can be reallotted to Black Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.0 kilometers (3.1 miles) southwest at joint petitioners' requested site. The coordinates for Channel 252C2 at Black Rock are 36–05–25 North Latitude and 91–08–55 West Longitude. *See* **SUPPLEMENTARY INFORMATION**, *infra.*

DATES: Comments must be filed on or before May 5, 2005, and reply comments on or before May 20, 2005. Any counterproposal filed in this proceeding need only protect Station KURB(FM), Little Rock, Arkansas, as a Class C0 allotment.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the following: Jason Roberts, Esq., Irwin, Campbell & Tennenwald, P.C., 1730 Rhode Island Ave., NW., Suite 200, Washington, DC 20036–3101 (Counsel for KFCM, Inc. and Bragg Broadcasting, Inc.); and Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–104, adopted March 9, 2005, and released March 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Additionally, Channel 222C2 can be reallotted to Cherokee Village at Station KSAR(FM)'s presently licensed site. The coordinates for Channel 222C2 at Cherokee Village are 36–21–58 North Latitude and 91–28–35 West Longitude. Moreover, Channel 254A can be allotted to Cave City with a site restriction of 1.0 kilometers (0.6 miles) southwest to avoid a short-spacing to the licensed site of Station WJZN(FM), Channel 255C1, Munford, Tennessee. The coordinates for Channel 254A at Cave City are 35–56–11 North Latitude and 91–33–27 West Longitude. Channel 253C0 can be reclassified at Little Rock at Station KURB(FM)'s presently licensed site. The coordinates for Channel 253C0 at Little Rock are 34–47–56 North Latitude and 92–29–44 West Longitude. Pursuant to Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 252C2 at Black Rock, Arkansas, or the use of Channel 222C2 at Cherokee Village, Arkansas, or require the joint petitioners to demonstrate the existence of an equivalent class channel for use of other interested parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Cherokee Village, Channel 252A and adding Black Rock, Channel 253C2; by adding Cave City, Channel 254A; and by removing Channel 253C and adding Channel 253C0 at Little Rock.

3. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 222C2 at Thayer.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–5855 Filed 3–23–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–89; FCC 05–49]

Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Reciprocal Bargaining Obligations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on the implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). Section 207 extends section 325(b)(3)(C) of the Communications Act until 2010 and amends that section to impose good faith retransmission consent bargaining obligations on multichannel video programming distributors (''MVPDs''). The Commission tentatively concludes that it should amend its existing good faith retransmission consent bargaining rules to apply equally to both broadcasters and MVPDs. The Commission also seeks comment on appropriate good faith retransmission consent negotiating standards for out-of-market significantly viewed television broadcast stations.

DATES: Comments for this proceeding are due on or before April 25, 2005; reply comments are due on or before May 9, 2005. Written comments on the proposed information collection requirements contained in the NPRM must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before May 23, 2005.

ADDRESSES: You may submit comments, identified by [docket number and/or rulemaking number], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format

documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in the *NPRM,* contact Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 05–49, adopted on March 2, 2005, and released on March 7, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198; *see* 44 U.S.C. 3506(c)(4).

Summary of the Notice of Proposed Rulemaking

1. In the *NPRM* we seek comment on the implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). Section 207 extends section 325(b)(3)(C) of the Communications Act until 2010 and amends that section to impose reciprocal good faith retransmission consent bargaining obligations on multichannel video programming distributors (''MVPDs''). This section alters the bargaining obligations created by the Satellite Home Viewer Improvement Act of 1999 (''SHVIA'') which imposed a good faith bargaining obligation only on broadcasters. As discussed below, because the Commission has in place existing rules governing good faith retransmission consent negotiations and because Congress did not instruct us through the SHVERA to modify those rules in any substantive way, we tentatively conclude that the most faithful and expeditious implementation of the amendments contemplated in section 207 of the SHVERA is to extend to MVPDs the existing good faith bargaining obligation imposed on broadcasters under our rules.

Discussion

The Good Faith Provisions of SHVIA

2. Section 325(b)(3)(C) of the Communications Act, as enacted by the SHVIA, instructed the Commission to commence a rulemaking proceeding to revise the regulations by which television broadcast stations exercise their right to grant retransmission consent; *see* 47 U.S.C. 325(b)(3)(C). Specifically, that section required that the Commission, until January 1, 2006:

> Prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations; *see* 47 U.S.C. 325(b)(3)(C)(ii).

The Commission issued a Notice of Proposed Rulemaking seeking comment on how best to implement the good faith and exclusivity provisions of the SHVIA; *see* 14 FCC Rcd 21736 (1999). After considering the comments received in response to the notice, the Commission adopted rules implementing the good faith provisions and complaint procedures for alleged rule violations; *see* 15 FCC Rcd 5445 (2000), 16 FCC Rcd 15599 (2001).

3. The *Good Faith Order* determined that Congress did not intend to subject retransmission consent negotiation to detailed substantive oversight by the Commission; *see* 15 FCC Rcd at 5450. Instead, the order found that Congress intended that the Commission follow established precedent, particularly in the field of labor law, in implementing the good faith retransmission consent negotiation requirement; *see* 15 FCC Rcd at 5453–54. Consistent with this conclusion, the *Good Faith Order* adopted a two-part test for good faith. The first part of the test consists of a brief, objective list of negotiation standards; *see* 15 FCC Rcd at 5457–58. First, a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Second, a broadcaster must appoint a negotiating representative with authority to bargain on retransmission consent issues. Third, a broadcaster must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Fourth, a broadcaster may not put forth a single, unilateral proposal. Fifth, a broadcaster, in responding to an offer proposed by an MVPD, must provide considered reasons for rejecting any aspects of the MVPD's offer. Sixth, a broadcaster is prohibited from entering into an agreement with any party conditioned upon denying retransmission consent to any MVPD. Finally, a broadcaster must agree to execute a written retransmission consent agreement that sets forth the full agreement between the broadcaster and the MVPD; *see* 47 CFR 76.65(b)(1)(i) through (vii).

4. The second part of the good faith test is based on a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the specific standards enumerated above, given the totality of the circumstances constitute a failure to negotiate in good faith; *see* 47 CFR 76.65(b)(2).

5. The *Good Faith Order* provided examples of negotiation proposals that presumptively are consistent and inconsistent with ''competitive marketplace considerations;'' *see* 15 FCC Rcd at 5469–70. The *Good Faith Order* found that it is implicit in section 325(b)(3)(C) that any effort to further anti-competitive ends through the negotiation process would not meet the good faith negotiation requirement; *see* 15 FCC Rcd at 5470. The order stated

that considerations that are designed to frustrate the functioning of a competitive market are not ''competitive marketplace considerations.'' Further, conduct that is violative of national policies favoring competition—that, for example, is intended to gain or sustain a monopoly, an agreement not to compete or to fix prices, or involves the exercise of market power in one market in order to foreclose competitors from participation in another market—is not within the competitive marketplace considerations standard included in the statute; *see* 15 FCC Rcd at 5470.

6. Finally, the *Good Faith Order* established procedural rules for the filing of good faith complaints pursuant to section 76.7 of the Commission's rules; *see* 47 CFR 76.65(c), 47 CFR 76.7. The burden of proof is on the complainant to establish a good faith violation and complaints are subject to a one year limitations period; *see* 47 CFR 76.65(d) and (e).

The Reciprocal Bargaining Obligations of SHVERA

7. In enacting the SHVERA good faith negotiation obligation for MVPDs, Congress used language identical to that of the SHVIA imposing a good faith obligation on broadcasters, requiring the Commission, until January 1, 2010, to:

> Prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations; *see* 47 U.S.C. 325(b)(3)(C)(iii).

Congress did not instruct the Commission to amend its existing good faith rules in any way other than to implement the statutory extension and impose the good faith obligation on MVPDs. Accordingly, we believe that Congress did not intend that the Commission revisit the findings and conclusions that were reached in the SHVIA rulemaking. The little legislative history directly applicable to Section 207 supports this approach and, in pertinent part, provides:

> In light of evidence that retransmission negotiations continue to be contentious, the Committee chose to extend these obligations, and also to begin applying the good-faith obligations to MVPDs. The Committee intends the MVPD good-faith obligations to be analogous to those that apply to broadcasters, and not to affect the ultimate ability of an MVPD to decide not to enter into retransmission consent with a broadcaster.

We believe that the implementation of section 207 most consistent with the apparent intent of Congress is to amend our existing rules to apply equally to both broadcasters and MVPDs. We tentatively conclude that we should amend sections 76.64(l) and 76.65 as set forth on Appendix A of the *NPRM*. We seek comment on this proposal and any other reasonable implementation of Section 207.

8. We note that the original SHVIA good faith provision by its terms applied to ''television broadcast stations.'' Similarly, the SHVERA good faith provision applies to ''multichannel video programming distributors.'' We seek comment whether, under the statute, the good faith negotiating standards may be any different for carriage of significantly viewed television broadcast stations outside of their designated market area (''DMA'') (A DMA is a geographic market designation created by Nielsen Media Research that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.) Significantly viewed television broadcast stations do not have carriage rights outside of their DMA and carriage of their signals by out-of-market MVPDs is permissive. We seek comment as to whether the Commission has discretion under section 325(b)(3)(C) to distinguish this situation. For example, if a television broadcast station from DMA X is significantly viewed in DMA Y and seeks carriage on an MVPD located in DMA Y, must the MVPD in DMA Y negotiate retransmission consent in good faith with the broadcaster from DMA X in exactly the same way that it negotiates with broadcasters that are located in DMA Y? Should the same good faith negotiation standard apply to broadcasters and MVPDs regardless of the DMA in which they reside? Should a different standard apply, and if so what standard? Should the good faith retransmission consent negotiation obligation apply only to MVPDs and broadcasters located in the same DMA? We seek comment on this issue.

Procedural Matters

Ex Parte Rules

9. Permit-But-Disclose. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules; see 47 CFR 1.1206(b), 47 CFR 1.1202, 1.1203. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required; *see* 47 CFR 1.1206(b)(2). Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

10. Comments may be filed electronically using the Internet by accessing the the Commission's Electronic Comment Filing System (''ECFS''): *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L. LaLonde@omb.eop.gov,* or via fax at 202–395–5167.

Ordering Clauses

11. Accordingly, *it is ordered* that pursuant to section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, and sections 1, 4(i) and (j), and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j),

and 325, *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

12. *It is further ordered* that the Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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, 315, 317, 325, 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 76.64 is amended by revising paragraph (l) to read as follows:

§ 76.64 Retransmission consent.

* * * * *

(l) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate any agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at midnight on December 31, 2009.

* * * * *

3. Section 76.65 is revised to read as follows:

§ 76.65 Good faith and exclusive retransmission consent complaints.

(a) *Duty to negotiate in good faith.* Television broadcast stations and multichannel video programming distributors shall negotiate in good faith the terms and conditions of retransmission consent agreements to fulfill the duties established by section 325(b)(3)(C) of the Act; provided, however, that it shall not be a failure to negotiate in good faith if:

(1) The television broadcast station proposes or enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations; or

(2) The multichannel video programming distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations. If a television broadcast station or multichannel video programming distributor negotiates in accordance with the rules and procedures set forth in this section, failure to reach an agreement is not an indication of a failure to negotiate in good faith.

(b) *Good faith negotiation.* (1) *Standards.* The following actions or practices violate a broadcast television station's or multichannel video programming distributor's (the "negotiating entity") duty to negotiate retransmission consent agreements in good faith:

(i) Refusal by a negotiating entity to negotiate retransmission consent;

(ii) Refusal by a negotiating entity to designate a representative with authority to make binding representations on retransmission consent;

(iii) Refusal by a negotiating entity to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations;

(iv) Refusal by a negotiating entity to put forth more than a single, unilateral proposal.

(v) Failure of a negotiating entity to respond to a retransmission consent proposal of the other party, including the reasons for the rejection of any such proposal;

(vi) Execution by a negotiating entity of an agreement with any party, a term or condition of which requires that such negotiating entity not enter into a retransmission consent agreement with any other television broadcast station or multichannel video programming distributor; and

(vii) Refusal by a negotiating entity to execute a written retransmission consent agreement that sets forth the full understanding of the television broadcast station and the multichannel video programming distributor.

(2) *Totality of the circumstances.* In addition to the standards set forth in paragraph (b)(1) of this section, a Negotiating Entity may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station or multichannel video programming distributor breached its duty to negotiate in good faith as set forth in paragraph (a) of the section.

(c) *Good faith negotiation and exclusivity complaints.* Any television broadcast station or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this section or paragraph (l) of § 76.64 may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7.

(d) *Burden of proof.* In any complaint proceeding brought under this section, the burden of proof as to the existence of a violation shall be on the complainant.

(e) *Time limit on filing of complaints.* Any complaint filed pursuant to this paragraph must be filed within one year of the date on which one of the following events occurs:

(1) A complainant enters into a retransmission consent agreement with a television broadcast station or multichannel video programming distributor that the complainant alleges to violate one or more of the rules contained in this paragraph; or

(2) A television broadcast station or multichannel video programming distributor engages in retransmission consent negotiations with a complainant that the complainant alleges to violate one or more of the rules contained in this subpart, and such negotiation is unrelated to any existing contract between the complainant and the television broadcast station or multichannel video programming distributor; or

(3) The complainant has notified the television broadcast station or multichannel video programming distributor that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules contained in this paragraph.

(f) *Termination of rules.* This section shall terminate at midnight on December 31, 2009.

[FR Doc. 05–5851 Filed 3–23–05; 8:45 am]

BILLING CODE 6712–01–P