

SATELLITE HOME VIEWER IMPROVEMENTS ACT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

S. 247

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

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SATELLITE HOME VIEWER IMPROVEMENTS ACT

THURSDAY, JANUARY 28, 1999

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:34 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senator Leahy.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. Let's begin this morning. We only have a very limited time this morning because we have caucuses meeting. This is a very important hearing and we are going to make a record here today and we are going to try and push this as hard as we can.

We are here today to discuss the Satellite Home Viewer Improvements Act, a bill designed to bring greater consumer choice and competition in subscription television services to people in my own home State of Utah and in Senator Leahy's home State of Vermont and across the Nation.

We have come a long way since television began some 70 years ago in the small home workshop of inventor and Utah native Philo T. Farnsworth, who, together with his wife and colleagues, viewed the first television transmission. We are very proud of that in Utah. It was a single black line that rotated from vertical to horizontal. While not everyone might agree, I think the programming has greatly improved since Farnsworth's rotating black line.

Since that day in the Farnsworth's workshop, television viewers have benefitted from steady advances in technology, bringing increased access to an evermore diversified range of programming choices. The television industry has progressed from one or two over-the-air broadcast stations to a full range of broadcast networks delivering local and syndicated national programming, to cable television delivering both broadcast and made-for-cable programming.

In the last decade, satellite broadcasters have emerged as the newest competitors in the television delivery system and industry. With hundreds of channels of programming, they are pushing the envelope of consumer options and stand poised to serve as full-fledged, full-service competitors to cable in the multi-channel video delivery marketplace.

The Satellite Home Viewer Act, however, is simply not designed for this sort of competition in its current form. It was enacted in 1988 only to provide lifeline access to television for those scattered households that were unable to get television in any other way, such as over-the-air or by cable.

The bill we will discuss today is designed to allow satellite broadcasters to compete fully in the market. Most importantly, it authorizes satellite broadcasters to provide local subscribers with their local television signals. Now, this means that every television viewer in Utah and Vermont can have access to Utah and Vermont news, weather, sports, and other locally relevant programming, as well as national network programming. Emerging technology now makes this possible, and our bill would make it legal. The bill also reduces the copyright fees that are passed along to subscribers. As a result, television viewers from St. George, to Salt Lake, to Logan, and in Senator Leahy's State in comparable ways, will have a full range of television options at more competitive prices.

Now, much progress has been made since this committee first began working toward reauthorization and reform of the Satellite Home Viewer Act some 3 years ago. This committee unanimously passed a version of this bill late last year and we expect it to move through the Congress quickly this year.

I want to recognize the efforts of my colleagues, particularly the distinguished ranking member on this committee, Senator Leahy, with whom I enjoy working especially on these types of issues.

I would also like to recognize Senators DeWine and Kohl, who are also cosponsors of this legislation, and to thank them for their contributions to this legislation's success. I also want to recognize the efforts of the chairman of the Commerce Committee, Senator McCain, who is also a cosponsor and who is working to address related communications issues in the Commerce Committee. And I want to thank the Majority Leader, Senator Lott, who has also played an important role in this process and who also is a cosponsor of this legislation.

Finally, I want to thank each of our witnesses who are with us today and recognize the support of their industry groups and how important it is to getting us to where we are today, and I look forward to their testimony, which we hope will be very short because we have to get to these meetings. But we will put all written statements in the record as though fully delivered, and any additional statements that you care to make that will help us with this record.

With that, let me now yield to my friend and distinguished ranking member, Senator Leahy.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR
FROM THE STATE OF VERMONT**

Senator LEAHY. Mr. Chairman, thank you very much, and having this hearing on the Hatch-Leahy, et al, legislation, I think, is a very positive step. And I agree with you that you and I have joined together in a lot of high-tech legislation and intellectual property. The joke is when Senators see a number of these Hatch-Leahy or Leahy-Hatch bills come to the floor, they figure either it is a very good bill or one of us didn't read it.

But the fact of the matter is these are issues that are not partisan. They are important to the growth of our country and to the things that we consider as important American advances. I am pleased in that regard, Mr. Chairman, that Peter Martin, of Vermont, is here this morning. He is a leader of the Vermont broadcasting industry and he and his father have probably seen every single change there has been in that industry almost from the time of the early programming that you described before.

I think when you and I worked together on this satellite bill last year, we almost got it done. If the Congress had not ended with other problems not related to this committee, we would have. We developed a good policy that properly balances the interests of those involved. It protects the local TV affiliate system and it promotes competition with cable, which I think is important. It does this by allowing the satellite carriers to offer local television network stations instead of distant network signals from the same network.

And I agree with you. Senator DeWine and Senator Kohl deserve a great deal of credit for the work they have done in this committee, and I would ask that a statement of Senator Kohl be included in the record, and any other statements on either side be included.

The CHAIRMAN. Without objection, we will do that.

[The prepared statement of Senator Kohl follows:]

PREPARED STATEMENT OF SENATOR HERBERT KOHL, A U.S. SENATOR FROM THE
STATE OF WISCONSIN

Mr. Chairman, let me thank you and Senator Leahy for picking up where we left off at the end of the 105th Congress: Working to enact legislation that helps create true competition between satellite and cable television. Our bipartisan effort—involving you and Senators McCain, Hollings, DeWine, and Lott—has moved us one step closer to providing customers with real choices among video providers.

The current law regulating satellite programming is simply inadequate. Most consumers cannot receive their local television stations via satellite, even if they live in a remote area where the broadcast signal is unclear. We need “local-to-local” programming for satellite—and if we have “must-carry” obligations for cable, we should have them for satellite, too.

That’s why it is essential that we make enacting meaningful, pro-competitive legislation a top priority. Our proposals extend the Satellite Home Viewer Act, give satellite carriers the ability to provide local television broadcast signals—while appropriately phasing-in must carry—reduce the royalty fees for these signals, and ask the FCC to take a much-needed second look at the definition of “unserved households.”

It’s a fair and comprehensive solution for satellite, cable, and local stations alike. If we continue to work together, consumers will be able to enjoy *real* choice as well as the availability and affordability that results from competition. So let’s not delay this much-needed bill any longer—instead, let’s pass this bipartisan legislation this year, if not this month. Thank you.

Senator LEAHY. You know, it is not logical that Vermonters have to watch stations from Georgia and Texas or Florida instead of watching Vermont news or Vermont weather or Vermont emergency broadcasts. Cable television offers a full range of local programming, as well as programming regarding sports and politics and national weather, and so on. But these cable rates continue to increase and increase.

The Judiciary Antitrust Subcommittee heard testimony yesterday that cable rates have increased approximately 21 percent since passage of the 1996 Telecommunications Act, which was supposed to control cable rates. That increase is three to four times the rate

of inflation. And why? Because cable has no competition. It is not because they have better signals.

In the residence I use when I am in Washington, I know that the signal I get on the cable system is often inferior to what you would get with just an ordinary antenna, and that has to be a concern to those people who want to have good quality. We heard testimony yesterday that the major reason consumers do not sign up for satellite service is they cannot receive local programming.

In my State, stations like WCAX or WPTZ or others should be carried by satellite. I believe satellite carriers should be able to offer a full range of local programming, and also you would have the ability to shop around where you would get the best picture. Local broadcasting stations contribute to our sense of community, and I strongly believe that when the full local-into-local satellite system is in place it will enhance the local affiliate system.

On a more personal note, as I have stated before, I live on the side of a mountain in Vermont. It is beautiful. I look down a valley, 35 miles down a valley with mountains on either side. I literally cannot see another person from my front porch, but I also can't see the local television station. It is 25, 30 miles away. I get a very, very fuzzy signal, at best. On another one, I get a halfway decent station signal and they are 25, 30 miles away, and there are a lot of Vermonters in the same boat that I am.

We want the problem fixed. We should be encouraging competition through local-into-local service. Instead, the current policy fosters confusion-into-more-confusion. It is not local-into-local, it is confusion-into-confusion and an awful lot of litigation. So we should be prescribing fairness for satellite dish owners. We should have a lot more competition in the television market and we should get through this bewildering policy maze that so confuses consumers.

So I thank you, Mr. Chairman, for doing this. I will put my full statement in the record in the interest of time, but I hope we can move forward rapidly and I will work very closely with you on this issue.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK LEAHY

I am very pleased that Peter Martin could be here this morning. He is a leader of the Vermont broadcasting industry, and I appreciate his efforts and look forward to hearing from him.

For quite some time, I have been concerned about this local television issue. I was pleased that this committee held a hearing on this important issue in late 1997. Senator Hatch, you and I agreed at that hearing to work together to try to solve this matter before it became such an issue. And we did work together and almost got the job done last Congress.

Last year, this committee developed a good policy that properly balances the interests of those involved, protects the local television affiliate system, *AND* promotes competition with cable television. Our bill does all this by allowing satellite carriers to offer local television stations instead of distant signals. I also appreciate the hard work of the chairman of the Antitrust Subcommittee, Senator DeWine, and the ranking member, Senator Kohl, who have worked with us to solve this problem.

It defies logic that Vermonters have to watch stations from Georgia, Texas or Florida instead of watching Vermont news, Vermont weather or Vermont emergency broadcasts. Cable television 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 continue to increase, increase and increase some more.

The Judiciary Antitrust Subcommittee heard testimony yesterday that cable rates have increased approximately 21 percent since passage of the 1996 Telecommuni-

cations Act. Cable television rates continue to climb at a rate of three to four times faster than the rate of inflation. Why? Because there is little competition.

Indeed, we heard testimony yesterday that the major reason consumers do not sign up for satellite service is that they cannot receive local programming, such as WCAX-TV, or the other local channels. I believe satellite carriers should be able to offer a full range of local programming.

Local broadcast stations contribute to our sense of community. The diversion of local network viewing threatens this system. I strongly believe that when the full "local-into-local" satellite system is in place, it will enhance the local affiliate television system.

On a more personal note. I live on the side of a mountain in Vermont. It is beautiful there and I can look for miles at hills and open country. However, I cannot receive cable service because it is not offered. Yet, I only receive one over-the-air station clearly and one other channel whose reception is so poor, I often wonder what I am watching. There are thousands of Vermonters who are in the same boat as me.

We all want this problem fixed. We should be encouraging competition through "local-into-local" service. Instead, the current policy fosters confusion-into-more-confusion and produces reams of litigation. It discourages competition and encourages a bewildering policy maze that angers consumers and seems to serve little purpose. We should be prescribing fairness for satellite dish owners and injecting some much-needed competition into the television market.

I think our bill—the "Satellite Home Viewer Improvements Act"—leads the way out of the blurry snowstorm that clouds my television reception. I look forward to hearing what all of you have to say about this legislation as well as the importance of "local-into-local" service. Thank you.

The CHAIRMAN. Well, thank you, Senator Leahy.

Now, we are pleased to have an outstanding panel of witnesses with us today. We will first hear from Mr. Bruce Reese of Bonneville International Corporation based in Salt Lake City, UT. Bonneville International operates two television stations in Utah, the local NBC affiliate, KSL-TV in Salt Lake City, and the PAX TV affiliate, KCSG, in Cedar City. Mr. Reese has been with Bonneville since 1984, where he has served as general counsel, executive vice president, and since 1996 as president and CEO.

Mr. Reese will be followed by Mr. Charles Meinkey, who owns the Satellite TV Warehouse in St. George, UT. Mr. Meinkey has been in the satellite business for close to 2 decades. His business currently includes retailing of satellite television programming and equipment for all of southern Utah. We will look forward to hearing your perspective, Charles, both as someone with a great deal of experience in the industry and someone who has his finger on the pulse of the viewing consumers in your area.

Now, after Mr. Meinkey, we will be pleased to hear from Mr. Michael Peterson, the Executive Director of the Utah Rural Electric Association. Mr. Peterson is a Utah native who has worked with electric cooperatives in our State since 1981. At the Utah Rural Electric Association, he is currently working in cooperation with the National Rural Telecommunications Cooperative to bring television to the homes of rural Utahns and to increase their programming options.

Finally, we are going to hear from Mr. Peter Martin, who is Vice President and General Manager of WCAX television, the CBS affiliate located in Burlington, VT.

I feel sorry that we don't have somebody representing the ABC affiliate and Fox affiliate and CNN affiliate, and we can go right on down the line. But I think we have a very representative group of people here today who are experts in these fields and from whom we can get a great deal of wisdom.

Senator LEAHY. I think it would be safe to say, would it not, Mr. Chairman, that if some of these others wish to correspond with the committee, obviously you and I would look at that?

The CHAIRMAN. We will certainly keep the record open for any affiliated group who wants to correspond with us. I can't promise we will put everything in the record if we get voluminous things.

Senator LEAHY. We will look at it.

The CHAIRMAN. But we will certainly look at it and see what we can do. We want to be fair here and we want to do this right.

Now, I would like to limit you each to 5 minutes. As I see it, I think your statements are all around that, and if you can keep at that, maybe we can have a few questions before we have to get to our respective caucus meetings.

Mr. Reese, we will turn to you first.

PANEL CONSISTING OF BRUCE T. REESE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, BONNEVILLE INTERNATIONAL CORPORATION, SALT LAKE CITY, UT; CHARLES E. MEINKEY, OWNER, SATELLITE TV WAREHOUSE, ST. GEORGE, UT; MICHAEL PETERSON, EXECUTIVE DIRECTOR, UTAH RURAL ELECTRIC ASSOCIATION, RICHFIELD, UT; AND PETER R. MARTIN, EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER, WCAX-TV, BURLINGTON, VT

STATEMENT OF BRUCE T. REESE

Mr. REESE. Thank you, Mr. Chairman. As you indicated, I am the president and CEO of Bonneville International which operates KSL television in Salt Lake City, which will on June 1st of this year celebrate its 50th anniversary of providing local television service to the residents of Salt Lake and the State of Utah. And, Mr. Chairman, you will get your invitation to our birthday party at Little America on the 1st.

The CHAIRMAN. OK.

Mr. REESE. KSL-TV is currently an NBC affiliate and previously was affiliated with the CBS television network. As is the case with many other television stations, KSL's ability to serve its audience will be affected significantly by the proposed legislation at issue here today. We appreciate your leadership in pushing this legislation forward early in the new Congress and we are grateful for the opportunity to make our views known on this extremely important matter.

Mr. Chairman, Bonneville supports the ongoing efforts of you and Senator Leahy to pass the legislation that would resolve many issues concerning satellite delivery of local television signals into local markets. Your bill, S. 247, provides the necessary copyright authority for local stations to be delivered via satellite. Bonneville also endorses your efforts to work with Senator McCain on S. 303 to address all the difficult issues that exist in this area.

As this committee is aware, the satellite industry's practice of delivering distant network stations into local markets has been a source of great frustration to both local television stations and consumers alike. Bonneville believes that the local-into-local concept advanced by these legislative efforts represents the fairest and most effective solution to this problem. It will give all satellite cus-

tomers full and fair access to their local television stations without disrupting the integrity of our Nation's broadcasting system, which has been and continues to be based on localism.

It cannot be overemphasized that service to local communities is the touchstone of television broadcasting in the United States, and Congress recognized this in the passage of the 1992 Cable Act. There can be no doubt that the viewing public in Salt Lake City and throughout Utah has a substantial interest in local programming. They rely on local stations to provide local news, weather, political information, charitable activities, and advertising for local businesses. Our station, KSL-TV, and the other local broadcasting stations in Salt Lake City play a vital role in meeting these needs and interests.

In addition, because Utah is the largest designated market area, or DMA, in the country with Salt Lake City as its only large metropolitan area, the Salt Lake City-based stations, including KSL, provide news and other important local programming to citizens throughout the State of Utah through an extensive TV translator network.

The ability of KSL and other local TV broadcasters to provide this programming is compromised by satellite importation of distant signals into the market we serve. Local-into-local, however, will preserve unique community-based programming by enabling satellite companies to deliver local station signals. This will eliminate the need for importation of distant network signals and avoid the related consumer confusion about eligibility.

Under the bill being considered today, every resident of the State of Utah, which is our DMA, the whole State, should be eligible to receive all Utah stations over satellite. By providing a copyright framework for local-into-local as proposed in your bill, Congress will assure that local stations continue to reach their audiences without putting a satellite customer's ability to receive network programming at risk.

By the same token, a consumer who wishes to subscribe to satellite services will not have to sacrifice access to local stations and thus will enjoy the same programming choices that have long been available over the air and over cable. Local-into-local, in other words, creates an opportunity for Congress to create a classic win-win scenario. It also will create additional competition to cable by enabling consumers to receive programming normally carried by cable and local television signals.

There are a number of issues that need to be addressed in this legislation and particularly in S. 303. These issues deal with network non-duplication, retransmission consent, syndicated exclusivity, "must carry," and the continued prohibitions against importation of distant signals. We are confident that in this bill and in your work with Senator McCain on S. 303, those issues can be addressed. And this legislation will provide important relief for consumers and will provide certainty for consumers, and we therefore support it and applaud your efforts.

The CHAIRMAN. Thank you, Mr. Reese. We appreciate your statement.

[The prepared statement of Mr. Reese follows:]

PREPARED STATEMENT OF BRUCE T. REESE

Good morning. My name is Bruce Reese, and I am President and Chief Executive Officer of Bonneville International Corporation. Bonneville is the operator of station KSL-TV, which as of June 1, 1999 will have provided local television service to the residents of Salt Lake City and the State of Utah for 50 years. KSL-TV is currently an NBC affiliate, and previously had been affiliated with the CBS network. As is the case with many other television stations, Bonneville's ability to serve its audience will be affected significantly by the proposed legislation at issue here today. We appreciate your leadership in pushing this legislation forward early in the new Congress, and are grateful for the opportunity to make our views known on this extremely important matter.

Mr. Chairman, Bonneville supports the ongoing efforts of you and Senator Leahy to pass legislation that would resolve many issues concerning satellite delivery of local television signals into local markets. Your bill, S. 247, provides the necessary copyright authority for local stations to be delivered via satellite. Bonneville also endorses your efforts to work with Senator McCain on S. 303 to address difficult issues that exist in this area. As this Committee is aware, the satellite industry's practice of delivering distant network stations into local markets has been a source of great frustration to both local television stations and consumers alike. Bonneville believes that the "local into local" concept advanced by these legislative efforts represents the fairest and most effective solution to this problem. It will give all satellite customers full and fair access to their local television stations without disrupting the integrity of our nation's broadcasting system, which since passage of the Communications Act of 1934 has been based on localism.

It cannot be overemphasized that service to local communities is the touchstone of television broadcasting in the United States. In passing the 1992 Cable Act, Congress itself recognized that "a primary objective and benefit of our nation's system of regulation of television broadcasting is the local origination of programming," and that "broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate." There can be no doubt that the viewing public in Salt Lake City has a substantial interest in local programming. They rely upon local stations to provide local news, weather, political information, charitable activities and advertising. Our station, KSL-TV, and the other local broadcasting stations in Salt Lake City play a vital role in meeting these needs and interests. Indeed, because Utah is the largest Designated Market Area in the country, with Salt Lake City as its only large metropolitan area, Bonneville, through KSL-TV and an extensive television translator network, provides news and other important local programming to citizens throughout the State.

The ability of KSL-TV and others to provide this programming is compromised by satellite importation of distant signals into the areas of the Salt Lake market that we serve. "Local into local," however, will preserve unique community-based programming by enabling satellite companies to deliver local stations' signals, thus alleviating the need for the importation of distant network signals and avoiding the related consumer confusion about eligibility. Indeed, under the bill being considered today, every resident of the State of Utah should be eligible to receive Salt Lake or Utah stations over satellite. By providing a copyright framework for "local into local" as proposed in your bill, Congress will assure that local stations continue to reach their audience, without putting a satellite customer's ability to receive network programming at risk. By the same token, a consumer who wishes to subscribe to satellite service will not have to sacrifice access to local stations, and thus will enjoy the same programming choices that have long been available over the air and over cable. "Local into local," in other words, creates an opportunity for Congress to create a classic "win-win" scenario for satellite carriers, local broadcast stations and their viewers.

Furthermore, "local into local" will have the additional benefit of creating more competition to cable. Though DBS has made enormous strides over the past few years, the fact remains that satellite companies cannot fully compete with the cable industry unless they are given the authorization to carry local stations. The marketplace reality is that a multichannel video provider cannot expect to be fully competitive with cable if it cannot offer local stations to its customers. By creating greater regulatory certainty on the "local into local" issue, Congress will greatly enhance the competitive position of DBS, and thus will very likely achieve the improved service and lower prices that have remained elusive since passage of the 1992 Cable Act.

In addition, Bonneville respectfully submits that a carefully crafted "local into local" bill will be far better than the law we have now. The Satellite Home Viewer Act in its present form and in its implementation has produced costly litigation that

has polarized the broadcast and satellite industries. As a result of that litigation, consumers are threatened with the loss of network signals, which are being delivered by satellite in violation of law. Though the courts have appropriately intervened, a legislative solution is needed. Your bill represents significant progress toward providing that solution.

Bonneville urges that this Committee move forward on S. 247. It also recognizes the need for coordination with Senator McCain's proposals. As the process moves forward, Bonneville requests the Committee members' assistance to help ensure that the communications law package that will be added to this bill be fair, and that it respect long relied on relationships, arrangements and principles with respect to issues such as must carry, retransmission consent, network nonduplication protection and syndicated exclusivity, and continued protection from the importation of distant signals to ineligible subscribers.

In sum, Bonneville believes that the legislative proposals now before Congress represent an essential first step toward providing broadcasters, satellite providers and, most importantly, consumers with relief in this area. We believe that the legislation you have introduced is a vital part of any final solution to the problems in this area. "Local into local" will promote Congress's long-standing goals of preserving the vitality of local broadcasting and fostering a fully competitive marketplace that maximizes consumer choice. Bonneville thus urges that this Committee pursue its work on S. 247 with all due speed, and encourage adoption of "local into local" legislation by the full Congress. Thank you.

The CHAIRMAN. Mr. Meinkey, we will turn to you.

STATEMENT OF CHARLES E. MEINKEY

Mr. MEINKEY. Chairman Hatch, Senator Leahy, thank you for this opportunity to testify on S. 247, the Satellite Home Viewer Improvements Act, legislation you have introduced to reform the copyright laws which will be crucial to the success of DBS and giving everyone in Utah the opportunity to receive broadcast signals from Salt Lake City. I believe this legislation will mean growth for my business, and more importantly will lead to more satisfied customers in my home State of Utah.

I have been in the satellite business since 1982 and I have a retail store there and I have thousands of customers, and I travel the State regularly, almost 200 miles a day, just taking care of the customers so they can watch local TV and other programming.

I have sold approximately 5,000 dishes, starting with the large C-band dishes, at a time when you could only receive maybe two off-air channels on a good day. At that time, the television broadcast transmitters were much less technologically sophisticated than they are now. I remember a time when, during Super Bowl Sunday, an hour-and-a-half before the game was to be broadcast, the translator went out. So, needless to say, I had several phone calls that day.

I sell both EchoStar and DirecTV, but the majority of my business is DISH Network because they do offer the local broadcasts and my customers really enjoy being able to catch their local news now. Your legislation is crucial to the success of DBS. As a competitor to cable, we will especially benefit all of Utah who live in rural areas because they will be able to receive digital-quality pictures as the broadcasters intend them to be seen. Your legislation would make DBS a more beneficial product for Utahns.

The lack of local channels on DBS has been one of the major reasons my customers don't choose me over cable. Now, with the local networks added to the lineup, my sales have increased considerably. It still requires customers to put a second dish on, but as time goes on and we acquire more spectrum, we will be able to get away

with just one satellite dish to pick up both the local and the regular programming.

My customers really want local signals and having them means they will no longer feel like second-class citizens. So now they can watch all their local news and sports. Eventually, we would love to see KJZZ and some of our PBS channels go up on satellite, but we know it is limited and eventually, hopefully, it might take place as time goes on.

This legislation takes care of another thorny problem for my customers. Up to now, they would have to wait approximately 90 days if they had cable and they decided to go with the satellite. They would have to wait 90 days so they could pick up the local-to-local. So, hopefully, with the passage of the bill, it will get rid of that issue, also.

As you know, Mr. Chairman, in our region of the country the terrain is mountainous. St. George is surrounded by mountains, cinder cones, hills and valleys. And just within a 100-mile radius, there are approximately six translators and you just go around a corner and you will totally lose the signal. So having the local-to-local is a very good product for us.

The quality has improved a great deal since 1982, but sometimes there is still interference and I think DBS carriage of local signals is a win for both satellite companies and the broadcasters. DBS can help eliminate any remaining problems in receiving a crystal-clear picture from the broadcast tower in Salt Lake City or its translators.

Small dealers like me nationwide appreciate you trying to create competition to cable and make our companies more competitive. This legislation would eliminate the blatantly discriminatory provision of the law that does not allow me to offer a network signal to customers until they have been disconnected from cable. It is like if you would decide to go in and buy a car and you pay for it and you can't get it for 90 days. That is how we feel about being able to get the networks for 90 days.

The provisions of this bill will finally make us much more competitive with cable, and I think that will mean that both DBS and cable subscribers will benefit. When you bring competition into the market, the competitors figure out a way to do it a little better, a little cheaper and a little nicer so that the customer just has a better deal going on.

I know that you are working with Senator McCain and the Commerce Committee on an overall package and I hope that you will exert your influence to ensure that the entire package is as fair and consumer-friendly as your bill is. We are especially interested in the issue of retransmission consent and "must carry."

I appreciate your time and I thank you very much.

The CHAIRMAN. Well, thank you, Mr. Meinkey. We appreciate it. I am really impressed that you are all living up to the five-minute suggestion. This is pretty impressive to me. Usually, we don't see that.

[The prepared statement of Mr. Meinkey follows:]

PREPARED STATEMENT OF CHARLES MEINKEY

Chairman Hatch and distinguished members of this Committee, thank you for the opportunity to testify before you today on S. 247, the Satellite Home Viewer Improvements Act—legislation you have introduced to reform the copyright laws which will be critical to the success of DBS and to giving everyone in Utah the opportunity to receive broadcast signals from Salt Lake City. I believe this legislation will mean growth for my business, and, more importantly, will lead to more satisfied customers in my home State of Utah.

My name is Charles Meinkey. I have been a satellite dealer since 1982. My small business, Satellite TV Warehouse, is located in St. George, UT. And I provide service throughout all of Southern Utah.

Since 1982, I have sold approximately 5,000 dishes, starting with the large C-Band dishes, at a time when you couldn't even receive off air channels—maybe one or two stations on a good day—because there was no cable available in our rural area. At that time, the television broadcast translators were much less technologically sophisticated than they are now. I remember a time when during Super Bowl Sunday, an hour and half before the game, the translator carrying the broadcast went out. Thousands of people were without the game.

I sell both EchoStar (also known as DISH TV) and Direct TV. But the majority of my business lately has been in selling DISH Network television, since that many of my customers are eligible to receive the local stations from Salt Lake City because they cannot receive them with an off air antennae.

Your legislation is crucial to the success of DBS as a competitor to cable and will especially benefit all Utahns who live in rural areas because they will be able to receive digital quality pictures as the broadcasters intended it to be seen. Your legislation would make DBS a more beneficial product for Utahns.

Lack of local channels on DBS, has been the single greatest obstacle for customers in deciding against choosing DBS over cable or switching from cable to DBS. Now it looks as though the DISH Network will soon be able to offer Utahns local-into-local service, on a single dish, to between 40 and 50 percent of the country, including the citizens of Utah. Currently, EchoStar offers limited local-into-local service in thirteen markets including Salt Lake City, but it requires customers to put two dishes on the roof and that has been a tough sell. EchoStar's plans to acquire more spectrum, and serve our market as one of 20 major metropolitan centers receiving local programming on one dish, will make the product much more attractive to my customers and, I suspect, to customers nationwide.

Since the Salt Lake City stations have been added to the DISH Network lineup, my sales have increased noticeably—by ten to twenty percent. I expect to see an even greater increase as the word gets out and as the DISH Network is able to market its local-into-local service nationally. I believe that can only happen with passage of your bill.

My customers really want their local signals and having them means they no longer feel like second class citizens because they can now watch their hometown state's news, weather and sports. For instance, they get to see how KSL-TV, KUTV, KSTU-TV and KTVX are covering you and Senator Bennett and our other elected representatives. Also, they now get the benefit of the local news and weather and knowing how the Utah Jazz, BYU and other local teams are performing.

Eventually, we would love to see KJZZ and our two excellent public broadcasting stations KBYU and KUED picked up by the DISH Network, but we understand that capacity is limited right now. Even this limited local service has been a giant step forward and has great benefits for my business, and for the people of Utah.

This legislation takes care of another very thorny problem for my customers. Up to now there has been a great deal of confusion about who is eligible to receive distant network signals that DISH Network and Direct TV offer. Those are the out of market station packages offered by DBS so that people who can't receive an off air signal can get at least some access to the network signals. This bill would eliminate that confusion because anyone in the Salt Lake City DMA, which covers all of Utah, will be eligible to receive the Utah package of local signals. Right now, I can only give it to those people who cannot get it off air and meet all of the other criteria. We think this will help the local broadcaster by expanding their markets considerably.

As you know Mr. Chairman, in our region of the country the terrain is mountainous. St. George is surrounded by mountains and cinder cones, hills and valleys. And just within the 50 to 100 mile radius where I provide service, there are at least 6 translators that carry between 3 and 10 broadcast channels. The quality has improved a great deal since 1982, but sometimes there is still interference. I think DBS carriage of local signals is a win for both Satellite companies and broadcasters.

DBS can help eliminate any remaining problems viewers have with receiving a crystal clear picture from the broadcast tower in Salt Lake City or its translators.

Small dealers like me nationwide appreciate what you are trying to do to create competition to cable and to make our companies more competitive. This legislation would eliminate a blatantly discriminatory provision of the law that does not allow me to offer a network signal to customers until they have been disconnected from cable for 90 days. That rule is much like saying to a customer you can buy a new car and pay for it up front, but you won't be allowed to take possession of it for 90 days. No one benefits by not allowing customers to receive those signals. It just makes people madder at the cable companies. Many of those people seeking to switch to DBS have already decided that cable isn't serving them well enough.

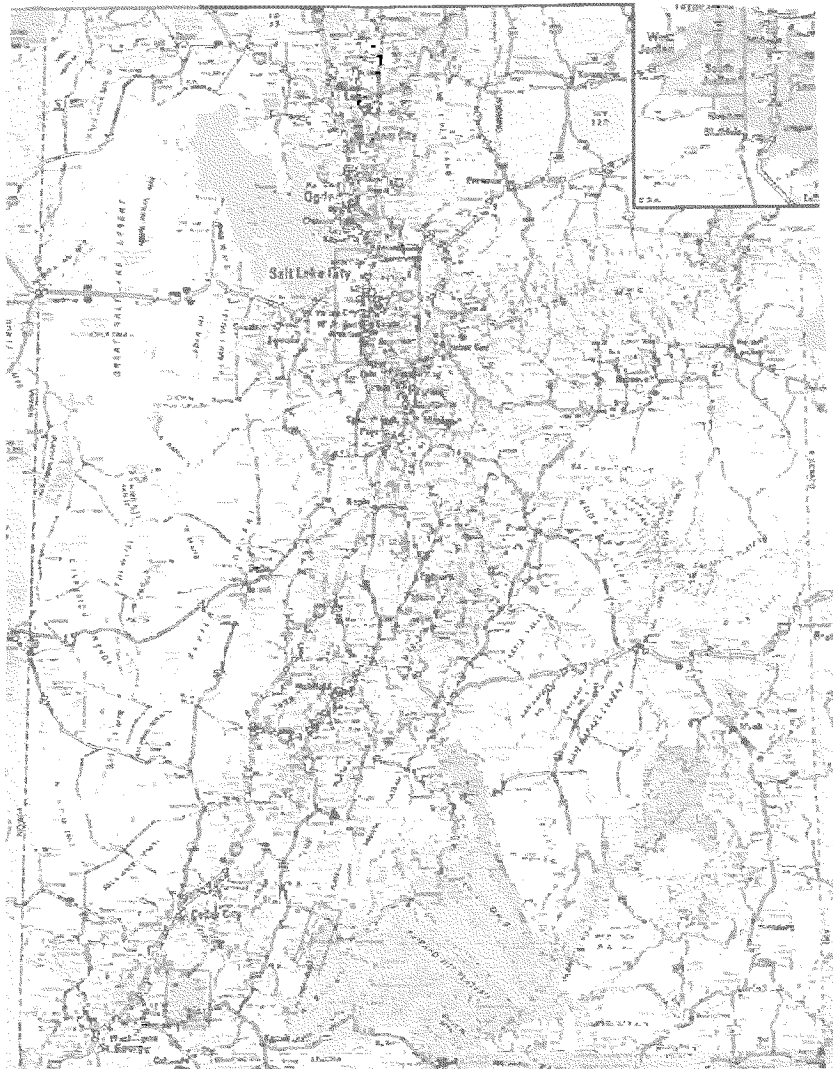
In its Fifth Annual Report to Congress, the Federal Communications Commission reconfirmed that, despite the efforts of competitors such as DBS, cable operators continue to possess bottleneck monopoly power in the distribution of multi-channel video programming. The Commission said Cable prices soared by 7.3 percent between June 1997 and June 1998. Compared to an inflation rate of only 1.7 percent.

The provisions of this bill will finally make us much more competitive with cable and I think that will mean that both DBS and cable subscribers will benefit. When you bring competition into the market, the competitors figure out how to do it a little better, a little cheaper, and a little nicer so they can get or keep the customers business.

I know you are working with Senator McCain and the Commerce Committee on an overall package and I hope that you would exert your influence to ensure that the entire package is as fair and consumer friendly as your own bill is. We are especially interested in the issues of retransmission consent and must carry.

SUMMARY

Thank you and your colleagues again for introducing S. 247, which if passed as written, will make a major difference in the lives of Utahns. I know I speak for many of my fellow dealers nationwide when I say that the work you are doing is important to our business. I appreciate the opportunity to testify before you here today. I look forward to answering your questions.



The CHAIRMAN. Mr. Peterson.

STATEMENT OF MICHAEL PETERSON

Mr. PETERSON. Thank you, Mr. Chairman. I am going to summarize—

The CHAIRMAN. Did I put some pressure on you, Mr. Peterson? [Laughter.]

Mr. PETERSON. I am going to summarize my written testimony as well. My name is Mike Peterson and I am the Executive Director for the Utah Rural Electric Association. I grew up in northeastern Utah, a part of the State where most of those residents, Senator, as they do their genealogy, claim that in some way or another they are related to Senator Orrin Hatch.

The CHAIRMAN. I know a number who refuse to claim that.

Mr. PETERSON. Cooperatives provide services of electricity and telephone, and now satellite television to many Utahns, nearly 200,000 rural Utahns, and we do that through organized co-ops or through organizations who were organized originally by co-ops.

Though in Utah the economy as a whole is pretty good, many in rural Utah, the economy has not been kind to them, particularly when you look back at northeastern Utah. The economy there is tied to oil prices, cattle prices, pork prices, hay prices, all of which have declined in recent years. So this legislation, some may say, is not needed, but I would disagree and say that it is needed, and many in rural Utah would as well say that it is certainly needed. And I am happy to be here with two fellow Utahns who also support your legislation.

Your legislation helps because, by necessity, because of the widespread—the map is gone now, but in the mountainous area, by necessity, a lot of our members rely on satellite technology to be connected to the modern world, to receive information, education, training over satellite technology, a lot of things that urban Americans take for granted, things that I took for granted as we traveled to our mother-in-law's house in Haden, UT, this past Christmas and for 2 days listened to all the grandkids say, "Grandma, is that the only station we can get around here?"

It makes a difference in rural America, and especially the popular superstition and network programming. So it is important that we have access at fair rates and on fair terms and conditions. Under the current copyright and communication laws, rural consumers that use satellite technology simply don't have that opportunity of fair access to programming, don't have a fair alternative to cable. They can't even receive some of the same distant network and some of the superstation signals. We are not even entitled to receive some of the distant network signals.

I just might mention with Mr. Reese, most of the satellite subscribers that I know in rural parts of the State may watch their satellite TV, but at 10:00 o'clock it is switched over to the network channels and principally to watch KSL. As a young man, I grew up with Norris Welty and James, and those of you from Utah understand what I am saying.

Another problem: unlike cable TV which has a permanent license, the satellite industry has a license and operates under kind of a cloud of uncertainty because their license is due to expire De-

ember 31, 1999. Another problem that Charlie mentioned is with the 90-day waiting period. It is hard to correlate that we have a 90-day waiting period for you to get satellite TV, and yet if you want to buy a gun, the waiting period is much less. So I don't understand the danger in the 90-day waiting period.

Those are issues, Mr. Chairman, that your legislation addresses, and we are happy to be here because those inequities and inequalities through the Satellite Home Viewer Improvements Act are removed. And while consumers may not recognize these are copyright issues, they do realize that they are paying up to ten times more in copyright rates. And so they appreciate that and appreciate that your legislation will extend the satellite copyright license for 5 years and appreciate the fact that it will eliminate the 90-day waiting period.

But more than anything, Senator, I think from rural Utah and rural America, we simply appreciate the fact that you listened to the concerns that we had. We spoke with members of your staff some time ago. And a lot of times we are out there, and especially in rural Utah, and you are taking care of the work to do and the chores at hand. And we realize what happens clear across the country in Washington that, you know, sometimes you can feel like you don't make a difference. But you listened and we appreciate that.

And as I return to Utah today and we will have a meeting with about 100 of the co-op members, that is certainly the message I will take back is that Senator Hatch listened and we have made some progress here. So thank you.

The CHAIRMAN. Well, thank you, Mr. Peterson. I appreciate your kind remarks. And I am happy to have as my partner a good listener, too, on these issues. I think we have got a good shot at getting this done right this time.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF MIKE PETERSON

Mr. Chairman. My name is Mike Peterson, and I'm the Executive Director of the Utah Rural Electric Association. I represent nearly 200,000 rural Utahns who receive electric, telephone and now satellite television service from cooperatives or from businesses first organized by co-ops. We provide these services on a non-profit basis and primarily in the sparsest, most remote areas of our beautiful State. Unfortunately, many in rural Utah are going through tough economic times. And while some may say your legislation is not needed, I would certainly disagree, rural Utahns would disagree and I'm pleased that two other fellow Utahns on this panel are here to join me in supporting this important legislation.

I appreciate very much the opportunity to appear before this Committee and to voice rural Utah's support for the Satellite Home Viewer Improvements Act. Mr. Chairman, as you well know, Utah is a vast, rural State. Most of the members of our rural electric cooperative association live in the so-called "C" and "D" counties, far from urban and suburban centers, far from the reach of television transmitters, and far from the wires of cable systems. By necessity, Mr. Chairman, our members often rely on satellite technology to be connected to the modern world * * * to receive information, education and entertainment programming that much or urban America takes for granted.

Satellite technology does in fact make a difference for rural America. It's important to us. To be a part of the modern Information Age, rural Americans need fair access to programming—especially popular network and superstation programming. And we need access at fair rates and on fair terms and conditions.

Under current copyright and communications laws, however, rural consumers using satellite technology are not provided with fair access to programming. We do not have a fair alternative to cable. We pay much higher copyright fees than cable

for the same distant network and superstation signals; we are not even entitled to receive some distant network signals; and we cannot receive local signals via satellite under any circumstances. Further, unlike cable, which has a permanent copyright license, the satellite industry operates under a cloud of uncertainty, because our ultimate statutory authority to provide distant signals is temporary and fleeting. It is impossible, as a practical matter, to develop and implement a business plan for the delivery of satellite services to rural America when our statutory copyright license is scheduled to expire on December 31, 1999. Last, Mr. Chairman, as you know, the satellite industry currently operates under the ridiculous requirement that subscribers must wait 90 days—that means subscribers must go without network signals entirely—before they may subscribe to distant network satellite service. That's a punishment written into the law for a subscriber who dares change from cable to satellite.

I am extremely pleased to note, on behalf of rural consumers in Utah and elsewhere across the country, that these inequities that unfairly discriminate against the satellite industry are all addressed in the Satellite Home Viewer Improvements Act. Even though rural consumers may well not recognize these as "copyright issues," they do know there is something wrong when they are paying up to 10 times more in copyright rates than cable subscribers pay for the same programming. As a practical matter, this unfair copyright rate translates into paying for an extra month of satellite service. So while the cable customer might spend that extra money to buy a daughter's Christmas doll, the satellite subscriber pays the 13th month's TV bill. That's not right.

Mr. Chairman, your bill tackles the copyright rate disparity by requiring an immediate reduction of 35 percent in rates for superstation signals and an immediate reduction of 45 percent for network signals. This is a huge cut, and it will be a practical, meaningful and appreciated one in rural Utah.

In fact, the main reason I came across the country today to testify before your Committee, Mr. Chairman, is because I personally wanted to thank you and applaud your leadership on the issue of reducing the unfair copyright rate for rural satellite subscribers. This is legislation that will make a real difference for the pocketbooks of rural America, and you are to be commended for stepping up to the plate and addressing this issue.

In a like vein, Mr. Chairman, your bill removes the uncertainty of the soon-to-expire satellite copyright license. As I mentioned, the satellite industry cannot really plan for the future when its statutory copyright license is scheduled to expire at the end of the year. This competitive problem is compounded by the fact that the cable industry operates without such uncertainty, under a permanent license. So while our competitors can spend their time marketing and promoting their services, we have to spend ours walking the halls of Congress hoping for an extension of our license. Your bill, Mr. Chairman, extends the satellite license for five more years. This, again, is a much needed and much appreciated amendment to the current copyright laws. The satellite industry needs it to survive in a competitive world and to continue providing distant network and superstation signals to consumers throughout rural America.

Your bill also works to create a more level playing field by removing the ridiculous requirement in current copyright law, that a consumer may not receive distant network signals by satellite if that consumer has received network signals via cable within the last 90 days. Off hand, I cannot think of a more blatantly anti-competitive, anti-choice, anti-consumer restriction. Imagine that: you can't get satellite if you've subscribed to cable. I am pleased to see that your bill strikes that obnoxious requirement altogether.

Mr. Chairman, I understand that as your bill moves forward it is expected to be married on the Floor with legislation from the Commerce Committee that addresses other similar problems within that Committee's purview. We need these types of changes that improve the quality of life in rural America.

I applaud your leadership on these issues. Your efforts will put rural Americans on the telecommunications map for the next century. They will be well appreciated by the folks we both serve * * * the rural families of Utah.

The CHAIRMAN. Mr. Martin, we are honored to have you here as well.

STATEMENT OF PETER R. MARTIN

Mr. MARTIN. Thank you very much, Mr. Chairman. I am delighted to be able to testify on S. 247, and thank you for that opportunity, and thank you for the work that you have done on the bill.

We strongly support the provisions of S. 247. I believe it is an elegant solution to a difficult problem. I note that S. 303, the companion Act, would have an important impact on how local-into-local will work in practice. But S. 303 is not the subject of this hearing and those issues we will have to postpone for another day and another place.

For over 40 years, WCAX-TV and Mt. Mansfield Television, the licensee, has served Vermont, portions of upstate New York and New Hampshire. Throughout this long, long period, we have provided continuous, award-winning local news and other programming to viewers in those three States.

It is important to emphasize in the context of this proposed legislation that we have been able to do so only through the benefit of the network affiliate relationship which has provided us with exclusive rights to high-quality programming which is attractive to our viewers. This relationship, whose preservation has always been a clear predicate for any compulsory license extended to satellite carriers, has enabled WCAX-TV to offer distinctive and attractive national programming and to establish and maintain the kind of local service upon which our viewers and upon which many of our public officials have come to depend to reach those viewers. That service has included not only local news and public affairs programs, but also public safety, weather, emergency, and a wide range of other program services.

WCAX-TV strongly supports the basic principle of local-into-local satellite service embodied in S. 247 because it strengthens rather than undermines the network affiliate relationship. It promotes multi-channel video competition by satellite carriers because it provides these carriers with access to attractive local broadcast signals like ours which only their cable competitors currently enjoy.

At the same time, it does so without jeopardizing the exclusivity rights of local television stations that enable those stations to attract the audiences necessary to sustain important local informational programs and to finance the enormous new costs which we face in implementing digital television service. We commend the committee for this constructive approach to the current impasse.

To strengthen implementation of the local-into-local principle, we urge the committee to consider one change to the provisions of this bill. S. 247 would add a new compulsory license for local-into-local that would, as we understand it, stand alongside the existing license for unserved areas or unserved viewers under section 119 of the Copyright Act. I believe that a viewer receiving a local signal through local-into-local will in every practical sense be a served viewer, and I would hope that S. 247 will be amended as it goes forward to reflect this reality.

In conclusion, WCAX-TV and Mt. Mansfield Television commend the committee for this constructive local-into-local principle which you have embodied into S. 247. We have some minor suggestions for clarifying language which we would be happy to discuss with your staff. And, finally, thank you very much for the opportunity to testify on this matter which is of vital importance to network affiliates like WCAX-TV, and thank you for your work on the bill.

[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF PETER R. MARTIN

Thank you, Mr. Chairman, for the opportunity to testify on S. 247, the Satellite Home Viewer Improvements Act of 1999, which is designed to permit "local-into-local" satellite retransmissions of television broadcast station signals. Mt. Mansfield strongly supports the provisions of this bill, which I believe is an elegant solution to a difficult problem. I note that S. 303, the Satellite Television Act of 1999, would have an important impact on how local-into-local would work in practice, but that S. 303 is not being considered by this Committee today. I understand that these are issues for another day and another place.

For over 40 years, Mt. Mansfield has served as the licensee of WCAX-TV, the CBS affiliate serving most of Vermont, and portions of New Hampshire and upstate New York. Throughout this period, WCAX-TV has provided continuous, award-winning local news and other programming to viewers in these areas. It is important to emphasize, in the context of this proposed legislation, that we have been able to do so only through the benefit of the network-affiliate relationship, which has provided us with exclusive rights to high quality programming attractive to our viewers. This relationship, whose preservation has always been a clear predicate for any compulsory license extended to satellite carriers, has enabled Mt. Mansfield to offer distinctive and attractive national programming, and to establish and maintain the kind of local service upon which our viewers have come to depend. That service has included not only local news and public affairs programs but also public safety, weather, emergency, and other developments involving the need for immediate and effective communication to our viewers.

Mt. Mansfield strongly supports the basic principle of "local-into-local" satellite service embodied in S. 247, because it strengthens rather than undermines this network-affiliate relationship. It promotes multichannel video competition by satellite carriers, because it provides these carriers with access to attractive local broadcast signals like WCAX-TV, which only their cable competitors now enjoy. At the same time, it does so without jeopardizing the exclusivity rights of local television stations that enable them to attract the audiences necessary to sustain important local informational programs, and to finance the enormous new costs they face in implementing digital television service. We commend the Committee for this constructive approach to the current impasse.

To strengthen implementation of the local-into-local principle, we urge the Committee to make one change to the provisions of the bill. S. 247 would add a new compulsory license for local-into-local that would, as we understand it, stand alongside the existing license for "unserved areas" under section 119 of the Copyright Act. I believe that a viewer receiving a local signal through local-into-local will in every practical sense be a "served" viewer, and I would hope that S. 247 would be amended as it goes forward to reflect that reality.

In conclusion, Mt. Mansfield commends the Committee for the constructive local-into-local principle that is embodied in S. 247. We have some suggestions for clarifying language that we would be happy to discuss with your staff. Thank you very much for the opportunity to testify on this matter, which is of vital importance to network affiliates like WCAX-TV.

The CHAIRMAN. Well, thank you, Mr. Martin.

We will limit ourselves to five minutes as well, and let me just ask my friends from Utah what are the greatest benefits which you see this bill providing for Utahns both in rural and urban areas, including those who may not even be satellite viewers. And, Mr. Martin, of course, we would love to hear your comments as well.

Let's start with you, Bruce.

Mr. REESE. I think the principal benefit is it preserves the concepts of localism which are the basis upon which our methods of over-the-air communications have been built in this country for 75 years. It preserves the concept, it preserves the reality and makes it possible for us as broadcasters to continue to be able to provide more and more local programming which is now available to people throughout our State under the principles embodied in this bill.

Mr. MEINKEY. Local-to-local means a good picture for all Utahns, in general. A lot of them don't get the picture at all. Having the local-to-local will benefit KSL and all the broadcasters in Utah.

Mr. PETERSON. I think, Mr. Chairman, that particularly with rural Utahns, it brings competition. It brings a sharper edge to the competition between the industries, and when you look at reducing the superstation rates by 35 percent, the network signals by 45 percent or so, that puts money in the pockets of some of those rural Utahns.

And you look at around Uintah County, some of those places where the average per-capita income is \$14,000, 72 percent of the State average, and that puts money in the pockets of those rural Utahns. And maybe \$25 isn't a lot to some people, but to them it is a lot.

The CHAIRMAN. Sure, it is.

Mr. Martin.

Mr. MARTIN. Well, there are a few things. First of all, it will enable us to reach viewers that we cannot currently reach or that we cannot reach in as clear a way as, say, Senator Leahy would like to see us.

Senator LEAHY. Well, I want to make very clear I hear you when your station comes through. I cannot see you at all but I hear you. [Laughter.]

Mr. MARTIN. So this is a very important bill, that we be able to get pictures to Senator Leahy so we will have added a viewer and we will be better able to compete in a multi-channel environment.

The CHAIRMAN. Let me ask Mr. Peterson and Mr. Meinkey this. The bill provides a substantial discount on the current copyright royalty rates for distant signals and a zero rate for local signals. Now, can we expect that satellite carriers will pass those savings on to consumers as we hope they will?

We will start with you, Mr. Meinkey.

Mr. MEINKEY. I am sure they will. They have never raised their rates in the last 2 years. And EchoStar and DISH Network have always been fair on their pricing, so I am sure they will.

Mr. PETERSON. I can't speak for the other companies, but NRTC has testified before Congress that those savings would be passed on to the consumers and we have mechanisms in place in the rate to put those into the pockets of consumers.

The CHAIRMAN. Let me just ask one other question to all witnesses. Do you agree that the advent of both local satellite service and digital television broadcasting will require us to review and substantially reform the distant signal rules in just a few years from now?

We will start with you, Bruce.

Mr. REESE. I would say, Senator, as we look at S. 247 and at S. 303, there don't appear to be gaping holes that would suggest we would have to review this. Once you set up a legal framework, you would hope it would work. History, however, suggests to us that whenever we are dealing with intellectual property or technology issues, we still don't do a very good job of anticipating where things are going. So I suspect we will have to look at these issues again in the future, but I believe the framework that is established by S. 247 and S. 303 looks pretty solid right now.

The CHAIRMAN. Thank you.

Mr. Meinkey.

Mr. MEINKEY. I didn't get the question.

The CHAIRMAN. Well, basically, we are just asking you if the advent of both local satellite service and digital television broadcasting is going to require us to review and substantially reform the distant signal rules that we have today.

Mr. MEINKEY. I really don't understand.

The CHAIRMAN. OK. That is a technical question.

Mr. PETERSON. My response to that question, Senator, is that customers will let you know. Your constituents will let you know if you need to review it further.

The CHAIRMAN. Do you feel like we might have to in the future?

Mr. PETERSON. Right now, you might say no. But, again, I think the customers and everybody will let us know how it is going.

The CHAIRMAN. We need to stay right on top of it to make sure.

Mr. PETERSON. Yes. I think as they see problems develop, you will hear.

The CHAIRMAN. OK. Mr. Martin.

Mr. MARTIN. I would guess that if this round of legislation lays the proper foundation, probably it might be a while, but always you have to look at things.

The CHAIRMAN. Sure.

Senator LEAHY. I didn't hear the answer.

Mr. MARTIN. I say you always have to be able to look at things over time. But will it be absolutely necessary? We won't know until we see how this works.

The CHAIRMAN. Thank you.

Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman. Mr. Meinkey's answer is encouraging on the rates. It really is, and I have felt for some time that we got sold a bill of goods on the Telecommunications Act. I say that as one of a tiny handful who voted against it because I just did not believe the cable companies when they said this would help stabilize prices and require competition, and so on. It hasn't. The costs just keep going up and up and up.

I asked a cable company why it is so expensive and they said, well, look at this; you are getting 100 channels or 90 channels, or whatever it is. And I said, well, let's take a look at what we have in those channels. A lot of those channels do not offer much and there is a lot of advertising.

Some say I can buy 12 pounds of zircon fake jewelry for a discounted price or something like that. And I am sure there are some people that like to buy 12 pounds of zircons, or other items on shopping channels.

The whole point of the thing—they say, well, you are paying for that. Well, we get no choice over, the channels now but that is how they justify the price going up.

And then I go and see some of the signals that come down from satellite companies and I see a much clearer signal and it is something that will reflect what we probably are going to have as we get better and better TV sets, those with more lines of resolution, and so on. I also see some of the problems with the satellite companies where, you have to watch the same program all over the house. There should be different technology and that is something that could be developed, I think, relatively easily.

My whole point is if we really work at making competition possible, I would think that the Congress also has a duty to make sure that competition benefits the consumers, both in a competition of quality—Mr. Martin and I have talked before about the signal I get in my home. That is fine. I am not anticipating to get it there, but if you are getting cable and if you are getting satellite, you expect to get the best quality and cost.

And then, of course, we come to the last question, the question of programming. Frankly, I want to be able to turn on affiliates from the major networks that are Vermont affiliates if I am going to watch. It is not because I might necessarily agree with the editorial policy of the particular station or maybe some of their local programs, but I want that choice. I want to see what is being offered.

And if there is that choice to all Vermonters, then there is going to be real competition among the stations. Mr. Martin will find competition at this station with other local stations. And, frankly, I think, Mr. Martin, you would agree with me that that is a good thing to have such competition.

Mr. MARTIN. Absolutely.

Senator LEAHY. But you can't have it if everybody is not receiving it. Now, I must admit I question Mr. Martin's sense of timing. He came here from a conference in New Orleans just before Mardi Gras so he could be with these two wild and swinging Senators. [Laughter.]

Let me just ask one question.

The CHAIRMAN. I felt that was fairly sarcastic myself. [Laughter.]

Senator LEAHY. No, it wasn't. Listen, what I am kidding about is Senator Hatch is an accomplished musician, a very good music writer. I actually listen to his CD's and I am not required to. He has to put up with me on this committee whether I do or not. It is called seniority, but I like it. When I put them on shuffle and I go from the Grateful Dead to you, Orrin, it takes a moment to—

The CHAIRMAN. That is quite a transition is all I can say. [Laughter.]

Senator LEAHY. Well, let me just ask this one question and I will put my other questions in the record. Mr. Martin, why would you expect satellite carriers to find that carrying the local network affiliates like yours to be more attractive to them than distant ones? Wouldn't they look at distant ones and think they might get more money, and would that not be more attractive especially when you are talking about a State as small as ours?

Mr. MARTIN. Well, there are two levels to that. One would presume under most of the copyright schemes that I am aware of that a distant signal would cost the satellite carrier more money; that is, the copyright fees for a distant signal tend to be higher than for a local station, number one.

Number two, it is a more attractive service. It provides most of the viewers in, say, Vermont or in Utah—

Senator LEAHY. What is more attractive, the local?

Mr. MARTIN. The local is more attractive because it is the local that carries the information that the local viewer needs and wants to have. So once it becomes possible for the satellite vendors to

carry the local signals, I would suspect that even in Vermont the logic of their situation is such that they would want very much to be able to carry local signals. And, certainly, a major competitive selling point for their major competition, which is cable, is that cable does offer the local signal.

The CHAIRMAN. Fine, and we will put all your statements as though fully delivered in the record. We appreciate the cooperation and your appearing here today. This is a very important hearing because we will next move to a markup on this matter. And, of course, Senator McCain, I understand, has filed his bill now and we are going to work with him and work closely together to try and get these two components of what needs to be done here put together. So we will do our very best and we want to thank you for your efforts in being here today and for your excellent testimony.

So with that, we will adjourn until further notice.

[Whereupon, at 10:17 a.m., the committee was adjourned.]

APPENDIX

PROPOSED LEGISLATION

II

106TH CONGRESS
1ST SESSION

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.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. HATCH (for himself, Mr. LEAHY, Mr. MCCAIN, Mr. DEWINE, Mr. KOHL, and Mr. LOTT) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 Home Viewers
5 Improvements 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.—

5 “(1) INITIAL LISTS.—A satellite carrier that
6 makes secondary transmissions of a primary trans-
7 mission made by a network station under subsection
8 (a) shall, within 90 days after commencing such sec-
9 ondary transmissions, submit to that station a list
10 identifying (by name and street address, including
11 county and zip code) all subscribers to which the
12 satellite carrier currently makes secondary trans-
13 missions of that primary transmission.

14 “(2) SUBSEQUENT LISTS.—After the list is sub-
15 mitted under paragraph (1), the satellite carrier
16 shall, on the 15th of each month, submit to the sta-
17 tion a list identifying (by name and street address,
18 including county and zip code) any subscribers who
19 have been added or dropped as subscribers since the
20 last submission under this subsection.

21 “(3) USE OF SUBSCRIBER INFORMATION.—Sub-
22 scriber information submitted by a satellite carrier
23 under this subsection may be used only for the pur-
24 poses of monitoring compliance by the satellite car-
25 rier with this section.

1 “(4) REQUIREMENTS OF STATIONS.—The sub-
2 mission requirements of this subsection shall apply
3 to a satellite carrier only if the station to whom the
4 submissions are to be made places on file with the
5 Register of Copyrights a document identifying the
6 name and address of the person to whom such sub-
7 missions are to be made. The Register shall main-
8 tain for public inspection a file of all such docu-
9 ments.

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

14 “(d) NONCOMPLIANCE WITH REPORTING REQUIRE-
15 MENTS.—Notwithstanding subsection (a), the willful or
16 repeated secondary transmission to the public by a sat-
17 ellite carrier into the local market of a television broadcast
18 station of a primary transmission made by that television
19 broadcast station and embodying a performance or display
20 of a work is actionable as an act of infringement under
21 section 501, and is fully subject to the remedies provided
22 under sections 502 through 506 and 509, if the satellite
23 carrier has not complied with the reporting requirements
24 of subsection (b).

1 “(e) WILLFUL ALTERATIONS.—Notwithstanding
2 subsection (a), the secondary transmission to the public
3 by a satellite carrier into the local market of a television
4 broadcast station of a primary transmission made by that
5 television broadcast station and embodying a performance
6 or display of a work is actionable as an act of infringement
7 under section 501, and is fully subject to the remedies pro-
8 vided by sections 502 through 506 and sections 509 and
9 510, if the content of the particular program in which the
10 performance or display is embodied, or any commercial ad-
11 vertising or station announcement transmitted by the pri-
12 mary transmitter during, or immediately before or after,
13 the transmission of such program, is in any way willfully
14 altered by the satellite carrier through changes, deletions,
15 or additions, or is combined with programming from any
16 other broadcast signal.

17 “(f) VIOLATION OF TERRITORIAL RESTRICTIONS ON
18 STATUTORY LICENSE FOR TELEVISION BROADCAST STA-
19 TIONS.—

20 “(1) INDIVIDUAL VIOLATIONS.—The willful or
21 repeated secondary transmission to the public by a
22 satellite carrier of a primary transmission made by
23 a television broadcast station and embodying a per-
24 formance or display of a work to a subscriber who
25 does not reside in that station’s local market, and is

1 not subject to statutory licensing under section 119,
2 is actionable as an act of infringement under section
3 501 and is fully subject to the remedies provided by
4 sections 502 through 506 and 509, except that—

5 “(A) no damages shall be awarded for such
6 act of infringement if the satellite carrier took
7 corrective action by promptly withdrawing serv-
8 ice from the ineligible subscriber; and

9 “(B) any statutory damages shall not ex-
10 ceed \$5 for such subscriber for each month dur-
11 ing which the violation occurred.

12 “(2) PATTERN OF VIOLATIONS.—If a satellite
13 carrier engages in a willful or repeated pattern or
14 practice of secondarily transmitting to the public a
15 primary transmission made by a television broadcast
16 station and embodying a performance or display of
17 a work to subscribers who do not reside in that sta-
18 tion’s local market, and are not subject to statutory
19 licensing under section 119, then in addition to the
20 remedies under paragraph (1)—

21 “(A) if the pattern or practice has been
22 carried out on a substantially nationwide basis,
23 the court shall order a permanent injunction
24 barring the secondary transmission by the sat-
25 ellite carrier of the primary transmissions of

1 that television broadcast station (and if such
2 television broadcast station is a network sta-
3 tion, all other television broadcast stations af-
4 filiated with such network), and the court may
5 order statutory damages not exceeding
6 \$250,000 for each 6-month period during which
7 the pattern or practice was carried out; and

8 “(B) if the pattern or practice has been
9 carried out on a local or regional basis with re-
10 spect to more than one television broadcast sta-
11 tion (and if such television broadcast station is
12 a network station, all other television broadcast
13 stations affiliated with such network), the court
14 shall order a permanent injunction barring the
15 secondary transmission in that locality or re-
16 gion by the satellite carrier of the primary
17 transmissions of any television broadcast sta-
18 tion, and the court may order statutory dam-
19 ages not exceeding \$250,000 for each 6-month
20 period during which the pattern or practice was
21 carried out.

22 “(g) BURDEN OF PROOF.—In any action brought
23 under subsection (d), (e), or (f), the satellite carrier shall
24 have the burden of proving that its secondary transmission
25 of a primary transmission by a television broadcast station

1 is made only to subscribers located within that station's
2 local market.

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

8 “(i) EXCLUSIVITY WITH RESPECT TO SECONDARY
9 TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE
10 TO MEMBERS OF THE PUBLIC.—No provision of section
11 111 or any other law (other than this section and section
12 119) shall be construed to contain any authorization, ex-
13 emption, or license through which secondary transmissions
14 by satellite carriers of programming contained in a pri-
15 mary transmission made by a television broadcast station
16 may be made without obtaining the consent of the copy-
17 right owner.

18 “(j) DEFINITIONS.—In this section—

19 “(1) The term ‘distributor’ means an entity
20 which contracts to distribute secondary trans-
21 missions from a satellite carrier and, either as a sin-
22 gle channel or in a package with other programming,
23 provides the secondary transmission either directly
24 to individual subscribers or indirectly through other
25 program distribution entities.

1 “(2) The term ‘local market’ for a television
2 broadcast station has the meaning given that term
3 under rules, regulations, and authorizations of the
4 Federal Communications Commission relating to
5 carriage of television broadcast signals by satellite
6 carriers.

7 “(3) The terms ‘network station’, ‘satellite car-
8 rier’ and ‘secondary transmission’ have the meaning
9 given such terms under section 119(d).”.

10 “(4) The term ‘subscriber’ means an entity that
11 receives a secondary transmission service by means
12 of a secondary transmission from a satellite and
13 pays a fee for the service, directly or indirectly, to
14 the satellite carrier or to a distributor.

15 “(5) The term ‘television broadcast station’
16 means an over-the-air, commercial or noncommercial
17 television broadcast station licensed by the Federal
18 Communications Commission under subpart E of
19 part 73 of title 47, Code of Federal Regulations.”.

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

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

1 **SEC. 3. EXTENSION OF EFFECT OF AMENDMENTS TO SEC-**
2 **TION 119 OF TITLE 17, UNITED STATES CODE.**

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

7 **SEC. 4. COMPUTATION OF ROYALTY FEES FOR SATELLITE**
8 **CARRIERS.**

9 Section 119(c) of title 17, United States Code, is
10 amended by adding at the end the following new para-
11 graph:

12 “(4) REDUCTION.—

13 “(A) SUPERSTATION.—The rate of the
14 royalty fee payable in each case under sub-
15 section (b)(1)(B)(i) as adjusted by a royalty fee
16 established under paragraph (2) or (3) of this
17 subsection shall be reduced by 30 percent.

18 “(B) NETWORK.—The rate of the royalty
19 fee payable under subsection (b)(1)(B)(ii) as
20 adjusted by a royalty fee established under
21 paragraph (2) or (3) of this subsection shall be
22 reduced by 45 percent.

23 “(5) PUBLIC BROADCASTING SERVICE AS
24 AGENT.—For purposes of section 802, with respect
25 to royalty fees paid by satellite carriers for re-
26 transmitting the Public Broadcasting Service sat-

1 elite feed, the Public Broadcasting Service shall be
2 the agent for all public television copyright claimants
3 and all Public Broadcasting Service member sta-
4 tions.”.

5 **SEC. 5. DEFINITIONS.**

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

8 (1) by striking paragraph (10) and inserting
9 the following:

10 “(10) UNSERVED HOUSEHOLD.—The term
11 ‘unserved household’, with respect to a particular
12 television network, means a household that cannot
13 receive, through the use of a conventional outdoor
14 rooftop receiving antenna, an over-the-air signal of
15 grade B intensity (as defined by the Federal Com-
16 munications Commission) of a primary network sta-
17 tion affiliated with that network.”; and

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

19 “(12) LOCAL NETWORK STATION.—The term
20 ‘local network station’ means a network station that
21 is secondarily transmitted to subscribers who reside
22 within the local market in which the network station
23 is located.”.

1 **SEC. 6. PUBLIC BROADCASTING SERVICE SATELLITE FEED.**

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

4 (1) by striking the paragraph heading and in-
5 serting “(1) SUPERSTATIONS AND PBS SATELLITE
6 FEED.—”;

7 (2) by inserting “or by the Public Broadcasting
8 Service satellite feed” after “superstation”; and

9 (3) by adding at the end the following: “In the
10 case of the Public Broadcasting Service satellite
11 feed, subsequent to January 1, 2001, or the date on
12 which local retransmissions of broadcast signals are
13 offered to the public, whichever is earlier, the statu-
14 tory license created by this section shall be condi-
15 tioned on the Public Broadcasting Service certifying
16 to the Copyright Office on an annual basis that its
17 membership supports the secondary transmission of
18 the Public Broadcasting Service satellite feed, and
19 providing notice to the satellite carrier of such cer-
20 tification.”.

21 (b) DEFINITION.—Section 119(d) of title 17, United
22 States Code, is amended by adding at the end the follow-
23 ing:

24 “(12) PUBLIC BROADCASTING SERVICE SAT-
25 ELLITE FEED.—The term ‘Public Broadcasting
26 Service satellite feed’ means the national satellite

1 feed distributed by the Public Broadcasting Service
2 consisting of educational and informational program-
3 ming intended for private home viewing, to which
4 the Public Broadcasting Service holds national ter-
5 restrial broadcast rights.”.

6 **SEC. 7. APPLICATION OF FEDERAL COMMUNICATIONS**
7 **COMMISSION REGULATIONS.**

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

10 (1) in paragraph (1), by inserting “is permis-
11 sible under the rules, regulations, and authorizations
12 of the Federal Communications Commission,” after
13 “satellite carrier to the public for private home view-
14 ing,”; and

15 (2) in paragraph (2), by inserting “is permis-
16 sible under the rules, regulations, and authorizations
17 of the Federal Communications Commission,” after
18 “satellite carrier to the public for private home view-
19 ing,”.

20 **SEC. 8. EFFECTIVE DATE.**

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

○

ADDITIONAL SUBMISSION FOR THE RECORD

ASSOCIATION OF LOCAL TELEVISION STATIONS,
 JAMES B. HEDLUND,
President, February 2, 1999.

HON. MIKE DEWINE,
*Chairman, Subcommittee on Antitrust,
 Business Rights, and Competition,
 Committee on the Judiciary,
 U.S. Senate,
 Washington, D.C*

Re: EchoStar—Acquisition of MCI/News Corp. assets S. 247; S. 303

DEAR MR. CHAIRMAN: We appreciate the opportunity to express our concerns regarding EchoStar's "local-into-local" plans and pending legislation which would allow satellite carriers to retransmit the signals of local television stations to subscribers in the stations' home markets. The Association of Local Television Stations, Inc. ("ALTV"), represents the interests, of the competitive edge of the broadcast television industry—full service local television stations affiliated of the now established Fox Network, the emerging UPN and WB networks, and the new family-oriented PaxTV network. Our membership also includes independent stations, which often provide innovative and unique program services like foreign language and religious programming to their communities. More than any of the popular cable networks, these stations have stimulated competition and enhanced program diversity for all viewers in local markets throughout our country.

As much as we appreciate the need for more competition in a video marketplace still dominated by cable television, we must resist efforts which attempt to promote competition in one market via means which distort competition and impede new competitors in a critical segment of that market. From the perspective of most of our member stations, the approach embodied in this legislation offers only a vain hope of satellite carriage in their local markets. At this point, only one DBS carrier, EchoStar's Dish Network, has begun providing local signals to viewers in a small, but growing number of markets. So far, EchoStar generally has offered only the signals of local television stations affiliated with the ABC, CBS, NBC, and Fox networks.¹ Stations in those markets affiliated with the UPN, WB, and PaxTV networks have been excluded, as have the independent stations in those markets. Under S. 303, which on its face defers any must carry rules for as much as three years, these local television stations will continue to suffer from lack of access to an increasing number of DBS subscribers in their home markets. Meanwhile, their direct competitors, affiliates of the three entrenched networks and Fox, will gain a competitive advantage in satellite homes.

This would come at a particularly bad time for emerging networks like UPN, WB, and PaxTV. Their struggle to compete with more established networks, the affiliates of which benefit from local satellite carriage, would be hampered. Excluded stations would enjoy none of the benefits of digital picture quality, none of the benefits of inclusion in the on-screen program guides, and none of the benefits of seamless surfing. Furthermore, they likely also would be subject to competition from distant affiliates of their networks, which will enjoy all the benefits of picture quality and tuning ease on the satellite system.² This would undermine the ability of new networks, their affiliates, and innovative independent stations to compete toe-to-toe with the ever expanding array of nonbroadcast program networks and services, as well as with their entrenched big three network competitors in their local markets. Thus, any delay in the imposition of must carry requirements on satellite carriers (once the compulsory license is amended to permit retransmission of local signals) is likely to injure competition and compound the difficulties inherent in establishing new competitive broadcast networks.

Moreover, we are far from confident that must carry rules ever will come to their competitive rescue. Under S. 303, the mandatory carriage provisions would apply no

¹ We understand that EchoStar also is providing the signals of local PBS affiliates in some markets.

² A passage from the CARP decision, which EchoStar has cited in its recent comments to the Copyright Office, states that:

Local retransmission of broadcast stations benefits the broadcast station * * *. If a local broadcast station is not available on a satellite carrier service, subscribers to that station are less likely to view that station. The viewer may not wish to install an A-B switch/antenna or additionally subscribe to a cable service or may find the system too inconvenient for regular use.

later than January 1, 2002. Such deadlines can slip and often do. For example, when Congress enacted the original satellite Home Viewer Act in 1988, it contemplated termination of the satellite compulsory license in 1995. However, once the public began to receive broadcast television station signals on their satellite systems, Congress essentially forfeited the ability to eliminate the compulsory license. It was extended in 1994, and no one seriously expects Congress to let it expire at the end of this year. The public simply would not stand for being deprived of signals they have received for years under the compulsory license.³ The same result is predictable under S. 303. If (we dare say “when”) satellite carriers protest that compliance with must carry requirements would be impossible and threaten to withdraw all broadcast signals from their services to sidestep the must carry requirements, Congress will find itself in the same untenable position.⁴ Indeed, the testimony of EchoStar CEO Charles W. Ergen at the hearing last week confirms that EchoStar “will not have the space” to carry all local stations in each market. In the face of readily predictable public outrage at the threatened reduction in their satellite program options, Congress, rather than adhere to the deadline, would have no choice, but to extend it. Meanwhile, the selective and discriminatory exclusion of many ALTV member stations would continue unabated. Such a result mocks competition by placing the latest entrants into broadcast network television at a distinct disadvantage *vis-a-vis* their established network competitors.

We do look forward to supporting legislation which permits satellite carriage of local signals, but only if it also requires satellite carriers to carry all local signals without delay. ALTV does not propose that satellite carriers be forced to carry local signals in every market (as is required of cable systems). However, if a satellite carrier retransmits the signal of one local television station in a market to subscribers in that market, then it should be required to carry all local stations in that market or at least provide a satellite subscriber with the same local signals a comparably situated cable subscriber would have available from its cable system. This would maintain parity between competing media by assuring that the satellite carrier were subject to no more rigorous obligations than a directly competitive cable systems. At the same time, independent stations and stations affiliated with new and emerging networks would suffer no competitive disadvantage in their home markets.

Satellite carriers may complain that requiring nondiscriminatory carriage of local signals might overtax their capacity and impose additional unwanted costs on their operations. ALTV respectfully suggests that these concerns are overblown and myopic. The practical effect of imposing such a requirement on satellite providers would be marginal. Again, like cable systems, satellite carriers would be likely to carry some local stations voluntarily. Therefore, such a requirement typically might require a satellite carrier to add only a few additional local signals, such as those of newer stations or stations affiliated with newer networks like UPN, WB, and PaxTV. Thus, the practical effect often would be not a “carry one, so carry seven,” but a “carry four, so carry six or seven” rule. At worst, under current technological limits on capacity, compliance might require a satellite carrier to forego local signal carriage in a few markets in order to accommodate all local signals in other markets. ALTV submits that this result is preferable to a regime which invited and tolerated discrimination among local stations in the same market.

Therefore, we respectfully urge you to reconsider S. 303 and S. 247 with respect to the delayed must carry provision. Historically—and rightly—the cable and satellite compulsory licenses have carried with them the complementary obligation to use broadcast signals in a manner consistent with preserving the many benefits of free broadcast television service. We ask no more than that. Therefore, ALTV must oppose the S. 247/S. 303 package in its present form, but does look forward to making a positive contribution to efforts to draft and enact sound legislation to permit satellite carriers to carry the signals of local television stations in their home markets.

Very truly yours,

JAMES B. HEDLUND.



³We distinguish here between the equities in favor of satellite subscribers who have long enjoyed superstation and network signals on their satellite systems in a manner consistent with the law and those that have taken advantage of satellite distributors’ willingness to blink the restrictions on providing network signals in other than unserved areas.

⁴Section 337(b) of the bill (page 7, lines 9–10) subjects only “satellite carriers retransmitting television broadcast signals” to the must carry requirement. Thus, a satellite carrier could escape the must carry rule by carrying no broadcast signals.