A BILL

To extend the statutory license for secondary transmissions under section 119 of title 17, United States Code, and to amend the Communications Act of 1934 with respect to such transmissions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Satellite Home Viewer Extension and Reauthorization Act of 2004”.

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS

Sec. 201. Extension of retransmission consent exemption.
Sec. 202. Cable/satellite comparability.
Sec. 203. Carriage of local stations on a single dish.
Sec. 204. Replacement of distant signals with local signals.
Sec. 205. Additional notices to subscribers, networks, and stations concerning signal carriage.
Sec. 206. Privacy rights of satellite subscribers.
Sec. 207. Reciprocal bargaining obligations.
Sec. 208. Unserved digital customers.
Sec. 209. Reduction of required tests.

TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS

SEC. 201. EXTENSION OF RETRANSMISSION CONSENT EXEMPTION.

Section 325(b)(2)(C) of the Communications Act of 1934 (47 U.S.C. 325(b)(2)(C)) is amended by striking “December 31, 2004” and inserting “December 31, 2009”.

SEC. 202. CABLE/SATELLITE COMPARABILITY.

(a) AMENDMENT.—Part I of title III of the Communications Act of 1934 is amended by inserting after section 339 (47 U.S.C. 339) the following new section:
SEC. 340. SIGNIFICANTLY VIEWED SIGNALS PERMITTED TO BE CARRIED.

"(a) Significantly Viewed Stations.—In addition to the broadcast signals that subscribers may receive under section 338 and 339, a satellite carrier is also authorized to retransmit to subscribers located in a community the signal of any station that a cable system in the same community is authorized to retransmit pursuant to section 111 of title 17, United States Code, if such station is treated as significantly viewed in the county within which such community is located in accordance with the rules, regulations, and authorizations of the Commission.

"(b) Limitations.—

"(1) Analog service limited to subscribers taking local-into-local service.—With respect to a signal that originates as an analog signal of a television broadcast station, this section shall apply only to retransmissions to subscribers who receive retransmissions from a satellite carrier pursuant to the statutory license under section 122 of title 17, United States Code.

"(2) Digital service limitations.—With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—
“(A) the subscriber receives from the satellite carrier pursuant to the statutory license under section 122 of title 17, United States Code, the retransmission of the digital signal of a network station in the subscriber’s local market that is affiliated with the same television network; and

“(B) either—

“(i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or

“(ii) the retransmission of the local network station carries the entire bandwidth of the digital signal broadcast by such local network station.

“(3) LIMITATION NOT APPLICABLE WHERE NO NETWORK AFFILIATES.—The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.
“(4) Authority to grant station-specific waivers.—Notwithstanding paragraphs (1) and (2), a satellite carrier may provide to subscribers the retransmission of a network station that is determined to be significantly viewed under this section, if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has granted a waiver from the requirements of paragraphs (1) and (2) to such satellite carrier with respect to such significantly viewed station.

“(c) Modifications of list.—

“(1) Petitions from satellite carriers.—In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders—

“(A) by which stations and communities may be added to those that are eligible for retransmission under subsection (a); and

“(B) by which stations and communities may be determined to be eligible for retransmission under paragraph (2) of this subsection.

“(2) Application of criteria to communities without cable service.—In addition to
the stations and communities that are eligible for re-
transmission under subsection (a), in a community
that is not served by a cable system, a satellite car-
rrier is also authorized to retransmit to subscribers
located in such community the signal of any station
that a cable system in that community would be au-
thorized to retransmit pursuant to section 111 of
title 17, United States Code, if such signal would
be treated as significantly viewed in the county with-
in which such community is located in accordance
with the rules, regulations, and authorizations of the
Commission.
“(d) Effect on Other Obligations and
Rights.—
“(1) No effect on carriage obligations.—
Carriage of a signal under this section is not manda-
tory, and any right of a station licensee to have the
signal of such station carried under section 338 is
not affected by the eligibility of such station to be
carried under this section.
“(2) Retransmission consent rights not
affected.—The eligibility of the signal of a station
to be carried under this section does not affect the
right of the licensee of such station to grant (or
withhold) retransmission consent under section 325(b)(1).

“(e) NETWORK NONDUPlication AND SYNDICATED EXCLUSIVITY.—

“(1) NOT APPLICABLE EXCEPT AS PROVIDED BY COMMISSION REGULATIONS.—Signals eligible to be carried under this section are not subject to the Commission's regulations concerning network nonduplication or syndicated exclusivity unless, pursuant to regulations adopted by the Commission, the Commission determines to permit network nonduplication or syndicated exclusivity to apply within the appropriate zone of protection.

“(2) LIMITATION.—Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclusivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under section 119(a)(2)(A) or (B), with respect to persons who reside in unserved households, under 119(a)(4)(A), or under section 119(a)(12).

“(f) ENFORCEMENT PROCEEDINGS.—

“(1) NOTICE BY TELEVISION BROADCAST STATIONS.—If a television broadcast station believes
that a satellite carrier has retransmitted to any sub-
scriber in the local market of such station the signal
of another television broadcast station affiliated with
the same television network in violation of this sec-
tion, the station may provide the satellite carrier
with written notice of such violation. Such notice
shall be provided via overnight delivery, addressed to
the chief executive officer of the satellite carrier at
its principal place of business and marked ‘UR-
GENT LITIGATION MATTER’ on the outer pack-
aging. Such notification shall set forth—

“(A) the name, address, and call letters of
the station that is claimed to have been unlaw-
fully retransmitted (for purposes of this sub-
section, the ‘imported station’);

“(B) the name and address of the satellite
carrier;

“(C) the dates on which the alleged re-
transmission occurred;

“(D) the street address of at least one per-
son to whom the alleged retransmission was
made;

“(E) a statement that the retransmission
was not permitted because—
“(i) the Commission had not determined that the imported station is significantly viewed in the relevant community;

“(ii) the subscriber is not eligible for the retransmission of the signal because of the limitation in subsection (b) (1) or (2);

“(iii) the satellite carrier had not provided the notification required by subsection (h)(3); or

“(iv) two or more of the above; and

“(F) the name and address of counsel for the station.

“(2) Complaints by television broadcast stations.—If, within 30 days of providing to the satellite carrier a notice pursuant to paragraph (1), the satellite carrier has not cured the alleged retransmission in violation of this section, or if the satellite carrier cures the alleged violation after notice and then renews such violation within the next two years, the station may file a complaint with the Commission. Such complaint shall set forth the information provided in a notice under paragraph (1).

“(3) Service of complaints on satellite carriers.—For purposes of any proceeding under this subsection, any satellite carrier that retransmits
the signal of any broadcast station shall be deemed
to designate the Secretary of the Commission as its
agent for service of process. A television broadcast
station may serve a satellite carrier with a complaint
concerning an alleged violation of this section
through retransmission of a station within the local
market of such station by filing the original and two
copies of the complaint with the Secretary of the
Commission and serving a copy of the complaint on
the satellite carrier by means of two commonly used
overnight delivery services, each addressed to the
chief executive officer of the satellite carrier at its
principal place of business, and each marked ‘UR-
GENT LITIGATION MATTER’ on the outer pack-
aging. Service shall be deemed complete one business
day after a copy of the complaint is provided to the
delivery services for overnight delivery. On receipt of
a complaint filed by a television broadcast station
under this subsection, the Secretary of the Commiss-
ion shall send the original complaint by United
States mail, postage prepaid, receipt requested, ad-
dressed to the chief executive officer of the satellite
carrier at its principal place of business.

“(4) ANSWERS BY SATELLITE CARRIERS.—
Within 20 business days after the date of service,
the satellite carrier shall file an answer with the Commission and shall serve the answer by a commonly used overnight delivery service and by United States mail, on the counsel designated in the complaint at the address listed for such counsel in the complaint. The answer shall include, as a schedule, a complete and accurate list of all subscribers to which the satellite carrier retransmitted the imported station into the community in question pursuant to this section for each month during the relevant time period. Such subscriber information submitted by a satellite carrier may be used only for purposes of determining compliance by the satellite carrier with this section.

“(5) DEFENSES.—

“(A) EXCLUSIVE DEFENSES.—The defenses under this paragraph are the exclusive defenses available to a satellite carrier against which a complaint under this subsection is filed.

“(B) DEFENSES.—The defenses referred to under subparagraph (A) are the defenses—

“(i) that the satellite carrier did not retransmit the imported station to any person in the complaining station’s local mar-
ket pursuant to this section during the
time period specified in the complaint;

“(ii) if the complaining station has al-
leged that the retransmission was unlawful
because the Commission had not deter-
mined that the station is significantly
viewed in the relevant community, that the
Commission had in fact made that deter-
mination;

“(iii) with respect to particular sub-
scribers referenced in the complaint, that
those subscribers reside in communities in
which the Commission has determined the
station to be significantly viewed;

“(iv) if the complaining station has al-
leged that the retransmission is unlawful
because the subscriber is ineligible for the
retransmission because of the limitation in
subsection (b) (1) or (2), that such limita-
tion is inapplicable; and

“(v) if the complaining station has al-
leged that the retransmission was unlawful
because the satellite carrier had not pro-
vided the notification required by sub-
section (h)(3), that the satellite carrier had in fact provided that notification.

“(6) COUNTING OF VIOLATIONS.—The unlawful retransmission of a particular television broadcast station on a particular day subsequent to the notice and opportunity to cure described in paragraphs (1) and (2) of this subsection to a single subscriber pursuant to this section shall be considered a separate violation of this section.

“(7) PROCEDURES.—

“(A) REGULATIONS.—Within 60 days after the date of enactment, the Commission shall issue procedural regulations implementing this subsection which shall supersede procedures under section 312.

“(B) DETERMINATIONS.—

“(i) IN GENERAL.—Within 45 days after the filing of a complaint, the Commission shall issue a final determination in any proceeding brought under this subsection, unless the Commission issues an interim determination in writing that there has been a genuine, reasonable, good faith dispute about the applicability of one of the defenses set forth in paragraph (5), in
which case the Commission shall have 135 additional days to issue a final determination. The Commission shall hear witnesses only if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

“(ii) DISCOVERY.—The Commission may direct the parties to exchange pertinent documents, and if necessary to take prehearing depositions, on such schedule as the Commission may approve, but only if the Commission first determines that such discovery is necessary to resolve a genuine dispute about material facts, consistent with the obligation to make a final determination within 45 days (or 180 days, as appropriate).

“(8) RELIEF.—If the Commission determines that a satellite carrier has retransmitted the imported stations to at least one person in the complaining station’s local market based on this section and has failed to meet its burden of proving one of
the defenses under paragraph (5) with respect to such retransmission, the Commission shall be re-
quired to—

“(A) make a finding that the satellite car-
rier violated this section with respect to that station; and

“(B) issue an order containing—

“(i) a cease-and-desist order directing the satellite carrier immediately to stop making any further retransmissions in viol-
ation of this section;

“(ii) a monetary penalty of $50 per violation, which may be waived by the Commission only if the Commission deter-
mines that there was a genuine, reason-
able, good faith dispute about the applica-
bility of one of the defenses set forth in paragraph (5); and

“(C) an award to the complainant of the complainant’s costs and reasonable attorney’s fees.

“(9) COURT PROCEEDINGS ON ENFORCEMENT OF COMMISSION ORDER.—
“(A) IN GENERAL.—On entry by the Commission of a final order granting relief under this subsection—

“(i) a television broadcast station may apply within 30 days after such entry to the United States District Court for the District of Columbia for a final judgment enforcing all relief granted by the Commission; and

“(ii) the satellite carrier may apply within 30 days after such entry to the United States District Court for the District of Columbia for a judgment reversing the Commission’s order.

“(B) APPEAL.—

“(i) For cases in which the Commission has not determined that there has been a genuine, reasonable, good faith dispute about the applicability of one of the defenses set forth in paragraph (5), the procedure for an appeal under this subparagraph by the satellite carrier shall supersede any other appeal rights under Federal or State law. The United States District Court for the District of Columbia
may find personal jurisdiction based on the
satellite carrier’s ownership of licenses
issued by the Commission. An application
by a television broadcast station for an
order enforcing any cease-and-desist relief
granted by the Commission shall be re-
solved on a highly expedited schedule. No
discovery may be conducted by the parties
in any such proceeding. The district court
shall enforce the Commission order unless
the Commission record reflects manifest
error and an abuse of discretion by the
Commission.

“(ii) For cases in which the Commis-
sion has determined that there has been
genuine, reasonable, good faith dispute
about the applicability of one of the de-
fenses set forth in paragraph (5), the ap-
peals process set forth in section 402 shall
apply, with the following caveats:

“(I) If the Commission has found
the retransmissions in question to be
in violation of this section, the sat-
ellite carrier must cease such retrans-
missions during the pendency of any
appeal. Any such retransmissions after the date of the Commission’s order but prior to any order overturning the Commission on appeal shall be considered violations under paragraph (6).

“(II) If the Commission has found the retransmissions in question to be not in violation of this section, the satellite carrier may continue such retransmissions during the pendency of the appeal. Any such retransmissions after the date of the Commission’s order but prior to any order overturning the Commission on appeal shall not be considered violations under paragraph (6).

“(g) RULEMAKING.—

“(1) REQUIREMENTS.—The Commission shall—

“(A) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking within 180 days after the date of enactment of the Satellite
Home Viewer Extension and Reauthorization Act of 2004;

“(B) include in such notice a list of the stations or communities eligible for carriage under subsection (a); and

“(C) adopt rules pursuant to such rule-making within one year after such date of enactment.

“(2) INTERIM ELIGIBILITY.—Stations and communities listed as eligible for carriage in the notice of proposed rulemaking issued by the Commission under paragraph (1) may be treated as eligible for carriage under this section on an interim basis pending adoption of such rules and publication of the list of eligible stations and communities under such rules.

“(h) ADDITIONAL CORRESPONDING CHANGES IN REGULATIONS.—

“(1) COMMUNITY-BY-COMMUNITY ELECTIONS.—The Commission shall, no later than April 30, 2005, revise section 76.66 of its regulations (47 C.F.R. 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325) a television broadcast station that is located in a local market into which a sat-
ellite carrier retransmits a television broadcast sta-
tion on the basis of a statutory license under section
122 of title 17, United States Code, to elect, with
respect to such satellite carrier, between retrans-
mission consent pursuant to such section 325 and
mandatory carriage pursuant to section 338 sepa-
rately for each county within such station’s local
market, if—

“(A) the satellite carrier has notified the
station, pursuant to paragraph (3), that it in-
tends to carry another affiliate of the same net-
work pursuant to this section during the rel-
evant election period in the station’s local mar-
et; or

“(B) on the date notification under para-
graph (3) was due, the satellite carrier was re-
transmitting into the station’s local market pur-
suant to this section an affiliate of the same tele-
vision network.

“(2) SINGLE NEGOTIATIONS.—In revising its
regulations as required by paragraph (1), the Com-
mission shall provide that any such station shall con-
duct a single negotiation for the entire portion of its
local market for which retransmission consent is
elected.
“(3) ADDITIONAL PROVISIONS.—The Commission shall, no later than April 30, 2005, revise its regulations to provide the following:

“(A) NOTIFICATIONS BY SATELLITE CARRIER.—A satellite carrier’s retransmission of television broadcast stations pursuant to this section shall be subject to the following limitations:

“(i) In any local market in which the satellite carrier provides service on the basis of a statutory license under section 122 of title 17, United States Code, on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission’s regulations (47 C.F.R. 76.66), of—

“(I) each affiliate of the same television network that the carrier reserves the right to retransmit into that station’s local market pursuant to this section during the next election
cycle under such section of such regulations; and

“(II) for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions.

“(ii) In any local market in which the satellite carrier commences service on the basis of a statutory license under section 122 of title 17, United States Code, after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a station in that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission’s regulations (47 C.F.R. 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station’s local market during the next election cycle under such section of such regulations.
“(iii) Beginning with the 2005 election cycle, a satellite carrier may only retransmit pursuant to this section during the pertinent election period a signal—

“(I) as to which it has provided the notifications set forth in clauses (i) and (ii); or

“(II) that it was retransmitting into the local market under this section as of the date such notifications were due.

“(B) Harmonization of Elections and Retransmission Consent Agreements.—If a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

“(i) Definitions.—As used in this section:

“(1) Local Market; Satellite Carrier; Subscriber; Television Broadcast Station.—
The terms ‘local market’, ‘satellite carrier’, ‘subscriber’, and ‘television broadcast station’ have the meanings given such terms in section 338(k).

“(2) Network station; television network.—The terms ‘network station’ and ‘television network’ have the meanings given such terms in section 339(d).

“(3) Bandwidth.—The terms ‘equivalent bandwidth’ and ‘entire bandwidth’ shall be defined by the Commission by regulation.”

SEC. 203. CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.

Section 338 of the Communications Act of 1934 (47 U.S.C. 338(d)) is amended—

(1) by redesignating subsections (g) and (h) as subsections (j) and (k), respectively;

(2) by inserting after subsection (f) the following new subsection:

“(g) Carriage of Local Stations on a Single Dish.—

“(1) Single Dish.—Each satellite carrier that retransmits the signals of local television broadcast stations in a local market shall retransmit the signals of all local television broadcast stations retransmitted by that carrier to subscribers in such market
by means of a single reception antenna and associated equipment.

“(2) Exception.—Notwithstanding paragraph (1), if the carrier retransmits signals in the digital television service, the carrier shall retransmit the digital television service signals of all the local television broadcast stations retransmitted by that carrier to subscribers in such market by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used for signals that are not in the digital television service.

“(3) Effective date.—The requirements of paragraphs (1) and (2) of this subsection shall apply on and after one year after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

“(4) Notice of disruptions.—A carrier that is providing signals of a local television broadcast station in a local market under this section on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 shall, not later than 270 days after such date of enactment, provide to the licensees for such stations and the
carrier’s subscribers in such local market a notice
that displays prominently and conspicuously a clear
statement of—

“(A) any reallocation of signals between
different reception antennas and associated
equipment that the carrier intends to make in
order to comply with the requirements of this
subsection;

“(B) the need, if any, for subscribers to obtain an additional reception antenna and asso-
ciated equipment to receive such signals; and

“(C) any cessation of carriage or other ma-
terial change in the carriage of signals as a con-
sequence of the requirements of this paragraph.

“(5) ENFORCEMENT.—Notwithstanding any other provision of this section, the Commission may enforce this section and any regulation thereunder in accordance with titles IV and V of this Act.”.

SEC. 204. REPLACEMENT OF DISTANT SIGNALS WITH LOCAL SIGNALS.

Section 339(a) of the Communications Act of 1934 (47 U.S.C. 339(a)) is amended—

(1) by redesignating paragraph (2) as para-
graph (3); and
(2) by inserting after paragraph (1) the follow-
ing new paragraph:

“(2) REPLACEMENT OF DISTANT SIGNALS WITH
LOCAL SIGNALS.—Notwithstanding any other provi-
sion of paragraph (1), the following rules shall apply
after the date of enactment of the Satellite Home
Viewer Extension and Reauthorization Act of 2004:

“(A) RULES FOR GRANDFATHERED SUB-
SCRIBERS.—In the case of a subscriber of a sat-
ellite carrier who is eligible to receive the signal
of a network station solely by reason of section
119(e) of title 17, United States Code (in this
subparagraph referred to as a ‘distant signal’),
the following shall apply:

“(i) In a case in which the signal of
a local network station affiliated with the
same television network is made available
pursuant to the statutory license under
section 122 by that satellite carrier to the
subscriber, the carrier may only provide
the secondary transmissions of the distant
signal of such network station to that sub-
scriber—

“(I) if, within 60 days after re-
ceiving the notice of the satellite car-
rier under section 338(h)(1) of the Communications Act of 1934, the subscriber elects to retain the distant signal; but

“(II) only until such time as the subscriber elects to receive such local signal.

“(ii) Notwithstanding clause (i), the carrier may not retransmit the distant signal to any subscriber who is eligible to receive the signal of a network station solely by reason of section 119(e) of title 17, United States Code, unless such carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network the list and statement required by section 338(h)(2).

“(B) Rules for other subscribers.—

In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station under the statutory license under section 119(a)(2) of title 17, United States Code (in this subparagraph referred to as a ‘distant
signal’), other than subscribers to whom sub-
paragraph (A) applies, the following shall apply:

“(i) In a case in which the signal of
a local network station affiliated with the
same television network is made available
pursuant to the statutory license under
section 122 by that satellite carrier to the
subscriber on the date of the enactment of
the Satellite Home Viewer Extension and
Reauthorization Act of 2004, the carrier
may only provide the secondary trans-
missions of the distant signal of such net-
work station to that subscriber—

“(I)(aa) if, on such date of enact-
ment, the subscriber is receiving such
distant signal and is also receiving
such local signal, and

“(bb) the subscriber’s satellite
carrier, within 60 days after the date
of the enactment of the Satellite
Home Viewer Extension and Reau-
thorization Act of 2004, submits to
that television network the list and
statement required by section
338(h)(2); or
“(II)(aa) if, on such date of enactment, the subscriber is receiving such distant signal and is not receiving such local signal; but

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

“(ii) In a case in which the signal of a local network station affiliated with the same television network is not made available pursuant to the statutory license under section 122 by that satellite carrier to a subscriber on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may only provide the secondary transmissions of the distant signal of such network station to that subscriber—

“(I) who is a subscriber of that satellite carrier on such date of enactment, or

“(II) who becomes a subscriber of that satellite carrier after such date but before the local signal is made available by the carrier, but only until
such time as the subscriber elects to
receive the local signal from that sat-
ellite carrier.

“(C) FUTURE APPLICABILITY.—A satellite
carrier may not provide a distant signal (within
the meaning of subparagraph (A) or (B)) to
any person in a location to which the signal of
a local network station affiliated with the same
Television network was made available by that
carrier pursuant to the statutory license under
section 122 of title 17, United States Code, be-
fore the person becomes a subscriber to that
carrier.

“(D) AUTHORITY TO GRANT STATION-SPE-
cIFIC WAIVERS.—Notwithstanding the provi-
sions of this paragraph, a satellite carrier may
provide the distant signal (within the meaning
of subparagraph (A) or (B)) of any distant net-
work station to any person to whom the signal
of a local network station is available pursuant
to the statutory license under section 122 of
title 17, United States Code, if and to the ex-
tent that such local network station has granted
a waiver from the requirements of this para-
graph to such satellite carrier with respect to such distant network station.

“(E) Other provisions not affected.—This paragraph shall not affect the eligibility of a subscriber to receive secondary transmissions under section 119(a)(3) of title 17, United States Code, or as an unserved household included under section 119(a)(12) of such title.”.

SEC. 205. ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.

Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is further amended by inserting after subsection (g) (as added by section 203) the following new subsection:

“(h) Additional Notices to Subscribers, Networks, and Stations Concerning Signal Carriage.—

“(1) Notices to and elections by subscribers concerning grandfathered signals.—Any carrier that provides a distant signal of a network station to a subscriber pursuant to a statutory license under section 119(a)(4)(A) of title 17, United States Code, shall—
“(A) within 60 days after the local signal of a network station of the same television network is available pursuant to a statutory license under section 122, or within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, whichever is later, send a notice to the subscriber—

“(i) offering to substitute the local network signal for the duplicating distant network signal; and

“(ii) informing the subscriber that, if the subscriber fails to respond in 60 days, the subscriber will lose the distant network signal but will be permitted to subscribe to the local network signal; and

“(B) if the subscriber—

“(i) elects to substitute such local network signal within such 60 days, switch such subscriber to such local network signal within 10 days after the end of such 60-day period; or

“(ii) fails to respond within such 60 days, terminate the distant network signal
within 10 days after the end of such 60-day period.

“(2) Notices to networks of distant signal subscribers.—Within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, each satellite carrier that provides a distant signal of a network station to a subscriber pursuant to a statutory license under section 119(a)(4)(A) or 119(a)(4)(B)(i) of title 17, United States Code, shall submit to each network—

“(A) a list, aggregated by designated market area, identifying each subscriber provided such a signal by—

“(i) name;

“(ii) address (street or RFD number, city, state, and zip code); and

“(iii) the distant network signal or signals received; and

“(B) a statement that, to the best of the carrier’s knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to a statutory license under section

“(3) NOTICE TO STATION LICENSEES OF COMMENCEMENT OF LOCAL-INTO-LOCAL SERVICE.—

“(A) NOTICE REQUIRED.—Within 180 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall revise the regulations under this section relating to notice to broadcast station licensees to comply with the requirements of this paragraph.

“(B) CONTENTS OF COMMENCEMENT NOTICE.—The notice required by such regulations shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage—

“(i) of the carrier’s intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier’s proposed local receive facility for that local market;
“(ii) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

“(iii) that such licensee has 30 days from the date of the receipt of such notice to make such election; and

“(iv) that failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

“(C) TRANSMISSION OF NOTICES.—Such regulations shall require that each satellite carrier shall transmit the notices required by such regulation via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

“(4) NOTICES CONCERNING SIGNIFICANTLY VIEWED STATIONS.—Each satellite carrier that proposes to commence the retransmission of a station pursuant to section 340 in any local market shall—

“(A) not less than 60 days before commencing such retransmission, provide a written
notice to any television broadcast station in such local market of a such proposal; and

“(B) designate on such carrier’s website all significantly viewed signals carried pursuant to section 340 and the communities in which the signals are carried.”.

SEC. 206. PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.

(a) Amendment.—Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is further amended by inserting after subsection (h) (as added by section 205) the following new subsection:

“(i) Privacy Rights of Satellite Subscribers.—

“(1) Notice.—At the time of entering into an agreement to provide any satellite service or other service to a subscriber and at least once a year thereafter, a satellite carrier shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

“(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;
“(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

“(C) the period during which such information will be maintained by the satellite carrier;

“(D) the times and place at which the subscriber may have access to such information in accordance with paragraph (5); and

“(E) the limitations provided by this section with respect to the collection and disclosure of information by a satellite carrier and the right of the subscriber under paragraphs (7) and (9) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this subsection, such notice shall be provided within 180 days of such date and at least once a year thereafter.

“(2) DEFINITIONS.—For purposes of this subsection, other than paragraph (9)—

“(A) the term ‘personally identifiable information’ does not include any record of aggre-
gate data which does not identify particular persons;

“(B) the term ‘other service’ includes any wire or radio communications service provided using any of the facilities of a satellite carrier that are used in the provision of satellite service; and

“(C) the term ‘satellite carrier’ includes, in addition to persons within the definition of satellite carrier, any person who—

“(i) is owned or controlled by, or under common ownership or control with, a satellite carrier; and

“(ii) provides any wire or radio communications service.

“(3) Prohibitions.—

“(A) Consent to Collection.—Except as provided in subparagraph (B), a satellite carrier shall not use any facilities used by the satellite carrier to collect programming selection or subscription information from such a subscriber to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.
“(B) EXCEPTIONS.—A satellite carrier may use such facilities to collect such information in order to—

“(i) obtain information necessary to render a satellite service or other service provided by the satellite carrier to the subscriber; or

“(ii) detect unauthorized reception of satellite communications.

“(4) DISCLOSURE.—

“(A) CONSENT TO DISCLOSURE.—Except as provided in subparagraph (B), a satellite carrier shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or satellite carrier.

“(B) EXCEPTIONS.—A satellite carrier may disclose such information if the disclosure is—

“(i) necessary to render, or conduct a legitimate business activity related to, a
satellite service or other service provided
by the satellite carrier to the subscriber;

“(ii) subject to paragraph (9), made
pursuant to a court order authorizing such
disclosure, if the subscriber is notified of
such order by the person to whom the
order is directed;

“(iii) a disclosure of the names and
addresses of subscribers to any satellite
service or other service, if—

“(I) the satellite carrier has pro-
vided the subscriber the opportunity
to prohibit or limit such disclosure;
and

“(II) the disclosure does not re-
veal, directly or indirectly, the—

“(aa) extent of any viewing
or other use by the subscriber of
a satellite service or other service
provided by the satellite carrier;
or

“(bb) the nature of any
transaction made by the sub-
scriber over any facilities used by
the satellite carrier to collect pro-
programming selection or subscription information from such a subscriber; or

“(iv) to a government entity as authorized under chapters 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include records revealing satellite subscriber selection of video programming from a satellite carrier.

“(5) ACCESS BY SUBSCRIBER.—A satellite subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a satellite carrier. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such satellite carrier. A satellite subscriber shall be provided reasonable opportunity to correct any error in such information.

“(6) DESTRUCTION OF INFORMATION.—A satellite carrier shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under paragraph (5) or pursuant to a court order.
“(7) PENALTIES.—Any person aggrieved by any act of a satellite carrier in violation of this section may bring a civil action in a United States district court. The court may award—

“(A) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

“(B) punitive damages; and

“(C) reasonable attorneys’ fees and other litigation costs reasonably incurred.

The remedy provided by this subsection shall be in addition to any other lawful remedy available to a satellite subscriber.

“(8) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to prohibit any State from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

“(9) COURT ORDERS.—Except as provided in paragraph (4)(B)(iv), a governmental entity may obtain personally identifiable information concerning a satellite subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—
“(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

“(B) the subject of the information is afforded the opportunity to appear and contest such entity’s claim.”.

(b) **Effective Date.**—Section 338(i) of the Communications Act of 1934 (47 U.S.C. 338(i)) as amended by subsection (a) of this section shall be effective 60 days after the date of enactment of this Act.

**SEC. 207. RECIPROCAL BARGAINING OBLIGATIONS.**

(a) **Amendments.**—Section 325(b)(3)(C) of the Communications Act of 1934 (47 U.S.C. 325(b)(3)(C)) is amended—

(1) by striking “Within 45 days” and all that follows through “1999, the” and inserting “The”;

(2) by striking the second sentence;

(3) by striking “and” at the end of clause (i);

(4) in clause (ii)—

(A) by striking “January 1, 2006” and inserting “January 1, 2010”; and
(B) by striking the period at the end and inserting "; and"; and

(5) by adding at the end the following new clauses:

"(iii) until January 1, 2010, prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations."

(b) DEADLINE.—The Federal Communications Commission shall prescribe regulations to implement the amendments made by subsection (a)(5) within 180 days after the date of enactment of this Act.

SEC. 208. UNSERVED DIGITAL CUSTOMERS.

(a) INQUIRY REQUIRED.—Consistent with the digital television service rules of Federal Communications Commission in effect on the date of enactment of this Act, and the propagation prediction models derived from Bul-
letin No. 69 of the Commission’s Office of Engineering
and Technology, the Commission shall initiate an inquiry
to recommend the appropriate methodologies for deter-
mining which consumers are in locations where the con-
sumer will be unable, on and after the date on which ana-
log television services are discontinued pursuant to the
provisions of section 309(j)(14) of the Communications
Act of 1934 (47 U.S.C. 309(j)(14)), to receive broadcast
digital television service signals that are transmitted from
a station’s permanent digital television channel that are
of sufficient intensity to be able to receive and display dig-
ital television service using receiving terrestrial outdoor
antennas of reasonable cost and ease of installation. Such
methodologies shall be based on the current field strength
requirements for digital television stations in section
73.622(e)(1) of the Commission’s regulations (47 C.F.R.
622(e)(1)).

(b) Report Required.—The Federal Communications Commission shall submit a report on the results of the inquiry required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than December 31, 2005. Such report shall include—
(1) a proposal, using the best engineering practices for the broadcast television industry, for a predictive methodology for determining both which consumers—

    (A) receive a digital signal of sufficient intensity to be able to receive and display digital television service using receiving terrestrial outdoor antennas of reasonable cost and ease of installation; or

    (B) will receive such a signal after a local station begins transmitting on its permanent digital television channel;

(2) an analysis of whether it is possible to identify the areas of the country within which consumers will not, on and after the date on which analog television services are discontinued pursuant to the provisions of section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)), be able to receive a digital television signal of sufficient intensity to be able to receive and display digital television service using receiving terrestrial outdoor antennas of reasonable cost and ease of installation; and

(3) if possible, an identification, on a county-by-county or more localized basis, of such areas for each television network.
SEC. 209. REDUCTION OF REQUIRED TESTS.

Section 339(c)(4) of the Communications Act of 1934 (47 U.S.C. 339(c)(4)) is amended by inserting after subparagraph (C) the following new subparagraphs:

“(D) Reduction of verification burdens.—Within one year after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall by rule exempt from the verification requirements of subparagraph (A) any request for a test made by a subscriber to a satellite carrier—

“(i) to whom the retransmission of the signals of local broadcast stations is available under section 122 of title 17, United States Code, from such carrier; or

“(ii) for whom the predictive model required by paragraph (3) predicts a signal intensity that exceeds the signal intensity standard in effect under section 119(d)(11)(A) of such title by such number of decibels as the Commission specifies in such rule.

“(E) Exception.—Notwithstanding any provision of this Act, this section does not prohibit a subscriber who is predicted to receive a
signal that meets or exceeds such signal intensity standard from conducting a signal strength test at the subscriber’s own expense for the purpose of determining their eligibility for distant signals under this section.”.

SEC. 210. CARRIAGE OF CERTAIN ADDITIONAL STATIONS.

Section 340 of the Communications Act of 1934, as added by section 202(a) of this Act, is amended by inserting at the end of subsection (c) the following new paragraph:

“(3) Carriage of certain additional stations.—

“(A) Additional stations authorized.—In addition to the signals that are eligible to be carried under subsection (a) and paragraph (2) of this subsection, a satellite carrier is also authorized to retransmit to subscribers in no more than two counties in a State that are in a local market principally comprised of counties in another State, the signals of any television station located in the capital city of the State in which such counties are located, if the total number of television households in the two counties combined did not exceed 10,000 for
the year 2003 according to Nielson Media Research.

“(B) TREATMENT AS SIGNIFICANTLY VIEWED; LIMITATIONS.—Such signals shall be deemed, solely for purposes of this section, to be significantly viewed in such two counties. In total, a satellite carrier that carries one or more additional signals under this paragraph may retransmit no more than four television broadcast stations in such counties pursuant to this paragraph. All rules applicable to carriage of stations pursuant to subsection (a) or paragraph (2) of this subsection shall apply to carriage of stations pursuant to this paragraph.”.
A BILL

To extend the statutory license for secondary transmissions under section 119 of title 17, United States Code, and to amend the Communications Act of 1934 with respect to such transmissions, and for other purposes.

JULY 22, 2004

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed