

Calendar No. 422

103^D CONGRESS
2^D SESSION

S. 1485

A BILL

To extend certain satellite carrier compulsory
licenses, and for other purposes.

May 5 (legislative day, May 2), 1994
Reported with an amendment

Calendar No. 422

103^D CONGRESS
2^D SESSION

S. 1485

To extend certain satellite carrier compulsory licenses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 7), 1993

Mr. DECONCINI (for himself, Mr. LEAHY, Mr. HEFLIN, Mr. JEFFORDS, Mr. GREGG, Mr. HATCH, Ms. MOSELEY-BRAUN, Mr. THURMOND, Mr. CRAIG, and Mr. PRESSLER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 5 (legislative day, MAY 2), 1994

Reported by Mr. BIDEN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To extend certain satellite carrier compulsory licenses, and
for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 ~~This Act may be cited as the “Satellite Carrier Com-~~
5 ~~pulsory License Extension Act of 1993”.~~

1 **SEC. 2. STATUTORY LICENSE FOR SATELLITE CARRIERS.**

2 Section 119 of title 17, United States Code, is
3 amended—

4 (1) in subsection (a)(2)—

5 (A) in subparagraph (C)—

6 (i) by striking out “90 days after the
7 effective date of the Satellite Home Viewer
8 Act of 1988, or”;

9 (ii) by striking out “whichever is
10 later,”;

11 (iii) by inserting “name and” after
12 “identifying (by” each place it appears;
13 and

14 (iv) by striking out “, on or after the
15 effective date of the Satellite Home Viewer
16 Act of 1988,”; and

17 (B) by adding at the end thereof the fol-
18 lowing new subparagraph:

19 “(D) SAMPLE SITE MEASUREMENTS.—On
20 or before January 1, 1995, and thereafter on or
21 before each January 1, upon the request of a
22 network each satellite carrier referred to under
23 subparagraph (C) shall, jointly with that net-
24 work, conduct measurements of the reception of
25 over-the-air television broadcast signals of net-
26 work stations affiliated with that network. The

1 foregoing measurements shall be conducted
2 within the predicted Grade B contours of up to
3 5 network affiliated stations selected by the net-
4 work and taken at up to 20 subscriber house-
5 holds per affiliated station that are selected by
6 the network.”;

7 (2) in subsection (a)(5)(C) by striking out “the
8 Satellite Home Viewer Act of 1988” and inserting in
9 lieu thereof “this section”;

10 (3) in subsection (b)(1)(B)—

11 (A) in clause (i) by striking out “12 cents”
12 and inserting in lieu thereof “17.5 cents per
13 subscriber in the case of superstations not sub-
14 ject to syndicated exclusivity under the regula-
15 tions of the Federal Communications Commis-
16 sion, and 14 cents per subscriber in the case of
17 superstations subject to such syndicated exclu-
18 sivity”;

19 (B) in clause (ii) by striking out “3” and
20 inserting in lieu thereof “6”;

21 (4) in subsection (c)—

22 (A) in the heading by striking out “DE-
23 TERMINATION” and inserting in lieu thereof
24 “ADJUSTMENT”;

25 (B) in paragraph (1)—

1 (i) by striking out “December 31,
2 1992, unless”; and

3 (ii) by striking out “After that date,”
4 and inserting in lieu thereof “All adjust-
5 ments of”;

6 (C) in paragraph (2)—

7 (i) in subparagraph (A) by striking
8 out “July 1, 1991,” and inserting in lieu
9 thereof “January 1, 1996, and every 5
10 years thereafter,”; and

11 (ii) in subparagraph (D) by striking
12 out “until December 31, 1994” and insert-
13 ing in lieu thereof “in accordance with the
14 terms of the agreement”; and

15 (D) in paragraph (3)—

16 (i) in subparagraph (A) by striking
17 out “December 31, 1991,” and inserting in
18 lieu thereof “July 1, 1996, and every 5
19 years thereafter,”;

20 (ii) in subparagraph (E) by striking
21 out “60” and inserting in lieu thereof
22 “180”; and

23 (iii) in subparagraph (G) by striking
24 out “, or until December 31, 1994”; and

25 (5) in subsection (d)—

1 (A) by amending paragraph (2) to read as
2 follows:

3 “(2) NETWORK STATION.—The term ‘network
4 station’ means a television broadcast station, includ-
5 ing any translator station or terrestrial satellite sta-
6 tion that rebroadcasts all or substantially all of the
7 programming broadcast by a network station, that is
8 owned or operated by, or affiliated with, one or more
9 of the television networks in the United States which
10 offer an interconnected program service on a regular
11 basis for 15 or more hours per week to at least 25
12 of its affiliated television licensees in 10 or more
13 States.”; and

14 (B) in paragraph (6) by inserting “, and
15 operates in the Fixed Satellite Service under
16 part 25 of title 47 of the Code of Federal Regu-
17 lations or the Direct Broadcast Satellite Service
18 under part 100 of title 47 of the Code of Fed-
19 eral Regulations,” after “Commission”.

20 **SEC. 3. CABLE COMPULSORY LICENSE.**

21 Section 111(f) of title 17, United States Code, is
22 amended in the paragraph relating to the definition of
23 “cable system” by striking out “wires, cables” and insert-
24 ing in lieu thereof “wires, microwave cables, terrestrially
25 based transmission paths.”

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Satellite Compulsory*
 3 *License Extension Act of 1994”.*

4 **SEC. 2. STATUTORY LICENSE FOR SATELLITE CARRIERS.**

5 *Section 119 of title 17, United States Code, is amend-*
 6 *ed—*

7 *(1) in subsection (a)(2)(C)—*

8 *(A) by striking out “90 days after the effec-*
 9 *tive date of the Satellite Home Viewer Act of*
 10 *1988, or”;*

11 *(B) by striking out “whichever is later,”;*

12 *(C) by inserting “name and” after “identi-*
 13 *fying (by)” each place it appears; and*

14 *(D) by striking out “, on or after the effec-*
 15 *tive date of the Satellite Home Viewer Act of*
 16 *1988,”;*

17 *(2) in subsection (a)(5)—*

18 *(A) in subparagraph (C) by striking out*
 19 *“the Satellite Home Viewer Act of 1988” and in-*
 20 *serting in lieu thereof “this section”;* and

21 *(B) by adding at the end thereof the follow-*
 22 *ing new subparagraphs:*

23 *“(D) BURDEN OF PROOF.—In any action*
 24 *brought under this subsection, the satellite car-*
 25 *rier shall have the burden of proof (in the case*

1 *of a primary transmission by a network station)*
2 *that a subscriber is an unserved household.*

3 “(E) *SIGNAL INTENSITY MEASUREMENT;*
4 *LOSER PAYS.—*

5 “(i) *GRADE B CONTOUR.—(I) Within*
6 *the Grade B Contour, upon a challenge by*
7 *a network affiliate regarding whether a sub-*
8 *scriber is an unserved household, the sat-*
9 *ellite carrier shall—*

10 “(aa) *deauthorize service to that*
11 *household; or*

12 “(bb) *conduct a measurement of*
13 *the signal intensity of the subscriber’s*
14 *household to determine whether the*
15 *household is unserved.*

16 “(II) *If the carrier conducts a signal*
17 *intensity measurement under subclause (I)*
18 *and the measurement indicates that—*

19 “(aa) *the household is not an*
20 *unserved household, the carrier shall*
21 *immediately deauthorize the service to*
22 *that household; or*

23 “(bb) *the household is an unserved*
24 *household, the affiliate challenging the*
25 *service shall reimburse the carrier for*

1 *the costs of the signal measurement,*
2 *within 45 days after receipt of the*
3 *measurement results and a statement*
4 *of the costs.*

5 “(III)(aa) *Notwithstanding subclause*
6 *(II), a carrier may not be required to test*
7 *in excess of 5 percent of the subscribers that*
8 *have subscribed to service before the effective*
9 *date of the Satellite Compulsory License*
10 *Extension Act of 1994, within any market*
11 *during a calendar year.*

12 “(bb) *If a network affiliate challenges*
13 *whether a subscriber is an unserved house-*
14 *hold in excess of the 5 percent of the sub-*
15 *scribers within any market, the affiliate*
16 *may conduct its own signal intensity meas-*
17 *urement. If such measurement indicates*
18 *that the household is not an unserved house-*
19 *hold, the carrier shall immediately de-*
20 *authorize service to that household and re-*
21 *imburse the affiliate, within 45 days after*
22 *receipt of the measurement and a statement*
23 *of costs.*

24 “(ii) *OUTSIDE THE GRADE B CON-*
25 *TOUR.—(I) Outside the Grade B Contour, if*

1 *a network affiliate challenges whether a sub-*
2 *scriber is an unserved household the affiliate*
3 *shall conduct a signal intensity measure-*
4 *ment of the subscriber's household to deter-*
5 *mine whether the household is unserved.*

6 “(II) *If the affiliate conducts a signal*
7 *intensity measurement under subclause (I)*
8 *and the measurement indicates that—*

9 “(aa) *the household is not an*
10 *unserved household, the affiliate shall*
11 *forward the results to the carrier who*
12 *shall immediately deauthorize service*
13 *to the household, and reimburse the af-*
14 *filiate within 45 days after receipt of*
15 *the results and a statement of the costs;*
16 *or*

17 “(bb) *the household is an unserved*
18 *household, the affiliate shall pay the*
19 *costs of the measurement.*

20 “(iii) *RECOVERY OF MEASUREMENT*
21 *COSTS IN A CIVIL ACTION.—In any civil ac-*
22 *tion filed relating to the eligibility of sub-*
23 *scribing households, a challenging affiliate*
24 *shall reimburse a carrier for any signal in-*

1 *tensity measurement that indicates the*
2 *household is an unserved household.”;*

3 (3) *in subsection (b)(1)(B)—*

4 (A) *in clause (i) by striking out “12 cents”*
5 *and inserting in lieu thereof “17.5 cents per sub-*
6 *scriber in the case of superstations not subject to*
7 *syndicated exclusivity under the regulations of*
8 *the Federal Communications Commission, and*
9 *14 cents per subscriber in the case of*
10 *superstations subject to such syndicated exclusiv-*
11 *ity”;* *and*

12 (B) *in clause (ii) by striking out “3” and*
13 *inserting in lieu thereof “6”;*

14 (4) *in subsection (c)—*

15 (A) *in the heading for paragraph (1) by*
16 *striking out “DETERMINATION” and inserting in*
17 *lieu thereof “ADJUSTMENT”;*

18 (B) *in paragraph (1)—*

19 (i) *by striking out “December 31, 1992,*
20 *unless”;* *and*

21 (ii) *by striking out “After that date,”*
22 *and inserting in lieu thereof “All adjust-*
23 *ments of”;*

24 (C) *in paragraph (2)—*

1 (i) in subparagraph (A) by striking
2 out “July 1, 1991,” and inserting in lieu
3 thereof “January 1, 1996,”; and

4 (ii) in subparagraph (D) by striking
5 out “until December 31, 1994” and insert-
6 ing in lieu thereof “in accordance with the
7 terms of the agreement”; and

8 (D) in paragraph (3)(A) by striking out
9 “December 31, 1991,” and inserting in lieu
10 thereof “July 1, 1996,”; and

11 (5) in subsection (d)—

12 (A) by amending paragraph (2) to read as
13 follows:

14 “(2) NETWORK STATION.—The term ‘network
15 station’ means—

16 “(A) a television broadcast station, includ-
17 ing any translator station or terrestrial satellite
18 station that rebroadcasts all or substantially all
19 of the programming broadcast by a network sta-
20 tion, that is owned or operated by, or affiliated
21 with, one or more of the television networks in
22 the United States which offer an interconnected
23 program service on a regular basis for 15 or
24 more hours per week to at least 25 of its affili-
25 ated television licensees in 10 or more States; or

1 “(B) any noncommercial educational sta-
2 tion, as defined in section 111(f) of this title,
3 that is a member of the public broadcasting serv-
4 ice.”; and

5 (B) in paragraph (6) by inserting “and op-
6 erates in the Fixed Satellite Service under part
7 25 of title 47 of the Code of Federal Regulations
8 or the Direct Broadcast Satellite Service under
9 part 100 of title 47 of the Code of Federal Regu-
10 lations,” after “Commission,”.

11 **SEC. 3. CABLE COMPULSORY LICENSE.**

12 Section 111(f) of title 17, United States Code, is
13 amended—

14 (1) in the paragraph relating to the definition of
15 “cable system” by striking out “wires, cables” and in-
16 serting in lieu thereof “wires, microwave, cables”; and

17 (2) in the paragraph relating to the definition of
18 “local service area of a primary transmitter”—

19 (A) by striking out “comprises the area”
20 and inserting in lieu thereof “comprises either
21 the area”; and

22 (B) by inserting after “April 15, 1976,” the
23 following: “or such station’s television market as
24 defined in section 76.55(e) of title 47, Code of
25 Federal Regulations (as in effect on September

1 18, 1993), or any subsequent modifications to
2 such television market made pursuant to section
3 76.55(e) or 76.59 of title 47 of the Code of Fed-
4 eral Regulations.”.

5 **SEC. 4. TERMINATION.**

6 (a) *EXPIRATION OF AMENDMENTS.*—Section 119 of
7 title 17, United States Code, as amended by section 2 of
8 this Act, ceases to be effective on December 31, 1999.

9 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—Sec-
10 tion 207 of the Satellite Home Viewer Act of 1988 (17
11 U.S.C. 119 note) is repealed.

12 **SEC. 5. EFFECTIVE DATE.**

13 (a) *IN GENERAL.*—Except as provided under sub-
14 section (b), the provisions of this Act and amendments made
15 by this Act shall take effect on the date of the enactment
16 of this Act.

17 (b) *BURDEN OF PROOF PROVISIONS.*—The provisions
18 of section 119(a)(5)(D) of title 17, United States Code, (as
19 added by section 2(2)(B) of this Act) relating to the burden
20 of proof of satellite carriers, shall take effect on January
21 1, 1997, with respect to civil actions relating to the eligi-
22 bility of subscribers who subscribed to service as an
23 unserved household before the date of the enactment of this
24 Act.