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COPYRIGHT COMPULSORY LICENSE IMPROVEMENT ACT OF 1998

SEPTEMBER 10, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 2921]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2921) to amend the Communications Act of 1934 to require the Federal Communications Commission to conduct an inquiry into the impediments to the development of competition in the market for multichannel video programming distribution, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike section 4, redesignate section 3 as section 7, and strike sections 1 and 2 and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Compulsory License Improvement Act of 1998."

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

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

"§ 122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets.

"(a) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE CARRIERS.—A secondary transmission into the local market of a television broadcast station of a primary transmission made by that station and embodying the performance or display of a work shall be subject to statutory licensing under this section if—

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

"(2) the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission; and

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

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

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

"(b) REPORTING REQUIREMENTS.—

"(1) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to 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 and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission.

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

"(3) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subsection may be used only for the purposes of monitoring compliance by the satellite carrier with this section.

"(4) REQUIREMENTS OF NETWORKS.—The submission requirements of this subsection shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions

are to be made. The Register shall maintain for public inspection a file of all such documents.

"(c) NO ROYALTY FEE REQUIRED.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall have no obligation to pay royalties under this title for such secondary transmissions.

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

"(e) WILLFUL ALTERATIONS.—Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

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

"(1) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119, is actionable as an act on infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

"(A) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber; and

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

"(2) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of secondarily transmitting to the public a primary transmission made by a television broadcast station and embodying a performance or display of a work to subscribers who do not reside in that station's local market, and are not subject to statutory licensing

under section 119, then in addition to the remedies set forth in paragraph (1)—

"(A) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of any television broadcast station, and the court may order statutory damages not exceeding $250,000 for each 6-month period during which the pattern or practice was carried out; 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 shall order a permanent injunction barring the secondary transmission in that locality or region by the satellite carrier of the primary transmissions of any television broadcast station, and the court may order statutory damages not exceeding $250,000 for each 6-month period during which the pattern or practice was carried out.

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

"(h) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to locations in the United States.

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

"(j) STATUTORY LICENSE CONTINGENT ON COMPLIANCE WITH SATELLITE MUST-CARRY REQUIREMENTS.—Notwithstanding subsection (a), the willful or repeated secondary transmission to the public into the local market of a television broadcast station by a satellite carrier of a primary transmission made by that 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, if at the time of such transmission the satellite carrier is not in compliance with the requirements of subsection (k) to carry television stations.

"(k) CARRIAGE OBLIGATIONS.—

"(1) IN GENERAL.—Each satellite carrier providing secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request all television broadcast stations located within that local market, subject to subsection (l), except that the carriage obligations of this subsection shall apply only to satellite carriers that retransmit the signals of broadcast television stations pursuant to the statutory license

under this section. Carriage of additional broadcast stations within that local market shall be at the discretion of the satellite carrier, subject to subsection (l). The satellite carrier shall carry the entire signal of each local television station carried pursuant to this subsection.

"(2) DUPLICATION NOT REQUIRED.—Notwithstanding paragraph (1), a satellite carrier shall not be required to carry upon request the signal of any local television broadcast station that substantially duplicates the signal of another television broadcast station within the same local market which is secondarily transmitted by the satellite carrier, or to carry upon request the signals of more than one local television broadcast station in a single local market that is affiliated with a particular broadcast network (as the term 'broadcast network' is defined by the Register of Copyrights by regulation).

"(3) CARRIAGE OF ALL LOCAL TELEVISION STATIONS ON CONTIGUOUS CHANNELS.—All local television broadcast stations retransmitted by a satellite carrier to subscribers in the stations' local markets shall be made available to subscribers in their local markets on contiguous channels and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

"(4) COMPENSATION FOR CARRIAGE.—A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this subsection or for channel positioning rights provided to such stations under this subsection, except that any such station may be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier.

"(5) REMEDIES.—

"(A) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this subsection, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier is obligated to carry upon request the signal of such station or has otherwise failed to comply with other requirements of this subsection. The satellite carrier shall, within 30 days of such written notification, respond in writing to such notification and either begin carrying the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with other requirements of this subsection, as the case may be. A local television broadcast station that is denied carriage in accordance with this subsection by a satellite carrier or is otherwise harmed by a response by a satellite carrier that it is in compliance with other requirements of this subsection may obtain review of such denial or response by filing a complaint with the Register of Copyrights. Such complaint shall allege the manner in which such satellite

carrier has failed to meet its obligations and the basis for such allegations.

"(B) OPPORTUNITY TO RESPOND.—The Register shall afford the satellite carrier against which a complaint is filed under subparagraph (A) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this subsection.

"(C) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed under subparagraph (A), the Register shall determine whether the satellite carrier has met its obligations under this chapter. If the Register determines that the satellite carrier has failed to meet such obligations, the Register shall order the satellite carrier, in the case of an obligation to carry a station, to begin carriage of the station and to continue such carriage for at least 12 months, or, in the case of the failure to meet other obligations under this subsection, shall take other appropriate remedial action. If the Register determines that the satellite carrier has fully met the requirements of this chapter, the Register shall dismiss the complaint.

"(6) REGULATIONS BY REGISTER OF COPYRIGHTS.—Within 180 days after the effective date of this section, the Register of Copyrights shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this subsection.

"(l) RETRANSMISSION CONSENT.—

"(1) RETRANSMISSION CONSENT REQUIRED.—No satellite carrier shall retransmit the signal of a television broadcast station, or any part thereof, except—

"(A) with the express authority of the station; or

"(B) pursuant to subsection (k) of this section, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such subsection.

"(2) EXCLUSIONS.—The provisions of this subsection shall not apply to—

"(A) retransmission of the signal of a noncommercial television broadcast station;

"(B) retransmission of the signal of a superstation by a satellite carrier to subscribers for private home viewing if the originating station was a superstation on May 1, 1991, and on December 31, 1997, such station was a network station and its signal was retransmitted by a satellite carrier directly to at least 500,000 subscribers for private home viewing; or

"(C) retransmission of the signal of a television broadcast station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household.

"(3) PROMULGATION OF REGULATIONS.—Within 45 days after the effective date of the Copyright Compulsory License Improvement Act of 1998, the Register of Copyrights shall commence a rulemaking proceeding to promulgate regulations governing the exercise by television broadcast stations of the right

to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitation contained in paragraph (2). Such regulations shall establish election time periods that correspond with those regulations adopted under subparagraph (B) of section 325(b)(3) of the Communications Act of 1934. The rulemaking shall be completed within 180 days after the effective date of the Copyright Compulsory License Improvement Act of 1998.

"(m) DEFINITIONS.—In this section:

"(1) DESIGNATED MARKET AREA.—The term 'designated market area' means a designated market area, as determined by the Nielsen Media Research and published in the DMA Market and Demographic Report.

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

"(3) LOCAL MARKET.—(A) In the case of both commercial and noncommercial television broadcast stations, the term 'local market' means the designated market area in which a station is located.

"(B) 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.

"(C) Following a written request, the Register of Copyrights may, with respect to a particular local market, include additional commercial television broadcast stations to better effectuate the purposes of this section. In considering such a request, the Register shall primarily consider evidence of historic viewing patterns within the local market concerned. The Register may determine that particular commercial television broadcast stations serve more than one local market

"(D) In the case of a noncommercial educational television broadcast station, the local market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

"(4) LOCAL RECEIVE FACILITY.—The term 'local receive facility' means the reception point in the local market of a television broadcast station or in a market contiguous to the local market of a television broadcast station at which a satellite carrier initially receives the signal of the station for purposes of transmission of such signals to the facility which uplinks the signals to the carrier's satellites for secondary transmission to the satellite carrier's subscribers. The designation of a local receive facility by a satellite carrier shall not be used to undermine or evade the carriage requirements imposed by this chapter.

"(5) SUBSCRIBER.—The term 'subscriber' means an entity that receives a secondary transmission service by means of a secondary transmission from a satellite and pays a fee for the

service, directly or indirectly, to the satellite carrier or to a distributor.

"(6) TELEVISION BROADCAST STATION.—The term 'television broadcast station' means an over-the-air commercial or noncommercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations, as such regulations are in effect on August 4, 1998, and as they may be amended thereafter.

"(7) SATELLITE CARRIER, ETC.—The terms 'private home viewing', 'satellite carrier', 'secondary transmission', 'superstation', and 'unserved household' have the meanings given such terms in section 119(d).".

(b) STANDING TO SUE FOR SATELLITE CARRIER FAILURE TO CARRY ALL LOCAL TELEVISION BROADCAST STATIONS.—Section 501 of title 17, United States Code, is amended by adding at the end the following:

"(f) With respect to any satellite carrier making a secondary transmission of a primary transmission made by a television broadcast station to subscribers located within the local market of such station that fails to carry all television broadcast stations located within that market as required by section 122, any station that has not given retransmission consent and is improperly denied carriage shall have standing to bring a copyright infringement action with respect to the unauthorized performance or display of works embodied in the secondary transmission.

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

(c) ADDITIONAL REMEDIES FOR FAILURE BY SATELLITE CARRIERS TO CARRY ALL LOCAL TELEVISION BROADCAST STATIONS.—Chapter 5 of title 17, United States Code, is amended by adding at the end the following:

"§ 512. Remedies for failure by satellite carriers to carry all local broadcast stations

"(a) In any action filed pursuant to section 122(j), the following remedies shall be available:

"(1) If the action is brought by a party identified in subsection (b) of section 501, the remedies provided by sections 502 through 505, and the remedy provided by subsection (b) of this section.

"(2) If an action is brought by a television broadcast station identified in subsection (f) of section 501, the remedies provided by sections 502 and 505, together with any actual damages suffered by such station as a result of the infringement, and the remedy provided by subsection (b) of this section.

"(b) In any action filed pursuant to section 122(j) of this title in which carriage of a television broadcast station has been improperly denied, the court shall decree that the satellite carrier is deprived of the statutory license under section 122 of this title until carriage of such station has been restored.".

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

"122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets.".

(2) The table of sections for chapter 5 of title 17, United States Code, is amended by adding after the item relating to section 511 the following:

"512. Remedies for failure by satellite carriers to carry all local broadcast stations.".

SEC. 3. EXTENSION OF APPLICABILITY OF SECTION 119 OF TITLE 17, UNITED STATES CODE.

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

SEC. 4. UNSERVED HOUSEHOLDS.

Section 119(d)(10) of title 17, United States Code, is amended to read as follows:

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

SEC. 5. PUBLIC BROADCASTING SERVICE SATELLITE FEED; APPLICATION OF FEDERAL COMMUNICATIONS COMMISSION REGULATIONS.

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

(1) in paragraph (1)—

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

(B) by inserting "or by the Public Broadcasting Service satellite feed" after "superstation"; and

(C) by inserting "is permissible under the rules, regulations, or authorizations of the Federal Communications Commission," after "satellite carrier to the public for private home viewing,"; and

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

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

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

SEC. 6. TEMPORARY STAY OF SATELLITE ROYALTY FEE INCREASE.

Notwithstanding any other provision of law, the Copyright Office shall not before December 31, 1999, implement, enforce, collect, or award copyright royalty fees pursuant to the decision of the Librarian of Congress on October 28, 1997, which established a royalty fee of $0.27 per subscriber per month for the retransmission of distant broadcast signals by satellite carriers, and no obligation or liability for copyright royalty fees shall accrue before December 31, 1999, pursuant to that decision. This section shall not affect implementing, enforcing, collecting, or awarding copyright royalty fees pursuant to the royalty fee structure affected by the decision, as it existed prior to October 28, 1997.

Amend the title so as to read:

A bill to provide for statutory copyright licensing of secondary transmissions by satellite carriers of primary transmissions of television broadcast stations within the local markets of such stations, and for other purposes.

PURPOSE AND SUMMARY

The purpose of H.R. 2921, the "Copyright Compulsory License Improvement Act," is to improve the current copyright compulsory license applied to satellite carriers of copyrighted programming contained on television broadcast signals, and to provide for a new copyright compulsory license that will allow satellite carriers to retransmit a local broadcast signal into the same local market from which it originated for no copyright fee. This will essentially provide to satellite carriers the same opportunities as their cable competitors while also applying many of the same obligations. This parity will lead to increased exposure of copyrighted programming to consumers, resulting in lower prices for cable and satellite services because such services will have to compete with each other to deliver desired programming directly to American homes.

BACKGROUND AND THE NEED FOR LEGISLATION

CABLE: § 111 of the copyright act

National network or local television stations negotiate privately with copyright owners, who possess the exclusive property right to authorize the exploitation of content contained in their television programs for "program rights"—the authority to broadcast publicly their programs over signals transmitted by the broadcaster. Payment is made for such program rights by the broadcaster directly to the copyright owner.

In 1976, with the rise of cable as an alternative means of multichannel video delivery, Congress feared that the infant cable industry would not have the financial ability to negotiate privately with copyright owners for program rights to viewers not covered by fees paid for such program rights by broadcasters. In order to encourage the rise of cable as a viable video delivery system for consumers, Congress bestowed on that industry, in the Copyright Act of 1976, a permanent compulsory license.[1]

This license compels copyright owners to allow the "retransmission" of a local television signal into the same local market from which it originated, free of charge. Copyright owners do not receive compensation for the retransmission of a local signal back into the same local market because they have already been fully compensated through program rights fees paid by broadcasters for such programming to reach viewers in one manner or another in that market.

The cable compulsory license also compels copyright owners to allow the retransmission of television stations outside of a local market (a distant signal) at a government-set rate. Copyright owners are entitled to compensation for distant signals since these signals will reach viewers not covered by a program rights fee paid by a broadcaster for viewers in a certain market.

The fees cable operators pay for distant signal retransmission are paid to the copyright owners through a distribution proceeding conducted under the auspices of the United States Copyright Office.[2]

SATELLITE: § 119 of the copyright act

During the mid-1980's, the direct-to-home satellite industry began to offer an increasingly popular alternative for the delivery of multichannel video. Congress grew concerned, however, that satellite, still in its infancy like cable before it, might lack the financial ability to negotiate privately with copyright owners for the necessary program rights (to viewers not covered by fees paid for such program rights by broadcasters). To expedite the viability of satellite as an alternative video delivery system for consumers, and to clarify the application of the §111 license, Congress created a separate compulsory license when it enacted the Satellite Home Viewer Act (SHVA) of 1988.[3]

The license requires copyright owners to allow the retransmission of television stations outside of a local market (a distant signal to "unserved households") at a government-set rate. No license was created to compel the retransmission of local signals into local markets because, at the time, satellite carriers were not capable technologically of providing such retransmissions. Under the license, copyright owners are entitled to compensation for distant signals retransmitted to "unserved households" since the signal will reach viewers not covered by a program-rights fee paid by a broadcaster for viewers in a certain market.

The SHVA further awarded satellite carriers the right to retransmit a local television signal to unserved households without the broadcaster's permission and without payment to the broadcaster.

[1] 17 U.S.C. § 111, et seq.
[2] See 17 U.S.C. §§ 801–803.
[3] 17 U.S.C. § 119.

Once again, this subsidy was considered necessary to stimulate the growth of the direct-to-home satellite industry.

It is similar in many respects to the cable license. Section 119 allows a satellite carrier to retransmit distant network broadcast signals to "unserved" subscribers for private home-viewing upon semiannual submissions of statements of account and royalty fees to the Copyright Office. Unlike cable royalties, however, §119 royalties are calculated on a flat, per subscriber, per signal, monthly fee basis. Television signals are divided into two categories—superstation signals (commercial independent stations) and network signals (commercial network stations and noncommercial educational stations)—each with its own attendant royalty rates. Satellite carriers simply multiply the respective royalty rate for each signal they carry by the number of subscribers who receive the signal.

In 1991, an arbitral panel increased the rates to the following levels: $0.175 cents per subscriber per month for any superstation signal subject to syndex rules; $0.14 cents per subscriber per month for any superstation signal not subject to syndex rules; and $0.06 cents per subscriber per month for any network signal.

Although a satellite carrier may retransmit a superstation signal to subscribers anywhere in the United States, the §119 license imposes a constraint on the retransmission of network signals to certain households. As noted, a satellite carrier may only retransmit network signals to "unserved households." Section 119(d)(10) defines such a household as one ". . . that cannot receive, through the use of a conventional outdoor rooftop . . . antenna, an over-the-air signal of grade B intensity . . ., and [which has not received a cable signal within the previous 90 days.]" The broadcast and satellite industries also refer to those locations in which "unserved households" are situated as "white areas."

Once the SHVA expired in 1994, Congress reauthorized it for another five years. While the basic framework of the 1988 Act remained in place, two significant changes were made: the first involved the creation of a temporary mechanism to allow broadcasters to target impermissible service of network signals in "white areas," which expired at the end of calendar year 1996. The other reform concerned the application of a fair market value standard for adjusting royalty rates under the license.

In contrast to the §111 compulsory license, which has no expiration date, the SHVA of 1994 and the §119 license will expire, in the absence of reauthorization, at the end of calendar year 1999.

THE COPYRIGHT OFFICE REVIEW OF THE LICENSING REGIMES

The Copyright Office conducted a review of the copyright licensing regimes governing the compulsory licenses, and released its findings on August 1, 1997. The report contains, *inter alia,* the following findings and recommendations:

1. *Perpetuation of Both Licenses.* Ideally, the Copyright Office believes §111 and §119 should be repealed. Practically speaking, however, many commercial arrangements and investments are made in reliance upon their existence; and critics have yet to identify a workable alternative in their absence. Therefore, as long as the cable license exists indefinitely, so should the satellite license be extended indefinitely.

2. *Harmonization of Both Licenses.* Differences between the two should be removed where possible, but there is no practical benefit in terms of public administration to harmonize both into one license.

3. *Structure of Cable Rates.* (a) Amend §111 rates so that they reflect fair market value, the best alternative being a flat, per subscriber, per signal fee. (b) Eliminate reference to the 1976 must-carry rules and define a "local" market by its area of dominant influence (ADI). (c) Define Public Broadcasting Service (PBS) markets by a 50-mile radius from a PBS station's community of license.

4. *Application of Cable License to Open Video Systems (OVS) Operations.* Because of its similarity to cable, any OVS should be eligible for the §111 license.

5. *Passive Carrier Exemption.* Section 111(a)(3) exempts a carrier from liability (copyright infringement) if it has ". . . no direct or indirect control over the content of selection . . ." of the broadcast signal transmitted or the recipients of the signal (and so long as it only provides the hardware of transmission ". . . for the use of others. . . ." The Copyright Office advocates that an OVS carrier receive the benefit of the exemption only when the operator retransmits broadcast signals for an unaffiliated programmer and no broadcast stations invoke their must-carry rights.

6. *Section 119 and "White Areas."* (a) The Copyright Office believes that Congress should eventually allow the retransmission of signals generated by all television broadcast stations, commercial as well as PBS, within each station's local market. (b) Until such time, eliminate the Grade B contour standard and substitute a "red zone/green zone" approach; that is, a subscriber living within a "red zone" (a broadcast station's local market) could not receive a distant signal unless he or she paid a surcharge distributed by the Copyright Office to affiliates.

7. *Treatment of Network Signals.* (a) Equalize rates for the retransmission of network as well as independent (superstation) signals. (b) Owners of network programming should receive cable royalties in addition to satellite royalties.

8. *Payment for Local Signals.* The Copyright Office advocates retaining payment of a minimum copyright royalty fee for cable systems.

"WHITE AREA" LITIGATION

As discussed *supra,* the SHVA of 1994 created a new and temporary mechanism to address the issue of retransmission of network signals to unserved households. The statute authorized a network affiliate to issue written challenges to a satellite carrier for any subscribers that the affiliate believed were not entitled to received network carriage from the carrier. If a given subscriber resided in the Grade B contour of the challenging station (generally thought of as the station's over-the-air service area), the satellite carrier, upon receiving the challenge, had the option of either turning off the subscriber's service of that network, or conducting a measurement of the intensity of the signal arriving at the subscriber's rooftop antenna. If the measurement indicated that the subscriber did receive a signal of Grade B intensity, then the carrier would pay for the test and immediately terminate service of that

signal. If the test revealed the subscriber did not receive a Grade B signal, however, the service would continue and the challenging broadcast station would pay for the test.[4]

The application of this mechanism was highly unsatisfactory. Many challenges were issued, but few tests were conducted. Satellite carriers complained that the tests were too costly, and both sides argued over the mechanics and parameters of an "appropriate" test (the broadcasters advocating the Grade B contour standard, the carriers a "picture quality" standard). Broadcast affiliates began suing the largest carrier, Primetime 24, in different venues around the country, and have urged Congress not to extend the §119 license as a result of the satellite industry's "bad faith" in "refusing" to abide by the terms of the SHVA of 1994. Primetime 24 responded by urging its subscribers to contact Congress to "fix" the law.

There have been significant developments of late in two of the lawsuits brought against Primetime 24 and its agents. In the first case, the U.S. District court for the Southern District of Florida granted a motion for preliminary injunction at the request of plaintiffs CBS and FOX against Primetime 24. The Injunction will result in Primetime 24 discontinuing nationwide the importation of CBS and FOX distant signals to customers who do not live in an "unserved household" within the Grade B as determined by Longley-Rice propagation maps. The trial of this case is proceeding as of the filing of this Report.

Additionally, on August 19, 1998, the U.S. District court for the Middle District of North Carolina issued a permanent injunction in favor of ABC against Primetime 24 finding that Primetime 24 engaged in a willful and repeated pattern and practice of transmitting ABC programming to households ineligible for such service under the SHVA. The decision will result in a discontinuation of any distant ABC signals to Primetime 24 customers within the local market of the Raleigh, North Carolina, ABC affiliate station (WTVD).

Lastly, on July 14, 1998, the National Rural Telecommunications Cooperative petitioned the Federal Communications Commission (FCC) to initiate a rulemaking procedure aimed at establishing a new definition of an over-the-air signal of Grade B intensity. The Commission has not yet taken any action. On August 18, 1998, Echostar Communications Corporation filed a similar petition with the FCC.

"SPOT-BEAMING"

Echostar Communications Corporation, Capital Broadcasting Company, and certain other satellite companies hope to solve the "white area" problem while providing competition to the cable industry. They wish to "spot-beam" signals, including local broadcast signals, to households. If feasible, this breakthrough would enable a satellite carrier to uplink a local broadcast signal and retransmit it directly (and with perfect clarity) to the affected broadcaster's service area. As a result, satellite subscribers would receive local broadcasts of network programming, thereby resolving the "white

[4] 17 U.S.C. §119(a)(8).

area" controversy between the cable and broadcast industries since satellite, like cable, could deliver local signals through its service to the intended market. Unlike cable, however, satellite companies do not operate with a license which incorporates the relevant regulating provisions. A change to copyright law would be necessary to clarify that such local-to-local retransmission is permissible.

The cable industry argues that this technology is as yet unperfected, and that roughly one-quarter of the entire country would still be unserved by the technology due to limited satellite space, assuming that Congress amends the Copyright Act to authorize the activity. In addition, cable maintains that the same tax and regulatory constraints placed on its operations should also apply to those of satellite if both industries are permitted to offer local-to-local service.

On December 23, 1997, Echostar Communications Corporation filed a petition with the Copyright Office requesting that the Office issue a rule concerning whether a satellite carrier may retransmit network station signals to households within a station's local market area. The Copyright Office has granted that request and has begun a rulemaking proceeding. Comments on the proposed rule were to be submitted to the Copyright Office by February 28, 1998. That same month, Echostar began to offer local-to-local service in six markets, with a goal of expanding to 20 markets nationwide.

ARBITRAL DECISION TO INCREASE SATELLITE FEES

Originally, the former Copyright Royalty Tribunal (CRT) distributed to copyright owners the royalties received by the Copyright Office and deposited the royalty fees with the U.S. Treasury in interest-bearing accounts, pending their distribution. In 1993 Congress abolished the CRT, however, and replaced it with a system of ad hoc copyright arbitration panels (CARPs), administered by the Copyright Office under the direction of the Librarian of Congress.[5]

The SHVA of 1988 established initial rates for the satellite compulsory license, which were later adjusted by the old CRT in 1992. In passing the SHVA of 1994, however, Congress directed future CARPs to adjust satellite rates based on a fair market value standard.

A recently-convened CARP published its determination pursuant to this new standard on August 28, 1997, which raises superstation signal rates (currently $0.175 cents per subscriber, per month) and network signal rates (currently $0.06 per subscriber, per month) to $0.27 cents a piece, and applied the increases retroactively to July 1, 1997. The Librarian affirmed the decision but chose to apply the changes prospectively; they took effect on January 1, 1998.

The practical consequence of the decision means that, as of January 1, 1998, satellite broadcast companies must pay $0.27 per subscriber, per month, per broadcast signal (superstation and distant network signals alike). Prior to the decision, satellite broadcast companies paid $0.06 per subscriber, per month for each distant network signal, $0.14 per subscriber, per month for each "syndexproof" superstation signal, and $0.175 per subscriber, per month for

[5] See *supra* note 2.

each "non-syndex proof" superstation signal. The first copyright fee payment by the satellite companies under the new rate was due on August 1, 1998.

Satellite carriers and distributors are irate over the decision. They fear that if they raise subscriber rates to compensate for the CARP decision that customers will drop satellite service, or switch to cable. In addition to hurting those businesses affected by rate proceedings under § 119, these same organizations argue that cable will face even less competition in the foreseeable future.

NEED FOR THE LEGISLATION

Although the cable and satellite compulsory licenses have similarities, there are important differences which prevent satellite from becoming a true competitor to cable. Technology has changed significantly since the cable and satellite compulsory licenses were created. In a very short time, satellite carriers will be able to bring local programming through their services to viewers of that local market. The goal of this legislation is to facilitate such a shift to local service, and contains the following changes in furtherance of that end and to the benefit of consumers:

1. Provisions which will allow satellite carriers to retransmit local network signals into the local market of that station via satellite. (Pursuant to this reform, those companies which offer local-to-local service must carry all local broadcast stations within a given market.);
2. A provision which will extend the satellite compulsory license for five years;
3. A provision which lifts the current prohibition which prevents a qualified new subscriber from receiving network signals for 90 days;
4. A provision which allows satellite carriers to rebroadcast a national Public Broadcasting Services (PBS) signal; and
5. A provision which places a moratorium on the increase in copyright fees to be paid by satellite carriers until December 31, 1999, matching a provision adopted by the Subcommittee on Courts and Intellectual Property.

HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held two days of oversight hearings on issues addressed in H.R. 2921 on October 30, 1997, and February 4, 1998. Testimony was received from 19 witnesses representing 17 public and private organizations

COMMITTEE CONSIDERATION

On August 4, 1998, the Committee met in open session and ordered reported favorably the bill H.R. 2921 with amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activi-

ties 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.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budget authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2921, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 4, 1998.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2921, the Copyright Compulsory License Improvement Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), Hester Grippando (for revenues), Pepper Santalucia (for the state and local impact), and Jean Wooster (for the private-sector impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 2921—Copyright Compulsory License Improvement Act of 1998

Summary: Pursuant to the Satellite Home Viewer Act of 1988, satellite carriers (companies that use satellite transmissions to provide television signals directly to consumers) pay a monthly royalty fee for each subscriber to the U.S. Copyright Office for the right to retransmit network and superstation signals by satellite to subscribers for private home viewing. The Copyright Office later distributes these fees to those who own copyrights on the material retransmitted by satellite.

H.R. 2921 would allow satellite carriers to retransmit the signals of local television broadcast stations into the local markets of those stations The bill would also extend the requirement that satellite carriers pay royalty fees to the federal government until December

31, 2004. Finally, the bill would rescind an increase in those fees that went into effect in January and delay that increase for two years.

H.R. 2921 would decrease revenues from royalty collections by $115 million in 1999, but increase revenues thereafter. CBO estimates that the bill would result in a net increase in revenues of $692 million over the 1999–2003 period and of $544 million in the following two years. After review by an arbitration panel, the royalty fees will be paid to copyright owners, along with accrued interest earnings. With higher royalty collections, the payments to copyright holders will also be higher, by an estimated $196 million over the 1999–2003 period, and by another $1.2 billion over the following five years. Assuming appropriation of the necessary amounts, CBO estimates that issuance of regulations regarding secondary transmissions would cost the Copyright Office about $500,000 in 1999. Because H.R. 2921 would affect both revenues and direct spending, it would be subject to pay-as-you-go procedures.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2921 is shown in the following table. For purposes of this estimate, CBO assumes the bill will be enacted at or near the start of fiscal year 1999. CBO also assumes that payments from the federal government to copyright holders for satellite transmissions would follow historical patterns. The costs of this legislation fall within budget function 370 (commerce and housing credit).

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
Receipts and Spending Under Current Law:						
Estimated Revenues [1]	235	322	259	183	193	202
Estimated Budget Authority [2]	263	450	286	208	217	225
Estimated Outlays	372	332	295	250	216	205
Proposed Changes:						
Estimated Revenues	0	−115	50	214	250	293
Estimated Budget Authority	0	−85	48	219	266	315
Estimated Outlays	0	−10	−44	−36	77	209
Net Increase or Decrease (−) in Surplus	0	−105	94	250	173	84
Receipts and Spending Under H.R. 2921:						
Estimated Revenues [1]	235	207	309	397	443	495
Estimated Budget Authority [2]	263	365	334	427	483	540
Estimated Outlays	372	322	251	214	293	414

[1] Includes royalty collections from cable television stations, jukebox licenses, satellite carriers, and digital audio devices.

[2] Payments to copyright owners include interests earnings on securities held by the Copyright Office.

Note: In addition to the effects shown above, H.R. 2921 would increase spending subject to appropriation by about $500,000 in fiscal year 1999.

Basis of estimate: H.R. 2921 would allow a satellite carrier to make secondary transmissions of local television broadcasts, extend copyright royalty fees, and delay in increase in those fees. All of these provisions affect payments by satellite carriers to the federal government and payments by the federal government to copyright holders. Assuming enactment of the bill near the beginning of fiscal year 1999, CBO estimates that H.R. 2921 would increase revenues by $692 million and increase spending by $196 million over the 1999–2003 period.

Secondary transmissions: Section 2 of H.R. 2921 would allow satellite carriers to retransmit the signals of local television broadcast stations into the local markets of those stations. Secondary transmissions would make the services provided by satellite carriers much more attractive to people who are not customers of cable television stations. The bill would also eliminate a provision of law that requires customers of cable television service to wait 90 days between ending that service and purchasing satellite service. As a result, CBO expects that the number of subscribers to satellite services would increase more rapidly than under current law. Based on information from the Copyright Office, CBO estimates that under H.R. 2921 the annual change in the volume of satellite services would increase from a projected rate of 10 percent a year to 17 percent a year by 2001. By 2003, this increased rate of growth would result in additional annual revenues of $64 million, all of which would ultimately be paid out to copyright holders. Because these provisions could increase the incentives for choosing satellite service over cable service, they might lead to a loss in revenues from cable fees. However, based on information from the Copyright Office and the cable and satellite industries, CBO estimates that any such reduction in revenues would not be significant.

Section 2 would result in a small discretionary cost for the Copyright Office to issue the required regulations. CBO estimates that the cost of issuing those regulations—within 180 days after enactment—would be about $500,000, subject to the availability of appropriated funds.

Delay of increase in the copyright royalty fee: H.R. 2921 would prohibit Copyright Office from collecting or awarding copyright royalty fees pursuant to a rule issued on October 28, 1997, by the Librarian of Congress, which increased the royalty fee to $0.27 per subscriber per month, during calendar years 1998 and 1999. Previously, the royalty fee was $0.06 per subscriber per month for distant networks and between $0.14 and $0.175 per subscriber per month for superstations. The Copyright Office has already received payments at the higher rate from satellite carriers for the first six months of calendar year 1998. Assuming that, under H.R. 2921, the additional revenues from satellite carriers in 1998 would be credited to the revenues due in 1999, CBO estimates that the bill would reduce revenues by $115 million in fiscal year 1999—about $30 million in credits for the excess 1998 payments and $85 million for the reduction in 1999 payments. Under the bill, the fee imposed on satellite carriers would revert to its current higher level of $0.27 per subscriber per month on December 31, 1999.

Extension of copyright royalty fees: Under current law, the royalty fees for satellite carriers expire on December 31, 1999. H.R. 2921 would extend royalty fees through December 31, 2004, increasing both revenue from satellite carriers and payments to copyright holders (including interest) during the 2000–2005 period. CBO estimates that revenues from satellite carriers would total $135 million in 2000 (of which $91 million would be from the proposed extension of fees). In 2000, the net change in estimated revenues is relatively small because of a lag between changes in fee rates and the collection of such fees. In particular, the first of two

annual payments to the Copyright Office in 2000 would be lower than under current law because of the lower rates required by the bill for 1999. Only the second of those two payments would reflect the bill's extension of the authority to collect royalty fees. By 2003, we expect additional revenues to total $293 million.

Payments to copyright holders: S. 2921 would result in additional spending because all revenues are eventually paid to copyright holders with interest. Historical spending patterns indicate that copyright holders may receive the fees and interest up to four years after the Copyright Office has collected the revenues. Thus, CBO estimates a significant lag between changes in revenues and the eventual changes in outlays that stem from copyright fees.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	−10	−44	−36	77	209	279	326	318	187	45
Changes in receipts	0	−115	50	214	250	293	343	201	0	0	0

Intergovernmental and private-sector impact: H.R. 2921 would impose no intergovernmental or private-sector mandates as defined in UMRA. However, the delay in the increase in copyright royalty fees would impose costs on the copyright holders, including some state and local government entities, while reducing costs of satellite carriers. Because of this delay, the fees collected in 1998 and 1999 that the Copyright Office would distribute over fiscal years 1999 through 2001 to the industry groups that represent copyright holders would be reduced by $90 million. The bill would also extend the royalty fees through December 31, 2004.

Previous CBO estimates: On July 9, 1998, CBO transmitted an estimate for H.R. 2921, the Multichannel Video Competition and Consumer Protection Act of 1997, as ordered reported by the House Committee on Commerce on June 24, 1998. On March 26, 1998, CBO prepared a cost estimate for S. 1422, the Federal Communications Commission Satellite Carrier Oversight Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 12, 1998. Differences between those estimates and the estimate of the Judiciary Committee's version of H.R. 2921 reflect differences in the bills and the timing of fee collections. Neither the House Commerce Committee's version of H.R. 2921 nor S. 1422 would extend the copyright payments by satellite carriers beyond December 31, 1999. In addition, the previous estimates assumed that the bills would be enacted before any payments of the increased 1998 fees were made.

The House Commerce Committee's version of H.R. 2921 would postpone the scheduled increase in royalty fees paid by satellite carriers until July 1999—six months sooner than the Judiciary

Committee's version. S. 1244 would postpone the scheduled increase in royalty fees paid by satellite carriers until December 31, 1998—one year sooner than the Judiciary Committee's version of H.R. 2921. Consequently, the revenue loss and reduced spending associated with postponement of the royalty fee increase are greater under the Judiciary Committee's version of H.R. 2921 than they would be under the House Commerce Committee's version of H.R. 2921 or under S. 1422.

Estimate prepared by: Federal Costs: Mark Hadley, Revenues: Hester Grippando, Impact on State, Local, and Tribal Governments: Pepper Santalucia, Impact on the Private Sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. The title of the bill is amended to read the "Copyright Compulsory License Improvement Act."

Sec. 2. Limitations on Exclusive Rights; Secondary Transmissions by Satellite Carriers Within Local Markets. This section creates a new compulsory license for satellite carriers retransmitting local television broadcast stations to address the problems associated with satellite subscribers losing, or being denied, access to satellite-delivered television broadcast stations. Due to the limitations of the § 119 satellite compulsory license, satellite providers may not afford a subscriber network television signals if the subscriber can receive an over-the-air signal of Grade B intensity using a conventional rooftop antenna, or the subscriber receives cable television service. By creating a permanent, royalty-free compulsory license for local retransmissions, the bill encourages satellite carriers to offer their subscribers the local network affiliates in the same way that cable offers its subscribers local stations. In exchange for the license, satellite carriers offering local signals must carry all full-power television broadcast stations in those markets.

The bill creates a new § 122 of the Copyright Act expressly devoted to local-to-local retransmissions. Satellite carriers may retransmit the signal of a local television station, either network or independent, to subscribers who reside within that station's local market without incurring a royalty fee obligation. The satellite carrier must not in any way alter the signal of the local station, and must provide the networks once a month with lists and locations of subscribers receiving local retransmissions. The purpose of this requirement is to ensure that satellite carriers do not attempt to use the § 122 license to provide network stations to subscribers who do not reside within the local markets of those stations.

Any violations of the terms of the § 122 license are subject to a copyright infringement action and the full remedies of the copyright law. If a satellite carrier willfully and repeatedly violates the

terms of the § 122 license, the carrier is permanently enjoined from offering any television station broadcasts under the license.

The new § 122 license is a permanent license; however, a satellite carrier using it must retransmit all local stations within a given market to obtain the license. For example, if a satellite carrier provides its subscribers in the Washington, D.C., television market with the local network stations, the satellite carrier must also carry the signals of all full power television stations in Washington, D.C., market. The bill also amends §§ 501 and 512 of the Copyright Act to clarify that § 122 is contingent upon full must-carry obligations, and confers standing upon broadcasters to sue for violations of the requirements of § 122.

In order to avail themselves of the § 122 license, satellite carriers must carry all full power television broadcast stations in the markets they choose to offer local signals. The must-carry requirements, which are conditions attached to this license, are modeled after the must-carry obligations of title 47 of the U.S. Code currently imposed on the cable television industry.

Although a satellite carrier using the § 122 license must carry all the local stations, the carrier is not required to carry a local television broadcast station whose programming substantially duplicates the programming of another station in the market. For example, a satellite carrier would not have to carry two NBC stations located in the same market.

A satellite carrier must "place" all television broadcast stations on contiguous channels and make them available in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu. No satellite carrier may request or accept compensation from a television broadcast station in exchange for carriage, and the television broadcast station bears the cost of delivering a good quality signal to the satellite carrier's local "receive" facility.

The Register of Copyrights is charged with determining when individual satellite carriers have failed to satisfy their must-carry obligations. The Register is given 120 days from the filing of a complaint by a television broadcast station to determine whether carriage is required, and has the power to order such carriage. The Register is also directed to adopt regulations implementing all requirements imposed by the must-carry provisions of § 122. In addition, a local broadcast station improperly denied carriage of its signal is given standing to sue for full remedies and damages under the Copyright Act.

In addition to must-carry rights, § 122 also grants local broadcasters retransmission rights. No satellite carrier may carry the signal of a local television broadcast station without the station's permission, unless the station invokes its must-carry rights or is subject to one of the exemptions to retransmission consent. The exemptions include noncommercial broadcast stations, superstations that have been carried on a nationwide basis since 1991, and network stations delivered to unserved households under § 119 of the Copyright Act.

Sec. 3. Extension of Effect of Amendments to § 119 of Title 17, United States Code. The § 119 compulsory license of the Copyright Act, created by the SHVA for the retransmission of distant tele-

vision stations by satellite carriers, is extended for a period of five years. This should allow the satellite industry sufficient time to implement technology designed to offer satellite subscribers their local television stations under the permanent § 122 license.

Sec. 4. Unserved Households. The current definition of an unserved household in the § 119 compulsory license is amended by eliminating the 90-day waiting period from termination of cable service to eligibility of satellite-delivered network service. The prohibition of the current law is anticompetitive because it discourages subscribers from terminating their cable service in favor of satellite since they must wait 90 days before they can receive network stations from their satellite carrier.

Sec. 5. Public Broadcasting Service Satellite Feed. The § 119 compulsory license is further amended by extending the license to cover the national programming service offered by PBS. Because the PBS national satellite feed is not a television broadcast station, satellite carriers do not have a compulsory license to retransmit it. Section Five treats the PBS national feed as if it were a superstation retransmission under current law.

Sec. 6. Temporary Stay on Satellite Royalty Fee Increase. The bill postpones the effective date of the royalty fee increase adopted last year by the Librarian of Congress for the § 119 compulsory license. Satellite carriers may pay for the retransmission of superstations and network stations at the prior rates established by the Copyright Royalty Tribunal until December 31, 1999.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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 italics, 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.

* * * * * * *

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

* * * * * * *

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

[(1) SUPERSTATIONS.—] *(1) SUPERSTATIONS AND PBS SATELLITE FEED.*—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a primary transmission made by a superstation *or*

by the Public Broadcasting Service satellite feed and embodying a performance or display of a work 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, *is permissible under the rules, regulations, or authorizations of the Federal Communications Commission,* and the carrier makes a direct or indirect charge for each retransmission service to each household 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.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection and section 114(d), secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work 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, *is permissible under the rules, regulations, or authorizations of the Federal Communications Commission,* and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

* * * * * * *

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

(1) * * *

* * * * * * *

[(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 outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

[(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.**]**

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

* * * * * * *

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

* * * * * * *

§ 122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets.

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

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

(2) the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission; and

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

(A) each subscriber receiving the secondary transmission; or

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

(b) REPORTING REQUIREMENTS.—

(1) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to 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 and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission.

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

(3) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subsection may be used only for the purposes of monitoring compliance by the satellite carrier with this section.

(4) REQUIREMENTS OF NETWORKS.—The submission requirements of this subsection shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions

are to be made. The Register shall maintain for public inspection a file of all such documents.

(c) NO ROYALTY FEE REQUIRED.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall have no obligation to pay royalties under this title for such secondary transmissions.

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

(e) WILLFUL ALTERATIONS.—Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

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

(1) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119, is actionable as an act on infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

(A) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber; and

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

(2) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of secondarily transmitting to the public a primary transmission made by a television broadcast station and embodying a performance or display of a work to subscribers who do not reside in that station's local market, and are not subject to statutory licensing under section

119, then in addition to the remedies set forth in paragraph (1)—

(A) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of any television broadcast station, and the court may order statutory damages not exceeding $250,000 for each 6-month period during which the pattern or practice was carried out; 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 shall order a permanent injunction barring the secondary transmission in that locality or region by the satellite carrier of the primary transmissions of any television broadcast station, and the court may order statutory damages not exceeding $250,000 for each 6-month period during which the pattern or practice was carried out.

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

(h) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to locations in the United States.

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

(j) STATUTORY LICENSE CONTINGENT ON COMPLIANCE WITH SATELLITE MUST-CARRY REQUIREMENTS.—Notwithstanding subsection (a), the willful or repeated secondary transmission to the public into the local market of a television broadcast station by a satellite carrier of a primary transmission made by that 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, if at the time of such transmission the satellite carrier is not in compliance with the requirements of subsection (k) to carry television stations.

(k) CARRIAGE OBLIGATIONS.—

(1) IN GENERAL.—Each satellite carrier providing secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request all television broadcast stations located within that local market, subject to subsection (l), except that the carriage obligations of this subsection shall apply only to satellite carriers that retransmit the signals of broadcast television stations pursuant to the statutory license

under this section. Carriage of additional broadcast stations within that local market shall be at the discretion of the satellite carrier, subject to subsection (l). The satellite carrier shall carry the entire signal of each local television station carried pursuant to this subsection.

(2) DUPLICATION NOT REQUIRED.—Notwithstanding paragraph (1), a satellite carrier shall not be required to carry upon request the signal of any local television broadcast station that substantially duplicates the signal of another television broadcast station within the same local market which is secondarily transmitted by the satellite carrier, or to carry upon request the signals of more than one local television broadcast station in a single local market that is affiliated with a particular broadcast network (as the term "broadcast network" is defined by the Register of Copyrights by regulation).

(3) CARRIAGE OF ALL LOCAL TELEVISION STATIONS ON CONTIGUOUS CHANNELS.—All local television broadcast stations retransmitted by a satellite carrier to subscribers in the stations' local markets shall be made available to subscribers in their local markets on contiguous channels and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

(4) COMPENSATION FOR CARRIAGE.—A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this subsection or for channel positioning rights provided to such stations under this subsection, except that any such station may be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier.

(5) REMEDIES.—

(A) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this subsection, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier is obligated to carry upon request the signal of such station or has otherwise failed to comply with other requirements of this subsection. The satellite carrier shall, within 30 days of such written notification, respond in writing to such notification and either begin carrying the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with other requirements of this subsection, as the case may be. A local television broadcast station that is denied carriage in accordance with this subsection by a satellite carrier or is otherwise harmed by a response by a satellite carrier that it is in compliance with other requirements of this subsection may obtain review of such denial or response by filing a complaint with the Register of Copyrights. Such complaint shall allege the manner in which such satellite car-

rier has failed to meet its obligations and the basis for such allegations.

(B) OPPORTUNITY TO RESPOND.—The Register shall afford the satellite carrier against which a complaint is filed under subparagraph (A) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this subsection.

(C) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed under subparagraph (A), the Register shall determine whether the satellite carrier has met its obligations under this chapter. If the Register determines that the satellite carrier has failed to meet such obligations, the Register shall order the satellite carrier, in the case of an obligation to carry a station, to begin carriage of the station and to continue such carriage for at least 12 months, or, in the case of the failure to meet other obligations under this subsection, shall take other appropriate remedial action. If the Register determines that the satellite carrier has fully met the requirements of this chapter, the Register shall dismiss the complaint.

(6) REGULATIONS BY REGISTER OF COPYRIGHTS.—Within 180 days after the effective date of this section, the Register of Copyrights shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this subsection.

(l) RETRANSMISSION CONSENT.—

(1) RETRANSMISSION CONSENT REQUIRED.—No satellite carrier shall retransmit the signal of a television broadcast station, or any part thereof, except—

(A) with the express authority of the station; or

(B) pursuant to subsection (k) of this section, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such subsection.

(2) EXCLUSIONS.—The provisions of this subsection shall not apply to—

(A) retransmission of the signal of a noncommercial television broadcast station;

(B) retransmission of the signal of a superstation by a satellite carrier to subscribers for private home viewing if the originating station was a superstation on May 1, 1991, and on December 31, 1997, such station was a network station and its signal was retransmitted by a satellite carrier directly to at least 500,000 subscribers for private home viewing; or

(C) retransmission of the signal of a television broadcast station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household.

(3) PROMULGATION OF REGULATIONS.—Within 45 days after the effective date of the Copyright Compulsory License Improvement Act of 1998, the Register of Copyrights shall commence a rulemaking proceeding to promulgate regulations governing the exercise by television broadcast stations of the right to grant re-

transmission consent under this subsection, and such other regulations as are necessary to administer the limitation contained in paragraph (2). Such regulations shall establish election time periods that correspond with those regulations adopted under subparagraph (B) of section 325(b)(3) of the Communications Act of 1934. The rulemaking shall be completed within 180 days after the effective date of the Copyright Compulsory License Improvement Act of 1998.

(m) DEFINITIONS.— In this section:

(1) DESIGNATED MARKET AREA.—The term "designated market area" means a designated market area, as determined by the Nielsen Media Research and published in the DMA Market and Demographic Report.

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

(3) LOCAL MARKET.—(A) In the case of both commercial and noncommercial television broadcast stations, the term "local market" means the designated market area in which a station is located.

(B) 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.

(C) Following a written request, the Register of Copyrights may, with respect to a particular local market, include additional commercial television broadcast stations to better effectuate the purposes of this section. In considering such a request, the Register shall primarily consider evidence of historic viewing patterns within the local market concerned. The Register may determine that particular commercial television broadcast stations serve more than one local market

(D) In the case of a noncommercial educational television broadcast station, the local market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

(4) LOCAL RECEIVE FACILITY.—The term "local receive facility" means the reception point in the local market of a television broadcast station or in a market contiguous to the local market of a television broadcast station at which a satellite carrier initially receives the signal of the station for purposes of transmission of such signals to the facility which uplinks the signals to the carrier's satellites for secondary transmission to the satellite carrier's subscribers. The designation of a local receive facility by a satellite carrier shall not be used to undermine or evade the carriage requirements imposed by this chapter.

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

(6) TELEVISION BROADCAST STATION.—The term "television broadcast station" means an over-the-air commercial or noncommercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations, as such regulations are in effect on August 4, 1998, and as they may be amended thereafter.

(7) SATELLITE CARRIER, ETC.—The terms "private home viewing", "satellite carrier", "secondary transmission", "superstation", and "unserved household" have the meanings given such terms in section 119(d).

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CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

§ 501. Infringement of copyright

(a) * * *

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(f) With respect to any satellite carrier making a secondary transmission of a primary transmission made by a television broadcast station to subscribers located within the local market of such station that fails to carry all television broadcast stations located within that market as required by section 122, any station that has not given retransmission consent and is improperly denied carriage shall have standing to bring a copyright infringement action with respect to the unauthorized performance or display of works embodied in the secondary transmission.

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

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§ 512. Remedies for failure by satellite carriers to carry all local broadcast stations

(a) In any action filed pursuant to section 122(j), the following remedies shall be available:

(1) If the action is brought by a party identified in subsection (b) of section 501, the remedies provided by sections 502 through 505, and the remedy provided by subsection (b) of this section.

(2) If an action is brought by a television broadcast station identified in subsection (f) of section 501, the remedies provided by sections 502 and 505, together with any actual damages suffered by such station as a result of the infringement, and the remedy provided by subsection (b) of this section.

(b) In any action filed pursuant to section 122(j) of this title in which carriage of a television broadcast station has been improperly denied, the court shall decree that the satellite carrier is deprived of the statutory license under section 122 of this title until carriage of such station has been restored.

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SECTION 4 OF THE SATELLITE HOME VIEWER ACT OF 1994

SEC. 4. TERMINATION.

(a) EXPIRATION OF AMENDMENTS.—Section 119 of title 17, United States Code, as amended by section 2 of this Act, ceases to be effective on December 31, **[**1999**]** *2004*.

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SECTION 705 OF THE COMMUNICATIONS ACT OF 1934

SEC. 705. UNAUTHORIZED PUBLICATION OF COMMUNICATIONS.

(a) * * *

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(d) For purposes of this section—

(1) * * *

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(6) the term "any person aggrieved" shall include any person with proprietary rights in the intercepted communication by wire or radio, including wholesale or retail distributors of satellite cable programming *or direct-to-home satellite services (as defined in section 303(v))*, and, in the case of a violation of paragraph (4) of subsection (e), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming.

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