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HOUSE OF REPRESENTATIVES
REPORT
111–319

SATELLITE HOME VIEWER UPDATE AND REAUTHORIZATION ACT OF 2009

OCTOBER 28, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3570]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3570) to amend title 17, United States Code, to reauthorize the satellite statutory license, to conform the satellite and cable statutory licenses to all-digital transmissions, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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89–006

THE AMENDMENTS

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, line 12, strike "chapter I" and insert "chapter 1".

Page 6, line 4, strike "catastrophe" and insert "catastrophic incident".

Page 6, line 19, insert "and the Committee on Homeland Security" after "Judiciary".

Page 7, insert the following after line 12:

> "(iii) CATASTROPHIC INCIDENT.—The term 'catastrophic incident' means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, the environment, the economy, national morale, or government functions in a geographic area.

Page 8, line 3, strike "by a" and insert "to a".

Page 9, strike lines 7 and 8 and insert the following:

> (4) in paragraph (3), as redesignated—
> (A) by inserting "(including the filing fee specified in paragraph (1)(C))" after "shall receive all fees"; and
> (B) by striking "paragraph (4)" and inserting "paragraph (5)";

Page 12, line 21, strike "COPYRIGHT" and insert "COPYRIGHT".

Page 19, lines 2 and 3, strike "associated data" and insert "program-related material".

Page 19, line 4, insert "(as determined by Nielsen Media Research)" after "viewership ratings".

Page 19, line 10, insert a space after "(1),".

Page 21, line 11, insert ", as amended by subsections (d) and (j)," after "119(a)".

Page 23, line 6, strike "paragraph (3)(E)" and insert "subparagraph (E) of paragraph (3)".

Page 27, line 9, strike "chapter I" and insert "chapter 1".

Page 34, move lines 5 through 7 two ems to the right.

Page 35, move line 21 through page 36, line 3, two ems to the right.

Page 36, move line 9 two ems to the right.

Page 36, line 11, strike "low power television station" and insert "'low power television station'".

Page 36, line 15, strike "low power television station" and insert "'low power television station'".

Page 37, line 2, strike "chapter I" and insert "chapter 1".

Page 38, line 21, strike "catastrophe" and insert "catastrophic incident".

Page 39, line 9, insert "and the Committee on Homeland Security" after "Judiciary".

Page 39, add the following after line 24:

> "(C) CATASTROPHIC INCIDENT.—The term 'catastrophic incident' means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, the environment, the economy, national morale, or government functions in a geographic area.

Page 40, line 24, insert a space after the semicolon.

Page 41, line 3, strike "A total" and insert "Except in the case of a cable system whose royalty is specified in subparagraph (E) or (F), a total".

Page 41, line 10, insert "of such gross receipts" after "1.064 percent".

Page 43, lines 11 and 12, strike "this paragraph" and insert "subparagraph (C)(iii)".

Page 43, line 16, insert "or offset" after "refund".

Page 45, strike lines 4 through 6 and insert the following:

> (2) in paragraph (2)—
>
> (A) by striking "The Register of Copyrights" and inserting the following "HANDLING OF FEES.—The Register of Copyrights"; and
>
> (B) by inserting "(including the filing fee specified in paragraph (1)(G))" after "shall receive";

Page 45, line 20, strike "'; and'" and insert "the semicolon".

Page 47, line 3, strike "during" and insert "for".

Page 47, insert the following after line 4 and redesignate succeeding subsections accordingly:

(d) EFFECTIVE DATE OF NEW ROYALTY FEE RATES.—The royalty fee rates established in section 111(d)(1)(B) of title 17, United States Code, as amended by subsection (c)(1)(C) of this section, shall take effect commencing with the first accounting period occurring in 2010.

Page 49, line 8, strike "steam" and insert "stream".

Page 54, line 21, strike "subsection (c)" and insert "subsection (c)(1)".

Page 54, line 24, strike "each place it appears".

PURPOSE AND SUMMARY

The purpose of the Satellite Home Viewer Update and Reauthorization Act of 2009 is to modernize, improve and simplify the compulsory copyright licenses governing the retransmission of distant and local television signals by cable and satellite television operators, under Sections 111, 119 and 122 of Chapter 17 of the United States Code. Both the cable and satellite industries rely on these licenses to provide television programming to their customers.

The legislation reauthorizes the Section 119 license, which would otherwise expire on December 31, 2009. The bill also amends the licenses to reflect the transition to digital television, resolves the so-called "phantom signal" ambiguity and slightly increases the royalties paid under the cable license (Section 111), provides content owners with an audit right that increases fairness in the Sections 111 and 119 licenses, dramatically increases the penalties for copyright infringement under the satellite licenses (Sections 119 and 122), incentivizes the satellite industry to correct a gap in the current television market that disadvantages rural consumers, and provides a framework for cable and satellite providers to offer multicast signals to their customers. The bill corrects technical errors and inconsistencies in the licenses.

BACKGROUND AND NEED FOR THE LEGISLATION

These compulsory copyright licenses were designed to facilitate investment in new creative works by the satellite and cable industries by eliminating direct negotiation with the copyright owners for the use of certain kinds of distant [1] and local signal program-

[1] A distant signal contains the programming of a television network affiliate that comes from outside the receiving household's local market area (known as "Designated Market Areas" or DMAs). For example, if a household in Zanesville, Ohio receives the programming on an ABC station based in Chicago, the Chicago ABC station signal is a "distant signal" for the Ohio household. The country is divided into 210 DMAs. The boundaries of each DMA are defined by Nielsen Media Research and are periodically updated. Broadcasters generally negotiate affiliation agreements and advertising contracts concerning particular DMAs. Additionally, the FCC's carriage requirements refer to DMAs.

ming. Section 119 of the Copyright Act allows satellite carriers to retransmit "distant" broadcast signals without incurring the transaction costs associated with individual marketplace negotiations. The license in Section 122 governs the rebroadcast of certain kinds of local signals by satellite providers, and Section 111 of the Copyright Act governs the retransmission of distant and local signals by cable operators.

The purpose of this legislation is to make the licenses more fair for content owners, increase competition and service to satellite and cable consumers, and update the licenses to reflect new technological advances such as multicasting and the transition to digital television.

A. THE HISTORICAL CONTEXT OF THE LICENSES

Over 30 years ago, Congress first recognized the challenges that made it difficult for the nascent cable industry to clear the numerous copyrights contained in a broadcast television signal before retransmitting the programming to its customers. Specifically, Congress wanted to decrease the high transaction costs associated with the private negotiation with each content creator for the performance rights in copyrighted work.

In 1976, Congress enacted Section 111 of the Copyright Act, which allows cable operators to provide distant and local signals to customers. Unlike Section 119, which must be reauthorized every 5 years, Section 111 is permanent and has rarely been amended by Congress since its inception.

Beginning in 1988, Congress passed a series of laws governing the retransmission of broadcast television signals by satellite carriers, in order to foster growth in the nascent satellite industry, advance multichannel video competition, and increase consumer choice. The Section 119 license was intended to provide a lifeline service to households that could not receive certain signals over the air and to help the satellite industry develop into a viable competitor to the entrenched cable industry. The 1988 Satellite Home Viewer Act ("SHVA"),[2] the Satellite Home Viewer Act of 1994,[3] the 1999 Satellite Home Viewer Improvement Act ("SHVIA"),[4] and the 2004 Satellite Home Viewer Extension and Reauthorization Act ("SHVERA")[5] established and modified the Section 119 and Section 122 licenses. Section 119 permits satellite carriers to offer distant signals to subscribers who are not otherwise served by local network television signals. Section 122 permits satellite carriers to retransmit the subscriber's local television signals to the subscriber via satellite.

B. HOW THE LICENSES WORK

In exchange for the license to publicly perform the copyrighted works contained in distant signals, cable and satellite providers pay royalties at pre-determined rates to the Copyright Office, which then distributes those royalties in accordance with an order issued by the Copyright Royalty Judges to the pool of copyright

[2] P.L. 100–667.
[3] P.L. 103–369.
[4] P.L. 106–113.
[5] P.L. 108–447, passed as Division J of Title IV of the FY 2005 Consolidated Appropriations Act.

owners whose works have been used. The rates can be set by voluntary agreement, or, in the case of Section 119, the rate can also be set by a compulsory proceeding before the Copyright Royalty Judges. The calculation of royalties that cable providers must pay under Section 111 is based on a percentage of the gross receipts generated by each cable system. The royalties that satellite carriers must pay under Section 119 are calculated on a per subscriber, per signal basis. Section 122 is a royalty-free license.

Under Section 111, cable operators may offer any number of distant broadcast signals to subscribers, as long as the operators pay the royalties required by the license and abide by rules and regulations established by the Federal Communications Commission regarding the carriage of broadcast signals.[6] In contrast, under the Section 119 license, a satellite carrier may only provide the distant signal of a network[7] station to a household that is "unserved" with respect to that particular network. A household is unserved if the household does not receive the primary video of a network affiliate that is located within the household's DMA.[8]

Section 122 governs the satellite retransmission of signals from the subscriber's own local market (so-called "local into local" service). This license does not require the payment of royalties because it simply results in consumers receiving the same programming they could receive without a satellite (*e.g.,* by using an antenna).

This license permits, but does not require, satellite carriers to retransmit a local network signal to the households in the DMA where the signal originated. If a satellite carrier chooses to provide the signal of a local broadcast station in a DMA, it must offer the signal of all network channels in that DMA.[9] Local broadcasters do not want their programming to be ignored by consumers simply because it is not integrated into satellite service, so this requirement ensures that consumers who choose to receive satellite service receive their local broadcast as easily as they receive the other channels offered via their satellite service. Satellite companies now offer local-into-local service to 97 percent of the households in the country. The areas that do not receive this service tend to be rural and sparsely populated markets. These are the regions that would particularly benefit from satellite service, but have thus far been insufficiently profitable to induce satellite carriers to enter the market.

C. THE ISSUES CONTEMPLATED BY SHVURA

(1) Reauthorization of Section 119 License for Five Years

This legislation extends Section 119 for 5 years. The Committee carefully considered proposals to eliminate the Sections 111, 119 and 122 licenses. Content owners assert that the compulsory licenses are an abrogation of their exclusive rights, that the below-

[6] *See, e.g.,* 47 U.S.C. § 339(b).

[7] Under the Section 119 license, the word "network" means both traditional networks, such as ABC or CBS, and noncommercial educational stations.

[8] The "primary video" is the programming stream that had the highest viewership on the date of this statute's enactment. Viewership is measured by the Neilson Media Research company. In rare cases, a local broadcaster may offer—in addition to its primary signal—a different network affiliate on a multicast video stream. Multicasting, and its effect on the "unserved household" analysis, is addressed more comprehensively in Section (C)(2) of this Report.

[9] This rule is known as "carry one, carry all" and is related to requirements set forth in the Section 338 of the Communications Act, as implemented by the Federal Communications Commission.

market rates they receive are an unjustifiable subsidy to a profitable industry, and that the declining number of distant signal subscribers (approximately 1 percent of U.S. TV households) serviced by satellite providers prove the licenses are an anachronism.[10] The Copyright Office shares this perspective but has noted that as long as the cable industry benefits from the continued existence of the 111 compulsory license, it would be inequitable for Congress to eliminate the 119 license.[11] Satellite providers assert that nearly a million satellite subscribers still rely on the distant signal license today.[12]

The Committee supports a transition to open market and direct negotiations between content owners and cable and satellite providers, but has determined that the marketplace is not yet equipped to function without the licenses.

(2) Revisions Required by the Digital Transition

In June 2009, all full power television broadcast stations ceased broadcasting analog signals and exclusively broadcast digital signals. This legislation updates the statutory licenses in several respects to accommodate the significant changes the digital transition has caused in television broadcasting.

Prior to this legislation, a household was considered "served" if it received a stray signal from a station outside of its DMA.[13] This legislation clarifies that only signals that originate from the DMA where the household is located are considered when determining if a household is served. The bill also updates the definition of "unserved household" to provide for a more accurate predictive method of determining whether satellite carriers may presume a household will be "unserved" by a particular network signal.

The legislation also addresses the growing practice of "multicasting"—when a broadcaster subdivides its digital stream, allowing the broadcaster to provide multiple streams of distinct programming to a single household.[14] At the time the statutory licenses were designed, this proliferation of programming options by a single broadcaster was not contemplated. This has caused uncertainty about whether multicast streams should be considered when determining if a household is served, as well as how multicast streams should be valued for the purposes of royalty collection.

This legislation updates the Section 119 license to address when a multicast stream of a network station will render a household "served" for the purpose of distant signal eligibility. At this point in time while multicasting is in its infancy, it is impossible to pre-

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[10] Hearing testimony of Fritz Attaway, Executive Vice President, Motion Picture Association of America, "Copyright Licensing in a Digital Age: Competition and the Need to Update the Cable and Satellite TV Licenses," February 25, 2009, Committee on the Judiciary, House of Representatives.

[11] Hearing testimony of Marybeth Peters, Register of Copyrights, "Cable and Satellite Carrier Statutory License," February 24, 2004, Subcommittee on Courts, The Internet and Intellectual Property, House of Representatives.

[12] Hearing testimony of Bob Gabrielli, Senior Vice President, DirecTV, Inc., "Copyright Licensing in a Digital Age: Competition and the need to Update the Cable and Satellite TV Licenses," February 25, 2009, House of Representatives, Committee on the Judiciary.

[13] This phenomenon has previously been called "Grade B Bleed." After the digital transition, the situation would occur when a broadcast signal is received outside of its "noise-limited contour," which is the area that the FCC estimates a digital signal will cover.

[14] For example, in a market that does not contain a local affiliate for a particular network, a local broadcaster could negotiate with that missing network to provide the network programming on one of its subchannels. The broadcaster would add syndicated programming and its own local programming to provide consumers with a full television programming day.

dict how many such multicast network channels will arise. To accommodate the current limitations on satellite capacity,[15] this legislation provides for a 3-year multicasting transition period. Any local broadcaster's multicast of a network station that a satellite carrier offers on July 1, 2009 will render a household "served" for the purpose of determining distant signal eligibility for that network. After the statute is enacted, satellite carriers have 3 years to build out satellite capacity to accommodate new network channels transmitted by multicast, and broadcasters have 3 years to establish new network affiliates they intend to transmit by multicast. A household that receives a transmission of these additional network channels as a multicast stream during this transition period is not considered "served," and a satellite carrier is allowed to provide that station to the subscriber under Section 119. On January 1, 2013, any household that receives local network programming via multicast will be considered "served" with respect to that station. Satellite carriers will not be permitted to import distant signals if these multicasts exist in the local market.

The Committee intends this change to affect only the definition of "unserved household," which in turn concerns only eligibility for distant signals under the statutory license contained in Section 119. The Committee does not intend this language to affect the definition of "primary video" or "program related" under any other provision of law.

In the Section 111 license, which has no "unserved household" standard, this legislation clarifies that multicast streams have some value with respect to royalty calculations.

The Committee does not intend for the digital transition to upset settled expectations with regard to the application of Section 111 to broadcast signals whose status for purposes of the compulsory license has historically been determined by reference to the analog "Grade B contour." Thus for example, Section 5(d)(4) of the Act updates the definition of the "local service area of a primary transmitter" to add a reference to the "noise-limited contour," which is the comparable signal strength measurement for digital television broadcast signals as the analog Grade B contour. The Copyright Office will adopt a common sense approach with respect to other situations in which the Grade B contour is a factor in the application of the compulsory license.

(3) Filing Fee

The administration of the statutory license is expensive. The Committee believes that the entire cost of administering the licensing system and adjudicating disputes should not be deducted from the royalties copyright owners are due to receive for the compelled use of their works.[16]

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[15] Satellite carriers design their satellite spot beams to maximize the number of local markets they can serve under the "carry one, carry all" rules. If they design a particular beam with too little capacity, they cannot serve the market at all. If they design the beam with more capacity than necessary, however, they can fit fewer beams on the satellite (and can thus serve fewer markets). So they have designed their beams to exactly match the number of full power stations in a given market, which is why at the current time most of those beams lack room for additional local multicast signals.

[16] In its Section 110 Report, the Copyright Office concluded that "the section 119 license does harm copyright owners because the current statutory rates do not reflect fair market value and . . . the law requires a segment of copyright owners to bear the costs associated with administration of the new Copyright Royalty Board without any requirement that the users of the license pay any share of the Copyright Royalty Board's administrative costs." *Satellite Home*

The legislation adds a new subparagraph (c) to 119 (b)(1), directing the Register of Copyrights to determine an appropriate filing fee to be paid in connection with the deposit of semiannual statements of account and royalty payments by satellite carriers.

The legislation also adds a new subparagraph G to Section 111(d)(1), directing the Register of Copyrights to determine an appropriate filing fee to be paid in connection with the deposit of semi-annual statements of account and royalty payments by cable systems. In establishing such a fee, the Register should seek to minimize the burden such fees may impose on individual cable systems that calculate their royalties based on subparagraphs (E) and (F) of Section 111(d)(1).

(4) Emergency Response

At present, the statutory licenses preclude cable and satellite companies from retransmitting broadcast television programming to government organizations, even in times of national emergency. The bill gives satellite carriers and cable operators the flexibility they need to assist the U.S. government during specific national emergencies. It permits either provider to retransmit distant signal programming of television broadcast stations as the relevant Federal agencies may require in order to carry out their mission.

(5) Audit Right

The bill gives copyright owners a mechanism by which they can verify that they are being accurately compensated for the use of their intellectual property under both the Section 111 and Section 119 licenses.

The legislation directs the Register of Copyrights to adopt regulations establishing a process by which copyright owners, through a qualified independent auditor, may verify the gross receipts and royalty fee computations reported on statements of account submitted by cable operators under Section 111. By specifying that a system's semi-annual statements of account may be subject to a "single verification procedure," the Committee intends only to ensure that no individual statement of account may be audited more than once. In implementing the verification process, the Register may consider the procedures adopted under other audit provisions in its rules as well as audit provisions in private agreements to which cable operators or content owners may be parties. The Register should seek to tailor audit procedures to the specific needs and circumstances of the reporting and payment of royalty fees under Section 111.

In particular, the Register should adopt a verification procedure that protects sensitive business information from unnecessary disclosure and minimizes the burden and costs imposed by the audit process. For example, the Register should establish limits on the frequency with which audits can be conducted on an individual cable system and on the number of audits that a multiple system operator can be required to undergo in a single year. The Copyright Office will establish a procedure under which all copyright owners whose works were the subject of secondary transmissions during

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Viewer Extension and Reauthorization Report, Report of the Register of Copyrights, February 2006, at p. vi.

the relevant accounting period and desire to audit a cable system shall designate a single qualified independent auditor to verify on their behalf a cable system's reported gross receipts and royalty fee calculations for the period.

Finally, in establishing verification procedures, the Register should provide cable operators the opportunity to review the auditor's report before it is disseminated to the copyright owners and should establish a reasonable period following such review before the auditor's report is disseminated to the owners. The regulations should permit a cable operator during the pre-dissemination period to amend its statement of account and to supplement its royalty payments (subject to the filing fee and interest requirements generally applicable to late, corrected, or supplemental statements of account and royalty fees) to conform with the auditor's findings. In the absence of a showing of bad faith, a cable operator that files such amendment and supplemental payment within the prescribed period will not be subject to copyright infringement liability under Section 111(c)(2)(B) based on the deficiencies found by the auditor. Failure to amend and to pay within the prescribed period would mean that an infringement action could be brought against a cable operator based on the deficiencies identified by the auditor and, to the extent that such deficiencies are determined by a court of competent jurisdiction to constitute copyright infringement, the operator would be fully subject to all infringement remedies, provided, however, that a finding of the auditor shall be given no special deference in any such infringement action. The rules adopted by the Office shall include procedures allocating responsibility for the cost of audits consistent with such procedures in other audit provisions in its rules.

(6) "Significantly Viewed" and Low Power Stations

The 2004 SHVERA legislation provided satellite carriers with a limited right to retransmit significantly viewed signals,[17] on a royalty-free basis, to those subscribers who already receive local signals. This change was made to achieve greater parity between cable and satellite providers (because cable operators can provide subscribers with significantly viewed channels) and to provide an additional incentive for subscribers to sign up for the delivery of local signals where available. Since significantly viewed signals are by definition a subset of distant signals, SHVERA included this provision in Section 119, the distant signal license. However, since significantly viewed signals do not incur royalties, the Committee believes it should be moved to Section 122, which governs all other royalty-free satellite transmissions under the compulsory license. The bill accordingly incorporates the significantly viewed provision, previously in Section 119(a)(3), into Section 122(a).

This legislation also amends the law with respect to low power television stations to clarify that the Section 119 license requires payment for the use of low power signals when they are transmitted beyond the limited area that the broadcast equipment of the low power station was designed to reach over the air.[18] The bill moves the low power provision that relates to rebroadcasts within

[17] Significantly viewed signals are broadcast stations that originate in a neighboring DMA but have historically been significantly received and viewed by a wider audience.

[18] This geographic limitation is referred to as the low power station's local service area.

the geographic limitation, which are royalty-free, to Section 122, but preserves the ability of satellite carriers to retransmit low power stations throughout the DMA, so long as royalties are paid for transmissions that go beyond the local service area.

(7) Permanent Injunction

In 2006, DISH Network (DISH) was enjoined from using the Section 119 license. A Florida district court found that DISH Network, then known as Echostar Communications Corporation, had a national pattern of significant violations of the license.[19] Although that court found DISH liable for massive copyright infringement and imposed heavy remedial obligations on the company, it did not enjoin DISH from using the Section 119 license. However, on appeal, the United States Court of Appeals for the 11th Circuit ruled that as a matter of law, the district court did not have the equitable jurisdiction to avoid imposing the permanent injunction under 17 U.S.C. 119(a)(7)(B)(i).[20] The appellate court directed the district court to impose the injunction.

This legislation restores DISH's ability to provide subscribers distant signals if, and only if, DISH provides local-into-local service to all 210 DMAs in the country. Currently, DISH provides local service in 182 DMAs.[21] To regain access to its 119 license, DISH would have to provide local-into-local service under the Section 122 license to the additional 28 markets. Once the injunction has been lifted, if DISH stops serving all 210 DMAs, it loses the right to use the Section 119 license.

This legislation does not lift or alter the penalties for abusing the license that exist elsewhere in the statute, for DISH or for any other carrier. It places the burden of proof on DISH if its compliance with the terms of the waiver is challenged. If DISH abuses the license, the injunction will be reimposed and DISH will face additional, substantial penalties.

The Committee believes that this is an important policy initiative because it will induce DISH to fill a gap in the current television market that primarily disadvantages rural consumers who live in markets that are often not served by cable television and not deemed sufficiently lucrative by satellite companies to justify the expense of launching local-into-local service. Consequently, about 3 percent of all U.S. households do not receive local broadcast signals through their satellite service. Because there are constitutional obstacles to requiring a satellite carrier to provide local-into-local service in all 210 markets, an incentive-based system is the most effective method available to guarantee that all television markets receive local-into-local service.

The actual impact of permitting DISH to once again use the Section 119 license is fairly limited. Due to the "if local, no distant" requirements in the law, DISH would only be able to use the Section 119 license in a few circumstances, such as for short markets (markets that are missing an affiliate), for recreational vehicles,

[19] *CBS Broad., Inc. v. EchoStar Communs. Corp.,* 276 F. Supp. 2d 1237 (2003).
[20] *CBS Broad., Inc. v. Echostar Communs. Corp,* 450 F.3d 505, 512 (11th Cir. 2006).
[21] DirecTV offers local television stations by satellite in 150 out of 210 DMAs.

and for the special exceptions for Vermont, New Hampshire, Oregon and Mississippi.[22]

(8) The "Phantom Signals" Dispute

For the past several years, the cable television and content industries have taken different views on whether cable providers should include certain signals that are not received by every customer in the calculation of Section 111 royalty obligations. Members of the cable industry argue that providers should not have to pay for such signals because some consumers do not receive them. Members of the content industry assert that, under the law, all signals should be taken into account in the royalty rate calculation. The Committee understands that there are two different readings of the statute and that the issue should be resolved to provide certainty to both industries.

The legislation revises and updates subparagraphs (C) and (D) of Section 111(d)(1) to resolve the so-called "phantom signal" issue. Just as the current law allows subscriber group calculations for "partially local/partially distant" situations, so too may cable systems use the subscriber group methodology when calculating royalties for phantom signal situations. Specifically, subparagraph (C) as amended states that if a cable system provides secondary transmissions of primary transmitters to some, but not all, communities served by the cable system, the gross receipts and distant signal equivalent values for each secondary transmission may be derived on the basis of the subscribers in those communities where the cable system actually provides such secondary transmission. Where a cable system calculates its royalties on such a community-specific (or "subscriber group") basis, the system will apply the methodology in Section 111(d)(1)(B)(ii)–(iv) to calculate a separate royalty for each subscriber group, but will compute the minimum fee calculation called for by Section 111(d)(1)(B)(i) on a system-wide basis (just as it currently is calculated for purposes of Section 111(d)(1)(C)(ii)). For each accounting period in which such a community-specific calculation is used, a system's total royalty fee payment will be either the amount of the sum of the subscriber-group-by-subscriber group royalty calculations or of the system-wide minimum fee royalty calculation, whichever is greater. This change shall not affect a cable system's obligation to pay the minimum fee as appropriate.

Subparagraph (D) as amended provides that for any accounting period prior to the enactment of the amendments in subparagraph (C), a cable system's computation of its royalty fee consistent with the methodology described in subparagraph (C)(iii), or a cable system's use of such methodology on an amendment of a statement originally filed before the date of enactment will not be deemed actionable as an act of infringement within the meaning of section 111(c)(2)(B) provided, however, that the cable system shall not be entitled to a refund or to an offset to any current or future royalty payments in connection with the re-calculation of royalty fees using such methodology contained in such amendment.

[22] Section 119(a)(2)(C). In these states, satellite carriers are permitted to provide in-state signals to subscribers who neither reside in the originating DMA nor qualify to receive the programming on the basis of the signal being deemed "significantly viewed."

Finally, as a result of discussions among the parties affected by the phantom signal issue that helped lead to broad industry support for these amendments, certain cable operators agreed to the payment of additional royalty amounts directly to the Copyright Office for a 5-year period. These additional royalty payments are addressed in new paragraph (6) of subsection (d), which directs the Copyright Office to treat them as part of the Section 111 base rate royalty pool attributable to the period for which they are submitted. For example, if the first such additional royalty payments are submitted on the filing deadline for the first accounting period of 2010 (*i.e.,* August 29, 2010), the Office shall treat such amounts as part of the base rate royalty pool for the first accounting period of 2010 for deposit and distribution to claimants using the existing procedures.

The legislation also revises and updates subparagraph (B) of Section 111(d)(1) to adjust the royalty percentages payable by cable systems that must compute their royalty payments in accordance with subparagraph (B). The adjusted royalty percentages become effective January 1, 2010 in lieu of any adjustments in royalty percentages or gross receipts thresholds that might have been made in 2010 pursuant to Sections 801(b)(2) and 804(b)(1). The schedule for future proceedings to adjust the royalty percentages and gross receipt thresholds has been revised so that the proceedings to determine the next such adjustments are moved to 2015, with subsequent determinations to be made every 5 years thereafter.

The Register of Copyrights will work closely with the interested parties to minimize the administrative burden of implementing the Act's provisions.

(9) Public Television

Currently, Section 119 does not permit satellite carriers to retransmit state or public television network programming throughout the state if some DMAs straddle state lines (generally such DMAs may receive programming from one state or the other depending on where the DMA is located, but not both). State and public television network programming is often intended for a statewide audience. The Committee believes that given the public value of this type of programming, the statutory license should not preclude satellite companies from using distant signals to provide such state-specific programming to the entire state audience. Consequently, the legislation permits, but does not require, satellite carriers to import state public television network signals into in-state counties that are located in an out-of-state DMA, provided they pay the associated royalty fees.

(10) Grandfathering

Some customers receive signals to which they would not be entitled under the current law. This legislation continues the practice of "grandfathering" these subscribers so that they are not abruptly deprived of programming and services to which they have become accustomed. The total number of so-called "grandfathered" households remains small.

HEARINGS

The Committee on the Judiciary held an oversight hearing titled, "Copyright Licensing in a Digital Age: Competition and the Need to Update the Cable and Satellite TV Licenses," on February 25, 2009. The purpose of the hearing was to assess the Satellite Home Viewer Extension and Reauthorization Act of 2004 and begin formal consideration of what changes, if any, the Committee should make to the law. Witnesses at the hearing included the following: Marybeth Peters, United States Register of Copyrights; Fritz Attaway, Executive Vice President, Motion Picture Association of America; Bob Gabrielli, Senior Vice President, DirecTV, Inc.; Chris Murray, Senior Counsel, Consumer's Union; Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association; and David Rehr, President and CEO, National Association of Broadcasters. Charles W. Ergen, Chairman and CEO, DISH Network Corporation, and Mike Mountford, CEO, National Programming Service, submitted additional written testimony.

COMMITTEE CONSIDERATION

On September 16, 2009, the Committee met in open session and ordered the bill H.R. 3570 favorably reported, without amendment, by a rollcall vote of 34 to 0, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 3570:

1. Reporting the bill favorably. Approved 34–0.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Delahunt	X		
Mr. Wexler			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Mr. Gutierrez	X		
Mr. Sherman			
Ms. Baldwin	X		
Mr. Gonzalez			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Ms. Wasserman Schultz	X		
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren	X		
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper	X		
Total	34	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3570, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 16, 2009.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3570, the "Satellite Home Viewer Update and Reauthorization Act of 2009."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 3570—Satellite Home Viewer Update and Reauthorization Act of 2009.

SUMMARY

Under current law, satellite and cable television carriers pay royalty fees to the Copyright Office for the right to transmit certain television signals to their subscribers. The Copyright Office later distributes those fees to the owners of copyrights on the transmitted material.

H.R. 3570 would amend and extend through December 31, 2014, the requirement that satellite carriers pay royalty fees to the Copyright Office for transmission of certain copyrighted broadcasts. The bill also would change the calculation of royalties that cable companies pay for the right to transmit copyrighted material to their subscribers. (The requirement to pay royalties for satellite transmissions is set to expire on December 31, 2009; royalty fees for cable transmissions do not expire). The bill also would authorize the Copyright Office to charge filing fees to satellite and cable operators to offset part of its cost to operate the royalty program.

CBO estimates that enacting the bill would increase revenues by $633 million over the 2010–2019 period. With higher royalty collections, the payments to copyright owners (including interest earnings) also would increase, resulting in an estimated increase in direct spending of $725 million over the 2010–2019 period. Thus, the net impact on the Federal budget would be an increase in the deficit of $92 million over the over the same period. That net increase over the 10-year period reflects the payment of interest, which accrues during the period the royalties are held by the Copyright Office, in addition to amounts collected in royalties.

H.R. 3570 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on satellite carriers, cable carriers, broadcasters, and copyright holders. Based on information from industry sources and the Copyright Office, CBO estimates that the aggregate cost of complying with the mandates would not exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates ($69 million and $139 million in 2009, respectively, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3570 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

By Fiscal Year, in Millions of Dollars

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
CHANGES IN REVENUES												
Satellite Copyright Royalty Fees	20	97	101	104	106	79	0	0	0	0	428	507
Cable Copyright Royalty Fees	7	11	12	12	12	13	13	13	13	13	54	119
Copyright Office Filing Fees	0	0	0	1	1	1	1	1	1	1	2	7
Total Changes in Revenues	27	108	113	117	119	93	14	14	14	14	484	633
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	27	110	121	132	140	111	29	28	24	19	530	741
Estimated Outlays	1	16	14	39	72	108	132	132	112	99	142	725
NET EFFECT ON THE DEFICIT [1]												
Estimated Impact on the Deficit	–26	–92	–99	–78	–47	15	118	118	98	85	–342	92

1. Positive numbers represent an increase in the deficit; negative numbers represent a reduction in the deficit.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted before the end of December 2009 and that spending will follow historical patterns for the program. The bill would increase the collection of copyright royalty fees, which are recorded in the budget as revenues. Those fees, plus interest accrued between the time of collection and payment, would later be paid to copyright owners.

Revenues

H.R. 3570 contains provisions that would increase Federal revenues by increasing royalty collections and assessing new fees on certain cable and satellite providers. Taken together, CBO estimates that enacting H.R. 3570 would increase revenues by $633 million over the 2010–2019 period.

Satellite Copyright Royalty Fees. H.R. 3570 would extend through December 31, 2014, the requirement that satellite carriers pay royalty fees to owners of copyrighted material to retransmit that material to some of their subscribers. The royalty is based on a flat fee charged for each subscriber that receives the copyrighted transmissions. The bill would require the Copyright Royalty Judges (CRJs) to set a new rate if the affected parties cannot come to an agreement voluntarily; the rate would be adjusted annually thereafter for increases in the cost of living. The bill also would make a number of changes to current law that would affect the number of households eligible to receive transmissions for which royalty payments would be due.

In fiscal year 2008, the Copyright Office collected about $90 million in royalties from seven satellite carriers. Based on information from the satellite industry and groups representing copyright holders, CBO expects that the parties would reach an agreement on new rates that would not result in a significant increase in royalty collections. H.R. 3570 could also affect royalty collections by increasing the number of households that would be eligible to receive copyrighted transmissions. Based on information from satellite providers, CBO expects that royalty collections could increase by about

5 percent per year once the infrastructure is in place to transmit the broadcasts to more households. We estimate that, taken together, those changes would increase revenues by $507 million over the 2010–2019 period.

Cable Copyright Royalty Fees. Under current law, cable companies pay a royalty fee to use copyrighted material based on revenues collected from subscribers that are entitled to receive the copyrighted material whether or not they receive those broadcasts. H.R. 3570 would increase royalty rates set in law and eliminate the requirement that copyright fees be paid on revenue from subscribers that do not receive the copyrighted material. The bill also would authorize the Copyright Office to distribute any royalty payments received as the result of private agreements reached between cable systems and copyright holders.

In fiscal year 2008, the Copyright Office collected about $150 million in royalties from cable television carriers on revenues reported by approximately 5,000 cable systems. H.R. 3570 would increase the rate charged on those revenues by 5 percent. CBO estimates the higher royalty rate would increase revenues by $119 million over the 2010–2019 period.

Copyright Office Filing Fees. H.R. 3570 would authorize the Copyright Office to establish a new fee to be paid by satellite and cable providers that report subscriber or revenue data twice yearly with their royalty payments. The fees would be set at a rate sufficient to cover a portion of the costs to administer the licensing program; copyright holders pay the full cost of the program under current law. Based on information from the Copyright Office, CBO estimates that those new filing fees would ultimately generate about $1 million per year for a total of $7 million over the 2010–2019 period and would increase direct spending by the same amount.

Penalties. H.R. 3570 would significantly increase the size of the penalties that could be assessed for violations of rules that restrict satellite transmissions to households that cannot receive over-the-air network broadcasts that originate in their local market. This increase could result in additional Federal revenues when penalties are assessed for violations of the territorial restrictions. Civil penalties are recorded as revenues, however, CBO estimates that such revenue collections would not be significant due to the small number of cases expected to be involved.

Direct Spending

Royalty Payments with Interest. With higher satellite and cable royalty collections under H.R. 3570, payments to copyright holders also would increase. Under current law, CRJs are responsible for determining the distribution of royalties collected and for settling disputes over royalty claims. Because the process relies on the copyright holders' agreement on the allocation of the amount due, royalty collections can be held by the Copyright Office for a number of years. Historical spending patterns indicate that copyright holders generally begin to receive payments several years after the revenues have been collected. Thus, we estimate a significant lag between increases in revenue collections and payments to copyright holders.

Under current law, interest, which accrues on the collections during the time they are held by the Copyright Office, is paid to the

copyright holders at the time the royalties are distributed. Based on historical spending patterns, CBO assumes that the royalties would be held for four years, on average, before being distributed.

CBO estimates that increases in direct spending resulting from increases in royalty collections would total $718 million over the 2010–2019 period. Of that amount, approximately $90 million represents payments of accrued interest.

Filing Fees. Under current law, the full cost to administer the royalty program is deducted from payments due to copyright owners. As noted above, H.R. 3570 would authorize the Copyright Office to charge cable and satellite carriers filing fees to offset a portion of those administrative costs, in effect, distributing the program costs between those paying the royalty fees and those receiving the royalty distributions. This would result in an increase in the amount of royalties paid to the copyright holders because they would be covering a smaller portion of the administrative costs. CBO estimates that this provision would increase direct spending by $7 million over the 2010–2019 period.

Spending Subject to Appropriation

H.R. 3570 would require the Copyright Office to develop new regulations to allow reports submitted to the Office to be audited and to establish the new filing fees. In addition, the Federal Communications Commission would be required to develop a new model to determine the eligibility of households to receive copyright-protected satellite signals in light of the switch to digital broadcasting. Finally, the Department of Homeland Security would be required to develop regulations that would allow cable and satellite carriers to broadcast certain material to Federal agencies in the event of an emergency. Based on information from each agency, CBO estimates that implementing those requirements would not have a significant effect on spending subject to appropriation.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3570 would impose intergovernmental and private-sector mandates, as defined in UMRA, on satellite and cable carriers, broadcasters, and copyright holders. Based on information from industry sources and the Copyright Office, CBO estimates that the aggregate cost of complying with the mandates would not exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates ($69 million and $139 million in 2009, respectively, adjusted annually for inflation).

Mandates that Apply to both Public and Private Entities

Secondary Transmission of Network Signals. The bill would extend an existing mandate on satellite carriers and copyright holders that requires them to participate in a process to set royalty rates for certain types of transmissions. The bill also would adjust some of the methods for determining subscribers' eligibility for those transmissions. The requirement to participate in the process is set to expire on December 31, 2009.

In the absence of the bill, royalty rates would be set in the private market. Under the bill, satellite carriers, as users of copyrighted materials, would not need specific permission from copyright owners to retransmit those materials to their eligible sub-

scribers but would be required to pay royalties and abide by certain conditions when using the material. The bill would require satellite carriers and copyright holders to negotiate in good faith to set royalty rates. If a party objects to the rates set during the negotiations, the bill would require CRJs to establish rates that represent the fair market value. The cost of the mandate to satellite carriers and copyright holders would be equal to the difference between the royalties that would be set in the absence of the bill and the royalties set during the process required by the bill. Based on information from industry sources and the Copyright Office, CBO expects that the parties would reach an agreement on new rates that would not differ significantly from the rates that would be set in the market. Consequently, we estimate that the costs of complying with this mandate would be small.

H.R. 3570 also would extend an existing mandate on broadcasters and copyright holders to allow satellite providers to retransmit network signals of certain stations without paying royalties. Based on information from the Federal Communications Commission and industry sources, CBO expects that few subscribers would be eligible for such transmissions. Therefore, CBO estimates that the cost to comply with the mandate would be minimal.

Cable Royalty Rates. The bill would increase the royalties that cable carriers pay for retransmitting the signals of distant network stations by $54 million over the 2010–2014 period. Based on information from industry sources about the number of cable carriers involved, CBO estimates that the cost to public cable carriers of the royalties set in the bill would total less than $3 million per year and that the cost to private cable carriers would total no more than $12 million per year.

Filing Fees. The bill would require satellite and cable carriers to pay filing fees to the Copyright Office for any royalty payments incurred from retransmitting distant network signals. Based on information from the Copyright Office, CBO estimates that the cost to satellite and cable carriers would be $1 million per year beginning in 2013. At the same time, the bill would direct the Copyright Office to reduce fees that copyright holders pay under current law to register, renew, or change a copyright in an amount equal to the fees to be paid by satellite and cable carriers.

Broadcaster Audits. The bill would require satellite and cable carriers to allow copyright holders to audit their subscriber lists. Because such subscriber information is already collected and maintained by satellite and cable carriers, CBO estimates that the cost of complying with this mandate would be minimal.

Retransmission to Certain Government Organizations During Emergencies. The bill would limit the ability of copyright owners to collect compensation when secondary transmissions of copyrighted works are made for emergency purposes. CBO expects that few such emergencies would occur and estimates that the loss of compensation to copyright holders would be small.

Mandate that Applies to Private Entities Only

Satellite Reporting Requirements. The bill would require satellite carriers to submit additional information about subscribers that receive local retransmission of network stations. Based on information from industry sources regarding current industry prac-

tice and the availability of such information, CBO estimates that the costs to comply would be minimal.

ESTIMATE PREPARED BY

Federal Costs: Susan Willie
Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle
Impact on the Private Sector: Sam Wice and Paige Piper/Bach

ESTIMATE APPROVED BY

Theresa Gullo: Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3570 amends and modernizes the compulsory copyright licenses governing the retransmission of broadcast television signals set forth in Sections 111, 119 and 122 of Chapter 17 of the United States Code and reauthorizes the satellite license in Section 119 for 5 more years.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clauses 3 and 8 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R.3570 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Sets forth the short title of the bill as SHVURA.

Sec. 2. Reference.

Sec. 3. Modifications to Statutory License for Satellite Carriers.

Subsection (a) removes "for private home viewing" from the heading to reflect the fact that the Act is no longer limited to private homes and now extends to commercial establishments, recreational vehicles, and other places. It updates the table of contents.

Subsection (b) amends the definition of "unserved household" in Section 119(d)(10)(A). It clarifies that a household that does not receive a primary video signal from a network within its local market is unserved for the purposes of that network. The amended definition also provides that a household receiving a qualified multicast from a network within its local market will be considered served for the purpose of that network. "Qualified multicast" is defined in subsection (h). This subsection also grandfathers subscribers who were lawfully receiving distant signals when this law is enacted.

Subsection (c) provides for a filing fee to help recoup administrative costs of distributing royalty fees. The fee will be set by the Copyright Office.

Subsection (d) permits satellite carriers to retransmit programming that would otherwise be unavailable under the license at the request of the Secretary of Homeland Security, when necessary to help monitor and respond to a national emergency. This new subsection also requires the Secretary of Homeland Security to issue regulations governing these requests and to annually report such use to Congress.

Subsection (e) will permit, but not require, satellite carriers to import state public television network signals into in-state counties that are located in an out-of-state DMA. Without this provision, satellite carriers cannot transmit the state or regional public television networks that are intended to serve the entire state to markets that are in a different DMA.

Subsection (f) grants an audit right to copyright owners so they can verify the statements of account and royalty fees submitted by satellite providers.

Subsection (g) amends Section 119(c), which sets forth the procedure for determining royalty rates. Royalty rates can either be set by voluntary agreement or by proceedings before the Copyright Royalty Judges. The new rates will not be automatically reduced as they were under the previous statute. The provision now clarifies that fees should be established for each digital stream of programming included in a multicast transmission. The subsection also provides for a more efficient annual cost of living adjustment by the Copyright Royalty Judges. Technical changes in this section include the elimination of the word analog, grammatical corrections, and deletion of references to arbitration proceedings and the Librarian of Congress.

Subsection (h) adds or clarifies the definition of the following terms: "subscriber," "low power television station," "local market," "noncommercial educational broadcast station," "multicast transmission," "qualified multicast video," and "nonnetwork station." A "multicast transmission" is a transmission by a television station that contains more than one channel or digital stream, each containing its own distinct programming. A "qualified multicast video" is a multicast video that can render a household served for the purpose of that network. A multicast that a satellite carrier offers to its subscribers on July 1, 2009, and remains affiliated with the same network, will be counted for purposes of determining if a household is served. Any subsequent multicast streams will not render a household served until January 1, 2013. After that date, no new multicasts will be taken into account in the analysis of whether a household is served.

Subsection (i) replaces the word "superstation" with the word "nonnetwork station" throughout the statute because "superstation" has a different meaning in the licenses than it has in communications law.

Subsection (j) amends the "low power" provision to clarify that the Section 119 license requires payment for the use of low-power signals when they are transmitted beyond the area they would otherwise reach over the air (the so-called "geographic restriction").

Subsection (k) removes the "significantly viewed" provision from Section 119 (so it can be inserted into Section 122, as described below) and makes conforming amendments.

Subsection (l) includes a predictive model to be used for digital signals, which shall be established by the FCC. This subsection also makes changes to 119(a)(3) [formerly (a)(4)], which grandfathers certain subscribers for distant signals. The subsection removes the word "analog" from each place it occurs and preserves the status quo so that subscribers who are grandfathered before the act continue to be grandfathered after the act. This subsection also increases the penalty for violations of territorial restrictions by increasing the maximum statutory damages from $5 to $250 per subscriber per month during which the violation occurred, and changes the maximum statutory damages for a regional or large-scale violation (that does not trigger a permanent injunction or "death penalty") from $250,000 to $2.5M. This subsection also removes all references to Section 509 of Title 17, because that section was repealed last year.

Sec. 4. Modifications to Statutory License For Satellite Carriers in Local Markets.

Subsection (a) changes the heading of Section 122 to "Secondary Transmissions of Local Television Programming by Satellite."

Subsection (b) amends Section 122 to add the "significantly viewed" provision that this bill removes from Section 119. The substance of the provision is essentially the same, except the significantly viewed waiver does not have the same sunset procedure. Low power stations are covered by the 122 license where they are rebroadcast within their geographic limitations.

Subsection (c) adds the requirement to report all subscribers receiving significantly viewed stations to the networks. (The legislation moves these requirements from Section 119 to Section 122).

Subsection (d) increases the statutory penalty for individual violations of the Section 122 license from $5 to $250 for each subscriber for each month during which the violation occurred; it increases the statutory penalty for regional or national violations of the license from $250,000 to $2.5M.

Subsection (e) makes minor changes to the definitions section, including adding the definition of "low power television station" to Section 122.

Sec. 5. Modifications to Cable System Secondary Transmission Rights Under Section 111.

Subsection (a) changes the title of Section 111 to reflect the fact that the license concerns secondary transmissions used in cable television.

Subsection (b) permits cable operators to retransmit programming that would otherwise be unavailable under the license at the request of the Secretary of Homeland Security, when necessary to help monitor and respond to a national emergency. This new subsection also requires the Secretary of Homeland Security to issue regulations governing these requests and to annually report such use to Congress. This language parallels the language in Section 119.

Subsection (c) resolves the phantom signal ambiguity that required cable systems to pay royalty fees for carriage to all subscribers within the system. It allows a cable system that provides transmissions of distant signals to some but not all communities to calculate royalty fees on the basis of the actual carriage of specific signals and the gross receipts derived from the subscribers in the

community. It slightly raises the royalty rate that cable operators must pay to content owners.

This subsection also provides for a filing fee to help recoup administrative costs of distributing royalty fees. It grants an audit right to copyright owners so they can verify the statements of account and royalty fees submitted by the cable operators. The Register of Copyrights will issue regulations that structure the process to reflect the particular requirements of auditing cable systems.

Subsection (d) amends and supplements the terms defined in the statute to correct errors, describe new technologies and reflect alterations to the royalty structure. The term "distant signal equivalent" is updated to reflect the digital transition and emergence of multicasting.

Subsection (e) changes the date of the next inflation adjustment (which would have occurred in 2010), because the rates have already been increased in subsection (c).

Subsection (f) makes technical and conforming amendments, including providing numbers for paragraphs that had been left undesignated in the previous statute and making grammatical corrections.

Sec. 6. Certain Waivers Granted to Providers of Local-Into-Local Service for All DMAs.

This section waives the injunction precluding a previously-enjoined satellite carrier (DISH Network) from using the Section 119 license, on the condition that the carrier provides local-into-local service in all 210 designated market areas or DMAs (defined as 90 percent of all households in each DMA). This subsection does not lift or alter the penalties for abusing the license that exist elsewhere in the statute. The waiver lasts only as long as the carrier continues to provide service in all 210 markets and abide by all other requirements of the license.

It outlines the procedure by which the carrier must obtain permission to use the license on a temporary basis to enter all 210 television markets. During this preliminary period, the carrier will have limited access to the license for the exclusive purpose of providing a full complement of programming to any 'short market" to which the carrier is providing local-into-local service for the first time. A "short market" lacks one or more necessary affiliates. This limited temporary waiver can only be issued once and will expire within 120 days of its issuance unless the court finds good cause to extend the temporary waiver.

Once the carrier is providing local-into-local service in all 210 DMAs, it will file a statement of eligibility with the court that imposed the injunction. This statement shall include a certification issued by the Federal Communications Commission stating that the carrier is providing a good quality signal to 90 percent of the households in each DMA.

The subsection also outlines the mechanism by which the carrier's establishment of service to all 210 markets can be challenged. It sets out the penalties that the court will impose for willful noncompliance, including the revocation of the license and substantial monetary penalties. It sets forth the burden of proof for initial and subsequent compliance proceedings.

Sec. 7. Sunset of the Section 119 License.

This section provides for the expiration of the Section 119 license on December 31, 2014.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

* * * * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

Sec.
101. Definitions.

* * * * * * *

[111. Limitations on exclusive rights: Secondary transmissions.]
111. Limitations on exclusive rights: Secondary transmissions of television programming by cable.

* * * * * * *

[119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing.]
119. Limitations on exclusive rights: Secondary transmissions of distant television programming by satellite.

* * * * * * *

[122. Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets.]
122. Limitations on exclusive rights: Secondary transmissions of local television programming by satellite.

* * * * * * *

§ 111. Limitations on exclusive rights: Secondary transmissions *of television programming by cable*

(a) CERTAIN SECONDARY TRANSMISSIONS EXEMPTED.—The secondary transmission of a performance or display of a work embodied in a primary transmission is not an infringement of copyright if—

(1) * * *

(2) the secondary transmission is made solely for the purpose and under the conditions specified by [clause] *paragraph* (2) of section 110; or

(3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: Provided, That the provisions of this [clause] *paragraph* extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the ac-

tivities of others with respect to their own primary or secondary transmissions;

(4) the secondary transmission is made by a satellite carrier pursuant to a statutory license under section 119[; or] *or section 122;*

(5) the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service[.]*; or*

(6) the secondary transmission is made by a cable system for emergency preparation, response, or recovery as described under subsection (g).

* * * * * * *

(c) SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) Subject to the provisions of [clauses] *paragraphs* (2), (3), and (4) of this subsection and section 114(d), secondary transmissions to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico shall be subject to statutory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

(2) Notwithstanding the provisions of [clause] *paragraph* (1) of this subsection, the willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, in the following cases:

(A) * * *

* * * * * * *

(3) Notwithstanding the provisions of [clause] *paragraph* (1) of this subsection and subject to the provisions of subsection (e) of this section, the secondary transmission to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully al-

tered by the cable system through changes, deletions, or additions, except for the alteration, deletion, or substitution of commercial advertisements performed by those engaged in television commercial advertising market research: Provided, That the research company has obtained the prior consent of the advertiser who has purchased the original commercial advertisement, the television station broadcasting that commercial advertisement, and the cable system performing the secondary transmission: And provided further, That such commercial alteration, deletion, or substitution is not performed for the purpose of deriving income from the sale of that commercial time.

(4) Notwithstanding the provisions of [clause] *paragraph* (1) of this subsection, the secondary transmission to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by an appropriate governmental authority of Canada or Mexico is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if (A) with respect to Canadian signals, the community of the cable system is located more than 150 miles from the United States-Canadian border and is also located south of the forty-second parallel of latitude, or (B) with respect to Mexican signals, the secondary transmission is made by a cable system which received the primary transmission by means other than direct interception of a free space radio wave emitted by such broadcast television station, unless prior to April 15, 1976, such cable system was actually carrying, or was specifically authorized to carry, the signal of such foreign station on the system pursuant to the rules, regulations, or authorizations of the Federal Communications Commission.

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

(1) [A cable system whose secondary] *STATEMENT OF ACCOUNT AND ROYALTY FEES.—A cable system whose secondary* transmissions have been subject to statutory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe [by regulation—] *by regulation the following:*

(A) [a statement of account] *A statement of account*, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may from time to time prescribe by regulation. In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions pursu-

ant to section 119. Such statement shall also include a special statement of account covering any [nonnetwork] *nonnetwork* television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage[; and].

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

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

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

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

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

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

[(C) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total $80,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which $80,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $3,000. The royalty fee payable under this subclause shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, if any; and

[(D) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of

primary broadcast transmitters, are more than $80,000 but less than $160,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to $80,000; and (ii) 1 per centum of any gross receipts in excess of $80,000 but less than $160,000, regardless of the number of distant signal equivalents, if any.]

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

(i) 1.064 percent of such gross receipts for the privilege of further transmitting, beyond the local service area of such primary transmitter, any non-network programming of a primary transmitter in whole or in part, such amount to be applied against the fee, if any, payable pursuant to clauses (ii) through (iv);

(ii) 1.064 percent of such gross receipts for the first distant signal equivalent;

(iii) 0.701 percent of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iv) 0.330 percent of such gross receipts for the fifth distant signal equivalent and each distant signal equivalent thereafter.

(C) In computing amounts under clauses (ii) through (iv) of subparagraph (B)—

(i) any fraction of a distant signal equivalent shall be computed at its fractional value;

(ii) in the case of any cable system located partly within and partly outside of the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located outside of the local service area of such primary transmitter; and

(iii) if a cable system provides a secondary transmission of a primary transmitter to some but not all communities served by that cable system—

(I) the gross receipts and the distant signal equivalent values for such secondary transmission shall be derived solely on the basis of the subscribers in those communities where the cable system provides such secondary transmission; and

(II) the total royalty fee for the period paid by such system shall not be less than the royalty fee calculated under subparagraph (B)(i) multiplied by the gross receipts from all subscribers to the system.

(D) A cable system that, on a statement submitted before the date of the enactment of the Satellite Home Viewer Update and Reauthorization Act of 2009, computed its royalty fee consistent with the methodology under subparagraph (C)(iii) or that amends a statement filed before such

date of enactment to compute the royalty fee due using such methodology shall not be subject to an action for infringement, or eligible for any royalty refund or offset, arising out of its use of such methodology on such statement.

(E) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total $263,800 or less—

(i) gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which $263,800 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $10,400; and

(ii) the royalty fee payable under this paragraph shall be 0.5 percent, regardless of the number of distant signal equivalents, if any.

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

(i) 0.5 percent of any gross receipts up to $263,800, regardless of the number of distant signal equivalents, if any; and

(ii) 1 percent of any gross receipts in excess of $263,800, but less than $527,600, regardless of the number of distant signal equivalents, if any.

(G) A filing fee, as determined by the Register of Copyrights pursuant to section 708(a).

(2) **[**The Register of Copyrights**]** *HANDLING OF FEES.—The Register of Copyrights* shall receive *(including the filing fee specified in paragraph (1)(G))* all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress upon authorization by the Copyright Royalty Judges.

(3) **[**The royalty fees**]** *DISTRIBUTION OF ROYALTY FEES TO COPYRIGHT OWNERS.—The royalty fees* thus deposited shall, in accordance with the procedures provided by clause (4), be distributed to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) **[**any such**]** *Any such* owner whose work was included in a secondary transmission made by a cable system of a **[**nonnetwork**]** *non-network* television program in whole or in part beyond the local service area of the primary transmitter**[**; and**]**.

(B) [any such] *Any such* owner whose work was included in a secondary transmission identified in a special statement of account deposited under clause (1)(A)[;].

(C) [any such] *Any such* owner whose work was included in [nonnetwork] *non-network* programming consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

(4) [The royalty fees] *PROCEDURES FOR ROYALTY FEE DISTRIBUTION.—The royalty fees* thus deposited shall be distributed in accordance with the following procedures:

(A) * * *

* * * * * * *

(5) VERIFICATION OF ACCOUNTS AND FEE PAYMENTS.—The Register of Copyrights shall issue regulations to provide for the confidential verification and audit of the information reported on the semi-annual statement of account filed after the date of the enactment of the Satellite Home Viewer Update and Reauthorization Act of 2009. The regulations shall provide for a single verification procedure, with respect to the semi-annual statements of account filed by a cable system, to be conducted by a qualified independent auditor on behalf of all copyright owners whose works were the subject of a secondary transmission to the public by a cable system of a performance or display of a work embodied in a primary transmission and for a mechanism to review and cure defects identified by any such audit.

(6) ACCEPTANCE OF ADDITIONAL DEPOSITS.—Any royalty fee payments received by the Copyright Office from cable systems for the secondary transmission of primary transmissions that are in addition to the payments calculated and deposited in accordance with this subsection shall be deemed to have been deposited for the particular accounting period for which they are received and shall be distributed as specified under this subsection.

(e) NONSIMULTANEOUS SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) Notwithstanding those provisions of the [second paragraph of subsection (f)] *subsection (f)(2)* relating to nonsimultaneous secondary transmissions by a cable system, any such transmissions are actionable as an act of infringement under section 501, and are fully subject to the remedies provided by sections 502 through 506 and section 510, unless—

(A) the program on the videotape is transmitted no more than one time to the cable system's subscribers; [and]

(B) the copyrighted program, episode, or motion picture videotape, including the commercials contained within such program, episode, or picture, is transmitted without deletion or editing; [and]

(C) an owner or officer of the cable system (i) prevents the duplication of the videotape while in the possession of the system, (ii) prevents unauthorized duplication while in the possession of the facility making the videotape for the system if the system owns or controls the facility, or takes reasonable precautions to prevent such duplication if it

does not own or control the facility, (iii) takes adequate precautions to prevent duplication while the tape is being transported, and (iv) subject to [clause] *paragraph* (2), erases or destroys, or causes the erasure or destruction of, the videotape; [and]

(D) within forty-five days after the end of each calendar quarter, an owner or officer of the cable system executes an affidavit attesting (i) to the steps and precautions taken to prevent duplication of the videotape, and (ii) subject to [clause] *paragraph* (2), to the erasure or destruction of all videotapes made or used during such quarter; [and]

(E) such owner or officer places or causes each such affidavit, and affidavits received pursuant to [clause] *paragraph* (2)(C), to be placed in a file, open to public inspection, at such system's main office in the community where the transmission is made or in the nearest community where such system maintains an office; and

(F) the nonsimultaneous transmission is one that the cable system would be authorized to transmit under the rules, regulations, and authorizations of the Federal Communications Commission in effect at the time of the nonsimultaneous transmission if the transmission had been made simultaneously, except that this [subclause] *subparagraph* shall not apply to inadvertent or accidental transmissions.

(2) If a cable system transfers to any person a videotape of a program nonsimultaneously transmitted by it, such transfer is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, except that, pursuant to a written, nonprofit contract providing for the equitable sharing of the costs of such videotape and its transfer, a videotape nonsimultaneously transmitted by it, in accordance with [clause] *paragraph* (1), may be transferred by one cable system in Alaska to another system in Alaska, by one cable system in Hawaii permitted to make such nonsimultaneous transmissions to another such cable system in Hawaii, or by one cable system in Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands, to another cable system in any of those [three territories] *five entities*, if—

(A) each such contract is available for public inspection in the offices of the cable systems involved, and a copy of such contract is filed, within thirty days after such contract is entered into, with the Copyright Office (which Office shall make each such contract available for public inspection); [and]

(B) the cable system to which the videotape is transferred complies with [clause] *paragraph* (1)(A), (B), (C)(i), (iii), and (iv), and (D) through (F); and

(C) such system provides a copy of the affidavit required to be made in accordance with [clause] *paragraph*

(1)(D) to each cable system making a previous nonsimultaneous transmission of the same videotape.

* * * * * * *

(4) As used in this subsection, the term "videotape" [, and each of its variant forms,] means the reproduction of the images and sounds of a program or programs broadcast by a television broadcast station licensed by the Federal Communications Commission, regardless of the nature of the material objects, such as tapes or films, in which the reproduction is embodied.

(f) DEFINITIONS.—As used in this section, the following terms [and their variant forms] mean the following:

[A "primary transmission" is a transmission]

(1) PRIMARY TRANSMISSION.—A "primary transmission" is a transmission, including a multicast transmission, made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted.

[A "secondary transmission"]

(2) SECONDARY TRANSMISSION.—A "secondary transmission" is the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission if by a ["cable system"] *cable system* not located in whole or in part within the boundary of the forty-eight contiguous States, Hawaii, or Puerto Rico: Provided, however, That a nonsimultaneous further transmission by a cable system located in Hawaii of a primary transmission shall be deemed to be a secondary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

[A "cable system"]

(3) CABLE SYSTEM.—A "cable system" is a facility, located in any State, [Territory, Trust Territory, or Possession] *territory, trust territory, or possession of the United States*, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(1), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.

[The "local service area of a primary transmitter"]

(4) LOCAL SERVICE AREA OF A PRIMARY TRANSMITTER.—The "local service area of a primary transmitter", in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, or such station's television market as

defined in section 76.55 (e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or [76.59 of title 47 of the Code of Federal Regulations] *76.59 of title 47, Code of Federal Regulations, or within the noise-limited contour as defined in 73.622(e)(1) of title 47, Code of Federal Regulations*, or in the case of a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico, the area in which it would be entitled to insist upon its signal being retransmitted if it were a television broadcast station subject to such rules, regulations, and authorizations. In the case of a low power television station, [as defined by the rules and regulations of the Federal Communications Commission,] the "local service area of a primary transmitter" comprises the area within 35 miles of the transmitter site, except that in the case of such a station located in a standard metropolitan statistical area which has one of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20 miles. The "local service area of a primary transmitter", in the case of a radio broadcast station, comprises the primary service area of such station, pursuant to the rules and regulations of the Federal Communications Commission.

[A "distant signal equivalent" is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming. It is computed by assigning a value of one to each independent station and a value of one-quarter to each network station and noncommercial educational station for the nonnetwork programming so carried pursuant to the rules, regulations, and authorizations of the Federal Communications Commission. The foregoing values for independent, network, and noncommercial educational stations are subject, however, to the following exceptions and limitations. Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of enactment of this Act permit a cable system, at its election, to effect such deletion and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be assigned for the substituted or additional program; where the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of this Act permit a cable system, at its election, to omit the further transmission of a particular program and such rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value as-

signed for the substituted or additional program shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year. In the case of a station carried pursuant to the late-night or specialty programming rules of the Federal Communications Commission, or a station carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry, the values for independent, network, and noncommercial educational stations set forth above, as the case may be, shall be multiplied by a fraction which is equal to the ratio of the broadcast hours of such station carried by the cable system to the total broadcast hours of the station.]

(5) DISTANT SIGNAL EQUIVALENT.—

(A) IN GENERAL.—Except as provided under subparagraph (B), a "distant signal equivalent"—

(i) is the value assigned to the secondary transmission of any non-network television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming; and

(ii) is computed by assigning a value of one to each channel or digital stream carrying independent television programming, and a value of one-quarter to each channel or digital stream carrying network television programming or noncommercial educational television programming transmitted by a television broadcast station pursuant to the rules, regulations, and authorizations of the Federal Communications Commission.

(B) EXCEPTIONS.—The values for independent, network, and noncommercial educational programming specified in subparagraph (A) are subject to the following:

(i) Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of enactment of the Copyright Act of 1976 permit a cable system, at its election, to effect such omission and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be assigned for the substituted or additional program.

(ii) Where the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of the Copyright Act of 1976 permit a cable system, at its election, to omit the further transmission of a particular program and such

rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value assigned for the substituted or additional program shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year.

(iii) In the case of a channel or digital stream carried pursuant to the late-night or specialty programming rules of the Federal Communications Commission, or a channel or digital stream carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals that it is authorized to carry, the values for independent, network, and noncommercial educational programming set forth in subparagraph (A), as the case may be, shall be multiplied by a fraction that is equal to the ratio of the broadcast hours of such channel or digital stream carried by the cable system to the total broadcast hours of the channel or digital stream.

[A "network station"]

(6) NETWORK STATION.—

(A) IN GENERAL.—A "network station" is a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day.

(B) NETWORK PROGRAMMING.—The term "network television programming" means programming that is transmitted by a network station.

[An "independent station" is a commercial television broadcast station other than a network station.

[A "noncommercial educational station" is a television station that is a noncommercial educational broadcast station as defined in section 397 of title 47.]

(7) INDEPENDENT STATION.—

(A) IN GENERAL.—An "independent station" is a commercial television broadcast station other than a network station.

(B) INDEPENDENT PROGRAMMING.—The term "independent television programming" means all programming other than "network television programming" or "noncommercial educational television programming".

(8) NONCOMMERCIAL EDUCATIONAL STATION.—

(A) IN GENERAL.—A "noncommercial educational station" is a television or radio broadcast station that—

(i) under the rules and regulations of the Federal Communications Commission in effect on November 2, 1978, is eligible to be licensed by the Federal Commu-

nications Commission as a noncommercial educational radio or television broadcast station and that is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

(ii) is owned and operated by a municipality and that transmits only noncommercial programs for education purposes.

(B) NONCOMMERCIAL EDUCATIONAL PROGRAMMING.—The term "noncommercial educational television programming" means programming that is transmitted by a noncommercial educational station.

(9) MULTICAST TRANSMISSION.—A "multicast transmission" is a transmission by a television station that contains more than one channel or digital stream, each containing its own distinct programming.

(10) SUBSCRIBER.—The term "subscriber" means a person or entity that receives a secondary transmission service from a cable system and pays a fee for the service, directly or indirectly, to the cable system.

(g) RETRANSMISSION FOR EMERGENCY PREPARATION, RESPONSE, OR RECOVERY.—

(1) AUTHORITY.—For purposes of subsection (a)(6), a secondary transmission by a cable system of a performance or display of a work embodied in a primary transmission by a television broadcast station is made for emergency preparation, response, or recovery if such transmission is made—

(A) by a cable system to a Federal governmental body designated by the Secretary of Homeland Security or an organization established with the purpose of carrying out a system of national and international relief efforts and chartered under section 300101 of title 36;

(B) to officers or employees of such body or such organization as a part of the official duties or employment of such officers or employees;

(C) at the request of the Secretary of Homeland Security; and

(D) for the sole purpose of preparing for, responding to, or recovering from an emergency described under paragraph (2).

(2) EMERGENCIES.—An emergency is described under this paragraph if the Secretary of Homeland Security identifies such emergency as a major disaster, a catastrophic incident, an act of terrorism, or a transportation security incident.

(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this subsection, the Secretary of Homeland Security shall issue regulations to protect copyright owners by preventing the unauthorized access to the secondary transmissions described in paragraph (1).

(4) REPORTS TO CONGRESSIONAL COMMITTEES.—Not later than one year after the date of the enactment of this subsection and by September 30 of each year thereafter, the Secretary of Homeland Security shall submit a report to the Committee on the Judiciary and the Committee on Homeland Security of the House of Representatives and the Committee on the Judiciary of the Senate describing—

(A) the manner in which the authority granted under paragraph (1) is being used; and

(B) any additional legislative recommendations the Secretary may have.

(5) DEFINITIONS.—As used in this subsection:

(A) TERRORISM.—The term "terrorism" has the meaning given that term in section 2(16) of the Homeland Security Act of 2002 (6 U.S.C. 101(16)).

(B) TRANSPORTATION SECURITY INCIDENT.—The term "transportation security incident" has the meaning given that term in section 70101 of title 46.

(C) CATASTROPHIC INCIDENT.—The term "catastrophic incident" means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, the environment, the economy, national morale, or government functions in a geographic area.

(6) EFFECTIVE DATE.—This subsection shall take effect with respect to a secondary transmission described under paragraph (1) that is made after the end of the 30-day period beginning on the effective date of the regulations issued by the Secretary of Homeland Security under paragraph (3).

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§ 119. Limitations on exclusive rights: Secondary transmissions of [Superstations and network stations for private home viewing] *distant television programming by satellite*

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) [SUPERSTATIONS] *NON-NETWORK STATIONS*.—Subject to the provisions of paragraphs [(5), (6), and (8)] *(4), (5), and (7)* of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a [superstation] *non-network station* shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing or for viewing in a commercial establishment, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each subscriber receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing or for viewing in a commercial establishment.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and [paragraphs (5), (6), (7), and (8)] *paragraphs (4), (5), (6), and (7)* of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a network station shall be subject to

statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—

(i) IN GENERAL.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions of the signals of no more than two network stations in a single day for each television network to persons who reside in unserved households. **[**The limitation in this clause shall not apply to secondary transmissions under paragraph (3).**]**

(ii) ACCURATE DETERMINATIONS OF ELIGIBILITY.—

(I) * * *

* * * * * * *

(III) ACCURATE PREDICTIVE MODEL WITH RESPECT TO DIGITAL SIGNALS.—Notwithstanding subclause (I), in determining presumptively whether a person resides in an unserved household under subsection (d)(10)(A) with respect to digital signals, a court shall rely on a predictive model set forth by the Federal Communications Commission pursuant to a rulemaking as provided in section 339(c)(3) of the Communications Act of 1934 (47 U.S.C. 339(c)(3)), as that model may be amended by the Commission over time under such section to increase the accuracy of that model. Until such time as the Commission sets forth such model, a court shall rely on the predictive model endorsed by the Commission in FCC 05–199, released December 9, 2005.

(iii) C-BAND EXEMPTION TO UNSERVED HOUSEHOLDS.—

(I) * * *

(II) DEFINITION.—**[**In this clause**]** *In this clause,* the term "C-band service" means a service that is licensed by the Federal Communications Commission and operates in the Fixed Satellite Service under part 25 of title 47 **[**of the Code of Federal Regulations**]**, *Code of Federal Regulations*.

(C) EXCEPTIONS.—

(i) * * *

(ii) STATES WITH ALL NETWORK STATIONS AND **[**SUPERSTATIONS**]** *NON-NETWORK STATIONS* IN SAME LOCAL MARKET.—In a State in which all network stations and **[**superstations**]** *non-network stations* licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned

to the same local market and that local market does not encompass all counties of that State, the statutory license provided under subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of title 47 [of the Code of Federal Regulations], *Code of Federal Regulations*).

* * * * * * *

(vi) NETWORKS OF NONCOMMERCIAL EDUCATIONAL BROADCAST STATIONS.—In the case of a system of three or more noncommercial educational broadcast stations licensed to a single State, public agency, or political, educational, or special purpose subdivision of a State, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission of the primary transmission of such system to any subscriber in any county within such State, if such subscriber is located in a designated market area that is not otherwise eligible to receive the secondary transmission of the primary transmission of such system pursuant to section 122(a).

(D) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

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

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

[(II) a separate list, aggregated by designated market area (as defined in section 122(j)) (by name and address, including street or rural route number, city, State, and zip code), which shall indicate those subscribers being served pursuant to paragraph (3), relating to significantly viewed stations.

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

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

[(II) a separate list, aggregated by designated market area (by name and street address, includ-

ing street or rural route number, city, State, and zip code), identifying those subscribers whose service pursuant to paragraph (3), relating to significantly viewed stations, has been added or dropped.]

(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, not later than 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households.

(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), the satellite carrier shall, not later than the 15th of each month, submit to the network a list identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) any persons who have been added or dropped as subscribers under clause (i) since the last submission under clause (i).

* * * * * * *

[(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

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

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

[(C) WAIVER.—

[(i) IN GENERAL.—A subscriber who is denied the secondary transmission of the primary transmission of a network station under subparagraph (B) may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber's

request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

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

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

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

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

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

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

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

(II) Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply with respect to any subscriber who is eligible to receive the distant [analog] signal of a television network station solely by reason of subsection (e), unless the satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of

2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

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

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

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

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

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

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

of a station affiliated with the same network to that subscriber if—

[(I) that subscriber seeks to subscribe to such distant signal before the date on which such carrier commences to provide pursuant to the statutory license under section 122 the secondary transmissions of the primary transmission of stations from the local market of such local network station; and

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

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

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

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

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

(B) RULES FOR OTHER SUBSCRIBERS.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of a primary transmission of a network station to a person who—

(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Home Viewer Update and Reauthorization Act of 2009; or

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

[(E)**]** *(C)* OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions **[**under paragraph (3) or**]** to unserved households included under **[**paragraph (12)**]** *paragraph (11)*.

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

[(G)**]** *(E)* AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes available a secondary transmission of the primary transmission of a local station to a subscriber or person if the satellite carrier offers that secondary transmission to other subscribers who reside in the same *9-digit* zip code as that subscriber or person.

[(5)**]** *(4)* NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a **[**superstation**]** *non-network station* or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

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

fully subject to the remedies provided by sections 502 through 506 and section 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

[(7)**]** *(6)* VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506, except that—

(i) * * *

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

(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who are not eligible to receive the transmission under this section, then in addition to the remedies set forth in subparagraph (A)—

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed **[**$250,000**]** *$2,500,000* for each 6-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed **[**$250,000**]** *$2,500,000* for each 6-month period during which the pattern or practice was carried out.

* * * * * * *

[(8)**]** *(7)* DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a pri-

mary transmission made by a [superstation] *non-network station* or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the satellite carrier unlawfully discriminates against a distributor.

[(9)] *(8)* GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

[(10)] *(9)* LOSER PAYS FOR SIGNAL INTENSITY MEASUREMENT; RECOVERY OF MEASUREMENT COSTS IN A CIVIL ACTION.—In any civil action filed relating to the eligibility of subscribing households as unserved households—

(A) * * *

* * * * * * *

[(11)] *(10)* INABILITY TO CONDUCT MEASUREMENT.—If a network station makes a reasonable attempt to conduct a site measurement of its signal at a subscriber's household and is denied access for the purpose of conducting the measurement, and is otherwise unable to conduct a measurement, the satellite carrier shall within 60 days notice thereof, terminate service of the station's network to that household.

[(12)] *(11)* SERVICE TO RECREATIONAL VEHICLES AND COMMERCIAL TRUCKS.—

(A) EXEMPTION.—

(i) IN GENERAL.—For purposes of this subsection, and subject to clauses (ii) and (iii), the term "unserved household" shall include—

(I) recreational vehicles as defined in regulations of the Secretary of Housing and Urban Development under section 3282.8 of title 24 [of the Code of Federal Regulations], *Code of Federal Regulations*; and

(II) commercial trucks that qualify as commercial motor vehicles under regulations of the Secretary of Transportation under section 383.5 of title 49 [of the Code of Federal Regulations], *Code of Federal Regulations*.

* * * * * * *

(B) DOCUMENTATION REQUIREMENTS.—A recreational vehicle or commercial truck shall be deemed to be an unserved household beginning 10 days after the relevant satellite carrier provides to the network that owns or is affiliated with the network station that will be secondarily transmitted to the recreational vehicle or commercial truck the following documents:

(i) * * *

* * * * * * *

(iii) REGISTRATION AND LICENSE.—In the case of a commercial truck, a copy of—

(I) * * *

(II) a copy of a valid, current commercial driver's license, as defined in regulations of the Sec-

retary of Transportation under section 383 of title 49 [of the Code of Federal Regulations], *Code of Federal Regulations*, issued to the operator.

* * * * * * *

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

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

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

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

[(B) GEOGRAPHIC LIMITATION.—

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

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

[(II) reside within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of pop-

ulation taken by the Secretary of Commerce), the number of miles shall be 20.

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

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

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

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

(14) SECONDARY TRANSMISSIONS OF LOW POWER TELEVISION PROGRAMMING.—

(A) IN GENERAL.—Notwithstanding paragraph (2)(B), and subject to subparagraphs (B) through (D) of this paragraph, the statutory license provided for in paragraph (1) shall apply to the secondary transmission by a satellite carrier of the primary transmission of the programming of a non-network station that is licensed as a low power television station, to a subscriber who resides within the same designated market area as the station that originates the programming signal.

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

(C) ROYALTY FEES.—A satellite carrier whose secondary transmission of the primary transmission of the program-

ming of a low power television station is subject to statutory licensing under this section shall be subject to royalty payments under subsection (b)(1)(B) for any transmission to a subscriber outside of the local market of the low power television station.

(D) LIMITATION TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—Secondary transmissions provided for in subparagraph (A) may be made by a satellite carrier only to subscribers who receive secondary transmissions of primary transmissions from that satellite carrier pursuant to the statutory license under section 122.

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

(A) * * *

* * * * * * *

(16) RETRANSMISSION FOR EMERGENCY PREPARATION, RESPONSE, OR RECOVERY.—

(A) AUTHORITY.—The secondary transmission by a satellite carrier of a performance or display of a work embodied in a primary transmission of a television broadcast station is not an infringement of copyright if such secondary transmission is made—

(i) to a Federal governmental body designated by the Secretary of Homeland Security or an organization established with the purpose of carrying out a system of national and international relief efforts and chartered under section 300101 of title 36;

(ii) to officers or employees of such body or such organization as a part of the official duties or employment of such officers or employees;

(iii) at the request of the Secretary of Homeland Security; and

(iv) for the sole purpose of preparing for, responding to, or recovering from an emergency described under subparagraph (B).

(B) EMERGENCIES.—An emergency is described under this subparagraph if the Secretary of Homeland Security identifies such emergency as a major disaster, a catastrophic incident, an act of terrorism, or a transportation security incident.

(C) REGULATIONS.—Not later than 6 months after the date of the enactment of this paragraph, the Secretary of Homeland Security shall issue regulations to protect copyright owners by preventing the unauthorized access to the secondary transmissions described in subparagraph (A).

(D) REPORTS TO CONGRESSIONAL COMMITTEES.—Not later than one year after the date of the enactment of this paragraph and by September 30 of each year thereafter, the Secretary of Homeland Security shall submit a report to the Committee on the Judiciary and the Committee on Homeland Security of the House of Representatives and the Committee on the Judiciary of the Senate describing—

(i) the manner in which the authority granted under subparagraph (A) is being used; and

(ii) any additional legislative recommendations the Secretary may have.

(E) DEFINITIONS.—As used in this paragraph:

(i) TERRORISM.—The term "terrorism" has the meaning given that term in section 2(16) of the Homeland Security Act of 2002 (6 U.S.C. 101(16)).

(ii) TRANSPORTATION SECURITY INCIDENT.—The term "transportation security incident" has the meaning given that term in section 70101 of title 46.

(iii) CATASTROPHIC INCIDENT.—The term "catastrophic incident" means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, the environment, the economy, national morale, or government functions in a geographic area.

(F) EFFECTIVE DATE.—This paragraph shall take effect with respect to a secondary transmission described under subparagraph (A) that is made after the end of the 30-day period beginning on the effective date of the regulations issued by the Secretary of Homeland Security under subparagraph (C).

* * * * * * *

[(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—]

(b) DEPOSIT OF STATEMENTS AND FEES; VERIFICATION PROCEDURES.—

(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all non-network stations and network stations whose signals were retransmitted, at any time during that period, to subscribers as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such retransmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation; [and]

(B) a royalty fee for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of each non-network station or network station during each calendar month by the appropriate rate in effect under this section[.]*; and*

(C) a filing fee, as determined by the Register of Copyrights pursuant to section 708(a).

[Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a subscriber under paragraph (3) of such subsection.]

(2) VERIFICATION OF ACCOUNTS AND FEE PAYMENTS.—The Register of Copyrights shall issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under this subsection.

[(2)**]** *(3)* INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees *(including the filing fee specified in paragraph (1)(C))* deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under **[**paragraph (4)**]** *paragraph (5)*), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title.

[(3)**]** *(4)* PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under **[**paragraph (2)**]** *paragraph (3)* shall, in accordance with the procedures provided by **[**paragraph (4)**]** *paragraph (5)*, be distributed to those copyright owners whose works were included in a secondary transmission made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Judges under **[**paragraph (4)**]** *paragraph (5)*.

[(4)**]** *(5)* PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under **[**paragraph (2)**]** *paragraph (3)* shall be distributed in accordance with the following procedures:

(A) * * *

* * * * * * *

(c) ADJUSTMENT OF ROYALTY FEES.—

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

(A) INITIAL FEE.—The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the **[**primary analog transmissions**]** *primary transmissions* of network stations and **[**superstations**]** *non-network stations* shall be the appropriate fee set forth in part 258 of title 37, Code of Federal Regulations, as in effect on **[**July 1, 2004**]** *July 1, 2009*, as modified under this paragraph.

(B) FEE SET BY VOLUNTARY NEGOTIATION.—On or before **[**January 2, 2005, the Librarian of Congress**]** *January 4, 2010, the Copyright Royalty Judges* shall cause to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers for the secondary transmission of the **[**primary analog transmission**]** *primary transmissions* of network stations and **[**superstations**]** *non-network stations* under subsection (b)(1)(B). *A separate fee shall be established for each stream of a multicast transmission included in the secondary transmission to the subscriber.*

(C) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach

a voluntary agreement or agreements for the payment of royalty fees. Any such satellite carriers, distributors and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the [Librarian of Congress] *Copyright Royalty Judges* shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the cost thereof.

(D) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS; PUBLIC NOTICE.—[(i) Voluntary agreements]

(i) VOLUNTARY AGREEMENTS; FILING.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners [that a parties] *that are parties* thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

[(ii)(I) Within]

(ii) PROCEDURE FOR ADOPTION OF FEES.—

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

[(II) Upon receiving a request under subclause (I), the Librarian of Congress]

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

[(III) The Librarian]

(III) ADOPTION OF FEES.—The Copyright Royalty Judges shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors, and copyright owners without convening [an arbitration proceeding] *the proceeding under subparagraph (F)* unless a party with an intent to participate in [the arbitration proceeding] *that proceeding* and a significant interest in the outcome of that proceeding objects under subclause (II).

(E) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the [Copyright Office] *Copyright Royalty Judges* in accordance with this

paragraph shall become effective on the date specified in the agreement, and shall remain in effect until [December 31, 2009] *December 31, 2014*, or in accordance with the terms of the agreement, whichever is later.

(F) FEE SET BY [COMPULSORY ARBITRATION] *COPYRIGHT ROYALTY JUDGES PROCEEDING.*—

(i) NOTICE OF INITIATION OF [PROCEEDINGS] *THE PROCEEDING.*—On or before [May 1, 2005, the Librarian of Congress] *May 3, 2010, the Copyright Royalty Judges* shall cause notice to be published in the Federal Register of the initiation of [arbitration proceedings] *a proceeding* for the purpose of determining the royalty [fee to be paid] *fees to be paid* for the secondary transmission of [primary analog transmission] *the primary transmissions* of network stations and [superstations] *non-network stations* under subsection (b)(1)(B) by satellite carriers and [distributors] *distributors*—

(I) * * *

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

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

[(ii) Establishment of royalty fees.—In determining royalty fees under this subparagraph, the copyright arbitration royalty panel appointed under chapter 8, as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004 shall establish fees for the secondary transmissions of the primary analog transmission of network stations and non-network stations that most clearly represent the fair market value of secondary transmissions, except that the Librarian of Congress and any copyright arbitration royalty panel shall adjust those fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Office pursuant to subparagraph (D). In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—]

(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this subparagraph, the Copyright Royalty Judges shall establish fees for the secondary transmissions of the primary transmissions of network stations and non-network stations that most

clearly represent the fair market value of secondary transmissions, except that the Copyright Royalty Judges shall adjust royalty fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Royalty Judges in accordance with subparagraph (D). In determining the fair market value, the Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—

(I) * * *

* * * * * * *

[(iii) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

[(I) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004; or

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

(iii) EFFECTIVE DATE FOR DECISION OF COPYRIGHT ROYALTY JUDGES.—The obligation to pay the royalty fees established under a determination that is made by the Copyright Royalty Judges in a proceeding under this paragraph shall be effective as of January 1, 2010.

(iv) PERSONS SUBJECT TO ROYALTY [FEE] *FEES*.—The royalty [fee] *fees* referred to in (iii) shall be binding on all satellite carriers, distributors and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under subparagraph (D).

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

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

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

[(C) the royalty fees that are established for the secondary transmission of the primary digital transmission of network stations and non-network stations in accordance

with to the procedures set forth in paragraph (1)(F)(iii) and are payable under subsection (b)(1)(B)—

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

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

(2) ANNUAL ROYALTY FEE ADJUSTMENT.—Effective January 1 of each year, the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be adjusted by the Copyright Royalty Judges to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) published by the Secretary of Labor before December 1 of the preceding year. Notification of the adjusted fees shall be published in the Federal Register at least 25 days before January 1.

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

(1) DISTRIBUTOR.—The term "distributor" means an entity [which] *that* contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities in accordance with the provisions of this section.

(2) NETWORK STATION.—The term "network station" means—

(A) a television station licensed by the Federal Communications Commission, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States [which] *that* offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(B) a noncommercial educational broadcast station [(as defined in section 397 of the Communications Act of 1934)];

except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.

* * * * * * *

(5) PRIVATE HOME VIEWING.—The term "private home viewing" means the viewing, for private use in a household by means of satellite reception equipment [which] *that* is operated by an individual in that household and [which] *that* serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

(6) SATELLITE CARRIER.—The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 [of the Code of Federal Regulations], *Code of Federal Regulations* [or the Direct], *or the Direct* Broadcast Satellite Service under part 100 of title 47 [of the Code of Federal Regulations], *Code of Federal Regulations*, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing pursuant to this section.

* * * * * * *

[(8) SUBSCRIBER.—The term "subscriber" means an individual or entity that receives a secondary transmission service by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor in accordance with the provisions of this section.]

(8) SUBSCRIBER.—The term "subscriber" means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(9) [SUPERSTATION] *NON-NETWORK STATION*.—The term "[superstation] *non-network station*" means a television station, other than a network station, licensed by the Federal Communications Commission, that is secondarily transmitted by a satellite carrier.

(10) UNSERVED HOUSEHOLD.—The term "unserved household", with respect to a particular television network, means a household that—

[(A) cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that network of Grade B intensity as defined by the Federal Communications Commission under section 73.683(a) of title 47 , Code of Federal Regulations, as in effect on January 1, 1999;]

(A) cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal containing the primary video or qualified multicast video of a primary network station located in that household's local market and affiliated with that network of—

(i) if the signal originates as an analog signal, Grade B intensity as defined by the Federal Communications Commission under section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999; or

(ii) if the signal originates as a digital signal, intensity defined in the values for digital television noise-limited service contour, as defined in regulations

issued by the Federal Communications Commission under section 73.622(e) of title 47, Code of Federal Regulations, as such regulations may be amended from time to time;

(B) is subject to a waiver that meets the standards of ⟦subsection (a)(14)⟧ *subsection (a)(13),* whether or not the waiver was granted before the date of the enactment of the ⟦Satellite Home Viewer Extension and Reauthorization Act of 2004⟧ *Satellite Home Viewer Update and Reauthorization Act of 2009*;

* * * * * * *

(D) is a subscriber to whom subsection ⟦(a)(12)⟧ *(a)(11)* applies; ⟦or⟧

(E) is a subscriber to whom the exemption under subsection (a)(2)(B)(iii) applies⟦.⟧*; or*

(F) is a subscriber who was lawfully receiving, by reason of subparagraph (A) of this paragraph, as in effect on the day before the date of the enactment of the Satellite Home Viewer Update and Reauthorization Act of 2009, secondary transmissions of the primary transmission of a network station affiliated with that network.

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

(11) LOCAL MARKET.—The term "local market" has the meaning given such term under section 122(j).

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

* * * * * * *

(14) NONCOMMERCIAL EDUCATIONAL BROADCAST STATION.—The term "noncommercial educational broadcast station" means a television broadcast station that—

(A) under the rules and regulations of the Federal Communications Commission in effect on November 2, 1978, is eligible to be licensed by the Federal Communications Commission as a noncommercial educational television broadcast station and is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

(B) is owned and operated by a municipality and transmits only noncommercial programs for education purposes.

(15) MULTICAST TRANSMISSION.—A "multicast transmission" is a transmission by a television station that contains more than one channel or digital stream, each containing its own distinct programming.

(16) QUALIFIED MULTICAST VIDEO.—A "qualified multicast video" is a video stream other than the primary video that, with respect to a particular satellite carrier either—

(A) was carried by that satellite carrier on July 1, 2009, and remains affiliated with the same network; or

(B) exists on January 1, 2013, and remains affiliated with the same network.

(17) PRIMARY VIDEO.—The term "primary video" means the single programming stream and program-related material that received the highest aggregate viewership ratings (as determined by Nielsen Media Research) of all programming streams offered by that station as of the date of enactment of the Satellite Home Viewer Update and Reauthorization Act of 2009, offered by a television broadcast station.

(e) MORATORIUM ON COPYRIGHT LIABILITY.—Until December 31, [2009] *2014*, a subscriber who does not receive a signal of Grade A intensity (as defined in the regulations of the Federal Communications Commission under section 73.683(a) of title 47 [of the Code of Federal Regulations]*, Code of Federal Regulations*, as in effect on January 1, 1999, or predicted by the Federal Communications Commission using the Individual Location Longley-Rice methodology described by the Federal Communications Commission in Docket No. 98-201) of a local network television broadcast station shall remain eligible to receive signals of network stations affiliated with the same network, if that subscriber had satellite service of such network signal terminated after July 11, 1998, and before October 31, 1999, as required by this section, or received such service on October 31, 1999.

* * * * * * *

(g) CERTAIN WAIVERS GRANTED TO PROVIDERS OF LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.—

(1) INJUNCTION WAIVER.—A court that issued an injunction pursuant to subsection (a)(7)(B) before the date of the enactment of this subsection shall waive such injunction if the court recognizes the entity against which the injunction was issued as a qualified carrier.

(2) LIMITED TEMPORARY WAIVER.—

(A) IN GENERAL.—Upon a request made by a satellite carrier, a court that issued an injunction against such carrier under subsection (a)(7)(B) before the date of the enactment of this subsection shall waive such injunction with respect to the statutory license provided under subsection (a)(2) to the extent necessary to allow such carrier to retransmit distant network signals to unserved households located in short markets in which such carrier was not providing local service pursuant to the license under section 122 as of December 31, 2009.

(B) EXPIRATION OF TEMPORARY WAIVER.—A temporary waiver of an injunction under subparagraph (A) shall expire after the end of the 120-day period beginning on the date such temporary waiver is made unless extended for good cause by the court making the temporary waiver.

(C) FAILURE TO MAKE GOOD FAITH EFFORT TO PROVIDE LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.—

(i) WILLFUL FAILURE.—If the court making a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to make a good faith effort to provide local-into-local service to all DMAs and determines that such failure was willful, such failure—

(I) is actionable as an act of infringement under section 501 and the court may in its discretion impose the remedies provided for in section 502 through 506 and subsection (a)(6)(B) of this section; and

(II) shall result in the termination of the waiver provided under subparagraph (A).

(ii) NONWILLFUL FAILURE.—If the court making a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to make a good faith effort to provide local-into-local service to all DMAs and determines that such failure was nonwillful, the court may in its discretion impose financial penalties that reflect—

(I) the degree of control the carrier had over the circumstances that resulted in the failure;

(II) the quality of the carrier's efforts to remedy the failure; and

(III) the severity and duration of the service interruption.

(D) SINGLE TEMPORARY WAIVER AVAILABLE.—An entity may only receive one temporary waiver under this paragraph.

(E) SHORT MARKET DEFINED.—For purposes of this paragraph, the term "short market" means a local market in which programming of one or more of the four most widely viewed television networks nationwide as measured on the date of enactment of this subsection is not offered on the primary signal of any local television broadcast station.

(3) ESTABLISHMENT OF QUALIFIED CARRIER RECOGNITION.—

(A) STATEMENT OF ELIGIBILITY.—An entity seeking to be recognized as a qualified carrier under this subsection shall file a statement of eligibility with the court that imposed the injunction. A statement of eligibility must include—

(i) an affidavit that the entity is providing local-into-local service to all DMAs;

(ii) a request for a waiver of the injunction; and

(iii) a certification issued pursuant to section [X] of [E&C Act].

(B) GRANT OF RECOGNITION AS A QUALIFIED CARRIER.—Upon receipt of a statement of eligibility, the court shall recognize the entity as a qualified carrier and issue the waiver under paragraph (1).

(C) VOLUNTARY TERMINATION.—At any time, an entity recognized as a qualified carrier may file a statement of voluntary termination with the court certifying that it no longer wishes to be recognized as a qualified carrier. Upon

receipt of such statement, the court shall reinstate the injunction waived under paragraph (1).

(D) LOSS OF RECOGNITION PREVENTS FUTURE RECOGNITION.—No entity may be recognized as a qualified carrier if such entity had previously been recognized as a qualified carrier and subsequently lost such recognition or voluntarily terminated such recognition under subparagraph (C).

(4) QUALIFIED CARRIER OBLIGATIONS AND COMPLIANCE.—

(A) IN GENERAL.—An entity recognized as a qualified carrier shall continue to provide local-into-local service to all DMAs.

(B) COMPLIANCE DETERMINATION.—Upon the motion of an aggrieved television broadcast station, the court recognizing an entity as a qualified carrier may make a determination of whether the entity is providing local-into-local service to all DMAs.

(C) PLEADING REQUIREMENT.—In any motion brought under subparagraph (B), the party making such motion shall specify one or more designated market areas (as such term is defined in section 122(j)(2)(C)) for which the failure to provide service is being alleged, and, for each such designated market area, shall plead with particularity the circumstances of the alleged failure.

(D) BURDEN OF PROOF.—In any proceeding to make a determination under subparagraph (B), and with respect to a designated market area for which failure to provide service is alleged, the entity recognized as a qualified carrier shall have the burden of proving that the entity provided local-into-local service with a good quality satellite signal to 90 percent of the households in such designated market area at the time and place alleged.

(5) FAILURE TO PROVIDE SERVICE.—

(A) PENALTIES.—If the court recognizing an entity as a qualified carrier finds that such entity has willfully failed to provide local-into-local service to all DMAs, such finding shall result in the loss of recognition of the entity as a qualified carrier and the termination of the waiver provided under paragraph (1), and the court may, in its discretion—

(i) treat such failure as an act of infringement under section 501, and subject such infringement to the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

(ii) impose a fine of no greater than $250,000.

(B) EXCEPTION FOR NONWILLFUL VIOLATION.—If the court determines that the failure to provide local-into-local service to all DMAs is nonwillful, the court may in its discretion impose financial penalties for noncompliance that reflect—

(i) the degree of control the entity had over the circumstances that resulted in the failure;

(ii) the quality of the entity's efforts to remedy the failure and restore service; and

(iii) the severity and duration of the service interruption.

(6) PENALTIES FOR VIOLATIONS OF LICENSE.—A court that finds, under subsection (a)(6)(A), that an entity recognized as a qualified carrier has willfully made a secondary transmission of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section shall reinstate the injunction waived under paragraph (1), and the court may order statutory damages of not to exceed $2,500,000.

(7) LOCAL-INTO-LOCAL SERVICE TO ALL DMAS DEFINED.—For purposes of this subsection:

(A) IN GENERAL.—An entity provides "local-into-local service to all DMAs" if the entity provides local service in all designated market areas (as such term is defined in section 122(j)(2)(C)) pursuant to the license under section 122.

(B) HOUSEHOLD COVERAGE.—For purposes of subparagraph (A), an entity that makes available local-into-local service with a good quality satellite signal to 90 percent of the households in a designated market area based on the most recent census data shall be considered to be providing local service to such designated market area.

(C) GOOD QUALITY SATELLITE SIGNAL DEFINED.—The term "good quality signal" has the meaning given such term under section [X] of [E&C Act].

* * * * * * *

§ 122. Limitations on exclusive rights: Secondary transmissions [by satellite carriers within local markets] *of local television programming by satellite*

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

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

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

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

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

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

(a) SECONDARY TRANSMISSIONS INTO LOCAL MARKETS.—

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

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

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

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

(i) each subscriber receiving the secondary transmission; or

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

(2) SIGNIFICANTLY VIEWED STATIONS.—

(A) IN GENERAL.—The statutory license under paragraph (1) shall apply to the secondary transmission of the primary transmission of a network station or a non-network station to a subscriber who resides outside the station's local market but within a community in which the signal has been determined by the Federal Communications Commission to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of the primary transmissions of network stations or non-network stations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under paragraph (1).

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

(3) SECONDARY TRANSMISSION OF LOW POWER PROGRAMMING.—

(A) IN GENERAL.—Subject to subparagraphs (B) through (D) of this paragraph, the statutory license provided under paragraph (1) shall apply to the secondary transmission by a satellite carrier of the primary transmission of a network station or a non-network station that is licensed as a low power television station, to a subscriber

who resides within the same local market as the station that originates the transmission.

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

(C) LIMITATION TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—Secondary transmissions by a satellite carrier provided for in subparagraph (A) may be made only to subscribers who receive secondary transmissions of primary transmissions from that satellite carrier pursuant to the statutory license in paragraph (1), and only in conformity with the requirements under section 340(b) of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Home Viewer Update and Reauthorization Act of 2009.

(D) NO IMPACT ON OTHER SECONDARY TRANSMISSIONS OBLIGATIONS.—A satellite carrier that makes secondary transmissions of a primary transmission of a low power television station under a statutory license provided under this section is not required, by reason of such secondary transmissions, to make any other secondary transmissions.

(b) REPORTING REQUIREMENTS.—

(1) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network **[**station a list identifying (by name in alphabetical order and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a).**]** *station—*

(A) a list identifying (by name in alphabetical order and street address, including county and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a); and

(B) a separate list, aggregated by designated market area (by name and address, including street or rural route number, city, State, and 9-digit zip code), which shall indicate those subscribers being served pursuant to subsection (a)(2), relating to significantly viewed stations.

(2) SUBSEQUENT LISTS.—After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the **[**network a list identifying (by name in alphabetical order and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.**]** *network—*

(A) a list identifying (by name in alphabetical order and street address, including county and 9-digit zip code) any subscribers who have been added or dropped as sub-

scribers since the last submission under this subsection; and

(B) a separate list, aggregated by designated market area (by name and street address, including street or rural route number, city, State, and 9-digit zip code), identifying those subscribers whose service pursuant to subsection (a)(2), relating to significantly viewed stations, has been added or dropped since the last submission under this subsection.

* * * * * * *

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

(1) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a television broadcast station to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under **[**section 119 or**]** *section 119, subject to statutory licensing by reason of subsection (a)(2)(A), or subject to* a private licensing agreement, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506, except that—

(A) * * *

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

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

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

(i) * * *

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

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

(i) * * *

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

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

ance with [section 119 or] *section 119, subsection (a)(2)(A), or* a private licensing agreement.

* * * * * * *

(j) DEFINITIONS.—In this section—

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

(2) LOCAL MARKET.—

[(A) IN GENERAL.—The term "local market", in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and—

[(i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and

[(ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.]

(A) IN GENERAL.—The term "local market" means—

(i) in the case of a television broadcast station that is not a low power television station, the designated market area in which such station is located, and—

(I) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and

(II) in the case of a noncommercial educational television broadcast station, any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station; and

(ii) in the case of a low power television broadcast station, the area that is both—

(I) within the designated market area in which such station is located; and

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

* * * * * * *

(3) NETWORK STATION; *NON-NETWORK STATION;* SATELLITE CARRIER; SECONDARY TRANSMISSION.—The terms "network station", *"non-network station",* "satellite carrier", and "secondary transmission" have the meanings given such terms under section 119(d).

[(4) SUBSCRIBER.—The term "subscriber" means a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.**]**

(4) SUBSCRIBER.—The term "subscriber" means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

* * * * * * *

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

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CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

* * * * * * *

§ 804. Institution of proceedings

(a) * * *

(b) TIMING OF PROCEEDINGS.—

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

(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year **[**2005**]** *2015*, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C), as the case may be. A petition for adjustment of rates established by section 111(d)(1)(B) as a result of

a change in the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

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COMMITTEE JURISDICTIONAL LETTERS

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

PETER T. KING, NEW YORK
RANKING MEMBER

One Hundred Eleventh Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

October 28, 2009

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
2138 Rayburn House Office Bldg.
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Conyers:

I write to you regarding H.R. 3570, the "Satellite Home Viewer Update and Reauthorization Act of 2009."

H.R. 3570 contains provisions that fall within the jurisdiction of the Committee on Homeland Security. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I will not seek a sequential referral of the bill. However, agreeing to waive consideration of this bill should not be construed as the Committee on Homeland Security waiving, altering, or otherwise affecting its jurisdiction over subject matters contained in the bill which fall within its Rule X jurisdiction.

Further, I request your support for the appointment of an appropriate number of Members of the Committee on Homeland Security to be named as conferees during any House-Senate conference convened on H.R. 3570 or similar legislation. I also ask that a copy of this letter and your response be included in the legislative report on H.R. 3570 and in the *Congressional Record* during floor consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

Bennie G. Thompson
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Peter T. King, Ranking Member
The Honorable John Sullivan, Parliamentarian

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951
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October 28, 2009

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman: Bennie

Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 3570, the Satellite Home Viewer Update and Reauthorization Act of 2009.

I appreciate your willingness to support expediting floor consideration of this important legislation today. I understand and agree that this is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support your request for an appropriate number of conferees.

Per your request, I will include a copy of your letter and this response in the Committee report, as well as in the Congressional Record in the debate on the bill. Thank you for your cooperation as we work towards enactment of this legislation.

Sincerely,

John Conyers, Jr.
Chairman

cc: The Honorable Lamar Smith
The Honorable Peter T. King

ADDITIONAL VIEWS

The principal purpose of H.R. 3570 is to extend for an additional five years the copyright compulsory license, which is codified in § 119 of title 17, United States Code, for the satellite retransmission of distant over-the-air television broadcast stations. The bill also contains amendments to the local satellite retransmission license, which is codified in § 122 of title 17, and the cable license, which is codified in § 111 of title 17. Together, these licenses provide statutory authority for satellite and cable providers to compel copyright owners to make available their television programs at below-market government-mandated rates.

A. EXPANSION AND PERPETUATION OF COMPULSORY LICENSES

> "The bill rests on the assumption that Congress should impose a compulsory license only when the marketplace cannot suffice." [1]

When the original Satellite Home Viewer Act was enacted, it was intended to provide a limited and temporary mechanism for clearing the rights to copyrighted television broadcast programming. The drafters' intent was to permit the license to expire once the satellite industry and copyright owners were able to negotiate the rights to network television programs in an efficient manner.

At present, it is estimated that approximately one million subscribers receive distant-network programming under the authority of the § 119 license. Despite the existence of these licenses, the cable and satellite industries remain free to enter into private negotiations with copyright owners and to compensate them for the use of their property under agreed-upon terms. Indeed, such agreements provide the basis for the overwhelming majority of programming made available to cable and satellite subscribers.

In several respects, H.R. 3570 resuscitates, broadens and extends the license rather than accelerating its demise. This is regrettable since the justification for establishing the license and abrogating the rights of copyright owners, i.e. that consumers would benefit from the nurturing of an effective competitor to cable providers, was satisfied long ago.

Today, the two national satellite carriers are the second and third largest multi-video program distributors (MVPD's) in the country. For years, they have been among the fastest growing and most profitable programming distributors as their technology and the efficiencies of scale they enjoy as "national" services have enabled them to take market-share from local and regional cable competitors.

The Satellite Home Viewer Act of 1988 was envisioned as necessary to spur the growth of a start-up direct-to-home satellite industry as an effective competitor to cable. Congress determined "that the public interest best will be served by creating an *interim* statutory solution that will allow carriers of broadcast signals to serve home satellite antenna users until marketplace solutions to this problem can be developed." [2] Congress was clear that it "does not favor interference with workable marketplace relationships for

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[1] H.R. Rep. No. 100–887, 100th Cong., 2d Sess., pt. 1, at 15.
[2] *Id.* at 13.

the transfer of exhibition rights in programming," and that by adopting a 6-year sunset on the new satellite compulsory license it expected that "the marketplace and competition will eventually serve the needs of home satellite dish owners." [3]

The Copyright Office was specifically tasked with the responsibility to evaluate the effect of these licenses and in the 2008 report mandated by the Satellite Home Viewer Extension and Reauthorization Act (SHVERA), found that both the cable and satellite industries "are no longer nascent entities in need of government subsidies through a statutory licensing system" and that they "have substantial market power and are able to negotiate private agreements with copyright owners." The Copyright Office concluded that the distant compulsory licenses "have interfered in the marketplace for programming and have unfairly lowered the rates paid to copyright owners" and that "[t]he time has come when private negotiations would serve the public interest, and interests of the creative community, better than either Section 111 or Section 119." The report's principal recommendation was "that Congress move toward abolishing Section 111 and Section 119 of the [Copyright] Act." That recommendation builds upon findings in earlier Copyright Office reports in 1997 and 1992 and a 1989 FCC report.

There is ample evidence to question whether satellite carriers continue to need the compulsory license to effectively compete and provide a "lifeline" network service to consumers. The license is of tremendous economic value to them in avoiding negotiations and the payment of market rates to copyright owners. Even if Congress was not prepared to allow the license to expire at the end of 2009, the decision to extend it by an additional five years without including meaningful steps to transition content owners and wean satellite carriers from the coerced subsidy they receive out of the pockets of creators was unfortunate. Congress should examine ways to replace the current system with an alternative that is fair to all copyright owners.

B. SUBORDINATING COPYRIGHT ENFORCEMENT TO THE COMMUNICATIONS ACT GOAL OF LOCAL-INTO-LOCAL SERVICE

During the 2004 reauthorization of the § 119 license, the Committee worked to diminish satellite carriers' continued reliance on the distant programming license, to provide for the evaluation of free-market alternatives, and to encourage the wider availability of local programming. As a result, satellite carriers today offer "local into local" service to approximately 97% of American households.

Nevertheless, there are some markets where satellite providers chose not to offer local service due to low population densities and/or business or economic decisions. A desire to ensure the availability of local service in these few remaining markets is cited as the motivation for section six of the bill, which orders a federal court to waive a permanent injunction against a satellite carrier, i.e. the DISH Network (aka EchoStar), which was found liable for willfully and systematically violating the rights of intellectual property owners in 2006.

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[3] *Id.* at 15.

In a remarkable, unanimous opinion by a panel of the Court of Appeals for the Eleventh Circuit in *CBS Broadcasting, Inc. v. EchoStar Communications Corp.,* the court wrote:

> *EchoStar has disregarded the limitations of its statutory license and sought to avoid its obligations under the [law] at every turn," and, "As if the magnitude of its ineligible subscriber base were insufficiently disconcerting, we have found no indication that EchoStar was ever interested in complying with the Act. Indeed,... we seem to have discerned a 'pattern' and 'practice' of violating the Act in every way imaginable.*

The Court of Appeals, upholding a determination by the district court, make clear that DISH Network's record of deliberately violating the rights of intellectual property owners and the clear requirements of copyright law was not inadvertent, insignificant, or a mere technical matter.[4]

The importance of intellectual property to the United States cannot be overstated. The most urgent matters that confront American innovators and creators today is how they can effectively protect their works from unlawful exploitation and enforce respect for their exclusive rights in an international marketplace.

While we share the goal of enabling all Americans to view local television programming via satellite, we question the proposition that the best available means to provide such an incentive is to relieve DISH Network of the foreseeable results of its persistent, determined, unlawful conduct. Rather than crafting a proposal designed to benefit one satellite carrier, a better approach would be to provide an incentive to both national satellite carriers to enter the remaining markets.

Such an approach would harness the forces of free-market competition and possess the virtues of protecting the integrity of the copyright law and respecting the judiciary's independence in administering, without prejudice, the laws Congress enacts to advance copyright owners' legitimate interests. When Congress weakens copyright protection, it strikes a dissonant note. Before enactment, SHVURA should incorporate provisions to enhance regard for intellectual property and further strengthen deterrence from future violations. To fail to do so places Congress in the position of absolving a notorious infringer for past violations in return for vague assurances of future respect for the rights of others.

C. EROSION OF "NO DISTANT WHERE LOCAL" AND COPYRIGHT EXCLUSIVITY PRINCIPLES

In addition to these concerns, the bill also re-defines a household capable of receiving a local network signal through the air as "unserved" if the signal is delivered in some cases via digital multicast technology. For more than two decades, the license has generally limited the abrogation of copyright owner's rights to only those circumstances where consumers are unable to receive a good quality signal through the air. This is commonly referred to as providing a "lifeline" service to consumers. When a household can re-

[4] The Eleventh Circuit found *"In an effort to dissuade the district court from issuing the original injunction in this case, EchoStar's CEO, Charles Ergen, made a formal pledge under penalty of perjury in September 1999. In that pledge, he promised . . . [to] terminate all illegal subscribers. . . . Contrary to Ergen's promise, the district court found no evidence that EchoStar terminated service to* any *of these subscribers for compliance-related purposes."*

ceive a good quality network signal through the air, there is no need for a lifeline and no apparent justification for permitting a satellite carrier to prefer an imported distant signal over the signal offered by a community-based local broadcaster.

In a sense, the inclusion of this provision erodes the "no distant where local" principle embodied in the 2004 Satellite Home Viewer Extension and Reauthorization Act (SHVERA). In essence, this language functions as a "no local where distant" provision because it provides authority to satellite providers to discriminate against the network television programming offered for free in a local community by over-the-air broadcast stations.

Indeed, the preference in section three of the bill may result in discouraging free over-the-air local broadcasters from affiliating with more than one network and developing a market-based solution to the "missing network affiliate" problem. This would limit the number of free network programming options available to consumers and, in effect, require consumers to subscribe to pay television to receive networks they might otherwise have been able to view for free.

We recognize that the bill mitigates one harm from this provision by limiting it to a period of three years but that limit may actually lead to a scenario in which some satellite subscribers could lose programming they will have become accustomed to receiving on January 1, 2013. It would be preferable to eliminate the provision in its entirety rather than create a new and perhaps vocal class of subscribers who could be urged by certain satellite providers to petition Congress to extend this provision as it approaches expiration.

Despite these concerns, the prospect of approximately one million American households being denied the ability to view network programming via satellite after December 31, 2009 made it advisable to advance the bill at full committee. It is our hope that the spirit of cooperation reflected at the markup will be extended to the continued attention, deliberation and improvement of the serious matters that remain to be appropriately addressed in SHVURA.

LAMAR SMITH.
HOWARD L. BERMAN.
HOWARD COBLE.
SHEILA JACKSON LEE.
DANIEL E. LUNGREN.
DARRELL E. ISSA.
ADAM B. SCHIFF.
J. RANDY FORBES.
LOUIE GOHMERT.
JASON CHAFFETZ.
TOM ROONEY.
GREGG HARPER.

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