provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 4, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In the table in § 52.2270(e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' the entries for ''Speed Limit Reduction'' and ''voluntary mobile emissions program'' in the Houston/Galveston area are revised to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

* * * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* *	* *	*	*	*
Speed Limit Reduction	Houston/Galveston, TX	9/26/02	11/14/02 and FR cite.	Section 6.3.12.
Voluntary Mobile Emissions Program	Houston/Galveston, TX	9/26/02	11/14/02 and FR cite.	
* *	* *	*	*	*

[FR Doc. 02–28844 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–2; FCC 02–287]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises regulations which the Commission adopted to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999. This document addresses petitions for reconsideration filed by the Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Hockey League, and the Division 1–A Athletic Director's Association (''Sports Leagues'') as well as by EchoStar Satellite Corporation (''EchoStar'') and DirecTV, Inc. (''DirecTV''). The modifications to the regulations are largely technical and pertain to notifications of sporting events and programming to be blacked out, as well as to the criteria for eligibility to request sports blackout protection.

DATES: Effective December 16, 2002, except for §§ 76.122(c)(2) and 76.127(c), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for the amendments to §§ 76.122(c)(2) and 76.127(c).

FOR FURTHER INFORMATION CONTACT: Peter Corea at (202) 418–7200 or via Internet at *pcorea@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217, or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order on Reconsideration (''Order''), FCC 02–287, adopted October 10, 2002; released October 17, 2002. The full text of this decision is

available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via Internet at *http://www.fcc.gov/mb/*.

Paperwork Reduction Act: This Order contains new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. A Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission is published elsewhere in this **Federal Register**.

Synopsis of the Order

Introduction

1. In this Order on Reconsideration, we consider three petitions for reconsideration of the Commission's Report and Order in Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules To Satellite Retransmissions of Broadcast Signals, (65 FR 68082, November 14, 2000) (hereinafter ''Report and Order'') which implemented section 339 of the Communications Act of 1934 (''Act''), as amended by the section 1008 of the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''). Section 339(d)(4) defines ''satellite carrier'' by reference to the definition in the Copyright Act of 1947, as amended, 17 U.S.C. 119(d). The Report and Order adopted rules to apply the network non-duplication, syndicated exclusivity, and sports blackout rules, previously applicable only to cable television systems, to satellite carriers' retransmission of nationally distributed superstations, and to apply the sports blackout rule to satellite carriers' retransmission of network stations. The network non-duplication, syndicated exclusivity, and sports blackout rules (collectively referred to herein as ''the exclusivity rules''), protect exclusive contractual rights that have been negotiated between program providers and broadcasters or other rights holders. The satellite network non-duplication and syndicated exclusivity rules provide that specific programs must be deleted from ''nationally distributed superstations'' delivered to subscribers within a specified area if the programs are subject to exclusive rights pursuant to contracts with local stations. A ''nationally distributed superstation'' is a television broadcast station, licensed by the Commission, that meets the following three criteria: (A) It is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States; (B) on May 1, 1991, it was retransmitted by a satellite carrier and was not a network station at that time; and (C) it was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code. The only television broadcast stations that meet this definition are KTLA–TV (Los Angeles), WPIX–TV (New York), KWGN–TV (Denver), WSBK–TV (Boston), WWOR–TV (New York) and WGN–TV (Chicago).

No new station can meet the date-specific criteria set forth in the definition. The sports blackout rule provides that sporting events carried on distant stations retransmitted to a specified area must be deleted when carriage would violate sporting teams' or leagues' exclusive rights in the local market.

2. The issues raised on reconsideration are largely technical issues pertaining to the operation of the rules. The Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Hockey League, and the Division 1–A Athletic Director's Association (''Sports Leagues'') jointly filed a petition for reconsideration concerning the timing for submitting deletion notifications to satellite carriers and the method of determining when the blackout rule is triggered. EchoStar Satellite Corporation (''EchoStar'') filed a petition for reconsideration concerning the duration of the phase-in period and the timing and application of the notification requirements, with which DirecTV, Inc. (''DirecTV'') joined in part. The Association of Local Television Stations (''ALTV'') and the Motion Picture Association of America (''MPAA''), as well as the Petitioners, filed oppositions or comments in response to the petitions.

3. Our response to the petitions is governed by the Communications Act and our own rules. 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 that 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, we deny EchoStar's and DirecTV's petitions and deny in part and grant in part the Sports Leagues' petition. We also take this opportunity to clarify and, where necessary, amend some of the requirements in the Report and Order and the rules.

Background and Summary of Petitions

4. In implementing sections of the SHVIA in the Report and Order, the Commission was guided by the directive to place satellite carriers on equal footing with cable operators, while also taking into consideration that the operational structures of cable operators and satellite carriers are different. To allow satellite carriers a reasonable period of time to adjust to the new non-duplication and syndicated exclusivity rules, the Commission gave carriers 120 days from the time they received blackout request notices to implement the necessary deletions for the first six months the rules were effective. The rules took effect on November 29, 2000. Therefore, the six month period ended May 29, 2001.

5. With respect to the sports blackout rule, the Commission applied the rule to satellite retransmission of nationally distributed superstations as well as to satellite retransmission of network stations. Although the satellite sports blackout rules are very similar to the cable rules, the notification periods in the satellite context differ to ensure that satellite carriers are notified of blackouts as soon as the rights holder has the information in hand. In addition, in order to afford satellite carriers an opportunity to adjust to the new requirements, the Commission provided a phase-in period for implementing the sports blackout rules, albeit somewhat shorter than the phase-in for the non-duplication and syndicated exclusivity rules.

6. EchoStar's petition for reconsideration requests a one-year phase-in period, rather than the 120-day transition provided in the Report and Order. EchoStar also requests a longer notification period for sports blackout requests, and it objects to the application of the sports blackout rule to all network stations. DirecTV's petition for reconsideration joins EchoStar's petition with respect to application of the sports blackout rule to all network stations and the length of the

notification period. The Sports Leagues object to the requirement that notice of sports blackouts be given within 48 hours of the telecast schedule being set. The Sports Leagues also contend that § 76.128 does not precisely track the defunct rule section it was intended to replace.

Order on Reconsideration

Transition Phase-In Period

7. *Background.* In the Report and Order the Commission gave satellite carriers time to phase-in compliance with the new network non-duplication and syndicated exclusivity rules to ensure that they would have adequate equipment and personnel to implement the deletions, and to arrange for programming to substitute for deleted programming. To afford both satellite carriers and broadcasters a reasonable period of time to adjust to the new requirements and review the contract language, the Commission provided that broadcasters would have up to six months from the effective date of the Report and Order to renegotiate contracts, and required that they notify satellite carriers of deletion requests within sixty days of signing a renegotiated contract. For notices provided before June 1, 2001, satellite carriers were given 120 days before they were required to implement the necessary deletions. For notices provided to satellite carriers after June 1, 2001, the normal time requirements—within sixty days of notification—apply. The six month period for renegotiations expired in May, 2001.

8. With respect to the sports blackout rule, the Commission required that rights holders provide sixty days advance notice for any sports blackout that would occur on or before March 31, 2001. As of April 1, 2001, the regular notice requirements, including twenty-four hour notice for changes in previously scheduled blackouts, became applicable. Because satellite carriers were complying with contractually required sports blackouts prior to the implementation of the SHVIA requirements, it was unnecessary to provide the same length of time to phase-in the sports blackout rules as provided for the network non-duplication and syndicated exclusivity rules.

9. In its petition for reconsideration, EchoStar reiterated its request for a one-year phase-in period to assess the ability of its subscriber qualification system to differentiate protection zones for superstation and network programming. Three of the superstations informed EchoStar that the exclusivity rule requirements could require deletion of all programming from 8:30 a.m. to 9 p.m., which would prompt EchoStar to decide not to offer these superstations to their subscribers. EchoStar also stated that if the number and complexity of deletion requests make it necessary to replace its entire conditional access system, the replacement process would take nine to twelve months to complete from the time it receives such requests. EchoStar disagreed with the Commission's conclusions concerning the need for new equipment and suggested the Commission require rights holders to submit deletion requests for a year before they would be implemented. The Sports Leagues, ALTV, and MPAA opposed EchoStar's petition. Further, MPAA asserts that the 120-day notice phase-in period stretches beyond the one-year effective date Congress required in the SHVIA.

10. *Discussion.* The transition period provided in the Report and Order ended in 2001, as did the one-year period EchoStar requested in the original proceeding and again on reconsideration. Nonetheless, we rule on the merits and decline to extend the phase-in period for the implementation of syndicated exclusivity, network non-duplication and sports blackout rules beyond the phase-in periods provided by the Report and Order and rules. The Report and Order rejected EchoStar's proposal for a transition period of one year as unnecessary, impractical and unlikely to assist EchoStar in planning for deletions given that rights holders would not submit deletion requests knowing that they would not be acted upon for a year. Satellite carriers did not demonstrate that they needed additional time to develop new equipment in addition to their existing blackout and conditional access equipment. EchoStar has not provided sufficient justification for its request and has not presented new arguments that would warrant reconsideration of this issue. EchoStar asserts that its system is near capacity, but has not provided evidence of how the capacity was used or how additional burdens affect the capacity. Although we understand that EchoStar did not have specific deletion requests when it submitted comments in the rulemaking proceeding, the potential scope of the deletions required by the statutory mandate were largely apparent when the statute took effect at the end of 1999. We therefore deny EchoStar's petition for reconsideration with respect to lengthening the phase-in periods.

Sports Blackout Rule

The Sports Blackout Rule Applied to Retransmission of Network Stations

11. *Background.* In the Report and Order the Commission applied the sports blackout rule to retransmission of nationally distributed superstations and network stations. The Commission's sports broadcasts rule (''sports blackout rule'') is designed to allow the holder of the exclusive distribution rights of sporting events, to control, through contractual agreements, the display of that event on local cable and, pursuant to the SHVIA, on satellite systems. The sports blackout rule is triggered when a subject sporting event will not be aired live by any local television station carried on a community unit cable system. Under the sports blackout rule, the holder of the rights to the event (*e.g.*, a sports team or league, rather than a broadcaster) has the power to demand that the local cable system or satellite carrier blackout the distant importation of the subject sporting event. The zone of protection afforded by the sports blackout rule generally is 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place. Unlike the network non-duplication and syndicated exclusivity rules, the sports blackout rule applies to retransmission of distant network stations as well as to nationally distributed superstations. In the case of retransmission of network stations, the SHVIA instructed the Commission to apply the cable sports blackout rule to satellite carriers only ''to the extent technically feasible and not economically prohibitive.'' In the Report and Order the Commission considered DirecTV's request that the Commission invoke the ''technical/economic hardship exception of section 339(b)(1)(B)'' and decline to apply any sports blackout requirement on satellite retransmission of network stations. The Commission determined, however, that DirecTV and EchoStar had not provided sufficient information regarding the costs and burdens imposed by the requirement to satisfy the statutory exception. The burden requires a showing that conforming to rules similar to those applicable to cable operators ''would entail a very serious economic threat to the health of the carrier.''

12. EchoStar's petition seeks reconsideration of that decision. EchoStar maintains that ''there was simply no historical evidence available to satellite carriers to illustrate the burdens from future compliance'' and that the benefit to sports rights holders

is small compared to the ''formidable burden'' on satellite carriers. EchoStar notes that the distant network signals in question may only be retransmitted to unserved households of which there are few within any protection zone. The statutory copyright license only permits retransmission of distant signals to ''unserved households.'' Under copyright law ''unserved households'' are those that are unable to receive an over-the-air network signal of Grade B intensity or better. In addition, ''grandfathered'' households, as well as recreational vehicles and commercial trucks, are included in the definition of unserved households. EchoStar follows that ''the limited practical significance of the rules does not necessarily lessen the difficulty that the satellite carrier would still confront in blacking out the sports programming for those few households.'' DirecTV agrees and asserts that blacking out a small area or small number of subscribers in the satellite context is more complex than in the cable context because of the several steps an operator must go through, including encoding information; data entry; scheduling and processing; and triggering each blackout manually by individually watching each event. DirecTV further asserts that these steps ''raise a question of whether the Commission was justified in concluding that the application of sports blackout rules to satellite carrier retransmission of network stations is ''technically feasible and not economically prohibitive.'''

13. EchoStar argues that it is in a better position to make a preliminary estimate of the possible burden of complying with the blackout rules as applied to network programming during the reconsideration process because it has evidence of actual deletion requests, which it could not have had during the initial rulemaking proceeding. EchoStar states that the primary issue determining the impact of network blackout rules is the ''number of different regions that must be defined as possible blackout zones, even more so than the number of programs and events to be blacked out.'' EchoStar describes its anticipated problem in implementing sports blackouts to be a result of the complexity of, and lack of coordination for, blackout zones among the various sports leagues. EchoStar states that its current sports blackout system for ESPN and Fox uses 128 different blackout zones coordinated with individual consumer's receivers, each associated with a single blackout region for twelve categories of sports. EchoStar explains that because several sports teams that are in close proximity will have overlapping blackout zones, it will need to implement ''a mosaic of smaller zone ''pieces''' to make up a complete blackout zone, which will rapidly consume its blackout resources. EchoStar asserts that if it receives blackout requests for zones that differ from its current contractual blackout zones, and if it gets a significant increase in the number of requests, as it expects with the addition of blackout requirements for network stations along with syndicated exclusivity and network non-duplication requests, that it will likely have to replace its existing conditional access system for one with expanded capabilities. EchoStar estimates the costs of system upgrade in the $75 to $100 million range, and also provides an estimated figure of $123.5 million dollars for total system replacement.

14. The Sports Leagues assert that EchoStar does not present any new evidence to substantiate its claimed injury, but instead presents arguments lacking foundation in fact and failing to satisfy the burden imposed by Congress. The Sports Leagues also contend that the 35-mile zone of protection applied to nationally distributed superstations should be the same protection zone used to blackout network stations and, therefore, ''no new codes [in addition to codes for the sports blackout rule as applied to nationally distributed superstations] should be necessary in implementing the [sports blackout rule] for network signals.'' Further the Sports Leagues point out that EchoStar does not attempt to differentiate nationally distributed superstations from network stations. The Sports Leagues argue that EchoStar has failed to support assertions that its coding is ''near capacity'' and cannot therefore accommodate blackouts of sporting events carried on network stations.

15. *Discussion.* EchoStar has presented evidence regarding the potential burden imposed by the sports blackout rule, and suggested that additional capacity demands on its system in connection with providing sports blackout for network stations could require an overhaul of its entire conditional access system, but has not presented evidence of the burdens specifically associated with the application of the sports blackout rule to the retransmission of the signals of network stations. EchoStar asserts that the complexity of and lack of coordination for blackout zones among the various sports leagues creates difficulties in implementing sports blackouts. In connection with this reconsideration proceeding, the four major sports leagues have agreed to use a single, standardized zip code list for purposes of the Sports Blackout Rule and have provided such a list to the satellite carriers. In order to receive blackout protection, § 76.127(b) obligates rights holders to provide detailed information in the blackout notices, including accurate zip code information. Therefore, to ensure accurate application of sports blackout protection, the Sports Leagues will be responsible for keeping the standardized zip code list current. Although satellite carriers' other contractual arrangements may still create the need for multiple codes in each market, the standard zip code list will reduce the overall burdens on satellite carriers in meeting sports blackout requirements. Nevertheless, as the Commission found in the Report and Order, EchoStar's evidence offered for reconsideration does not identify separately the burdens imposed by blacking out network stations and the burdens imposed by blacking out nationally distributed superstations, nor does it provide information on the costs—incremental or total—of deleting network stations. We are, therefore, unable to make a meaningful evaluation of EchoStar's claim that it may not have capacity to implement the required number of sports blackout zones based on the record. Accordingly, we deny EchoStar's petition for reconsideration.

Forty-Eight Hour Notification Period

16. *Background.* In order to activate the protections of the sports blackout rule, specific notification procedures regarding the sporting events to be deleted must be followed. The notification requirement for sports blackout, as historically applied to cable systems, requires several days advance notice, but in certain circumstances can be given as little as twenty-four hours in advance. With respect to cable systems, notifications for regularly scheduled events subject to the sports blackout rule must be received no later than the Monday preceding the calendar week during which the deletion is to be made. Notifications for events not regularly scheduled, or when the schedule is revised, must be received within 24 hours after the time of the deleted telecast is known, but in no event less than 24 hours before the event will take place. Nothing we adopt herein regarding modifications to notice requirements for the satellite sports blackout rule is intended to modify the cable sports blackout rule.

17. In the original rulemaking proceeding, DirecTV described a satellite blackout system that is more complex than cable. The Commission

acknowledged in the Report and Order that although ''the process described by DirecTV did not appear to present such a serious technical or economic burden as to excuse compliance with the sports blackout rules altogether, it does suggest that the challenge of implementing multiple, simultaneous blackouts and identifying and arranging substitute programming is greater for satellite carriers than for cable operators.'' DirecTV proposed a notification period of 60 days prior to the start of a season for sports with a specific season, 60 days prior to the event for non-seasonal but regularly scheduled events, 30 days for events not regularly scheduled, and ten working days for revisions to previously submitted notices. The Commission found that satellite carriers made ''reasonable arguments in support of revising the notification periods in the satellite sports blackout rules to the extent possible without depriving the teams and leagues of their contractual rights by establishing time frames that afford practical protection.''

18. In the Report and Order the Commission found that satellite carriers were complying with contractually mandated sports blackouts, which require that they delete sporting events and provide subscribers with replacement programming. However, recognizing differences in the structure and operation of the satellite and cable industries, the Commission ruled that some adjustment in the application of the sports blackout rules was justified. The Commission found that the lack of specific information in the record limited our ability to finely tailor the notice requirements with respect to satellite sports blackout. The Commission therefore declined to adopt DirecTV's notification proposals, and instead ruled that the sports blackout rules for satellite carriers would retain the same advance notice requirements used in the cable context for regularly scheduled events (notice must be received the Monday before the calendar week in which the deletion is to be made), but would also require that rights holders notify satellite carriers within 48 hours of the time the telecast to be deleted is known.

19. In its petition for reconsideration, EchoStar asserts that the complexity of carrying local sports broadcasts over a nationwide satellite system requires more time to black out programming than for cable operators. EchoStar argues that the rule requiring notice within 48 hours of the time a telecast is scheduled, without establishing a limit on how close in time the scheduling of the event can be to the event itself, does not give satellite carriers enough time to comply because the notice might be delayed until as late as twenty-four hours before the event to be broadcast. EchoStar requests that the Commission reconsider its decision regarding notification periods for sports blackout, and align the notification period with the network non-duplication and syndicated exclusivity rules requiring a minimum of sixty days notice. In addition, EchoStar requests that the Commission not allow deletion requests for unscheduled events.

20. The Sports Leagues state that the requirement that rights holders notify satellite carriers within 48 hours of the time the telecast is known creates a significant and unwarranted burden on the Sports Leagues while also causing confusion on the part of the satellite carries. The rule, according to the Sports Leagues, results in a piecemeal notice scheme where numerous, often unnecessary, notices must be sent. The Sports Leagues explain that the various sports teams make decisions to televise their away games at different times in the pre-season months. The Sports Leagues contend that the rule requires that each time a visiting team sets its away game telecast schedule, and communicates it to the home team or the league, the home team broadcast rights holder must send a notice to the satellite carrier to blackout the games. If, subsequent to the visiting team's decision to telecast, the home team decides to telecast the game in its home market, within 48 hours of that decision, notices countermanding the blackout request must be sent. The Sports Leagues surmise that this rule would require ''hundreds, if not thousands, of notices, an unbelievable burden on the Leagues and an administrative nightmare for the carriers as they attempted to monitor the constant flow of notices coming in.''

21. The Sports Leagues urge the Commission to adopt the same standard of notice for satellite carriers as it has for cable operators. The Sports Leagues state that the cable rule, by allowing notice on the Monday of the week preceding the calendar week of the game, has enabled the Sports Leagues ''to compile national and local telecasting schedules and distribute all notices at one time, it also allows cable operators (even those with systems in dozens of major markets) to receive all notices at one time.'' The Sports Leagues indicate that this procedure has been used in the cable context for over twenty-five years. The Sports Leagues also state that in some circumstances, such as for the NFL, the league may know before the season begins that a team's scheduled games have been sold out and that, therefore, no blackouts will be necessary. The Sports Leagues explain that if the satellite rule followed the cable rule procedures for notification, in the ''vast number of circumstances'' the Leagues would be able to provide notices ''no less than six days before a blackout at the beginning of the season and, in most cases, six months before blackouts at the end of the regular season.'' The Sports Leagues also assert that satellite carriers need only a ''couple of days notice'' to perform blackouts necessitated by regular season and playoff schedule changes. The Sports Leagues also oppose EchoStar's request that the Commission eliminate the twenty-four hour notice provision for revisions to existing notifications and notifications of unscheduled events because that would preclude protection for post-season or rescheduled games.

22. In its opposition, EchoStar argues that the Sports Leagues have not offered any new evidence, study, or specific facts to support changing the rule. Rather, EchoStar suggests the burden of providing notices could be alleviated by better coordination between teams within the Sports Leagues.

23. In response, the Sports Leagues propose a compromise resolution. The Sports Leagues agree to provide, along with a master list of zip codes, a master blackout notice covering every team in a league for all regular season games to be received by carriers no less than fifteen days before the start of a sports season. The Sports Leagues suggest that the use of a fifteen-day period in advance of the season would allow satellite carriers sufficient time to enter the necessary game and zip code information to accomplish the blackout requests.

24. *Discussion*. On reconsideration, we agree that the requirement that rights holders notify carriers 48 hours from the time the telecast to be deleted is known (the ''48-hour rule'') will potentially create significantly more burdensome notice requirements for both rights holders and satellite carriers than intended. We therefore grant the Sports Leagues petition, in part, insofar as the Sports Leagues request modification of the rule. For the same reasons discussed in the Report and Order, we deny EchoStar's and DirecTV's petitions repeating their requests for sixty-day notice periods for scheduled events and elimination of blackout requirements for unscheduled events. As the Commission indicated in the Report and Order, the purpose of the 48-hour rule was to give carriers sufficient time to enter blackout requests and line up substitute programming by ensuring that rights

holders notify satellite carriers as soon as the telecasts are scheduled. However, given that many teams set their telecast schedules at different times over the months leading to the start of a season, our rules can be interpreted to require each team to send out multiple notices to satellite carriers as they sporadically receive the telecast schedules of their opposing teams. Moreover, many of the notices must be subsequently rescinded when the complete telecast schedules of the home teams and visiting teams are reconciled. For example, if, subsequent to sending out blackout notices to satellite carriers of away team telecasts to be deleted, the home team determines that it will also telecast one or more of the same games, then blackout protection would be removed under § 76.127(a), and notifications would need to be sent out under § 76.127(c). This application of the 48-hour rule could indeed result in numerous notices being received by satellite carriers in a confusing and unnecessarily complex manner.

25. We continue to recognize the unique technical challenges that satellite carriers face in implementing sports blackouts and arranging for substitute programming. However, in light of the potential volume of notices created by the rule as applied to the professional sports leagues, we reconsider and amend it to require that rights holders choose between providing notice within 48 hours of the time the telecast to be deleted is known, or fifteen days prior to the commencement of the season, as described below.

26. As EchoStar suggested, some coordination among the teams in the league is necessary in connection with the notice requirement. This is what the Sports Leagues are requesting to do, and have done in connection with the cable rule for years. Therefore, we will permit rights holders for sports with a discernable season to submit blackout notifications for an entire season, but we establish a date certain by when those notifications must be received by satellite carriers. The Sports Leagues have proposed that they can coordinate their teams' telecast schedules and submit notices of blackout requirements for those schedules by fifteen days before the beginning of each league's season. This proposal is reasonable. In connection with the standardized zip code list the Sports Leagues will provide to the satellite carriers, we think that carriers will have enough time to schedule the blackouts and to arrange for substitute programming where needed. This approach is very similar to the implementation of the cable sports blackout rule, while also reflecting the satellite carriers' demonstrated need for additional advance notice. We also recognize that in some circumstances pre-season sporting events will use sports blackout protection similar to regular season games.

27. We will maintain the 48-hour rule for situations where the fifteen-day pre-season notice is impracticable or unnecessary. If the participants in a sports league are able to organize the entire league's telecast schedule before the start of the season, or a pre-season period, blackout notices for that season, or pre-season, may be submitted to satellite carriers all at once fifteen days prior to the start of the season or pre-season. However, should a team or league not be able to provide its entire telecast schedule in advance of a season, or pre-season, the rights holder may send the notices game by game, but must do so within 48 hours of the time the telecast to be deleted is known. For broadcasts of individual sporting events or for sports without a complex league structure or a defined season it will likely be more practical to send blackout notices of regularly scheduled sporting events within 48 hours of the time the telecast to be deleted is known.

Definition of ''Local'' for Purposes of the Application of the Sports Blackout Rules

28. Background. Prior to amending the sports blackout rules in the Report and Order, the sports blackout provisions could be applied ''if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§ 76.5(gg)(1) through 76.5(gg)(3) of this part.'' The Commission deleted § 76.5(gg) in its 1993 Order rescinding rate regulation. In the Report and Order the Commission adopted language to replace the deleted provision. In adopting a new standard based on former § 76.5(gg), the Commission shortened and consolidated the provisions of that section and included them in a new rule provision, § 76.128, which was not intended to change the operation of the cable sports blackout rule.

29. In their petition for reconsideration, the Sports Leagues assert that the application of the rule would likely have an unintended effect. The Sports Leagues point out that § 76.128 now defines a ''local'' station as, ''among other things, a station either within 35 miles of the cable or sports event community or one placing a Grade B contour over the cable or sports event community.'' The Sports Leagues assert that under the 1972 must carry rules, Grade B contour stations had no must-carry rights and were subject to deletion under the cable sports blackout rule. The Sports Leagues explain that with respect to cable television systems, a broadcast station transmitting a Grade B signal of a particular game into the 35-mile sports blackout zone of a rights holder could prevent that rights holder from requiring the cable operator to black out a non-televised home game. The Sports Leagues ask us to re-establish the protections for sports blackouts that have existed for over twenty-five years, and to create the same type of protection for satellite importation. The Sports Leagues state that this can be achieved by ''specifically recognizing that coverage by a Grade B contour does not vitiate blackout protection.'' ALTV recognized the problem raised in Sports Leagues' petition, but states that there is insufficient evidence in the record to assess the impact of the request.

30. EchoStar asserts that the Commission revised the definition of ''local'' for purposes of the sports blackout rule in order to simplify the definition and reflect changes in the must carry rules. EchoStar states that the rule now says that the sports blackout will not be triggered when the sports event is available live on a station whose grade B contour covers the community in which the event occurs. EchoStar argues that the revision in the rule is consistent with the purpose of the sports blackout rule, which is to protect gate receipts when a game is not locally available over the air.

31. Discussion. We agree that the revisions to the sports blackout rules may have an unintended effect in rare situations such as those described by the Sports Leagues. Contrary to EchoStar's assertions, it was not the Commission's intention to alter the operation or effect of this part of the rules for cable operators or satellite carriers. To address the points raised by the Sports Leagues, we amend § 76.128 so that it will more closely track the terms and effect of the former § 76.5(gg) by reestablishing that the Grade B contour provision applies only in non-major markets.

Clarification of Non-Duplication Protection Notices

32. Background. Emmis Television Broadcasting, L.P. d/b/a WCKF–TV, Orlando, Florida (''Emmis'') in an *ex parte* submission requested reconsideration and revision of § 76.122 of our rules. Emmis asserts that § 76.122(c)(2) is dissimilar to the notification requirements in the cable context insofar as § 76.122(c)(2) requires the inclusion of specific program

information regardless of an affiliate's ability to furnish that information based on the content of its affiliation contract.

33. Discussion. In the Report and Order, the Commission concluded that stations should notify satellite carriers of exclusivity rights in the same manner required under the cable rules. The Commission intended that the satellite rules would require that the notice asserting exclusivity rights contain the same identifying information about the programming to be deleted and the extent of the exclusivity as required in the cable rules.

34. We take this opportunity to revise § 76.122(c) so that the rule conforms to the cable rules in § 76.94(a) and (b). We take this action partly sua sponte and partly in response to the informal request for clarification of our rules. Broadcasters requesting non-duplication protection from satellite carriers are required to include the name of the program, series or specific episodes for which protection is sought if such information is identified in the station's network agreement.

Procedural Matters

35. *Paperwork Reduction Act of 1995 Analysis*. This Order on Reconsideration contains new or modified information collections 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. A Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission is published elsewhere in this **Federal Register**.

36. *Supplemental Final Regulatory Flexibility Certification*. The Regulatory Flexibility Act of 1980, as amended (RFA), see 5 U.S.C. 605(b), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The RFA, see 5 U.S.C. 601(6), generally defines ''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 Administration (SBA).

37. In the Report and Order adopting the rules, the Commission issued a Final Regulatory Flexibility Analysis. In this Order on Reconsideration, the Commission amends § 76.122 of our rules so that it conforms to the cable rules in § 76.94(a) and (b). The Commission intended that the satellite rules would require that the notice asserting exclusivity rights would contain the same information about the programming to be deleted and the extent of the exclusivity as is required in the cable rules. The correction to this rule requires notices to satellite carriers to contain specific information only when the information is readily available to the rights holder, as similarly required by the cable rules. Therefore, the rule change eases the notification process, and the economic impact on rights holders and satellite carriers will not be significant.

38. The Commission also amends a notification requirement in § 76.127 enabling sports rights holders to submit blackout notices to satellite carriers on an individual basis, or to cover an entire sports season at the rights holder's election. This elective notification scheme potentially reduces the burdens on sports rights holders and satellite carriers in conforming to the satellite sports blackout rule. The modification to this requirement aligns the satellite rule more closely with the application of the cable rule, as intended by the Report and Order. The changes we make to the requirements should not increase or decrease the number of event broadcasts to be blacked out, but should allow for more efficient scheduling and implementation of blackouts, and hence the economic impact on rights holders and satellite carriers will not be significant.

39. Finally, the Commission amends § 76.128 of our rules so that it more closely tracks the former § 76.5(gg) it was intended to replace. In particular, the revision clarifies the definition of local station for purposes of the application of the sport blackout rules. The Commission never intended to alter the operation or effect of this rule, and this aspect of the definition would have had effect only in very rare instances.

40. For the above reasons, we certify that the requirements of this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Order on Reconsideration (or a summary thereof) and this certification will be published in the **Federal Register**, see 5 U.S.C. 605(b), and will be sent to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

41. *It is ordered*, pursuant to section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that EchoStar's and DirecTV's Petition for Reconsideration *are denied*.

42. *It is further ordered*, pursuant to section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Sports Leagues' Petition for Reconsideration *is denied in part and granted in part*.

43. *It is further ordered*, that, pursuant to authority found in Sections 4(i) 4(j), 303(r), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 339, the amendments to part 76 of the Commission's rules, 47 CFR part 76, as discussed in this Order on Reconsideration and set forth in Appendix B, and the clarifications of those rules discussed in this Order on Reconsideration, *are adopted*, and shall become effective December 16, 2002 except that rules § 76.122(c)(2) and § 76.127(c) that contain information collection requirements under the PRA are not effective until approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

44. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

45. *It is further ordered* that this proceeding *is terminated*.

List of Subjects in 47 CFR Part 76

Cable television, Satellite carriers, Television broadcast stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

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

2. Section 76.122 is amended by revising paragraph (c)(2) to read as follows:

§ 76.122 Satellite network non-duplication.

* * * * *

(c) * * *

(2) Where the agreement between network and affiliate so identifies, the name of the program or series (including specific episodes where necessary) for which protection is sought;

* * * * *

3. Section 76.127 is amended by revising paragraph (c) to read as follows:

§ 76.127 Satellite sports blackout.

* * * * *

(c)(1) With respect to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known; or, for events that comprise a season or pre-season period, fifteen (15) days prior to the first event of the season or pre-season, respectively; and no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made. (2) Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

* * * * *

4. Section 76.128 is amended by revising paragraph (b) to read as follows:

§ 76.128 Application of sports blackout rules.

* * * * *

(b) For communities in television markets other than major markets as defined in § 76.51, television broadcast stations within whose Grade B contours the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;

* * * * *

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