

has yet to acknowledge the full extent of the genocide that occurred. When a tragedy of this magnitude takes place, it is our duty to face all the uncomfortable truths and to ensure that the story is not forgotten.

History holds valuable lessons for us as we enter the new millennium. "Who remembers the Armenian?" asked Adolf Hitler as he unleashed his wrath upon the Jews. This collective amnesia proved devastating. Fortunately, the answer is clear. We remember the Armenians. We remember the suffering of their people and will not allow their memories to fade.

I proudly represent a large and vibrant Armenian community in my district in Massachusetts. Every year survivors of the Armenian Genocide and their descendants make public and vivid the hidden details of the Armenian Genocide as they participate in commemoration ceremonies in Boston, Lowell, and other areas in the Merrimack Valley. These same Armenian-Americans have made great contributions to society through a wide range of professions, and have significantly enriched the cultural life of the 5th District.

Out of respect for them and for Armenians all over the world, let us renew our commitment here today that the American people will oppose any and all instances of genocide. We refuse to once again watch from afar, as the ethnic cleansing and genocide that ravaged the Armenians now plagues the people Kosovo. Our unified voices and actions must be strong and unequivocal. Violence born out of hatred and fear will never again be tolerated.

INTRODUCTION OF H.R. —, THE SATELLITE COPYRIGHT, COMPETITION, AND CONSUMER PROTECTION ACT OF 1999

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Monday, April 26, 1999

Mr. COBLE. Mr. Speaker, I am pleased to introduce H.R. —, the Satellite Copyright, Competition, and Consumer Protection Act of 1999. This bill will improve the copyright compulsory license and the conditions of that license for satellite carriers of copyrighted programming contained on television broadcast signals by applying to such carriers the same opportunities and rules as their cable competitors. This competitive parity will lead to increased exposure of copyrighted programming to consumers who will pay lower prices for cable and satellite services which deliver programming to their homes. These lower prices will result from the choices consumers will have in choosing how they want their television programming delivered. Mr. Speaker, I know I speak for many of the Members in this House when I assert that creating competition in the video delivery market is the key to more choice and lower prices for our constituents.

This is a very dynamic time for the multichannel video marketplace, particularly for the satellite industry. The satellite copyright compulsory license is set to expire at the end of this year at a time when the industry enjoys a record number of subscribers. In the meantime, a federal court decision threatens to disconnect hundred of thousands of satellite cus-

tomers from their distant network signals. Additionally, several other copyright restrictions still prevent the satellite industry from competing with the cable television industry on an even playing field.

The Copyright Act of 1976 bestowed on cable television a permanent copyright compulsory license which enables that industry to rebroadcast network and superstation signals to cable television viewers without requiring cable operators to receive the authorization of thousands of copyright owners who have an exclusive right to authorize the exploitation of their programs. The cable operators pay a set fee for the right to retransmit and the monies collected are paid to the copyright owners through a distribution proceeding conducted under the auspices of the United States Copyright Office.

In 1988, Congress granted a compulsory license to the satellite industry. Although the cable and satellite compulsory licenses have similarities, there are important differences which I believe prevent satellite from becoming a true competitor to cable. Technology has changed significantly since the cable and satellite compulsory licenses were created. Satellite carriers are starting to be able to bring local programming through their services to viewers of that local market. The time has come to take a comprehensive look at the satellite compulsory license as it relates to the long-term viability and competitiveness of the satellite television industry. The satellite compulsory license is set to sunset in December of this year, and the Federal Communications Commission has reported time and again that in areas where there is no competition to cable, consumers are paying higher cable rates. We must act for our constituents to level the playing field in a manner that will allow both industries to flourish to the benefit of consumers.

To that end, the "Satellite Copyright, Competition, and Consumer Protection Act of 1999" makes the following changes to the Satellite Home Viewer Act:

It reauthorizes the satellite compulsory license for five years.

It allows new satellite customers who have received a network signal from a cable system within the past three months to sign up for satellite service for those signals. This is not allowed today.

It provides a discount for the copyright fees paid by the satellite carriers.

It allows satellite carriers to retransmit a local television station to households within that station's local market, just like cable does, conditioned upon meeting requirements of the Communications Act.

It allows satellite carriers to rebroadcast a national signal of the Public Broadcasting Service.

It postpones the currently scheduled shut-off of distant network service until the FCC develops a new predictive model to more accurately determine who is entitled to receive distant network signals.

I commend the work of Representative BILLY TAUZIN, Chairman of the Commerce Subcommittee on Telecommunications, Trade and Consumer Protection, and with Representative TOM BLILEY, Chairman of the Committee on Commerce, on those provisions of this legislation complimentary to the copyright provisions. Their leadership and partnership have been and will continue to be invaluable

and necessary in guaranteeing true competition between the satellite and cable industries, particularly as this legislation moves forward towards a conference.

I also want to recognize the leadership and care that Senator ORRIN HATCH and Senator PATRICK LEAHY, Chairman and Ranking Member of the Senate Committee on the Judiciary, have paid to the development of this important bill. We have worked together closely on its provisions and I look forward to continuing our work together as our bills move toward completion.

Let me make clear that this bill is a compromise, carefully balanced to ensure competition. Many doubters thought our two committees could never work together to forge such a compromise. I believe it contains the balance necessary to allow this bill to become law this session and I urge all Members to support its passage.

SECTION-BY-SECTION

TITLE I—SATELLITE COMPETITION AND CONSUMER PROTECTION

Section 101. Short title

The name of title I of the bill is the "Satellite Copyright, Competition, and Consumer Protection Act of 1999."

Section 102. Retransmission consent

Section 102 amends section 325 of the Communications Act to provide that satellite carriers must in certain circumstances obtain retransmission permission from a broadcaster before they can retransmit the signal of a network broadcast station. Like the regime applicable to the cable industry, network broadcasters are afforded the option of either granting retransmission consent, or they may elect must-carry status as provided in section 103 of the bill. All satellite carriers that provide local service of television network stations must obtain either retransmission consent of the local broadcasters, or carry their signals under the must-carry provisions.

Section 102 exempts carriage of certain broadcast stations from the retransmission requirement. Retransmission consent does not apply to noncommercial broadcasting stations, and superstations that existed as superstations on May 1, 1991, were retransmitted by satellite carriers under the section 119 satellite compulsory license as of July 1, 1998, and the retransmissions were in compliance with FCC rules governing network non-duplication, syndicated exclusivity and sports blackout.

The retransmission consent exemption for satellite-delivered distant network signals is eliminated 7 months after passage of the Act. Elimination of this exemption will foster retransmission of local network stations by satellite carriers by requiring satellite carriers to obtain retransmission permission from the distant network stations they wish to provide to their subscribers.

Section 102 also directs the Federal Communications Commission, within 45 days of enactment, to commence a rulemaking proceeding to adopt regulations governing the exercise of retransmission rights for satellite retransmissions. In addition to establishing election periods for must-carry/retransmission consent rights, the Commission is directed to establish regulations, effective until January 1, 2006, that prohibit broadcasters from engaging in discriminatory practices, understandings, arrangements and activities, including exclusive contracts for carriage, that prevent any multichannel video programming distributor from obtaining retransmission consent.

Section 103. Must-carry for satellite carriers retransmitting television broadcast signals

Section 103 of the bill creates must-carry obligations for satellite carriers retransmitting television broadcast signals, effective on January 1, 2002. The provisions are similar to those applicable to the cable industry. Any satellite carrier that retransmits a television broadcast signal to subscribers residing within the local market of that signal must carry all the television stations in the local market to subscribers residing in the local market. This approach of "carry one, then carry all" is subject to the retransmission consent election of section 102 of the bill. Thus, a satellite carrier does not have to carry a local television broadcast station if the station elects retransmission consent rather than must-carry.

Section 103 tracks the cable must-carry provisions of the 1992 Cable Act by relieving satellite carriers from the burden of having to carry more than one affiliate of the same network if both of the affiliates are located in the same local market. Local broadcasters are also afforded some channel positioning rights and are required to provide a good quality signal to the satellite carrier's local receive facility in order to assert must-carry rights. Satellite carriers are forbidden from obtaining compensation from local broadcasters in exchange for carriage. Section 103 also provides a means for broadcasters to seek redress from the Federal Communications Commission for violations of the must-carry obligations.

The Federal Communications Commission is directed to adopt regulations within 6 months of enactment of the legislation to implement the must-carry obligations for satellite.

Section 104. Nonduplication of programming broadcast by local stations

Section 104 of the bill directs the Federal Communications Commission, within 45 days of enactment, to commence rulemaking proceedings to adopt network nonduplication, syndicated exclusivity and sports blackout rules applicable to satellite retransmission of television broadcast signals. To the extent possible, the Commission shall model its new regulations after those that currently apply to the cable industry.

The bill sets forth express network nonduplication provisions that will solve the problems associated with satellite delivery of network signals and the recent shut-offs of network signals that have occurred as the result of federal court injunctions. This is accomplished through improvement of the signal intensity standard and predictive model, and creation of a system that allows subscribers who do not receive an adequate over-the-air signal from a network broadcaster to obtain a waiver to receive satellite service of that network.

The bill establishes that the current over-the-air signal intensity standard is the Grade B standard identified in the FCC's rules. Within 6 months of enactment, the Commission is directed to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations to receive an over-the-air signal of Grade B intensity. Such predictive model will take into account terrain, building structures, and other land cover variations.

For those subscribers targeted by the predictive model as receiving an adequate over-the-air signal, but do not, there are two forms of relief. First, the subscriber may request a waiver from the local network broadcaster to receive satellite-delivered network service. The local broadcaster is given 30 days to issue a waiver or reject the request. If the station rejects the request, then the

subscriber may submit a request to his/her satellite carrier that a test be conducted as the subscriber's household. The party conducting the test shall be designated by the satellite carrier and the local broadcaster or, if they cannot agree, the FCC. The cost of a test will be borne by the satellite carrier and the local broadcaster equally, and the subscriber shall not have any responsibility for the cost.

If a subscriber has installed satellite reception equipment on a recreational vehicle, that vehicle shall be exempt from a network broadcaster's nonduplication protection rights if the subscriber provides a local broadcaster seeking to enforce those rights with verification of the motor vehicle registration, license, and proof of ownership of such vehicle. Recreational vehicles to not include any residential manufactured homes.

Not later than 2 years after enactment, the Commission shall conduct an inquiry to determine whether the current Grade B signal intensity standard is adequate to measure subscribers' ability to receive an acceptable over-the-air television broadcast signal. In conducting this inquiry, the Commission will consider the number of subscribers requesting waivers, the number of denials, the number of tests requested and their results, the results of any consumer research study undertaken to carry out the purpose of section 104 of the bill, and the extent to which consumers are not legally entitled to install broadcast reception devices assumed in the Commission's signal standard. The Commission will report the findings of its inquiry to Congress not later than the end of the 2-year period and shall complete any action necessary to revise the Grade B signal intensity standard and the predictive model.

Section 105. Consent of membership to retransmission of public Broadcasting Service satellite feed

Section 105 amends the Communications Act to require the Public Broadcasting Service to certify on an annual basis to the Corporation for Public Broadcasting that the majority of its membership supports, or does not support, the retransmission by satellite carriers of the Public Broadcasting Service satellite feed. The Public Broadcasting Service is required to provide notice of the certification to each satellite carrier retransmitting the satellite feed.

Section 106. Definitions

Section 106 amends the Communications Act to provide definitions of a "local market," "satellite carrier," and "television network/television network station" for purposes of the amendments made by the bill.

Section 107. Completion of biennial regulatory review

Within 6 months of the date of enactment, the FCC is directed to complete its biennial review required by section 202(h) of the Telecommunications Act of 1996.

Section 108. Result of loss of network service

Section 108 provides that until the FCC implements its new regulations governing network nonduplication protection for broadcasters against satellite carriers, if a satellite subscriber has lost his/her network service as a result of the provisions of section 119 of the Copyright Act, the satellite carrier terminating such service must, upon request of the subscriber, provide the subscriber free-of-charge an over-the-air television broadcast receiving antenna that will provide the subscriber with an over-the-air signal of grade B intensity for those network stations that were terminated as a result of section 119.

Section 109. Interim provisions

Section 109 provides that no subscriber of satellite service who lives outside of the

Grade A contour of a network station shall have his or her satellite service disconnected as a result of a finding of copyright infringement under Section 119 of the Copyright Act until the FCC has issued and implemented a new predictive model under this Act.

TITLE II—SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS WITHIN LOCAL MARKETS

Section 201. Short title

The name of title II of the bill is the "Satellite Copyright Compulsory License Improvement Act."

Section 202. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets

Section 202 of the bill creates a new copyright compulsory license, found at section 122 of title 17 of the United States Code, for the retransmission of television broadcast stations by satellite carriers to subscribers located within the local markets of those stations. In order to be eligible for this compulsory license, a satellite carrier must be in full compliance with all applicable rules and regulations of the Federal Communications Commission, including any must-carry obligations imposed upon the satellite carrier by the Commission or by law.

Because the copyrighted programming contained on local broadcast programming is already licensed with the expectation that all viewers in the local market will be able to view the programming, the new section 122 license is a royalty-free license. Satellite carriers must, however, provide local broadcasters with lists of their subscribers receiving local stations so that broadcasters may verify that satellite carriers are making proper use of the license. The subscriber information supplied to broadcasters is for verification purposes only, and may not be used by broadcasters for other reasons.

Satellite carriers are liable for copyright infringement, and subject to the full remedies of the Copyright Act, if they violate one or more of the following requirements of the section 122 license. First, satellite carriers may not in any way willfully alter the programming contained on a local broadcast station.

Second, satellite carriers may not use the section 122 license to retransmit a television broadcast station to a subscriber located outside the local market of the station. If a carrier willfully or repeatedly violates this limitation on a nationwide basis, then the carrier may be enjoined from retransmitting that signal. If the broadcast station involved is a network station, then the carrier could lose the right to retransmit any network stations. If the willful or repeated violation of the restriction is performed on a local or regional basis, then the right to retransmit the station (or, if a network station, then all networks) can be enjoined on a local or regional basis, depending upon the circumstances. In addition to termination of service on a nationwide or local or regional basis, statutory damages are available up to \$250,000 for each 6-month period during which the pattern or practice of violations was carried out. Satellite carriers have the burden of proving that they are not improperly making use of the section 122 license to serve subscribers outside the local markets of the television broadcast stations they are providing.

The section 122 license is not limited to private home viewing, as is the section 119 compulsory license, so that satellite carriers may make use of it to serve commercial establishments as well as homes. The local market of a television broadcast station for purposes of the section 122 license will be defined by the Federal Communications Commission as part of its broadcast carriage rules for satellite carriers.

Section 203. Extension of effect of amendments to section 119 of title 17, United States Code

Section 203 of the bill extends the expiration date of the current section 119 satellite compulsory license from December 31, 1999, to December 31, 2004.

Section 204. Computation of royalty fees for satellite carriers

Section 204 of the bill reduces the 27-cent royalty fee adopted last year by the Librarian of Congress for the retransmission of network and superstation signals by satellite carriers under the section 119 license. The 27-cent rate for superstations is reduced by 30 percent per subscriber per month, and the 27-cent rate for network stations is reduced by 45 percent per subscriber per month.

In addition, section 119(c) of title 17 is amended to clarify that in royalty distribution proceedings conducted under section 802 of the Copyright Act, the Public Broadcasting Service may act as agent for all public television copyright claimants and all Public Broadcasting Service member stations.

Section 205. Public Broadcasting Service satellite feed; definitions

Section 205 of the bill amends the section 119 satellite compulsory license for retransmission of distant signals by providing that satellite carriers may deliver the national satellite feed of the Public Broadcasting Service under the section 119 license. PBS will supply its national feed to satellite carriers in lieu of the signals of its affiliates, as long as PBS certifies to the Corporation for Public Broadcasting on an annual basis, as provided in section 105 of the bill, that the affiliates support the national feed. Such certification is not required until satellite carriers provide their subscribers with local PBS affiliates, or two years from date of enactment, whichever is earlier.

Section 206. Distant signal retransmissions

Section 206 of the bill amends the section 119 satellite compulsory license for the retransmission of distant signals by removing the "Unserved household" restriction from the Copyright Act. Instead of the "unserved household" use of the section 119 license by satellite carriers is contingent upon compliance with the FCC's nonduplication rules for satellite prescribed in section 104 of the bill.

Section 207. Application of Federal Communications Commission regulations

Section 207 of the bill amends the section 119 satellite compulsory license to clarify

that satellite carriers' eligibility for the license is contingent upon their full compliance with all Federal Communications Commission rules governing carriage of television broadcast signals.

Section 208. Study

Section 208 provides that the Copyright Office and the NTIA shall jointly study the proliferation of local-to-local service to smaller markets.

Section 209. Effective date

The amendments made by the bill take effect on July 1, 1999, the first day of a new copyright accounting period for satellite carriers, except the amendments made by section 205 and 208 which take effect upon date of enactment.

INTRODUCTION OF H.R.—, THE
SATELLITE COPYRIGHT, COMPETITION,
AND CONSUMER PROTECTION ACT

HON. W.J. (BILLY) TAUZIN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, April 26, 1999

Mr. TAUZIN. Mr. Speaker, the gentleman from North Carolina, Mr. COBLE and I are introducing the Satellite Copyright, Competition, and Consumer Protection Act. The bill represents the combined work of the House Committee on commerce and the House Committee on the Judiciary.

I am pleased to report that, through hard work and difficult consideration, we are able to present the House an agreement on changes to telecommunications and copyright law in order to provide the American consumer with a stronger, more viable competitor to their incumbent cable operator. This legislation will enact comprehensive reforms to the offering of satellite television service. I expect that the reforms contained in this bill will have a dramatic and beneficial effect on the multichannel video programming marketplace for years to come.

Consumers today expect more from their video programming providers, whether it be their cable company, their satellite company, their broadcaster or other distributors—including the Internet. Consumers are very savvy, and they now expect—indeed, demand—that

their video programming distributor offer a wide array of programming at a reasonable cost, and with exceptional picture quality.

Today, however, there are some limitations on the ability of satellite carriers to meet consumer demand. These limitations put satellite carriers at a competitive disadvantage to incumbent cable operators. The main limitation on satellite providers is the inherent difficulties in providing local broadcast programming via satellite. Even though broadcasters are experiencing a dramatic reduction in overall audience share compared to just a few years ago, the overwhelming number of consumers want local broadcast programming. Consumer surveys conclude that the lack of local broadcast programming is the number one reason some consumers are unwilling to subscribe to satellite service.

The bill Mr. COBLE and I are introducing today is designed to put satellite on competitive equal footing with cable. The bill provides for a compulsory license to retransmit local broadcast programming, and ensures carriage for local broadcast stations through retransmission consent/must-carry elections. The bill also provides for network non-duplication, syndicated exclusivity, and sports blackout protections.

Mr. Speaker, this bill combines the telecommunications provisions of H.R. 851, the Save Our Satellites Act of 1999 (as reported), and the copyright provisions of H.R. 1027, the Satellite Television Improvement Act (as reported). The legislative history of this bill can therefore be found in the applicable portions of the reports filed by our two Committees (i.e., H. Rep. 106–79 for Title I, and H. Rep. 106–86 for Title II).

Mr. Speaker, let me thank the hard work of the large group of Members that had a role in bringing this new bill to introduction: Chairman BLILEY, Ranking Member DINGELL and Subcommittee Ranking Member MARKEY from the Commerce Committee; and Chairman HYDE, Subcommittee Chair COBLE, Ranking Member CONYERS and Subcommittee Ranking Member BERMAN from the Judiciary Committee. This is a bi-partisan, bi-committee approach to a very important legislative bill. I am pleased that we were all able to work together and bring this compromise to the House.