

Calendar No. 461

106TH CONGRESS }
2d Session }

SENATE

{ REPORT
106-243 }

LAUNCHING OUR COMMUNITIES' ACCESS TO
LOCAL TELEVISION ACT OF 2000

R E P O R T

OF THE

COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2097

together with

ADDITIONAL VIEWS



MARCH 15, 2000.—Ordered to be printed

Filed under authority of the order of the Senate of March 9, 2000

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Mr. GRAMM, from the Committee on Banking, Housing, and Urban
Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2097]

INTRODUCTION

On March 8, 2000, the Senate Committee on Banking, Housing, and Urban Affairs met in legislative session and marked up and ordered to be reported S. 2097, the Launching Our Communities Access to Local Television Act of 2000 (LOCAL TV Act of 2000), a bill to authorize loan guarantees in order to facilitate access to local television broadcast signals in unserved and underserved areas, and for other purposes, with a recommendation that the bill do pass. The Committee's action was taken by a 19-0 roll call vote, Senator Mack recusing himself from voting.

The full Committee conducted two hearings to consider S. 2097. The first hearing was on February 1, 2000, and included testimony from: Steven J. Cox, Senior Vice President, DIRECTV, Inc.; David K. Moskowitz, Senior Vice President, ECHOSTAR Communications Corporation; B. Robert Phillips, Chief Executive Officer, National Rural Telecommunications Cooperative; Richard Sjoberg, President, Sjoberg's Incorporated; K. James Yager, President and Chief Operating Officer, Benedek Broadcasting; Dale N. Hatfield, Chief, Office of Engineering and Technology, Federal Communications Commis-

sion (FCC); William Roberts, Senior Attorney, U.S. Copyright Office; Greg L. Rohde, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce; and Christopher McLean, Acting Administrator, Rural Utilities Service (RUS), U.S. Department of Agriculture. The second hearing was on February 9, 2000, and included testimony from Senators Burns, Hutchinson, Thomas, and Lincoln, and from Dan L. Crippen, Director, Congressional Budget Office.

HISTORY OF THE LEGISLATION

The Launching Our Communities Access to Local Television Act of 2000, S. 2097, was introduced on February 24, 2000, by Senators Burns, Gramm, Lott, Stevens, Crapo, Hutchinson, Allard, Bunning, Snowe, Collins, and Grassley. Senators Enzi, Thomas, Hagel, Lugar, and Cochran became additional cosponsors.

On March 8, 2000, the LOCAL TV Act of 2000 was passed by unanimous vote (19–0) by the Senate Committee on Banking, Housing, and Urban Affairs. The Act was created in an attempt to accomplish the same purpose as that set forth by the Rural Viewer Amendment to the Satellite Home Viewer Improvement Act of 1999 (SHVIA), but to do so in a manner more protective of the taxpayer while enhancing the likelihood of successful delivery of local television broadcasts in unserved and underserved areas. The SHVIA was incorporated into an amendment to the FY 2000 Consolidated Appropriations Act (P.L. 106–113), but the Rural Viewer Amendment was not included in this legislation.

The SHVIA legislation modified copyright and communications law related to the transmission of broadcast television signals by for-profit satellite providers. Particularly relevant to the pending legislation were the modifications to copyright law that allow a satellite provider to retransmit within a local community the signal of that community's local broadcast stations. During the conference for this legislation, several conferees noted that, despite the changes in copyright law, many local broadcast stations nonetheless may not be retransmitted via satellite for the indefinite future. This result seemed contrary to what was expected to be an important benefit of the SHVIA legislation: the transmission via satellite of local television signals to areas of the country with no access to local television signals by any means. The Rural Viewer Amendment was added in conference to the SHVIA legislation in an attempt to correct this problem and promote the transmission of local broadcast signals in areas that otherwise would not receive such signals.

The Rural Viewer Amendment proposed to establish a federal loan guarantee program to promote the delivery of local television signals to unserved and underserved areas. However, the amendment was introduced in conference and, therefore, was not considered on the floor of the House or Senate. In addition, the Congressional Budget Office (CBO) estimated the proposed loan guarantee program would cost U.S. taxpayers approximately \$350 million. Following concerns over the lack of time for consideration and the potential cost, the amendment was removed from the final version of the SHVIA, and a unanimous consent agreement in the Senate

provided for expedited consideration of a stand-alone bill addressing this issue. The LOCAL TV Act of 2000 represents this new proposal for a loan guarantee program.

PURPOSE AND SCOPE

The provision of local television signals to households that do not have access to such signals by any means—including over-the-air transmission, cable or satellite systems, or other technologies—increasingly has become an important issue in rural development. The two main satellite television providers carry the local stations of approximately the 25 largest markets, which include about half of the U.S. population,¹ but the remaining 185 media markets do not receive local television signals via satellite.² In addition, while estimates vary, the Federal Communications Commission reports that about 3 million households do not have access to cable television, which is required by law to carry local television stations.³ Since most of these 3 million households are in rural areas, the reception of an over-the-air local television signal may be difficult or impossible. As a result, a small but significant portion of the U.S. population cannot receive local television signals from any means, while as much as half of the population cannot receive such signals via satellite.

The lack of local television signals in many rural areas is a product of both economics and public policy. Allocating the spectrum used by a satellite to carry a local station, building translators or repeaters to boost a local station's over-the-air signal, or extending the lines of a cable television provider frequently are uneconomical ventures in areas with low population density and thus few potential viewers. Similarly, costs are imposed by regulations such as the “must carry” provision, which requires that a satellite provider that transmits the signal of one local broadcast television station in a market must offer to transmit the signal of all stations in that market. The major satellite television providers have testified that the must-carry requirement severely limits their ability to extend their offering of local television signals to additional markets.⁴ This limitation exists because of the finite amount of spectrum available for such service, and because the most common satellite television technology, direct broadcast satellite, was not designed with the intention of providing many local stations.⁵ Since existing satellites transmit over most or all of the country, using such technology to transmit a local signal that serves only a relatively small geographic area results in considerable use of spectrum that could be used to serve other markets.

¹ Nielsen Media Research, Local Market Universe Estimates for the 1999–2000 Broadcast Season.

² Testimony of Steven J. Cox, Senior Vice President, DIRECTV, Inc., and David K. Moskowitz, Senior Vice President, ECHOSTAR Communications Corporation, Hearing on the provision of local television signals in rural areas: Senate Committee on Banking, Housing, and Urban Affairs, February 1, 2000, at 1 and 1–2.

³ In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Sixth Annual Report, CS Docket No. 99–230 (Jan. 14, 2000).

⁴ Supra note 2, at 2–3 and 4–6.

⁵ Testimony of Dale N. Hatfield, Chief, Office of Engineering and Technology, Federal Communications Commission, Hearing on the provision of local television signals in rural areas: Senate Committee on Banking, Housing, and Urban Affairs, February 1, 2000, at 5.

These economic and policy conditions make it costly to provide the signals of local television stations in many rural areas, and thus make projects to provide such service financially risky investments.⁶ Nonetheless, several technologies exist that can be used to provide such service in many rural areas, though generally at high cost.⁷ In addition, new technologies are under development that offer promise for serving these areas at considerably lower cost.⁸ The challenge at present is to provide appropriate public policy incentives to help promote the transmission of local television signals in those areas that remain costly to serve.

The LOCAL TV Act of 2000 addresses this challenge by developing a loan guarantee program that is guided by three principles. First, the Act places its highest priority on promoting service to the greatest number of households in unserved areas—those that receive no local signals—while also recognizing that a solution which serves other households as well (including those in underserved areas) may be an effective way to accomplish this goal. This prioritization is designed to maximize the number of households that benefit from this Act, especially those households that currently receive no local television signals.⁹ Second, the Act is technologically neutral, meaning that it does not favor a particular technology, industry, or means by which local television signals may be delivered. This principle is especially important given the rapid change in technologies that can provide such service and the possibility that the most economically efficient delivery mechanisms in use today may be obsolete in the near future.¹⁰ Third, the Act develops a loan guarantee program that is fiscally responsible. This quality is critical to ensuring that the American taxpayer does not have to pay for economically inefficient projects and that projects are supported by this program that are likely to provide service now and into the future. All of these principles are consistent with those advanced by the Administration.¹¹

Properly implemented, the LOCAL TV Act of 2000 (the “Act”) will provide incentives for loans for investment in projects that promote access to local television signals while at the same time establishing appropriate incentives for private entities participating in the program to focus only on economically feasible projects. These provisions are equally important. Loans that are not made and loans that are not repaid represent unsuccessful projects—either projects that were never initiated or that ultimately failed—and in both cases result in no service for unserved and underserved areas. By establishing incentives for economically viable projects, the like-

⁶Testimony of Dan L. Crippen, Director, Congressional Budget Office, Hearing on the provision of local television signals in rural areas: Senate Committee on Banking, Housing, and Urban Affairs, February 9, 2000, at 1.

⁷Supra note 3, at 5, and testimony of Bill Roberts, Senior Attorney, U.S. Copyright Office, Hearing on the provision of local television signals in rural areas: Senate Committee on Banking, Housing, and Urban Affairs, February 1, 2000, at 4–5.

⁸Supra note 3, at 9.

⁹Testimony of Christopher McLean, Acting Administrator, Rural Utilities Service (RUS), U.S. Department of Agriculture, Hearing on the provision of local television signals in rural areas: Senate Committee on Banking, Housing, and Urban Affairs, February 1, 2000, at 3–4.

¹⁰Supra note 5, at 9.

¹¹Testimony of Greg L. Rohde, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, Hearing on the provision of local television signals in rural areas: Senate Committee on Banking, Housing, and Urban Affairs, February 1, 2000, at 2–3.

likelihood that the purpose of the Act will be accomplished increases significantly.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the bill may be cited as the “Launching Our Communities Access to Local Television Act of 2000” (“LOCAL TV Act of 2000”).

Section 2. Purpose

The purpose of the Act is to facilitate on a technologically neutral basis access to signals of local television stations in unserved and underserved areas.

Section 3. Local Broadcast Signal Loan Guarantee Board

Section 3 establishes and describes the responsibilities of the LOCAL TV Loan Guarantee Board (the Board). The Board is made up of three members: the Secretary of the Treasury, the Chairman of the Board of the Federal Reserve System, and the Secretary of Agriculture. Each of these members may appoint a designee. A designee must be an officer of the United States who has been appointed by the President with the advice and consent of the Senate.

The Board is responsible for determining which entities will receive loan guarantees under the Act. The Board must consult with such departments and agencies of the Federal Government as it considers appropriate to carry out its responsibilities under the Act, and these departments and agencies are required to assist the Board. Loan guarantees may be made with approval of a majority of the Board.

Section 4. Approval of loan guarantees

Section 4 authorizes the Board to approve loan guarantees. The Administrator (defined in Section 5) will prescribe regulations to implement the Act under the direction of and for approval by the Board. The regulations will include provisions for the time period to review applications, safeguards against evasion of the provisions of the Act, the description of who will be considered an applicant, and requirements for the submission of documents and other information necessary for the administration of the provisions of the Act.

The Board is authorized to approve loan guarantees only to the extent that funds for this purpose are provided for in advance in appropriations acts. The Board may delegate to the Administrator the authority to approve loan guarantees not exceeding \$20 million, provided that the Administrator complies with the terms and conditions of the Act.

This section also stipulates the requirements that must be met in order for a loan guarantee to be approved: The loan to be guaranteed must be used to finance the means by which local television signals will be delivered to viewers in an unserved or underserved area, and such loan may not be used for operating expenses. In addition, the loan must be provided by a depository institution that is insured by the Federal Deposit Insurance Corporation and that

is acceptable to the Board. The loan may not be for a term longer than 25 years or the economically useful life of the asset, whichever is less.

Other requirements for approval of a loan guarantee include a written determination that the collateral is sufficient to protect U.S. financial interests. To this end, the Board must determine that the collateral is equal to the unpaid balance of the loan amount covered by the loan guarantee. If such collateral is of a lower amount, then the collateral of an affiliate of the applicant must be added to the existing collateral. If necessary to meet requirements for sufficient collateral under the Act, the assets of the applicant and all assets from any affiliate can be required. Finally, the Board must determine in writing that all necessary and required regulatory approvals have been received for the loan and the project that is associated with the loan, that the loan would not have been available on reasonable terms and conditions without the guarantee provided under this Act, and that there is a reasonable expectation by the Board that the loan will be repaid.

The Board will prioritize applicants for loan guarantees using the following criteria. The first priority will be for projects that serve the greatest number of households in unserved areas. The second priority will be for projects that serve the greatest number of households in underserved areas. The Board must consider the cost per household served for the proposed projects of all applicants.

The Board may guarantee up to 80 percent of that portion of a loan that will be used to provide local television signals and that otherwise meets the requirements established by the Board and this Act. The aggregate value of all loans for which loan guarantees may be issued under this Act cannot exceed \$1.25 billion, but otherwise there is no minimum or maximum value required for a loan guarantee.

The 80 percent loan guarantee may take one of two forms. The guarantee may represent up to 80 percent of a loan that comprises all (100 percent) of the debt associated with a project meeting the purposes of this Act. Alternatively, the guarantee may represent a full guarantee (100 percent) of a loan that comprises up to 80 percent of the debt associated with a project. Under this second scenario, the same lender must provide all of the financing for the project, including both the guaranteed and the unguaranteed portions.

The Board also is authorized to establish and accept credit risk premiums with respect to loan guarantees under this Act. To the extent appropriations of budget authority are not sufficient to cover the cost of loan guarantees under this Act, the Board must require credit risk premiums from applicants to cover this shortfall. Credit risk premiums will be paid into an account established in the Treasury and shall accrue interest. The Board shall use the proceeds of this account to cover any shortfall between a guaranteed amount paid pursuant to this Act and the net proceeds earned upon liquidation of all assets used as collateral for the loan. When all loans guaranteed by this Act have been repaid or otherwise satisfied, the Board will refund any remainder in the account to those borrowers who did not default or who cured any default, on a pro rata basis.

Section 5. Administration of loan guarantees

Section 5 provides that the Administrator of the Rural Utilities Service (Administrator) will be responsible for administering loan guarantees issued pursuant to this Act. The Administrator will enforce the terms and conditions specified by the Board and monitor the performance of loans guaranteed by the Board.

The Administrator will have superior status to all other lienholders on assets used to secure a loan guaranteed under this Act and a perfected security interest in such assets. In the event of default, all property or related interests must be sold or disposed of in an orderly and efficient manner so as to maximize return to the taxpayer. The Administrator is authorized to accept property as payment of amounts owed to the United States, but only to the extent that the obligation is not fully satisfied by cash.

The Administrator may approve the modification of a loan guarantee under this Act only if such modification meets certain requirements: Consent must be obtained from parties to the loan agreement. The modification must be consistent with the underwriting criteria developed pursuant to this Act. There must be no negative impact on the ability of the applicant to repay the loan, and the National Telecommunications Information Administration must be consulted. Finally the modification must not adversely affect the Federal Government's interest in the assets or collateral of the applicant and must be consistent with the financial interests of the United States.

Notwithstanding any other provision of law, if any person or entity indebted to the United States as a result of this Act files for bankruptcy protection, the person's or entity's debts due to the United States must be satisfied first. A discharge in bankruptcy will not release a person or entity from obligations under this Act.

Section 6. Annual audit

Section 6 requires the General Accounting Office (GAO) to conduct an annual audit of the loan guarantee program developed pursuant to this Act. The GAO report is to be submitted to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking and Financial Services.

Section 7. Sunset

Section 7 prohibits the guarantee of any loan under this Act made after December 31, 2006.

Section 8. Retransmission of local television broadcast stations

Section 8 requires that if a local broadcast station requests carriage of its signal and is located in a market not served by a satellite carrier, the applicant shall carry the signal of that station without charge and be subject to the applicable rights, obligations, and limitations of sections 338, 614, and 615 of the Communications Act of 1934.

Section 9. Definitions

Section 9 defines the terms "affiliate," "unserved area," "underserved area," and common terms used in this Act.

Section 10. Authorization of appropriations

Section 10 authorizes funds to be appropriated as necessary to carry out the Act.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill.

S. 2097 imposes a modest burden on the Administrator of the Rural Utilities Service to administer the provisions of this Act. This requirement is similar to other responsibilities of the Rural Utilities Service. In addition, a modest burden will be imposed on the Secretary of the Treasury, the Secretary of Agriculture, and the Chairman of the Board of the Federal Reserve System, or their designees. Also, to the extent Federal agencies or departments are consulted by the Board or the Administrator so as to comply with the requirements of this Act, these agencies or departments may face additional operational costs. No new regulatory burden is anticipated to be imposed by this legislation on the private sector since participation in the loan guarantee program is elective, purely voluntary.

CHANGES IN EXISTING LAWS

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

COST OF LEGISLATION

Senate rule XXVI, section 11(b) of the Standing Rules of the Senate, and section 403 of the Congressional Budget Impoundment and Control Act, require that each committee report on a bill containing a statement estimating the cost of the proposed legislation, which has been prepared by the Congressional Budget Office. The estimate is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 15, 2000.

Hon. PHIL GRAMM,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2097, the Launching Our Communities' Access to Local Television Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley.

Sincerely,

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

Enclosure.

S. 2097—Launching Our Communities’ Access to Local Television Act of 2000

Summary: S. 2097 would establish a loan guarantee program for certain companies to provide local television service to areas of the country that do not receive local television stations from satellite companies. The bill would authorize the Administrator of the Rural Utilities Service (RUS) at the Department of Agriculture to guarantee up to 80 percent of private loans authorized to be made to qualified borrowers. The bill would authorize the appropriation of amounts necessary for the costs of the loan guarantees for up to \$1.25 billion of private borrowing, and associated administrative expenses. Qualifying loans would be payable in full within the lesser of 25 years or the useful life of the assets purchased. The authority to guarantee loans would be contingent upon future appropriation action and would expire on December 31, 2006.

CBO estimates that implementing S. 2097 would cost about \$265 million for loan subsidy and administrative costs over the 2000–2005 period, assuming appropriation of the necessary amounts. S. 2097 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 2097 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: For the purpose of this estimate, CBO assumes that S. 2097 will be enacted in fiscal year 2000 and that funds will be provided for its implementation each year. The estimated budgetary impact of S. 2097 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—					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	5	252	2	2	2	2
Estimated Outlays	2	167	90	2	2	2

Basis of estimate: Under procedures established by the Federal Credit Reform Act of 1990, the subsidy cost of a loan guarantee is the estimated long-term cost to the government, calculated on a net present value basis (excluding administrative costs). We estimate that the loan guarantees provided under the bill would cost about 20 percent of the total amount borrowed—or \$250 million, subject to the availability of appropriated funds. In addition, CBO estimates that administering the program would cost about \$5 million in 2000 and about \$2 million in each subsequent year. The bill would authorize the Secretary of Agriculture to charge fees, which could offset some of the subsidy or administrative costs, but this estimate assumes no fees would be charged.

To prepare this estimate, CBO consulted with industry experts and investment analysts and examined the credit ratings of firms in the satellite television and related industries. The information on credit ratings is useful because different credit ratings reflect analysts’ expectations of defaults. Based on this information, we assume that the rural television loans likely to be guaranteed under

this bill would have a credit risk comparable to debt rated as “B” or “CCC,” which typically have default rates ranging from about 30 percent to 45 percent respectively.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 2097 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On March 1, 2000, CBO transmitted a cost estimate for H.R. 3615, the Rural Local Broadcast Signal Act, as ordered reported by the House Committee on Agriculture on February 16, 2000. That bill would authorize the RUS to guarantee 100 percent of the value of loans made for this purpose—up to \$1.25 billion in private borrowing. It also would allow the government’s guarantee to be subordinate to third-party financing. CBO estimated that implementing H.R. 3615 would cost \$365 million over the 2000–2005 period, subject to the availability of appropriated funds. The lower estimated cost for S. 2097 reflects the lower federal risk associated with an 80-percent guarantee level and the fact that the government’s guarantee would not be subordinate.

Estimate prepared by: Mark Hadley.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ADDITIONAL VIEWS

We strongly support the goal of the “Launching Our Communities’ Access to Local Television Act of 2000.” The Committee heard testimony outlining how very important access to local television is in unserved and underserved communities.

In order to promote the success of the effort to provide this service through the loan guarantee program included in the legislation, we believe that Section 4 of the legislation should not include the requirement that the program be financed only through depository institutions that are insured by the Federal Deposit Insurance Corporation.

Our view is that the lender should be any qualified lender that is acceptable to the Board, which includes membership with broad and deep knowledge of financial markets and lending institutions. In addition to the qualified lenders specified in S. 2097, the final legislation should also allow other qualified entities including venture capital firms, investment banks, or cooperative banks that provide specialized financing products that might not be available through FDIC-insured institutions. This would allow borrowers expanded access to capital, thus providing them with the experience of entities who are regularly involved in the private capital markets.

JOHN EDWARDS.
CHRIS DODD.
CHARLES SCHUMER.
TIM JOHNSON.
RICHARD H. BRYAN.
PAUL S. SARBANES.
JOHN F. KERRY.
JACK REED.
EVAN BAYH.

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