Health Review Commission for a term expiring April 27, 2001.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

SATELLITE HOME VIEWERS IMPROVEMENT ACT

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 24, S. 247.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 247) to amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

S. 247

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Satellite Home Viewers Improvements Act''.

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

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

''§ 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 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) the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission; 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.

''(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 that station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission.

''(2) SUBSEQUENT LISTS.—After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the station a list identifying (by name 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 STATIONS.—The submission requirements of this subsection shall apply to a satellite carrier only if the station to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

''(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.

''(d) NONCOMPLIANCE WITH REPORTING REQUIREMENTS.—Notwithstanding subsection (a), the willful or repeated secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided under sections 502 through 506 and 509, if the satellite carrier has not complied with the reporting requirements of subsection (b).

''(e) WILLFUL ALTERATIONS.—Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by 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.

''(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 made by a television broadcast station and embodying a performance or display of a work to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

''(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 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 made by a television broadcast station and embodying a performance or display of a work to subscribers who do not reside in that station's local market, and are not subject to statutory licensing under section 119, 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 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 the court may order statutory damages not exceeding $250,000 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 (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), the court 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 the court may order statutory damages not exceeding $250,000 for each 6-month period during which the pattern or practice was carried out.

''(g) BURDEN OF PROOF.—In any action brought under subsection (d), (e), or (f), the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a television broadcast station is made only to subscribers located within that station's local market.

''(h) GEOGRAPHIC LIMITATIONS ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply to secondary transmissions to locations in the United States, and any commonwealth, territory, or possession of the United States.

''(i) EXCLUSIVITY WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 or any other law (other than this section and section 119) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers of programming contained in a primary transmission made by a television broadcast station may be made without obtaining the consent of the copyright owner.

''(j) DEFINITIONS.—In this section—

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

''(2) The term 'local market' for a television broadcast station has the meaning given that term under rules, regulations, and authorizations of the Federal Communications Commission relating to carriage of television broadcast signals by satellite carriers.

''(3) The terms 'network station', 'satellite carrier' and 'secondary transmission' have the meaning given such terms under section 119(d).

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

''(5) The term 'television broadcast station' means an over-the-air, commercial or noncommercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations.''.

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

''122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local market.''.

SEC. 3. EXTENSION OF EFFECT OF AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.

Section 4(a) of the Satellite Home Viewer Act of 1994 (17 U.S.C. 119 note; Public Law 103–369; 108 Stat. 3481) is amended by striking ''December 31, 1999'' and inserting ''December 31, 2004''.

SEC. 4. COMPUTATION OF ROYALTY FEES FOR SATELLITE CARRIERS.

Section 119(c) of title 17, United States Code, is amended by adding at the end the following new paragraph:

''(4) REDUCTION.—

[''(A) SUPERSTATION.—The rate of the royalty fee payable in each case under subsection (b)(1)(B)(i) as adjusted by a royalty fee established under paragraph (2) or (3) of this subsection shall be reduced by 30 percent.

[''(B) NETWORK.—The rate of the royalty fee payable under subsection (b)(1)(B)(ii) as adjusted by a royalty fee established under paragraph (2) or (3) of this subsection shall be reduced by 45 percent.**]**

''(A) SUPERSTATION.—The rate of the royalty fee in effect on January 1, 1998 payble in each case under subsection (b)(1)(B)(i) shall be reduced by 30 percent.

''(B) NETWORK.—The rate of the royalty fee in effect on January 1, 1998 payable under susection (b)(1)(B)(ii) shall be reduced by 45 percent.

''(5) PUBLIC BROADCASTING SERVICE AS AGENT.—For purposes of section 802, with respect to royalty fees paid by satellite carriers for retransmitting the Public Broadcasting Service satellite feed, the Public Broadcasting Service shall be the agent for all public television copyright claimants and all Public Broadcasting Service member stations.''.

[SEC. 5. DEFINITIONS.

[Section 119(d) of title 17, United States Code, is amended—

[(1) by striking paragraph (10) and inserting the following:**]**

SEC. 5. DEFINITIONS.

Section 119(d) of title 17, United States Code, is amended by striking paragraph (10) and inserting the following:

''(10) UNSERVED HOUSEHOLD.—The term 'unserved household', with respect to a particular television network, means a household that cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network.''.**[**; and

[(2) by adding at the end the following:

[''(12) LOCAL NETWORK STATION.—The term 'local network station' means a network station that is secondarily transmitted to subscribers who reside within the local market in which the network station is located.''.**]**

SEC. 6. PUBLIC BROADCASTING SERVICE SATELLITE FEED.

(a) SECONDARY TRANSMISSIONS.—Section 119(a)(1) of title 17, United States Code, is amended—

(1) by striking the paragraph heading and inserting ''(1) SUPERSTATIONS AND PBS SATELLITE FEED.—'';

(2) by inserting ''or by the Public Broadcasting Service satellite feed'' after ''superstation''; and

(3) by adding at the end the following: ''In the case of the Public Broadcasting Service satellite feed, subsequent to January 1, 2001, or the date on which local retransmissions of broadcast signals are offered to the public, whichever is earlier, the statutory license created by this section shall be conditioned on the Public Broadcasting Service certifying to the Copyright Office on an annual basis that its membership supports the secondary transmission of the Public Broadcasting Service satellite feed, and providing notice to the satellite carrier of such certification.''.

(b) DEFINITION.—Section 119(d) of title 17, United States Code, is amended by adding at the end the following:

''(12) PUBLIC BROADCASTING SERVICE SATELLITE FEED.—The term 'Public Broadcasting Service satellite feed' means the national satellite feed distributed by the Public Broadcasting Service consisting of educational and informational programming intended for private home viewing, to which the Public Broadcasting Service holds national terrestrial broadcast rights.''.

SEC. 7. APPLICATION OF FEDERAL COMMUNICATIONS COMMISSION REGULATIONS.

Section 119(a) of title 17, United States Code, is amended—

(1) in paragraph (1), by inserting ''is permissible under the rules, regulations, and authorizations of the Federal Communications Commission,'' after ''satellite carrier to the public for private home viewing,''; and

(2) in paragraph (2), by inserting ''is permissible under the rules, regulations, and authorizations of the Federal Communications Commission,'' after ''satellite carrier to the public for private home viewing,''.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on January 1, 1999, except the amendments made by section 4 shall take effect on July 1, 1999.

Mr. HATCH. Mr. President, I ask unanimous consent that the committee amendments be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

Mr. HATCH. Mr. President, today the Senate considers legislation that will help provide for greater consumer choice and competition in television services, S. 247, ''The Satellite Home Viewers Improvements Act of 1999.'' The bill before us is a model of bipartisanship and cross-Committee cooperation. The cosponsors of this bill include, first and foremost, the distinguished Ranking Member of the Judiciary Committee, Senator Leahy, with whom I have worked closely on this legislation; the majority leader, Senator LOTT, and the minority leader, Senator DASCHLE; the chairman and ranking member of the Judiciary Committee's Antitrust Subcommittee, Senators DEWINE and KOHL; and the distinguished chairman of the Senate Commerce Committee, Senator MCCAIN. We have all worked together with many others of our colleagues to bring this important legislation along on behalf of our constituents.

The options consumers have for viewing television entertainment have vastly increased since that fateful day in September 1927 when television inventor and Utah native Philo T. Farnsworth, together with his wife and colleagues, viewed the first television transmission in the Farnsworth's home workshop: a single black line rotated from vertical to horizontal. Both the forms of entertainment and the technologies for delivering that entertainment have proliferated over the 70 years since that day. In the 1940s and 50s, televisions began arriving in an increasing number of homes to pick up entertainment being broadcast into a growing number of cities and towns.

In the late 1960s and early 1970s, cable television began offering communities more television choices by initially providing community antenna systems for receiving broadcast television signals, and later by offering new created-for-cable entertainment. The development of cable television made dramatic strides with the enactment of the cable compulsory license in 1976, providing an efficient way of clearing copyright rights for the retransmission of broadcast signals over cable systems.

In the 1980s, television viewers began to be able to receive television entertainment with their own home satellite equipment, and the enactment of the Satellite Home Viewer Act in 1988 helped develop a system of providing options for television service to Americans who lived in areas too remote to receive television signals over the air or via cable.

Much has changed since the original Satellite Home Viewer Act was adopted in 1988. The Satellite Home Viewer Act was originally intended to ensure that households that could not get television in any other way, traditionally provided through broadcast or cable, would be able to get television signals via satellite. The market and the satellite industry has changed substantially since 1988. Many of the difficulties and controversies associated with the satellite license have been at least partly a product of the satellite business attempting to move from a predominately need-based rural niche service to a full service video delivery competitor in all markets, urban and rural.

Now, many market advocates both in and out of Congress are looking to satellite carriers to compete directly with cable companies for viewership, because we believe that an increasingly competitive market is better for consumers both in terms of cost and the diversity of programming available. The bill we consider today will move us toward that kind of robust competition.

In short, this bill is focused on changes that we can make this year to move the satellite television industry to the next level, making it a full competitor in the multi-channel video delivery market. It has been said time and again that a major, and perhaps

the biggest, impediment to satellite's ability to be a strong competitor to cable is its current inability to provide local broadcast signals to its subscribers. (See, e.g., Business Week (22 Dec. 1997) p. 84.) In fact, marketing research by one firm found that 86 percent of those consumers who consider subscribing to satellite but ultimately do not do so, decide against satellite service because the local television signals are not available. (U.S. Satellite Broadcasting, ''Research Summary for Thomson Electronics,'' Aug. 1997, p. 6.) This problem has been partly technological and partly legal.

As we speak, the technological hurdles to satellite retransmission of local broadcast signals are being lowered substantially. Emerging technology is not enabling the satellite industry to begin to offer television viewers their own local programming of news, weather, sports, and entertainment, with digital quality picture and sound. This will mean that viewers in the remoter areas of my large home state of Utah will be able to watch television programming originating in Salt Lake City, rather than New York or California. In fact, one satellite carrier is already providing such a service in Utah.

Today, with this bill, we hope to remove the legal impediments to use of this emerging technology to make local retransmission of broadcast signals a reality for all subscribers. The most important result will be that the constituents of all my colleagues will finally have a choice for full service multi-channel video programming: They will be able to choose cable or one of a number of satellite carriers. This should foster an environment of proliferating choice and lowered prices, all to the benefit of consumers, our constituents.

To that end, the ''Satellite Home Viewer Improvements Act'' makes the following changes in the copyright law governing satellite television transmissions:

It creates a new copyright license which allows satellite carriers to retransmit a local television station to households and businesses throughout that station's local market, just as cable does, and sets a zero copyright rate for providing this service.

It extends the satellite compulsory licenses for both local and distant signals, which are now set to expire at the end of the year, until 2004.

It cuts the copyright rates paid for distant signals by 30 or 45 percent, depending on the type of signal.

It allows consumers to switch from cable to satellite service for network signals without waiting 90-day period now required in the law.

It allows for a national Public Broadcasting Service satellite feed.

Many of my colleagues in this Chamber will recognize this legislation as substantively identical to a bill reported unanimously by the Judiciary Committee last year. It passed the Judiciary Committee this year again with unanimous support. I am pleased with the degree of cooperation and consensus we have been able to forge with respect to this legislation, and I am pleased that we have been able to bring this bill before the Senate for swift consideration and approval.

Let me explain how we will proceed. As I have indicated earlier, the bill we have before us is the copyright portion of a comprehensive reform package crafted in conjunction with our colleagues on the Commerce Committee. As the Judiciary Committee has moved forward with consideration of the copyright legislation embodied in S. 247, the Commerce Committee proceeded simultaneously to consider separate legislation introduced by Chairman MCCAIN, S. 303, to address related communications amendments, including important ares such as the must-carry and retransmission consent requirements for satellite carriers upon which the copyright licenses will be conditioned, and the FCC's distant television signal eligibility process. It is our joint intention to combine our respective work product as two titles of the same bill in a way that will clearly delineate the work product of each committee, but combine them in the seamless whole necessary to make the licenses work for consumers and the affected industries. To do that, Chairman MCCAIN will today offer the text of his committee's companion legislation as an amendment to the Judiciary Committee's underlying copyright bill. Upon adoption of this amendment, we will offer a manager's package of technical and conforming amendments to more fully meld the bills into a comprehensive, pro-consumer package that we can offer to the House for their consideration in a conference.

I am glad we are taking up this legislation today. We need to act quickly on this legislation. The Satellite Home Viewer Act sunsets at the end of this year, placing at risk the service of many of the 11 million satellite subscribers nationwide. Many of our constituents are confused about the status of satellite service in February and April to as many as 2.5 million subscribers nationally who have been adjudged ineligible for distant signal service under current law. The granting of the local license, together with some resolution of the eligibility rules for distant signals and a more consumer-friendly process, can help bring clarity to these consumers, and greater competition in price and service for all subscription television viewers.

I again thank the majority leader for his interest in and leadership with respect to these issues, and the chairman of the Commerce Committee for his collegiality and cooperation in this process. I also thank my colleagues on the Judiciary Committee who have worked on this legislation. This bill is a product of a bipartisan effort with Senators LEAHY, DEWINE, and KOHL, and I have been pleased to work closely with each of them every step of the way. Finally, I thank the Register of Copyrights, Ms. Marybeth Peters, and Bill Roberts of her staff in particular, for their assistance and expertise throughout this process. The Senate process has been a more informed one, and the product of our efforts more sound as a result of their advice and recommendations.

In closing, I look forward to our consideration of this important legislation today, and to continued collaboration with my colleagues to help hasten more vigorous competition in the television delivery market and the ever-widening consumer choice that will follow it.

Mr. LEAHY. Mr. President, I am very pleased that the Senate is able to pass the Hatch-Leahy Satellite Home Viewers Improvements Act. This bill will provide viewers with more choices and will greatly increase competition regarding network and other video programming.

For some time, I have been concerned about the lack of competition with cable TV and escalating cable rates. This bill will allow satellite TV providers to compete directly with cable and will give consumers a choice. It also avoids needless cutoffs of satellite TV service and protects local TV affiliates.

The Judiciary Committee had a full committee hearing on these satellite issues on November 12, 1997, and Chairman HATCH and I agreed to work together on this bill. On March 5, 1998, the Hatch-Leahy bill, S. 1720, was introduced and was reported out of the Judiciary Committee unanimously on October 1, 1998. It permits local TV signals, as opposed to distant out-of-State networks signals, to be offered to viewers via satellite; increase competition between cable and satellite TV providers; and provide more PBS programming by also offering a national feed as well as local programming; and reduce rates charged to consumers.

We have been racing against the clock because court orders have required the cutoffs of distant CBS and Fox television signals to over a million households in the U.S.

Under a preliminary injunction, satellite service to thousands of households in Vermont and other states was to be terminated on October 8, 1998, for CBS and Fox distant network signals for households signed up after March 11, 1997, the date the action was filed.

This bill will allow satellite TV to operate just like cable TV with local channels, movies, local weather, sports, CNN, news, superstations, and the like. It allows for local TV stations to be received over satellite, permanently, and could reduce satellite rates.

It ends the cable subscriber 90-day waiting period for those wanting to switch from cable to satellite—which has been a needless barrier to competition.

The bill extends distant network service to allow for a phase-in to local-

into-local TV service and creates a national PBS feed, and also will offer the local PBS.

It also restores all lost distant stations, if the satellite provider is willing to restore service, and delays cutoffs of all other distant signals until December 31 of this year and only for a much smaller number of dish owners.

Ultimately, in 2002, the bill will impose ''must carry'' rules on satellite providers just like the ''must carry'' rules for cable TV which permits a phase-in of local-to-local service.

The chairman of the Antitrust Subcommittee, Senator DEWINE, and the ranking member, Senator KOHL, also worked hard on this issue.

It is absurd that home dish owners—whether they live in Vermont, Utah or California—have to watch network stations imported from distant states.

This committee has worked together to protect the local broadcast system and to provide the satellite industry with a way to compete with cable.

Cable TV now offers a full range of local programming as well as programming regarding sports, politics, national weather, education, and a range of movies.

Yet, cable rates keep increasing—I want satellite TV to directly compete with cable TV. The only way they can do that is to be able to offer local TV stations.

We heard testimony in 1997 and 1998 that the major reason consumers do not sign up for satellite service is that they cannot get local programming. I want satellite carriers to be able to offer the full range of local programming.

We should be encouraging this so-called ''local-into-local'' service. Local broadcast stations contribute to our sense of community.

We should be encouraging competition through local-into-local service. Instead, the current policy fosters confusion-into-more-confusion service and lots of litigation.

By striking a burdensome and flawed limitation on satellite providers, we will be prescribing fairness for dish owners and injecting some much-needed competition into the television market.

I look forward to working with my colleagues at conference.

AMENDMENT NO. 372

(Purpose: To amend the Communications Act of 1934 to enhance the ability of direct broadcast satellite and other multichannel video providers to compete effectively with cable television systems, and for other purposes)

Mr. HATCH. Mr. President, Senator MCCAIN has an amendment at the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. MCCAIN, proposes an amendment numbered 372.

Mr. HATCH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.)

AMENDMENT NO. 373 TO AMENDMENT NO. 372

(Purpose: To strike certain provisions amending title 17, United States Code)

Mr. HATCH. Mr. President, I have an amendment at the desk to the MCCAIN amendment, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. LEAHY, proposes an amendment numbered 373 to amendment No. 372.

The amendment follows:

On page 17, strike line 4 through page 18, line 4 and insert the following:

SEC. 208. DEFINITIONS.

Mr. HATCH. Mr. President, I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 373) was agreed to.

Mr. HATCH. Mr. President, I ask unanimous consent that amendment No. 372, as amended, be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 372), as amended, was agreed to.

AMENDMENT NOS. 374 AND 375

Mr. HATCH. Mr. President, there are two technical amendments at the desk, submitted by myself and Senator LEAHY, and I ask unanimous consent that they be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 374 and 375) were agreed to, as follows:

AMENDMENT NO. 374

(Purpose: To provide a manager's amendment to make certain technical and conforming amendments, and for other purposes)

On page 3, line 9, strike ''that station'' and insert ''the network that owns or is affiliated with the network station''.

On page 3, lines 16 and 17, strike ''the station'' and insert ''the network''.

On page 4, line 3, strike ''the station'' and insert ''the network''.

On page 12, beginning with line 19, strike all through line 5 on page 13 and insert the following:

(3) by adding at the end the following: ''In the case of the Public Broadcasting Service satellite feed, the compulsory license shall be effective until January 1, 2002.''.

On page 13, strike lines 6 through 8 and insert the following:

(b) DEFINITIONS.—Section 119(d) of title 17, United States Code, is amended—

(1) by amending paragraph (9) to read as follows:

''(9) SUPERSTATION.—The term 'superstation'—

''(A) means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier; and

''(B) includes the Public Broadcasting Service satellite feed.''; and

(2) by adding at the end the following:

On page 13, line 25, strike ''and''.

On page 14, line 5, strike the period and insert a semicolon and ''and''.

On page 14, insert between lines 5 and 6 the following:

(3) by adding at the end the following:

''(11) STATUTORY LICENSE CONTINGENT ON COMPLIANCE WITH FCC RULES AND REMEDIAL STEPS.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission 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 and 509, 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.''.

SEC. 8. TELEVISION BROADCAST STATION STANDING.

Section 501 of title 17, United States Code, is amended by adding at the end the following:

''(f) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.''.

On page 14, line 6, strike ''**SEC. 8.**'' and insert ''**SEC. 9.**''.

AMENDMENT NO. 375

(Purpose: To modify the definition of unserved household, provide for a moratorium on copyright liability, and for other purposes)

On page 12, line 4, insert after ''network'' the following: ''or is not otherwise eligible to receive directly from a satellite carrier a signal of that television network (other than a signal provided under section 122) in accordance with section 338 of the Communications Act of 1934.''.

On page 14, insert between lines 5 and 6 the following:

SEC. 8. MORATORIUM ON COPYRIGHT LIABILITY.

Until December 31, 1999, no subscriber, as defined under section 119(d)(8) of title 17, United States Code, located within the predicted Grade B contour of a local network television broadcast station shall have satellite service of a distant network signal affiliated with the same network terminated, if that subscriber received satellite service of such network signal before July 11, 1998, as a result of section 119 of title 17, United States Code.

On page 14, line 6, strike ''**SEC. 8.**'' and insert ''**SEC. 9.**''.

Mr. BRYAN. Mr. President, I want to engage my good friend from Arizona, our chairman of the Commerce Committee, in a colloquy concerning an issue I raised in committee on signal reception standards.

Mr. MCCAIN. I will be happy to accommodate the Senator from Nevada.

Mr. BRYAN. Mr. President, consumers who live in small and rural markets deserve access to network television service via satellite and the competition with cable it provides just as much as their fellow citizens living in urban markets. The local-into-local

service that will be made possible by the legislation we are considering today will provide this much-needed service to consumers, thereby enhancing competition to cable in many urban markets. Unfortunately, because local-into-local will not be available in small and rural markets in the immediate future, consumers who live there must depend on satellite delivery of network signals from distant markets. Recent court-imposed limitations on the delivery of distant network signals, however, will affect households that cannot receive viewable local network signals over-the-air.

To correct this imbalance, we should grant the Federal Communications Commission the authority to set a modern television signal reception standard. If the new signal reception standard is set at a level that will provide consumers with a viewable picture, then the new standard will produce a more realistic and accurate separation between ''served'' and ''unserved'' households for purposes of SHVA. In addition, such a standard would provide consumers who do not qualify to receive distant network signals with a reasonable expectation that, if they go to the trouble and expense of installing a ''conventional'' rooftop antenna, they will be able to receive a television picture they can actually watch.

To make application of the new standard more consumer friendly, I also urge that we give the FCC the authority to establish the most accurate point-to-point predictive model. Such a model would enable a consumer to know whether or not he or she will be able to receive a signal of the strength established by the rulemaking quickly, accurately, and without expensive testing.

Mr. MCCAIN. I think my colleague for his work on this very sensitive but important subject. The senator is absolutely correct. With the passage of this bill, the issue of setting an appropriate signal reception standard and predictive model is more important than ever. Consumers are frustrated today by the current situation with distant network signals because they are being told by local broadcasters they must receive their local signals over-the-air, though in many cases traditional antennas do not provide an adequate picture. If the law tells consumers they must get a local signal but they aren't able to get a decent picture, what alternative does a consumer have? Unfortunately, we are dealing here with an antiquated law that needs updating for the twenty first century.

Mr. BRYAN. If this law isn't revised we can expect more consumer confusion and frustration. The ''Grade B'' standard that is used as the signal reception standard today measures the amount of signal intensity that a consumer must receive at his or her rooftop antenna to produce what is considered an ''acceptable'' television picture. Unfortunately, this was a determination made in 1952. Consumer expectations of what constitutes an ''acceptable'' picture have increased substantially in the past 50 years. What constituted an acceptable picture to a focus group in 1951 watching black and white television would almost certainly not be a picture that modern consumers would want to watch on state-of-the-art color sets.

In addition, interference has increased substantially since the early 1950's. Background noise produced by aircraft, automobile and truck traffic, power lines, and the like, and electronic interference produced by computers, cell phones, and other electronic equipment interfere with signal propagation. Because of this increased interference, consumers need higher signal intensity in order to receive a viewable television picture.

Mr. MCCAIN. I concur with your concerns over this situation. If we are going to enforce the law and enforce a standard, we need to make sure that consumers can rely on the standard. Today, that is clearly not the case. In addition, since the purpose of the bill before us today is to give satellite television the tools it needs to become more viable competitors to cable, we have to evaluate each of the ways in which cable and satellite are compared. For example, the viewing standard that you discussed is based on three ''grades'' of television picture—''fine,'' ''good,'' and ''acceptable,'' in descending order of quality. Currently, cable viewing standards are based on a ''good'' picture. Satellite's standard is ''acceptable,'' which is a grade below ''good.'' Why wouldn't we want the reception standards between these two competing industries to be equivalent? If we are to provide true competition between cable and satellite, an increase of the standard and a corresponding increase in signal intensity model is necessary.

Mr. BRYAN. Even though the language mandating a new signal standard and predictive model was not adopted in committee, I think the chairman would agree that such language needs to be incorporated into a final measure. Many of my colleagues have been stunned to learn of the crazy circumstance that is facing many of our rural constituents as they attempt to get a network signal that they can actually watch. We shouldn's be making it more difficult for them to get this valuable service.

Mr. MCCAIN. I can assure my colleague from Nevada, we will attempt to address this in conference and rectify a very troubling inconsistency in the law.

Mr. HOLLINGS. Mr. President, I rise to support S. 247, the Satellite Home Viewers Improvement Act. This legislation represents a first step towards providing a viable competitor to cable in the multichannel video programming marketplace. Significantly, S. 247 permits direct-to-home satellite providers to transmit local broadcast signals into local markets, and eliminates the 90 day waiting period for existing cable subscribers who wish to switch to satellite service. These critical changes in the law will substantially help satellite providers compete with their cable counterparts.

I also support, for the most part, the inclusion in S. 247 of the floor amendment offered by the Senator from Arizona, Mr. MCCAIN, Amendment No. 372. This amendment is identical to the text of the committee reported amendment to S. 303, the Satellite Television Act of 1999, which was reported favorably by the Senate Commerce, Science and Transportation Committee, Senate Report No. 106–51. With one reservation, which I will explain shortly, I am pleased that the work product of the Commerce Committee will be included in the Satellite Home Viewers Improvement Act, S. 247, as passed by the Senate.

As reported by our committee, S. 303 complements S. 247 by removing additional statutory impediments that thwart the ability of direct-to-home satellite service providers to compete with cable television. S. 303 authorizes direct-to-home satellite service providers to offer their subscribers local television station broadcasts, but requires those providers to comply with the must-carry and retransmission consent rules that apply to cable television operators. In addition, S. 303 requires the Federal Communications Commission to use the Individual Location Longely-Rice Methodology to better determine who should be receiving distant network signals and who should not. Finally, the legislation requires the FCC to implement a waiver process to give consumers with unsatisfactory local television reception a timely process in which to have their concerns addressed.

While I support moving S. 247, as amended, out of the Senate, I must note one concern with the legislation. I oppose provisions in S. 303 that sanction the illegal behavior of direct broadcast satellite service providers. Those provisions permanently grandfathered the transmission of distant network signals to subscribers residing outside of their local station's Grade A contour, but within the Grade B contour, regardless of whether those subscribers are actually able to receive the signals of their local stations. My opposition to this approach is explained in greater detail in the minority views filed with the Committee Report. In brief, I will say that the provisions I opposed put the legislation squarely in the position of sanctioning illegal behavior. As a law and order man, that is not an approach I am willing to support.

Otherwise, I am extremely pleased that the Senate has been able to act so quickly on this important issue. By passing legislation so early in the 106th Congress, we have gone a long way toward ensuring greater competition in the video programming marketplace.

Mr. KOHL. Mr. President, I rise in support of this legislation because it will increase competition between satellite and cable. Senators MCCAIN, HATCH, LEAHY, HOLLINGS, DEWINE and others deserve credit for moving this measure so quickly this term, especially when we came so close last year.

Mr. President, when the Judiciary and Commerce bills are combined as one, it creates a good, comprehensive measure. Satellite companies will finally be allowed to legally broadcast local stations to local viewers—so-called ''local into local.'' The strange anomaly that restricted satellite from providing local signals will be a thing of the past. And to be balanced, satellite companies will also be subject to ''must-carry'' obligations, just like cable. This bill will also reduce the royalty fees for those local signals to a level closer to that paid by cable companies. All of this moves us towards parity between satellite and cable, and it is a huge step forward for consumers. Let me tell you why.

Increased competition will discipline the cable marketplace which, in turn, will create lower prices, increased choice, and wider availability of television programming for all Americans, no matter how remote. And we do this in the best way possible, by promoting competition, not increasing regulation. Moreover, it won't be at the expense of our local television stations, which provide a valuable community benefit in the form of local news, weather, sports and various forms of public service.

One of the hardest questions to address, of course, is which viewers should be entitled to receive ''distant network'' signals, especially in rural states like mine. Authorizing ''local into local'' is a crucial first step and, eventually, when technology advances and more satellites are launched, we will see ''local into local'' almost everywhere. So, this bill goes a long way to ensure that every viewer will receive one signal of each of the major television networks—this is a marked improvement over the current situation.

Mr. President, I urge my colleagues to support this bipartisan measure which will permit satellite companies to compete on a more level playing field with cable. We have our work cut out for us at conference because the House version is quite different from ours. But there is no excuse for not enacting this pro-competition, pro-consumer legislation this year. Let's get to conference and get this bill done.

Mr. HATCH. Mr. President, I ask unanimous consent that the bill, as amended, be read a third time, and that the Senate proceed to Calendar No. 93, H.R. 1554. I further ask unanimous consent that all after the enacting clause be stricken and the text of S. 247, as amended, be inserted in lieu thereof; that the bill be read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the bill appear at the appropriate place in the RECORD. I finally ask unanimous consent that S. 247 then be placed back on the Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1554), as amended, was read the third time and passed.

AUTHORIZATION OF LEGAL REPRESENTATION

Mr. HATCH. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 104 submitted earlier by Senators LOTT and DASCHLE.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 104) to authorize testimony, production of documents, and legal representation in United States v. Nippon Miniature Bearing, Inc., et al.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LOTT. Mr. President, this resolution concerns a subpoena for testimony and document production in an action brought by the United States Customs Service in the Court of International Trade against Nippon Miniature Bearing, Inc., and its parent and subsidiary, alleging false representations to Customs about the composition of imported bearings. The defendants have subpoenaed Tim Osborn, a former employee of the Senate Committee on Small Business, seeking to depose him regarding his communications with the Customs Service and others about this investigation. Mr. Osborn's activities were on behalf of the Small Business Committee, in preparing for and conducting a September 1988 oversight hearing of the Customs Service concerning its enforcement of laws affecting the bearing industry. The information that the defendants seek therefore is privileged from compelled discovery from the Congress under the Constitution's Speech or Debate Clause.

This resolution would authorize the Senate Legal Counsel to provide representation in order to move to quash the subpoena and otherwise protect the Senate's privileges in this matter. The resolution would authorize Mr. Osborn and any other former Member or employee of the Senate to testify and produce documents in this case only to the extent consistent with these privileges.

Mr. HATCH. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 104) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 104

Whereas, in the case of United States v. Nippon Miniature Bearing, Inc., et al., Court No. 96–12–02853, pending in the United States Court of International Trade, a subpoena for testimony and documents has been issued to Tim Osborn, a former employee of the Senate Committee on Small Business, concerning the performance of is duties on behalf of the Committee;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C.§§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members or employees of the Senate with respect to any subpoena, order, or request for testimony or documents relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That Tim Osborn, and any other former Senate Member or employee from whom testimony may be required, are authorized to testify and produce documents in the case of United States v. Nippon Miniature Bearing, Inc., et al., except concerning matters for which a privilege should be asserted.

Sec. 2. The Senate Legal Counsel is authorized to represent Tim Osborn, and any other former Member or employee of the Senate from whom testimony may be required, in connection with the case of United States v. Nippon Miniature Bearing, Inc., et al.

EXECUTIVE SESSION

TREATY

Mr. HATCH. I ask unanimous consent that the Senate proceed to executive session to consider the following treaty on today's Executive Calendar: No. 2. I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification; that all committee provisos, reservations, understandings, declarations be considered agreed to; that any statements be printed in the CONGRESSIONAL RECORD as if read; I further ask consent that when the resolution of ratification is voted upon the motion to reconsider be laid upon the table; the President be notified of the Senate's action and that following the disposition of the treaty, the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The treaty will be considered to have passed through its various parliamentary stages up to and including the presentation of the resolution of ratification.

The resolution of ratification is as follows:

AMENDED MINES PROTOCOL

Resolved (two-thirds of the Senators present concurring therein),