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Part 1

SATELLITE COMPETITION AND CONSUMER PROTECTION ACT

APRIL 7, 1999.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 851]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 851) to require the Federal Communications Commission to establish improved predictive models for determining the availability of television broadcast signals, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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69–006

AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Satellite Competition and Consumer Protection Act".

TITLE I—AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934

SEC. 101. RETRANSMISSION CONSENT.

Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended—

(1) by amending paragraphs (1) and (2) to read as follows:

"(b)(1) No cable system or other multichannel video programming distributor shall retransmit the signal of a television broadcast station, or any part thereof, except—

"(A) with the express authority of the originating station;

"(B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or

"(C) pursuant to section 338, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

"(2) The provisions of this subsection shall not apply—

"(A) to retransmission of the signal of a noncommercial television broadcast station;

"(B) to retransmission of the signal of a television broadcast station outside the station's local market by a satellite carrier directly to its subscribers, if—

"(i) such station was a superstation on May 1, 1991;

"(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the compulsory license of section 119 of title 17, United States Code; and

"(iii) the satellite carrier complies with all network nonduplication, syndicated exclusivity, and sports blackout rules adopted by the Commission pursuant to section 712 of this Act;

"(C) until 7 months after the date of enactment of the Satellite Competition and Consumer Protection Act, to retransmission of the signal of a television network station directly to a satellite antenna, if the subscriber receiving the signal is located in an area outside the local market of such station; or

"(D) to retransmission by a cable operator or other multichannel video provider, other than a satellite carrier, of the signal of a television broadcast station outside the station's local market if such signal was obtained from a satellite carrier and—

"(i) the originating station was a superstation on May 1, 1991; and

"(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the compulsory license of section 119 of title 17, United States Code.";

(2) by adding at the end of paragraph (3) the following new subparagraph:

"(C) Within 45 days after the date of enactment of the Satellite Competition and Consumer Protection Act, the Commission shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall complete all actions necessary to prescribe such regulations within one year after such date of enactment. Such regulations shall—

"(i) establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph; and

"(ii) prohibit television broadcast stations that provide retransmission consent from engaging in discriminatory practices, understandings, arrangements, and activities, including exclusive contracts for carriage, that prevent a satellite carrier from obtaining retransmission consent from such stations.";

(3) in paragraph (4), by adding at the end the following new sentence: "If an originating television station elects under paragraph (3)(C) to exercise its right to grant retransmission consent under this subsection with respect to a satellite carrier, the provisions of section 338 shall not apply to the carriage of the signal of such station by such satellite carrier.";

(4) in paragraph (5), by striking "614 or 615" and inserting "338, 614, or 615"; and

(5) by adding at the end the following new paragraph:

"(7) For purposes of this subsection, the term 'television broadcast station' means an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.".

SEC. 102. MUST-CARRY FOR SATELLITE CARRIERS RETRANSMITTING TELEVISION BROADCAST SIGNALS.

Title III of the Communications Act of 1934 is amended by inserting after section 337 (47 U.S.C. 337) the following new section:

"SEC. 338. CARRIAGE OF LOCAL TELEVISION SIGNALS BY SATELLITE CARRIERS.

"(a) CARRIAGE OBLIGATIONS.—

"(1) IN GENERAL.—Subject to the limitations of subparagraph (2), each satellite carrier providing secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request all television broadcast stations located within that local market, subject to section 325(b), by retransmitting the signal or signals of such stations that are identified by Commission regulations for purposes of this section.

"(2) EFFECTIVE DATE.—No satellite carrier shall be required to carry local television broadcast stations under paragraph (1) until January 1, 2002.

"(b) GOOD SIGNAL REQUIRED.—

"(1) COSTS.—A television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

"(2) REGULATIONS.—The regulations issued under subsection (g) shall set forth the obligations necessary to carry out this subsection.

"(c) DUPLICATION NOT REQUIRED.—

"(1) COMMERCIAL STATIONS.—Notwithstanding subsection (a), a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than 1 local commercial television broadcast station in a single local market that is affiliated with a particular television network.

"(2) NONCOMMERCIAL STATIONS.—The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulations shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under section 615.

"(d) CHANNEL POSITIONING.—No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

"(e) COMPENSATION FOR CARRIAGE.—A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.

"(f) REMEDIES.—

"(1) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations

under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier is obligated to carry upon request the signal of such station or has otherwise failed to comply with other requirements of this section. The satellite carrier shall, within 30 days of such written notification, respond in writing to such notification and either begin carrying the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with other requirements of this section, as the case may be. A local television broadcast station that is denied carriage in accordance with this section by a satellite carrier or is otherwise harmed by a response by a satellite carrier that it is in compliance with other requirements of this section may obtain review of such denial or response by filing a compliant with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

"(2) OPPORTUNITY TO RESPOND.—The Commission shall afford the satellite carrier against which a complaint is filed under subparagraph (A) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

"(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed under subparagraph (A), the Commission shall determine whether the satellite carrier has met its obligations under this chapter. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier, in the case of an obligation to carry a station, to begin carriage of the station and to continue such carriage for at least 12 months, or, in the case of the failure to meet other obligations under this section, shall take other appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of this chapter, the Commission shall dismiss the complaint.

"(g) REGULATIONS BY COMMISSION.—Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing this section.

"(h) DEFINITIONS.—As used in this section:

"(1) SUBSCRIBER.—The term 'subscriber' means an entity that receives a secondary transmission service by means of a secondary transmission from a satellite and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

"(2) DISTRIBUTOR.—The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

"(3) LOCAL RECEIVE FACILITY.—The term 'local receive facility' means the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

"(4) TELEVISION BROADCAST STATION.—The term 'television broadcast station' has the meaning given such term in section 325(b)(7).

"(5) SECONDARY TRANSMISSION.—The term 'secondary transmission' has the meaning given such term in section 119(c) of title 17, United States Code.".

SEC. 103. NONDUPLICATION OF PROGRAMMING BROADCAST BY LOCAL STATIONS.

Section 712 of the Communications Act of 1934 (47 U.S.C. 612) is amended to read as follows:

"SEC. 712. NONDUPLICATION OF PROGRAMMING BROADCAST BY LOCAL STATIONS.

"(a) EXTENSION OF NETWORK NONDUPLICATION, SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT TO SATELLITE RETRANSMISSION.—Within 45 days after the date of enactment of the Satellite Competition and Consumer Protection Act, the Commission shall commence a single rulemaking proceeding to establish regulations that apply network nonduplication protection, syndicated exclusivity protection, and sports blackout protection to the retransmission of broadcast signals by satellite carriers to subscribers. To the extent possible consistent with subsection (b), such regulations shall provide the same degree of protection against retransmission of broadcast signals as is provided by the network nonduplication (47 C.F.R. 76.92), syndicated exclusivity (47 C.F.R. 151), and sports blackout (47 C.F.R. 76.67) rules applicable to cable television systems. The Commission shall complete all actions necessary to prescribe regulations required by this section so that the regulations shall become effective within 1 year after such date of enactment.

"(b) ESTABLISHMENT OF NETWORK NONDUPLICATION BOUNDARIES.—

"(1) ESTABLISHMENT OF SIGNAL STANDARD FOR NETWORK NONDUPLICATION REQUIRED.—The Commission shall establish a signal intensity standard for purposes of determining the network nonduplication rights of local television broadcast stations. Until revised pursuant to subsection (c), such standard shall be the Grade B field strength standard prescribed by the Commission in section 73.683 of the Commission's regulations (47 C.F.R. 73.683). For purposes of this section, the standard established under this paragraph is referred to as the 'Network Nonduplication Signal Standard'.

"(2) ESTABLISHMENT OF IMPROVED PREDICTIVE MODEL REQUIRED.—Within 180 days after the date of enactment of the Satellite Competition and Consumer Protection Act, the Commission shall take all actions necessary, including any reconsideration, to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations to receive signals in accordance with the Network Nonduplication Signal Standard. In prescribing such model, the Commission shall ensure that such model takes into account terrain, building structures, and other land cover variations. The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available. For purposes of this section, such model is referred to as the 'Network Nonduplication Reception Model', and the area encompassing locations that are predicted to have the ability to receive such a signal of a particular broadcast station is referred to as that station's 'Reception Model Area'.

"(3) NETWORK NONDUPLICATION.—The network nonduplication regulations required under subsection (a) shall allow a television network station to assert nonduplication rights as follows:

"(A) If a satellite carrier is retransmitting that station, or any other television broadcast stations located in the same local market, to subscribers located in that station's local market, the television network station may assert nonduplication rights against the satellite carrier throughout the area within which that station may assert such rights under the rules applicable to cable television systems (47 C.F.R. 76.92), except as provided in subparagraph (C).

"(B) If a satellite carrier is not retransmitting any television broadcast stations located in the television network station's local market to subscribers located in such market, the television network station may assert nonduplication rights against the satellite carrier in the geographic area that is within such station's Reception Model Area, but such geographic area shall not extend beyond the local market of such station.

"(C) If there are 2 or more television network stations that are each affiliates of a single television network within the same local market, neither such station may assert under subparagraph (A) nonduplication rights against a satellite carrier in an area that is outside the Reception Model Area of that station.

"(4) WAIVERS.—The network nonduplication protection described in paragraph (3) shall not apply to a subscriber who files with the satellite carrier a written waiver with respect to that subscriber obtained from a television network station allowing the subscriber to receive satellite retransmission of another network station affiliated with that same network. The television network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request. The television network station and the satellite carrier shall maintain a file available to the public that contains such waiver requests and the acceptances and rejections thereof.

"(5) OBJECTIVE VERIFICATION.—If a subscriber submits a petition to the Commission or an entity designated by the Commission by rule—

"(A) that alleges that such subscriber does not receive a signal that meets or exceeds the Network Nonduplication Signal Standard; and

"(B) includes a processing fee in an amount prescribed by regulation to recover the cost of administering the provisions of this paragraph;

the network nonduplication rights described in paragraph (3) shall not apply to that subscriber unless such station submits to the Commission or such entity and to the subscriber the written findings and conclusions of a test conducted in accordance with the provisions of section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, demonstrating that the subscriber receives a signal that meets or exceeds the Network Nonduplication Signal Standard. A subscriber is required to file a waiver request under paragraph (4) before filing a petition under this paragraph. A subscriber may not be required to bear any portion of the cost of such test.

"(6) RECREATIONAL VEHICLE LOCATION.—In the case of a subscriber to a satellite carrier who has installed satellite reception equipment in a recreational vehicle, and who has permitted any television network station seeking to assert network nonduplication rights to verify the motor vehicle registration, license, and proof of ownership of such vehicle, the subscriber shall be considered to be outside the local market and Reception Model Area of such station. For purposes of this paragraph, the term 'recreational vehicle' does not include any residential manufactured home, as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402(6)).

"(c) REVIEW AND REVISION OF STANDARDS AND MODEL.—

"(1) ONGOING INQUIRY REQUIRED.—Not later than 2 years after the date of enactment of the Satellite Competition and Consumer Protection Act, the Commission shall conduct an inquiry of the extent to which the Network Nonduplication Signal Standard, the Network Nonduplication Reception Model, and the Reception Model Areas of television stations are adequate to reliably measure the ability of consumers to receive an acceptable over-the-air television broadcast signal.

"(2) DATA TO BE CONSIDERED.—In conducting the inquiry required by paragraph (1), the Commission shall consider as evidence that consumers are not receiving a signal of the quality described in such paragraph—

"(A) the number of subscribers requesting waivers under subsection (b)(4), and the number of waivers that are denied;

"(B) the number of subscribers submitting petitions under subsection (b)(5), and the number of such petitions that are granted;

"(C) the results of any consumer research study that may be undertaken to carry out the purposes of this section; and

"(D) the extent to which consumers are not legally entitled to install broadcast reception devices assumed in the Commission's standard.

"(3) REPORT AND ACTION.—The Commission shall submit to the Congress a report on the inquiry required by this subsection not later than the end of the 2-year period described in paragraph (1). The Commission shall complete any actions necessary to revise the Network Nonduplication Signal Standard, the Network Nonduplication Reception Model, and the Reception Model Areas of television stations in accordance with the findings of such inquiry not later than 6 months after the end of such 2-year period.

"(4) DATA SUBMISSION.—The Commission shall prescribe by rule the data required to be submitted by television broadcast stations and by satellite carriers to the Commission or such designated entity to carry out this subsection, and the format for submission of such data.".

SEC. 104. CONSENT OF MEMBERSHIP TO RETRANSMISSION OF PUBLIC BROADCASTING SERVICE SATELLITE FEED.

Section 396 of the Communications Act of 1934 (47 U.S.C. 396) is amended by adding at the end the following new subsection:

"(n) The Public Broadcasting Service shall certify to the Board on an annual basis that a majority of its membership supports or does not support the secondary transmission of the Public Broadcasting Service satellite feed, and provide notice to each satellite carrier carrying such feed of such certification.".

SEC. 105. INQUIRY ON RURAL SERVICE REQUIRED.

(a) INQUIRY REQUIRED.—Within 180 days after the enactment of this section, the National Telecommunications and Information Administration shall complete an inquiry into the availability of local television broadcast signals in small and rural markets as part of a service that competes with, or supplements, video programming delivered by satellite carriers or cable operators. The Administration shall submit to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of such inquiry.

(b) ANALYSIS REQUIRED.—The inquiry under subsection (a) shall include an analysis of—

(1) the technological capability of dual satellite dish technology to receive effectively over-the-air broadcast transmissions from the local market, the availability of such capability in small and rural markets and the affordability of such capability;

(2) the technological capability (including interference), availability, and affordability of wireless cable (or terrestrial wireless) delivery of local broadcast stations, including the feasibility and desirability of the expedited licensing of such competitive wireless technologies for rural and small markets; and

(3) the technological capability, availability, and affordability of a broadcast-only basic tier of cable service.

SEC. 106. DEFINITIONS.

Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended—

(1) by redesignating—

(A) paragraphs (49) through (52) as paragraphs (52) through (55), respectively;

(B) paragraphs (39) through (48) as paragraphs (41) through (50), respectively; and

(C) paragraphs (27) through (38) as paragraph (28) through (39), respectively;

(2) by inserting after paragraph (26) the following new paragraph:

"(27) LOCAL MARKET.—

"(A) IN GENERAL.—The term 'local market', in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and—

"(i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and

"(ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

"(B) COUNTY OF LICENSE.—In addition to the area described in subparagraph (A), a station's local market includes the county in which the station's community of license is located.

"(C) DESIGNATED MARKET AREA.—For purposes of subparagraph (A), the term 'designated market area' means a designated market area, as determined by Nielsen Media Research and published in the DMA Market and Demographic Report.";

(3) by inserting after paragraph (39) (as redesignated by paragraph (1) of this section) the following new paragraph:

"(40) SATELLITE CARRIER.—The term 'satellite carrier' means an entity that uses the facilities of a satellite or satellite service licensed by the Commission, and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under this Act."; and

(3) by inserting after paragraph (50) (as redesignated by paragraph (1) of this section) the following new paragraph:

"(51) TELEVISION NETWORK; TELEVISION NETWORK STATION.—

"(A) TELEVISION NETWORK.—The term 'television network' means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

"(B) TELEVISION NETWORK STATION.—The term 'television network station' means a television broadcast station that is owned or operated by, or affiliated with, a television network.".

SEC. 107. COMPLETION OF BIENNIAL REGULATORY REVIEW.

Within 180 days after the date of enactment of this Act, the Commission shall complete the biennial review required by section 202(h) of the Telecommunications Act of 1996.

TITLE II—AMENDMENTS TO TITLE 17, UNITED STATES CODE

SEC. 201. LIMITATIONS ON EXCLUSIVE RIGHTS; SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS WITHIN LOCAL MARKETS.

(a) IN GENERAL.—Section 119 of title 17, United States Code, is amended to read as follows:

"§ 119. Limitations on exclusive rights; Secondary transmissions by satellite carriers

"(a) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE CARRIERS.—

"(1) STATUTORY LICENSE.—Subject to the provisions of paragraphs (2), (3), (4), and (5) of this subsection and section 114(d), a secondary transmission that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission of a primary transmission made by a television broadcast station and embodying a performance or display of a work may have a statutory license under this section if the satellite carrier makes a direct or indirect charge to subscribers for the secondary transmission or to a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission. For purposes of this section, the Public Broadcasting Service satellite feed shall be considered a primary transmission made by a television broadcast station that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission, except that subsequent to—

"(A) the date when a majority of subscribers to satellite carriers are able to receive the signal of at least one noncommercial educational television broadcast station from their satellite carrier within such stations' local market, or

"(B) 2 years after the effective date of the Satellite Competition and Consumer Protection Act,

whichever is earlier, the statutory license created by this section with respect to such satellite feed shall be conditioned on the annual certification of support under section 396(n) of the Communications Act of 1934.

"(2) SUBMISSION OF SUBSCRIBER LISTS.—(A) A satellite carrier that makes secondary transmissions of a primary transmission of a television broadcast station under paragraph (1) shall, within 90 days after commencing such secondary transmissions, submit to that station a list identifying all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Such list shall be organized by State, identifying all subscribers by name (including street address, county, and 9-digit zip code) in that State that receive secondary transmissions of that primary transmission.

"(B) After the list is submitted under subparagraph (A), the satellite carrier shall, on the 15th of each month, submit to the television broadcast station a list identifying by State the names (including street address, county, and 9-digit zip code) of any subscribers who have been added or dropped as subscribers since the last submission under this paragraph.

"(C) Subscriber information submitted by a satellite carrier under this paragraph may be used only for purposes of monitoring compliance by the satellite carrier with the statutory license created by this section. The submission of subscriber lists is only required for those television broadcast stations that place on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

"(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier has not deposited the statement of account and royalty fees required by subsection (b).

"(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraph (1), the secondary transmission to the public that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by a primary transmitter during, or immediately before or after the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

"(5) DISCRIMINATION BY SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission by a satellite carrier of a primary transmission made by a television broadcast station and embodying the performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

"(6) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to subscribers located in the United States.

"(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS.—

"(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with the requirements that the Register shall prescribe by regulation—

"(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all television broadcast stations whose signals were retransmitted at any time during that period to subscribers, the total number of subscribers that received such secondary transmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation, and

"(B) a royalty fee for that 6-month period, computed as follows:

"(i) For each television network station that is retransmitted to subscribers located outside the local market of that station, by multiplying the total number of subscribers receiving such secondary transmission during each calendar month by the royalty fee prescribed in section 258.3(b)(2) of title 37, Code of Federal Regulations, as in effect on January 1, 1998.

"(ii) For each superstation that is retransmitted to subscribers located outside the local market of that station, by multiplying the total number of subscribers receiving such secondary transmission during each calendar month by the royalty fee prescribed in section 258.3(b)(1) of title 37, Code of Federal Regulations, as in effect on January 1, 1998.

"(iii) By adding together the totals computed under clauses (i) and (ii).

For secondary transmissions of a television broadcast station to subscribers who reside within the local market of that station, there shall be no royalty fee.

"(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. Any funds held by the Secretary of the Treasury shall be invested in interest bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title. The Register may, in the Register's discretion, at any time after four years have elapsed since the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

"(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission to the public made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Librarian of Congress under paragraph (4). For purposes of section 802 of this title, with respect to royalty fees paid by satellite carriers for retransmitting the Public Broadcasting Service satellite feed, the Public Broadcasting Service shall be agent for all public television copyright claimants and all Public Broadcasting Service member stations.

"(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

"(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions under this section shall file a claim with the Librarian of Congress, in accordance with requirements that the Librarian shall pre-

scribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

"(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian determines that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Librarian finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of fees.

"(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

"(c) DEFINITIONS.—As used in this section—

"(1) DISTRIBUTOR.—The term 'distributor' means any entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

"(2) LOCAL MARKET.—The term 'local market' of a television broadcast station has the meaning given that term section 3 of the Communications Act of 1934 (47 U.S.C. 153) as interpreted under the rules, regulations, and authorizations of the Federal Communications Commission relating to carriage of television broadcast signals by satellite carriers.

"(3) PRIMARY TRANSMISSION.—The term 'primary transmission' has the meaning given that term in section 111(f) of this title.

"(4) PUBLIC BROADCASTING SERVICE SATELLITE FEED.—The term 'Public Broadcasting Service satellite feed' means the national satellite feed distributed by the Public Broadcasting Service for purposes of this section consisting of educational and informational programming, to which the Public Broadcasting Service holds national terrestrial broadcast rights.

"(5) SATELLITE CARRIER.—The term 'satellite carrier' has the meaning given that term in section 3 of the Communications Act of 1934.

"(6) SECONDARY TRANSMISSION.—The term 'secondary transmission' has the meaning given that term in section 111(f) of this title.

"(7) SUBSCRIBER.—The term 'subscriber' means an entity that receives a secondary transmission service by means of a secondary transmission from a satellite and pays a fee for the service, directly or indirectly, to the satellite carrier or a distributor.

"(8) SUPERSTATION.—The term 'superstation' means a television broadcast station, other than a television network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier, and includes the Public Broadcasting Service satellite feed.

"(9) TELEVISION BROADCAST STATION.—The term 'television broadcast station' has the meaning given that term in section 325(b)(7) of the Communications Act of 1934.

"(10) TELEVISION NETWORK STATION.—The term 'television network station' means—

"(A) a television network station (as defined in section 3 of the Communications Act of 1934); or

"(B) a noncommercial educational broadcast station (as defined in section 397 of such Act).

"(d) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers of programming contained in a primary transmission may be made without obtaining the consent of the copyright owner.".

(b) CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS.—The table of sections for chapter 1 of title 17, United States Code, is amended by striking the item relating to section 119 and inserting the following:

"119. Limitation on exclusive rights: Secondary transmissions by satellite carriers.".

(2) STANDING.—Subsection (e) of section 501 of title 17, United States Code, is repealed.

SEC. 202. REDUCTION IN ROYALTY FEES.

The royalty fee prescribed in section 119(b)(1)(B)(i) of title 17, United States Code, as amended by section 201(a) of this Act, is reduced by 45 percent, effective upon July 1, 1999. The royalty fee prescribed in section 119(b)(1)(B)(ii) of such title, as so amended, is reduced by 30 percent, effective upon July 1, 1999.

PURPOSE AND SUMMARY

The purpose of H.R. 851, the Satellite Competition and Consumer Protection Act, is to promote competition in the market for multichannel video programming distribution ("MVPD") through the availability of satellite-delivered local broadcast television programming. H.R. 851: (1) clarifies the scope of local broadcast stations' rights in granting retransmission consent to satellite carriers; (2) delays implementation of satellite must-carry rules until January 1, 2002; (3) imposes network non-duplication, syndicated exclusivity, and sports blackout rules for satellite-delivered broadcast programming; (4) provides satellite carriers with a permanent compulsory copyright license to transmit both local and distant broadcast television programming; and (5) reduces the copyright royalty fees that satellite carriers pay for the out-of-market distribution of broadcast programming.

BACKGROUND AND NEED FOR LEGISLATION

THE CURRENT STATE OF VIDEO COMPETITION

At its core, the Satellite Competition and Consumer Protection Act is about promoting competition in the MVPD market. A recent Federal Communications Commission ("FCC") report on the status of competition in the MVPD market[1] found that, while subscribership to satellite television services is growing exponentially, incumbent cable operators still retain a dominant position in the MVPD market, with about 85 percent of the MVPD market. Moreover, the FCC's report also found that cable rates increased an average of 8.5 percent over the 12-month period from June 1997 to June 1998, compared to a 1.7 percent increase in the consumer price index ("CPI") for the same period.

It is important to note that these cable rate increases have occurred under the auspices of the FCC's cable rate regulation regime (the statutory authority for which expired on March 31, 1999). As a result, competition is widely viewed as the most effective tool for protecting consumers against rate increases. Thus, the Committee is exploring alternative, non-regulatory means to promoting more competition in the MVPD market, and satellite-delivered television is a key component of that effort.

[1] See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fifth Annual Report, CS Docket No. 98–102 (rel. Dec. 23, 1998).

EMERGENCE OF SATELLITE TELEVISION

Satellite-delivered television arrived in the mid-1970s, and emerged as a serious competitor in the MVPD market in the 1990s. During that period, it never competed directly against other multichannel video programming providers, such as cable. Instead, it served those markets (particularly rural markets) where cable and over-the-air broadcast either could not or would not provide service.

But recent advances in satellite technology (e.g., smaller dishes, added signal capacity) have enabled distributors to compete directly with cable and over-the-air broadcast television service, even in urban markets. Satellite television has, therefore, become a key competitor in the MVPD market. To be sure, satellite television is not yet a complete substitute for other terrestrial-based multichannel systems, such as cable and wireless cable. In part, this is because satellite television systems have traditionally lacked both the technology and legal authority to distribute local broadcast signals (i.e., "local-into-local").

Satellite television distributors have, therefore, sought to differentiate their service by offering consumers hundreds of channels of high-quality national programming, including "packages" of out-of-market broadcast signals (e.g., WCBS in New York, or WRAL in Raleigh) as well as superstation signals (e.g., WGN, WWOR). Notwithstanding the unavailability of local broadcast programming, consumers have responded positively to satellite television offerings. Satellite television—and particularly high-powered direct broadcast satellite ("DBS") service—has made substantial inroads into incumbent cable's historically dominant position in the MVPD market. The FCC's report on the MVPD market found that over 10 million households subscribe to satellite television service, and that two out of three new subscribers to an MVPD service choose DBS.

SHVA'S COMPULSORY LICENSING REGIME

The Committee finds that in order for satellite television to compete more effectively with cable in the MVPD market, Congress must reform the Satellite Home Viewer Act ("SHVA"). First enacted in 1988, and then re-authorized in 1994, SHVA governs the manner in which satellite television distributors can re-transmit broadcast network programming to households in markets unserved by either cable or over-the-air broadcast television service. Specifically, SHVA currently extends to satellite television distributors a "compulsory copyright license" to re-transmit distant network-affiliated signals to "unserved households."[2] Through a compulsory license, satellite television distributors avoid the significant transaction costs and practical difficulties of obtaining clearance for every program carried on every broadcast station. A compulsory license essentially "compels" a copyright holder to license its programming to a distributor (such as a satellite television operator or a cable operator), in return for the distributor

[2] The current compulsory license also includes superstation signals, such as WGN in Chicago. The superstation license, however, has no geographic limitation similar to the unserved household limitation on network programming signals. 17 U.S.C. §119(a)(1).

paying a fee that is either statutorily or administratively prescribed.

Congress, however, placed a key limitation on the satellite distributors' compulsory license, i.e., the license permits satellite television distributors to re-transmit out-of-market network programming only to "unserved households." SHVA currently defines "unserved households" as those that: (1) cannot receive an over-the-air signal of "grade B intensity"[3] from a local broadcast station affiliated with that network using a conventional roof-top antenna, and (2) have not subscribed to a cable system that provides the signal of a local broadcast station affiliated with that network within the previous 90 days. Unserved households are colloquially referred to as "white areas," because their television sets receive only "white snow" when using a rooftop antenna.

The unserved household limitation is intended to protect the traditional network-affiliate relationship. Broadcast networks give local affiliates an exclusive license to distribute network programming in a given market. Local affiliates, in turn, rely upon and market this exclusivity to attract commercial advertisers. Because advertising revenue is its only source of revenue, a local broadcast station strives to reach as many households as possible within its market. Thus, when a satellite television operator distributes out-of-market, or distant, network signals to households that can otherwise receive local signals over the air, the local broadcast station's viewership (and hence, advertising revenue) necessarily declines. The unserved household limitation therefore has helped to preserve local affiliates' bargained-for exclusivity, and in doing so, promoted the development of local programming and free, over-the-air television.

"WHITE AREA" LITIGATION

The unserved household limitation, however, has proven to be difficult to enforce, and as such, has led to a great deal of confusion and uncertainty for consumers. In March 1997, local television broadcast stations affiliated with CBS and Fox filed suit in Miami, Florida, against PrimeTime 24, a distributor of satellite-delivered network programming. The broadcasters argued that PrimeTime 24 willfully violated SHVA's unserved household limitation by selling packages of out-of-market broadcast signals to households that were otherwise able to receive local broadcast signals via conventional rooftop antennas.

In December 1998, the Miami court ruled in favor of the plaintiff broadcasters in light of the overwhelming evidence that a substantial number of PrimeTime 24's subscribers lived in close proximity to local broadcast station transmitters (or, stated technically, lived "within the stations' Grade A contours"). The court, therefore, ordered that satellite television distributors shut off network programming signals for about 2.2 million households. But at a recent Subcommittee on Telecommunications, Trade, and Consumer Protection hearing, the Committee learned that the scope of the court's injunction was unnecessarily broad. Specifically, testimony before the Subcommittee made clear that as many as 10 percent of the

[3] "Grade B intensity" measures the strength of the television signal at a given location.

homes subject to the court's injunction were genuinely "unserved" and, therefore, eligible for satellite-delivered network programming. While the courts' ability and authority to interpret the law is unquestionable, their remedies are sometimes too blunt, particularly in cases, such as this one, where the remedy affects a broad class of consumers who, to the best of their knowledge, violated no Federal law. It is, therefore, critical that, on a going-forward basis, Congress empower expert agencies with implementing and enforcing telecommunications policy.

SHVA REFORM: ENABLING LOCAL-INTO-LOCAL

The key to more competition with cable, as well as a partial solution to the "white area" problem, is to provide satellite carriers with the legal authority to distribute local broadcast signals back into local markets, i.e., "local-into-local." As previously stated, satellite carriers traditionally lacked the technological capability to provide local broadcast signals, and as a result, sold packages of distant network signals to meet consumer demand for network programming. Consequently, the satellite compulsory license was limited to superstation and distant signal distribution.

But digital compression, as well as "spot beam" technology, have advanced to the point where satellite carriers have enough capacity to carry many (if not all) local broadcast signals from around the country. The Subcommittee received testimony from two satellite carriers—Local TV on Satellite, and EchoStar—that, within a couple of years, plan to provide consumers living in numerous cities with access to their local broadcast stations via satellite. Satellite television, in other words, now has the technological ability to offer consumers a complete substitute for incumbent cable offerings.

SHVA REFORM: REFINING DISTANT SIGNAL ELIGIBILITY RULES

The other key component to reforming SHVA is to further refine the rules regarding consumers' eligibility for distant network signals. Under current law, a consumer's eligibility for satellite-delivered network programming turns on whether he or she, among other things, "cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission)."[4] This eligibility standard has led to protracted litigation between the television broadcast industry and the satellite television industry. The broadcast industry argues that the standard is sufficient. The problem (in the broadcast industry's view) lies not in the statute but with satellite television distributors that have willfully violated the unserved household limitation. The satellite industry maintains that the statute is too vague, as well as outdated given that it relies on a signal intensity standard that was acceptable to consumers in the 1950s but may be unacceptable to today's consumers.

In any event, it is clear to the Committee that criteria for eligibility need refinement, both in terms of their implementation and enforcement. Consumers have become pawns in a lawsuit between

[4] 17 U.S.C. §119(d)(10) (defining "unserved household" for purposes of determining the scope of the network station compulsory license).

two warring industries, and the Committee seeks to avoid a repeat of this scenario. At the same time, however, the Committee re-affirms its historical commitment to localism. As previously mentioned, the unserved household limitation served a valuable purpose: to preserve local affiliates' bargained-for exclusivity, and promote the development of local programming and free, over-the-air television.

H.R. 851, therefore, seeks to achieve a critical balance between promoting competition and preserving localism. In doing so, H.R. 851 makes numerous changes to telecommunications and copyright law to enable local-into-local, as well as to refine the rules for consumer eligibility for distant network signals. Moreover, these amendments are premised on the idea that, to the extent possible, similar rules and obligations should apply to similarly situated distributors of multichannel video programming. In other words, because local-into-local will enable satellite television service to serve as a more complete substitute to cable service, then satellite and cable service providers should operate on similar regulatory footing.

HEARINGS

The Subcommittee on Telecommunications, Trade, and Consumer Protection held a hearing on February 24, 1999, to consider issues relating to reform and reauthorization of the Satellite Home Viewer Act. The Subcommittee received testimony from Deborah Lathen, Chief, Cable Services Bureau, FCC; Charles C. Hewitt, President, Satellite Broadcasting and Communications Association ("SBCA"); Gene Kimmelman, Co-Director, Consumers Union; Andy Fisher, Executive Vice President, Cox Broadcasting; Jack Perry, President and Chief Executive Officer ("CEO"), Decisionmark; Sophia Collier, President and CEO, Northpoint Technology; Al DeVaney, President, NewsWeb Broadcasting; John Hutchinson, Executive Vice President and Chief Operating Officer, Local TV on Satellite; and David K. Moskowitz, Senior Vice President and General Counsel, EchoStar.

COMMITTEE CONSIDERATION

On March 4, 1999, the Subcommittee on Telecommunications, Trade, and Consumer Protection met in open markup session and approved H.R. 851 for Full Committee consideration, amended, by a voice vote. On March 25, 1999, the Full Committee met in open markup session and ordered H.R. 851 reported to the House, amended, by a voice vote, a quorum being present.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

There were no recorded votes taken in connection with ordering H.R. 851 reported. An Amendment in the Nature of a Substitute offered by Mr. Tauzin, was agreed to, amended, by a voice vote. An Amendment to the Tauzin Amendment in the Nature of a Substitute offered by Mr. Boucher to require the National Telecommunications and Information Administration to conduct a

study and report to Congress on the availability of local television broadcast signals in small and rural markets as part of a service that competes with, or supplements, video programming delivered by satellite carriers or cable operators was agreed to by a voice vote. An Amendment to the Tauzin Amendment in the Nature of a Substitute offered by Mrs. Wilson to exempt the provision of the bill relating to network non-duplication for subscribers that install a satellite receiver on a recreational vehicle, was agreed to by a voice vote. An Amendment to the Tauzin Amendment in the Nature of a Substitute offered by Mr. Green to require satellite providers or vendors to provide a free, over-the-air antenna to receive local broadcast signals to subscribers who have been terminated from receiving a distant network signal, was withdrawn by unanimous consent.

A motion by Mr. Bliley to order H.R. 851 reported to the House, amended, was agreed to by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held an oversight hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 851, the Satellite Competition and Consumer Protection Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 7, 1999.

Hon. TOM BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 851, the Satellite Competition and Consumer Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), Hester Grippando (for revenues), Theresa Fullo (for the state and local impact), and Jean Wooster (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 851—Satellite Competition and Consumer Protection Act

Summary: H.R. 851 would allow satellite carriers (companies that use satellite transmissions to provide television signals directly to consumers) to retransmit the signals of local television broadcast stations into the local markets of those stations. The bill would allow a local broadcast station to require, by January 1, 2002, satellite carriers that serve customers in its market to transmit its signal. In addition, the bill would eliminate a 90-day waiting period for households that switch from cable to satellite service.

Under the Satellite Home Viewer Act of 1988 (Public Law 100–667), satellite carriers pay a monthly royalty fee for each subscriber to the U.S. Copyright Office for the right to retransmit distant network and superstation signals by satellite to subscribers for private home viewing. The Copyright Office later distributes the fees to those who own copyrights on the material retransmitted by satellite. The bill would permanently extend the requirement that satellite carriers pay royalty fees to the federal government. Beginning July 1, 1999, the bill would reduce the current royalty fees charged to superstations by 30 percent, to $0.19 per subscriber per channel per month, and the fees paid by network stations by 45 percent to $0.15.

CBO estimates that enacting H.R. 851 would result in a net increase in revenues of $477 million over the 2000–2004 period and of $916 million over the 2005–2009 period. After review by an arbitration panel, royalty fees are paid to copyright owners, along with accrued interest earnings. With higher royalty collections, the payments to copyright holders would also be higher under H.R. 851, by an estimated $152 million over the 2000–2004 period, and by another $750 million over the following five years. Because H.R. 851 would affect both revenues and direct spending, it would be subject to pay-as-you-go procedures. Assuming appropriation of the necessary amounts, CBO also estimates that complying with the provisions of the bill would cost the Federal Communications Commission (FCC) and the National Telecommunications and Informa-

tion Administration (NTIA) about $2 million in 2000 and less than $500,000 in each subsequent year. H.R. 851 would impose both intergovernmental and private-sector mandates, as defined by the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of the mandates would not exceed the thresholds established by UMRA ($50 million in 1996, adjusted for inflation for intergovernmental entities and $100 million in 1996, adjusted for inflation for the private sector).

Estimated cost to the Federal government: The estimated budgetary impact of H.R. 851 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
REVENUES AND DIRECT SPENDING [1]						
Recepits and spending under current law:						
Estimated revenues [2]	244	185	118	112	107	101
Estimated budget authority [3]	272	281	219	142	131	121
Estimated outlays	209	207	259	264	220	182
Proposed changes:						
Estimated revenues	0	17	92	107	122	139
Estimated budget authority	0	18	97	116	136	155
Estimated outlays	0	0	4	19	35	94
Net increase in the surplus	0	17	88	88	87	45
Receipts and spending under H.R. 851:						
Estimated revenues [2]	244	202	210	219	229	240
Estimated budget authority [3]	272	299	316	258	267	276
Estimated outlays	209	207	263	283	255	276

[1] In addition to the effects shown in the table, H.R. 851 would increase spending subject to appropriation by about $2 million in 2000 and by less than $500,000 in each subsequent year.
[2] Includes royalty fee collections from cable television stations, satellite carriers, and digital audio devices.
[3] Payments to copyright owners include interest earnings on securities held by the Copyright Office.

Basis of estimate: H.R. 851 would allow a satellite carrier to make secondary transmissions of local television broadcasts, eliminate the waiting period for switching from cable to satellite service, reduce the rates of copyright royalty fees, and permanently extend those fees. All of these provisions would affect payments by satellite carriers to the federal government and payments by the federal government to copyright holders. CBO assumes that payments from the federal government to copyright holders for satellite transmissions would follow historical patterns. Assuming enactment of the bill before the end of fiscal year 1999, CBO estimates that H.R. 851 would increase revenues by $477 million and increase spending by $152 million over the 2000–2004 period.

Secondary transmission.—H.R. 851 would allow satellite carriers to retransmit the signals of local television broadcast stations into the local markets of those stations. The bill also would eliminate a provision of current law that requires households to wait 90 days between ending cable service and beginning satellite service. These provisions would make the services provided by satellite carriers more attractive. As a result, CBO expects that the number of subscribers to satellite services would increase more rapidly than under current law. Based on information from the Copyright Office, CBO estimates that under H.R. 851 the annual change in the volume of satellite services would increase from a projected rate of 10 percent a year to 17 percent in 2000.

In addition, H.R. 851 would allow a local broadcast station to require, by January 1, 2002, satellite carriers that serve customers in its market to transmit its signal. This provision would reduce revenues from fees in two ways. First, satellite carriers might enter new markets more slowly as they grapple with the technical difficulty of carrying hundreds of local signals. Second, satellite carriers would provide subscribers with fewer distant network signals and more signals of local broadcast stations. Under the bill, satellite carriers would not pay the royalty fee for local broadcast stations.

CBO estimates that the annual growth in fee volume would gradually decrease from the projected rate of 17 percent in 2000 to about 3 percent by 2009. Because the bill's provisions could increase the incentives for choosing satellite service over cable service, they might lead to a loss in revenues from cable fees. However, based on information from the Copyright Office and the cable and satellite industries, CBO estimates that any such reduction in revenues would not be significant.

Reduction in the copyright royalty fee.—A rule issued on October 28, 1997, by the Librarian of Congress, increased the royalty fee to $0.27 per subscriber per month. H.R. 851 would reduce the royalty fee on superstations by 30 percent to $0.19 per subscriber per channel per month and the rates on network stations by 45 percent to $0.15, effective July 1, 1999. Based on information from the Copyright Office, CBO estimates that this provision would reduce revenues by $26 million in fiscal year 2000, when the fees would expire under current law. But this reduction would be more than offset by permanently extending the copyright royalty fees.

Extension of copyright royalty fees.—Under current law, the royalty fees for satellite carriers expire on December 31, 1999. H.R. 851 would permanently extend royalty fees, increasing both revenue from satellite carriers and payments to copyright holders (including interest) during the 2000–2004 period. In fiscal year 2000, the net change in estimated revenues would be relatively small—$17 million—because the additional revenue from extending the fees ($43 million) would be partially offset by a reduction in fee payments due early in the year under current law. By 2004, CBO expects additional revenues to total $139 million because of the fee extension.

Payments to copyright holders.—H.R. 851 would result in additional spending because all revenues are eventually paid to copyright holders with interest. Historical spending patterns indicate that copyright holders may receive the fees and interest up to 10 years after the Copyright Office has collected the revenues. Thus, CBO estimates a significant lag between changes in revenues and the eventual changes in the outlays that stem from copyright fees.

Discretionary spending.—H.R. 851 would require the FCC to conduct rule makings containing technical and business relationships between satellite carriers and local broadcast stations. The bill also would require the FCC to report on methods for facilitating the delivery of local signals in local markets, especially smaller markets. Based on information from the FCC, CBO estimates that implementing H.R. 851 would cost the commission about $1 million in 2000 and less than $500,000 in each subsequent year, subject to

the availability of appropriated funds. H.R. 851 would require NTIA to report on the availability of local television broadcast signals in small and rural markets. Based on information from NTIA, CBO estimates that conducting the inquiry would cost $500,000 to $1 million in 2000, subject to the availability of appropriated funds.

Pay-as-you-go considerations.—The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The new changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	0	4	19	35	94	108	125	153	173	191
Changes in receipts	0	17	92	107	122	139	156	172	186	197	205

Intergovernmental and private-sector impact: H.R. 851 would impose both intergovernmental and private-sector mandates, as defined by UMRA. The cost of the intergovernmental mandate would be insignificant and would not exceed the threshold established by UMRA ($50 million in 1996, adjusted for inflation). The cost of the private-sector mandates imposed on satellite carriers and network broadcast stations also would not exceed the annual threshold for private-sector mandates ($100 million in 1996, adjusted for inflation).

Section 104 would impose a mandate on the Public Broadcasting Service (PBS). The requirement would be both an intergovernmental and private-sector mandate because PBS is owned and operated by local noncommercial television stations that include both publicly and privately owned stations. This bill would require that PBS annually certify whether the majority of its member stations support the retransmission of PBS's national satellite feed. PBS must also provide such certification to the satellite carriers that carry that feed. Based on information from PBS, CBO estimates that the cost to comply with this mandate would be insignificant because PBS regularly surveys its members for other purposes and could easily incorporate this new requirement into existing surveys.

The remaining mandates would impose requirements on satellite carriers and network stations, all private-sector entities. Section 101 would require satellite carriers to obtain consent from a television broadcast station to rebroadcast programs to subscribers outside the local broadcast. That requirement would be effective seven months after enactment of this bill. The costs imposed on the satellite carriers would be mostly administrative costs for negotiating agreements with local network stations. CBO believes that those costs would be small.

Section 103 would require that both satellite providers and network television stations maintain a publicly available file of subscribers' requests to allow the satellite retransmission of the signal of a network affiliate. Information from satellite carriers and networks indicates that most currently maintain some or all of that

information. CBO estimates that the additional costs incurred by the satellite carriers and network television stations would be small.

An additional economic effect of this bill (not associated with a federal mandate) would result from changes to the royalty fees paid by satellite carriers to copyright holders, including some state and local government entities. The bill would reduce the fees from current levels and permanently extend them. If the current arrangement for collecting royalties were to expire, satellite owners would have to reach agreement with each copyright owner, which would be difficult and expensive.

Previous CBO estimate: On March 8, 1999, CBO transmitted a cost estimate for S. 247, the Satellite Home Viewers Improvements Act, as ordered reported by the Senate Committee on the Judiciary on February 25, 1999. That bill would extend the requirement that satellite carriers pay royalty fees only until December 31, 2004. Thus, S. 247 and H.R. 851 would have different effects on revenues and spending over the 2005–2009 period. S. 247 does not contain provisions affecting the FCC or NTIA.

Estimate prepared by: Federal costs: Mark Hadley; Revenues: Hester Grippando; Impact on State, local, and tribal governments: Theresa Gullo; Impact on the private sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides for the short title of the Act, the "Satellite Competition and Consumer Protection Act."

Section 101. Retransmission consent

Section 101 amends subsection 325(b) of the Communications Act of 1934, which currently requires MVPDs to obtain the consent of broadcast stations before retransmitting their signals (unless the station has elected must-carry status pursuant to section 614 (cable must-carry) or new section 338 (satellite must-carry)). New subsection 325(b), however, provides for four exceptions to the general retransmission consent rule. First, no MVPD need obtain consent to retransmit the signal of non-commercial television broadcast stations. Second, no satellite carrier need obtain consent to retransmit the signal of any station outside the station's local market if such station was a superstation as of May 1, 1991, was distributed directly to subscribers pursuant to the satellite compulsory license as of July 1, 1998, and the satellite carrier complies with all network non-duplication, syndicated exclusivity, and sports blackout rules pursuant to new section 712. Third, until seven months after enactment, no satellite carrier need obtain consent to retransmit station signals to subscribers residing in distant markets. And fourth, no non-satellite MVPD need obtain consent to retransmit the signal of any station outside the station's local market if such station was a superstation as of May 1, 1991, and the signal was distributed to the non-satellite MVPD's headend pursuant to the satellite compulsory license as of July 1, 1998.

Subsection 325(b) further requires the FCC to issue implementing rules within one year of enactment. Subsection 325(b) specifically directs the FCC to ensure that its rules (1) establish election time periods, and (2) prohibit stations from engaging in discriminatory practices, understandings, arrangements, and activities, including exclusive contracts for carriage, that prevent a satellite carrier from obtaining retransmission consent from stations. With regard to the second criteria, the Committee notes that the FCC's rules may not require stations to provide retransmission consent to different MVPDs on identical terms. Each MVPD is architecturally unique. Cable systems serve a local or regional territory, whereas satellite systems have a national footprint. Stations may therefore properly choose to provide consent on varying terms and conditions to reflect the inherent differences in video programming distribution systems.

Finally, subsection 325(b) makes clear that a station electing carriage pursuant to retransmission consent may not avail itself of the satellite must-carry requirements under new section 338. This limitation is parallel to the limitation on stations' ability to secure cable carriage pursuant to cable must-carry once they have elected retransmission consent.

Section 102. Must-carry for satellite carriers retransmitting television broadcast signals

Section 102 creates new section 338 of the Communications Act of 1934 to address satellite carriers' must-carry obligations. In particular, subsection 338(a) requires satellite carriers, by January 1, 2002, to carry all local broadcast stations signals in a market in which it carries at least one such signal. The Committee points out

that nothing in subsection 338(a) is intended to compel the carriage of multiple signals from any one broadcast station, to require the carriage of both digital and analog signals during the transition to digital television, or to otherwise supersede existing statutory authority regarding the carriage of analog or digital signals transmitted by broadcasters.

Subsection 338(b) requires television broadcast stations that assert must-carry rights to bear the costs of delivering a good quality signal to the designated local receive facility of the satellite carrier, or to an alternative facility that is acceptable to at least one-half of the stations in the same market that are also asserting must-carry rights. Subsection 338(c) provides that, notwithstanding the general must-carry requirement, satellite carriers are not required to transmit substantially duplicative local television station signals within the local market, nor are satellite carriers required to retransmit more than one affiliate of a television broadcast network. With regard to carriage of multiple local non-commercial television stations, subsection 338(c) directs the FCC to ensure that such stations receive the same degree of carriage by satellite systems that they presently receive from cable systems.

Pursuant to subsection 338(d), even though they are not required to provide local television broadcast signals on any particular channel, satellite carriers must retransmit local television broadcast signals to subscribers on contiguous channels, and provide access to such signals at a nondiscriminatory price, and in a non-discriminatory manner, on any on-screen program guide or similar interface. Subsection 338(e) provides that satellite carriers may not accept or request compensation in cash or in kind in exchange for carriage of a local television broadcast station, or for channel positioning rights provided to the local television broadcast station.

Subsection 338(f) outlines a complaint procedure for a local television station to follow in the event that the station believes a satellite carrier has wrongly denied carriage to the station under section 338. Finally, subsection 338(g) gives the FCC 180 days to implement satellite must-carry rules.

Section 103. Nonduplication of programming broadcast by local stations

Section 103 replaces section 712 of the Communications Act of 1934 to establish rules relating the non-duplication of broadcast programming distributed via satellite. As amended, subsection 712(a) requires the FCC to issue rules that enable local broadcast stations to assert network non-duplication, syndicated exclusivity, and sports blackout rights against satellite carriers distributing other broadcast programming. Subsection 712(a) further states that, to the extent possible, local broadcast stations shall have the same degree of protection against duplication as they do in the context of cable distribution of other broadcast programming.

Given the uniqueness of the network-affiliate relationship, subsection 712(b) provides specific guidelines with regard to the duplication of network programming via satellite. In the cable context, the FCC's network non-duplication rules permit a local network television station to ask that a cable operator delete duplicative network programming from another network television station re-

transmitted by the cable operator into a specified zone associated with the local network television station. Subsection 712(b) is intended to operate as the satellite equivalent of the network non-duplication rules that currently apply to cable operators. To begin with, it directs the FCC to establish a "Network Nonduplication Signal Standard" that, at least initially, will be the FCC's existing grade B signal contours,[5] and to also establish a new "Network Nonduplication Reception Model" that can reliably and presumptively predict the ability of a consumer to receive a signal in accordance with the Network Nonduplication Signal Standard. Subsection 712(b) directs the FCC, within 180 days of enactment, to incorporate into its Model signal interference caused by terrain, building structures, and other land cover variations. The FCC is further directed to continually refine the Model and additional data as it becomes available. Together, the Signal Standard and the Model will generate a "Reception Model Area" ("RMA") for each television broadcast station, throughout which consumers are predicted to have access to a signal in accordance with the Network Nonduplication Signal Standard.

Subsection 712(b) then identifies the scope of television broadcast station's network non-duplication rights, depending upon whether the satellite carrier is distributing local broadcast signals back into their originating markets (i.e., local-into-local). Specifically, in cases where the satellite carrier is offering local-into-local, a network television station may assert non-duplication rights against a satellite carrier within the same geographic area throughout which the station may assert non-duplication rights with respect to cable retransmission of television broadcast signals. (However, in cases where there are two network stations that are affiliates of the same television network, and both stations are located within the same local market, neither station may assert non-duplication rights in an area that is outside the station's RMA.) In cases where a satellite carrier is not offering local-into-local, a network television station may assert non-duplication rights against a satellite carrier within that network television station's RMA.

The Committee recognizes that, even though subsection 712(b) requires the FCC to continually refine its Network Nonduplication Reception Model, there inevitably will be occasions where some consumers are erroneously deemed ineligible for satellite-delivered network programming. Accordingly, subsection 712(b) provides consumers with the added protection of an expeditious waiver process. In particular, subsection 712(b) makes clear that consumers may seek a waiver from a network television station that has asserted network non-duplication rights affecting the consumer. The station must accept or reject the waiver request within 30 days. In the event the station denies the waiver, subsection 712(b) further permits the consumer to submit a petition to the FCC (or a neutral third party of the FCC's choosing), alleging that he or she does not receive the required signal intensity. The petition will be deemed granted, unless the network television station submits to the FCC (or the neutral third party) the written findings and results of a test that prove that the consumer does, in fact, receive the required

[5] See 47 C.F.R. § 73.683.

signal intensity. Subsection 712(b) makes clear that under no circumstances is the consumer to be required to bear any portion of the cost of the test. Finally, in cases where consumers adequately demonstrate that they have installed satellite television services in a recreational vehicle, subsection 712(b) deems those consumers to be outside network television stations' local markets and RMAs, and thus eligible for satellite-delivered network programming without restriction.

Section 712 provides one other measure to ensure that the eligibility criteria serve the interests of both competition and localism: an ongoing review of the signal intensity standard and the predictive model. Subsection 712(c) directs the FCC to conduct an inquiry, and report to Congress within two years of enactment, on the extent to which the Network Nonduplication Signal Standard, the Network Nonduplication Reception Model, and the Reception Model Areas are adequate to reliably measure the ability of consumers to receive an acceptable over-the-air television broadcast signal. As part of its inquiry, the FCC must consider, among other things, the number of consumers that have requested waivers from their local broadcaster, and the number of waivers that broadcasters have denied. The Committee believes that, in cases where the Model fails to accurately predict consumer eligibility, the waiver process is critical to ensuring that consumers are expeditiously served, with the least amount of administrative and financial burden.

Subsection 712(c) directs the FCC to revise its eligibility rules in accordance with the findings from its inquiry, within six months of completing the inquiry and submitting a report to Congress. The Committee emphasizes that the FCC is required to make only those changes that flow from the findings from its inquiry. Thus, if the FCC finds that the grade B signal intensity standard, when applied in conjunction with a refined predictive model, and an expedited waiver process, adequately serve consumers, then the FCC shall refrain from modifying the signal intensity standard.

Section 104. Consent of membership to retransmission of public broadcasting service satellite feed

Section 104 amends section 396 of the Communications Act of 1934 to require the Public Broadcasting Service ("PBS") to annually certify to the Corporation for Public Broadcasting ("CPB") that a majority of PBS' member stations support a national PBS satellite feed. Satellite carriers will have access to the feed through a compulsory license that is created in subsection 201(a) of H.R. 851.

No later than two years after enactment, however, the compulsory license for a PBS feed will be conditioned upon the annual certification process in subsection 396(n). The Committee views this annual certification process as a critical component of the compulsory license. While the Committee supports wide availability of satellite-delivered PBS programming (and therefore provides for a conditional compulsory license), the Committee at the same time seeks to ensure that PBS member stations support the satellite feed.

Section 105. Inquiry on rural service required

Section 105 directs the National Telecommunications and Information Administration ("NTIA") of the Department of Commerce to conduct an inquiry into the availability of local television broadcast signals in small and rural markets as part of a service that competes with, or supplements, video programming delivered by satellite carriers or cable operators. NTIA is further required to submit to the Committee, as well as the Committee on Commerce, Science, and Transportation of the Senate, a report on the results of the inquiry.

Section 106. Definitions

Section 106 amends section 3 of the Communications Act of 1934 to include definitions of "local market," "satellite carrier," and "television network; television network station."

Section 107. Completion of biennial regulatory review

Section 107 provides that, within 180 days after the date of enactment, the FCC will complete the biennial review required by section 202(h) of the Telecommunications Act of 1996. In particular, the FCC will issue a notice of proposed rulemaking and a final report and order on those rules that are covered under "MM Dkt. No. 98–35, NOI, FCC 98–37."

TITLE II—AMENDMENTS TO TITLE 17, UNITED STATES CODE

Section 201. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets

(a) In general

Subsection 201(a) amends section 119 of the Copyright Act.[6] Subsection 119(a) expressly establishes a compulsory license for satellite carriers to retransmit local and distant television broadcast station signals to subscribers, irrespective of where they reside. The license is conditioned upon carrier compliance with FCC rules and regulations (which are established in Title I of the bill), as well as compliance with monthly submissions of detailed subscriber lists.

The Committee notes that new subsection 119(a) removes all provisions regarding the unserved household limitation that are currently in the satellite compulsory license. It is illogical to place territorial restrictions on compulsory licenses, given that they are designed to effectuate telecommunications policy goals (e.g., localism, and the viability of free, over-the-air television), and not copyright interests. Therefore, Title I of H.R. 851—which addresses amendments to the Communications Act of 1934—properly identifies any and all geographic limitations on satellite carriers' ability to retransmit broadcast programming, and Title II conditions the carriers' compulsory license on compliance with FCC rules established pursuant to Title I.

The Committee also notes that new subsection 119(a) unifies the compulsory license for local and distant licenses, and makes both licenses permanent (as opposed to sunsetting one, but making the

[6] 17 U.S.C. § 119.

other permanent). Many rural and small markets rely, and will continue to rely for some time, upon satellite-delivered distant signals as their only source of network programming. It therefore makes no sense to the Committee to effectively discriminate against consumers living in these markets by sunsetting the distant signal license, while also making the local license permanent. Similarly, new subsection 119(a) makes the compulsory license available for distribution to both residences and commercial establishments alike. Many consumers have no access to multichannel video programming at their place of residence. They therefore rely on commercial establishments for access to a wide variety of satellite-delivered information and video programming. The Committee is satisfied that submissions of detailed subscriber lists will minimize any potential piracy associated with distribution to commercial establishments.

Finally, subsection 119(a) also establishes a compulsory license for satellite carriers to retransmit a national PBS feed. The compulsory license for a national PBS feed, however, is conditional. Beginning no later than two years after enactment, PBS must make an annual certification to CPB in accordance with subsection 396(n) of the Communications Act of 1934.

Subsection 119(b) makes clear that the local-into-local license is royalty-free. Subsection 119(b) also codifies the current statutory royalty fees paid by satellite carriers for the retransmission of distant network and superstations. Those rates are then reduced by the percentages provided in section 202 of the bill.

(b) Conforming amendments

Subsection 201(b) makes certain conforming amendments to Title 17. It also removes the standing of local broadcast stations to sue for infringement under Section 501 of the Copyright Act. The Committee finds that local broadcast stations have sufficient remedies available to them under the Communications Act of 1934 to protect their legitimate telecommunications-related interests. It is, therefore, unnecessary to give stations an additional right of action under the Copyright Act to protect their non-copyright-related interests. This is not to say that stations have no legal recourse in cases where their copyright interests have been infringed upon. To the contrary, the Copyright Act still permits a station to bring an infringement action, but only for those programs for which the station owns the copyright.

Section 202. Reduction in royalty rates

Section 202 of H.R. 851 reduces the copyright royalty fees paid by satellite carriers for the retransmission of network and superstation signals by 45 percent and 30 percent, respectively.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * * * *

TITLE I—GENERAL PROVISIONS

* * * * * * *

SEC. 3. DEFINITIONS.

For the purposes of this Act, unless the context otherwise requires—

(1) * * *

* * * * * * *

(27) LOCAL MARKET.—

(A) IN GENERAL.—The term "local market", in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and—

(i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and

(ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

(B) COUNTY OF LICENSE.—In addition to the area described in subparagraph (A), a station's local market includes the county in which the station's community of license is located.

(C) DESIGNATED MARKET AREA.—For purposes of subparagraph (A), the term "designated market area" means a designated market area, as determined by Nielsen Media Research and published in the DMA Market and Demographic Report.

[(27)] *(28)* MOBILE SERVICE.—The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding.

[(28)] *(29)* MOBILE STATION.—The term "mobile station" means a radio-communication station capable of being moved and which ordinarily does move.

[(29)] *(30)* NETWORK ELEMENT.—The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

[(30)] *(31)* NUMBER PORTABILITY.—The term "number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

[(31)] *(32)*(A) OPERATOR.—The term "operator" on a ship of the United States means, for the purpose of parts II and III of title III of this Act, a person holding a radio operator's license of the proper class as prescribed and issued by the Commission.

(B) "Operator" on a foreign ship means, for the purpose of part II of title III of this Act, a person holding a certificate as such of the proper class complying with the provision of the radio regulations annexed to the International Telecommunication Convention in force, or complying with an agreement or treaty between the United States and the country in which the ship is registered.

[(32)] *(33)* PERSON.—The term "person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

[(33)] *(34)* RADIO COMMUNICATION.—The term "radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

[(34)] *(35)*(A) RADIO OFFICER.—The term "radio officer" on a ship of the United States means, for the purpose of part II of title III of this Act, a person holding at least a first or second class radiotelegraph operator's license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a "radio officer" in accordance with the Act of May 12, 1948 (46 U.S.C. 229a–h).

(B) "Radio officer" on a foreign ship means, for the purpose of part II of title III of this Act, a person holding at least a first or second class radiotelegraph operator's certificate complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force.

[(35)] *(36)* RADIO STATION.—The term "radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

[(36)] *(37)* RADIOTELEGRAPH AUTO ALARM.—The term "radiotelegraph auto alarm" on a ship of the United States subject to the provisions of part II of title III of this Act means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. "Radiotelegraph auto alarm" on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the government of the country in which the ship is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this Act or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of title III of this Act, on a foreign ship subject to such part, where the country in which the ship is registered and the United States are not parties to the same treaty, convention, or agreements prescribing the requirements for such apparatus.

[(37)] *(38)* RURAL TELEPHONE COMPANY.—The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—

(A) provides common carrier service to any local exchange carrier study area that does not include either—

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

[(38)] *(39)* SAFETY CONVENTION.—The term "safety convention" means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

(40) SATELLITE CARRIER.—The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed by the Commission, and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide

such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under this Act.

[(39)**]** *(41)*(A) SHIP.—The term "ship" or "vessel" includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

(B) A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

(C) A cargo ship means any ship not a passenger ship.

(D) A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry shipwrecked, distressed, or other persons in like or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

(E) "Nuclear ship" means a ship provided with a nuclear powerplant.

[(40)**]** *(42)* STATE.—The term "State" includes the District of Columbia and the Territories and possessions.

[(41)**]** *(43)* STATE COMMISSION.—The term "State commission" means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

[(42)**]** *(44)* STATION LICENSE.—The term "station license," "radio station license," or "license" means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission.

[(43)**]** *(45)* TELECOMMUNICATIONS.—The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

[(44)**]** *(46)* TELECOMMUNICATIONS CARRIER.—The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

[(45)**]** *(47)* TELECOMMUNICATIONS EQUIPMENT.—The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide

telecommunications services, and includes software integral to such equipment (including upgrades).

[(46)] *(48)* TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

[(47)] *(49)* TELEPHONE EXCHANGE SERVICE.—The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

[(48)] *(50)* TELEPHONE TOLL SERVICE.—The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

(51) TELEVISION NETWORK; TELEVISION NETWORK STATION.—

(A) TELEVISION NETWORK.—The term "television network" means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(B) TELEVISION NETWORK STATION.—The term "television network station" means a television broadcast station that is owned or operated by, or affiliated with, a television network.

[(49)] *(52)* TELEVISION SERVICE.—

(A) ANALOG TELEVISION SERVICE.—The term "analog television service" means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(a) of its regulations (47 C.F.R. 73.682(a)).

(B) DIGITAL TELEVISION SERVICE.—The term "digital television service" means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(d) of its regulations (47 C.F.R. 73.682(d)).

[(50)] *(53)* TRANSMISSION OF ENERGY BY RADIO.—The term "transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

[(51)] *(54)* UNITED STATES.—The term "United States" means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

[(52)] *(55)* WIRE COMMUNICATION.—The term "wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by

aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

* * * * * * *

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 325. FALSE DISTRESS SIGNALS; REBROADCASTING; STUDIOS OF FOREIGN STATIONS.

(a) * * *

[(b)(1) Following the date that is one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

[(A) with the express authority of the originating station; or

[(B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

[(2) The provisions of this subsection shall not apply to—

[(A) retransmission of the signal of a noncommercial broadcasting station;

[(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

[(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

[(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms "satellite carrier", "superstation", and "unserved household" have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.]

(b)(1) No cable system or other multichannel video programming distributor shall retransmit the signal of a television broadcast station, or any part thereof, except—

(A) with the express authority of the originating station;

(B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or

(C) pursuant to section 338, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

(2) The provisions of this subsection shall not apply—

(A) to retransmission of the signal of a noncommercial television broadcast station;

(B) to retransmission of the signal of a television broadcast station outside the station's local market by a satellite carrier directly to its subscribers, if—

(i) such station was a superstation on May 1, 1991;

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the compulsory license of section 119 of title 17, United States Code; and

(iii) the satellite carrier complies with all network nonduplication, syndicated exclusivity, and sports blackout rules adopted by the Commission pursuant to section 712 of this Act;

(C) until 7 months after the date of enactment of the Satellite Competition and Consumer Protection Act, to retransmission of the signal of a television network station directly to a satellite antenna, if the subscriber receiving the signal is located in an area outside the local market of such station; or

(D) to retransmission by a cable operator or other multichannel video provider, other than a satellite carrier, of the signal of a television broadcast station outside the station's local market if such signal was obtained from a satellite carrier and—

(i) the originating station was a superstation on May 1, 1991; and

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the compulsory license of section 119 of title 17, United States Code.

(3)(A) * * *

* * * * * * *

(C) Within 45 days after the date of enactment of the Satellite Competition and Consumer Protection Act, the Commission shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall complete all actions necessary to prescribe such regulations within one year after such date of enactment. Such regulations shall—

(i) establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph; and

(ii) prohibit television broadcast stations that provide retransmission consent from engaging in discriminatory practices, understandings, arrangements, and activities, including exclusive contracts for carriage, that prevent a satellite carrier from obtaining retransmission consent from such stations.

(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of sec-

tion 614 shall not apply to the carriage of the signal of such station by such cable system. *If an originating television station elects under paragraph (3)(C) to exercise its right to grant retransmission consent under this subsection with respect to a satellite carrier, the provisions of section 338 shall not apply to the carriage of the signal of such station by such satellite carrier.*

(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section ⟦614 or 615⟧ *338, 614, or 615* of any station electing to assert the right to signal carriage under that section.

* * * * * * *

(7) For purposes of this subsection, the term 'television broadcast station' means an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

* * * * * * *

SEC. 338. CARRIAGE OF LOCAL TELEVISION SIGNALS BY SATELLITE CARRIERS.

(a) CARRIAGE OBLIGATIONS.—

(1) IN GENERAL.—Subject to the limitations of subparagraph (2), each satellite carrier providing secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request all television broadcast stations located within that local market, subject to section 325(b), by retransmitting the signal or signals of such stations that are identified by Commission regulations for purposes of this section.

(2) EFFECTIVE DATE.—No satellite carrier shall be required to carry local television broadcast stations under paragraph (1) until January 1, 2002.

(b) GOOD SIGNAL REQUIRED.—

(1) COSTS.—A television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) REGULATIONS.—The regulations issued under subsection (g) shall set forth the obligations necessary to carry out this subsection.

(c) DUPLICATION NOT REQUIRED.—

(1) COMMERCIAL STATIONS.—Notwithstanding subsection (a), a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than 1 local commer-

cial television broadcast station in a single local market that is affiliated with a particular television network.

(2) NONCOMMERCIAL STATIONS.—The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulations shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under section 615.

(d) CHANNEL POSITIONING.—No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

(e) COMPENSATION FOR CARRIAGE.—A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.

(f) REMEDIES.—

(1) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier is obligated to carry upon request the signal of such station or has otherwise failed to comply with other requirements of this section. The satellite carrier shall, within 30 days of such written notification, respond in writing to such notification and either begin carrying the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with other requirements of this section, as the case may be. A local television broadcast station that is denied carriage in accordance with this section by a satellite carrier or is otherwise harmed by a response by a satellite carrier that it is in compliance with other requirements of this section may obtain review of such denial or response by filing a compliant with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(2) OPPORTUNITY TO RESPOND.—The Commission shall afford the satellite carrier against which a complaint is filed under subparagraph (A) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed under subparagraph (A), the Commission shall determine whether the satellite carrier has met its obligations under this chapter. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier, in the case of an obligation to carry a station, to begin carriage of the station and to continue such carriage for at least 12 months, or, in the case of the failure to meet other obligations under this section, shall take other appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of this chapter, the Commission shall dismiss the complaint.

(g) REGULATIONS BY COMMISSION.—Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing this section.

(h) DEFINITIONS.—As used in this section:

(1) SUBSCRIBER.—The term "subscriber" means an entity that receives a secondary transmission service by means of a secondary transmission from a satellite and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(2) DISTRIBUTOR.—The term "distributor" means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

(3) LOCAL RECEIVE FACILITY.—The term "local receive facility" means the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

(4) TELEVISION BROADCAST STATION.—The term "television broadcast station" has the meaning given such term in section 325(b)(7).

(5) SECONDARY TRANSMISSION.—The term "secondary transmission" has the meaning given such term in section 119(c) of title 17, United States Code.

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PART IV—ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING

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Subpart D—Corporation for Public Broadcasting

SEC. 396. DECLARATION OF POLICY.

(a) * * *

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(n) The Public Broadcasting Service shall certify to the Board on an annual basis that a majority of its membership supports or does not support the secondary transmission of the Public Broadcasting Service satellite feed, and provide notice to each satellite carrier carrying such feed of such certification.

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TITLE VII—MISCELLANEOUS PROVISIONS

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[SEC. 712. SYNDICATED EXCLUSIVITY.

[(a) The Federal Communications Commission shall initiate a combined inquiry and rulemaking proceeding for the purpose of—

[(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming (as defined by the Commission) for private home viewing of secondary transmissions by satellite of broadcast station signals similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television; and

[(2) adopting such rules if the Commission considers the imposition of such rules to be feasible.

[(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act.]

SEC. 712. NONDUPLICATION OF PROGRAMMING BROADCAST BY LOCAL STATIONS.

(a) EXTENSION OF NETWORK NONDUPLICATION, SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT TO SATELLITE RETRANSMISSION.—Within 45 days after the date of enactment of the Satellite Competition and Consumer Protection Act, the Commission shall commence a single rulemaking proceeding to establish regulations that apply network nonduplication protection, syndicated exclusivity protection, and sports blackout protection to the retransmission of broadcast signals by satellite carriers to subscribers. To the extent possible consistent with subsection (b), such regulations shall provide the same degree of protection against retransmission of broadcast signals as is provided by the network nonduplication (47 C.F.R. 76.92), syndicated exclusivity (47 C.F.R. 151), and sports blackout (47 C.F.R. 76.67) rules applicable to cable television systems. The Commission shall complete all actions necessary to prescribe regulations required by this section so that the regulations shall become effective within 1 year after such date of enactment.

(b) ESTABLISHMENT OF NETWORK NONDUPLICATION BOUNDARIES.—

(1) ESTABLISHMENT OF SIGNAL STANDARD FOR NETWORK NONDUPLICATION REQUIRED.—The Commission shall establish a signal intensity standard for purposes of determining the network nonduplication rights of local television broadcast stations. Until revised pursuant to subsection (c), such standard shall be the Grade B field strength standard prescribed by the Commission in section 73.683 of the Commission's regulations (47 C.F.R. 73.683). For purposes of this section, the standard established under this paragraph is referred to as the "Network Nonduplication Signal Standard".

(2) ESTABLISHMENT OF IMPROVED PREDICTIVE MODEL REQUIRED.—Within 180 days after the date of enactment of the Satellite Competition and Consumer Protection Act, the Commission shall take all actions necessary, including any reconsideration, to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations to receive signals in accordance with the Network Nonduplication Signal Standard. In prescribing such model, the Commission shall ensure that such model takes into account terrain, building structures, and other land cover variations. The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available. For purposes of this section, such model is referred to as the "Network Nonduplication Reception Model", and the area encompassing locations that are predicted to have the ability to receive such a signal of a particular broadcast station is referred to as that station's "Reception Model Area".

(3) NETWORK NONDUPLICATION.—The network nonduplication regulations required under subsection (a) shall allow a television network station to assert nonduplication rights as follows:

(A) If a satellite carrier is retransmitting that station, or any other television broadcast stations located in the same local market, to subscribers located in that station's local market, the television network station may assert nonduplication rights against the satellite carrier throughout the area within which that station may assert such rights under the rules applicable to cable television systems (47 C.F.R. 76.92), except as provided in subparagraph (C).

(B) If a satellite carrier is not retransmitting any television broadcast stations located in the television network station's local market to subscribers located in such market, the television network station may assert nonduplication rights against the satellite carrier in the geographic area that is within such station's Reception Model Area, but such geographic area shall not extend beyond the local market of such station.

(C) If there are 2 or more television network stations that are each affiliates of a single television network within the same local market, neither such station may assert under subparagraph (A) nonduplication rights against a satellite

carrier in an area that is outside the Reception Model Area of that station.

(4) WAIVERS.—The network nonduplication protection described in paragraph (3) shall not apply to a subscriber who files with the satellite carrier a written waiver with respect to that subscriber obtained from a television network station allowing the subscriber to receive satellite retransmission of another network station affiliated with that same network. The television network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request. The television network station and the satellite carrier shall maintain a file available to the public that contains such waiver requests and the acceptances and rejections thereof.

(5) OBJECTIVE VERIFICATION.—If a subscriber submits a petition to the Commission or an entity designated by the Commission by rule—

(A) that alleges that such subscriber does not receive a signal that meets or exceeds the Network Nonduplication Signal Standard; and

(B) includes a processing fee in an amount prescribed by regulation to recover the cost of administering the provisions of this paragraph;

the network nonduplication rights described in paragraph (3) shall not apply to that subscriber unless such station submits to the Commission or such entity and to the subscriber the written findings and conclusions of a test conducted in accordance with the provisions of section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, demonstrating that the subscriber receives a signal that meets or exceeds the Network Nonduplication Signal Standard. A subscriber is required to file a waiver request under paragraph (4) before filing a petition under this paragraph. A subscriber may not be required to bear any portion of the cost of such test.

(6) RECREATIONAL VEHICLE LOCATION.—In the case of a subscriber to a satellite carrier who has installed satellite reception equipment in a recreational vehicle, and who has permitted any television network station seeking to assert network nonduplication rights to verify the motor vehicle registration, license, and proof of ownership of such vehicle, the subscriber shall be considered to be outside the local market and Reception Model Area of such station. For purposes of this paragraph, the term "recreational vehicle" does not include any residential manufactured home, as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402(6)).

(c) REVIEW AND REVISION OF STANDARDS AND MODEL.—

(1) ONGOING INQUIRY REQUIRED.—Not later than 2 years after the date of enactment of the Satellite Competition and Consumer Protection Act, the Commission shall conduct an inquiry of the extent to which the Network Nonduplication Signal Standard, the Network Nonduplication Reception Model, and the Reception Model Areas of television stations are adequate to reliably measure the ability of consumers to receive an acceptable over-the-air television broadcast signal.

(2) DATA TO BE CONSIDERED.—In conducting the inquiry required by paragraph (1), the Commission shall consider as evidence that consumers are not receiving a signal of the quality described in such paragraph—

(A) the number of subscribers requesting waivers under subsection (b)(4), and the number of waivers that are denied;

(B) the number of subscribers submitting petitions under subsection (b)(5), and the number of such petitions that are granted;

(C) the results of any consumer research study that may be undertaken to carry out the purposes of this section; and

(D) the extent to which consumers are not legally entitled to install broadcast reception devices assumed in the Commission's standard.

(3) REPORT AND ACTION.—The Commission shall submit to the Congress a report on the inquiry required by this subsection not later than the end of the 2-year period described in paragraph (1). The Commission shall complete any actions necessary to revise the Network Nonduplication Signal Standard, the Network Nonduplication Reception Model, and the Reception Model Areas of television stations in accordance with the findings of such inquiry not later than 6 months after the end of such 2-year period.

(4) DATA SUBMISSION.—The Commission shall prescribe by rule the data required to be submitted by television broadcast stations and by satellite carriers to the Commission or such designated entity to carry out this subsection, and the format for submission of such data.

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TITLE 17—COPYRIGHTS

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CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

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[§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

[(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

[(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a

work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

[(2) NETWORK STATIONS.—

[(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection and section 114(d), secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

[(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

[(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

[(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of in-

fringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

[(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

[(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

[(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

[(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

[(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred.

[(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

[(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out; and

[(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission,

for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out.

[(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before November 16, 1988.

[(D) BURDEN OF PROOF.—In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household.

[(6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

[(7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

[(8) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—

[(A) IN GENERAL.—Subject to subparagraph (C), upon a challenge by a network station regarding whether a subscriber is an unserved household within the predicted Grade B Contour of the station, the satellite carrier shall, within 60 days after the receipt of the challenge—

[(i) terminate service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

[(ii) conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the network station of the satellite carrier's intent to conduct the measurement.

[(B) EFFECT OF MEASUREMENT.—If the satellite carrier conducts a signal intensity measurement under subparagraph (A) and the measurement indicates that—

[(i) the household is not an unserved household, the satellite carrier shall, within 60 days after the measurement is conducted, terminate the service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the net-

work station that made the challenge that service to that household has been terminated; or

[(ii) the household is an unserved household, the station challenging the service shall reimburse the satellite carrier for the costs of the signal measurement within 60 days after receipt of the measurement results and a statement of the costs of the measurement.

[(C) LIMITATION ON MEASUREMENTS.—(i) Notwithstanding subparagraph (A), a satellite carrier may not be required to conduct signal intensity measurements during any calendar year in excess of 5 percent of the number of subscribers within the network station's local market that have subscribed to the service as of the effective date of the Satellite Home Viewer Act of 1994.

[(ii) If a network station challenges whether a subscriber is an unserved household in excess of 5 percent of the subscribers within the network's station local market within a calendar year, subparagraph (A) shall not apply to challenges in excess of such 5 percent, but the station may conduct its own signal intensity measurement of the subscriber's household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement. If such measurement indicates that the household is not an unserved household, the carrier shall, within 60 days after receipt of the measurement, terminate service to the household of the signal that is the subject of the challenge and within 30 days thereafter notify the network station that made the challenge that service has been terminated. The carrier shall also, within 60 days after receipt of the measurement and a statement of the costs of the measurement, reimburse the network station for the cost it incurred in conducting the measurement.

[(D) OUTSIDE THE PREDICTED GRADE B CONTOUR.—(i) If a network station challenges whether a subscriber is an unserved household outside the predicted Grade B Contour of the station, the station may conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement.

[(ii) If the network station conducts a signal intensity measurement under clause (i) and the measurement indicates that—

[(I) the household is not an unserved household, the station shall forward the results to the satellite carrier who shall, within 60 days after receipt of the measurement, terminate the service to the household of the signal that is the subject of the challenge, and shall reimburse the station for the costs of the measurement within 60 days after receipt of the measurement results and a statement of such costs; or

[(II) the household is an unserved household, the station shall pay the costs of the measurement.

[(9) LOSER PAYS FOR SIGNAL INTENSITY MEASUREMENT; RECOVERY OF MEASUREMENT COSTS IN A CIVIL ACTION.—In any civil action filed relating to the eligibility of subscribing households as unserved households—

[(A) a network station challenging such eligibility shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the satellite carrier for any signal intensity measurement that is conducted by that carrier in response to a challenge by the network station and that establishes the household is an unserved household; and

[(B) a satellite carrier shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the network station challenging such eligibility for any signal intensity measurement that is conducted by that station and that establishes the household is not an unserved household.

[(10) INABILITY TO CONDUCT MEASUREMENT.—If a network station makes a reasonable attempt to conduct a site measurement of its signal at a subscriber's household and is denied access for the purpose of conducting the measurement, and is otherwise unable to conduct a measurement, the satellite carrier shall within 60 days notice thereof, terminate service of the station's network to that household.

[(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

[(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

[(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation; and

[(B) a royalty fee for that 6-month period, computed by—

[(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations;

[(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 6 cents; and

[(iii) adding together the totals computed under clauses (i) and (ii).

[(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title.

[(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Librarian of Congress under paragraph (4).

[(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

[(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Librarian of Congress, in accordance with requirements that the Librarian of Congress shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

[(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian of Congress determines that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Librarian of Congress finds the existence of a controversy, the Librarian of Congress shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.

[(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to

which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

[(c) ADJUSTMENT OF ROYALTY FEES.—

[(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective unless a royalty fee is established under paragraph (2) or (3) of this subsection.

[(2) FEE SET BY VOLUNTARY NEGOTIATION.—

[(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1996, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

[(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Librarian of Congress shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

[(C) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

[(D) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1999, or in accordance with the terms of the agreement, whichever is later.

[(3) FEE SET BY COMPULSORY ARBITRATION.—

[(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before January 1, 1997, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such arbitration proceeding shall be conducted under chapter 8.

[(B) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

[(i) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

[(ii) the economic impact of such fees on copyright owners and satellite carriers; and

[(iii) the impact on the continued availability of secondary transmissions to the public.

[(C) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

[(i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), or

[(ii) is established by the Librarian of Congress under section 802(f),

shall become effective as provided in section 802(g) or July 1, 1997, whichever is later.

[(D) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in subparagraph (C) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

[(d) DEFINITIONS.—As used in this section—

[(1) DISTRIBUTOR.—The term "distributor" means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

[(2) NETWORK STATION.—The term "network station" means—

[(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

[(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934).

[(3) PRIMARY NETWORK STATION.—The term "primary network station" means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

[(4) PRIMARY TRANSMISSION.—The term "primary transmission" has the meaning given that term in section 111(f) of this title.

[(5) PRIVATE HOME VIEWING.—The term "private home viewing" means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

[(6) SATELLITE CARRIER.—The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

[(7) SECONDARY TRANSMISSION.—The term "secondary transmission" has the meaning given that term in section 111(f) of this title.

[(8) SUBSCRIBER.—The term "subscriber" means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

[(9) SUPERSTATION.—The term "superstation" means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

[(10) UNSERVED HOUSEHOLD.—The term "unserved household", with respect to a particular television network, means a household that—

[(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

[(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to

a cable system that provides the signal of a primary network station affiliated with that network.

[(11) LOCAL MARKET.—The term "local market" means the area encompassed within a network station's predicted Grade B contour as that contour is defined by the Federal Communications Commission.

[(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.]

§ 119. Limitations on exclusive rights; Secondary transmissions by satellite carriers

(a) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE CARRIERS.—

(1) STATUTORY LICENSE.—Subject to the provisions of paragraphs (2), (3), (4), and (5) of this subsection and section 114(d), a secondary transmission that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission of a primary transmission made by a television broadcast station and embodying a performance or display of a work may have a statutory license under this section if the satellite carrier makes a direct or indirect charge to subscribers for the secondary transmission or to a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission. For purposes of this section, the Public Broadcasting Service satellite feed shall be considered a primary transmission made by a television broadcast station that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission, except that subsequent to—

(A) the date when a majority of subscribers to satellite carriers are able to receive the signal of at least one noncommercial educational television broadcast station from their satellite carrier within such stations' local market, or

(B) 2 years after the effective date of the Satellite Competition and Consumer Protection Act,

whichever is earlier, the statutory license created by this section with respect to such satellite feed shall be conditioned on the annual certification of support under section 396(n) of the Communications Act of 1934.

(2) SUBMISSION OF SUBSCRIBER LISTS.—(A) A satellite carrier that makes secondary transmissions of a primary transmission of a television broadcast station under paragraph (1) shall, within 90 days after commencing such secondary transmissions, submit to that station a list identifying all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Such list shall be organized by State, identifying all subscribers by name (including street ad-

dress, county, and 9-digit zip code) in that State that receive secondary transmissions of that primary transmission.

(B) After the list is submitted under subparagraph (A), the satellite carrier shall, on the 15th of each month, submit to the television broadcast station a list identifying by State the names (including street address, county, and 9-digit zip code) of any subscribers who have been added or dropped as subscribers since the last submission under this paragraph.

(C) Subscriber information submitted by a satellite carrier under this paragraph may be used only for purposes of monitoring compliance by the satellite carrier with the statutory license created by this section. The submission of subscriber lists is only required for those television broadcast stations that place on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier has not deposited the statement of account and royalty fees required by subsection (b).

(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraph (1), the secondary transmission to the public that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by a primary transmitter during, or immediately before or after the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(5) DISCRIMINATION BY SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public that is in compliance with the rules, regulations, and authorizations of the Federal Communications Commission by a satellite carrier of a primary transmission made by a television broadcast station and embodying the performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509,

if the satellite carrier unlawfully discriminates against a distributor.

(6) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to subscribers located in the United States.

(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS.—

(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with the requirements that the Register shall prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all television broadcast stations whose signals were retransmitted at any time during that period to subscribers, the total number of subscribers that received such secondary transmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation, and

(B) a royalty fee for that 6-month period, computed as follows:

(i) For each television network station that is retransmitted to subscribers located outside the local market of that station, by multiplying the total number of subscribers receiving such secondary transmission during each calendar month by the royalty fee prescribed in section 258.3(b)(2) of title 37, Code of Federal Regulations, as in effect on January 1, 1998.

(ii) For each superstation that is retransmitted to subscribers located outside the local market of that station, by multiplying the total number of subscribers receiving such secondary transmission during each calendar month by the royalty fee prescribed in section 258.3(b)(1) of title 37, Code of Federal Regulations, as in effect on January 1, 1998.

(iii) By adding together the totals computed under clauses (i) and (ii).

For secondary transmissions of a television broadcast station to subscribers who reside within the local market of that station, there shall be no royalty fee.

(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. Any funds held by the Secretary of the Treasury shall be invested in interest bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title. The Register may, in the Register's discretion, at any time after four years have elapsed since the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such ac-

count and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission to the public made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Librarian of Congress under paragraph (4). For purposes of section 802 of this title, with respect to royalty fees paid by satellite carriers for retransmitting the Public Broadcasting Service satellite feed, the Public Broadcasting Service shall be agent for all public television copyright claimants and all Public Broadcasting Service member stations.

(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions under this section shall file a claim with the Librarian of Congress, in accordance with requirements that the Librarian shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian determines that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Librarian finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(c) DEFINITIONS.—As used in this section—

(1) DISTRIBUTOR.—The term "distributor" means any entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

(2) LOCAL MARKET.—The term "local market" of a television broadcast station has the meaning given that term section 3 of the Communications Act of 1934 (47 U.S.C. 153) as interpreted under the rules, regulations, and authorizations of the Federal Communications Commission relating to carriage of television broadcast signals by satellite carriers.

(3) PRIMARY TRANSMISSION.—The term "primary transmission" has the meaning given that term in section 111(f) of this title.

(4) PUBLIC BROADCASTING SERVICE SATELLITE FEED.—The term "Public Broadcasting Service satellite feed" means the national satellite feed distributed by the Public Broadcasting Service for purposes of this section consisting of educational and informational programming, to which the Public Broadcasting Service holds national terrestrial broadcast rights.

(5) SATELLITE CARRIER.—The term "satellite carrier" has the meaning given that term in section 3 of the Communications Act of 1934.

(6) SECONDARY TRANSMISSION.—The term "secondary transmission" has the meaning given that term in section 111(f) of this title.

(7) SUBSCRIBER.—The term "subscriber" means an entity that receives a secondary transmission service by means of a secondary transmission from a satellite and pays a fee for the service, directly or indirectly, to the satellite carrier or a distributor.

(8) SUPERSTATION.—The term "superstation" means a television broadcast station, other than a television network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier, and includes the Public Broadcasting Service satellite feed.

(9) TELEVISION BROADCAST STATION.—The term "television broadcast station" has the meaning given that term in section 325(b)(7) of the Communications Act of 1934.

(10) TELEVISION NETWORK STATION.—The term "television network station" means—

(A) a television network station (as defined in section 3 of the Communications Act of 1934); or

(B) a noncommercial educational broadcast station (as defined in section 397 of such Act.

(d) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers of programming contained in a primary transmission may be made without obtaining the consent of the copyright owner.

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CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

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§ 501. Infringement of copyright

(a) * * *

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[(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.]

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ADDITIONAL VIEWS

H.R. 851 the Satellite Competition and Consumer Protection Act established a means for satellite television carriers to legally carry and retransmit local television network signals, thus providing a viable competitor to the cable industry.

Recent events led to the termination of network signals to millions of satellite television subscribers. Under current law only those persons who can not receive a network signal through an over the air television antenna are eligible to receive and purchase a distant network package through their satellite carriers. Unfortunately, there are many customers who live in areas of the country, for example in downtown areas, that can receive a clear network signal and were still sold these distant network packages. It is these customers who deserve a measure of relief. These are ineligible customers who were sold an illegal product.

H.R. 851 takes many steps to solve the problem of satellite customers who might have been ineligible to receive a distant network signal but were still sold distant network packages. The provisions providing for local into local service will start to alleviate this problem. However, many of these customers were still sold either through the carrier or a local vendor a distant network package that was terminated. Until local into local service is available in all markets, these satellite carriers or local vendors should be held accountable and are obligated to provide their customers with access to a local network signal.

Satellite carriers and the local vendors need to fulfill their obligations to their customers and provide them with access to a network signal.

GENE GREEN.