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108TH CONGRESS }
2d Session }

SENATE

{ REPORT
108-427 }

SATELLITE HOME VIEWER EXTENSION AND
RURAL CONSUMER ACCESS TO DIGITAL
TELEVISION ACT OF 2004

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2644



DECEMBER 7, 2004.—Ordered to be printed

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DECEMBER 7, 2004.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 2644]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2644) to amend the Communications Act of 1934 with respect to the carriage of direct broadcast satellite television signals by satellite carriers to consumers in rural areas, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2644 the “Satellite Home Viewer Extension and Rural Consumer Access to Digital Television Act of 2004” is to ensure that rural consumers continue to have access to the same quality of broadcast television signals, including access to high definition, digital signals, as those enjoyed by urban consumers.

BACKGROUND AND NEED

Direct Broadcast Satellite (DBS), which first became commercially available in the early 1990s, has become the most significant national competitor to cable with almost 22 percent of the multi-channel video program distribution (MVPD) market. In 1988, Congress enacted the Satellite Home Viewer Act (SHVA), which first allowed home viewers to receive broadcast television through the use of satellite dishes. In 1999, Congress expanded and extended SHVA by enacting the Satellite Home Viewer Improvement Act (SHVIA). The goal of SHVIA was to place satellite carriers on an

equal footing with cable operators to provide local broadcast programming to consumers, and thus give consumers more choices in selecting a MVPD. SHVIA offers consumers greater access to both local and distant broadcast signals, by allowing DBS companies to retransmit local broadcast signals into the same local market and to import distant broadcast signals for subscribers unable to receive a local broadcast signal. The principal provisions of SHVIA that allow the lawful importation of distant network signals are set to expire at the end of 2004. This bill is necessary to maintain these provisions, including the continued availability of distant broadcast signals to rural consumers.

LEGISLATIVE HISTORY

On May 4, 2004, the Senate Commerce, Science, and Transportation Committee held a hearing on the reauthorization of the Satellite Home Viewers Improvement Act of 1999. Senators Ensign and McCain introduced S. 2644 on July 13, 2004. The Senate Commerce, Science, and Transportation Committee held an executive session on July 22, 2004 at which S. 2644 was considered. The bill was approved by voice vote and was ordered reported with amendments. The only amendment was an amendment in the nature of a substitute offered by Senators Ensign and McCain.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 2644—Satellite Home Viewer Extension and Rural Consumer Access to Digital Television Act of 2004

Summary: S. 2644 would amend current law relating to satellite retransmission of television broadcasting. CBO estimates that enacting only the provisions of S. 2644 would not affect direct spending or revenues. If the authority to collect and distribute copyright royalties for satellite retransmission were extended by subsequent legislation, CBO estimates that enacting the bill (together with that extension) would affect direct spending and revenues, but by an insignificant amount. Implementing the bill would not have a significant effect on spending subject to appropriation.

S. 2644 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

S. 2644 would impose private-sector mandates as defined in UMRA on satellite companies and television network stations. CBO estimates that the aggregate cost of those mandates would not exceed the annual threshold for private-sector mandates established by UMRA (\$120 million in 2004, adjusted annually for inflation).

Estimated cost to the Federal Government: Under current law, the use of certain copyrighted material by the public is governed by the terms of a compulsory license. Users of copyrighted material do not need specific permission from owners to use material with a compulsory license but must pay royalties and abide by certain conditions when using the material. The federal Copyright Office

collects royalties from users of material subject to compulsory licenses and then later distributes the royalties to owners of copyrighted works using guidelines agreed upon in private negotiations between users and owners of copyrighted work. Receipts of royalties from users of copyrighted material are recorded in the budget as federal revenues, and the distributions to copyright owners are recorded as federal spending.

S. 2644 would extend current law to allow satellite companies to use copyrighted material without specific permission from copyright owners but would not extend the requirement for satellite companies to pay royalties in exchange for the use of such material. Under current law, the requirement to pay royalties will expire on December 31, 2004. Several provisions in S. 2644 would make changes affecting royalties collected and distributed for satellite transmissions; however, without extending the requirement for satellite companies to pay royalties for use of copyrighted material, those changes would have no effect on the budget after December 31, 2004.

As a result, CBO estimates that enacting S. 2644 by itself would have no effect on revenues or direct spending from enactment through 2014. If the Congress extends royalty requirements for satellite retransmission of broadcast signals at the rate effective under current law, CBO estimates that enacting the bill (together with that extension) would have an insignificant effect on direct spending and revenues.

Basis of estimate: Under section 4, satellite subscribers who live in a “digital white area” (i.e., persons who cannot receive a local digital signal from broadcasters) could choose to receive digital signals for digital programming. As a result, some subscribers who do not receive a distant signal under current law would receive the signal under section 4 of the bill. Because satellite companies currently pay royalties for retransmitting distant signals, enacting section 4 would increase both revenues from royalty collections and payments to copyright owners.

Neither the satellite industry nor the Federal Communications Commission has information regarding the number of satellite subscribers who are located in digital white areas as defined under section 4. For this estimate, CBO assumes that satellite subscribers in digital white areas would generally overlap with satellite subscribers in analog white areas. Under that assumption, any increase in copyright royalties from new digital transmissions would be offset by a decrease in copyright royalties from analog transmissions as satellite subscribers switch from analog to digital. Thus, CBO estimates that enacting section 4 would not have a significant effect on revenues or direct spending, even if the requirement to pay royalties were extended.

S. 2644 would not make a number of other changes to current law regarding satellite subscribers’ eligibility to receive distant signals. CBO estimates that enacting those provisions would not have a significant effect on revenues or direct spending if the requirement to pay royalties were extended.

Estimated impact on state, local, and tribal governments: S. 2644 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: S. 2644 would impose private-sector mandates as defined in UMRA on satellite companies and television network stations. Specifically, the bill would impose mandates on satellite companies by requiring them to:

- Reallocate their retransmission of local television channels to a single dish,
- Retransmit a distant digital signal only if they retransmit a local analog signal in that same market and notify those customers that are receiving a distant digital signal when they are no longer eligible to receive those distant signals,
- Notify subscribers of their privacy rights,
- Provide the television network stations with a list of subscribers when those subscribers would no longer be eligible to receive a distant digital signal, and
- Announce the sponsor of commercial or political advertising that originates with the satellite company.

The bill also would require that the television network stations notify a satellite company when a household would no longer be eligible to receive a distant digital signal.

CBO estimates that the aggregate cost of those mandates would not exceed the annual threshold for private-sector mandates established by UMRA (\$120 million in 2004, adjusted annually for inflation).

Carriage of local stations on a single dish

Section 3 would require satellite companies to reallocate their retransmission of local television channels so that satellite subscribers could receive all of the local channels with only one satellite antenna (or satellite dish) and associated equipment. Local channels are those channels that can be received over the air with a conventional antenna and television set. The bill would provide an exception to this requirement in the case of local digital channels. It would allow satellite carriers to retransmit local digital channels to subscribers by means of a separate dish, if they transmit all local digital channels to the same dish.

In many television markets, some subscribers to satellite service require two dishes to receive all the local channels. Many subscribers in those markets do not have a second dish and so do not receive some local channels. Satellite companies estimate that currently only 15 percent to 20 percent of subscribers nationally have two dishes, but that proportion of subscribers varies by market.

The bill would require carriers to meet the retransmission requirements of section 3 within 18 months of enactment. Given that time frame, affected companies could comply with the mandate in one of two ways. First, satellite carriers could exit the market for retransmission of local channels. CBO expects that satellite companies would not abandon local service entirely because the affected companies would risk losing valuable customers to rival satellite companies and cable providers. Second, carriers could reallocate their satellite transmissions so that, in each market, subscribers received all their local channels from a single satellite. In some markets, receiving those local channels would require that the companies provide a second dish to subscribers. The largest cost facing affected companies would be the cost of installing those additional dishes. CBO estimates that providing additional dishes could cost

the companies about \$150 per customer, including equipment, installation, and notification of customers.

Service to as many as two million subscribers could be subject to the reallocation requirements under the current configuration of local television channels on the satellites. Thus, under the current configuration of channels on the satellites, as many as two million additional dishes would have to be installed. Engineering studies, however, suggest that reallocation of local channels on the satellites could reduce the number of subscribers needing the second dish to 350,000 to 400,000. Such reallocation of local channels would most likely occur in the smaller markets served by the carriers.

Based on those figures, CBO estimates that satellite companies could spend \$50 million to \$60 million to comply with that mandate. The number of subscribers affected might be reduced further by technical changes available to satellite companies. CBO has not accounted for such technical changes in its estimate.

Transmission of a distant digital signal in a local market

Section 4 would require that a satellite company retransmit a distant digital signal only if that company is also transmitting a local analog signal and not a local digital signal in that same market. The satellite company also would be required to notify those customers that are receiving a distant digital signal when they are no longer eligible to receive those distant signals. According to information from industry representatives, satellite companies currently retransmit a distant digital signal only in markets where they also retransmit a local analog signal. The number of those households that receive those signals is very small. Therefore, CBO estimates that the satellite companies would incur minimal cost to comply with those requirements.

Privacy rights of satellite subscribers

Section 7 would extend the current privacy rights of cable subscribers to satellite subscribers. That section would require satellite companies to provide a separate, written notice that would inform the subscriber of the personally identifiable information that the satellite company collects and how it is to be used; the nature, frequency, and purpose of any disclosures; the time and place at which the subscriber may access the information; and the time frame during which the company would maintain that information. That section also would prohibit satellite companies from collecting and disclosing program selection or personally identifiable information on any subscriber without prior consent from the subscriber. In addition, satellite companies would be required to provide a subscriber access to all personally identifiable information that it collected. When that information is no longer necessary and a request for access is not pending, the company would have to destroy such information. Information from representatives of the satellite companies indicates that they currently comply with many of those requirements. CBO estimates that the incremental cost to provide a written notice of the subscribers' privacy rights could be about \$20 million.

Notices to satellite companies and television network stations regarding a digital signal

Within two years after the enactment of S. 2644, the bill would require that the FCC determine what households would be considered “unserved households” for a distant digital signal. A television network station would be required to notify the satellite company when it files a license application with the FCC that would result in any household ceasing to be an unserved digital household. When the satellite company receives that notification, it would have to send a list identifying each subscriber that would no longer be an unserved digital household and, therefore, would no longer be allowed to receive a distant digital signal. The satellite company also would be required to send a comprehensive list to television network stations that provide a digital signal to the satellite company’s subscribers. Based on information from the representatives of the satellite companies, CBO estimates that the cost to comply with those notification requirements would be minimal.

Sponsorship identification requirement

Section 8 would extend the sponsorship identification rules that currently apply to cable operators of satellite companies. As a result, a satellite company would be required to announce a sponsor of any commercial or political advertising that originates with a satellite company. According to representatives of the satellite companies, they only retransmit programming and do not add any advertising to those programs. Therefore, CBO estimates that the satellite companies would incur no costs to comply with this requirement.

Previous CBO estimates: On July 8, 2004, CBO transmitted a cost estimate for H.R. 4501, the Satellite Home Viewer Extension and Reauthorization Act of 2004, as ordered reported by the House Committee on Energy and Commerce on June 3, 2004. Both bills contain provisions that would make changes to satellite retransmission of distant and local signals, but S. 2644 would affect a smaller number of subscribers. The cost estimates for the bills reflect this difference.

On July 22, 2004, CBO transmitted a cost estimate for H.R. 4518, the Satellite Home Viewer Extension Act of 2004, as ordered reported by the House Committee on the Judiciary on July 7, 2004. While H.R. 4518 would extend copyright royalty fees, S. 2644 would not. Both bills contain provisions that would make changes to satellite retransmission of distant and local signals, but S. 2644 would affect a smaller number of subscribers. The cost estimates for the bills reflect those differences.

On July 22, 2004, CBO transmitted a cost estimate for S. 2013, the Satellite Home Viewer Extension Act of 2004, as ordered reported by the Senate Committee on the Judiciary on June 17, 2004. While S. 2013 would extend copyright royalty fees, S. 2644 would not. The cost estimates for the bills reflect this difference.

Both S. 2644 and H.R. 4501 would require that satellite companies retransmit local television channels to a single dish and to notify customers of their privacy rights. H.R. 4518 and S. 2013 would require a satellite company to submit a list to television network stations of their subscribers that are receiving signals of “significantly viewed” stations. The total direct costs of mandates con-

tained in each of the bills would fall below the annual threshold for private-sector mandates established in UMRA.

Estimate prepared by: Federal Costs: Melissa E. Zimmerman. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Jean Talarico.

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

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2644 would reauthorize particular elements of the Satellite Home Viewer Improvement Act of 1999. The number of persons covered by this legislation should be consistent with current levels of individuals affected. The legislation would impose new regulatory obligations on DBS carriers including a new prohibition on the use of two satellite dishes to retransmit the signals of local broadcasters into local markets, new restrictions on the use of subscribers' account information, and new obligations with respect to the identification of sponsors of certain advertising. The bill would also impose new good-faith bargaining obligations on both direct broadcast satellite carriers and cable operators vis-a-vis local broadcasters.

ECONOMIC IMPACT

The legislation would impose new limitations on the ability of DBS carriers to retransmit the signals of local broadcasters into a local market over more than one receiving antenna. The section would permit EchoStar, the only satellite provider currently using more than one antenna to receive all of the broadcast stations in particular local markets, to continue this practice for 18 months. At the end of this transition period, the new limitation may have an adverse effect on EchoStar and consumers may then be required to purchase a second satellite dish to receive local broadcast television retransmissions.

PRIVACY

S. 2644 is not expected to have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation. Section 7 of the bill would enhance personal privacy by setting forth requirements for the protection of subscribers' account information.

PAPERWORK

The legislation should have minimal impact on current paperwork levels.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

This section provides that the act may be cited as “The Satellite Home Viewer Extension and Rural Consumer Access to Digital Television Act of 2004,” and sets forth the table of contents of the bill.

Section 2. Extension of retransmission consent exception

This section would extend until December 31, 2009, the retransmission consent exception provided in section 325 of the Communications Act of 1934. This section allows DBS companies to retransmit the signals of network stations directly to certain subscribers without requiring the satellite carrier to obtain the consent of the network station. This provision is set to expire December 31, 2004.

Section 3. Carriage of local stations on a single dish

This section amends section 338 of the Communications Act by mandating that a satellite carrier choosing to offer the local stations of a particular market provide such stations to subscribers through the use of a single reception antenna and associated equipment (i.e., a single satellite dish). The DBS carrier may carry local stations on a separate dish from the rest of its programming channels (CNN, ESPN, etc.), and may also elect to carry analog signals of the local broadcasters on a separate dish from digital signals of the local broadcasters. Satellite carriers would have 18 months from enactment to comply with the new requirement. This section responds to the concerns about discriminatory treatment made by local broadcasters, particularly religious and foreign-language broadcasters, by banning the division of local broadcast stations between two satellite dishes.

A significant beneficiary of DBS providers’ use of two-dishes has been consumers in medium- sized markets who have been able to receive their local stations via satellite earlier than would have been possible if carriage on one-dish was mandated. While ultimately sympathizing with those broadcasters who have been placed on a separate satellite dish, this bill would attempt to minimize the disruption to consumers in the medium-sized markets by providing an 18 month transition period for a satellite carrier to deliver all broadcasters to one-dish.

Section 4. Carriage of distant digital signals; unserved digital customers

This section would ensure that consumers in rural and other areas who are unable to receive a local broadcaster’s digital signal could enjoy high definition (HD) digital content carried by the broadcast networks. Consumers could be confident that if they purchased expensive high definition television sets, they could enjoy high profile HD events available on broadcast channels, such as the Super Bowl, the World Series, the Oscars, and other programming.

This section would direct the FCC to develop a method for identifying unserved digital households within two years. The FCC would establish a process similar to the predictive model used today to determine when a household is “unserved” with respect to analog signal reception. Thus, the Commission would (1) determine

the appropriate signal standard for determining eligibility for distant digital signals; (2) develop a predictive model for presumptively determining the ability of individual locations to receive digital signals in accordance with the signal standard; and (3) establish waiver and objective verification standards. The bill would also preserve the existing eligibility of certain households who are unable to receive an analog signal to receive distant digital signals until the FCC completes this process. However, satellite carriers could only import distant digital signals into markets where they were already offering the local analog signals.

The bill is not intended to be punitive toward any broadcaster. It is primarily focused on ensuring consumers have access to digital HD broadcast programming. As a concession to broadcasters, therefore, the bill would make clear that, even after the Commission establishes a permanent predictive model, if a broadcaster demonstrates that its signal would reach a particular household but for circumstances that lie beyond its control, that household would not be eligible to receive a distant digital signal.

Broadcasters have expressed significant concern that a satellite carrier that is permitted to provide a distant digital signal will never terminate that signal even after the broadcaster is able to reach the household. In response to this concern, this section would require that satellite companies terminate distant digital signals whenever a change in circumstances occurs that would result in an “unserved household” becoming a “served household” for that network affiliate. Moreover, satellite carriers would be required to give any potential subscribers clear, conspicuous, and prior notice that the distant digital service will be terminated within 120 days after the date the subscriber becomes ineligible for the service (because the household is now able to receive the broadcaster’s over-the-air digital signal). Satellite carriers would also be required to provide broadcasters with a list of subscribers receiving distant digital signals whose service would be terminated as a result of such a change.

Failure to provide networks with a “complete” list of subscribers receiving service under the rule provided in this section, and failure to cease distant digital transmissions within 120 days of the date when a subscriber becomes ineligible, would subject satellite carriers to extremely severe enforcement penalties for each household out of compliance. Each household at issue would be considered a separate violation, and each day would be a separate violation. For example, if a satellite carrier illegally provided a distant digital signal to fifty households in a local market, the company would be eligible for a fine of \$550,000 dollars a day ($\$11,000 \times 50$ households).

Section 5. Bargaining obligations

This section would extend and expand the good faith bargaining obligation from the current January 1, 2006 sunset to January 1, 2010. Currently, the good faith obligation is only imposed on broadcasters. This bill will impose the obligation on not only broadcasters, but also DBS providers and cable companies.

Section 6. Reduction of required tests

This section would modify section 339 of the Communications Act, which designates whether broadcasters or satellite companies must pay for a signal strength test requested by a consumer in a household that disagrees with a determination by the Commission's predictive model that it should be able to receive an over-the-air analog signal. The section would preclude subscribers who are capable of receiving local signals via satellite, as well as subscribers who are predicted to receive a signal of an intensity better than whatever standard is in effect (currently Grade B intensity) from the network at issue, from demanding a signal strength test under section 339(c)(4) of that Act. Such subscribers may, however, request a test at their own expense.

Section 7. Privacy rights of satellite subscribers

This section would modify section 631 of the Communications Act, which sets forth requirements for protection of cable subscriber account information, by making it applicable to satellite operators.

Section 8. Sponsorship identification rules for DBS

This section would direct the FCC to apply section 317 of the Communications Act to DBS providers. This provision of the Act deals with sponsorship identification, and provides that any matter broadcast in exchange for payment must be accompanied by an announcement that the matter was paid for or sponsored by the paying entity. Section 317 currently applies to cable operators and broadcasters.

Section 9. Certain vessels and aircraft

This section would include aircraft and "recreational vessels" (i.e., certain types of boats) within the definition of unserved households, thereby making such entities eligible for distant signals.

Section 10. Carriage of local television signals by certain satellite carriers

This section would allow a satellite carrier to offer a broadcaster's signal, if the broadcaster was the only network signal in that State prior to January 1, 1995, to other viewers in that State as long as the community is not contained in the top 50 broadcast television markets. Additionally, a DBS provider would be able to provide to viewers in a State that contains a top 50 market any network and superstation signals that were licensed as of January 1, 1995 in the same market, if the market does not encompass all the counties in a State and if the market is not a top 50 market.

Section 11. Carriage of television stations to certain subscribers

This section would allow a DBS carrier to retransmit any stations that are located in an eligible county within a State where a MVPD was transmitting the same stations to subscribers in the county on January 1, 2004. These stations would be considered "significantly viewed." Additionally, this section would allow a DBS carrier to retransmit up to two stations located in the State in which the county is located if the MVPD is authorized to carry less

than three. The section also defines which counties are eligible for these stations.

Section 12. Retransmission of signals into adjacent local market in certain markets

This section would prevent a satellite carrier from carrying the signal of a television station into an adjacent local market where such market is comprised of only a portion of a county, other than to unserved households in such county.

Section 13. Satellite carriage of Alaska television stations in areas of Alaska outside any DMA

This section would require all satellite carriers offering MVPD service in the United States to over 5 million subscribers to retransmit the analog and digital signals of each local Alaska broadcast station within 2 years and to retransmit stations in at least one Alaska market to other areas of the State that are not within a Designated Market Area (DMA). This section would also prohibit the importation of distant digital signals into Alaska pursuant to the distant signal copyright license once local Alaska stations are made available by the satellite operator to Alaska subscribers pursuant to the local-into-local copyright license.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 17. COPYRIGHTS

CHAPTER 1. SUBJECT MATTER AND SCOPE OF COPYRIGHT

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

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(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 performance or display of a work embodied in a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for 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. In the case of the Public Broadcasting Service satellite

feed, the statutory license shall be effective until January 1, 2002.

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

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—

(i) IN GENERAL.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions of the signals of no more than two network stations in a single day for each television network to persons who reside in unserved households.

(ii) ACCURATE DETERMINATIONS OF ELIGIBILITY.—

(I) ACCURATE PREDICTIVE MODEL.—In determining presumptively whether a person resides in an unserved household under subsection [(d)(10)(A),] (d)(10), a court shall rely on the Individual Location Longley-Rice model set forth by the Federal Communications Commission in Docket No. 98-201, as that model may be amended by the Commission over time under section [339(c)(3)] 339 of the Communications Act of 1934 to increase the accuracy of that model.

(II) ACCURATE MEASUREMENTS.—For purposes of site measurements to determine whether a person resides in an unserved household under subsection [(d)(10)(A),] (d)(10), a court shall rely on section [339(c)(4)] 339 of the Communications Act of 1934.

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

(I) IN GENERAL.—The limitations of clause (i) shall not apply to any secondary transmissions by C-band services of network stations that a subscriber to C-band service received before any termination of such secondary transmissions before October 31, 1999.

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

(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph 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.

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

(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a superstation or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 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.

(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does

not reside in an unserved household 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, except that—

(i) 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

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

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

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

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

(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before November 16, 1988.

(D) BURDEN OF PROOF.—In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household.

(E) EXCEPTION.—The secondary transmission by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a network station to subscribers who do not reside in unserved households shall not be an act of infringement if—

(i) the station on May 1, 1991, was retransmitted by a satellite carrier and was not on that date owned or operated by or affiliated with a television network that offered interconnected program service on a regular

basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of this section; and

(iii) the station is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States.

(6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a superstation or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

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

(8) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—

(A) IN GENERAL.—Subject to subparagraph (C), upon a challenge by a network station regarding whether a subscriber is an unserved household within the predicted Grade B Contour of the station, the satellite carrier shall, within 60 days after the receipt of the challenge—

(i) terminate service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

(ii) conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the network station of the satellite carrier's intent to conduct the measurement.

(B) EFFECT OF MEASUREMENT.—If the satellite carrier conducts a signal intensity measurement under subparagraph (A) and the measurement indicates that—

(i) the household is not an unserved household, the satellite carrier shall, within 60 days after the measurement is conducted, terminate the service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

(ii) the household is an unserved household, the station challenging the service shall reimburse the satellite carrier for the costs of the signal measurement within 60 days after receipt of the measurement results and a statement of the costs of the measurement.

(C) LIMITATION ON MEASUREMENTS.—

(i) Notwithstanding subparagraph (A), a satellite carrier may not be required to conduct signal intensity measurements during any calendar year in excess of 5 percent of the number of subscribers within the network station's local market that have subscribed to the service as of the effective date of the Satellite Home Viewer Act of 1994.

(ii) If a network station challenges whether a subscriber is an unserved household in excess of 5 percent of the subscribers within the network station's local market within a calendar year, subparagraph (A) shall not apply to challenges in excess of such 5 percent, but the station may conduct its own signal intensity measurement of the subscriber's household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement. If such measurement indicates that the household is not an unserved household, the carrier shall, within 60 days after receipt of the measurement, terminate service to the household of the signal that is the subject of the challenge and within 30 days thereafter notify the network station that made the challenge that service has been terminated. The carrier shall also, within 60 days after receipt of the measurement and a statement of the costs of the measurement, reimburse the network station for the cost it incurred in conducting the measurement.

(D) OUTSIDE THE PREDICTED GRADE B CONTOUR.—

(i) If a network station challenges whether a subscriber is an unserved household outside the predicted Grade B Contour of the station, the station may conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement.

(ii) If the network station conducts a signal intensity measurement under clause (i) and the measurement indicates that—

(I) the household is not an unserved household, the station shall forward the results to the satellite carrier who shall, within 60 days after receipt of the measurement, terminate the service to the household of the signal that is the subject of the challenge, and shall reimburse the station for the costs of the measurement within 60 days after receipt of the measurement results and a statement of such costs; or

(II) the household is an unserved household, the station shall pay the costs of the measurement.

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

(A) a network station challenging such eligibility shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the satellite carrier for any signal intensity measurement that is conducted by that carrier in response to a challenge by the network station and that establishes the household is an unserved household; and

(B) a satellite carrier shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the network station challenging such eligibility for any signal intensity measurement that is conducted by that station and that establishes the household is not an unserved household.

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

(11) SERVICE TO [RECREATIONAL VEHICLES AND COMMERCIAL TRUCKS.—] *RECREATIONAL VEHICLES, VESSELS, AIRCRAFT, AND COMMERCIAL TRUCKS.*—

(A) EXEMPTION.—

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

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

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

(III) *recreational vessels as defined in section 2101(25) of title 46, United States Code, documented in accordance with section 12101 of title 46 or State law; and*

(IV) *aircraft registered under section 44103 of title 49.*

(ii) LIMITATION.—Clause (i) shall apply only to a recreational [vehicle or] *vehicle, vessel, aircraft, or* commercial truck if any satellite carrier that proposes to make a secondary transmission of a network station to the operator of such a recreational [vehicle or] *vehicle, vessel, aircraft, or* commercial truck complies with the documentation requirements under subparagraphs (B) and (C).

(iii) EXCLUSION.—For purposes of this subparagraph, the terms “recreational [vehicle”] *vehicle, recreational vessel, aircraft*” and “commercial truck” shall not include any fixed dwelling, whether a mobile home or otherwise.

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

(i) DECLARATION.—A signed declaration by the operator of the recreational **[vehicle]** *vehicle, recreational vessel, aircraft*, or commercial truck that the satellite dish is permanently attached to the recreational **[vehicle]** *vehicle, recreational vessel, aircraft*, or commercial truck, and will not be used to receive satellite programming at any fixed dwelling.

(ii) REGISTRATION.—In the case of a recreational vehicle, a copy of the current State vehicle registration for the recreational vehicle.

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

(I) the current State vehicle registration for the truck; and

(II) a copy of a valid, current commercial driver's license, as defined in regulations of the Secretary of Transportation under section 383 of title 49 of the Code of Federal Regulations, issued to the operator.

(C) UPDATED DOCUMENTATION REQUIREMENTS.—If a satellite carrier wishes to continue to make secondary transmissions to a recreational **[vehicle or]** *vehicle, recreational vessel, aircraft*, or commercial truck for more than a 2-year period, that carrier shall provide each network, upon request, with updated documentation in the form described under subparagraph (B) during the 90 days before expiration of that 2-year period.

(12) STATUTORY LICENSE CONTINGENT ON COMPLIANCE WITH FCC RULES AND REMEDIAL STEPS.—Notwithstanding any other provision of this section, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a broadcast station licensed by the Federal Communications Commission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if, at the time of such transmission, the satellite carrier is not in compliance with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast station signals.

(13) NO IMPORTATION OF DISTANT SIGNALS INTO CERTAIN MARKETS.—*Notwithstanding any other provision of this title, the statutory license in this subsection and subsection (b) shall not apply to any secondary transmission of a television station located outside of the State of Alaska to any subscriber in that State to whom secondary transmissions of television stations lo-*

cated in that State are made available by the satellite carrier pursuant to section 122.

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

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

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

(B) a royalty fee for that 6-month period, computed by—

(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations;

(ii) multiplying the number of subscribers receiving each secondary transmission of a network station or the Public Broadcasting Service satellite feed during each calendar month by 6 cents; and

(iii) adding together the totals computed under clauses (i) and (ii).

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

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Librarian of Congress under paragraph (4).

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

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Librarian of Congress, in accordance with requirements that the Librarian of Congress shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian of Congress determines that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Librarian of Congress finds the existence of a controversy, the Librarian of Congress shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(c) ADJUSTMENT OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective unless a royalty fee is established under paragraph (2) or (3) of this subsection.

(2) FEE SET BY VOLUNTARY NEGOTIATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1996, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Librarian of Con-

gress shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

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

(D) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1999, or in accordance with the terms of the agreement, whichever is later.

(3) FEE SET BY COMPULSORY ARBITRATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before January 1, 1997, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such arbitration proceeding shall be conducted under chapter 8.

(B) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

(i) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

(ii) the economic impact of such fees on copyright owners and satellite carriers; and

(iii) the impact on the continued availability of secondary transmissions to the public.

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

(i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), or

(ii) is established by the Librarian of Congress under section 802(f), shall become effective as provided in section 802(g) or July 1, 1997, whichever is later.

(D) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in subparagraph (C) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

(4) REDUCTION.—

(A) SUPERSTATION.—The rate of the royalty fee in effect on January 1, 1998, payable in each case under subsection (b)(1)(B)(i) shall be reduced by 30 percent.

(B) NETWORK AND PUBLIC BROADCASTING SATELLITE FEED.—The rate of the royalty fee in effect on January 1, 1998, payable under subsection (b)(1)(B)(ii) shall be reduced by 45 percent.

(5) PUBLIC BROADCASTING SERVICE AS AGENT.—For purposes of section 802, with respect to royalty fees paid by satellite carriers for retransmitting the Public Broadcasting Service satellite feed, the Public Broadcasting Service shall be the agent for all public television copyright claimants and all Public Broadcasting Service member stations.

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

(1) 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 for private home viewing or indirectly through other program distribution entities.

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

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

(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934); except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.

(3) PRIMARY NETWORK STATION.—The term “primary network station” means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

(4) PRIMARY TRANSMISSION.—The term “primary transmission” has the meaning given that term in section 111(f) of this title.

(5) PRIVATE HOME VIEWING.—The term “private home viewing” means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such house-

hold, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

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

(7) **SECONDARY TRANSMISSION.**—The term “secondary transmission” has the meaning given that term in section 111(f) of this title.

(8) **SUBSCRIBER.**—The term “subscriber” means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(9) **SUPERSTATION.**—The term “superstation”—

(A) means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier; and

(B) except for purposes of computing the royalty fee, includes the Public Broadcasting Service satellite feed.

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

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

[(B) is subject to a waiver granted under regulations established under section 339(c)(2) of the Communications Act of 1934;

[(C) is a subscriber to whom subsection (e) applies;

[(D) is a subscriber to whom subsection (a)(11) applies;

or

[(E) is a subscriber to whom the exemption under subsection (a)(2)(B)(iii) applies.]

(10) **UNSERVED HOUSEHOLD.**—

(A) *IN GENERAL.*—The term “unserved household”, with respect to a particular television network, means an unserved analog household or an unserved digital household.

(B) *UNSERVED ANALOG HOUSEHOLD.*—In this paragraph, the term “unserved analog household” means, with respect to an analog signal, a household that—

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

(ii) is subject to a waiver granted under regulations established under section 339(c)(2) of the Communications Act of 1934;

(iii) is a subscriber to whom subsection (e) applies;

(iv) is a subscriber to whom subsection (a)(11) applies; or

(v) is a subscriber to whom the exemption under subsection (a)(2)(B)(iii) applies.

(C) *UNSERVED DIGITAL HOUSEHOLD.*—In this paragraph, the term “unserved digital household” means, with respect to a digital signal, a household that is eligible to receive distant digital signals pursuant to section 339(d) of the Communications Act of 1934 (47 U.S.C. 339(d)).

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

(12) *PUBLIC BROADCASTING SERVICE SATELLITE FEED.*—The term “Public Broadcasting Service satellite feed” means the national satellite feed distributed and designated for purposes of this section 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.

(e) *MORATORIUM ON COPYRIGHT LIABILITY.*—Until December 31, 2004, a subscriber who does not receive a signal of Grade A intensity (as defined in the regulations of the Federal Communications Commission under section 73.683(a) of title 47 of the Code of Federal Regulations, as in effect on January 1, 1999, or predicted by the Federal Communications Commission using the Individual Location Longley-Rice methodology described by the Federal Communications Commission in Docket No. 98-201) of a local network television broadcast station shall remain eligible to receive signals of network stations affiliated with the same network, if that subscriber had satellite service of such network signal terminated after July 11, 1998, and before October 31, 1999, as required by this section, or received such service on October 31, 1999.

§ 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 of a performance or display of a work embodied in a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if—

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

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

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

(A) each subscriber receiving the secondary transmission; or

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

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

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

(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 which 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 of Copyrights 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 royalty obligation for such secondary transmissions.

(d) NONCOMPLIANCE WITH REPORTING AND REGULATORY 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 embodying a performance or display of a work made by that television broadcast station 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) or with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast signals.

(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 performance or display of a work embodied in a primary transmission made by that television broadcast station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 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 embodying a performance or display of a work made by a television broadcast station to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119 or a private licensing agreement, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 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 embodying a performance or display of a work made by a television broadcast station to subscribers who do not reside in that station's local market, and are not subject to statutory licensing under section 119 or a private licensing agreement, then in addition to the remedies under paragraph (1)—

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

(i) shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of that television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network); and

(ii) 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—

(i) 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

(ii) 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 (f), the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a television broadcast station is made only to subscribers located within that station's local market or subscribers being served in compliance with section 119 or a private licensing agreement.

(h) GEOGRAPHIC LIMITATIONS ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply 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) DEFINITIONS.—In this section—

(1) 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.

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

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

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

(B) COUNTY OF LICENSE.—In addition to the area described in subparagraph (A), a station's local market includes the county in which the station's community of license is located.

(C) DESIGNATED MARKET AREA.—For purposes of subparagraph (A), the term “designated market area” means a designated market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.

(D) CERTAIN STATES.—*If a satellite carrier elects, under section 338(a)(3)(A) or (B) of the Communications Act of 1934 (47 U.S.C. 338(a)(3)(A) or (B)), to carry the signal of a network station or superstation then, in addition to the area described in*

subparagraph (A) of this paragraph, the local market of that station includes, solely for the purposes of the secondary transmission of that signal by the satellite carrier, all households within the geographic borders of the State in which that station is licensed.

(E) CERTAIN AREAS OUTSIDE OF ANY DESIGNATED MARKET AREA.—Any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area.

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

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

(5) TELEVISION BROADCAST STATION.—The term “television broadcast station”—

(A) 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, except that such term does not include a low-power or translator television station; and

(B) includes a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico if the station broadcasts primarily in the English language and is a network station as defined in section 119(d)(2)(A).

* * * * *

COMMUNICATIONS ACT OF 1934

TITLE III—PROVISIONS RELATING TO RADIO

PART I. GENERAL PROVISIONS

SEC. 325. FALSE DISTRESS SIGNALS; REBROADCASTING; STUDIOS OF FOREIGN STATIONS.

[47 U.S.C. 325]

(a) No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signals of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

(b)(1) No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

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

(B) under section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or

(C) under section 338, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

(2) This subsection shall not apply—

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

(B) to retransmission of the signal of a television broadcast station outside the station's local market by a satellite carrier directly to its subscribers, if—

(i) such station was a superstation on May 1, 1991;

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code; and

(iii) the satellite carrier complies with any network non-duplication, syndicated exclusivity, and sports blackout rules adopted by the Commission under section 339(b) of this Act;

(C) until ~~December 31, 2004,~~ *December 31, 2009*, to retransmission of the signals of network stations directly to a home satellite antenna, if the subscriber receiving the signal—

(i) is located in an area outside the local market of such stations; and

(ii) resides in an unserved household;

(D) to retransmission by a cable operator or other multi-channel video provider, other than a satellite carrier, of the signal of a television broadcast station outside the station's local market if such signal was obtained from a satellite carrier and—

(i) the originating station was a superstation on May 1, 1991; and

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code; or

(E) during the 6-month period beginning on the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, to the retransmission of the signal of a television broadcast station within the station's local market by a satellite carrier directly to its subscribers under the statutory license of section 122 of title 17, United States Code.

For purposes of this paragraph, the terms "satellite carrier" and "superstation" have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of the enactment of the Cable Television Consumer Protection and Competition Act of 1992, the term "unserved household" has the meaning given that term under section 119(d) of such title, and the term "local market" has the meaning given that term in section 122(j) of such title.

(3)(A) Within 45 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection

and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable. Such rulemaking proceeding shall be completed within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.

(C) ~~Within 45 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, the~~ *The* Commission shall commence a rulemaking proceeding to revise the 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 limitations contained in paragraph (2). ~~The Commission shall complete all actions necessary to prescribe such regulations within 1 year after such date of enactment.~~ Such regulations shall—

(i) establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph; ~~and~~

(ii) ~~until January 1, 2006,~~ *January 1, 2010*, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace ~~considerations.~~ *considerations; and*

(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.*

(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system. If an originating television station elects under paragraph (3)(C) to exercise its right to grant retransmission

consent under this subsection with respect to a satellite carrier, section 338 shall not apply to the carriage of the signal of such station by such satellite carrier.

(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 338, 614, or 615 of any station electing to assert the right to signal carriage under that section.

(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.

(7)¹ For purposes of this subsection, the term—

(A) “network station” has the meaning given such term under section 119(d) of title 17, United States Code; and

(B) “television broadcast station” means an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(c) No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.

(d) Such application shall contain such information as the Commission may by regulation prescribe, and the granting or refusal thereof shall be subject to the requirements of section 309 hereof with respect to applications for station licenses or renewal or modification thereof, and the license or permission so granted shall be revocable for false statements in the application so required or when the Commission, after hearings, shall find its continuation no longer in the public interest.

(e) ENFORCEMENT PROCEEDINGS AGAINST SATELLITE CARRIERS CONCERNING RETRANSMISSIONS OF TELEVISION BROADCAST STATIONS IN THE RESPECTIVE LOCAL MARKETS OF SUCH CARRIERS.—

(1) COMPLAINTS BY TELEVISION BROADCAST STATIONS.—If after the expiration of the 6-month period described under subsection (b)(2)(E) a television broadcast station believes that a satellite carrier has retransmitted its signal to any person in the local market of such station in violation of subsection (b)(1), the station may file with the Commission a complaint providing—

- (A) the name, address, and call letters of the station;
- (B) the name and address of the satellite carrier;

¹ Margin so in law.

(C) the dates on which the alleged retransmission occurred;

(D) the street address of at least one person in the local market of the station to whom the alleged retransmission was made;

(E) a statement that the retransmission was not expressly authorized by the television broadcast station; and

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

(2) 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 subsection (b)(1) 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 “URGENT LITIGATION MATTER” on the outer packaging. 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 Commission shall send the original complaint by United States mail, postage prepaid, receipt requested, addressed to the chief executive officer of the satellite carrier at its principal place of business.

(3) ANSWERS BY SATELLITE CARRIERS.—Within five 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.

(4) 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 that—

(i) the satellite carrier did not retransmit the television broadcast station to any person in the local market of the station during the time period specified in the complaint;

(ii) the television broadcast station had, in a writing signed by an officer of the television broadcast station, expressly authorized the retransmission of the station by the satellite carrier to each person in the local market of the television broadcast station to which the satellite carrier made such retransmissions for the entire time period during which it is alleged that a violation of subsection (b)(1) has occurred;

- (iii) the retransmission was made after January 1, 2002, and the television broadcast station had elected to assert the right to carriage under section 338 as against the satellite carrier for the relevant period; or
- (iv) the station being retransmitted is a noncommercial television broadcast station.

(5) COUNTING OF VIOLATIONS.—The retransmission without consent of a particular television broadcast station on a particular day to one or more persons in the local market of the station shall be considered a separate violation of subsection (b)(1).

(6) BURDEN OF PROOF.—With respect to each alleged violation, the burden of proof shall be on a television broadcast station to establish that the satellite carrier retransmitted the station to at least one person in the local market of the station on the day in question. The burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under paragraph (4)(B)(i).

(7) PROCEDURES.—

(A) REGULATIONS.—Within 60 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, 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. The Commission's final determination shall specify the number of violations committed by the satellite carrier. 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.

(8) RELIEF.—If the Commission determines that a satellite carrier has retransmitted the television broadcast station to at least one person in the local market of such station and has failed to meet its burden of proving one of the defenses under paragraph (4) with respect to such retransmission, the Commission shall be required to—

(A) make a finding that the satellite carrier violated subsection (b)(1) with respect to that station; and

(B) issue an order, within 45 days after the filing of the complaint, containing—

(i) a cease-and-desist order directing the satellite carrier immediately to stop making any further retransmissions of the television broadcast station to any person within the local market of such station until such time as the Commission determines that the satellite carrier is in compliance with subsection (b)(1) with respect to such station;

(ii) if the satellite carrier is found to have violated subsection (b)(1) with respect to more than two television broadcast stations, a cease-and-desist order directing the satellite carrier to stop making any further retransmission of any television broadcast station to any person within the local market of such station, until such time as the Commission, after giving notice to the station, that the satellite carrier is in compliance with subsection (b)(1) with respect to such stations; and

(iii) an award to the complainant of that 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 Eastern District of Virginia 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 Eastern District of Virginia for a judgment reversing the Commission's order.

(B) APPEAL.—The procedure for an appeal under this paragraph by the satellite carrier shall supersede any other appeal rights under Federal or State law. A United States district court shall be deemed to have personal jurisdiction over the satellite carrier if the carrier, or a company under common control with the satellite carrier, has delivered television programming by satellite to more than 30 customers in that district during the preceding 4-year period. If the United States District Court for the Eastern District of Virginia does not have personal jurisdiction over the satellite carrier, an enforcement action or appeal shall be brought in the United States District Court for the District of Columbia, which 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 resolved 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.

(10) CIVIL ACTION FOR STATUTORY DAMAGES.—Within 6 months after issuance of an order by the Commission under this subsection, a television broadcast station may file a civil action in any United States district court that has personal jurisdiction over the satellite carrier for an award of statutory damages for any violation that the Commission has determined to have been committed by a satellite carrier under this subsection. Such action shall not be subject to transfer under section 1404(a) of title 28, United States Code. On finding that the satellite carrier has committed one or more violations of subsection (b), the District Court shall be required to award the television broadcast station statutory damages of \$25,000 per violation, in accordance with paragraph (5), and the costs and attorney’s fees incurred by the station. Such statutory damages shall be awarded only if the television broadcast station has filed a binding stipulation with the court that such station will donate the full amount in excess of \$1,000 of any statutory damage award to the United States Treasury for public purposes. Notwithstanding any other provision of law, a station shall incur no tax liability of any kind with respect to any amounts so donated. Discovery may be conducted by the parties in any proceeding under this paragraph only if and to the extent necessary to resolve a genuinely disputed issue of fact concerning one of the defenses under paragraph (4). In any such action, the defenses under paragraph (4) shall be exclusive, and the burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under paragraph (4)(B)(i). A judgment under this paragraph may be enforced in any manner permissible under Federal or State law.

(11) APPEALS.—

(A) IN GENERAL.—The nonprevailing party before a United States district court may appeal a decision under this subsection to the United States Court of Appeals with jurisdiction over that district court. The Court of Appeals shall not issue any stay of the effectiveness of any decision granting relief against a satellite carrier unless the carrier presents clear and convincing evidence that it is highly likely to prevail on appeal and only after posting a bond for the full amount of any monetary award assessed against it and for such further amount as the Court of Appeals may believe appropriate.

(B) APPEAL.—If the Commission denies relief in response to a complaint filed by a television broadcast station under this subsection, the television broadcast station filing the complaint may file an appeal with the United States Court of Appeals for the District of Columbia Circuit.

(12) SUNSET.—No complaint or civil action may be filed under this subsection after December 31, 2001. This subsection shall continue to apply to any complaint or civil action filed on or before such date.

* * * * *

SEC. 338. CARRIAGE OF LOCAL TELEVISION SIGNALS BY SATELLITE CARRIERS.

[47 U.S.C. 338]

(a) CARRIAGE OBLIGATIONS.—

(1) IN GENERAL.—Subject to the limitations of paragraph [(2),] (2) and except as provided by paragraph (3), each satellite carrier providing, under section 122 of title 17, United States Code, 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 the signals of all television broadcast stations located within that local market, subject to section 325(b).

(2) REMEDIES FOR FAILURE TO CARRY.—The remedies for any failure to meet the obligations [under this subsection] under paragraph (1) shall be available exclusively under section 501(f) of title 17, United States Code.

[(3) EFFECTIVE DATE.—No satellite carrier shall be required to carry local television broadcast stations under paragraph (1) until January 1, 2002.]

(3) CERTAIN BROADCAST AREAS.—

(A) SINGLE NETWORK STATION STATES.—A satellite carrier may elect to carry also the signal of a commercial television broadcast station that was the only network station (as defined in section 339(d)(3)) in that State as of January 1, 1995, for secondary transmission to subscribers in any community in that State that is not within 1 of the first 50 major television markets listed in section 76.51(a) of the Commission's regulations (47 C.F.R. 76.51(a)), as such regulations were in effect on January 1, 1995, if the satellite carrier is retransmitting the signal of the station pursuant to paragraph (1) of this subsection or section 325(b) of this Act.

(B) MULTIPLE NETWORK STATION STATES.—A satellite carrier may elect to carry also the signals of any network station (as defined in section 339(d)(3)) or superstation (as defined in section 325(b)(2)) in a State in which—

(i) all network stations and superstations licensed by the Commission as of January 1, 1995, were assigned to the same local market, and

(ii) that local market does not encompass all counties of that State,

for secondary transmission to subscribers in that State who reside in one of the first 50 major television markets listed in section 76.51(a) of the Commission's regulations (47 C.F.R. 76.51(a)), as such regulations were in effect on January 1, 1995, if the satellite carrier is retransmitting the signals pursuant to paragraph (1) of this subsection or section 325(b) of this Act.

(4) CARRIAGE OF SIGNALS OF LOCAL STATIONS IN CERTAIN MARKETS.—A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall, within 2 years after the date of enactment of the Satellite Home Viewer Extension and Rural Consumer Access to Digital Television Act of 2004, retransmit

the analog and digital signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States and that contains more than one television market. The retransmissions of such stations shall be made available to substantially all of the satellite carrier's subscribers in each station's local market, and the retransmissions of the stations in at least one market in the state shall be made available to substantially all of the satellite carrier's subscribers in areas of the State that are not within a designated market area. The cost to subscribers of such retransmissions shall not exceed the cost of retransmissions of local television stations in other States. Within 1 year after the date of enactment of that Act, the Commission shall promulgate regulations concerning elections by television stations in such State between mandatory carriage pursuant to this section and retransmission consent pursuant to section 325(b), which shall take into account the schedule on which local television stations are made available to viewers in such State.

(b) GOOD SIGNAL REQUIRED.—

(1) COSTS.—A television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) REGULATIONS.—The regulations issued under subsection (g) shall set forth the obligations necessary to carry out this subsection.

(c) DUPLICATION NOT REQUIRED.—

(1) COMMERCIAL STATIONS.—Notwithstanding subsection (a), a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) NONCOMMERCIAL STATIONS.—The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulations shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under section 615.

(d) CHANNEL POSITIONING.—No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

(e) **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 section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.

(f) **REMEDIES.**—

(1) **COMPLAINTS BY BROADCAST STATIONS.**—Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under subsections (b) through (e) of this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations. The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations. A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(2) **OPPORTUNITY TO RESPOND.**—The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) **REMEDIAL ACTIONS; DISMISSAL.**—Within 120 days after the date a complaint is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e). If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint.

(g) **CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.**—

(1) **GENERAL RULE.**—*A 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 that market by means of a single reception antenna and associated equipment.*

(2) **EXCEPTION FOR DIGITAL TELEVISION SERVICE.**—*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 that market by means of a single reception antenna and associated equipment, but the 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) *18-MONTH TRANSITION PERIOD FOR EXISTING 2-DISH MARKETS.*—In the case of a satellite carrier that, as of July 1, 2004, is retransmitting local television broadcast signals to subscribers in local markets by means of more than a single reception antenna and associated equipment, the requirements of paragraphs (1) and (2) shall first apply to that carrier in those local markets 18 months after the date of enactment of the Satellite Home Viewer Extension and Rural Consumer Access to Digital Television Act of 2004.

(4) *ENFORCEMENT.*—If a satellite carrier fails to comply with the requirements of this subsection—

(A) the failure to comply shall be punishable under titles IV and V of this Act;

(B) each market with respect to which the satellite carrier fails to comply shall be considered to be a separate violation; and

(C) each day of a continuing violation shall be considered to be a separate violation.

[(g)] (h) *REGULATIONS BY COMMISSION.*—Within 1 year after the date of the enactment of this section, the Commission shall issue regulations implementing this section following a rulemaking proceeding. The regulations prescribed under this section shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(3) and (4) and 615(g)(1) and (2).

[(h)] (i) *DEFINITIONS.*—As used in this section:

(1) *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.

(2) *LOCAL RECEIVE FACILITY.*—The term “local receive facility” means the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

(3) *LOCAL MARKET.*—The term “local market” has the meaning given that term under section 122(j) of title 17, United States Code.

(4) *SATELLITE CARRIER.*—The term “satellite carrier” has the meaning given such term under section 119(d) of title 17, United States Code.

(5) *SECONDARY TRANSMISSION.*—The term “secondary transmission” has the meaning given such term in section 119(d) of title 17, United States Code.

(6) *SUBSCRIBER.*—The term “subscriber” has the meaning given that term under section 122(j) of title 17, United States Code.

(7) *TELEVISION BROADCAST STATION.*—The term “television broadcast station” has the meaning given such term in section 325(b)(7).

SEC. 339. CARRIAGE OF DISTANT TELEVISION STATIONS BY SATELLITE CARRIERS.

[47 U.S.C. 339]

(a) PROVISIONS RELATING TO CARRIAGE OF DISTANT SIGNALS.—

[(1) CARRIAGE PERMITTED.—

[(A) IN GENERAL.—Subject to section 119 of title 17, United States Code, any satellite carrier shall be permitted to provide the signals of no more than two network stations in a single day for each television network to any household not located within the local markets of those network stations.

[(B) ADDITIONAL SERVICE.—In addition to signals provided under subparagraph (A), any satellite carrier may also provide service under the statutory license of section 122 of title 17, United States Code, to the local market within which such household is located. The service provided under section 122 of such title may be in addition to the two signals provided under section 119 of such title.]

(1) CARRIAGE PERMITTED.—

(A) ANALOG SIGNALS.—

(i) IN GENERAL.—*Subject to section 119 of title 17, United States Code, a satellite carrier may provide the analog signals of no more than 2 network stations in a single day for each television network to any household not located within the local markets of those network stations.*

(ii) ADDITIONAL SERVICE.—*To the extent consistent with sections 119 and 122 of title 17, United States Code, a satellite carrier may also provide service under the statutory license of those sections to the local market within which such household is located in addition to the signals provided under clause (i).*

(B) DIGITAL SIGNALS.—*To the extent consistent with section 119 of title 17, United States Code, a satellite carrier may provide the digital signals of no more than 2 network stations in a single day for each television network to any household not located within the local markets of those network stations. Nothing in this subparagraph creates a statutory license under section 119(a) or (b) of title 17, United States Code.*

(2) PENALTY FOR VIOLATION.—Any satellite carrier that knowingly and willfully provides the signals of television stations to subscribers in violation of this subsection shall be liable for a forfeiture penalty under section 503 in the amount of \$50,000 for each violation or each day of a continuing violation.

(b) EXTENSION OF NETWORK NONDUPLICATION, SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT TO SATELLITE RETRANSMISSION.—

(1) EXTENSION OF PROTECTIONS.—Within 45 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall commence a single rulemaking proceeding to establish regulations that—

(A) apply network nonduplication protection (47 CFR 76.92) syndicated exclusivity protection (47 CFR 76.151),

and sports blackout protection (47 CFR 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers to subscribers; and

(B) to the extent technically feasible and not economically prohibitive, apply sports blackout protection (47 CFR 76.67) to the retransmission of the signals of network stations by satellite carriers to subscribers.

(2) DEADLINE FOR ACTION.—The Commission shall complete all actions necessary to prescribe regulations required by this section so that the regulations shall become effective within 1 year after such date of enactment.

(c) ELIGIBILITY FOR RETRANSMISSION OF *DISTANT ANALOG SIGNALS*.—

(1) SIGNAL STANDARD FOR SATELLITE CARRIER PURPOSES.—For the purposes of identifying an unserved household under section 119(d)(10) of title 17, United States Code, within 1 year after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall conclude an inquiry to evaluate all possible standards and factors for determining eligibility for retransmissions of the signals of network stations, and, if appropriate—

(A) recommend modifications to the Grade B intensity standard for analog signals set forth in section 73.683(a) of its regulations (47 CFR 73.683(a)), or recommend alternative standards or factors for purposes of determining such eligibility; and

(B) make a further recommendation relating to an appropriate standard for digital signals.

(2) WAIVERS.—A subscriber who is denied the retransmission of a signal of a network station under section 119 of title 17, United States Code, may request a waiver from such denial by submitting a request, through such subscriber's satellite carrier, to the network station asserting that the retransmission is prohibited. The network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request. The subscriber shall be permitted to receive such retransmission under section 119(d)(10)(B) of title 17, United States Code, if such station agrees to the waiver request and files with the satellite carrier a written waiver with respect to that subscriber allowing the subscriber to receive such retransmission. If a television network station fails to accept or reject a subscriber's request for a waiver within the 30-day period after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver.

(3) ESTABLISHMENT OF IMPROVED PREDICTIVE MODEL REQUIRED.—Within 180 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall take all actions necessary, including any reconsideration, to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations to receive signals in accordance with the signal intensity standard in effect under section 119(d)(10)(A) of title 17, United States Code. In prescribing such model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the Federal Communica-

tions Commission in Docket No. 98–201 and ensure that such model takes into account terrain, building structures, and other land cover variations. The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available.

(4) OBJECTIVE VERIFICATION.—

(A) IN GENERAL.—If a subscriber’s request for a waiver under paragraph (2) is rejected and the subscriber submits to the subscriber’s satellite carrier a request for a test verifying the subscriber’s inability to receive a signal that meets the signal intensity standard in effect under section 119(d)(10)(A) of title 17, United States Code, the satellite carrier and the network station or stations asserting that the retransmission is prohibited with respect to that subscriber shall select a qualified and independent person to conduct a test in accordance with section 73.686(d) of its regulations (47 CFR 73.686(d)), or any successor regulation. Such test shall be conducted within 30 days after the date the subscriber submits a request for the test. If the written findings and conclusions of a test conducted in accordance with such section (or any successor regulation) demonstrate that the subscriber does not receive a signal that meets or exceeds the signal intensity standard in effect under section 119(d)(10)(A) of title 17, United States Code, the subscriber shall not be denied the retransmission of a signal of a network station under section 119 of title 17, United States Code.

(B) DESIGNATION OF TESTER AND ALLOCATION OF COSTS.—If the satellite carrier and the network station or stations asserting that the retransmission is prohibited are unable to agree on such a person to conduct the test, the person shall be designated by an independent and neutral entity designated by the Commission by rule. Unless the satellite carrier and the network station or stations otherwise agree, the costs of conducting the test under this paragraph shall be borne by the satellite carrier, if the station’s signal meets or exceeds the signal intensity standard in effect under section 119(d)(10)(A) of title 17, United States Code, or by the network station, if its signal fails to meet or exceed such standard.

(C) AVOIDANCE OF UNDUE BURDEN.— Commission regulations prescribed under this paragraph shall seek to avoid any undue burden on any party.

(D) REDUCTION OF VERIFICATION BURDENS.—*Within one year after the date of enactment of the Satellite Home Viewer Extension and Rural Consumer Access to Digital Television 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.

(5) DEFINITION.—Notwithstanding subsection [(d)(4),] (e)(4), for purposes of paragraphs (2) and (4) of this subsection, the term “satellite carrier” includes a distributor (as defined in section 119(d)(1) of title 17, United States Code), but only if the satellite distributor's relationship with the subscriber includes billing, collection, service activation, and service deactivation.

(d) ELIGIBILITY FOR RETRANSMISSION OF DISTANT DIGITAL SIGNALS.—

(1) IN GENERAL.—For purposes of identifying an unserved digital household under section 119(d)(10) of title 17, United States Code, within 2 years after the date of enactment of the Satellite Home Viewer Extension and Rural Consumer Access to Digital Television Act of 2004, the Commission shall conclude a proceeding—

(A) to determine the appropriate signal standard for determining eligibility for retransmissions of the digital signals of network stations;

(B) to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations to receive digital signals in accordance with the signal standard determined under subparagraph (A), and in prescribing that model, the Commission shall—

(i) ensure that it takes into account terrain, building structures, and other land cover variations;

(ii) establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available; and

(iii) provide that any network station that would be expected to serve a household but is not serving that household due to noneconomic circumstances beyond its control will be deemed to be serving such a household; and

(C) to establish appropriate waiver and objective verification procedures, similar to the procedures under paragraphs (2) and (4) of subsection (c), to apply to unserved digital household determinations made pursuant to the model.

(2) PRESERVATION OF EXISTING ELIGIBILITY.—Until the Commission completes the proceeding required by paragraph (1), an unserved household for purposes of section 119(d)(10) of title 17, United States Code, with respect to the digital signals of a particular network, is a household that is eligible to receive retransmission of analog signals pursuant to subsection (c) of this section and section 119(a) of title 17, United States Code.

(3) *LOCAL-TO-LOCAL MARKET REQUIREMENT.*—For purposes of applying the rule prescribed by the Commission under paragraph (1) only, a satellite carrier may not retransmit the digital signals of a network station in any local market in which it does not provide secondary transmission to subscribers located within that local market of the analog signals of television broadcast stations located within that local market under section 338(a)(1) of this Act.

(4) *NOTICES.*—

(A) *BY CARRIER TO CUSTOMERS TO WHOM DIGITAL SIGNAL WILL BE PROVIDED.*—A satellite carrier providing a distant digital signal pursuant to this section shall notify its customers in a clear and conspicuous manner before offering the distant digital signal that it will cease providing that digital signal within 120 days after the date on which it is notified that the household ceases to be an unserved household with respect to digital signals.

(B) *BY NETWORK STATION TO SATELLITE CARRIER.*—Within not more than 48 hours after filing with the Commission any license application that will result in any household ceasing to be an unserved digital household, a network station shall notify all satellite carriers of the filing.

(C) *BY SATELLITE CARRIERS TO NETWORK STATIONS.*—

(i) *RESPONSE TO STATION NOTICE.*—Within 60 days after receiving notification under subparagraph (B) from a network station, a satellite carrier shall transmit a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier provides a distant digital signal in the local market of the network station whose service will be terminated under paragraph (5).

(ii) *COMPLETION OF COMMISSION PROCEEDING.*—Within 120 days after the Commission completes the proceeding required by paragraph (1), each satellite carrier shall transmit a comprehensive list to the network stations that, as a result of the proceeding, are providing a digital signal to the satellite carrier's subscribers, containing the information required by clause (i).

(D) *LIST USED ONLY FOR COMPLIANCE.*—It is unlawful for any person to use a list provided under this paragraph, or information derived from such a list, for any purpose other than compliance with the requirements of this section.

(5) *TERMINATION OF CARRIAGE TO HOUSEHOLDS THAT LOSE UNSERVED STATUS.*—Within 120 days after the date on which a satellite carrier receives notice under paragraph (4)(B), it shall cease providing the distant digital signal to subscribers in households, determined on the basis of the notice, that will cease to be unserved households with respect to digital signals. Within 120 days after the date on which the Commission completes the proceeding required by paragraph (1) (or on such date as the Commission in that proceeding may otherwise specify), a satellite carrier shall cease providing distant digital signals to households required as a result of the Commission's action.

(6) *ENFORCEMENT.*—

(A) *IN GENERAL.*—Compliance with this section shall be enforced under titles IV and V of this Act.

(B) *SPECIAL RULE FOR SATELLITE CARRIER LIST REQUIREMENT.*—If a satellite carrier fails to provide a complete list of subscribers in accordance with the requirements of paragraph (4)(C)(i), then each household with respect to which such failure occurs shall constitute a separate violation.

(C) *SPECIAL RULE FOR TERMINATIONS.*—If a satellite carrier providing a distant digital signal pursuant to this section fails to comply with the requirements of paragraph (5), then—

(i) each household with respect to which the satellite carrier fails to comply shall be considered to be a separate violation for purposes of section 503(b) of this Act; and

(ii) each day of a continuing violation shall be considered to be a separate violation.

(7) *APPLICATION OF SECTION 338.*—Nothing in this subsection affects the obligations of a satellite carrier under section 338(a) of this Act.

[(d)] (e) DEFINITIONS.—For the purposes of this section:

(1) *LOCAL MARKET.*—The term “local market” has the meaning given that term under section 122(j) of title 17, United States Code.

(2) *NATIONALLY DISTRIBUTED SUPERSTATION.*—The term “nationally distributed superstation” means a television broadcast station, licensed by the Commission, that—

(A) is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(B) on May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and

(C) was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code.

(3) *NETWORK STATION.*—The term “network station” has the meaning given such term under section 119(d) of title 17, United States Code.

(4) *SATELLITE CARRIER.*—The term “satellite carrier” has the meaning given such term under section 119(d) of title 17, United States Code.

(5) *TELEVISION NETWORK.*—The term “television network” means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

SEC. 340. CARRIAGE OF TELEVISION SIGNALS TO CERTAIN SUBSCRIBERS.

(a) *IN GENERAL.*—A multichannel video programming distributor may elect to retransmit, to subscribers in an eligible county—

(1) any television broadcast stations that are located in the State in which the county is located and that any multichannel

video programming distributor was retransmitting to subscribers in the county on January 1, 2004; or

(2) up to 2 television broadcast stations located in the State in which the county is located, if the number of television broadcast stations that the multichannel video programming distributor is authorized to carry under paragraph (1) is less than 3.

(b) *DEEMED SIGNIFICANTLY VIEWED.*—Any station described in subsection (a) is deemed to be significantly viewed in the eligible county within the meaning of section 76.54 of the Commission’s regulations (47 C.F.R. 76.54).

(c) *DEFINITION OF ELIGIBLE COUNTY.*—For purposes of this subsection, the term “eligible county” means any 1 of 4 counties that—

(1) are in a single State;

(2) on January 1, 2004, were in local markets principally comprised of counties in another State; and

(3) had a combined total of 41,340 television households according to the U.S. Television Household Estimates by Nielsen Media Research for 2003–2004.

(d) *LIMITATION.*—Carriage of a station under this section shall be at the option of the multichannel video programming distributor.

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TITLE VI—CABLE COMMUNICATIONS

PART IV. MISCELLANEOUS PROVISIONS

SEC. 631. PROTECTION OF SUBSCRIBER PRIVACY.

[47 U.S.C. 551]

(a)(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator 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 cable operator;

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

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

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

(2) For purposes of this section, other than subsection (h)—

(A) the term “personally identifiable information” does not include any record of aggregate 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 cable operator that are used in the provision of cable service; and

(C) the term “cable operator” includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

(b)(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to—

(A) obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

(B) detect unauthorized reception of cable communications.

(c)(1) Except as provided in paragraph (2), a cable operator 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 cable operator.

(2) A cable operator may disclose such information if the disclosure is—

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

(B) subject to subsection (h), 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;

(C) a disclosure of the names and addresses of subscribers to any cable service or other service, if—

(i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—

(I) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or

(II) the nature of any transaction made by the subscriber over the cable system of the cable operator; or

(D) 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 cable subscriber selection of video programming from a cable operator.

(d) A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a

convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) A cable operator 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 subsection (d) or pursuant to a court order.

(f)(1) Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court.

(2) 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.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

(g) Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) Except as provided in subsection (c)(2)(D), a governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(1) 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

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

(i) *APPLICATION TO DBS PROVIDERS.*—

(1) *IN GENERAL.*—*The provisions of this section shall apply to satellite carriers in the same way and to the same extent as they apply to cable operators.*

(2) *SPECIAL RULE.*—*For the purpose of applying the last sentence of subsection (a)(1) to a satellite carrier, the phrase "the date of enactment of the Satellite Home Viewer Extension and Rural Consumer Access to Digital Television Act of 2004," shall be substituted for the phrase "the effective date of this section,".*

(3) *SATELLITE CARRIER.*—*In this subsection, the term "satellite carrier" means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service, or the Direct Broadcast Satellite Service, under part 25 of title 47 of the Code of Federal Regulations to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such distribution.*