

111TH CONGRESS
1ST SESSION

H. R. 3570

To amend title 17, United States Code, to reauthorize the satellite statutory license, to conform the satellite and cable statutory licenses to all-digital transmissions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2009

Mr. CONYERS (for himself, Mr. BOUCHER, Ms. WASSERMAN SCHULTZ, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to reauthorize the satellite statutory license, to conform the satellite and cable statutory licenses to all-digital transmissions, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Satellite Home Viewer
5 Update and Reauthorization Act of 2009”.

6 **SEC. 2. REFERENCE.**

7 Except as otherwise provided, whenever in this Act
8 an amendment is made to a section or other provision,

1 the reference shall be considered to be made to such sec-
2 tion or provision of title 17, United States Code.

3 **SEC. 3. MODIFICATIONS TO STATUTORY LICENSE FOR SAT-**
4 **ELLITE CARRIERS.**

5 (a) HEADING RENAMED.—

6 (1) IN GENERAL.—The heading of section 119
7 is amended by striking “**superstations and net-**
8 **work stations for private home viewing**”
9 and inserting “**distant television program-**
10 **ming by satellite**”.

11 (2) TABLE OF CONTENTS.—The table of con-
12 tents for chapter I is amended by striking the item
13 relating to section 119 and inserting the following:

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

14 (b) UNSERVED HOUSEHOLD DEFINED.—Section
15 119(d)(10) is amended—

16 (1) by striking subparagraph (A) and inserting
17 the following:

18 “(A) cannot receive, through the use of a
19 conventional, stationary, outdoor rooftop receiv-
20 ing antenna, an over-the-air signal containing
21 the primary video or qualified multicast video of
22 a primary network station located in that
23 household’s local market and affiliated with
24 that network of—

1 “(i) if the signal originates as an ana-
2 log signal, Grade B intensity as defined by
3 the Federal Communications Commission
4 under section 73.683(a) of title 47, Code
5 of Federal Regulations, as in effect on
6 January 1, 1999; or

7 “(ii) if the signal originates as a dig-
8 ital signal, intensity defined in the values
9 for digital television noise-limited service
10 contour, as defined in regulations issued by
11 the Federal Communications Commission
12 under section 73.622(e) of title 47, Code of
13 Federal Regulations, as such regulations
14 may be amended from time to time;”;

15 (2) in subparagraph (B)—

16 (A) by striking “subsection (a)(14)” and
17 inserting “subsection (a)(13),”; and

18 (B) by striking “Satellite Home Viewer
19 Extension and Reauthorization Act of 2004”
20 and inserting “Satellite Home Viewer Update
21 and Reauthorization Act of 2009”;

22 (3) in subparagraph (D)—

23 (A) by striking “(a)(12)” and inserting
24 “(a)(11)”; and

25 (B) by striking “or”;

1 (4) in subparagraph (E), by striking the period
2 at the end and inserting “; or”; and

3 (5) by adding at the end the following new sub-
4 paragraph:

5 “(F) is a subscriber who was lawfully re-
6 ceiving, by reason of subparagraph (A) of this
7 paragraph, as in effect on the day before the
8 date of the enactment of the Satellite Home
9 Viewer Update and Reauthorization Act of
10 2009, secondary transmissions of the primary
11 transmission of a network station affiliated with
12 that network.”.

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

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

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

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

19 “(C) a filing fee, as determined by the
20 Register of Copyrights pursuant to section
21 708(a).”.

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

1 “(17) RETRANSMISSION FOR EMERGENCY
2 PREPARATION, RESPONSE, OR RECOVERY.—

3 “(A) AUTHORITY.—The secondary trans-
4 mission by a satellite carrier of a performance
5 or display of a work embodied in a primary
6 transmission of a television broadcast station is
7 not an infringement of copyright if such sec-
8 ondary transmission is made—

9 “(i) to a Federal governmental body
10 designated by the Secretary of Homeland
11 Security or an organization established
12 with the purpose of carrying out a system
13 of national and international relief efforts
14 and chartered under section 300101 of
15 title 36;

16 “(ii) to officers or employees of such
17 body or such organization as a part of the
18 official duties or employment of such offi-
19 cers or employees;

20 “(iii) at the request of the Secretary
21 of Homeland Security; and

22 “(iv) for the sole purpose of preparing
23 for, responding to, or recovering from an
24 emergency described under subparagraph
25 (B).

1 “(B) EMERGENCIES.—An emergency is de-
2 scribed under this subparagraph if the Sec-
3 retary of Homeland Security identifies such
4 emergency as a major disaster, a catastrophe,
5 an act of terrorism, or a transportation security
6 incident.

7 “(C) REGULATIONS.—Not later than 6
8 months after the date of the enactment of this
9 paragraph, the Secretary of Homeland Security
10 shall issue regulations to protect copyright own-
11 ers by preventing the unauthorized access to
12 the secondary transmissions described in sub-
13 paragraph (A).

14 “(D) REPORTS TO CONGRESSIONAL COM-
15 MITTEES.—Not later than one year after the
16 date of the enactment of this paragraph and by
17 September 30 of each year thereafter, the Sec-
18 retary of Homeland Security shall submit a re-
19 port to the Committee on the Judiciary of the
20 House of Representatives and the Committee
21 on the Judiciary of the Senate describing—

22 “(i) the manner in which the author-
23 ity granted under subparagraph (A) is
24 being used; and

1 “(ii) any additional legislative rec-
2 ommendations the Secretary may have.

3 “(E) DEFINITIONS.—As used in this para-
4 graph:

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

9 “(ii) TRANSPORTATION SECURITY IN-
10 CIDENT.—The term ‘transportation secu-
11 rity incident’ has the meaning given that
12 term in section 70101 of title 46.

13 “(F) EFFECTIVE DATE.—This paragraph
14 shall take effect with respect to a secondary
15 transmission described under subparagraph (A)
16 that is made after the end of the 30-day period
17 beginning on the effective date of the regula-
18 tions issued by the Secretary of Homeland Se-
19 curity under subparagraph (C).”.

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

24 “(vi) NETWORKS OF NONCOMMERCIAL
25 EDUCATIONAL BROADCAST STATIONS.—In

1 the case of a system of three or more non-
2 commercial educational broadcast stations
3 licensed by a single State, public agency,
4 or political, educational, or special purpose
5 subdivision of a State, the statutory license
6 provided for in subparagraph (A) shall
7 apply to the secondary transmission of the
8 primary transmission of such system to
9 any subscriber in any county within such
10 State, if such subscriber is located in a
11 designated market area that is not other-
12 wise eligible to receive the secondary trans-
13 mission of the primary transmission of
14 such system pursuant to section 122(a).”.

15 (f) DEPOSIT OF STATEMENTS AND FEES;
16 VERIFICATION PROCEDURES.—Section 119(b) is amend-
17 ed—

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

21 (2) by redesignating paragraphs (2), (3), and
22 (4) as paragraphs (3), (4), and (5), respectively;

23 (3) by inserting after paragraph (1) the fol-
24 lowing:

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

7 (4) in paragraph (3), as redesignated, by strik-
8 ing “paragraph (4)” and inserting “paragraph (5)”;

9 (5) in paragraph (4), as redesignated—

10 (A) by striking “paragraph (2)” and in-
11 sserting “paragraph (3)”;

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

14 (6) in paragraph (5), as redesignated, by strik-
15 ing “paragraph (2)” and inserting “paragraph (3)”.

16 (g) ADJUSTMENT OF ROYALTY FEES.—Section
17 119(e) is amended as follows:

18 (1) Paragraph (1) is amended—

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

21 (B) in subparagraph (A)—

22 (i) by striking “primary analog trans-
23 missions” and inserting “primary trans-
24 missions”; and

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

3 (C) in subparagraph (B)—

4 (i) by striking “January 2, 2005, the
5 Librarian of Congress” and inserting
6 “January 4, 2010, the Copyright Royalty
7 Judges”;

8 (ii) by striking “primary analog trans-
9 mission” and inserting “primary trans-
10 missions”; and

11 (iii) by adding at the end the fol-
12 lowing: “A separate fee shall be established
13 for each stream of a multicast trans-
14 mission included in the secondary trans-
15 mission to the subscriber.”;

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

19 (E) in subparagraph (D)—

20 (i) in clause (i)—

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

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

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

4 (I) by striking “(ii)(I) Within”
5 and inserting the following:

6 “(ii) PROCEDURE FOR ADOPTION OF
7 FEES.—

8 “(I) PUBLICATION OF NOTICE.—
9 Within”;

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

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

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

23 (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.—The term ‘subscriber’
15 means a person or entity that receives a secondary
16 transmission service from a satellite carrier and pays
17 a fee for the service, directly or indirectly, to the sat-
18 ellite carrier or to a distributor.”.

19 (2) LOW POWER TELEVISION STATION.—Sec-
20 tion 119(d)(12) is amended by striking “low power
21 television as” and inserting “low power TV station
22 as”.

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

1 “(11) LOCAL MARKET.—The term ‘local mar-
2 ket’ has the meaning given such term under section
3 122(j).”.

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

6 (A) in paragraph (2)(B), by striking “(as
7 defined in section 397 of the Communications
8 Act of 1934)”; and

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

10 “(14) NONCOMMERCIAL EDUCATIONAL BROAD-
11 CAST STATION.—The term ‘noncommercial edu-
12 cational broadcast station’ means a television broad-
13 cast station that—

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

22 “(B) is owned and operated by a munici-
23 pality and transmits only noncommercial pro-
24 grams for education purposes.”.

1 (5) MULTICAST TRANSMISSION.—Section
2 119(d) is amended by adding at the end the fol-
3 lowing:

4 “(15) MULTICAST TRANSMISSION.—A
5 ‘multicast transmission’ is a transmission by a tele-
6 vision station that contains more than one channel
7 or digital stream, each containing its own distinct
8 programming.”.

9 (6) QUALIFIED MULTICAST VIDEO.—Section
10 119(d), as amended by paragraph (5), is further
11 amended by adding at the end the following new
12 paragraph:

13 “(16) QUALIFIED MULTICAST VIDEO.—A ‘quali-
14 fied multicast video’ is a video stream other than the
15 primary video that, with respect to a particular sat-
16 ellite carrier either—

17 “(A) was carried by that satellite carrier
18 on July 1, 2009, and remains affiliated with the
19 same network; or

20 “(B) exists on January 1, 2013, and re-
21 mains affiliated with the same network.”.

22 (7) PRIMARY VIDEO.—Section 119(d), as
23 amended by paragraph (6), is further amended by
24 adding at the end the following new paragraph:

1 “(17) PRIMARY VIDEO.—The term ‘primary
2 video’ means the single programming stream and as-
3 sociated data that received the highest aggregate
4 viewership ratings of all programming streams of-
5 fered by that station as of the date of enactment of
6 the Satellite Home Viewer Update and Reauthoriza-
7 tion Act of 2009, offered by a television broadcast
8 station.”.

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

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

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

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

20 (j) LOW POWER TELEVISION STATIONS.—Section
21 119(a)(15) is amended to read as follows:

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

24 “(A) IN GENERAL.—Notwithstanding para-
25 graph (2)(B), and subject to subparagraphs (B)

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

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

17 “(C) ROYALTY FEES.—A satellite carrier
18 whose secondary transmission of the primary
19 transmission of the programming of a low
20 power television station is subject to statutory
21 licensing under this section shall be subject to
22 royalty payments under subsection (b)(1)(B)
23 for any transmission to a subscriber outside of
24 the local market of the low power television sta-
25 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 is amended by striking paragraph (3) and redesign-
13 ating paragraphs (4) through (17) as paragraphs
14 (3) through (16), respectively.

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

17 (A) in subsection (a)—

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

21 (ii) in paragraph (2)—

22 (I) in subparagraph (A), by strik-
23 ing “paragraphs (5), (6), (7), and
24 (8)” and inserting “paragraphs (4),
25 (5), (6), and (7)”;

1 (II) in subparagraph (B)(i), by
2 striking the second sentence; and

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

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

21 “(ii) MONTHLY LISTS.—After the sub-
22 mission of the initial lists under clause (i),
23 the satellite carrier shall, not later than
24 the 15th of each month, submit to the net-
25 work a list identifying (by name and ad-

1 dress, including street or rural route num-
 2 ber, city, State, and 9-digit zip code) any
 3 persons who have been added or dropped
 4 as subscribers under clause (i) since the
 5 last submission under clause (i).”; and

6 (iii) in paragraph (3)(E) (as redesign-
 7 nated)—

8 (I) by striking “under paragraph
 9 (3) or”; and

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

12 (B) in subsection (b)(1), by striking the
 13 final sentence.

14 (I) MODIFICATIONS TO PROVISIONS FOR SECONDARY
 15 TRANSMISSIONS BY SATELLITE CARRIERS.—

16 (1) PREDICTIVE MODEL.—Section
 17 119(a)(2)(B)(ii) is amended by adding at the end
 18 the following:

19 “(III) ACCURATE PREDICTIVE
 20 MODEL WITH RESPECT TO DIGITAL
 21 SIGNALS.—Notwithstanding subclause
 22 (I), in determining presumptively
 23 whether a person resides in an
 24 unserved household under subsection
 25 (d)(10)(A) with respect to digital sig-

1 nals, a court shall rely on a predictive
2 model set forth by the Federal Com-
3 munications Commission pursuant to
4 a rulemaking as provided in section
5 339(c)(3) of the Communications Act
6 of 1934 (47 U.S.C. 339(c)(3)), as
7 that model may be amended by the
8 Commission over time under such sec-
9 tion to increase the accuracy of that
10 model. Until such time as the Com-
11 mission sets forth such model, a court
12 shall rely on the predictive model en-
13 dorsed by the Commission in FCC
14 05–199, released December 9, 2005.”.

15 (2) MODIFICATIONS TO STATUTORY LICENSE
16 WHERE RETRANSMISSIONS INTO LOCAL MARKET
17 AVAILABLE.—Section 119(a)(3) (as redesignated) is
18 amended—

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

21 (B) by amending subparagraph (B) to read
22 as follows:

23 “(B) RULES FOR OTHER SUBSCRIBERS.—
24 The statutory license under paragraph (2) shall
25 not apply to the secondary transmission by a

1 satellite carrier of a primary transmission of a
2 network station to a person who—

3 “(i) is not a subscriber lawfully receiv-
4 ing such secondary transmission as of the
5 date of the enactment of the Satellite
6 Home Viewer Update and Reauthorization
7 Act of 2009; or

8 “(ii) at the time such person seeks to
9 subscribe to receive such secondary trans-
10 mission, resides in a local market where
11 the satellite carrier makes available to that
12 person the secondary transmission of the
13 primary transmission of a local network
14 station affiliated with the same television
15 network pursuant to the statutory license
16 under section 122, and such secondary
17 transmission of such primary transmission
18 can reach such person.”;

19 (C) by striking subparagraphs (C) and
20 (D);

21 (D) by redesignating subparagraphs (E),
22 (F), and (G) as subparagraphs (C), (D), and
23 (E), respectively;

1 (E) in subparagraph (D) (as redesignated),
2 by striking “(C) or (D)” and inserting “(B)”;
3 and

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

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

9 (A) by striking “\$5” and inserting
10 “\$250”; and

11 (B) by striking “\$250,000” each place it
12 appears and inserting “\$2,500,000”.

13 (4) CLERICAL AMENDMENT.—Section
14 119(a)(2)(B)(iii)(II) is amended by striking “In this
15 clause” and inserting “In this clause,”.

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

18 (n) CLERICAL AMENDMENTS.—Section 119 is
19 amended—

20 (1) by striking “of the Code of Federal Regula-
21 tions” each place it appears and inserting “, Code
22 of Federal Regulations”; and

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

1 **SEC. 4. MODIFICATIONS TO STATUTORY LICENSE FOR SAT-**
 2 **ELLITE CARRIERS IN LOCAL MARKETS.**

3 (a) HEADING RENAMED.—

4 (1) IN GENERAL.—The heading of section 122
 5 is amended by striking “**by satellite carriers**
 6 **within local markets**” and inserting “**of local**
 7 **television programming by satellite**”.

8 (2) TABLE OF CONTENTS.—The table of con-
 9 tents for chapter I is amended by striking the item
 10 relating to section 122 and inserting the following:

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

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

13 “(a) SECONDARY TRANSMISSIONS INTO LOCAL MAR-
 14 KETS.—

15 “(1) SECONDARY TRANSMISSIONS OF TELE-
 16 VISION BROADCAST STATIONS WITHIN A LOCAL MAR-
 17 KET.—A secondary transmission of a performance
 18 or display of a work embodied in a primary trans-
 19 mission of a television broadcast station into the sta-
 20 tion’s local market shall be subject to statutory li-
 21 censing under this section if—

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

1 “(B) with regard to secondary trans-
2 missions, the satellite carrier is in compliance
3 with the rules, regulations, or authorizations of
4 the Federal Communications Commission gov-
5 erning the carriage of television broadcast sta-
6 tion signals; and

7 “(C) the satellite carrier makes a direct or
8 indirect charge for the secondary transmission
9 to—

10 “(i) each subscriber receiving the sec-
11 ondary transmission; or

12 “(ii) a distributor that has contracted
13 with the satellite carrier for direct or indi-
14 rect delivery of the secondary transmission
15 to the public.

16 “(2) SIGNIFICANTLY VIEWED STATIONS.—

17 “(A) IN GENERAL.—The statutory license
18 under paragraph (1) shall apply to the sec-
19 ondary transmission of the primary trans-
20 mission of a network station or a non-network
21 station to a subscriber who resides outside the
22 station’s local market but within a community
23 in which the signal has been determined by the
24 Federal Communications Commission to be sig-
25 nificantly viewed in such community, pursuant

1 to the rules, regulations, and authorizations of
2 the Federal Communications Commission in ef-
3 fect on April 15, 1976, applicable to deter-
4 mining with respect to a cable system whether
5 signals are significantly viewed in a community.

6 “(B) LIMITATION.—Subparagraph (A)
7 shall apply only to secondary transmissions of
8 the primary transmissions of network stations
9 or non-network stations to subscribers who re-
10 ceive secondary transmissions from a satellite
11 carrier pursuant to the statutory license under
12 paragraph (1).

13 “(C) WAIVER.—A subscriber who is denied
14 the secondary transmission of the primary
15 transmission of a network station or a non-net-
16 work station under subparagraph (B) may re-
17 quest a waiver from such denial by submitting
18 a request, through the subscriber’s satellite car-
19 rier, to the network station or non-network sta-
20 tion in the local market affiliated with the same
21 network or non-network where the subscriber is
22 located. The network station or non-network
23 station shall accept or reject the subscriber’s re-
24 quest for a waiver within 30 days after receipt
25 of the request. If the network station or non-

1 network station fails to accept or reject the sub-
2 scriber's request for a waiver within that 30-
3 day period, that network station or non-network
4 station shall be deemed to agree to the waiver
5 request.

6 “(3) SECONDARY TRANSMISSION OF LOW
7 POWER PROGRAMMING.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graphs (B) through (D) of this paragraph, the
10 statutory license provided under paragraph (1)
11 shall apply to the secondary transmission by a
12 satellite carrier of the primary transmission of
13 a network station or a non-network station that
14 is licensed as a low power television station, to
15 a subscriber who resides within the same local
16 market as the station that originates the trans-
17 mission.

18 “(B) NO APPLICABILITY TO REPEATERS
19 AND TRANSLATORS.—Secondary transmissions
20 by a satellite carrier provided for in subpara-
21 graph (A) shall not apply to any low power tele-
22 vision station that retransmits the programs
23 and signals of another television station for
24 more than 2 hours each day.

1 “(C) LIMITATION TO SUBSCRIBERS TAKING
2 LOCAL-INTO-LOCAL SERVICE.—Secondary trans-
3 missions by a satellite carrier provided for in
4 subparagraph (A) may be made only to sub-
5 scribers who receive secondary transmissions of
6 primary transmissions from that satellite car-
7 rier pursuant to the statutory license in para-
8 graph (1), and only in conformity with the re-
9 quirements under section 340(b) of the Com-
10 munications Act of 1934, as in effect on the
11 date of the enactment of the Satellite Home
12 Viewer Update and Reauthorization Act of
13 2009.

14 “(D) NO IMPACT ON OTHER SECONDARY
15 TRANSMISSIONS OBLIGATIONS.—A satellite car-
16 rier that makes secondary transmissions of a
17 primary transmission of a low power television
18 station under a statutory license provided under
19 this section is not required, by reason of such
20 secondary transmissions, to make any other sec-
21 ondary transmissions.”.

22 (c) REPORTING REQUIREMENTS.—Section 122(b) is
23 amended—

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

4 “(A) a list identifying (by name in alpha-
5 betical order and street address, including coun-
6 ty and 9-digit zip code) all subscribers to which
7 the satellite carrier makes secondary trans-
8 missions of that primary transmission under
9 subsection (a); and

10 “(B) a separate list, aggregated by des-
11 ignated market area (by name and address, in-
12 cluding street or rural route number, city,
13 State, and 9-digit zip code), which shall indicate
14 those subscribers being served pursuant to sub-
15 section (a)(2), relating to significantly viewed
16 stations.”; and

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

20 “(A) a list identifying (by name in alpha-
21 betical order and street address, including coun-
22 ty and 9-digit zip code) any subscribers who
23 have been added or dropped as subscribers
24 since the last submission under this subsection;
25 and

1 “(B) a separate list, aggregated by des-
2 gnated market area (by name and street ad-
3 dress, including street or rural route number,
4 city, State, and 9-digit zip code), identifying
5 those subscribers whose service pursuant to
6 subsection (a)(2), relating to significantly
7 viewed stations, has been added or dropped
8 since the last submission under this sub-
9 section.”.

10 (d) VIOLATIONS FOR TERRITORIAL RESTRICTIONS.—

11 (1) MODIFICATION TO STATUTORY DAMAGES.—Sec-
12 tion 122(f) is amended—

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

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

17 (2) CONFORMING AMENDMENT FOR SIGNIFICANTLY
18 VIEWED STATIONS.—Section 122 is amended—

19 (A) in subsection (f), by striking “section 119
20 or” each place it appears and inserting the fol-
21 lowing: “section 119, subject to statutory licensing
22 by reason of subsection (a)(2)(A), or subject to”;
23 and

1 (B) in subsection (g), by striking “section 119
2 or” and inserting the following: “section 119, sub-
3 section (a)(2)(A), or”.

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

5 (1) in paragraph (1), by striking “which contracts”
6 and inserting “that contracts”;

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

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

10 “(i) in the case of a television broad-
11 cast station that is not a low power tele-
12 vision station, the designated market area
13 in which such station is located, and—

14 “(I) in the case of a commercial
15 television broadcast station, all com-
16 mercial television broadcast stations
17 licensed to a community within the
18 same designated market area are
19 within the same local market; and

20 “(II) in the case of a non-
21 commercial educational television
22 broadcast station, any station that is
23 licensed to a community within the
24 same designated market area as the

1 noncommercial educational television
2 broadcast station; and

3 “(ii) in the case of a low power tele-
4 vision broadcast station, the area that is
5 both—

6 “(I) within the designated mar-
7 ket area in which such station is lo-
8 cated; and

9 “(II) within the area within 35
10 miles of the transmitter site of such
11 station, except that in the case of
12 such a station located in a standard
13 metropolitan statistical area that has
14 1 of the 50 largest populations of all
15 standard metropolitan statistical areas
16 (based on the 1980 decennial census
17 of population taken by the Secretary
18 of Commerce), the area within 20
19 miles of the transmitter site of such
20 station.”;

21 (3) in paragraph (3)—

22 (A) in the heading of such paragraph, by insert-
23 ing “NON-NETWORK STATION;” after “NETWORK
24 STATION;”; and

1 (B) by inserting “‘non-network station,’” after
2 “‘network station,’”;

3 (4) by amending paragraph (4) to read as follows:

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

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

10 “(6) LOW POWER TELEVISION STATION.—The
11 term “low power television station” means a low
12 power TV station as defined under section 74.701(f)
13 of title 47, Code of Federal Regulations, as in effect
14 on June 1, 2004. For purposes of this paragraph,
15 the term “low power television station” includes a
16 low power television station that has been accorded
17 primary status as a Class A television licensee under
18 section 73.6001(a) of title 47, Code of Federal Reg-
19 ulations.”.

20 **SEC. 5. MODIFICATIONS TO CABLE SYSTEM SECONDARY**
21 **TRANSMISSION RIGHTS UNDER SECTION 111.**

22 (a) **HEADING RENAMED.—**

23 (1) **IN GENERAL.—**The heading of section 111
24 is amended by inserting at the end the following:

25 **“of television programming by cable”.**

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

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

4 (b) NATIONAL EMERGENCY MONITORING EXEMP-
 5 TION.—Section 111 is amended—

6 (1) in subsection (a)—

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

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

11 (C) by adding at the end the following new
 12 paragraph:

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

16 (2) by adding at the end the following new sub-
 17 section:

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

20 “(1) AUTHORITY.—For purposes of subsection
 21 (a)(6), a secondary transmission by a cable system
 22 of a performance or display of a work embodied in
 23 a primary transmission by a television broadcast sta-

1 tion is made for emergency preparation, response, or
2 recovery if such transmission is made—

3 “(A) by a cable system to a Federal gov-
4 ernmental body designated by the Secretary of
5 Homeland Security or an organization estab-
6 lished with the purpose of carrying out a sys-
7 tem of national and international relief efforts
8 and chartered under section 300101 of title 36;

9 “(B) to officers or employees of such body
10 or such organization as a part of the official du-
11 ties or employment of such officers or employ-
12 ees;

13 “(C) at the request of the Secretary of
14 Homeland Security; and

15 “(D) for the sole purpose of preparing for,
16 responding to, or recovering from an emergency
17 described under paragraph (2).

18 “(2) EMERGENCIES.—An emergency is de-
19 scribed under this paragraph if the Secretary of
20 Homeland Security identifies such emergency as a
21 major disaster, a catastrophe, an act of terrorism, or
22 a transportation security incident.

23 “(3) REGULATIONS.—Not later than 6 months
24 after the date of the enactment of this subsection,
25 the Secretary of Homeland Security shall issue regu-

1 lations to protect copyright owners by preventing the
2 unauthorized access to the secondary transmissions
3 described in paragraph (1).

4 “(4) REPORTS TO CONGRESSIONAL COMMIT-
5 TEES.—Not later than one year after the date of the
6 enactment of this subsection and by September 30
7 of each year thereafter, the Secretary of Homeland
8 Security shall submit a report to the Committee on
9 the Judiciary of the House of Representatives and
10 the Committee on the Judiciary of the Senate de-
11 scribing—

12 “(A) the manner in which the authority
13 granted under paragraph (1) is being used; and

14 “(B) any additional legislative rec-
15 ommendations the Secretary may have.

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

17 “(A) TERRORISM.—The term ‘terrorism’
18 has the meaning given that term in section
19 2(16) of the Homeland Security Act of 2002 (6
20 U.S.C. 101(16)).

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

1 “(6) EFFECTIVE DATE.—This subsection shall
2 take effect with respect to a secondary transmission
3 described under paragraph (1) that is made after
4 the end of the 30-day period beginning on the effec-
5 tive date of the regulations issued by the Secretary
6 of Homeland Security under paragraph (3).”.

7 (c) STATUTORY LICENSE FOR SECONDARY TRANS-
8 MISSIONS BY CABLE SYSTEMS.—Section 111(d) is amend-
9 ed—

10 (1) in paragraph (1)—

11 (A) in the matter preceding subparagraph

12 (A)—

13 (i) by striking “A cable system whose
14 secondary” and inserting the following:
15 “STATEMENT OF ACCOUNT AND ROYALTY
16 FEES.—A cable system whose secondary”;
17 and

18 (ii) by striking “by regulation—” and
19 inserting “by regulation the following:”;

20 (B) in subparagraph (A)—

21 (i) by striking “a statement of ac-
22 count” and inserting “A statement of ac-
23 count”; and

24 (ii) by striking “;and” and inserting a
25 period; and

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

3 “(B) A total royalty fee for the period cov-
4 ered by the statement, computed on the basis of
5 specified percentages of the gross receipts from
6 subscribers to the cable service during such pe-
7 riod for the basic service of providing secondary
8 transmissions of primary broadcast transmit-
9 ters, as follows:

10 “(i) 1.064 percent for the privilege of
11 further transmitting, beyond the local serv-
12 ice area of such primary transmitter, any
13 non-network programming of a primary
14 transmitter in whole or in part, such
15 amount to be applied against the fee, if
16 any, payable pursuant to clauses (ii)
17 through (iv);

18 “(ii) 1.064 percent of such gross re-
19 ceipts for the first distant signal equiva-
20 lent;

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

24 “(iv) 0.330 percent of such gross re-
25 ceipts for the fifth distant signal equivalent

1 and each distant signal equivalent there-
2 after.

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

5 “(i) any fraction of a distant signal
6 equivalent shall be computed at its frac-
7 tional value;

8 “(ii) in the case of any cable system
9 located partly within and partly outside of
10 the local service area of a primary trans-
11 mitter, gross receipts shall be limited to
12 those gross receipts derived from sub-
13 scribers located outside of the local service
14 area of such primary transmitter; and

15 “(iii) if a cable system provides a sec-
16 ondary transmission of a primary trans-
17 mitter to some but not all communities
18 served by that cable system—

19 “(I) the gross receipts and the
20 distant signal equivalent values for
21 such secondary transmission shall be
22 derived solely on the basis of the sub-
23 scribers in those communities where
24 the cable system provides such sec-
25 ondary transmission; and

1 “(II) the total royalty fee for the
2 period paid by such system shall not
3 be less than the royalty fee calculated
4 under subparagraph (B)(i) multiplied
5 by the gross receipts from all sub-
6 scribers to the system.

7 “(D) A cable system that, on a statement
8 submitted before the date of the enactment of
9 the Satellite Home Viewer Update and Reau-
10 thorization Act of 2009, computed its royalty
11 fee consistent with the methodology under this
12 paragraph or that amends a statement filed be-
13 fore such date of enactment to compute the roy-
14 alty fee due using such methodology shall not
15 be subject to an action for infringement, or eli-
16 gible for any royalty refund, arising out of its
17 use of such methodology on such statement.

18 “(E) If the actual gross receipts paid by
19 subscribers to a cable system for the period cov-
20 ered by the statement for the basic service of
21 providing secondary transmissions of primary
22 broadcast transmitters total \$263,800 or less—

23 “(i) gross receipts of the cable system
24 for the purpose of this paragraph shall be
25 computed by subtracting from such actual

1 gross receipts the amount by which
2 \$263,800 exceeds such actual gross re-
3 cepts, except that in no case shall a cable
4 system's gross receipts be reduced to less
5 than \$10,400; and

6 “(ii) the royalty fee payable under this
7 paragraph shall be 0.5 percent, regardless
8 of the number of distant signal equiva-
9 lents, if any.

10 “(F) If the actual gross receipts paid by
11 subscribers to a cable system for the period cov-
12 ered by the statement for the basic service of
13 providing secondary transmissions of primary
14 broadcast transmitters are more than \$263,800
15 but less than \$527,600, the royalty fee payable
16 under this paragraph shall be—

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

20 “(ii) 1 percent of any gross receipts in
21 excess of \$263,800, but less than
22 \$527,600, regardless of the number of dis-
23 tant signal equivalents, if any.

1 “(G) A filing fee, as determined by the
2 Register of Copyrights pursuant to section
3 708(a).”;

4 (2) in paragraph (2), by striking “The Register
5 of Copyrights” and inserting the following: “HAN-
6 DLING OF FEES.—The Register of Copyrights”;

7 (3) in paragraph (3)—

8 (A) by striking “The royalty fees” and in-
9 serting the following: “DISTRIBUTION OF ROY-
10 ALTY FEES TO COPYRIGHT OWNERS.—The roy-
11 alty fees”;

12 (B) in subparagraph (A)—

13 (i) by striking “any such” and insert-
14 ing “Any such”; and

15 (ii) by striking “; and” and inserting
16 a period;

17 (C) in subparagraph (B)—

18 (i) by striking “any such” and insert-
19 ing “Any such”; and

20 (ii) by striking “; and” and inserting
21 a period; and

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

24 (4) in paragraph (4), by striking “The royalty
25 fees” and inserting the following: “PROCEDURES

1 FOR ROYALTY FEE DISTRIBUTION.—The royalty
2 fees”; and

3 (5) by adding at the end the following new
4 paragraphs:

5 “(5) VERIFICATION OF ACCOUNTS AND FEE
6 PAYMENTS.—The Register of Copyrights shall issue
7 regulations to provide for the confidential
8 verification and audit of the information reported on
9 the semi-annual statement of account filed after the
10 date of the enactment of the Satellite Home Viewer
11 Update and Reauthorization Act of 2009. The regu-
12 lations shall provide for a single verification proce-
13 dure, with respect to the semi-annual statements of
14 account filed by a cable system, to be conducted by
15 a qualified independent auditor on behalf of all copy-
16 right owners whose works were the subject of a sec-
17 ondary transmission to the public by a cable system
18 of a performance or display of a work embodied in
19 a primary transmission and for a mechanism to re-
20 view and cure defects identified by any such audit.

21 “(6) ACCEPTANCE OF ADDITIONAL DEPOSITS.—
22 Any royalty fee payments received by the Copyright
23 Office from cable systems for the secondary trans-
24 mission of primary transmissions that are in addi-
25 tion to the payments calculated and deposited in ac-

1 cordance with this subsection shall be deemed to
2 have been deposited for the particular accounting pe-
3 riod during which they are received and shall be dis-
4 tributed as specified under this subsection.”.

5 (d) DEFINITIONS.—Section 111(f) is amended—

6 (1) in the first undesignated paragraph, by
7 striking “A ‘primary transmission’ is a trans-
8 mission” and inserting the following:

9 “(1) PRIMARY TRANSMISSION.—A ‘primary
10 transmission’ is a transmission, including a
11 multicast transmission,”;

12 (2) in the second undesignated paragraph—

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

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

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

19 (3) in the third undesignated paragraph—

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

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

23 (B) by striking “Territory, Trust Terri-
24 tory, or Possession” and inserting “territory,

1 trust territory, or possession of the United
2 States”;

3 (4) in the fourth undesignated paragraph—

4 (A) in the first sentence, by striking “The
5 ‘local service area of a primary transmitter’ ”
6 and inserting the following:

7 “(4) LOCAL SERVICE AREA OF A PRIMARY
8 TRANSMITTER.—The ‘local service area of a primary
9 transmitter’ ”;

10 (B) by striking “76.59 of title 47 of the
11 Code of Federal Regulations” and inserting the
12 following: “76.59 of title 47, Code of Federal
13 Regulations, or within the noise-limited contour
14 as defined in 73.622(e)(1) of title 47, Code of
15 Federal Regulations”; and

16 (C) by striking “as defined by the rules
17 and regulations of the Federal Communications
18 Commission,”;

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

21 “(5) DISTANT SIGNAL EQUIVALENT.—

22 “(A) IN GENERAL.—Except as provided
23 under subparagraph (B), a ‘distant signal
24 equivalent’—

1 “(i) is the value assigned to the sec-
2 ondary transmission of any non-network
3 television programming carried by a cable
4 system in whole or in part beyond the local
5 service area of the primary transmitter of
6 such programming; and

7 “(ii) is computed by assigning a value
8 of one to each channel or digital stream
9 carrying independent television program-
10 ming, and a value of one-quarter to each
11 channel or digital stream carrying network
12 television programming or noncommercial
13 educational television programming trans-
14 mitted by a television broadcast station
15 pursuant to the rules, regulations, and au-
16 thorizations of the Federal Communica-
17 tions Commission.

18 “(B) EXCEPTIONS.—The values for inde-
19 pendent, network, and noncommercial edu-
20 cational programming specified in subparagraph
21 (A) are subject to the following:

22 “(i) Where the rules and regulations
23 of the Federal Communications Commis-
24 sion require a cable system to omit the fur-
25 ther transmission of a particular program

1 and such rules and regulations also permit
2 the substitution of another program em-
3 bodying a performance or display of a
4 work in place of the omitted transmission,
5 or where such rules and regulations in ef-
6 fect on the date of enactment of the Copy-
7 right Act of 1976 permit a cable system,
8 at its election, to effect such omission and
9 substitution of a nonlive program or to
10 carry additional programs not transmitted
11 by primary transmitters within whose local
12 service area the cable system is located, no
13 value shall be assigned for the substituted
14 or additional program.

15 “(ii) Where the rules, regulations, or
16 authorizations of the Federal Communica-
17 tions Commission in effect on the date of
18 enactment of the Copyright Act of 1976
19 permit a cable system, at its election, to
20 omit the further transmission of a par-
21 ticular program and such rules, regula-
22 tions, or authorizations also permit the
23 substitution of another program embodying
24 a performance or display of a work in
25 place of the omitted transmission, the

1 value assigned for the substituted or addi-
2 tional program shall be, in the case of a
3 live program, the value of one full distant
4 signal equivalent multiplied by a fraction
5 that has as its numerator the number of
6 days in the year in which such substitution
7 occurs and as its denominator the number
8 of days in the year.

9 “(iii) In the case of a channel or dig-
10 ital stream carried pursuant to the late-
11 night or specialty programming rules of
12 the Federal Communications Commission,
13 or a channel or digital stream carried on a
14 part-time basis where full-time carriage is
15 not possible because the cable system lacks
16 the activated channel capacity to re-
17 transmit on a full-time basis all signals
18 that it is authorized to carry, the values
19 for independent, network, and noncommer-
20 cial educational programming set forth in
21 subparagraph (A), as the case may be,
22 shall be multiplied by a fraction that is
23 equal to the ratio of the broadcast hours of
24 such channel or digital stream carried by

1 the cable system to the total broadcast
2 hours of the channel or digital stream.”;

3 (6) in the sixth undesignated paragraph—

4 (A) by striking “A ‘network station’” and
5 inserting the following:

6 “(6) NETWORK STATION.—

7 “(A) IN GENERAL.—A ‘network station’”;

8 and

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

10 “(B) NETWORK PROGRAMMING.—The term
11 ‘network television programming’ means pro-
12 gramming that is transmitted by a network sta-
13 tion.”;

14 (7) by striking the seventh undesignated para-
15 graph and inserting the following:

16 “(7) INDEPENDENT STATION.—

17 “(A) IN GENERAL.—An ‘independent sta-
18 tion’ is a commercial television broadcast sta-
19 tion other than a network station.

20 “(B) INDEPENDENT PROGRAMMING.—The
21 term ‘independent television programming’
22 means all programming other than ‘network tel-
23 evision programming’ or ‘noncommercial edu-
24 cational television programming’.”;

1 (8) by striking the eighth undesignated para-
2 graph and inserting the following:

3 “(8) NONCOMMERCIAL EDUCATIONAL STA-
4 TION.—

5 “(A) IN GENERAL.—A ‘noncommercial
6 educational station’ is a television or radio
7 broadcast station that—

8 “(i) under the rules and regulations of
9 the Federal Communications Commission
10 in effect on November 2, 1978, is eligible
11 to be licensed by the Federal Communica-
12 tions Commission as a noncommercial edu-
13 cational radio or television broadcast sta-
14 tion and that is owned and operated by a
15 public agency or nonprofit private founda-
16 tion, corporation, or association; or

17 “(ii) is owned and operated by a mu-
18 nicipality and that transmits only non-
19 commercial programs for education pur-
20 poses.

21 “(B) NONCOMMERCIAL EDUCATIONAL PRO-
22 GRAMMING.—The term ‘noncommercial edu-
23 cational television programming’ means pro-
24 gramming that is transmitted by a noncommer-
25 cial educational station.”; and

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

2 “(9) MULTICAST TRANSMISSION.—A ‘multicast
3 transmission’ is a transmission by a television sta-
4 tion that contains more than one channel or digital
5 stream, each containing its own distinct program-
6 ming.

7 “(10) SUBSCRIBER.—The term ‘subscriber’
8 means a person or entity that receives a secondary
9 transmission service from a cable system and pays
10 a fee for the service, directly or indirectly, to the
11 cable system.”.

12 (e) TIMING OF SECTION 111 PROCEEDINGS.—Sec-
13 tion 804(b)(1) is amended by striking “2005” each place
14 it appears and inserting “2015”.

15 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

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

18 (A) in subsections (a), (c), and (e), by
19 striking “clause” each place it appears and in-
20 serting “paragraph”;

21 (B) in subsection (c), by striking “clauses”
22 and inserting “paragraphs”; and

23 (C) in subsection (e)(1)(F), by striking
24 “subclause” each place it appears and inserting
25 “subparagraph”.

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

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

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

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

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

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

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

19 (E) in paragraph (2)(A), by striking “and”
20 at the end;

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

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

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

3 (6) CORRECTION TO TERRITORY REFERENCE.—
4 Section 111(e)(2) is amended in the matter pre-
5 ceding subparagraph (A) by striking “three terri-
6 tories” and inserting “five entities”.

7 **SEC. 6. CERTAIN WAIVERS GRANTED TO PROVIDERS OF**
8 **LOCAL-INTO-LOCAL SERVICE FOR ALL DMAS.**

9 Section 119 is amended by adding at the end the fol-
10 lowing new subsection:

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

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

19 “(2) LIMITED TEMPORARY WAIVER.—

20 “(A) IN GENERAL.—Upon a request made
21 by a satellite carrier, a court that issued an in-
22 junction against such carrier under subsection
23 (a)(7)(B) before the date of the enactment of
24 this subsection shall waive such injunction with
25 respect to the statutory license provided under

1 subsection (a)(2) to the extent necessary to
2 allow such carrier to retransmit distant network
3 signals to unserved households located in short
4 markets in which such carrier was not pro-
5 viding local service pursuant to the license
6 under section 122 as of December 31, 2009.

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

14 “(C) FAILURE TO MAKE GOOD FAITH EF-
15 FORT TO PROVIDE LOCAL-INTO-LOCAL SERVICE
16 TO ALL DMAS.—

17 “(i) WILLFUL FAILURE.—If the court
18 making a temporary waiver under subpara-
19 graph (A) determines that the satellite car-
20 rier that made the request for such waiver
21 has failed to make a good faith effort to
22 provide local-into-local service to all DMAs
23 and determines that such failure was will-
24 ful, such failure—

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

7 “(II) shall result in the termi-
8 nation of the waiver provided under
9 subparagraph (A).

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

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

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

1 “(III) the severity and duration
2 of the service interruption.

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

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

14 “(3) ESTABLISHMENT OF QUALIFIED CARRIER
15 RECOGNITION.—

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

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

24 “(ii) a request for a waiver of the in-
25 junction; and

1 “(iii) a certification issued pursuant
2 to section **[X]** of **[E&C Act]**.

3 “(B) GRANT OF RECOGNITION AS A QUALI-
4 FIED CARRIER.—Upon receipt of a statement of
5 eligibility, the court shall recognize the entity as
6 a qualified carrier and issue the waiver under
7 paragraph (1).

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

16 “(D) LOSS OF RECOGNITION PREVENTS
17 FUTURE RECOGNITION.—No entity may be rec-
18 ognized as a qualified carrier if such entity had
19 previously been recognized as a qualified carrier
20 and subsequently lost such recognition or volun-
21 tarily terminated such recognition under sub-
22 paragraph (C).

23 “(4) QUALIFIED CARRIER OBLIGATIONS AND
24 COMPLIANCE.—

1 “(A) IN GENERAL.—An entity recognized
2 as a qualified carrier shall continue to provide
3 local-into-local service to all DMAs.

4 “(B) COMPLIANCE DETERMINATION.—
5 Upon the motion of an aggrieved television
6 broadcast station, the court recognizing an enti-
7 ty as a qualified carrier may make a determina-
8 tion of whether the entity is providing local-
9 into-local service to all DMAs.

10 “(C) PLEADING REQUIREMENT.—In any
11 motion brought under subparagraph (B), the
12 party making such motion shall specify one or
13 more designated market areas (as such term is
14 defined in section 122(j)(2)(C)) for which the
15 failure to provide service is being alleged, and,
16 for each such designated market area, shall
17 plead with particularity the circumstances of
18 the alleged failure.

19 “(D) BURDEN OF PROOF.—In any pro-
20 ceeding to make a determination under sub-
21 paragraph (B), and with respect to a des-
22 ignated market area for which failure to provide
23 service is alleged, the entity recognized as a
24 qualified carrier shall have the burden of prov-
25 ing that the entity provided local-into-local serv-

1 ice with a good quality satellite signal to 90
2 percent of the households in such designated
3 market area at the time and place alleged.

4 “(5) FAILURE TO PROVIDE SERVICE.—

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

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

18 “(ii) impose a fine of no greater than
19 \$250,000.

20 “(B) EXCEPTION FOR NONWILLFUL VIOLA-
21 TION.—If the court determines that the failure
22 to provide local-into-local service to all DMAs is
23 nonwillful, the court may in its discretion im-
24 pose financial penalties for noncompliance that
25 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 to exceed
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 90 percent of the
7 households in a designated market area based
8 on the most recent census data shall be consid-
9 ered to be providing local service to such des-
10 ignated market area.

11 “(C) GOOD QUALITY SATELLITE SIGNAL
12 DEFINED.—The term ‘good quality signal’ has
13 the meaning given such term under section **[X]**
14 of **[E&C Act]**.”.

15 **SEC. 7. TERMINATION OF LICENSE.**

16 Section 119, as amended by this Act, shall cease to
17 be effective on December 31, 2014.

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