over the air signal at a specific location, and accounts for the effects that terrain and certain other factors might have on the signal.

In the Satellite Home Viewer Extension and Reauthorization Act (SHVERA) in 2004, Congress extended satellite carriers' rights to import signals to include the right to import digital signals where a subscriber could not receive the digital signal of a local network affiliate. Originally, the results of the ILLR analysis

were applied for purposes of determining the reach of digital service as well, although the subscriber could request an on-site measurement to rebut the results of the ILLR analysis. Congress directed the FCC to open an inquiry into adopting a new predictive model to account for the differences between analog and digital signals, and to consider revising the FCC's on-site measurement methodology, with an eye towards making it less onerous for subscribers. In response, the FCC commenced a proceeding to revise the analog ILLR method to adapt it to digital signals. The FCC reported its proposed new methodology to Congress in 2005 and has been applying it on an interim basis since that time. The FCC also commenced a proceeding examining on-site measurement and the burden it imposes on subscribers, but has never concluded it.

In enacting STELA, Congress chose to modify the definition of an "unserved household", and directed the FCC to finalize its predictive methodology for digital signals and incorporate those revisions permanently. Congress also directed the FCC to complete its open rulemaking proceeding regarding on-site measurements.

Predictive Model

STELA revises the definition of an unserved household in three ways. To qualify as unserved, a household: (1) must not be able to receive a signal of a specified intensity from a network affiliate station *that is located in the subscriber's television market,* as opposed to a network affiliate whose signal "bleeds" in from another market; (2) after a short phase-in period which ends on January 1, 2011, must not be able to receive the signal of an in-market station that is carrying the relevant network programming on one of its multicast streams; and (3) must not be able to receive the in-market affiliate's signal through the use of *an antenna*. This last provision marked a change from the prior law, which had specified the use of a *rooftop antenna*. This change created concern among broadcasters that households unable to receive their local affiliate through an indoor antenna might be able to qualify for importation of a distant network affiliate.

In response, the FCC is examining whether STELA's modification of the definition of unserved household dictates that it revise the ILLR model it has created and been using for some time. In the NPRM, the FCC tentatively concludes that it does not have to make any substantive revisions to its predictive model to accommodate the first and second revisions described above. Specifically, the Commission concludes that the first two revisions simply affect the number of stations that must be analyzed using the predictive model, but not how the model operates with regard to the stations to which it is applied. The first revision potentially reduces the number of stations that must be studied by eliminating a network affiliate whose signal "bleeds" into a neighboring market. The second revision simply requires that the multicast streams in the market be considered in the analysis because an in-market station might carry the programming of the relevant network on a secondary stream. A household will be considered "served" if it can receive the relevant network programming from a local station, whether on the station's primary or a secondary stream, and the predictive model measures the intensity of the entire signal, which includes both types of streams.

The third revision to the definition of an unserved household requires the FCC to consider whether the subscriber can obtain the relevant network programming from a local station by using "an antenna" to receive over the air signals, rather than the previously specified outdoor rooftop antenna. In considering whether this was merely a change in terminology, or a substantive change, the FCC notes that STELA directs the FCC to use the DTV noise-limited service contour values contained in Section 73.622(e)(1) of its rules as the threshold for determining whether a signal is sufficient at a particular subscriber's location. Those field strength values are derived based upon the use of an outdoor rooftop antenna. Accordingly, the NPRM tentatively concludes that the FCC does not need to revise its assumptions regarding the type

of antenna used in its analysis, and therefore does not need to substantially revise its existing predictive model.

The NPRM does note, however, that the change in legislative language allows the FCC to consider additional types of antennae in its analysis. While the FCC states that it is impractical to attempt in its predictive model to account for all situations involving indoor reception of signals, it does note that it remains concerned that there are situations where a subscriber cannot use an outdoor antenna. The example given in the NPRM is a subscriber who is limited to mounting an antenna on the south side of a building and is therefore unable to receive signals from stations to the north. The NPRM asks for comment on how to address these situations. Where commenters propose establishing an indoor reception model, the FCC asks that they provide detailed technical information regarding standards to be adopted for antenna pattern, building penetration loss, and multipath effects. The FCC also asks for comments on how it can adopt a more flexible standard that might address situations where subscribers live in multiple dwelling units, urban versus rural locations, or single family homes.

A New Digital TV ILLR Model

Despite the FCC's conclusion that its predictive model does not require substantial changes, the NPRM does propose some revisions to the analog ILLR model to create the new "digital TV ILLR model." The proposed amendments are discussed in detail in an Appendix to the Notice of Proposed Rulemaking and a draft of a new OET Bulletin No. 73, which is attached to the NPRM. Significantly, the FCC proposes that previous determinations of eligibility to receive distant signals that have been made under its prior methodologies not be altered based on any revised predictive model going forward. This "grandfathering" of eligible households is designed to prevent disruptions in service to subscribers.

The NPRM specifically proposes to increase the time and location variability factors contained in its predictive standard to require that 50% of locations be able to receive the digital signal 90% of the time. The Commission asks whether any additional revisions to this factor are needed to account for the digital "cliff effect." With respect to the land use and land cover factors contained in the predictive model, the FCC asks whether any new data has become available since its 2005 report to Congress that it should take into account. For example, the FCC asks whether any additional categories of land use and cover, such as vegetation, have been scientifically evaluated to create a standard accepted by the engineering community as to how it should affect the analysis.

Finally, to allow for continued refinement of the new digital TV ILLR model, the FCC proposes that parties which develop relevant new data, analysis, or information in the future submit that information as a request to modify OET Bulletin No. 73, which the FCC's staff would put out for comment as a Notice of Proposed Rulemaking.

As for the analog ILLR model, the FCC concludes that the results it has generated have been reliable and that the FCC will therefore continue to use it for assessing low power or Class A stations that continue to operate in analog format.

On-Site Measurement Methodology

As directed by Congress, the FCC is moving to complete its open rulemaking concerning on-site measurements and considering the impact of Congress' changes to the definition of an "unserved" household on that proceeding. The Commission notes that on-site measurements are an option to provide empirical input, rather than predictive input, into the question of whether a station's signal exceeds or falls

below the required threshold at the subscriber's location. Since both the empirical and the predictive models are designed to address the same issue, the Commission's approach to the revisions Congress included in the definition of unserved household is also the same. The first two revisions simply address which signals must be tested (i.e., only those that are located in the same market as the subscriber and later, all multicast streams). The Commission also concludes that testing should be limited to the use of an outdoor antenna because there are too many variables affecting measurement in an indoor environment to permit a useful standard. However, the Commission again requests comments on what approach to establish where a consumer is unable to use an outdoor antenna. Parties that previously commented in the Commission's open proceeding concerning on-site measurement are asked to update their comments with any new information or views.

Conclusion

As direct to home satellite service has matured, and both leading providers extend service to all 210 DMAs, the need to import distant signals into a market may diminish. However, where subscribers state that they are unable to receive the over the air signal of their local network affiliate, the standards established in this proceeding will determine whether they are entitled to receive a distant network signal. Accordingly, stations and their engineering personnel should familiarize themselves with the proposed predictive model, and raise now any concerns they may have with regard to its applicability to their DMA conditions or the signal of their station.

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