

111TH CONGRESS
1ST SESSION

H. R. 3570

AN ACT

To extend the statutory license for secondary transmissions under title 17, United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Satellite Home Viewer
3 Reauthorization Act of 2009”.

4 **TITLE I—STATUTORY LICENSES**

5 **SEC. 101. REFERENCE.**

6 Except as otherwise provided, whenever in this title
7 an amendment is made to a section or other provision,
8 the reference shall be considered to be made to such sec-
9 tion or provision of title 17, United States Code.

10 **SEC. 102. MODIFICATIONS TO STATUTORY LICENSE FOR**
11 **SATELLITE CARRIERS.**

12 (a) **HEADING RENAMED.—**

13 (1) **IN GENERAL.—**The heading of section 119
14 is amended by striking “**superstations and net-**
15 **work stations for private home viewing**”
16 and inserting “**distant television program-**
17 **ming by satellite**”.

18 (2) **TABLE OF CONTENTS.—**The table of con-
19 tents for chapter 1 is amended by striking the item
20 relating to section 119 and inserting the following:

“119. Limitations on exclusive rights: Secondary transmissions of distant tele-
vision programming by satellite.”.

21 (b) **UNSERVED HOUSEHOLD DEFINED.—**Section
22 119(d)(10) is amended—

23 (1) by striking subparagraph (A) and inserting
24 the following:

1 “(A) cannot receive, through the use of a
2 conventional, stationary, outdoor rooftop receiv-
3 ing antenna, an over-the-air signal containing
4 the primary stream, or, on or after January 1,
5 2013, the multicast stream, originating in that
6 household’s local market and affiliated with
7 that network of—

8 “(i) if the signal originates as an ana-
9 log signal, Grade B intensity as defined by
10 the Federal Communications Commission
11 in section 73.683(a) of title 47, Code of
12 Federal Regulations, as in effect on Janu-
13 ary 1, 1999; or

14 “(ii) if the signal originates as a dig-
15 ital signal, intensity defined in the values
16 for digital television noise-limited service
17 contour, as defined in regulations issued by
18 the Federal Communications Commission
19 (section 73.622(e) of title 47, Code of Fed-
20 eral Regulations), as such regulations may
21 be amended from time to time;”;

22 (2) in subparagraph (B)—

23 (A) by striking “subsection (a)(14)” and
24 inserting “subsection (a)(13),”; and

1 (B) by striking “Satellite Home Viewer
2 Extension and Reauthorization Act of 2004”
3 and inserting “Satellite Home Viewer Reau-
4 thorization Act of 2009”; and

5 (3) in subparagraph (D), by striking “(a)(12)”
6 and inserting “(a)(11)”.

7 (c) FILING FEE.—Section 119(b)(1) is amended—

8 (1) in subparagraph (A), by striking “and”
9 after the semicolon at the end;

10 (2) in subparagraph (B), by striking the period
11 and inserting “; and”; and

12 (3) by adding at the end the following:

13 “(C) a filing fee, as determined by the
14 Register of Copyrights pursuant to section
15 708(a).”.

16 (d) EMERGENCY MONITORING, PLANNING, OR RE-
17 SPONDING.—Section 119(a) is amended by adding at the
18 end the following:

19 “(17) RETRANSMISSION FOR EMERGENCY
20 PREPARATION, RESPONSE, OR RECOVERY.—

21 “(A) AUTHORITY.—The secondary trans-
22 mission by a satellite carrier of a performance
23 or display of a work embodied in a primary
24 transmission of a television broadcast station is

1 not an infringement of copyright if such sec-
2 ondary transmission is made—

3 “(i) to a Federal governmental body
4 designated by the Office of Emergency
5 Communications, in coordination with the
6 Federal Communications Commission, or
7 an organization established with the pur-
8 pose of carrying out a system of national
9 and international relief efforts and char-
10 tered under section 300101 of title 36;

11 “(ii) to officers or employees of such
12 body or such organization as a part of the
13 official duties or employment of such offi-
14 cers or employees;

15 “(iii) at the request of the Secretary
16 of Homeland Security; and

17 “(iv) for the sole purpose of preparing
18 for, responding to, or recovering from an
19 emergency described under subparagraph
20 (B).

21 “(B) EMERGENCIES.—An emergency is de-
22 scribed under this subparagraph if the Sec-
23 retary of Homeland Security identifies such
24 emergency as a major disaster, a catastrophic

1 incident, an act of terrorism, or a transpor-
2 tation security incident.

3 “(C) REGULATIONS.—Not later than 6
4 months after the date of the enactment of this
5 paragraph, the Secretary of Homeland Security,
6 in coordination with the Federal Communica-
7 tions Commission, the National Telecommuni-
8 cations and Information Administration, and
9 the Register of Copyrights, shall issue regula-
10 tions to protect copyright owners by preventing
11 the unauthorized access to the secondary trans-
12 missions described in subparagraph (A).

13 “(D) REPORTS TO CONGRESSIONAL COM-
14 MITTEES.—Not later than one year after the
15 date of the enactment of this paragraph and by
16 September 30 of each year thereafter, the Sec-
17 retary of Homeland Security, acting through
18 the Office of Emergency Communications, shall
19 submit a report to the Committees on the Judi-
20 ciary, on Homeland Security, and on Energy
21 and Commerce of the House of Representatives
22 and the Committees on the Judiciary, on
23 Homeland Security, and on Commerce, Science,
24 and Transportation of the Senate describing—

1 “(i) the manner in which the author-
2 ity granted under subparagraph (A) is
3 being used, including to whom and for
4 what purposes the secondary transmissions
5 are being provided; and

6 “(ii) any additional legislative rec-
7 ommendations the Secretary may have.

8 “(E) DEFINITIONS.—As used in this para-
9 graph:

10 “(i) TERRORISM.—The term ‘ter-
11 rorism’ has the meaning given that term in
12 section 2(16) of the Homeland Security
13 Act of 2002 (6 U.S.C. 101(16)).

14 “(ii) TRANSPORTATION SECURITY IN-
15 CIDENT.—The term ‘transportation secu-
16 rity incident’ has the meaning given that
17 term in section 70101 of title 46.

18 “(iii) CATASTROPHIC INCIDENT.—The
19 term ‘catastrophic incident’ means any
20 natural disaster, act of terrorism, or other
21 man-made disaster that results in extraor-
22 dinary levels of casualties or damage or
23 disruption severely affecting the population
24 (including mass evacuations), infrastruc-
25 ture, the environment, the economy, na-

1 tional morale, or government functions in a
2 geographic area.

3 “(F) EFFECTIVE DATE.—This paragraph
4 shall apply with respect to secondary trans-
5 missions described under subparagraph (A) that
6 are made after the end of the 30-day period be-
7 ginning on the effective date of the regulations
8 issued by the Secretary of Homeland Security
9 under subparagraph (C).”.

10 (e) LICENSE PROVIDED FOR CERTAIN NETWORKS OF
11 NONCOMMERCIAL EDUCATIONAL BROADCAST STA-
12 TIONS.—Section 119(a)(2)(C) is amended by adding at
13 the end the following new clause:

14 “(vi) NETWORKS OF NONCOMMERCIAL
15 EDUCATIONAL BROADCAST STATIONS.—In
16 the case of a system of three or more non-
17 commercial educational broadcast stations
18 licensed by a single State, public agency,
19 or political, educational, or special purpose
20 subdivision of a State, the statutory license
21 provided for in subparagraph (A) shall
22 apply to the secondary transmission of the
23 primary transmission of such system to
24 any subscriber in any county within such
25 State, if such subscriber is located in a

1 designated market area that is not other-
2 wise eligible to receive the secondary trans-
3 mission of the primary transmission of a
4 noncommercial educational broadcast sta-
5 tion located within the State pursuant to
6 section 122(a).”.

7 (f) DEPOSIT OF STATEMENTS AND FEES;
8 VERIFICATION PROCEDURES.—Section 119(b) is amend-
9 ed—

10 (1) by amending the subsection heading to read
11 as follows: “(b) DEPOSIT OF STATEMENTS AND
12 FEES; VERIFICATION PROCEDURES.—”;

13 (2) in paragraph (1), by striking subparagraph
14 (B) and inserting the following:

15 “(B) a royalty fee payable to copyright
16 owners pursuant to paragraph (4) for that 6
17 month period, computed by multiplying the
18 total number of subscribers receiving each sec-
19 ondary transmission of a primary or multicast
20 stream of each non-network station or network
21 station during each calendar year month by the
22 appropriate rate in effect under this sub-
23 section”.

24 (3) by redesignating paragraphs (2), (3), and
25 (4) as paragraphs (3), (4), and (5), respectively;

1 (4) by inserting after paragraph (1) the fol-
2 lowing:

3 “(2) VERIFICATION OF ACCOUNTS AND FEE
4 PAYMENTS.—The Register of Copyrights shall issue
5 regulations to permit interested parties to verify and
6 audit the statements of account and royalty fees
7 submitted by satellite carriers under this sub-
8 section.”;

9 (5) in paragraph (3), as redesignated, in the
10 first sentence—

11 (A) by inserting “(including the filing fee
12 specified in paragraph (1)(C))” after “shall re-
13 ceive all fees”; and

14 (B) by striking “paragraph (4)” and in-
15 serting “paragraph (5)”;

16 (6) in paragraph (4), as redesignated—

17 (A) by striking “paragraph (2)” and in-
18 serting “paragraph (3)”;

19 (B) by striking “paragraph (4)” each place
20 it appears and inserting “paragraph (5)”;

21 (7) in paragraph (5), as redesignated, by strik-
22 ing “paragraph (2)” and inserting “paragraph (3)”.

23 (g) ADJUSTMENT OF ROYALTY FEES.—Section
24 119(c) is amended as follows:

25 (1) Paragraph (1) is amended—

1 (A) in the heading for such paragraph, by
2 striking “ANALOG”;

3 (B) in subparagraph (A)—

4 (i) by striking “primary analog trans-
5 missions” and inserting “primary trans-
6 missions”; and

7 (ii) by striking “July 1, 2004” and in-
8 serting “July 1, 2009”;

9 (C) in subparagraph (B)—

10 (i) by striking “January 2, 2005, the
11 Librarian of Congress” and inserting
12 “January 4, 2010, the Copyright Royalty
13 Judges”; and

14 (ii) by striking “primary analog trans-
15 mission” and inserting “primary trans-
16 missions”;

17 (D) in subparagraph (C), by striking “Li-
18 brarian of Congress” and inserting “Copyright
19 Royalty Judges”;

20 (E) in subparagraph (D)—

21 (i) in clause (i)—

22 (I) by striking “(i) Voluntary
23 agreements” and inserting the fol-
24 lowing:

1 “(i) VOLUNTARY AGREEMENTS; FIL-
2 ING.—Voluntary agreements”; and

3 (II) by striking “that a parties”
4 and inserting “that are parties”; and
5 (ii) in clause (ii)—

6 (I) by striking “(ii)(I) Within”
7 and inserting the following:

8 “(ii) PROCEDURE FOR ADOPTION OF
9 FEES.—

10 “(I) PUBLICATION OF NOTICE.—
11 Within”;

12 (II) in subclause (I), by striking
13 “an arbitration proceeding pursuant
14 to subparagraph (E)” and inserting
15 “a proceeding under subparagraph
16 (F)”;

17 (III) in subclause (II), by strik-
18 ing “(II) Upon receiving a request
19 under subclause (I), the Librarian of
20 Congress” and inserting the following:

21 “(II) PUBLIC NOTICE OF
22 FEES.—Upon receiving a request
23 under subclause (I), the Copyright
24 Royalty Judges”; and

25 (IV) in subclause (III)—

1 (aa) by striking “(III) The
2 Librarian” and inserting the fol-
3 lowing:

4 “(III) ADOPTION OF FEES.—The
5 Copyright Royalty Judges”;

6 (bb) by striking “an arbitra-
7 tion proceeding” and inserting
8 “the proceeding under subpara-
9 graph (F)”;

10 (cc) by striking “the arbitra-
11 tion proceeding” and inserting
12 “that proceeding”;

13 (F) in subparagraph (E)—

14 (i) by striking “Copyright Office” and
15 inserting “Copyright Royalty Judges”; and

16 (ii) by striking “December 31, 2009”
17 and inserting “December 31, 2014”; and

18 (G) in subparagraph (F)—

19 (i) in the heading, by striking “COM-
20 PULSORY ARBITRATION” and inserting “
21 COPYRIGHT ROYALTY JUDGES PRO-
22 CEEDING”;

23 (ii) in clause (i)—

1 (I) in the heading, by striking
2 “PROCEEDINGS” and inserting “THE
3 PROCEEDING”;

4 (II) in the matter preceding sub-
5 clause (I)—

6 (aa) by striking “May 1,
7 2005, the Librarian of Congress”
8 and inserting “May 3, 2010, the
9 Copyright Royalty Judges”;

10 (bb) by striking “arbitration
11 proceedings” and inserting “a
12 proceeding”;

13 (cc) by striking “fee to be
14 paid” and inserting “fees to be
15 paid”;

16 (dd) by striking “primary
17 analog transmission” and insert-
18 ing “the primary transmissions”;
19 and

20 (ee) by striking “distribu-
21 tors” and inserting “distribu-
22 tors—”;

23 (III) in subclause (II)—

1 (aa) by striking “Librarian
2 of Congress” and inserting
3 “Copyright Royalty Judges”; and

4 (bb) by striking “arbitra-
5 tion”; and

6 (IV) by amending the last sen-
7 tence to read as follows: “Such pro-
8 ceeding shall be conducted under
9 chapter 8.”;

10 (iii) in clause (ii), by amending the
11 matter preceding subclause (I) to read as
12 follows:

13 “(ii) ESTABLISHMENT OF ROYALTY
14 FEES.—In determining royalty fees under
15 this subparagraph, the Copyright Royalty
16 Judges shall establish fees for the sec-
17 ondary transmissions of the primary trans-
18 missions of network stations and non-net-
19 work stations that most clearly represent
20 the fair market value of secondary trans-
21 missions, except that the Copyright Roy-
22 alty Judges shall adjust royalty fees to ac-
23 count for the obligations of the parties
24 under any applicable voluntary agreement
25 filed with the Copyright Royalty Judges in

1 accordance with subparagraph (D). In de-
2 termining the fair market value, the
3 Judges shall base their decision on eco-
4 nomic, competitive, and programming in-
5 formation presented by the parties, includ-
6 ing—”;

7 (iv) by amending clause (iii) to read
8 as follows:

9 “(iii) EFFECTIVE DATE FOR DECISION
10 OF COPYRIGHT ROYALTY JUDGES.—The
11 obligation to pay the royalty fees estab-
12 lished under a determination that is made
13 by the Copyright Royalty Judges in a pro-
14 ceeding under this paragraph shall be ef-
15 fective as of January 1, 2010.”; and

16 (v) in clause (iv)—

17 (I) in the heading, by striking

18 “FEE” and inserting “FEES”; and

19 (II) by striking “fee” and insert-

20 ing “fees”.

21 (2) Paragraph (2) is amended to read as fol-
22 lows:

23 “(2) ANNUAL ROYALTY FEE ADJUSTMENT.—
24 Effective January 1 of each year, the royalty fee
25 payable under subsection (b)(1)(B) for the sec-

1 ondary transmission of the primary transmissions of
2 network stations and non-network stations shall be
3 adjusted by the Copyright Royalty Judges to reflect
4 any changes occurring in the cost of living as deter-
5 mined by the most recent Consumer Price Index (for
6 all consumers and for all items) published by the
7 Secretary of Labor before December 1 of the pre-
8 ceding year. Notification of the adjusted fees shall
9 be published in the Federal Register at least 25 days
10 before January 1.”.

11 (h) DEFINITIONS.—

12 (1) SUBSCRIBER.—Section 119(d)(8) is amend-
13 ed to read as follows:

14 “(8) SUBSCRIBER; SUBSCRIBE.—

15 “(A) SUBSCRIBER.—The term ‘subscriber’
16 means a person or entity that receives a sec-
17 ondary transmission service from a satellite car-
18 rier and pays a fee for the service, directly or
19 indirectly, to the satellite carrier or to a dis-
20 tributor.

21 “(B) SUBSCRIBE.—The term ‘subscribe’
22 means to elect to become a subscriber.”.

23 (2) LOW POWER TELEVISION STATION.—Sec-
24 tion 119(d)(12) is amended by striking “low power

1 television as” and inserting “low power TV station
2 as”.

3 (3) LOCAL MARKET.—Section 119(d)(11) is
4 amended to read as follows:

5 “(11) LOCAL MARKET.—The term ‘local mar-
6 ket’ has the meaning given such term under section
7 122(j).”.

8 (4) NONCOMMERCIAL EDUCATIONAL BROAD-
9 CAST STATION.—Section 119(d) is amended—

10 (A) in paragraph (2)(B), by striking “(as
11 defined in section 397 of the Communications
12 Act of 1934)”; and

13 (B) by adding at the end the following:

14 “(14) NONCOMMERCIAL EDUCATIONAL BROAD-
15 CAST STATION.—The term ‘noncommercial edu-
16 cational broadcast station’ means a television broad-
17 cast station that—

18 “(A) under the rules and regulations of the
19 Federal Communications Commission in effect
20 on November 2, 1978, is eligible to be licensed
21 by the Federal Communications Commission as
22 a noncommercial educational television broad-
23 cast station and is owned and operated by a
24 public agency or nonprofit private foundation,
25 corporation, or association; or

1 “(B) is owned and operated by a municipi-
2 pality and transmits only noncommercial pro-
3 grams for education purposes.”.

4 (5) MULTICAST STREAM.—Section 119(d), as
5 amended by paragraph (4), is further amended by
6 adding at the end the following new paragraph:

7 “(15) MULTICAST STREAM.—The term
8 ‘multicast stream’ means a digital stream containing
9 programming and program-related material affili-
10 ated with a television network, other than the pri-
11 mary stream.”.

12 (6) PRIMARY STREAM.—Section 119(d), as
13 amended by paragraph (5), is further amended by
14 adding at the end the following new paragraph:

15 “(16) PRIMARY STREAM.—The term ‘primary
16 stream’ means—

17 “(A) the single digital stream of program-
18 ming as to which a television broadcast station
19 has the right to mandatory carriage with a sat-
20 ellite carrier under the rules of the Federal
21 Communications Commission in effect on July
22 1, 2009; or

23 “(B) if there is no such stream, either—

24 “(i) the single digital stream of pro-
25 gramming associated with the network last

1 transmitted by the station as an analog
2 signal; or

3 “(ii) the single digital stream of pro-
4 gramming affiliated with the network that,
5 as of July 1, 2009, had been offered by the
6 television broadcast station for the longest
7 period of time.”.

8 (7) CLERICAL AMENDMENT.—Section 119(d) is
9 amended in paragraphs (1), (2), and (5) by striking
10 “which” each place it appears and inserting “that”.

11 (i) SUPERSTATION REDESIGNATED AS NON-NET-
12 WORK STATION.—Section 119 is amended—

13 (1) by striking “superstation” each place it ap-
14 pears in a heading and each place it appears in text
15 and inserting “non-network station”; and

16 (2) by striking “superstations” each place it ap-
17 pears in a heading and each place it appears in text
18 and inserting “non-network stations”.

19 (j) LOW POWER TELEVISION STATIONS.—Section
20 119(a)(15) is amended to read as follows:

21 “(15) SECONDARY TRANSMISSIONS OF LOW
22 POWER TELEVISION PROGRAMMING.—

23 “(A) IN GENERAL.—Notwithstanding para-
24 graph (2)(B), and subject to subparagraphs (B)
25 through (D) of this paragraph, the statutory li-

1 cense provided for in paragraph (1) shall apply
2 to the secondary transmission by a satellite car-
3 rier of the primary transmission of the pro-
4 gramming of a non-network station that is li-
5 censed as a low power television station, to a
6 subscriber who resides within the same des-
7 ignated market area as the station that origi-
8 nates the programming signal.

9 “(B) NO APPLICABILITY TO REPEATERS
10 AND TRANSLATORS.—Secondary transmissions
11 provided for in subparagraph (A) shall not
12 apply to any low power television station that
13 retransmits the programs and signals of an-
14 other television station for more than 2 hours
15 each day.

16 “(C) ROYALTY FEES.—A satellite carrier
17 whose secondary transmission of the primary
18 transmission of the programming of a low
19 power television station is subject to statutory
20 licensing under this section shall be subject to
21 royalty payments under subsection (b)(1)(B)
22 for any transmission to a subscriber outside of
23 the local market of the low power television sta-
24 tion.

1 “(D) LIMITATION TO SUBSCRIBERS TAK-
2 ING LOCAL-INTO-LOCAL SERVICE.—Secondary
3 transmissions provided for in subparagraph (A)
4 may be made by a satellite carrier only to sub-
5 scribers who receive secondary transmissions of
6 primary transmissions from that satellite car-
7 rier pursuant to the statutory license under sec-
8 tion 122.”.

9 (k) REMOVAL OF SIGNIFICANTLY VIEWED PROVI-
10 SION.—

11 (1) REMOVAL OF PROVISION.—Section 119(a),
12 as amended by subsections (d) and (j), is amended
13 by striking paragraph (3) and redesignating para-
14 graphs (4) through (17) as paragraphs (3) through
15 (16), respectively.

16 (2) CONFORMING AMENDMENTS.—Section 119
17 is amended—

18 (A) in subsection (a)—

19 (i) in paragraph (1), by striking “(5),
20 (6), and (8)” and inserting “(4), (5), and
21 (7)”;

22 (ii) in paragraph (2)—

23 (I) in subparagraph (A), by strik-
24 ing “paragraphs (5), (6), (7), and

1 (8)” and inserting “paragraphs (4),
2 (5), (6), and (7)”;

3 (II) in subparagraph (B)(i), by
4 striking the second sentence; and

5 (III) in subparagraph (D), by
6 striking clauses (i) and (ii) and insert-
7 ing the following:

8 “(i) INITIAL LISTS.—A satellite car-
9 rier that makes secondary transmissions of
10 a primary transmission made by a network
11 station pursuant to subparagraph (A)
12 shall, not later than 90 days after com-
13 mencing such secondary transmissions,
14 submit to the network that owns or is af-
15 filiated with the network station a list
16 identifying (by name and address, includ-
17 ing street or rural route number, city,
18 State, and 9-digit zip code) all subscribers
19 to which the satellite carrier makes sec-
20 ondary transmissions of that primary
21 transmission to subscribers in unserved
22 households.

23 “(ii) MONTHLY LISTS.—After the sub-
24 mission of the initial lists under clause (i),
25 the satellite carrier shall, not later than

1 the 15th of each month, submit to the net-
2 work a list identifying (by name and ad-
3 dress, including street or rural route num-
4 ber, city, State, and 9-digit zip code) any
5 persons who have been added or dropped
6 as subscribers under clause (i) since the
7 last submission under clause (i).”; and

8 (iii) in subparagraph (E) of para-
9 graph (3) (as redesignated)—

10 (I) by striking “under paragraph
11 (3) or”; and

12 (II) by striking “paragraph (12)”
13 and inserting “paragraph (11)”; and

14 (B) in subsection (b)(1), by striking the
15 final sentence.

16 (l) MODIFICATIONS TO PROVISIONS FOR SECONDARY
17 TRANSMISSIONS BY SATELLITE CARRIERS.—

18 (1) PREDICTIVE MODEL.—Section
19 119(a)(2)(B)(ii) is amended by adding at the end
20 the following:

21 “(III) ACCURATE PREDICTIVE
22 MODEL WITH RESPECT TO DIGITAL
23 SIGNALS.—Notwithstanding subclause
24 (I), in determining presumptively
25 whether a person resides in an

1 unserved household under subsection
2 (d)(10)(A) with respect to digital sig-
3 nals, a court shall rely on a predictive
4 model set forth by the Federal Com-
5 munications Commission pursuant to
6 a rulemaking as provided in section
7 339(c)(3) of the Communications Act
8 of 1934 (47 U.S.C. 339(c)(3)), as
9 that model may be amended by the
10 Commission over time under such sec-
11 tion to increase the accuracy of that
12 model. Until such time as the Com-
13 mission sets forth such model, a court
14 shall rely on the predictive model as
15 recommended by the Commission with
16 respect to digital signals in its Report
17 to Congress in ET Docket N. 05–182,
18 FCC 05–199 (released December 9,
19 2005).”.

20 (2) MODIFICATIONS TO STATUTORY LICENSE
21 WHERE RETRANSMISSIONS INTO LOCAL MARKET
22 AVAILABLE.—Section 119(a)(3) (as redesignated) is
23 amended—

24 (A) by striking “analog” each place it ap-
25 pears in a heading and text;

1 (B) by striking subparagraphs (B), (C),
2 and (D), and inserting the following:

3 “(B) RULES FOR LAWFUL SUBSCRIBERS
4 AS OF DATE OF ENACTMENT OF 2009 ACT.—In
5 the case of a subscriber of a satellite carrier
6 who, on the day before the date of the enact-
7 ment of the Satellite Home Viewer Reauthoriza-
8 tion Act of 2009, was lawfully receiving the sec-
9 ondary transmission of the primary trans-
10 mission of a network station under the statu-
11 tory license under paragraph (2) (in this sub-
12 paragraph referred to as the ‘distant signal’),
13 other than subscribers to whom subparagraph
14 (A) applies, the statutory license under para-
15 graph (2) shall apply to secondary trans-
16 missions by that satellite carrier to that sub-
17 scriber of the distant signal of a station affili-
18 ated with the same television network, and the
19 subscriber’s household shall continue to be con-
20 sidered to be an unserved household with re-
21 spect to such network, until such time as the
22 subscriber elects to terminate such secondary
23 transmissions.

24 “(C) RULES FOR NEW SUBSCRIBERS
25 AFTER ENACTMENT OF 2009 ACT.—In the case

1 of a person who first seeks to subscribe with a
2 satellite carrier, on or after the date of the en-
3 actment of the Satellite Home Viewer Reau-
4 thorization Act of 2009, to receive secondary
5 transmissions of the primary transmission of a
6 network station under the statutory license
7 under paragraph (2) (in this subparagraph re-
8 ferred to as the ‘distant signal’), the following
9 shall apply:

10 “(i) Except in a case in which clause
11 (ii) applies, the statutory license under
12 paragraph (2) shall apply to secondary
13 transmissions by that satellite carrier to
14 that subscriber of the distant signal of a
15 station affiliated with the same television
16 network, and the subscriber’s household
17 shall continue to be considered an unserved
18 household with respect to such network,
19 until such time as the satellite carrier
20 makes available to the subscriber and the
21 subscriber receives from the satellite car-
22 rier the secondary transmission of the pri-
23 mary transmission of a primary stream or
24 a multicast stream affiliated with that net-

1 work and located in the subscriber's local
2 market.

3 “(ii) If, at the time such person seeks
4 to so subscribe, the satellite carrier does
5 not offer service in the subscriber's local
6 market pursuant to section 122, the statu-
7 tory license under paragraph (2) shall
8 apply to secondary transmissions by that
9 satellite carrier to that subscriber of the
10 distant signal of a station affiliated with
11 the same television network, and the sub-
12 scriber's household shall continue to be
13 considered an unserved household with re-
14 spect to such network, until such time as
15 the subscriber elects to terminate such sec-
16 ondary transmissions.”;

17 (C) by redesignating subparagraphs (E),
18 (F), and (G) as subparagraphs (D), (E), and
19 (F), respectively;

20 (D) in subparagraph (E) (as redesignated),
21 by striking “(C) or (D)” and inserting “(B) or
22 (C)”;

23 (E) in subparagraph (F) (as redesignated),
24 by inserting “9-digit” before “zip code”.

1 (3) STATUTORY DAMAGES FOR TERRITORIAL
2 RESTRICTIONS.—Section 119(a)(6) (as redesignated)
3 is amended—

4 (A) in subparagraph (A)(ii), by striking
5 “\$5” and inserting “\$250”;

6 (B) in subparagraph (B)——

7 (i) in clause (i), by striking
8 “\$250,000 for each 6-month period” and
9 inserting “\$2,500,000 for each 3-month
10 period”; and

11 (ii) in clause (ii), by striking
12 “\$250,000” and inserting “\$2,500,000”;
13 and

14 (C) by adding at the end the following
15 flush sentence:

16 “The court shall direct one half of any statu-
17 tory damages ordered under clause (i) to be de-
18 posited with the Register of Copyrights for dis-
19 tribution to copyright owners pursuant to sub-
20 section (b). The Copyright Royalty Judges shall
21 issue regulations establishing procedures for
22 distributing such funds, on a proportional basis,
23 to copyright owners whose works were included
24 in the secondary transmissions that were the
25 subject of the statutory damages.”.

1 (4) CLERICAL AMENDMENT.—Section
2 119(a)(2)(B)(iii)(II) is amended by striking “In this
3 clause” and inserting “In this clause,”.

4 (m) MORATORIUM EXTENSION.—Section 119(e) is
5 amended by striking “2009” and inserting “2014”.

6 (n) CLERICAL AMENDMENTS.—Section 119 is
7 amended—

8 (1) by striking “of the Code of Federal Regula-
9 tions” each place it appears and inserting “, Code
10 of Federal Regulations”; and

11 (2) in subsection (d)(6), by striking “or the Di-
12 rect” and inserting “, or the Direct”.

13 **SEC. 103. MODIFICATIONS TO STATUTORY LICENSE FOR**
14 **SATELLITE CARRIERS IN LOCAL MARKETS.**

15 (a) HEADING RENAMED.—

16 (1) IN GENERAL.—The heading of section 122
17 is amended by striking “**by satellite carriers**
18 **within local markets**” and inserting “**of local**
19 **television programming by satellite**”.

20 (2) TABLE OF CONTENTS.—The table of con-
21 tents for chapter 1 is amended by striking the item
22 relating to section 122 and inserting the following:

“122. Limitations on exclusive rights: Secondary transmissions of local television
programming by satellite.”.

23 (b) STATUTORY LICENSE.—Section 122(a) is amend-
24 ed to read as follows:

1 “(a) SECONDARY TRANSMISSIONS INTO LOCAL MAR-
2 KETS.—

3 “(1) SECONDARY TRANSMISSIONS OF TELE-
4 VISION BROADCAST STATIONS WITHIN A LOCAL MAR-
5 KET.—A secondary transmission of a performance
6 or display of a work embodied in a primary trans-
7 mission of a television broadcast station into the sta-
8 tion’s local market shall be subject to statutory li-
9 censing under this section if—

10 “(A) the secondary transmission is made
11 by a satellite carrier to the public;

12 “(B) with regard to secondary trans-
13 missions, the satellite carrier is in compliance
14 with the rules, regulations, or authorizations of
15 the Federal Communications Commission gov-
16 erning the carriage of television broadcast sta-
17 tion signals; and

18 “(C) the satellite carrier makes a direct or
19 indirect charge for the secondary transmission
20 to—

21 “(i) each subscriber receiving the sec-
22 ondary transmission; or

23 “(ii) a distributor that has contracted
24 with the satellite carrier for direct or indi-

1 rect delivery of the secondary transmission
2 to the public.

3 “(2) SIGNIFICANTLY VIEWED STATIONS.—

4 “(A) IN GENERAL.—The statutory license
5 under paragraph (1) shall apply to the sec-
6 ondary transmission of the primary trans-
7 mission of a network station or a non-network
8 station to a subscriber who resides outside the
9 station’s local market but within a community
10 in which the signal has been determined by the
11 Federal Communications Commission to be sig-
12 nificantly viewed in such community, pursuant
13 to the rules, regulations, and authorizations of
14 the Federal Communications Commission in ef-
15 fect on April 15, 1976, applicable to deter-
16 mining with respect to a cable system whether
17 signals are significantly viewed in a community.

18 “(B) LIMITATION.—Subparagraph (A)
19 shall apply only to secondary transmissions of
20 the primary transmissions of network stations
21 or non-network stations to subscribers who re-
22 ceive secondary transmissions from a satellite
23 carrier pursuant to the statutory license under
24 paragraph (1).

1 “(C) WAIVER.—A subscriber who is denied
2 the secondary transmission of the primary
3 transmission of a network station or a non-net-
4 work station under subparagraph (B) may re-
5 quest a waiver from such denial by submitting
6 a request, through the subscriber’s satellite car-
7 rier, to the network station or non-network sta-
8 tion in the local market affiliated with the same
9 network or non-network where the subscriber is
10 located. The network station or non-network
11 station shall accept or reject the subscriber’s re-
12 quest for a waiver within 30 days after receipt
13 of the request. If the network station or non-
14 network station fails to accept or reject the sub-
15 scriber’s request for a waiver within that 30-
16 day period, that network station or non-network
17 station shall be deemed to agree to the waiver
18 request.

19 “(3) SECONDARY TRANSMISSION OF LOW
20 POWER PROGRAMMING.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graphs (B) through (D) of this paragraph, the
23 statutory license provided under paragraph (1)
24 shall apply to the secondary transmission by a
25 satellite carrier of the primary transmission of

1 a network station or a non-network station that
2 is licensed as a low power television station, to
3 a subscriber who resides within the same local
4 market as the station that originates the trans-
5 mission.

6 “(B) NO APPLICABILITY TO REPEATERS
7 AND TRANSLATORS.—Secondary transmissions
8 provided for in subparagraph (A) shall not
9 apply to any low power television station that
10 retransmits the programs and signals of an-
11 other television station for more than 2 hours
12 each day.

13 “(C) LIMITATION TO SUBSCRIBERS TAKING
14 LOCAL-INTO-LOCAL SERVICE.—Secondary trans-
15 missions by a satellite carrier provided for in
16 subparagraph (A) may be made only to sub-
17 scribers who receive secondary transmissions of
18 primary transmissions from that satellite car-
19 rier pursuant to the statutory license in para-
20 graph (1), and only in conformity with the re-
21 quirements under section 340(b) of the Com-
22 munications Act of 1934, as in effect on the
23 date of the enactment of the Satellite Home
24 Viewer Reauthorization Act of 2009.

1 “(D) NO IMPACT ON OTHER SECONDARY
2 TRANSMISSIONS OBLIGATIONS.—A satellite car-
3 rier that makes secondary transmissions of a
4 primary transmission of a low power television
5 station under a statutory license provided under
6 this section is not required, by reason of such
7 secondary transmissions, to make any other sec-
8 ondary transmissions.”.

9 (c) REPORTING REQUIREMENTS.—Section 122(b) is
10 amended—

11 (1) in paragraph (1), by striking “station a
12 list” and all that follows through the end and insert-
13 ing the following: “station—

14 “(A) a list identifying (by name in alpha-
15 betical order and street address, including coun-
16 ty and 9-digit zip code) all subscribers to which
17 the satellite carrier makes secondary trans-
18 missions of that primary transmission under
19 subsection (a); and

20 “(B) a separate list, aggregated by des-
21 ignated market area (by name and address, in-
22 cluding street or rural route number, city,
23 State, and 9-digit zip code), which shall indicate
24 those subscribers being served pursuant to sub-

1 section (a)(2), relating to significantly viewed
2 stations.”; and

3 (2) in paragraph (2), by striking “network a
4 list” and all that follows through the end and insert-
5 ing the following: “network—

6 “(A) a list identifying (by name in alpha-
7 betical order and street address, including coun-
8 ty and 9-digit zip code) any subscribers who
9 have been added or dropped as subscribers
10 since the last submission under this subsection;
11 and

12 “(B) a separate list, aggregated by des-
13 ignated market area (by name and street ad-
14 dress, including street or rural route number,
15 city, State, and 9-digit zip code), identifying
16 those subscribers whose service pursuant to
17 subsection (a)(2), relating to significantly
18 viewed stations, has been added or dropped
19 since the last submission under this sub-
20 section.”.

21 (d) VIOLATIONS FOR TERRITORIAL RESTRICTIONS.—

22 (1) MODIFICATION TO STATUTORY DAMAGES.—

23 Section 122(f) is amended—

24 (A) in paragraph (1)(B), by striking “\$5”
25 and inserting “\$250”; and

1 (B) in paragraph (2), by striking
2 “\$250,000” each place it appears and inserting
3 “\$2,500,000”.

4 (2) CONFORMING AMENDMENT FOR SIGNIFI-
5 CANTLY VIEWED STATIONS.—Section 122 is amend-
6 ed—

7 (A) in subsection (f), by striking “section
8 119 or” each place it appears and inserting the
9 following: “section 119, subject to statutory li-
10 censing by reason of subsection (a)(2)(A), or
11 subject to”; and

12 (B) in subsection (g), by striking “section
13 119 or” and inserting the following: “section
14 119, subsection (a)(2)(A), or”.

15 (e) DEFINITIONS.—Section 122(j) is amended—

16 (1) in paragraph (1), by striking “which con-
17 tracts” and inserting “that contracts”;

18 (2) by amending paragraph (2)(A) to read as
19 follows:

20 “(A) IN GENERAL.—The term ‘local mar-
21 ket’ means—

22 “(i) in the case of a television broad-
23 cast station that is not a low power tele-
24 vision station, the designated market area
25 in which such station is located, and—

1 “(I) in the case of a commercial
2 television broadcast station, all com-
3 mercial television broadcast stations
4 licensed to a community within the
5 same designated market area are
6 within the same local market; and

7 “(II) in the case of a non-
8 commercial educational television
9 broadcast station, any station that is
10 licensed to a community within the
11 same designated market area as the
12 noncommercial educational television
13 broadcast station; and

14 “(ii) in the case of a low power tele-
15 vision broadcast station, the area that is
16 both—

17 “(I) within the designated mar-
18 ket area in which such station is lo-
19 cated; and

20 “(II) within the area within 35
21 miles of the transmitter site of such
22 station, except that in the case of
23 such a station located in a standard
24 metropolitan statistical area that has
25 1 of the 50 largest populations of all

1 standard metropolitan statistical areas
2 (based on the 1980 decennial census
3 of population taken by the Secretary
4 of Commerce), the area within 20
5 miles of the transmitter site of such
6 station.”;

7 (3) in paragraph (3)—

8 (A) in the heading of such paragraph, by
9 inserting “NON-NETWORK STATION; NON-
10 COMMERCIAL EDUCATIONAL BROADCAST STA-
11 TION;” after “NETWORK STATION;”;

12 (B) by inserting “‘non-network station;
13 noncommercial educational broadcast station’,”
14 after “‘network station’”;

15 (4) by amending paragraph (4) to read as fol-
16 lows:

17 “(4) SUBSCRIBER.—The term ‘subscriber’
18 means a person or entity that receives a secondary
19 transmission service from a satellite carrier and pays
20 a fee for the service, directly or indirectly, to the sat-
21 ellite carrier or to a distributor.”; and

22 (5) by adding at the end the following:

23 “(6) LOW POWER TELEVISION STATION.—The
24 term ‘low power television station’ means a low
25 power TV station as defined under section 74.701(f)

1 of title 47, Code of Federal Regulations, as in effect
2 on June 1, 2004. For purposes of this paragraph,
3 the term ‘low power television station’ includes a low
4 power television station that has been accorded pri-
5 mary status as a Class A television licensee under
6 section 73.6001(a) of title 47, Code of Federal Reg-
7 ulations.”.

8 **SEC. 104. MODIFICATIONS TO CABLE SYSTEM SECONDARY**
9 **TRANSMISSION RIGHTS UNDER SECTION 111.**

10 (a) **HEADING RENAMED.**—

11 (1) **IN GENERAL.**—The heading of section 111
12 is amended by inserting at the end the following:
13 **“of broadcast programming by cable”.**

14 (2) **TABLE OF CONTENTS.**—The table of con-
15 tents for chapter 1 is amended by striking the item
16 relating to section 111 and inserting the following:

“111. Limitations on exclusive rights: Secondary transmissions of broadcast pro-
gramming by cable.”.

17 (b) **NATIONAL EMERGENCY MONITORING EXEMP-**
18 **TION.**—Section 111 is amended—

19 (1) in subsection (a)—

20 (A) in paragraph (4), by striking “; or”
21 and inserting “or section 122;”;

22 (B) in paragraph (5), by striking the pe-
23 riod and inserting “; or”; and

1 (C) by adding at the end the following new
2 paragraph:

3 “(6) the secondary transmission is made by a
4 cable system for emergency preparation, response, or
5 recovery as described under subsection (g).”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(g) RETRANSMISSION FOR EMERGENCY PREPARA-
9 TION, RESPONSE, OR RECOVERY.—

10 “(1) AUTHORITY.—For purposes of subsection
11 (a)(6), a secondary transmission by a cable system
12 of a performance or display of a work embodied in
13 a primary transmission by a television broadcast sta-
14 tion is made for emergency preparation, response, or
15 recovery if such transmission is made—

16 “(A) by a cable system to a Federal gov-
17 ernmental body designated by the Office of
18 Emergency Communications, in coordination
19 with the Federal Communications Commission,
20 or an organization established with the purpose
21 of carrying out a system of national and inter-
22 national relief efforts and chartered under sec-
23 tion 300101 of title 36;

24 “(B) to officers or employees of such body
25 or such organization as a part of the official du-

1 ties or employment of such officers or employ-
2 ees;

3 “(C) at the request of the Secretary of
4 Homeland Security; and

5 “(D) for the sole purpose of preparing for,
6 responding to, or recovering from an emergency
7 described under paragraph (2).

8 “(2) EMERGENCIES.—An emergency is de-
9 scribed under this paragraph if the Secretary of
10 Homeland Security identifies such emergency as a
11 major disaster, a catastrophic incident, an act of ter-
12 rorism, or a transportation security incident.

13 “(3) REGULATIONS.—Not later than 6 months
14 after the date of the enactment of this subsection,
15 the Secretary of Homeland Security, in coordination
16 with the Federal Communications Commission, the
17 National Telecommunications and Information Ad-
18 ministration, and the Register of Copyrights, shall
19 issue regulations to protect copyright owners by pre-
20 venting the unauthorized access to the secondary
21 transmissions described in paragraph (1).

22 “(4) REPORTS TO CONGRESSIONAL COMMIT-
23 TEES.—Not later than one year after the date of the
24 enactment of this subsection and by September 30
25 of each year thereafter, the Secretary of Homeland

1 Security, acting through the Office of Emergency
2 Communications, shall submit a report to the Com-
3 mittees on the Judiciary, on Homeland Security, and
4 on Energy and Commerce of the House of Rep-
5 resentatives and the Committees on the Judiciary,
6 on Homeland Security, and on Commerce, Science,
7 and Transportation of the Senate describing—

8 “(A) the manner in which the authority
9 granted under paragraph (1) is being used, in-
10 cluding to whom and for what purposes the sec-
11 ondary transmissions are being provided; and

12 “(B) any additional legislative rec-
13 ommendations the Secretary may have.

14 “(5) DEFINITIONS.—As used in this subsection:

15 “(A) TERRORISM.—The term ‘terrorism’
16 has the meaning given that term in section
17 2(16) of the Homeland Security Act of 2002 (6
18 U.S.C. 101(16)).

19 “(B) TRANSPORTATION SECURITY INCI-
20 DENT.—The term ‘transportation security inci-
21 dent’ has the meaning given that term in sec-
22 tion 70101 of title 46.

23 “(C) CATASTROPHIC INCIDENT.—The term
24 ‘catastrophic incident’ means any natural dis-
25 aster, act of terrorism, or other man-made dis-

1 aster that results in extraordinary levels of cas-
2 ualties or damage or disruption severely affect-
3 ing the population (including mass evacu-
4 ations), infrastructure, the environment, the
5 economy, national morale, or government func-
6 tions in a geographic area.

7 “(6) EFFECTIVE DATE.—This subsection shall
8 apply with respect to secondary transmissions de-
9 scribed under paragraph (1) that are made after the
10 end of the 30-day period beginning on the effective
11 date of the regulations issued by the Secretary of
12 Homeland Security under paragraph (3).”.

13 (c) STATUTORY LICENSE FOR SECONDARY TRANS-
14 MISSIONS BY CABLE SYSTEMS.—Section 111(d) is amend-
15 ed—

16 (1) in paragraph (1)—

17 (A) in the matter preceding subparagraph

18 (A)—

19 (i) by striking “A cable system whose
20 secondary” and inserting the following:
21 “STATEMENT OF ACCOUNT AND ROYALTY
22 FEES.—Subject to paragraph (5), a cable
23 system whose secondary”; and

24 (ii) by striking “by regulation—” and
25 inserting “by regulation the following:”;

1 (B) in subparagraph (A)—

2 (i) by striking “a statement of ac-
3 count” and inserting “A statement of ac-
4 count”; and

5 (ii) by striking “; and” and inserting
6 a period; and

7 (C) by striking subparagraphs (B), (C),
8 and (D), and inserting the following:

9 “(B) Except in the case of a cable system
10 whose royalty fee is specified in subparagraph
11 (E) or (F), a total royalty fee payable to copy-
12 right owners pursuant to paragraph (3) for the
13 period covered by the statement, computed on
14 the basis of specified percentages of the gross
15 receipts from subscribers to the cable service
16 during such period for the basic service of pro-
17 viding secondary transmissions of primary
18 broadcast transmitters, as follows:

19 “(i) 1.064 percent of such gross re-
20 cepts for the privilege of further transmit-
21 ting, beyond the local service area of such
22 primary transmitter, any non-network pro-
23 gramming of a primary transmitter in
24 whole or in part, such amount to be ap-

1 plied against the fee, if any, payable pursu-
2 ant to clauses (ii) through (iv);

3 “(ii) 1.064 percent of such gross re-
4 ceipts for the first distant signal equiva-
5 lent;

6 “(iii) 0.701 percent of such gross re-
7 ceipts for each of the second, third, and
8 fourth distant signal equivalents; and

9 “(iv) 0.330 percent of such gross re-
10 ceipts for the fifth distant signal equivalent
11 and each distant signal equivalent there-
12 after.

13 “(C) In computing amounts under clauses
14 (ii) through (iv) of subparagraph (B)—

15 “(i) any fraction of a distant signal
16 equivalent shall be computed at its frac-
17 tional value;

18 “(ii) in the case of any cable system
19 located partly within and partly outside of
20 the local service area of a primary trans-
21 mitter, gross receipts shall be limited to
22 those gross receipts derived from sub-
23 scribers located outside of the local service
24 area of such primary transmitter; and

1 “(iii) if a cable system provides a sec-
2 ondary transmission of a primary trans-
3 mitter to some but not all communities
4 served by that cable system—

5 “(I) the gross receipts and the
6 distant signal equivalent values for
7 such secondary transmission shall be
8 derived solely on the basis of the sub-
9 scribers in those communities where
10 the cable system provides such sec-
11 ondary transmission; and

12 “(II) the total royalty fee for the
13 period paid by such system shall not
14 be less than the royalty fee calculated
15 under subparagraph (B)(i) multiplied
16 by the gross receipts from all sub-
17 scribers to the system.

18 “(D) A cable system that, on a statement
19 submitted before the date of the enactment of
20 the Satellite Home Viewer Reauthorization Act
21 of 2009, computed its royalty fee consistent
22 with the methodology under subparagraph
23 (C)(iii) or that amends a statement filed before
24 such date of enactment to compute the royalty
25 fee due using such methodology shall not be

1 subject to an action for infringement, or eligible
2 for any royalty refund or offset, arising out of
3 its use of such methodology on such statement.

4 “(E) If the actual gross receipts paid by
5 subscribers to a cable system for the period cov-
6 ered by the statement for the basic service of
7 providing secondary transmissions of primary
8 broadcast transmitters are \$263,800 or less—

9 “(i) gross receipts of the cable system
10 for the purpose of this paragraph shall be
11 computed by subtracting from such actual
12 gross receipts the amount by which
13 \$263,800 exceeds such actual gross re-
14 cepts, except that in no case shall a cable
15 system’s gross receipts be reduced to less
16 than \$10,400; and

17 “(ii) the royalty fee payable under this
18 paragraph to copyright owners pursuant to
19 paragraph (3) shall be 0.5 percent, regard-
20 less of the number of distant signal equiva-
21 lents, if any.

22 “(F) If the actual gross receipts paid by
23 subscribers to a cable system for the period cov-
24 ered by the statement for the basic service of
25 providing secondary transmissions of primary

1 broadcast transmitters are more than \$263,800
2 but less than \$527,600, the royalty fee payable
3 under this paragraph to copyright owners pur-
4 suant to paragraph (3) shall be—

5 “(i) 0.5 percent of any gross receipts
6 up to \$263,800, regardless of the number
7 of distant signal equivalents, if any; and

8 “(ii) 1 percent of any gross receipts in
9 excess of \$263,800, but less than
10 \$527,600, regardless of the number of dis-
11 tant signal equivalents, if any.

12 “(G) A filing fee, as determined by the
13 Register of Copyrights pursuant to section
14 708(a).”;

15 (2) in paragraph (2), in the first sentence—

16 (A) by striking “The Register of Copy-
17 rights” and inserting the following “HANDLING
18 OF FEES.—The Register of Copyrights”;

19 (B) by inserting “(including the filing fee
20 specified in paragraph (1)(G))” after “shall re-
21 ceive”; and

22 (3) in paragraph (3)—

23 (A) by striking “The royalty fees” and in-
24 serting the following: “DISTRIBUTION OF ROY-

1 ALTY FEES TO COPYRIGHT OWNERS.—The roy-
2 alty fees”;

3 (B) in subparagraph (A)—

4 (i) by striking “any such” and insert-
5 ing “Any such”; and

6 (ii) by striking “; and” and inserting
7 a period;

8 (C) in subparagraph (B)—

9 (i) by striking “any such” and insert-
10 ing “Any such”; and

11 (ii) by striking the semicolon and in-
12 serting a period; and

13 (D) in subparagraph (C), by striking “any
14 such” and inserting “Any such”;

15 (4) in paragraph (4), by striking “The royalty
16 fees” and inserting the following: “PROCEDURES
17 FOR ROYALTY FEE DISTRIBUTION.—The royalty
18 fees”; and

19 (5) by adding at the end the following new
20 paragraphs:

21 “(5) 3.75 PERCENT RATE AND SYNDICATED EX-
22 CLUSIVITY SURCHARGE NOT APPLICABLE TO
23 MULTICAST STREAMS.—The royalty rates specified
24 in sections 256.2(c) and 256.2(d) of title 37, Code
25 of Federal Regulations (commonly referred to as the

1 ‘3.75 percent rate’ and the ‘syndicated exclusivity
2 surcharge’, respectively), as in effect on the date of
3 enactment of the Satellite Home Viewer Reauthor-
4 ization Act of 2009, as such rates may be adjusted,
5 or such sections redesignated, thereafter by the
6 Copyright Royalty Judges, shall not apply to the
7 secondary transmission of a multicast stream.

8 “(6) VERIFICATION OF ACCOUNTS AND FEE
9 PAYMENTS.—The Register of Copyrights shall issue
10 regulations to provide for the confidential
11 verification and audit of the information reported on
12 the semi-annual statements of account filed after the
13 date of the enactment of the Satellite Home Viewer
14 Reauthorization Act of 2009. The regulations shall
15 provide for a single verification procedure, with re-
16 spect to the semi-annual statements of account filed
17 by a cable system, to be conducted by a qualified
18 independent auditor on behalf of all copyright own-
19 ers whose works were the subject of a secondary
20 transmission to the public by a cable system of a
21 performance or display of a work embodied in a pri-
22 mary transmission and for a mechanism to review
23 and cure defects identified by any such audit.

24 “(7) ACCEPTANCE OF ADDITIONAL DEPOSITS.—
25 Any royalty fee payments received by the Copyright

1 Office from cable systems for the secondary trans-
2 mission of primary transmissions that are in addi-
3 tion to the payments calculated and deposited in ac-
4 cordance with this subsection shall be deemed to
5 have been deposited for the particular accounting pe-
6 riod for which they are received and shall be distrib-
7 uted as specified under this subsection.”.

8 (d) EFFECTIVE DATE OF NEW ROYALTY FEE
9 RATES.—The royalty fee rates established in section
10 111(d)(1)(B) of title 17, United States Code, as amended
11 by subsection (c)(1)(C) of this section, shall take effect
12 commencing with the first accounting period occurring in
13 2010.

14 (e) DEFINITIONS.—Section 111(f) is amended—

15 (1) by striking the first undesignated paragraph
16 and inserting the following:

17 “(1) PRIMARY TRANSMISSION.—A ‘primary
18 transmission’ is a transmission made to the public
19 by a transmitting facility whose signals are being re-
20 ceived and further transmitted by a secondary trans-
21 mission service, regardless of where or when the per-
22 formance or display was first transmitted. In the
23 case of a television broadcast station, the primary
24 stream and any multicast streams transmitted by
25 the station constitute primary transmissions.”;

1 (2) in the second undesignated paragraph—

2 (A) by striking “A ‘secondary trans-
3 mission’” and inserting the following:

4 “(2) SECONDARY TRANSMISSION.—A ‘secondary
5 transmission’”; and

6 (B) by striking “‘cable system’” and in-
7 serting “cable system”;

8 (3) in the third undesignated paragraph—

9 (A) by striking “A ‘cable system’” and in-
10 serting the following:

11 “(3) CABLE SYSTEM.—A ‘cable system’”; and

12 (B) by striking “Territory, Trust Terri-
13 tory, or Possession” and inserting “territory,
14 trust territory, or possession of the United
15 States”;

16 (4) in the fourth undesignated paragraph, in
17 the first sentence—

18 (A) by striking “The ‘local service area of
19 a primary transmitter’, in the case of a tele-
20 vision broadcast station, comprises the area in
21 which such station is entitled to insist” and in-
22 serting the following:

23 “(4) LOCAL SERVICE AREA OF A PRIMARY
24 TRANSMITTER.—The ‘local service area of a primary
25 transmitter’, in the case of both the primary stream

1 and any multicast streams transmitted by a primary
2 transmitter that is a television broadcast station,
3 comprises the area where such primary transmitter
4 could have insisted”;

5 (B) by striking “76.59 of title 47 of the
6 Code of Federal Regulations” and inserting the
7 following: “76.59 of title 47, Code of Federal
8 Regulations, or within the noise-limited contour
9 as defined in 73.622(e)(1) of title 47, Code of
10 Federal Regulations”; and

11 (C) by striking “as defined by the rules
12 and regulations of the Federal Communications
13 Commission,”;

14 (5) by amending the fifth undesignated para-
15 graph to read as follows:

16 “(5) DISTANT SIGNAL EQUIVALENT.—

17 “(A) IN GENERAL.—Except as provided
18 under subparagraph (B), a ‘distant signal
19 equivalent’—

20 “(i) is the value assigned to the sec-
21 ondary transmission of any non-network
22 television programming carried by a cable
23 system in whole or in part beyond the local
24 service area of the primary transmitter of
25 such programming; and

1 “(ii) is computed by assigning a value
2 of one to each primary stream and to each
3 multicast stream (other than a simulcast)
4 that is an independent station, and by as-
5 signing a value of one-quarter to each pri-
6 mary stream and to each multicast stream
7 (other than a simulcast) that is a network
8 station or a noncommercial educational
9 station.

10 “(B) EXCEPTIONS.—The values for inde-
11 pendent, network, and noncommercial edu-
12 cational stations specified in subparagraph (A)
13 are subject to the following:

14 “(i) Where the rules and regulations
15 of the Federal Communications Commis-
16 sion require a cable system to omit the fur-
17 ther transmission of a particular program
18 and such rules and regulations also permit
19 the substitution of another program em-
20 bodying a performance or display of a
21 work in place of the omitted transmission,
22 or where such rules and regulations in ef-
23 fect on the date of enactment of the Copy-
24 right Act of 1976 permit a cable system,
25 at its election, to effect such omission and

1 substitution of a nonlive program or to
2 carry additional programs not transmitted
3 by primary transmitters within whose local
4 service area the cable system is located, no
5 value shall be assigned for the substituted
6 or additional program.

7 “(ii) Where the rules, regulations, or
8 authorizations of the Federal Communica-
9 tions Commission in effect on the date of
10 enactment of the Copyright Act of 1976
11 permit a cable system, at its election, to
12 omit the further transmission of a par-
13 ticular program and such rules, regula-
14 tions, or authorizations also permit the
15 substitution of another program embodying
16 a performance or display of a work in
17 place of the omitted transmission, the
18 value assigned for the substituted or addi-
19 tional program shall be, in the case of a
20 live program, the value of one full distant
21 signal equivalent multiplied by a fraction
22 that has as its numerator the number of
23 days in the year in which such substitution
24 occurs and as its denominator the number
25 of days in the year.

1 “(iii) In the case of the secondary
2 transmission of a primary transmitter that
3 is a television broadcast station pursuant
4 to the late-night or specialty programming
5 rules of the Federal Communications Com-
6 mission, or the secondary transmission of a
7 primary transmitter that is a television
8 broadcast station on a part-time basis
9 where full-time carriage is not possible be-
10 cause the cable system lacks the activated
11 channel capacity to retransmit on a full-
12 time basis all signals that it is authorized
13 to carry, the values for independent, net-
14 work, and noncommercial educational sta-
15 tions set forth in subparagraph (A), as the
16 case may be, shall be multiplied by a frac-
17 tion that is equal to the ratio of the broad-
18 cast hours of such primary transmitter re-
19 transmitted by the cable system to the
20 total broadcast hours of the primary trans-
21 mitter.

22 “(iv) No value shall be assigned for
23 the secondary transmission of the primary
24 stream or any multicast streams of a pri-
25 mary transmitter that is a television broad-

1 cast station in any community that is with-
2 in the local service area of the primary
3 transmitter.”;

4 (6) by striking the sixth undesignated para-
5 graph and inserting the following:

6 “(6) NETWORK STATION.—

7 “(A) TREATMENT OF PRIMARY STREAM.—

8 The term ‘network station’ shall be applied to
9 a primary stream of a television broadcast sta-
10 tion that is owned or operated by, or affiliated
11 with, one or more of the television networks in
12 the United States providing nationwide trans-
13 missions, and that transmits a substantial part
14 of the programming supplied by such networks
15 for a substantial part of the primary stream’s
16 typical broadcast day.

17 “(B) TREATMENT OF MULTICAST

18 STREAMS.—The term ‘network station’ shall be
19 applied to a multicast stream on which a tele-
20 vision broadcast station transmits all or sub-
21 stantially all of the programming of an inter-
22 connected program service that—

23 “(i) is owned or operated by, or affili-
24 ated with, one or more of the television

1 networks described in subparagraph (A);
2 and

3 “(ii) offers programming on a regular
4 basis for 15 or more hours per week to at
5 least 25 of the affiliated television licensees
6 of the interconnected program service in
7 10 or more States.”; and

8 (7) by striking the seventh undesignated para-
9 graph and inserting the following:

10 “(7) INDEPENDENT STATION.—The term ‘inde-
11 pendent station’ shall be applied to the primary
12 stream or a multicast stream of a television broad-
13 cast station that is not a network station or a non-
14 commercial educational station.”;

15 (8) by striking the eighth undesignated para-
16 graph and inserting the following:

17 “(8) NONCOMMERCIAL EDUCATIONAL STA-
18 TION.—A ‘noncommercial educational station’ is tel-
19 evision station that is a noncommercial educational
20 broadcast station as defined in section 397 of the
21 Communications Act of 1934, as in effect on the
22 date of the enactment of the Satellite Home Viewer
23 Reauthorization Act of 2009.”; and

24 (9) by adding at the end the following:

1 “(9) PRIMARY STREAM.—A ‘primary stream’
2 is—

3 “(A) the single digital stream of program-
4 ming that prior to June 12, 2009 was substan-
5 tially duplicating the programming transmitted
6 by the television broadcast station as an analog
7 signal; or

8 “(B) if there is no such stream, the single
9 digital stream of programming transmitted by
10 the station for the longest period of time.

11 “(10) PRIMARY TRANSMITTER.—A ‘primary
12 transmitter’ is a television or radio broadcast station
13 licensed by the Federal Communications Commis-
14 sion, or by an appropriate governmental authority of
15 Canada or Mexico, that makes primary trans-
16 missions to the public.

17 “(11) MULTICAST STREAM.—A ‘multicast
18 stream’ is a digital stream of programming trans-
19 mitted by a television broadcast station that is not
20 the station’s primary stream.

21 “(12) SIMULCAST.—A ‘simulcast’ is a multicast
22 stream of a television broadcast station that dupli-
23 cates the programming transmitted by the primary
24 stream or another multicast stream of such station.

25 “(13) SUBSCRIBER; SUBSCRIBE.—

1 “(A) SUBSCRIBER.—The term ‘subscriber’
2 means a person or entity that receives a sec-
3 ondary transmission service from a cable sys-
4 tem and pays a fee for the service, directly or
5 indirectly, to the cable system.

6 “(B) SUBSCRIBE.—The term ‘subscribe’
7 means to elect to become a subscriber.”.

8 (f) TIMING OF SECTION 111 PROCEEDINGS.—Section
9 804(b)(1) is amended by striking “2005” each place it ap-
10 pears and inserting “2015”.

11 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

12 (1) CORRECTIONS TO FIX LEVEL DESIGNA-
13 TIONS.—Section 111 is amended—

14 (A) in subsections (a), (c), and (e), by
15 striking “clause” each place it appears and in-
16 serting “paragraph”;

17 (B) in subsection (c)(1), by striking
18 “clauses” and inserting “paragraphs”; and

19 (C) in subsection (e)(1)(F), by striking
20 “subclause” and inserting “subparagraph”.

21 (2) CONFORMING AMENDMENT TO HYPHENATE
22 NONNETWORK.—Section 111 is amended by striking
23 “nonnetwork” each place it appears and inserting
24 “non-network”.

1 (3) PREVIOUSLY UNDESIGNATED PARA-
2 GRAPH.—Section 111(e)(1) is amended by striking
3 “second paragraph of subsection (f)” and inserting
4 “subsection (f)(2)”.

5 (4) REMOVAL OF SUPERFLUOUS ANDS.—Sec-
6 tion 111(e) is amended—

7 (A) in paragraph (1)(A), by striking “and”
8 at the end;

9 (B) in paragraph (1)(B), by striking
10 “and” at the end;

11 (C) in paragraph (1)(C), by striking “and”
12 at the end;

13 (D) in paragraph (1)(D), by striking
14 “and” at the end; and

15 (E) in paragraph (2)(A), by striking “and”
16 at the end.

17 (5) REMOVAL OF VARIANT FORMS REF-
18 ERENCES.—Section 111 is amended—

19 (A) in subsection (e)(4), by striking “, and
20 each of its variant forms,”; and

21 (B) in subsection (f), by striking “and
22 their variant forms”.

23 (6) CORRECTION TO TERRITORY REFERENCE.—
24 Section 111(e)(2) is amended in the matter pre-

1 ceding subparagraph (A) by striking “three terri-
2 tories” and inserting “five entities”.

3 (h) EFFECTIVE DATE WITH RESPECT TO
4 MULTICAST STREAMS.—

5 (1) IN GENERAL.—Subject to paragraphs (2)
6 and (3), the amendments made by this section, to
7 the extent such amendments assign a distant signal
8 equivalent value to the secondary transmission of the
9 multicast stream of a primary transmitter, shall take
10 effect on the date of the enactment of this Act.

11 (2) DELAYED APPLICABILITY.—

12 (A) SECONDARY TRANSMISSIONS OF A
13 MULTICAST STREAM BEYOND THE LOCAL SERV-
14 ICE AREA OF ITS PRIMARY TRANSMITTER BE-
15 FORE 2009 ACT.—In any case in which a cable
16 system was making secondary transmissions of
17 a multicast stream beyond the local service area
18 of its primary transmitter before the date of the
19 enactment of this Act, a distant signal equiva-
20 lent value (referred to in paragraph (1)) shall
21 not be assigned to secondary transmissions of
22 such multicast stream that are made on or be-
23 fore June 30, 2010.

24 (B) MULTICAST STREAMS SUBJECT TO
25 PREEXISTING WRITTEN AGREEMENTS FOR THE

1 SECONDARY TRANSMISSION OF SUCH
2 STREAMS.—In any case in which the secondary
3 transmission of a multicast stream of a primary
4 transmitter is the subject of a written agree-
5 ment entered into on or before June 30, 2009,
6 between a cable system or an association rep-
7 resenting the cable system and a primary trans-
8 mitter or an association representing the pri-
9 mary transmitter, a distant signal equivalent
10 value (referred to in paragraph (1)) shall not be
11 assigned to secondary transmissions of such
12 multicast stream beyond the local service area
13 of its primary transmitter that are made on or
14 before the date on which such written agree-
15 ment expires.

16 (C) NO REFUNDS OR OFFSETS FOR PRIOR
17 STATEMENTS OF ACCOUNT.—A cable system
18 that has reported secondary transmissions of a
19 multicast stream beyond the local service area
20 of its primary transmitter on a statement of ac-
21 count deposited under section 111 of title 17,
22 United States Code, before the date of the en-
23 actment of this Act shall not be entitled to any
24 refund, or offset, of royalty fees paid on ac-

1 count of such secondary transmissions of such
2 multicast stream.

3 (3) DEFINITIONS.—In this subsection, the
4 terms “cable system”, “secondary transmission”,
5 “multicast stream”, and “local service area of a pri-
6 mary transmitter” have the meanings given those
7 terms in section 111(f) of title 17, United States
8 Code, as amended by this section.

9 **SEC. 105. CERTAIN WAIVERS GRANTED TO PROVIDERS OF**
10 **LOCAL-INTO-LOCAL SERVICE FOR ALL DMAS.**

11 Section 119 is amended by adding at the end the fol-
12 lowing new subsection:

13 “(g) CERTAIN WAIVERS GRANTED TO PROVIDERS OF
14 LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.—

15 “(1) INJUNCTION WAIVER.—A court that issued
16 an injunction pursuant to subsection (a)(7)(B) be-
17 fore the date of the enactment of this subsection
18 shall waive such injunction if the court recognizes
19 the entity against which the injunction was issued as
20 a qualified carrier.

21 “(2) LIMITED TEMPORARY WAIVER.—

22 “(A) IN GENERAL.—Upon a request made
23 by a satellite carrier, a court that issued an in-
24 junction against such carrier under subsection
25 (a)(7)(B) before the date of the enactment of

1 this subsection shall waive such injunction with
2 respect to the statutory license provided under
3 subsection (a)(2) to the extent necessary to
4 allow such carrier to make secondary trans-
5 missions of primary transmissions made by a
6 network station to unserved households located
7 in short markets in which such carrier was not
8 providing local service pursuant to the license
9 under section 122 as of December 31, 2009.

10 “(B) EXPIRATION OF TEMPORARY WAIV-
11 ER.—A temporary waiver of an injunction
12 under subparagraph (A) shall expire after the
13 end of the 120-day period beginning on the
14 date such temporary waiver is issued unless ex-
15 tended for good cause by the court making the
16 temporary waiver.

17 “(C) FAILURE TO MAKE GOOD FAITH EF-
18 FORT TO PROVIDE LOCAL-INTO-LOCAL SERVICE
19 TO ALL DMAS.—

20 “(i) WILLFUL FAILURE.—If the court
21 issuing a temporary waiver under subpara-
22 graph (A) determines that the satellite car-
23 rier that made the request for such waiver
24 has failed to make a good faith effort to
25 provide local-into-local service to all DMAs

1 and determines that such failure was will-
2 ful, such failure—

3 “(I) is actionable as an act of in-
4 fringement under section 501 and the
5 court may in its discretion impose the
6 remedies provided for in sections 502
7 through 506 and subsection (a)(6)(B)
8 of this section; and

9 “(II) shall result in the termi-
10 nation of the waiver issued under sub-
11 paragraph (A).

12 “(ii) NONWILLFUL FAILURE.—If the
13 court issuing a temporary waiver under
14 subparagraph (A) determines that the sat-
15 ellite carrier that made the request for
16 such waiver has failed to make a good
17 faith effort to provide local-into-local serv-
18 ice to all DMAs and determines that such
19 failure was nonwillful, the court may in its
20 discretion impose financial penalties that
21 reflect—

22 “(I) the degree of control the
23 carrier had over the circumstances
24 that resulted in the failure;

1 “(II) the quality of the carrier’s
2 efforts to remedy the failure; and

3 “(III) the severity and duration
4 of any service interruption.

5 “(D) SINGLE TEMPORARY WAIVER AVAIL-
6 ABLE.—An entity may only receive one tem-
7 porary waiver under this paragraph.

8 “(E) SHORT MARKET DEFINED.—For pur-
9 poses of this paragraph, the term ‘short mar-
10 ket’ means a local market in which program-
11 ming of one or more of the four most widely
12 viewed television networks nationwide as meas-
13 ured on the date of enactment of this sub-
14 section is not offered on the primary stream
15 transmitted by any local television broadcast
16 station.

17 “(3) ESTABLISHMENT OF QUALIFIED CARRIER
18 RECOGNITION.—

19 “(A) STATEMENT OF ELIGIBILITY.—An
20 entity seeking to be recognized as a qualified
21 carrier under this subsection shall file a state-
22 ment of eligibility with the court that imposed
23 the injunction. A statement of eligibility must
24 include—

1 “(i) an affidavit that the entity is pro-
2 viding local-into-local service to all DMAs;

3 “(ii) a request for a waiver of the in-
4 junction; and

5 “(iii) a certification issued pursuant
6 to section 342(a) of Communications Act
7 of 1934.

8 “(B) GRANT OF RECOGNITION AS A QUALI-
9 FIED CARRIER.—Upon receipt of a statement of
10 eligibility, the court shall recognize the entity as
11 a qualified carrier and issue the waiver under
12 paragraph (1).

13 “(C) VOLUNTARY TERMINATION.—At any
14 time, an entity recognized as a qualified carrier
15 may file a statement of voluntary termination
16 with the court certifying that it no longer wish-
17 es to be recognized as a qualified carrier. Upon
18 receipt of such statement, the court shall rein-
19 state the injunction waived under paragraph
20 (1).

21 “(D) LOSS OF RECOGNITION PREVENTS
22 FUTURE RECOGNITION.—No entity may be rec-
23 ognized as a qualified carrier if such entity had
24 previously been recognized as a qualified carrier
25 and subsequently lost such recognition or volun-

1 tarily terminated such recognition under sub-
2 paragraph (C).

3 “(4) QUALIFIED CARRIER OBLIGATIONS AND
4 COMPLIANCE.—

5 “(A) CONTINUING OBLIGATIONS.—

6 “(i) IN GENERAL.—An entity recog-
7 nized as a qualified carrier shall continue
8 to provide local-into-local service to all
9 DMAs.

10 “(ii) COOPERATION WITH GAO EXAM-
11 INATION.—An entity recognized as a quali-
12 fied carrier shall fully cooperate with the
13 Comptroller General in the examination re-
14 quired by subparagraph (B).

15 “(B) QUALIFIED CARRIER COMPLIANCE
16 EXAMINATION.—

17 “(i) EXAMINATION AND REPORT.—

18 The Comptroller General shall conduct an
19 examination and publish a report con-
20 cerning the qualified carrier’s compliance
21 with the royalty payment and household
22 eligibility requirements of the license under
23 this section. The report shall address the
24 qualified carrier’s conduct during the pe-
25 riod beginning on the date on which the

1 qualified carrier is recognized as such
2 under paragraph (3)(B) and ending on De-
3 cember 31, 2011.

4 “(ii) RECORDS OF QUALIFIED CAR-
5 RIER.—Beginning on the date that is one
6 year after the date on which the qualified
7 carrier is recognized as such under para-
8 graph (3)(B), the qualified carrier shall
9 provide the Comptroller General with all
10 records that the Comptroller General, in
11 consultation with the Register of Copy-
12 rights, considers to be directly pertinent to
13 the following requirements under this sec-
14 tion:

15 “(I) Proper calculation and pay-
16 ment of royalties under the statutory
17 license under this section.

18 “(II) Provision of service under
19 this license to eligible subscribers
20 only.

21 “(iii) SUBMISSION OF REPORT.—The
22 Comptroller General shall file the report
23 required by clause (i) not later than March
24 1, 2012, with the court referred to in para-
25 graph (1) that issued the injunction, the

1 Register of Copyrights, and the Commit-
2 tees on the Judiciary of the House of Rep-
3 resentatives and the Senate.

4 “(iv) EVIDENCE OF INFRINGEMENT.—

5 The Comptroller General shall include in
6 the report a statement of whether the ex-
7 amination by the Comptroller General indi-
8 cated that there is substantial evidence
9 that a copyright holder could bring a suc-
10 cessful action under this section against
11 the qualified carrier for infringement. The
12 Comptroller General shall consult with the
13 Register of Copyrights in preparing such
14 statement.

15 “(v) SUBSEQUENT EXAMINATION.—If

16 the report includes the Comptroller Gen-
17 eral’s statement that there is substantial
18 evidence that a copyright holder could
19 bring a successful action under this section
20 against the qualified carrier for infringe-
21 ment, the Comptroller General shall, not
22 later than 6 months after the report under
23 clause (i) is published, initiate another ex-
24 amination of the qualified carrier’s compli-
25 ance with the royalty payment and house-

1 hold eligibility requirements of the license
2 under this section since the last report was
3 filed under clause (iii). The Comptroller
4 General shall file a report on such exam-
5 ination with the court referred to in para-
6 graph (1) that issued the injunction, the
7 Register of Copyrights, and the Commit-
8 tees on the Judiciary of the House of Rep-
9 resentatives and the Senate. The report
10 shall include a statement described in
11 clause (iv), prepared in consultation with
12 the Register of Copyrights.

13 “(C) AFFIRMATION.—A qualified carrier
14 shall file an affidavit with the district court and
15 the Register of Copyrights 30 months after
16 such status was granted stating that, to the
17 best of the affiant’s knowledge, it is in compli-
18 ance with the requirements for a qualified car-
19 rier.

20 “(D) COMPLIANCE DETERMINATION.—
21 Upon the motion of an aggrieved television
22 broadcast station, the court recognizing an enti-
23 ty as a qualified carrier may make a determina-
24 tion of whether the entity is providing local-
25 into-local service to all DMAs.

1 “(E) PLEADING REQUIREMENT.—In any
2 motion brought under subparagraph (D), the
3 party making such motion shall specify one or
4 more designated market areas (as such term is
5 defined in section 122(j)(2)(C)) for which the
6 failure to provide service is being alleged, and,
7 for each such designated market area, shall
8 plead with particularity the circumstances of
9 the alleged failure.

10 “(F) BURDEN OF PROOF.—In any pro-
11 ceeding to make a determination under sub-
12 paragraph (D), and with respect to a des-
13 ignated market area for which failure to provide
14 service is alleged, the entity recognized as a
15 qualified carrier shall have the burden of prov-
16 ing that the entity provided local-into-local serv-
17 ice with a good quality satellite signal to at
18 least 90 percent of the households in such des-
19 ignated market area (based on the most recent
20 census data released by the United States Cen-
21 sus Bureau) at the time and place alleged.

22 “(G) ENFORCEMENT.—Upon motion filed
23 by an interested party, the court recognizing an
24 entity as a qualified carrier shall terminate such
25 designation upon finding that the entity has

1 failed to meet the requirements imposed on the
2 entity under this paragraph.

3 “(5) FAILURE TO PROVIDE SERVICE.—

4 “(A) PENALTIES.—If the court recognizing
5 an entity as a qualified carrier finds that such
6 entity has willfully failed to provide local-into-
7 local service to all DMAs, such finding shall re-
8 sult in the loss of recognition of the entity as
9 a qualified carrier and the termination of the
10 waiver provided under paragraph (1), and the
11 court may, in its discretion—

12 “(i) treat such failure as an act of in-
13 fringement under section 501, and subject
14 such infringement to the remedies provided
15 for in sections 502 through 506 and sub-
16 section (a)(6)(B) of this section; and

17 “(ii) impose a fine of not more than
18 \$250,000.

19 “(B) EXCEPTION FOR NONWILLFUL VIOLA-
20 TION.—If the court determines that the failure
21 to provide local-into-local service to all DMAs is
22 nonwillful, the court may in its discretion im-
23 pose financial penalties for noncompliance that
24 reflect—

1 “(i) the degree of control the entity
2 had over the circumstances that resulted in
3 the failure;

4 “(ii) the quality of the entity’s efforts
5 to remedy the failure and restore service;
6 and

7 “(iii) the severity and duration of the
8 service interruption.

9 “(6) PENALTIES FOR VIOLATIONS OF LI-
10 CENSE.—A court that finds, under subsection
11 (a)(6)(A), that an entity recognized as a qualified
12 carrier has willfully made a secondary transmission
13 of a primary transmission made by a network sta-
14 tion and embodying a performance or display of a
15 work to a subscriber who is not eligible to receive
16 the transmission under this section shall reinstate
17 the injunction waived under paragraph (1), and the
18 court may order statutory damages of not more than
19 \$2,500,000.

20 “(7) LOCAL-INTO-LOCAL SERVICE TO ALL DMAS
21 DEFINED.—For purposes of this subsection:

22 “(A) IN GENERAL.—An entity provides
23 ‘local-into-local service to all DMAs’ if the enti-
24 ty provides local service in all designated mar-
25 ket areas (as such term is defined in section

1 122(j)(2)(C)) pursuant to the license under sec-
2 tion 122.

3 “(B) HOUSEHOLD COVERAGE.—For pur-
4 poses of subparagraph (A), an entity that
5 makes available local-into-local service with a
6 good quality satellite signal to at least 90 per-
7 cent of the households in a designated market
8 area based on the most recent census data re-
9 leased by the United States Census Bureau
10 shall be considered to be providing local service
11 to such designated market area.

12 “(C) GOOD QUALITY SATELLITE SIGNAL
13 DEFINED.—The term ‘good quality signal’ has
14 the meaning given such term under section
15 342(e)(2) of Communications Act of 1934.”.

16 **SEC. 106. TERMINATION OF LICENSE.**

17 (a) TERMINATION.—Section 119, as amended by this
18 title, shall cease to be effective on December 31, 2014.

19 (b) CONFORMING AMENDMENT.—Section 4(a) of the
20 Satellite Home Viewer Act of 1994 (17 U.S.C. 119 note;
21 Public Law 103–369) is repealed.

22 **SEC. 107. SURCHARGE ON STATUTORY LICENSES.**

23 (a) SURCHARGES.—The Copyright Royalty Judges
24 shall establish a surcharge or surcharges to be paid, in
25 accordance with subsection (b), by cable systems subject

1 to statutory licensing under section 111(c) of title 17,
2 United States Code, and satellite carriers whose secondary
3 transmissions are subject to statutory licensing under sec-
4 tion 119(a) of such title, in addition to the royalty fees
5 paid by such cable systems under section 111(d)(1) of
6 such title and by such satellite carriers under section
7 119(b)(1) of such title.

8 (b) AMOUNT AND TIMING OF SURCHARGES.—Sur-
9 charges under subsection (a) shall be assessed, during fis-
10 cal years 2009 through 2019, in amounts that, in the ag-
11 gregate, will equal at least \$92,000,000.

12 (c) FUNDS UNAVAILABLE FOR OBLIGATION.—Sur-
13 charges collected under this section shall be deposited in
14 the Treasury of the United States and shall not be avail-
15 able for obligation.

16 (d) AUTHORITIES.—The Copyright Royalty Judges
17 may exercise the authorities such Judges have under chap-
18 ter 8 of title 17, United States Code, to carry out this
19 section.

20 **SEC. 108. CONSTRUCTION.**

21 Nothing in section 111, 119, or 122 of title 17,
22 United States Code, including the amendments made to
23 such sections by this title, shall be construed to affect the
24 meaning of any terms under the Communications Act of
25 1934, except to the extent that such sections are specifi-

1 cally cross-referenced in such Act or the regulations issued
2 thereunder.

3 **TITLE II—COMMUNICATIONS** 4 **PROVISIONS**

5 **SEC. 201. REFERENCE.**

6 Except as otherwise provided, whenever in this title
7 an amendment is made to a section or other provision,
8 the reference shall be considered to be made to such sec-
9 tion or provision of the Communications Act of 1934 (47
10 U.S.C. 151 et seq.).

11 **SEC. 202. EXTENSION OF AUTHORITY.**

12 Section 325(b) is amended—

13 (1) in paragraph (2)(C), by striking “December
14 31, 2009” and inserting “December 31, 2014”; and

15 (2) in paragraph (3)(C), by striking “January
16 1, 2010” each place it appears in clauses (ii) and
17 (iii) and inserting “January 1, 2015”.

18 **SEC. 203. SIGNIFICANTLY VIEWED STATIONS.**

19 (a) IN GENERAL.—Paragraphs (1) and (2) of section
20 340(b) are amended to read as follows:

21 “(1) SERVICE LIMITED TO SUBSCRIBERS TAK-
22 ING LOCAL-INTO-LOCAL SERVICE.—This section shall
23 apply only to retransmissions to subscribers of a sat-
24 ellite carrier who receive retransmissions of a signal
25 from that satellite carrier pursuant to section 338.

1 “(2) SERVICE LIMITATIONS.—A satellite carrier
2 may retransmit to a subscriber in high definition
3 format the signal of a station determined by the
4 Commission to be significantly viewed under sub-
5 section (a) only if such carrier also retransmits in
6 high definition format the signal of a station located
7 in the local market of such subscriber and affiliated
8 with the same network whenever such format is
9 available from such station.”.

10 (b) RULEMAKING REQUIRED.—Within 180 days after
11 the date of the enactment of this Act, the Federal Commu-
12 nications Commission shall take all actions necessary to
13 promulgate a rule to implement the amendments made by
14 subsection (a).

15 **SEC. 204. DIGITAL TELEVISION TRANSITION CONFORMING**
16 **AMENDMENTS.**

17 (a) SECTION 338.—Section 338 is amended—

18 (1) in subsection (a), by striking “(3) EFFEC-
19 TIVE DATE.—No satellite” and all that follows
20 through “until January 1, 2002.”; and

21 (2) by amending subsection (g) to read as fol-
22 lows:

23 “(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE
24 RECEPTION ANTENNA.—

1 “(1) SINGLE RECEPTION ANTENNA.—Each sat-
2 ellite carrier that retransmits the signals of local tel-
3 evision broadcast stations in a local market shall re-
4 transmit such stations in such market so that a sub-
5 scriber may receive such stations by means of a sin-
6 gle reception antenna and associated equipment.

7 “(2) ADDITIONAL RECEPTION ANTENNA.—If
8 the carrier retransmits the signals of local television
9 broadcast stations in a local market in high defini-
10 tion format, the carrier shall retransmit such signals
11 in such market so that a subscriber may receive
12 such signals by means of a single reception antenna
13 and associated equipment, but such antenna and as-
14 sociated equipment may be separate from the single
15 reception antenna and associated equipment used to
16 comply with paragraph (1).”.

17 (b) SECTION 339.—Section 339 is amended—

18 (1) in subsection (a)—

19 (A) in paragraph (1)(B), by striking “Such
20 two network stations” and all that follows
21 through “more than two network stations.”;
22 and

23 (B) in paragraph (2)—

24 (i) in the heading for subparagraph
25 (A), by striking “TO ANALOG SIGNALS”;

1 (ii) in subparagraph (A)—

2 (I) in the heading for clause (i),
3 by striking “ANALOG”;

4 (II) in clause (i)—

5 (aa) by striking “analog”
6 each place it appears; and

7 (bb) by striking “October 1,
8 2004” and inserting “October 1,
9 2009”;

10 (III) in the heading for clause
11 (ii), by striking “ANALOG”; and

12 (IV) in clause (ii)—

13 (aa) by striking “analog”
14 each place it appears; and

15 (bb) by striking “2004” and
16 inserting “2009”;

17 (iii) by amending subparagraph (B) to
18 read as follows:

19 “(B) RULES FOR OTHER SUBSCRIBERS.—

20 “(i) IN GENERAL.—In the case of a
21 subscriber of a satellite carrier who is eligi-
22 ble to receive the signal of a network sta-
23 tion under this section (in this subpara-
24 graph referred to as a ‘distant signal’),
25 other than subscribers to whom subpara-

1 graph (A) applies, the following shall
2 apply:

3 “(I) In a case in which the sat-
4 ellite carrier makes available to that
5 subscriber, on January 1, 2005, the
6 signal of a local network station affili-
7 ated with the same television network
8 pursuant to section 338, the carrier
9 may only provide the secondary trans-
10 missions of the distant signal of a sta-
11 tion affiliated with the same network
12 to that subscriber if the subscriber’s
13 satellite carrier, not later than March
14 1, 2005, submits to that television
15 network the list and statement re-
16 quired by subparagraph (F)(i).

17 “(II) In a case in which the sat-
18 ellite carrier does not make available
19 to that subscriber, on January 1,
20 2005, the signal of a local network
21 station pursuant to section 338, the
22 carrier may only provide the sec-
23 ondary transmissions of the distant
24 signal of a station affiliated with the
25 same network to that subscriber if—

1 “(aa) that subscriber seeks
2 to subscribe to such distant sig-
3 nal before the date on which such
4 carrier commences to carry pur-
5 suant to section 338 the signals
6 of stations from the local market
7 of such local network station; and

8 “(bb) the satellite carrier,
9 within 60 days after such date,
10 submits to each television net-
11 work the list and statement re-
12 quired by subparagraph (F)(ii).

13 “(ii) SPECIAL CIRCUMSTANCES.—A
14 subscriber of a satellite carrier who was
15 lawfully receiving the distant signal of a
16 network station on the day before the date
17 of enactment of the Satellite Home Viewer
18 Reauthorization Act of 2009 may receive
19 both such distant signal and the local sig-
20 nal of a network station affiliated with the
21 same network until such subscriber chooses
22 to no longer receive such distant signal
23 from such carrier.”;

24 (iv) in subparagraph (C)—

25 (I) by striking “analog”;

1 (II) in clause (i), by striking “the
2 Satellite Home Viewer Extension and
3 Reauthorization Act of 2004” and in-
4 serting “the Satellite Home Viewer
5 Reauthorization Act of 2009”; and

6 (III) by amending clause (ii) to
7 read as follows:

8 “(ii) either—

9 “(I) at the time such person
10 seeks to subscribe to receive such sec-
11 ondary transmission, resides in a local
12 market where the satellite carrier
13 makes available to that person the
14 signal of a local network station affili-
15 ated with the same television network
16 pursuant to section 338, and the re-
17 transmission of such signal by such
18 carrier can reach such subscriber; or

19 “(II) receives from the satellite
20 carrier the programming of a network
21 station affiliated with the same net-
22 work that is broadcast by a local sta-
23 tion in the market where the sub-
24 scriber resides, but such programming

1 is not contained within the local sta-
2 tion’s primary video.”;

3 (v) in subparagraph (D)—

4 (I) in the heading, by striking
5 “DIGITAL”;

6 (II) by striking clauses (i), (iii)
7 through (v), (vii) through (ix), and
8 (xi);

9 (III) by redesignating clause (vi)
10 as clause (i) and transferring such
11 clause to appear before clause (ii);

12 (IV) by amending such clause (i)
13 (as so redesignated) to read as fol-
14 lows:

15 “(i) SIGNAL TESTING.—A subscriber
16 shall be eligible to receive a distant signal
17 of a distant network station affiliated with
18 the same network under this section if
19 such subscriber is determined, based on a
20 test conducted in accordance with section
21 73.686(d) of title 47, Code of Federal Reg-
22 ulations, or any successor regulation, not
23 to be able to receive a signal that exceeds
24 the signal intensity standard in section

1 73.622(e)(1) of title 47, Code of Federal
2 Regulations.”;

3 (V) in clause (ii)—

4 (aa) by striking “DIGITAL”
5 in the heading;

6 (bb) by striking “digital”
7 the first two places such term ap-
8 pears;

9 (cc) by striking “Satellite
10 Home Viewer Extension and Re-
11 authorization Act of 2004” and
12 inserting “Satellite Home Viewer
13 Reauthorization Act of 2009”;
14 and

15 (dd) by striking “, whether
16 or not such subscriber elects to
17 subscribe to local digital signals”;

18 (VI) by inserting after clause (ii)
19 the following new clause:

20 “(iii) TIME-SHIFTING PROHIBITED.—

21 In a case in which the satellite carrier
22 makes available to an eligible subscriber
23 under this subparagraph the signal of a
24 local network station pursuant to section
25 338, the carrier may only provide the dis-

1 tant signal of a station affiliated with the
2 same network to that subscriber if, in the
3 case of any local market in the 48 contig-
4 uous States of the United States, the dis-
5 tant signal is the secondary transmission
6 of a station whose prime time network pro-
7 gramming is generally broadcast simulta-
8 neously with, or later than, the prime time
9 network programming of the affiliate of
10 the same network in the local market.”;
11 and

12 (VII) by redesignating clause (x)
13 as clause (iv); and
14 (vi) in subparagraph (E), by striking
15 “distant analog signal or” and all that fol-
16 lows through “(B), or (D))” and inserting
17 “distant signal”;

18 (2) in subsection (c)—

19 (A) by amending paragraph (3) to read as
20 follows:

21 “(3) ESTABLISHMENT OF IMPROVED PRE-
22 DICTIVE MODEL AND ON-LOCATION TESTING RE-
23 QUIRED.—

24 “(A) PREDICTIVE MODEL.—Within 180
25 days after the date of the enactment of the Sat-

1 elite Home Viewer Reauthorization Act of
2 2009, the Commission shall take all actions
3 necessary to develop and prescribe by rule a
4 point-to-point predictive model for reliably and
5 presumptively determining the ability of indi-
6 vidual locations, through the use of a conven-
7 tional, stationary, outdoor rooftop receiving an-
8 tenna, to receive signals in accordance with the
9 signal intensity standard in section
10 73.622(e)(1) of title 47, Code of Federal Regu-
11 lations, including to account for the continuing
12 operation of translator stations and low power
13 television stations. In prescribing such model,
14 the Commission shall rely on the Individual Lo-
15 cation Longley-Rice model set forth by the
16 Commission in CS Docket No. 98–201, as pre-
17 viously revised with respect to analog signals,
18 and as recommended by the Commission with
19 respect to digital signals in its Report to Con-
20 gress in ET Docket No. 05–182, FCC 05–199
21 (released December 9, 2005). The Commission
22 shall establish procedures for the continued re-
23 finement in the application of the model by the
24 use of additional data as it becomes available.

1 “(B) ON-LOCATION TESTING.—The Com-
2 mission shall issue an order completing its rule-
3 making proceeding in ET Docket No. 06–94
4 within 180 days after the date of enactment of
5 the Satellite Home Viewer Reauthorization Act
6 of 2009.

7 “(C) STUDY OF TYPES OF ANTENNAS
8 AVAILABLE TO RECEIVE DIGITAL SIGNALS.—

9 “(i) STUDY REQUIRED.—Not later
10 than 1 year after the date of enactment of
11 the Satellite Home Viewer Reauthorization
12 Act of 2009, the Commission shall com-
13 plete a study regarding whether, for pur-
14 poses of identifying if a household is
15 unserved by an adequate digital signal
16 under section 119(d)(10) of title 17,
17 United States Code, the digital signal
18 strength standard in section 73.622(e)(1)
19 of title 47, Code of Federal Regulations, or
20 the testing procedures in section 73.686 of
21 title 47, Code of Federal Regulations, such
22 statutes or regulations should be revised to
23 take into account the types of antennas
24 that are available to and used by con-
25 sumers.

1 “(ii) STUDY CONSIDERATION.—In
2 conducting the study under clause (i), the
3 Commission shall consider whether to ac-
4 count for the fact that an antenna can be
5 mounted on a roof or placed in a home and
6 can be fixed or capable of rotating.

7 “(iii) REPORT.—Not later than 1 year
8 after the date of enactment of the Satellite
9 Home Viewer Reauthorization Act of 2009,
10 the Commission shall submit to the Com-
11 mittee on Energy and Commerce of the
12 House of Representatives and the Com-
13 mittee on Commerce, Science, and Trans-
14 portation of the Senate a report con-
15 taining—

16 “(I) the results of the study con-
17 ducted under clause (i); and

18 “(II) recommendations, if any,
19 regarding changes to be made to Fed-
20 eral statutes or regulations.”;

21 (B) by amending paragraph (4)(A) to read
22 as follows:

23 “(A) IN GENERAL.—If a subscriber’s re-
24 quest for a waiver under paragraph (2) is re-
25 jected and the subscriber submits to the sub-

1 subscriber’s satellite carrier a request for a test
2 verifying the subscriber’s inability to receive a
3 signal of the signal intensity referenced in
4 clause (i) of subsection (a)(2)(D), the satellite
5 carrier and the network station or stations as-
6 serting that the retransmission is prohibited
7 with respect to that subscriber shall select a
8 qualified and independent person to conduct the
9 test referenced in such clause. Such test shall
10 be conducted within 30 days after the date the
11 subscriber submits a request for the test. If the
12 written findings and conclusions of a test con-
13 ducted in accordance with such clause dem-
14 onstrate that the subscriber does not receive a
15 signal that meets or exceeds the requisite signal
16 intensity standard in such clause, the subscriber
17 shall not be denied the retransmission of a sig-
18 nal of a network station under section
19 119(d)(10)(A) of title 17, United States
20 Code.”;

21 (C) in paragraph (4)(B), by striking “the
22 signal intensity” and all that follows through
23 “United States Code” and inserting “such req-
24 uisite signal intensity standard”; and

1 (D) in paragraph (4)(E), by striking
2 “Grade B intensity”.

3 (c) SECTION 340.—Section 340(i) is amended by
4 striking paragraph (4).

5 **SEC. 205. APPLICATION PENDING COMPLETION OF**
6 **RULEMAKINGS.**

7 (a) IN GENERAL.—During the period beginning on
8 the date of the enactment of this Act and ending on the
9 date on which the Federal Communications Commission
10 adopts rules pursuant to the amendments to the Commu-
11 nications Act of 1934 made by sections 203 and 204 of
12 this Act, the Federal Communications Commission shall
13 follow its rules and regulations promulgated pursuant to
14 sections 338, 339, and 340 of the Communications Act
15 of 1934 as in effect on the day before the date of enact-
16 ment of this Act.

17 (b) TRANSLATOR STATIONS AND LOW POWER TELE-
18 VISION STATIONS.—Notwithstanding subsection (a), for
19 purposes of determining whether a subscriber within the
20 local market served by a translator station or a low power
21 television station affiliated with a television network is eli-
22 gible to receive distant signals under section 339 of the
23 Communications Act of 1934, the Federal Communica-
24 tions Commission shall follow its rules and regulations for
25 determining such subscriber’s eligibility as in effect on the

1 day before the date of enactment of this Act until the date
2 on which the translator station or low power television sta-
3 tion is licensed to broadcast a digital signal.

4 (c) DEFINITIONS.—As used in this title:

5 (1) LOCAL MARKET; LOW POWER TELEVISION
6 STATION; SATELLITE CARRIER; SUBSCRIBER; TELE-
7 VISION BROADCAST STATION.—The terms “local
8 market”, “low power television station”, “satellite
9 carrier”, “subscriber”, and “television broadcast sta-
10 tion” have the meanings given such terms in section
11 338(k) of the Communications Act of 1934.

12 (2) NETWORK STATION; TELEVISION NET-
13 WORK.—The terms “network station” and “tele-
14 vision network” have the meanings given such terms
15 in section 339(d) of such Act.

16 **SEC. 206. PROCESS FOR ISSUING QUALIFIED CARRIER CER-**
17 **TIFICATION.**

18 Part I of title III is amended by adding at the end
19 the following new section:

20 **“SEC. 342. PROCESS FOR ISSUING QUALIFIED CARRIER**
21 **CERTIFICATION.**

22 “(a) CERTIFICATION.—The Commission shall issue a
23 certification for the purposes of section 119(g)(3)(A)(iii)
24 of title 17, United States Code, if the Commission deter-
25 mines that—

1 “(1) a satellite carrier is providing local service
2 pursuant to the statutory license under section 122
3 of such title in each designated market area; and

4 “(2) with respect to each designated market
5 area in which such satellite carrier was not providing
6 such local service as of the date of enactment of the
7 Satellite Home Viewer Reauthorization Act of
8 2009—

9 “(A) the satellite carrier’s satellite beams
10 are designed, and predicted by the satellite
11 manufacturer’s pre-launch test data, to provide
12 a good quality satellite signal to at least 90 per-
13 cent of the households in each such designated
14 market area based on the most recent census
15 data released by the United States Census Bu-
16 reau; and

17 “(B) there is no material evidence that
18 there has been a satellite or sub-system failure
19 subsequent to the satellite’s launch that pre-
20 cludes the ability of the satellite carrier to sat-
21 isfy the requirements of subparagraph (A).

22 “(b) INFORMATION REQUIRED.—Any entity seeking
23 the certification provided for in subsection (a) shall submit
24 to the Commission the following information:

1 “(1) An affidavit stating that, to the best of the
2 affiant’s knowledge, the satellite carrier provides
3 local service in all designated market areas pursuant
4 to the statutory license provided for in section 122
5 of title 17, United States Code, and listing those
6 designated market areas in which local service was
7 provided as of the date of enactment of the Satellite
8 Home Viewer Reauthorization Act of 2009.

9 “(2) For each designated market area not listed
10 in paragraph (1):

11 “(A) Identification of each such designated
12 market area and the location of its local receive
13 facility.

14 “(B) Data showing the number of house-
15 holds, and maps showing the geographic dis-
16 tribution thereof, in each such designated mar-
17 ket area based on the most recent census data
18 released by the United States Census Bureau.

19 “(C) Maps, with superimposed effective
20 isotropically radiated power predictions ob-
21 tained in the satellite manufacturer’s pre-
22 launch tests, showing that the contours of the
23 carrier’s satellite beams as designed and the ge-
24 ographic area that the carrier’s satellite beams
25 are designed to cover are predicted to provide

1 a good quality satellite signal to at least 90 per-
2 cent of the households in such designated mar-
3 ket area based on the most recent census data
4 released by the United States Census Bureau.

5 “(D) For any satellite relied upon for cer-
6 tification under this section, an affidavit stating
7 that, to the best of the affiant’s knowledge,
8 there have been no satellite or sub-system fail-
9 ures subsequent to the satellite’s launch that
10 would degrade the design performance to such
11 a degree that a satellite transponder used to
12 provide local service to any such designated
13 market area is precluded from delivering a good
14 quality satellite signal to at least 90 percent of
15 the households in such designated market area
16 based on the most recent census data released
17 by the United States Census Bureau.

18 “(E) Any additional engineering, des-
19 igned market area, or other information the
20 Commission considers necessary to determine
21 whether the Commission shall grant a certifi-
22 cation under this section.

23 “(c) CERTIFICATION ISSUANCE.—

1 “(1) PUBLIC COMMENT.—The Commission shall
2 provide 30 days for public comment on a request for
3 certification under this section.

4 “(2) DEADLINE FOR DECISION.—The Commis-
5 sion shall grant or deny a request for certification
6 within 90 days after the date on which such request
7 is filed.

8 “(d) SUBSEQUENT AFFIRMATION.—An entity grant-
9 ed qualified carrier status pursuant to section 119(g) of
10 title 17, United States Code, shall file an affidavit with
11 the Commission 30 months after such status was granted
12 stating that, to the best of the affiant’s knowledge, it is
13 in compliance with the requirements for a qualified car-
14 rier.

15 “(e) DEFINITIONS.—For the purposes of this section:

16 “(1) DESIGNATED MARKET AREA.—The term
17 ‘designated market area’ has the meaning given such
18 term in section 122(j)(2)(C) of title 17, United
19 States Code.

20 “(2) GOOD QUALITY SATELLITE SIGNAL.—

21 “(A) IN GENERAL.—The term “good qual-
22 ity satellite signal” means—

23 “(i) a satellite signal whose power
24 level as designed shall achieve reception
25 and demodulation of the signal at an avail-

1 ability level of at least 99.7 percent
2 using—

3 “(I) models of satellite antennas
4 normally used by the satellite carrier’s
5 subscribers; and

6 “(II) the same calculation meth-
7 odology used by the satellite carrier to
8 determine predicted signal availability
9 in the top 100 designated market
10 areas; and

11 “(ii) taking into account whether a
12 signal is in standard definition format or
13 high definition format, compression meth-
14 odology, modulation, error correction,
15 power level, and utilization of advances in
16 technology that do not circumvent the in-
17 tent of this section to provide for non-dis-
18 criminatory treatment with respect to any
19 comparable television broadcast station sig-
20 nal, a video signal transmitted by a sat-
21 ellite carrier such that—

22 “(I) the satellite carrier treats all
23 television broadcast stations’ signals
24 the same with respect to statistical
25 multiplexer prioritization; and

1 “(II) the number of video signals
2 in the relevant satellite transponder is
3 not more than the then current great-
4 est number of video signals carried on
5 any equivalent transponder serving
6 the top 100 designated market areas.

7 “(B) DETERMINATION.—For the purposes
8 of subparagraph (A), the top 100 designated
9 market areas shall be as determined by Nielsen
10 Media Research and published in the Nielsen
11 Station Index Directory and Nielsen Station
12 Index United States Television Household Esti-
13 mates or any successor publication as of the
14 date of a satellite carrier’s application for cer-
15 tification under this section.”.

16 **SEC. 207. NONDISCRIMINATION IN CARRIAGE OF HIGH DEF-**
17 **INITION DIGITAL SIGNALS OF NONCOMMER-**
18 **CIAL EDUCATIONAL TELEVISION STATIONS.**

19 (a) IN GENERAL.—Section 338(a) is amended by
20 adding at the end the following new paragraph:

21 “(5) NONDISCRIMINATION IN CARRIAGE OF
22 HIGH DEFINITION SIGNALS OF NONCOMMERCIAL
23 EDUCATIONAL TELEVISION STATIONS.—

24 “(A) EXISTING CARRIAGE OF HIGH DEF-
25 NITION SIGNALS.—If, prior to the date of enact-

1 ment of the Satellite Home Viewer Reauthoriza-
2 tion Act of 2009, an eligible satellite carrier is
3 providing, under section 122 of title 17, United
4 States Code, any secondary transmissions in
5 high definition to subscribers located within the
6 local market of a television broadcast station of
7 a primary transmission made by that station,
8 then such satellite carrier shall carry the high-
9 definition signals of qualified noncommercial
10 educational television stations located within
11 that local market in accordance with the fol-
12 lowing schedule:

13 “(i) By December 31, 2010, in at
14 least 50 percent of the markets in which
15 such satellite carrier provides such sec-
16 ondary transmissions in high definition.

17 “(ii) By December 31, 2011, in every
18 market in which such satellite carrier pro-
19 vides such secondary transmissions in high
20 definition.

21 “(B) NEW INITIATION OF SERVICE.—If,
22 after the date of enactment of the Satellite
23 Home Viewer Reauthorization Act of 2009, an
24 eligible satellite carrier initiates the provision,
25 under section 122 of title 17, United States

1 Code, of any secondary transmissions in high
2 definition to subscribers located within the local
3 market of a television broadcast station of a
4 primary transmission made by that station, the
5 such satellite carrier shall carry the high-defini-
6 tion signals of all qualified noncommercial edu-
7 cational television stations located within that
8 local market.”.

9 (b) DEFINITIONS.—Section 338(k) is amended—

10 (1) by redesignating paragraphs (2) through
11 (8) as paragraphs (3) through (9), respectively;

12 (2) by inserting after paragraph (1) the fol-
13 lowing new paragraph:

14 “(2) ELIGIBLE SATELLITE CARRIER.—The term
15 ‘eligible satellite carrier’ means any satellite carrier
16 that is not a party to a carriage contract with a
17 qualified noncommercial educational television sta-
18 tion, or its representative, that is in force and effect
19 as of the date of enactment of the Satellite Home
20 Viewer Reauthorization Act of 2009.”;

21 (3) by redesignating paragraphs (6) through
22 (9) (as previously redesignated) as paragraphs (7)
23 through (10), respectively; and

24 (4) by inserting after paragraph (5) (as so re-
25 designated) the following new paragraph:

1 “(6) QUALIFIED NONCOMMERCIAL EDU-
 2 CATIONAL TELEVISION STATION.—The term ‘quali-
 3 fied noncommercial educational television station’
 4 has the meaning given such term in section
 5 615(l)(1) of this Act.”.

6 **SEC. 208. SAVINGS CLAUSE REGARDING USE OF NON-COM-**
 7 **PULSORY LICENSES.**

8 (a) IN GENERAL.—Nothing in this title, the Commu-
 9 nications Act of 1934, or regulations promulgated by the
 10 Federal Communications Commission under this title or
 11 the Communications Act of 1934 shall be construed to
 12 prevent a multichannel video programming distributor
 13 from retransmitting a performance or display of a work
 14 pursuant to an authorization granted by the copyright
 15 owner or, if within the scope of its authorization, its li-
 16 censee.

17 (b) LIMITATION.—Nothing in subsection (a) shall be
 18 construed to affect any obligation of a multichannel video
 19 programming distributor under section 325(b) of the
 20 Communications Act of 1934 to obtain the authority of
 21 a television broadcast station before retransmitting that
 22 station’s signal.

23 **SEC. 209. SAVINGS CLAUSE REGARDING DEFINITIONS.**

24 Nothing in this title or the amendments made by this
 25 title shall be construed to affect—

1 (1) the meaning of the terms “program re-
2 lated” and “primary video” under the Communica-
3 tions Act of 1934; or

4 (2) the meaning of the term “multicast” in any
5 regulations issued by the Federal Communications
6 Commission.

7 **TITLE III—REPORTS**

8 **SEC. 301. DEFINITION.**

9 In this title, the term “appropriate Congressional
10 committees” means the Committees on the Judiciary and
11 on Commerce, Science, and Transportation of the Senate
12 and the Committees on the Judiciary and on Energy and
13 Commerce of the House of Representatives.

14 **SEC. 302. REPORT ON MARKET BASED ALTERNATIVES TO** 15 **STATUTORY LICENSING.**

16 Not later than 1 year after the date of the enactment
17 of this Act, and after consultation with the Federal Com-
18 munications Commission, the Register of Copyrights shall
19 submit to the appropriate Congressional committees a re-
20 port containing—

21 (1) proposed mechanisms, methods, and rec-
22 ommendations on how to implement a phase-out of
23 the statutory licensing requirements set forth in sec-
24 tions 111, 119, and 122 of title 17, United States
25 Code, by making such sections inapplicable to the

1 secondary transmission of a performance or display
2 of a work embodied in a primary transmission of a
3 broadcast station that is authorized to license the
4 same secondary transmission directly with respect to
5 all of the performances and displays embodied in
6 such primary transmission;

7 (2) any recommendations for alternative means
8 to implement a timely and effective phase-out of the
9 statutory licensing requirements set forth in sections
10 111, 119, and 122 of title 17, United States Code;
11 and

12 (3) any recommendations for legislative or ad-
13 ministrative actions as may be appropriate to
14 achieve such a phase-out.

15 **SEC. 303. REPORT ON COMMUNICATIONS IMPLICATIONS OF**
16 **STATUTORY LICENSING MODIFICATIONS.**

17 (a) STUDY.—The Comptroller General shall conduct
18 a study that analyzes and evaluates the changes to the
19 carriage requirements currently imposed on multichannel
20 video programming distributors under the Communica-
21 tions Act of 1934 (47 U.S.C. 151 et seq.) and the regula-
22 tions promulgated by the Federal Communications Com-
23 mission that would be required or beneficial to consumers,
24 and such other matters as the Comptroller General deems
25 appropriate, if Congress implemented a phase-out of the

1 current statutory licensing requirements set forth under
2 sections 111, 119, and 122 of title 17, United States
3 Code. Among other things, the study shall consider the
4 impact such a phase-out and related changes to carriage
5 requirements would have on consumer prices and access
6 to programming.

7 (b) REPORT.—Not later than 1 year after the date
8 of enactment of this Act, the Comptroller General shall
9 report to the appropriate Congressional committees the re-
10 sults of the study, including any recommendations for leg-
11 islative or administrative actions.

12 **SEC. 304. REPORT ON IN-STATE BROADCAST PROGRAM-**
13 **MING.**

14 Not later than 1 year after the date of enactment
15 of this Act, the Federal Communications Commission shall
16 submit to the appropriate Congressional committees a re-
17 port containing an analysis of—

18 (1) the number of households in a State that
19 receive local broadcast stations from a station of li-
20 cense that is located in a different State;

21 (2) the extent to which consumers have access
22 to in-state broadcast programming; and

23 (3) whether there are alternatives to the use of
24 designated market areas, as defined in section 122
25 of title 17, United States Code, to define local mar-

1 kets that would provide more consumers with in-
2 state broadcast programming.

3 **TITLE IV—SEVERABILITY**

4 **SEC. 401. SEVERABILITY.**

5 If any provision of this Act, an amendment made by
6 this Act, or the application of such provision or amend-
7 ment to any person or circumstance is held to be unconsti-
8 tutional, the remainder of this Act, the amendments made
9 by this Act, and the application of such provision or
10 amendment to any person or circumstance shall not be af-
11 fected thereby.

 Passed the House of Representatives December 3,
2009.

Attest:

Clerk.

111TH CONGRESS
1ST SESSION

H. R. 3570

AN ACT

To extend the statutory license for secondary transmissions under title 17, United States Code, and for other purposes.