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STELA NPRMs On Fast Track

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In late May Congress finally got around to passing the Satellite Television Extension and Localism Act of 2010, affectionately referred to as STELA. In so doing, Congress ordered the FCC to crank up a couple of rulemaking proceedings, pronto, to implement changes largely dictated by STELA. As a result, the FCC hustled out two Notices of Proposed Rulemaking (*NPRMs*), each with very short comment periods which (with one exception) have already come and gone, and each addressing distinct aspects of satellite carriage, within a DMA, of broadcast signals from outside that DMA.

While the chance to comment on these matters has technically passed, broadcasters in particular should be aware of what's at stake here, since it could affect them in important ways.

STELA extends, with some changes, the right of satellite TV providers to retransmit the signals of local broadcast stations. That right has been around in one form or another since 1988's Satellite Home Viewer Act (SHVA), later revised in 1999's Satellite Home Viewer Improvement Act (SHVIA) and then again in 2004's Satellite Home Viewer Extension and Reauthorization Act (SHVERA). (SHVERA technically expired as of December 31, 2009 – but Congress extended it in a series of stop-gap measures, giving itself time to work out the kinks in STELA.)

In addition to extending the overall right of satellite operators to carry broadcast signals, STELA provides for several noteworthy modifications in the rules governing importation of out-of-market signals. It is those modifications that are the focus of the FCC's *NPRMs*. One deals primarily with questions involving satellite carriage of “significantly viewed” stations; the other focuses on technical questions in determining whether certain households are “unserved”, a determination which affects carriage of distant network-affiliated stations.

Significantly Viewed Stations NPRM

Normally, a satellite operator – like its cable confrères – is supposed to retransmit only broadcast signals within the DMA where those signals originate. There are exceptions,

though – including the ability to carry broadcast stations that are shown to be “significantly viewed” (SV) within the target market, even if those stations are not technically located within that market (or DMA). (The FCC maintains a list of stations that have met the SV standards.) Under the previous satellite carriage laws, SV carriage was subject to certain restrictions. STELA eases those restrictions.

HD or no HD – That is the question. Under SHVERA, a satellite operator seeking to retransmit an SV signal of network-affiliated station could do so only if the operator afforded the local network-affiliated station bandwidth equivalent to that afforded to the SV station. The idea was to assure that the local guy wouldn’t get short-changed with a “less robust” carriage format than the SV station. But the “bandwidth” approach imposed a significant burden on satellite carriers that effectively discouraged them from availing themselves of the SV opportunity.

No more. STELA shifts the focus from the hyper-technical “bandwidth” approach to a simpler “HD or no HD” approach. That is, under STELA, a satellite operator may carry a network-affiliated SV station in HD as long as the operator carries the local network affiliate in HD when that local affiliate is broadcasting in HD. The FCC seeks comment on this change – but, since Congress has mandated this approach, it’s a mortal lock to be adopted. Oh sure, there may be some subsidiary issues to be fine-tuned by the Commission – Is it OK for the FCC to use the ATSC definition of “HD” (and if so, does that lead to any potential issues)? How should the rule apply to situations where a local affiliate is broadcasting network programming in HD on a secondary stream? etc. – but it seems reasonably certain that we can kiss good-bye to “bandwidth” and embrace “HD or no HD” as the operative consideration in this area.

Local-into-local doesn’t mean “ALL local-into-local”. Previously, the Commission specified that a network-affiliate SV signal could be provided to a satellite subscriber **only** if that subscriber also received the signal of that network’s local affiliate as well. No longer. STELA abandons that approach, replacing it with the simpler concept that, if a satellite subscriber receives “local-into-local” retransmissions of local broadcast signals, that subscriber may receive SV signals as well. (Actually, Congress’s previous take on this was less than 100% clear, thus allowing the FCC to interpret it as it did; STELA, however, reins the FCC in on this point.)

This change could have a significant impact on the perennial triennial question of “must carry vs. retransmission consent”. A network affiliate which elects retrans but fails to cut a deal and, thus, finds itself not being carried will have opened the door for an SV station with the same affiliation to become the *de facto* representative of that network in the market, at least as far as satellite carriage is concerned. Under the old FCC approach, if the local network station

didn't get carried on the satellite for whatever reason, then the SV network station couldn't get carried, either – which meant that failure of retrans consent negotiations simply left both the local and the SV affiliate off the menu. Now, such a failure could create a situation in which the SV station might be carried, even if the in-market affiliate is not.

Other housekeeping items. In addition to the major items described above, the Commission's SV *NPRM* addresses several minor “housekeeping” issues (like abandoning, at long last, the term “non-cable” and subbing in “over-the-air” in its place).

“Unserved Households” NPRM

Satellite operators are permitted to provide a distant (*i.e.*, out-of-market) network-affiliate station – whether or not that station has SV status – to subscribers who are unable to receive an adequate over-the-air signal from the local affiliate of that network. And conversely, households which *do* receive an adequate over-the-air signal from the local affiliate (whether that local guy happens to be a full service TV, LPTV or TV translator) are generally *not* eligible to get the distant signal by satellite. The devil, as is usually the case, is in the details: how exactly does one determine – whether by measurement or prediction – the adequacy of an over-the-air signal for these purposes?

STELA charged the FCC with the chore of developing a “point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through the use of an antenna, to receive” a digital TV signal of specified strength. (An analog model is already in place but, in this post-DTV transition world, it's useful only for the remaining analog LPTVs and TV translators.) Additionally, Congress ordered the Commission to get a move on and wrap up a long-pending-still-unresolved proceeding looking to establish a procedure for on-site measurement of actual DTV signal reception. The “unserved households” *NPRM* is the FCC's response.

Tweaking (or not) the existing predictive model. With respect to a predictive model, the Commission proposes to use the tried-and-true SHVIA Individual Location Longley-Rice model (SHVIA ILLR model), with appropriate tweaks to address DTV considerations. For example, the Commission would use the DTV noise-limited service contour values (check them out in Section 73.622(e)(1) of the rules) as the standard for an adequate signal. (The analog model uses the Grade B contour, a concept which does not exist in DTV-land.) The Commission would also shift to an F(50,90) service contour, rather than the F(50,50) contour historically used for the SHVIA ILLR model – but that change is a function of the DTV transition. The F(50,50) curves are utilized for analog measurement, while DTV service is measured with F(50,90) curves.

(What the heck is this all about, you ask? The two values – *i.e.*, 50 and 90 in F(50,90) – refer to location and time variability factors, respectively. That is, within the area encompassed by an F(50,90) contour, at least *50% of the locations* can be expected to receive a signal that exceeds the field strength value at least *90% of the time.*)

Perhaps more importantly, though, the Commission is *not* inclined to alter the model with respect to the type of antenna assumed to be in use by the viewer. In its earlier version of the satellite carriage law, Congress’s definition of “unserved household” was based on that household’s ability to receive an adequate signal using a “conventional, stationary outdoor rooftop antenna”. But STELA revised that definition by referring only to “an antenna”, dropping the significant limitations of “conventional”, “stationary” or, perhaps most importantly, “outdoor rooftop”. In most instances, an “outdoor rooftop” antenna is likely to receive a stronger signal than would a set of 1950s era rabbit ears sitting on top of the TV. Thus, deleting “outdoor” from the definition could have made it easier for any given household to assert that it was unserved.

Citing impracticability, the Commission proposes to stick with its existing approach: the predictive model would be based on use of an outdoor antenna. The FCC recognizes that this may have an adverse impact on households which *cannot* have an outdoor antenna for one or another reason, and it professes to be open to comments advocating use of an indoor antenna model. The Commission made clear, though, that anybody supporting that approach would be expected to provide “detailed technical information regarding the specific standards” that would be involved, focusing on such factors as antenna characteristics, building penetration loss, multipath effects, etc. The Commission is also worried about how an indoor antenna approach – which would necessarily entail a wide variety of differing situations – could be developed into a standard predictive model not subject to abuse.

On-site measurements – which, what, how? STELA (like its predecessors) provides that, even if the predictive model indicates that a particular household receives a local network station adequately, that household can request an on-site measurement to determine whether the prediction is, in fact, correct. But STELA still requires the Commission to take another look at its existing measurement methods.

With respect to which stations are to be measured, STELA departs from its predecessors by specifying that only “local” stations are relevant. That means that only the signals of network-affiliated stations in the same DMA as the satellite subscriber are to be measured. With respect to what component(s) of the signals is/are to be measured – say, for example, a station happens to be broadcasting network programming on a multicast, rather than primary, stream – the Commission has tentatively decided simply to measure

the station's overall signal strength. Its assumption there is that the receivability of a station's signal will not vary from one stream to the next.

And as for how the signal is to be measured, the Commission plans to stick with *outdoor* measurement only. Indoor, moveable antennas give rise to a boatload of variables: for example, there are many different types of antennas; also, signal strengths vary from room to room, and from one particular spot to another in any particular room. Accordingly, the FCC doubts its ability to develop an indoor measurement procedure. Still, the Commission invited comments and suggestions for those supporting indoor measurements.

The comment periods (for the *SV NPRM* and the *Unserved Households NPRM*) were *very* abbreviated, but that was because Congress ordered the Commission to get its rules implementing STELA in place by November 24, which doesn't give it much time.