

105TH CONGRESS
2D SESSION

H. R. 4449

To amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

Mr. BURR of North Carolina (for himself and Mr. GRAHAM) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Satellite Access to
5 Local Stations Act”.

1 **SEC. 2. LIMITATIONS ON EXCLUSIVE RIGHTS; SECONDARY**
2 **TRANSMISSIONS BY SATELLITE CARRIERS**
3 **WITHIN LOCAL MARKETS.**

4 (a) IN GENERAL.—Chapter 1 of title 17, United
5 States Code, is amended by adding after section 121 the
6 following new section:

7 **“§ 122. Limitations on exclusive rights; secondary**
8 **transmissions by satellite carriers within**
9 **local markets**

10 “(a) SECONDARY TRANSMISSIONS OF TELEVISION
11 BROADCAST STATIONS BY SATELLITE CARRIERS.—A sec-
12 ondary transmission of a primary transmission of a tele-
13 vision broadcast station into the station’s local market
14 shall be subject to statutory licensing under this section
15 if—

16 “(1) the secondary transmission is made by a
17 satellite carrier to the public;

18 “(2) the secondary transmission is permissible
19 under the rules, regulations, or authorizations of the
20 Federal Communications Commission; and

21 “(3) the satellite carrier makes a direct or indi-
22 rect charge for the secondary transmission to—

23 “(A) each subscriber receiving the second-
24 ary transmission; or

1 “(B) a distributor that has contracted with
2 the satellite carrier for direct or indirect deliv-
3 ery of the secondary transmission to the public.

4 “(b) REPORTING REQUIREMENTS.—A satellite car-
5 rier whose secondary transmissions are subject to statu-
6 tory licensing under subsection (a) shall, on a semiannual
7 basis, submit to the Register of Copyrights, in accordance
8 with requirements that the Register shall prescribe by reg-
9 ulation, a statement of account, covering the preceding 6-
10 month period, specifying—

11 “(1) the names and locations of all television
12 broadcast stations whose signals were secondarily
13 transmitted within the local markets of those sta-
14 tions at any time during that period; and

15 “(2) the total number of, and addresses pro-
16 vided by, all subscribers receiving those secondary
17 transmissions.

18 “(c) NO ROYALTY FEE REQUIRED.—A satellite car-
19 rier whose secondary transmissions are subject to statu-
20 tory licensing under subsection (a) shall have no royalty
21 obligation for such secondary transmissions.

22 “(d) NONCOMPLIANCE WITH REPORTING REQUIRE-
23 MENTS.—Notwithstanding subsection (a), the willful or
24 repeated secondary transmission to the public by a sat-
25 ellite carrier of a television broadcast station and embody-

1 ing a performance or display of a work is actionable as
2 an act of infringement under section 501, and is fully sub-
3 ject to the remedies provided under sections 502 through
4 506 and 509, if the satellite carrier has not submitted the
5 statement of account required under subsection (b).

6 “(e) DEFINITIONS.—As used in this section—

7 “(1) DISTRIBUTOR.—The term ‘distributor’
8 means an entity that contracts to distribute second-
9 ary transmissions from a satellite carrier and, either
10 as a single channel or in a package with other pro-
11 gramming, provides the secondary transmission ei-
12 ther directly to subscribers or indirectly through
13 other program distribution entities.

14 “(2) LOCAL MARKET.—The ‘local market’ of a
15 television broadcast station has the meaning given
16 that term in section 337(g) of the Communications
17 Act of 1934.

18 “(3) TELEVISION BROADCAST STATION.—The
19 term ‘television broadcast station’ means an over-
20 the-air, commercial, or noncommercial television
21 broadcast station licensed by the Federal Commu-
22 nications Commission under subpart E of part 73 of
23 title 47, Code of Federal Regulations.

24 “(4) SUBSCRIBER.—The term ‘subscriber’
25 means a person or entity that receives a secondary

1 transmission service by means of a secondary trans-
 2 mission from a satellite and pays a fee for the serv-
 3 ice, directly or indirectly, to the satellite carrier or
 4 to a distributor.

5 “(5) OTHER TERMS.—The terms ‘satellite car-
 6 rier’ and ‘secondary transmission’ have the meanings
 7 given such terms under section 119(d).”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
 9 The table of sections for chapter 1 of title 17, United
 10 States Code, is amended by adding after the item relating
 11 to section 121 the following:

“122. Limitations on exclusive rights; secondary transmissions by satellite car-
 riers within local markets.”.

12 **SEC. 3. RETRANSMISSION CONSENT.**

13 Section 325(b) of the Communications Act of 1934
 14 (47 U.S.C. 325(b)) is amended—

15 (1) by striking “(b)(1)” and all that follows
 16 through the end of paragraph (1) and inserting the
 17 following:

18 “(b)(1) No cable system or other multichannel video
 19 programming distributor shall retransmit the signal of a
 20 broadcasting station, or any part thereof, except—

21 “(A) with the express authority of the station;

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

1 “(C) pursuant to section 337, in the case of a
 2 station electing, in accordance with this subsection,
 3 to assert the right to carriage under such section.”;
 4 and

5 (3) in paragraph (3), by adding at the end the
 6 following:

7 “(C) Within 45 days after the effective date of the
 8 Satellite Access to Local Stations Act, the Commission
 9 shall commence a rulemaking proceeding to revise the reg-
 10 ulations governing the exercise by television broadcast sta-
 11 tions of the right to grant retransmission consent under
 12 this subsection. Such regulations shall establish election
 13 time periods that correspond with those regulations adopt-
 14 ed under subparagraph (B). The rulemaking shall be com-
 15 pleted within 180 days after the effective date of the Sat-
 16 ellite Access to Local Stations Act.”.

17 **SEC. 4. MUST-CARRY FOR SATELLITE CARRIERS RE-**
 18 **TRANSMITTING TELEVISION BROADCAST SIG-**
 19 **NALS.**

20 Title III of the Communications Act of 1934 is
 21 amended by inserting after section 336 the following new
 22 section:

1 **“SEC. 337. CARRIAGE OF LOCAL TELEVISION SIGNALS BY**
2 **SATELLITE CARRIERS.**

3 “(a) CARRIAGE OBLIGATIONS.—Each satellite carrier
4 providing secondary transmissions of a television broad-
5 cast station to subscribers located within the local market
6 of such station shall offer to carry all television broadcast
7 stations located within that local market, subject to sec-
8 tion 325(b), except that the carriage obligations of this
9 section shall not apply to satellite carriers that do not re-
10 transmit the signals of broadcast television stations pursu-
11 ant to the statutory license under section 122 of title 17,
12 United States Code. Carriage of additional television
13 broadcast stations within the local market shall be at the
14 discretion of the satellite carrier, subject to section 325(b).

15 “(b) DUPLICATION NOT REQUIRED.—Notwithstand-
16 ing subsection (a), a satellite carrier shall not be required
17 to offer to carry the signal of any local television broadcast
18 station that substantially duplicates the signal of another
19 local television broadcast station which is secondarily
20 transmitted by the satellite carrier, or to offer to carry
21 the signals of more than one local television broadcast sta-
22 tion affiliated with a particular broadcast network (as the
23 term is defined by regulation).

24 “(c) CARRIAGE OF ALL LOCAL TELEVISION STA-
25 TIONS ON CONTIGUOUS CHANNELS.—All local television
26 broadcast stations retransmitted by a satellite carrier to

1 subscribers in the stations' local markets shall be made
2 available to subscribers in their local markets on contig-
3 uous channels and in a nondiscriminatory manner on any
4 navigational device, on-screen program guide, or menu.

5 “(d) COMPENSATION FOR CARRIAGE.—A satellite
6 carrier shall not accept or request monetary payment or
7 other valuable consideration in exchange either for car-
8 riage of local television broadcast stations in accordance
9 with the requirements of this section or for channel posi-
10 tioning rights provided to such stations under this section,
11 except that any such station may be required to bear the
12 costs associated with delivering a good quality signal to
13 the principal headend of the satellite carrier. No station
14 carried in accordance with the requirements of this section
15 shall be required to bear the costs of delivering a good
16 quality signal to a location other than the principal
17 headend of the satellite carrier.

18 “(e) REMEDIES.—

19 “(1) COMPLAINTS BY BROADCAST STATIONS.—
20 Whenever a local television broadcast station believes
21 that a satellite carrier has failed to meet its obliga-
22 tions under this section, such station shall notify the
23 carrier, in writing, of the alleged failure and identify
24 its reasons for believing that the satellite carrier is
25 obligated to offer to carry the signal of such station

1 or has otherwise failed to comply with other require-
2 ments of this section. The satellite carrier shall,
3 within 30 days after such written notification, re-
4 spond in writing to such notification and either
5 begin carrying the signal of such station in accord-
6 ance with the terms requested or state its reasons
7 for believing that it is not obligated to carry such
8 signal or is in compliance with other requirements
9 of this section. A local television broadcast station
10 that is denied carriage in accordance with this sec-
11 tion by a satellite carrier may obtain review of such
12 denial by filing a complaint with the Commission.
13 Such complaint shall allege the manner in which
14 such satellite carrier has failed to meet its obliga-
15 tions and the basis for such allegations. A failure
16 by a satellite carrier to carry a local television broad-
17 cast station within its local market if there has been
18 a change in that station's local market, or to carry
19 a local broadcast television station that is signifi-
20 cantly viewed outside its local market due to tech-
21 nical limitations of that satellite carrier's existing fa-
22 cilities, shall not constitute a failure by the satellite
23 carrier to comply with its obligations under this sec-
24 tion.

1 “(2) OPPORTUNITY TO RESPOND.—The Com-
2 mission shall afford such satellite carrier an oppor-
3 tunity to present data and arguments to establish
4 that there has been no failure to meet its obligations
5 under this section.

6 “(3) REMEDIAL ACTIONS; DISMISSAL.—Within
7 120 days after the date a complaint is filed, the
8 Commission shall determine whether the satellite
9 carrier has met its obligations under this section. If
10 the Commission determines that the satellite carrier
11 has failed to meet such obligations, the Commission
12 shall order the satellite carrier, in the case of an ob-
13 ligation to carry a station, to begin carriage of the
14 station and to continue such carriage for at least 12
15 months. If the Commission determines that the sat-
16 ellite carrier has fully met the requirements of this
17 section, it shall dismiss the complaint.

18 “(f) REGULATIONS BY COMMISSION.—Within 180
19 days after the effective date of this section, the Commis-
20 sion shall, following a rulemaking proceeding, issue regula-
21 tions implementing the requirements imposed by this sec-
22 tion.

23 “(g) DEFINITIONS.—As used in this section:

24 “(1) TELEVISION BROADCAST STATION.—The
25 term ‘television broadcast station’ means a full-

1 power television broadcast station, and does not in-
2 clude a low-power or translator television broadcast
3 station.

4 “(2) LOCAL MARKET.—The term ‘local market’
5 means the designated market area in which a station
6 is located and—

7 “(A) for a commercial television broadcast
8 station located in any of the 150 largest des-
9 ignated market areas, all commercial television
10 broadcast stations licensed to a community
11 within the same designated market area are
12 within the same local market;

13 “(B) for a commercial television broadcast
14 station that is located in a designated market
15 area that is not one of the 150 largest, the local
16 market includes all commercial television broad-
17 cast stations licensed to a community within the
18 same designated market area, and may also in-
19 clude any station that is significantly viewed, as
20 such term is defined in section 76.54 of the title
21 47, Code of Federal Regulations; and

22 “(C) for a noncommercial educational tele-
23 vision broadcast station, the local market in-
24 cludes any station that is licensed to a commu-
25 nity within the same designated market area as

1 the noncommercial educational television broad-
2 cast station.

3 “(3) DESIGNATED MARKET AREA.—The term
4 ‘designated market area’ means a designated market
5 area, as determined by the Nielsen Media Research
6 and published in the DMA Market and Demographic
7 Report.

8 “(4) PRINCIPAL HEADEND OF THE SATELLITE
9 CARRIER.—The term ‘principal headend of the sat-
10 ellite carrier’ means the reception point in the local
11 market of a broadcast television station or in a mar-
12 ket contiguous to the local market of a broadcast
13 television station at which the satellite carrier ini-
14 tially receives the signal of the station for purposes
15 of transmission of such signals to the facility which
16 uplinks the signals to the carrier’s satellites for sec-
17 ondary transmission to the satellite carrier’s sub-
18 scribers.

19 “(5) SECONDARY TRANSMISSION.—The term
20 ‘secondary transmission’ has the meaning given that
21 term in section 119(d) of title 17, United States
22 Code.”.

1 **SEC. 5. EFFECTIVE DATE.**

2 This Act and the amendments made by this Act shall
3 take effect on January 1, 1999.

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