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THE SATELLITE TELEVISION MODERNIZATION ACT OF 2009

NOVEMBER 10, 2009.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 1670]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 1670) to reform and modernize the limitations on exclusive rights relating to secondary transmissions of certain signals, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

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I. BACKGROUND AND PURPOSE OF THE SATELLITE TELEVISION MODERNIZATION ACT OF 2009

Broadcast television plays an important role in communities across the country by providing free access to news, weather, and sports that is tailored to the interests of its local viewers. The programming and services provided by local broadcasters help to foster a sense of community in cities and towns across the country. Congress has played a key role in ensuring the availability of local programming for as many consumers as possible. The Satellite Tele-

vision Modernization Act continues this policy by reauthorizing, modernizing, and simplifying important portions of the Copyright Act used by satellite providers and cable systems that facilitate the retransmission of broadcast stations to consumers.

Today, broadcast television is but one part of a growing matrix of video delivery systems. Cable, satellite, and increasingly, the Internet, are viable alternatives to over-the-air television, but the network of broadcast stations that exist in the United States remains the primary way in which locally oriented video content is received by consumers. Congress has created a statutory structure to enable cable and satellite companies to carry broadcast stations, which in turn has benefited both the carriers and the broadcasters.

Every signal broadcast by a television station contains copyrighted content, and the Copyright Act grants copyright holders the exclusive rights over the public performance of their works.¹ Prior to the Copyright Act of 1976 (the “1976 Act”),² however, courts held that a cable system retransmitting the content contained in a broadcast signal was not engaged in a separate public performance of the content.³ In the 1976 Act, Congress provided that the secondary transmission of a work or display embodied in a primary transmission is an act of infringement if done without the consent of the content owner or pursuant to the terms of the statutory license, created as part of the 1976 Act.⁴

The section 111 statutory license established by Congress in 1976 for the cable industry to provide secondary transmissions of broadcast programming has not been updated significantly since its enactment. As a result, the license remains based on rules of the Federal Communications Commission (“FCC”) in place more than 30 years ago, many of which have long since been repealed.⁵ The modern application of this license has resulted in unintended consequences, such as cable systems paying copyright holders for the retransmission of content to cable subscribers who do not actually receive the content. This has become known as the “phantom signal” issue.⁶ The Satellite Television Modernization Act addresses this issue by applying the royalty based only on subscribers who actually receive the content, but, in exchange, raising the royalty rate.

In the 1980s, satellite television became an increasingly viable delivery platform.⁷ Congress facilitated its growth by enacting the Satellite Home Viewer Act in 1988,⁸ legislation that created a new section 119 statutory license (the “distant signal license”) to be used by satellite providers to retransmit the signals of distant net-

¹ See 17 U.S.C. § 106. Broadcast television signals contain the copyrighted works of many different rights holders and aggregating those rights can be unwieldy. The statutory licenses discussed *infra* create a viable avenue for carriers to clear the necessary rights while ensuring copyright holders are compensated.

² Pub. L. No. 94–553.

³ See *Fortnightly Corp. v. United Artists Television, Inc.*, 392 U.S. 390 (1968).

⁴ See 17 U.S.C. § 111.

⁵ See A Report of the Register of Copyrights, United States Copyright Office, Satellite Home Viewer Extension and Reauthorization Act Section 109 Report (June 2008) [hereinafter Section 109 Report] at 2–8.

⁶ See *id.* at 99.

⁷ The satellite industry operated under the passive carrier exemption of the section 111 license from the inception of the license through the mid-1980s, but once satellite providers began to scramble their signals, questions were raised about whether they could continue to operate as passive carriers. See Section 109 Report, *supra* note 5 at 8–9.

⁸ Pub. L. No. 100–667.

work stations to households that were unserved by their local broadcast stations.

The Satellite Home Viewer Act included a standard to determine if a household was served or unserved that was intended to protect local broadcasters. The distant signal license defines an unserved household as one that “cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that network of Grade B intensity as defined by the Federal Communications Commission.”⁹ Congress set the distant signal license to expire in five years, and it has traditionally been reauthorized for five-year periods since its inception.

The distant signal license grew out of the existing satellite technology of the era, which was a satellite beam that covered the continental United States. As the industry grew throughout the 1990s, it was able to develop technology that allowed for the targeting of specific regions within the country. This progression in technology made it possible for satellite carriers to provide local stations to local markets. As a result, when Congress revisited the Satellite Home Viewer Act in 1999, it established a new license in section 122 that allowed for the retransmission of local broadcast signals in local markets (the “local license”).¹⁰ Unlike the distant signal license, the local license is permanent. The local license has been successful in both promoting the satellite television industry and enhancing access to local broadcast stations.

Congress last reauthorized the distant signal license in 2004.¹¹ Each reauthorization of the license has aimed to make improvements to the existing system. In this reauthorization, Congress must address certain changes to the television marketplace. Most significantly, by June 13, 2009, all full power broadcast stations in the United States had completed the transition from an analog format to digital, pursuant to congressional mandate.¹² The statutory license that governs the retransmission of distant broadcast content by the satellite industry, however, is currently based on the analog format. As a result, virtually all households in the United States currently fall under the definition of an unserved household for purposes of the distant signal license. The legislation reported by the Committee will modernize the statutory licenses so that they are based on a digital standard and will work efficiently and effectively in the digital world.

In June 2008, the United States Copyright Office issued a report pursuant to the 2004 reauthorization of the Satellite Home Viewer Act.¹³ Congress charged the Copyright Office with examining the compulsory licenses and making recommendations to improve the current system. The principle recommendation of the Copyright Office report was to move towards abolishing the licenses, but short of that, the report offers other recommendations to streamline and modernize them.¹⁴

The Committee bill, as reported, draws on the recommendations of the Copyright Office and takes steps to begin the process of

⁹ 17 U.S.C. 119(d)(10).

¹⁰ Pub. L. No. 106–113.

¹¹ Pub. L. No. 108–447.

¹² Pub. L. No. 111–4.

¹³ Pub. L. No. 108–447.

¹⁴ See generally Section 109 Report, *supra* note 5 at 219.

phasing out the statutory licenses. The Satellite Television Modernization Act moves locally-oriented provisions out of the distant signal license and places them into the permanent local license. These provisions include significantly viewed, special exception, and low-power stations. Shifting these provisions into the local license will ensure that the distant signal license is focused purely on providing truly distant signals to consumers unserved by their local broadcasters.

In addition, the Committee bill fixes an issue in the distant signal license that currently impedes the ability of satellite providers to import a distant signal if a broadcast signal from a neighboring market bleeds into portions of another market and covers households that would otherwise be deemed unserved. The bill also includes a new provision in the local license to allow a satellite carrier to import a missing network station from an adjacent market when the local market is not served by all four principle networks, after the provider first obtains the station's consent. The bill also makes it easier for satellite carriers to provide State public broadcasting networks.

These changes will improve the ability of satellite carriers to provide a full complement of network stations to consumers, which will encourage them to launch local service in more markets, and to offer more local stations for consumers. These changes also signify important steps toward phasing out the statutory licenses, in particular the distant signal license. As local service is launched in more and more markets, the distant signal license will become increasingly unnecessary and can eventually be ended.

Finally, the Satellite Television Modernization Act directs the United States Copyright Office to study proposals on phasing out the compulsory licenses, and to provide further recommendations on the issue. The Copyright Office would issue a report on this topic no later than one year following the enactment of this legislation.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

A. INTRODUCTION OF THE BILL

On September 15, 2009, Senator Leahy introduced the Satellite Television Modernization Act of 2009. Senator Sessions, Senator Kohl, Senator Hatch, and Senator Kyl were original cosponsors. This bill was referred to the Committee on the Judiciary.

B. HEARINGS

On February 25, 2009, the Senate Committee on the Judiciary had held a hearing on "Ensuring Television Carriage in the Digital Age." This hearing was attended by Chairman Leahy, Senator Specter, Senator Hatch, Senator Kohl, Senator Feingold, Senator Cardin, Senator Wyden, Senator Klobuchar, and Senator Kaufman. The following witnesses testified: Charlie Ergen, Chairman and CEO of DISH Network, L.L.C.; K. James Yager, CEO of Barrington Broadcasting Group, L.L.C., and Chairman of the National Association of Broadcaster's Television Board; Martin D. Franks, Executive Vice President for Policy, Planning and Government Relations, CBS Corporation; David L. Cohen, Executive Vice President, Comcast Corporation; and the Honorable Robert M. Hartwell,

Vermont State Senator, Bennington District. The following materials were submitted for the Record: statement of Gigi B. Sohn, President of Public Knowledge; statement of the Association of Public Television Stations; statement of Bob Gabrielli, Senior Vice President, DIRECTV, Inc.; and statement of Mike Mountford, CEO, National Programming Service.

C. LEGISLATIVE HISTORY

The Senate Judiciary Committee considered S. 1670 on September 24, 2009. Two amendments were considered during this meeting.

Senator Leahy offered a managers' amendment cosponsored by Senator Sessions, which was adopted by unanimous consent. This amendment makes technical corrections to the phantom signal provision; defines a "served household" as one that receives either a good quality digital or analog signal; clarifies that stations carried under the short market provision of section 122 are not part of the carry-one-carry-all requirement of the Communications Act of 1934; applies the "Grade B bleed" fix to all markets; grandfathers current distant signal subscribers so that they do not need to be requalified; provides a more accurate definition of where local service is available; strikes the channel positioning language of the non-commercial television provision; and directs the United States Copyright Office to study and report within one year on proposals to phase-out the statutory licenses.

Senator Feingold offered an amendment cosponsored by Senator Kohl, which was subsequently withdrawn, that would have required satellite providers to offer Wisconsin broadcast stations to subscribers in eight counties in Wisconsin that are located in Designated Market Areas that comprise counties primarily located in other states.

The Committee then voted to report the Satellite Television Modernization Act of 2009, as amended, favorably to the Senate by voice vote.

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title; Table of contents

This section provides that the legislation may be cited as the Satellite Television Modernization Act of 2009.

Section 2. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

In general, this section makes six substantive changes to streamline and modernize the section 119 license. First, it removes the special exceptions, low power television stations, and significantly viewed stations provisions from the section 119 license. Each of these provisions relates to the ability to receive locally-oriented programming. Section 3 of this Act recodifies these provisions in the local license—section 122 of title 17—so that section 119 is more clearly directed toward truly distant signals.

Second, this section updates the distant signal license to reflect the digital transition. Specifically, it provides for a digital predictive model for determining which households are unserved, replacing the analog model. A household that does continue to receive

a good quality analog signal, however, will continue to be deemed a served household.

Third, this section grandfathers existing subscribers, by ensuring that satellite providers do not need to requalify them under the new digital standard. It also continues to provide that the statutory license does not apply in the case of secondary transmissions to a subscriber who was not lawfully receiving such secondary transmission as of December 31, 2009, and is able to receive a local signal from the satellite carrier.

Fourth, this section modernizes the process for determining royalty rates. The current law differentiates between analog and digital signal for royalty purposes and continues to refer to the copyright arbitration royalty panel process, which no longer exists. This section makes the necessary updates for the Copyright Royalty Judges to set rates under the current statutory system in chapter 8 of title 17.

Fifth, this section includes within the definition of an unserved household a household in which there is no digital signal of a station affiliated with the network in the household's local market. This has been known as the "grade B bleed" issue.

Sixth, this section increases the penalties for violating the terms of the license to deter infringement. In addition, this section makes the necessary technical and conforming changes.

Section 3. Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets

In general, this section makes four substantive changes to the section 122 license. First, it inserts the significantly viewed stations, low power television stations, and special exceptions provisions that were removed in section 2 of the Act from section 119. In doing so, it also expands the license to provide secondary transmissions of the primary transmissions of local low power television stations to cover the entire local market. Royalties apply in the same manner as they do for these three provisions under current law.

Second, this section facilitates the carriage of networks of non-commercial educational broadcast stations. Specifically, it applies the statutory license to secondary transmissions of primary transmissions from a system of three or more noncommercial educational broadcast stations licensed by a single entity in a State to any subscriber within that State located in a designated market area not otherwise eligible to receive secondary transmissions of a noncommercial educational broadcast station located within that State. Royalties to the copyright owners apply to retransmissions under this provision.

Third, this section creates a new provision permitting a satellite carrier to provide a network signal from an adjacent market when a local market is unserved by that network, provided the satellite carrier obtain retransmission consent from the station. Royalties to the copyright owners apply to retransmissions under this provision.

Fourth, this section increases the penalties for violating the terms of the license to deter infringement. In addition, this section makes the necessary technical and conforming changes.

Section 4. Technical and conforming amendments

This section makes technical and conforming amendments to the Communications Act of 1934, specifying that carriage of low power, significantly viewed, special exception, and short market stations is optional, and not part of a carry-one-carry-all requirement.

Section 5. Extension of authority

This section reauthorizes the section 119 statutory license until December 31, 2014.

Section 6. Modifications to the cable statutory license

This section modifies the royalty calculation methodology in the section 111 cable license. This section ensures that the gross receipt pool, which serves as the basis for royalty payments under the section 111 license, applies only to subscribers who can actually receive the relevant content. This section also makes adjustments to the royalty rates. In addition, this section modifies section 804(b) of title 17, to delay proceedings to determine new royalty rates until 2015, and sets the effective date for the new royalty rates established in this section as the first accounting period of 2010.

Section 7. Report on market based alternatives to statutory licensing

This section directs the United States Copyright Office to submit a study to the House and Senate Judiciary Committees on proposals to phase out the statutory licenses. The report shall be due one year following the enactment of the bill.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available for inclusion in this report. The estimate will be printed in either a supplemental report or the Congressional Record when it is available.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 1670.

VI. CONCLUSION

The Satellite Television Modernization Act of 2009 sufficiently updates the statutory licenses that govern the retransmission of broadcast television content for the digital era. This legislation also takes important steps towards phasing out the statutory licenses. By modernizing the licenses for the digital age, the Satellite Television Modernization Act ensures that consumers will receive more local content in the most efficient manner possible.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1670, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 17—COPYRIGHTS

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

* * * * *

§ 111. **Limitations on exclusive rights: Secondary transmissions**

* * * * *

(d) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) A cable system whose secondary transmissions have been subject to statutory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

* * * * *

[(B) except in the case of a cable system whose royalty is specified in subclause (C) or (D), a total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during said period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

[(i) 0.675 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (ii) through (iv);

[(ii) 0.675 of 1 per centum of such gross receipts for the first distant signal equivalent;

[(iii) 0.425 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents;

[(iv) 0.2 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter; and

in computing the amounts payable under paragraphs (ii) through (iv), above, any fraction of a distant signal equivalent shall be computed at its fractional value and, in the case of any cable system located partly within and partly without the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter; and]

(B) except in the case of a cable system whose royalty fee is specified in subparagraph (E) or (F), a total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during said period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

(i) 1.064 per centum for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to clauses (ii) through (iv).

(ii) 1.064 per centum of such gross receipts for the first distant signal equivalent.

(iii) 0.701 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents.

(iv) 0.330 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each distant signal equivalent thereafter;

[(C) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total \$80,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which \$80,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than \$3,000. The royalty fee payable under this subclause shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, if any; and] *(C) in computing the amounts payable under clauses (ii) through (iv) of subparagraph (B), any fraction of a distant signal equivalent shall be computed at its fractional value or in the case of any cable system located partly within and partly without a local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter;*

[(D) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than \$80,000 but less than \$160,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to \$80,000; and (ii) 1 per centum of any gross receipts in excess of \$80,000 but less than \$160,000, regardless of the number of distant signal equivalents, if any.] *(D) in computing the amounts payable under clauses (ii) through (iv) of subparagraph (B), if a cable system provides a secondary transmission of a primary transmitter to some but not all communities served by that cable system, the gross receipts and the distant signal equivalent values for each secondary transmission shall be derived solely on the*

basis of the subscribers in those communities where the cable system provides each such secondary transmission, provided, however, that the total royalty fee for the period paid by such system shall in no event be less than the royalty fee calculated in accordance with clause (i) of subparagraph (B) multiplied by the gross receipts from all the subscribers to the system; and provided further, that a cable system that on a statement submitted prior to the date of enactment of the Satellite Television Modernization Act of 2009, computed its royalty fee consistent with the methodology in this paragraph or that amends a statement filed prior to the date of enactment of such Act to compute the royalty fee due using this methodology shall not be subject to an action for infringement, or eligible for any royalty refund, arising out of its use of such methodology on such statement;

(E) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total \$263,800 or less, gross receipts of the cable system for the purpose of this subparagraph shall be computed by subtracting from such actual gross receipts the amount by which \$263,800 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than \$10,400. The royalty fee payable under this subparagraph shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, if any; and

(F) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters are more than \$263,800 but less than \$527,600, the royalty fee payable under this subparagraph shall be—

(i) 0.5 of 1 per centum of any gross receipts up to \$263,800; and

(ii) 1 per centum of any gross receipts in excess of \$283,800 but less than \$527,600 regardless of the number of distant signal equivalents, if any.

* * * * *

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

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

* * * * *

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of [subparagraphs (B) and (C)] *subparagraph (B)* of this paragraph and paragraphs [(5), (6), (7), and (8)] (4), (5), (6), and (7) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a network station 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, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, 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.—

(i) IN GENERAL.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions of the signals of no more than two network stations in a single day for each television network to persons who reside in unserved households, *except that a satellite provider lawfully serving a subscriber with a distant network station pursuant to this subparagraph while a network station affiliated with such network was broadcasting in analog shall not be required to re-qualify such subscriber to receive such distant station under the digital predictive model established by the Federal Communications Commission.* **【The limitation in this clause shall not apply to secondary transmissions under paragraph (3).】**

(ii) ACCURATE DETERMINATIONS OF ELIGIBILITY.—

(I) ACCURATE PREDICTIVE MODEL.—In determining presumptively whether a person resides in an unserved household under subsection (d)(10)(A), **【a court shall rely on the Individual Location Longley-Rice model set forth by the Federal Communications Commission in Docket No. 98–201, as that model may be amended by the Commission over time under section 339(c)(3) of the Communications Act of 1934 [47 U.S.C.A. 339(c)(3)] to increase the accuracy of that model.】** *a court shall rely, with respect to a signal originating as an analog signal, on the Individual Location Longley-Rice model set forth by the Federal Communications Commission in Docket No. 98–201, and shall rely, with respect to a signal originating as a digital signal, on the predictive model established by the Federal Communications Commission, as that model may be amended over time to increase the accuracy of that model.*

(II) ACCURATE MEASUREMENTS.—For purposes of site measurements to determine whether a person resides in an unserved household under subsection (d)(10)(A), a court shall rely on **【section 339(c)(4) of the Communications Act of 1934 [47 U.S.C.A. 339(c)(4)]】** *rules established by the Federal Communications Commission.*

* * * * *

【(C) EXCEPTIONS.—

【(i) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmission of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 CFR 76.51).

【(ii) STATES WITH ALL NETWORK STATIONS AND SUPERSTATIONS IN SAME LOCAL MARKET.—In a State in which all network stations and superstations licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all counties of that State, the statutory license provided under subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of title 47 of the Code of Federal Regulations).

【(iii) ADDITIONAL STATIONS.—In the case of that State in which are located 4 counties that—

【(I) on January 1, 2004, were in local markets principally comprised of counties in another State, and

【(II) had a combined total of 41,340 television households, according to the U.S. Television Household Estimates by Nielsen Media Research for 2004,

the statutory license provided under subparagraph (A) shall apply to secondary transmissions by a satellite carrier to subscribers in any such county of the primary transmissions of any network station located in that State, if the satellite carrier was making such secondary transmissions to any subscribers in that county on January 1, 2004.

【(iv) CERTAIN ADDITIONAL STATIONS.—If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

[(I) the 2 counties are located in a local market that is in the top 100 markets for the year 2003 according to Nielsen Media Research; and

[(II) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

[(v) APPLICABILITY OF ROYALTY RATES.—The royalty rates under subsection (b)(1)(B) apply to the secondary transmissions to which the statutory license under subparagraph (A) applies under clauses (i), (ii), (iii), and (iv).]

[(D)] (C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

(i) INITIAL LISTS.—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—

[(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households; and

[(II) a separate list, aggregated by designated market area (as defined in *section 122(j)*) (by name and address, including street or rural route number, city, State, and zip code), which shall indicate those subscribers being served pursuant to paragraph (3), relating to significantly viewed stations.] *network station a list, aggregated by designated market area (as that term is defined in section 122(j)), indentifying (by name and address, including street or rural route number, city, State, and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households.*

(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), on the 15th of each month, the satellite carrier shall submit to [the network—

[(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the last submission under clause (i); and

[(II) a separate list, aggregated by designated market area (by name and street address, including street or rural route number, city, State, and zip code), identifying those subscribers whose service pursuant to paragraph (3), relating to significantly viewed stations, has been added or dropped.] *the network a list, aggregated by des-*

ignated market area (as that term is defined in section 122(j)), indentifying (by name and address, including street or rural route number, city, State, and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the submission under clause (i).

(iii) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

(iv) APPLICABILITY.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to which 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) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

【(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation to a subscriber who resides outside the station’s local market (as defined in section 122(j)) but within a community in which the signal has been determined by the Federal Communications Commission, to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

【(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of the primary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122.

【(C) WAIVER.—

【(i) IN GENERAL.—A subscriber who is denied the secondary transmission of the primary transmission of a network station under subparagraph (B) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber’s request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber’s request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted be-

fore the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 [47 U.S.C.A. § 339(c)(2)] shall not constitute a waiver for purposes of this subparagraph.

[(ii) SUNSET.—The authority under clause (i) to grant waivers shall terminate on December 31, 2008, and any such waiver in effect shall terminate on that date.

[(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

[(A) RULES FOR SUBSCRIBERS TO ANALOG SIGNALS UNDER SUBSECTION (e).—

[(i) FOR THOSE RECEIVING DISTANT ANALOG SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary analog transmission of a network station solely by reason of subsection (e) (in this subparagraph referred to as a “distant analog signal”), and who, as of October 1, 2004, is receiving the distant analog signal of that network station, the following shall apply:

[(I) In a case in which the satellite carrier makes available to the subscriber the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same television network—

[(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of the Communications Act of 1934 [47 U.S.C.A. § 338(h)(1)], the subscriber elects to retain the distant analog signal; but

[(bb) only until such time as the subscriber elects to receive such local analog signal.

[(II) Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply with respect to any subscriber who is eligible to receive the distant analog signal of a television network station solely by reason of subsection (e), unless the satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

[(aa) identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber; and

[(bb) states, to the best of the satellite carrier's knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant analog signals.

[(ii) FOR THOSE NOT RECEIVING DISTANT ANALOG SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant analog signal of a network station solely by reason of subsection (e) and who did not receive a distant analog signal of a station affiliated with the same network on October 1, 2004, the statutory license under paragraph (2) shall not apply to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same network.

[(B) RULES FOR OTHER SUBSCRIBERS.—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary analog transmission of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as a "distant analog signal"), other than subscribers to whom subparagraph (A) applies, the following shall apply:

[(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same television network if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber.

[(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant analog signal of a station affiliated with the same network to that subscriber if—

[(I) that subscriber seeks to subscribe to such distant analog signal before the date on which such carrier commences to provide pursuant to the statutory license under section 122 the secondary transmissions of the primary analog trans-

mission of stations from the local market of such local network station; and

[(II) the satellite carrier, within 60 days after such date, submits to each television network a list that identifies each subscriber in that local market provided such an analog signal by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber.

[(C) FUTURE APPLICABILITY.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of a primary analog transmission of a network station to a person who—

[(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

[(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, and such secondary transmission of such primary transmission can reach such person.

[(D) SPECIAL RULES FOR DISTANT DIGITAL SIGNALS.—The statutory license under paragraph (2) shall apply to secondary transmissions by a satellite carrier to a subscriber of primary digital transmissions of network stations if such secondary transmissions to such subscriber are permitted under section 339(a)(2)(D) of the Communications Act of 1934 [47 U.S.C.A. § 339(a)(2)(D)], as in effect on the day after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, except that the reference to section 73.683(a) of title 47, Code of Federal Regulations, referred to in section 339(a)(2)(D)(i)(I) [47 U.S.C.A. § 339(a)(2)(D)(i)(I)] shall refer to such section as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

[(E) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to unserved households included under paragraph (12).

[(F) WAIVER.—A subscriber who is denied the secondary transmission of a network station under subparagraph (C) or (D) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver re-

quest. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 [47 U.S.C.A. § 339(c)(2)] shall not constitute a waiver for purposes of this subparagraph.

【(G) AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes available a secondary transmission of the primary transmission of a local station to a subscriber or person if the satellite carrier offers that secondary transmission to other subscribers who reside in the same zip code as that subscriber or person.】

(3) *STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.*—

(A) *FUTURE APPLICABILITY.*—*The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of a primary transmission of a network station to a person who—*

(i) is not a subscriber lawfully receiving such secondary transmission as of December 31, 2009; and

(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the secondary transmission of the primary transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, and such secondary transmission of such primary transmission can reach such person.

(B) *OTHER PROVISIONS NOT AFFECTED.*—*This paragraph shall not affect the applicability of the statutory license to secondary transmissions to unserved households included in paragraph (11).*

(C) *WAIVER.*—*A subscriber who is denied the secondary transmission of a network station under this paragraph may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber’s request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber’s request for a waiver within that 30-day period, that network shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 (47 U.S.C. 339(c)(2)) shall not constitute a waiver for purposes of this subparagraph.*

(D) *AVAILABLE DEFINED.*—*For purposes of this paragraph, a satellite carrier makes available a secondary transmission of the primary transmission of a local station to a subscriber or person if the satellite carrier offers that secondary transmission to the other subscribers who reside in the same nine-digit zip code as that subscriber or person.*

[(5)] (4) 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 infringement 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).

[(6)] (5) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a superstation or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 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.

[(7)] (6) 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 is not eligible to receive the transmission under this section is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506, 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]** \$250 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 are not eligible to receive the transmission under this section, 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 net-

work station affiliated with the same network, and the court may order statutory damages of not to exceed ~~【\$250,000】~~ \$2,500,000 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】~~ \$2,500,000 for each 6-month period during which the pattern or practice was carried out.

* * * * *

~~【(8)】~~ (7) 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 performance or display of a work embodied in a primary transmission made by a superstation or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the satellite carrier unlawfully discriminates against a distributor.

~~【(9)】~~ (8) 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.

~~【(10)】~~ (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—

* * * * *

~~【(11)】~~ (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.

~~【(12)】~~ (11) SERVICE TO RECREATIONAL VEHICLES AND COMMERCIAL TRUCKS.—

* * * * *

~~【(13)】~~ (12) STATUTORY LICENSE CONTINGENT ON COMPLIANCE WITH FCC RULES AND REMEDIAL STEPS.—Notwithstanding any other provision of this section, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a broadcast station licensed by the Federal Communications Commission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if, at the time of such transmission, the satellite carrier is not in compliance with the

rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast station signals.

[(14)] (13) WAIVERS.—A subscriber who is denied the secondary transmission of a signal of a network station under subsection (a)(2)(B) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network station asserting that the secondary transmission is prohibited. The network station shall accept or reject a subscriber’s request for a waiver within 30 days after receipt of the request. If a television network station fails to accept or reject a subscriber’s request for a waiver within the 30-day period after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 [47 U.S.C.A. § 339(c)(2)], and that was in effect on such date of enactment, shall constitute a waiver for purposes of this paragraph.

[(15) CARRIAGE OF LOW POWER TELEVISION STATIONS.—

[(A) IN GENERAL.—Notwithstanding paragraph (2)(B), and subject to subparagraphs (B) through (F) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation that is licensed as a low power television station, to a subscriber who resides within the same local market.

[(B) GEOGRAPHIC LIMITATION.—

[(i) NETWORK STATIONS.—With respect to network stations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who—

[(I) reside in the same local market as the station originating the signal; and

[(II) reside within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20.

[(ii) SUPERSTATIONS.—With respect to superstations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who reside in the same local market as the station originating the signal.

[(C) NO APPLICABILITY TO REPEATERS AND TRANSLATORS.—Secondary transmissions provided for in subparagraph (A) shall not apply to any low power television station that retransmits the programs and signals of another television station for more than 2 hours each day.

[(D) ROYALTY FEES.—Notwithstanding subsection (b)(1)(B), a satellite carrier whose secondary transmissions of the primary transmissions of a low power television station are subject to statutory licensing under this section shall have no royalty obligation for secondary transmissions to a subscriber who resides within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20. Carriage of a superstation that is a low power television station within the station's local market, but outside of the 35-mile or 20-mile radius described in the preceding sentence, shall be subject to royalty payments under subsection (b)(1)(B).

[(E) LIMITATION TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—Secondary transmissions provided for in subparagraph (A) may be made only to subscribers who receive secondary transmissions of primary transmissions from that satellite carrier pursuant to the statutory license under section 122, and only in conformity with the requirements under 340(b) of the Communications Act of 1934 [47 U.S.C.A. § 340(b)], as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.]

[(16)] (14) RESTRICTED TRANSMISSION OF OUT-OF-STATE DISTANT NETWORK SIGNALS INTO CERTAIN MARKETS.—

* * * * *

(b) [STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—] DEPOSITS AND DISTRIBUTION OF ROYALTY FEES.—

(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 retransmitted, at any time during that period, to subscribers as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such retransmissions, 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 multiplying the total number of subscribers receiving each secondary transmission of each superstation or network station during each calendar month by the appropriate rate in effect under this section.

[Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary

transmissions to a subscriber under paragraph (3) of such subsection.]

* * * * *

[(c) ADJUSTMENT OF ROYALTY FEES.—

[(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR ANALOG SIGNALS.—

[(A) INITIAL FEE.—The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the primary analog transmissions of network stations and superstations shall be the appropriate fee set forth in part 258 of title 37, Code of Federal Regulations, as in effect on July 1, 2004, as modified under this paragraph.

[(B) FEE SET BY VOLUNTARY NEGOTIATION.—On or before January 2, 2005, the Librarian of Congress shall cause 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 for the secondary transmission of the primary analog transmission of network stations and superstations under subsection (b)(1)(B).

[(C) 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 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 cost thereof.

[(D) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS; PUBLIC NOTICE.—(i) voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that a 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.

[(ii)(I) Within 10 days after publication in the Federal Register of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding pursuant to subparagraph (E).

[(II) Upon receiving a request under subclause (I), the Librarian of Congress shall immediately provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.

[(III) The Librarian shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors,

and copyright owners without convening an arbitration proceeding unless a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).

[(E) 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, 2009, or in accordance with the terms of the agreement, whichever is later.

[(F) FEE SET BY COMPULSORY ARBITRATION.—

[(i) NOTICE OF INITIATION OF PROCEEDINGS.—On or before May 1, 2005, 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 the royalty fee to be paid for the secondary transmission of primary analog transmission of network stations and superstations under subsection (b)(1)(B) by satellite carriers and distributors

[(I) in the absence of a voluntary agreement filed in accordance with subparagraph (D) that establishes royalty fees to be paid by all satellite carriers and distributors; or

[(II) if an objection to the fees from a voluntary agreement submitted for adoption by the Librarian of Congress to apply to all satellite carriers, distributors, and copyright owners is received under subparagraph (D) from a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding.

Such arbitration proceeding shall be conducted under chapter 8 as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004.

[(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this subparagraph, the copyright arbitration royalty panel appointed under chapter 8, as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004 shall establish fees for the secondary transmissions of the primary analog transmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions, except that the Librarian of Congress and any copyright arbitration royalty panel shall adjust those fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Office pursuant to subparagraph (D). 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.

[(iii) 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), as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004; or

[(II) is established by the Librarian under section 802(f) as in effect on the day before such date of enactment shall be effective as of January 1, 2005.

[(iv) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in (iii) 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 subparagraph (D).

[(2) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR DIGITAL SIGNALS.—The process and requirements for establishing the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary digital transmissions of network stations and superstations shall be the same as that set forth in paragraph (1) for the secondary transmission of the primary analog transmission of network stations and superstations, except that—

[(A) the initial fee under paragraph (1)(A) shall be the rates set forth in section 298.3(b)(1) and (2) of title 37, Code of Federal Regulations, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, reduced by 22.5 percent;

[(B) the notice of initiation of arbitration proceedings required in paragraph (1)(F)(i) shall be published on or before December 31, 2005; and

[(C) the royalty fees that are established for the secondary transmission of the primary digital transmission of network stations and superstations in accordance with to the procedures set forth in paragraph (1)(F)(iii) and are payable under subsection (b)(1)(B)—

[(i) shall be reduced by 22.5 percent; and

[(ii) shall be adjusted by the Librarian of Congress on January 1, 2007, and on January 1 of each year thereafter, to reflect any changes occurring during the preceding 12 months in the cost of living as determined by the most recent Consumer Price Index (for

all consumers and items) published by the Secretary of Labor.】

(c) ADJUSTMENT OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—

(A) INITIAL FEE.—*The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the primary transmission of network stations and superstations shall be the appropriate fee set forth in subchapter E of chapter III of title 37, Code of Federal Regulations, as in effect on July 1, 2009, as modified under this paragraph.*

(B) FEE SET BY VOLUNTARY NEGOTIATION.—*On or before January 4, 2010, Copyright Royalty Judges shall cause 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 for the secondary transmission of the primary transmission of network stations and superstations under subsection (b)(1)(B).*

(C) 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 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 indentify common agents, Copyright Royalty Judges shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the cost thereof.*

(D)(i) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS; PUBLIC NOTICE.—*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.*

(ii)(I) *Within 10 days after publication in the Federal Register of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening a proceeding pursuant to subparagraph (F).*

(II) *Upon receiving a request under subclause (I), the Copyright Royalty Judges shall immediately provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.*

(III) *The Copyright Royalty Judges shall adopt the royalty fees from the voluntary agreement for all the satellite carriers, distributors, and copyright owners without convening a proceeding unless a party with an intent to par-*

participate in the proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).

(E) *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, 2014, or in accordance with the terms of the agreement, whichever is later.

(F) *PROCEEDING TO ESTABLISH ROYALTY FEES.*—

(i) *NOTICE OF INITIATION OF PROCEEDINGS; VOLUNTARY AGREEMENTS.*—On or before May 3, 2010, the Copyright Royalty Judges shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of determining the royalty fee to be paid for the secondary transmission of primary transmission of network stations and superstations under subsection (b)(1)(B) by satellite carriers and distributors—

(I) *in the absence of a voluntary agreement filed in accordance with subparagraph (D) that establishes royalty fees to be paid by all satellite carriers and distributors; or*

(II) *if an objection to the fees from a voluntary agreement submitted for adoption by the Copyright Royalty Judges to apply to all satellite carriers, distributors, and copyright owners is received under subparagraph (D) from a party with an intent to participate in the proceeding and a significant interest in the outcome of that proceeding.*

Such proceeding shall be conducted as provided under chapter 8 of this title.

(ii) *ESTABLISHMENT OF ROYALTY FEES.*—In determining royalty fees under this paragraph, the Copyright Royalty Judges shall establish fees for the secondary transmissions of the primary transmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions, except that the Copyright Royalty Judges shall adjust those fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Office pursuant to subparagraph (D). In determining fair market value, the Copyright Royalty Judges shall base their 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 the copyright owners and satellite carriers; and (III) the impact on the continued availability of secondary transmissions to the public.*

(iii) *PERIOD DURING WHICH DECISION OF THE COPYRIGHT ROYALTY JUDGES EFFECTIVE.*—The obligation to pay the royalty fee established under a determination which is made by the Copyright Royalty Judges under this paragraph shall be effective as of January 1, 2010.

(iv) *PERSONS SUBJECT TO ROYALTY FEE.*—The royalty fee referred to in clause (iii) 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 subparagraph (D).

(2) *ROYALTY FEE ANNUAL ADJUSTMENT.*—The royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary transmission of network stations and superstations shall be adjusted annually by the Copyright Royalty Judges to reflect any changes occurring during the preceding 12 months in the cost of living as determined by the most recent Consumer Price Index (for all consumers and items) published by the Secretary of Labor prior to December 1. Notification of the adjusted rates shall be published in the Federal Register prior to December 1 of that year.

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

* * * * *

(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, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that network of Grade B intensity as defined by the Federal Communications Commission under section 73.683(a) of title 47 of the Code of Federal Regulations, as in effect on January 1, 1999;] (A)(i) is located in a local market in which there is no primary network station affiliated with such network licensed to a community within such local market; or

(ii) cannot receive through the use of a conventional, stationary, outdoor rooftop antenna, an—

(I) over-the-air analog signal of a primary network station affiliated with that network that does not exceed Grade B intensity as defined by the Federal Communications Commission under section 73.683(a) of title 47 of the Code of Federal Regulations, as in effect on January 1, 1999; or

(II) over-the-air digital signal of a primary network station located in that household’s local market affiliated with that network that does not exceed the signal intensity standard in section 73.622(3)(1) of title 47 of the Code of Federal Regulations, as in effect on January 1, 2010;

(B) is subject to a waiver that meets the standards of subsection [(a)(14)] (a)(13) whether or not the waiver was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004;

(C) is a subscriber to whom subsection (e) applies;

(D) is a subscriber to whom subsection [(a)(12)] (a)(11) applies; or

(E) is a subscriber to whom the exemption under subsection (a)(2)(B)(iii) applies.

(11) LOCAL MARKET.—The term “local market” has the meaning given such term under section 122(j)[, except that with respect to a low power television station, the term “local market” means the designated market area in which the station is located].

[(12) LOW POWER TELEVISION STATION.—The term “low power television station” means a low power television as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term “low power television station” includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.]

[(13)] (12) COMMERCIAL ESTABLISHMENT.—The term “commercial establishment”—

* * * * *

[(f) EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.—

[(1) IN GENERAL.—In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

[(2) DEFINITION.—For purposes of this subsection, the term “antitrust laws”—

[(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

[(B) includes any State law similar to the laws referred to in paragraph (1).]

* * * * *

§ 122. Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets

[(a) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE CARRIERS.—A secondary transmission of a performance or display of a work embodied in a primary transmission

of a television broadcast station into the station's local market shall be subject to statutory licensing under this section if—

【(1) the secondary transmission is made by a satellite carrier to the public;

【(2) with regard to secondary transmissions, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and

【(3) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

【(A) each subscriber receiving the secondary transmission; or

【(B) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.】

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

(1) *SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS WITHIN A LOCAL MARKET.*—*A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station into the station's local market shall be subject to statutory licensing under this section if—*

(A) *the secondary transmission is made by a satellite carrier to the public;*

(B) *with regard to secondary transmissions, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and*

(C) *the satellite carrier makes a direct or indirect charge for the secondary transmission to—*

(i) *each subscriber receiving the secondary transmission; or*

(ii) *a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.*

(2) *SIGNIFICANTLY VIEWED AND LOW POWER STATIONS.*—*A secondary transmission of a performance or a display of a work embodied in a primary transmission of a television broadcast station or low power television station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall, if the secondary transmission is made by a satellite carrier that complies with the requirements of paragraph (1), be subject to statutory licensing under this paragraph as follows:*

(A) *SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.*—*The statutory license shall apply to the secondary transmission of the primary transmission of a network station or a superstation to a subscriber who resides outside the station's local market but within a community in which the signal has been determined by the Federal Communications Commission, to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications*

Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

(B) CARRIAGE OF LOW POWER TELEVISION STATIONS.—

(i) IN GENERAL.—The statutory license shall apply to the secondary transmission of the primary transmission of a station that is licensed as a low power television station, to a subscriber who resides within the same designated market area.

(ii) NO APPLICABILITY TO REPEATERS AND TRANSLATORS.—Secondary transmissions provided for in subparagraph (A) shall not apply to any low power television station that retransmits the programs and signals of another television station for more than 2 hours each day.

(3) SPECIAL EXCEPTIONS.—*A secondary transmission of a performance or a display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall, if the secondary transmission is made by a satellite carrier that complies with the requirements of paragraph (1), be subject to statutory licensing under this paragraph as follows:*

(A) STATES WITH SINGLE FULL-POWER NETWORK STATION.—*In a state in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in this paragraph shall apply to the secondary transmission by a satellite carrier of the primary of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 C.F.R. 76.51).*

(B) STATES WITH ALL NETWORK STATIONS AND SUPERSTATIONS IN SAME LOCAL MARKET.—*In a State in which all networks stations and superstations licensed by the Federal Communications Commission within the State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all counties of that State, the statutory license provided under this paragraph shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such (section 76.51 of title 47 of the Code of Federal Regulations).*

(C) ADDITIONAL STATIONS.—*In the case of that State in which are located 4 counties that—*

(i) on January 1, 2004, were in local markets principally comprised of counties in another State; and

(ii) had a combined total of 41,340 television households, according to the U.S. Television Household Estimates by Nielsen Media Research for 2004,

the statutory license provided under this paragraph shall apply to secondary transmissions by a satellite carrier to

subscribers in any such county of the primary transmissions of any network station located in that State, if the satellite carrier was making such secondary transmissions to any subscribers in that county on January 1, 2004.

(D) CERTAIN ADDITIONAL STATIONS.—If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in this paragraph shall apply to the secondary transmission by satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

(i) the 2 counties are located in a local market that is in the top 100 markets for the year 2003 according to Nielsen Media Research; and

(ii) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

(E) NETWORKS OF NONCOMMERCIAL EDUCATIONAL BROADCAST STATIONS.—In the case of a system of 3 or more noncommercial educational broadcast stations licensed by a single State, political, educational, or special purpose subdivision of a State, or a public agency, the statutory license provided for in this paragraph shall apply to the secondary transmission of that system to any subscriber in any county or county equivalent within that State that is located in the designated market that is not otherwise eligible to receive secondary transmissions of a noncommercial television broadcast station located within that State pursuant to paragraph (1).

(4) SHORT MARKETS.—A secondary transmission of a performance of a display of a work embodied in a primary transmission of a television broadcast station to subscribers who receive secondary transmissions of primary transmissions under paragraph (1) shall be subject to statutory licensing under this paragraph if the secondary transmission is of a primary transmission of a network station from a market adjacent to such local market and no station affiliated with such network is licensed to a community within that local market.

(5) APPLICABILITY OF ROYALTY RATES.—The royalty rates under section 119(b)(1)(B) shall apply to the secondary transmissions to which the statutory license under paragraphs (3) and (4) apply.

[(b) REPORTING REQUIREMENTS.—

[(1) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 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 in alphabetical order and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a).

[(2) SUBSEQUENT LISTS.—After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each

month, submit to the network a list identifying (by name in alphabetical order and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.

【(3) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subsection may be used only for the purposes of monitoring compliance by the satellite carrier with this section.

【(4) REQUIREMENTS OF NETWORKS.—The submission requirements of this subsection shall apply to a satellite carrier only if the network to which 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 of Copyrights shall maintain for public inspection a file of all such documents.】

(b) *REPORTING REQUIREMENTS.*—

(1) *INITIAL LISTS.*—*A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—*

(A) *a list, aggregated by designated market area (as that term is defined in subsection (j)), identifying (by name in alphabetical order and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (1); and*

(B) *a list, to be prepared and submitted separately from the list required under subparagraph (A), aggregated by designated market area (by name and address, including street or rural route number, city, State, and zip code), which shall indicate those subscribers being served pursuant to paragraphs (2), (3), or (4) of subsection (a).*

(2) *SUBSEQUENT LISTS.*—*After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the network—*

(A) *a list, aggregated by market area (as that term is defined in subsection (j)), indentifying (by name in alphabetical order and street address, including county and zip code) any subscribers since the last submission under this subsection; and*

(B) *a list, to be prepared and submitted separately from the list required under subparagraph (A), aggregated by designated market area (by name and street address, including street or rural route number, city, State, and zip code), indentifying those subscribers whose service pursuant to paragraphs (2), (3), or (4) of subsection (a) has been added or dropped.*

(3) *USE OF SUBSCRIBER INFORMATION.*—*Subscriber information submitted by a satellite carrier under this subsection may be used only for the purposes of monitoring compliance by the satellite carrier with this section.*

(4) *REQUIREMENTS OF NETWORKS.*—*The submission requirements of this subsection shall apply to a satellite carrier only if the network to which the submissions are to be made places*

on file with the Register of Copyrights a document indentifying the name and address of the person to whom such submissions are to be made. The Register of Copyrights shall maintain for public inspection a file of such documents.

[(c) NO ROYALTY FEE REQUIRED.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall have no royalty obligation for such secondary transmissions.] (c) NO ROYALTY FEE REQUIRED FOR CERTAIN SECONDARY TRANSMISSIONS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under paragraphs (1) and (2) of subsection (a) shall have no royalty obligation for such secondary transmissions.

* * * * *

(f) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR TELEVISION BROADCAST STATIONS.—

(1) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a television broadcast station to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119 or a private licensing agreement, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506, except that—

(A) 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

(B) any statutory damages shall not exceed **[\$5]** \$250 for such subscriber for each month during which the violation occurred.

(2) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of secondarily transmitting to the public a primary transmission embodying a performance or display of a work made by a television broadcast station to subscribers who do not reside in that station's local market, and are not subject to statutory licensing under section 119 or a private licensing agreement, then in addition to the remedies under paragraph (1)—

(A) if the pattern or practice has been carried out on a substantially nationwide basis, the court—

(i) shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of that television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network); and

(ii) may order statutory damages not exceeding **[\$250,000]** \$2,500,000 for each 6-month period during which the pattern or practice was carried out; and

(B) if the pattern or practice has been carried out on a local or regional basis with respect to more than one television broadcast station, the court—

(i) shall order a permanent injunction barring the secondary transmission in that locality or region by

the satellite carrier of the primary transmissions of any television broadcast station; and

(ii) may order statutory damages not exceeding ~~【\$250,000】~~ \$2,500,000 for each 6-month period during which the pattern or practice was carried out.

* * * * *

(j) DEFINITIONS.—In this section—

* * * * *

(3) *LOW POWER TELEVISION STATION.*—The term “low power television station” means a low power television as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term “low power television station” includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

~~【(3)】~~ (4) *NETWORK STATION; SATELLITE CARRIER; SECONDARY TRANSMISSION.*—The terms “network station”, “satellite carrier”, and “secondary transmission” have the meanings given such terms under section 119(d).

~~【(4)】~~ (5) *SUBSCRIBER.*—The term “subscriber” means a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

~~【(5)】~~ (6) *TELEVISION BROADCAST STATION.*—The term “television broadcast station”—

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CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYLTY JUDGES

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§ 804. Institution of proceedings

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(b) TIMING OF PROCEEDINGS.—

(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year ~~【2005】~~ 2015 and in each subsequent fifth calendar year.

(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made

under this chapter pursuant to this subparagraph may be re-considered in the year ~~2005~~ 2015, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C), as the case may be. A petition for adjustment of rates established by section 111(d)(1)(B) as a result of a change in the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

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UNITED STATES CODE

**TITLE 47—TELEGRAPHS, TELEPHONES,
AND RADIOTELEGRAPHS**

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CHAPTER 5—WIRE OR RADIO COMMUNICATION

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Subchapter III—Special Provisions Relating to Radio

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PART I—GENERAL PROVISIONS

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§ 338. Carriage of local television signals by satellite carriers

(a) CARRIAGE OBLIGATIONS.—

* * * * *

[(3) LOW POWER STATION CARRIAGE OPTIONAL.—No low power television station whose signals are provided under section 119(a)(14) of Title 17, shall be entitled to insist on carriage under this section, regardless of whether the satellite carrier provides secondary transmissions of the primary transmissions of other stations in the same local market pursuant to section 122 of Title 17, nor shall any such carriage be considered in connection with the requirements of subsection (c) of this section.]

(3) CARRIAGE OF LOW POWER, SIGNIFICANTLY VIEWED, SPECIAL EXCEPTION, AND SHORT MARKET STATIONS OPTIONAL.—No station whose signal is provided under paragraph (2), (3), or (4) of section 122(a) of title 17, United States Code, shall be entitled to insist on carriage under this section, regardless of whether the satellite carrier provides secondary transmissions of the primary transmissions of other stations in the same local market pursuant to such section 122, nor shall any such carriage be considered in connection with the requirements of subsection (c) of this section.

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

【(4)】 (5) CARRIAGE OF SIGNALS OF LOCAL STATIONS IN CERTAIN MARKETS.—

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