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113TH CONGRESS *2d Session*	SENATE	REPORT 113–322

SATELLITE TELEVISION ACCESS AND VIEWER RIGHTS ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2799

December 12, 2014.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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

R E P O R T

[To accompany S. 2799]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2799) to extend the authority of satellite carriers to retransmit certain television broadcast station signals, 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. 2799, the Satellite Television Access and Viewer Rights Act (STAVRA), as reported, is to reauthorize certain provisions of the Communications Act of 1934 (Communications Act) that govern satellite retransmission of television broadcast signals, which are set to expire at the end of 2014. STAVRA also amends the Communications Act to make several changes to existing video policy related to the television markets served by satellite pay TV companies; retransmission consent and the related "good faith" rules for retransmission consent negotiations; the integration ban rule presently applicable to cable set-top boxes; and the administrative rules for how small cable companies file petitions to prove effective competition under the Communications Act.

BACKGROUND AND NEEDS

Direct broadcast satellite (DBS) service is a nationally distributed subscription service that delivers video and audio programming over satellite to a small antenna located at a subscriber's residence. The Federal Communications Commission (FCC) first authorized the service in 1988, and DBS service became commercially

available in 1994. Currently, there are two major DBS providers, DIRECTV and Dish Network.

Over the past 20 years, subscribership to DBS service has grown substantially, making satellite carriers significant competitors to cable operators. According to the FCC's 15th Video Competition Report (issued in July 2013), approximately 101 million households in the United States subscribe to a multichannel video programming distributor (MVPD), which includes cable operators, satellite carriers, and telephone companies offering comparable video programming services. Of the total number of MVPD subscribers in the United States, 34 million households (or 33.6 percent) are satellite customers. Again according to the 15th Video Competition Report, DIRECTV is the largest DBS provider and the second largest MVPD, with approximately 19.9 million subscribers. Dish Network is the second largest DBS provider and the third largest MVPD, with approximately 14.1 million subscribers.

Where satellite carriers offer their subscribers access to local broadcast television signals, they have been more successful in competing with terrestrial-based MVPDs. The licensing and regulatory regime that enables satellite operators to retransmit broadcast signals to subscribers has developed through a series of laws, of which the Satellite Television Extension and Localism Act (STELA), passed by Congress in 2010, was the latest.

Satellite Home Viewer Act (SHVA)

Starting in the 1960s, the cable industry began to offer broadcast programming to its customers without paying broadcast television stations copyright royalties. To address this issue, Congress passed the Copyright Revision Act of 1976 (Copyright Act), which made cable provider retransmission of broadcast signals without a license a copyright violation. It also established a compulsory copyright license and statutory royalty regime to facilitate the retransmission of broadcast programming.

In 1988, Congress passed SHVA, creating a similar compulsory copyright license in section 119 of the Copyright Act for satellite carriers. A significant difference was that the section 119 license allowed satellite carriers to retransmit broadcast network and superstation (e.g., WGN) programming only to those households unable to receive viewable signals using over-the-air antennas (so-called "unserved households"). The reason for this limitation was to preserve "localism" and to prevent non-local or "distant" signals from taking viewers away from local broadcast television stations that provide community-focused programming such as local news and weather. SHVA established a 6-year compulsory copyright license, under which a satellite carrier may retransmit distant network signals to unserved households without obtaining permission directly from the copyright owners. It also established a government-set copyright royalty to be paid by such carrier to reimburse the copyright holders.

SHVA also established the "Grade B contour" around a broadcast tower as the determining factor as to whether a particular household was eligible to receive distant signals from a satellite operator. The Grade B contour of a station represented a prediction of the reach and coverage of a station's analog broadcast signal over average terrain in the absence of interference from other television sta-

tions. Individuals living inside a Grade B contour were not allowed to receive distant signals, while those outside the contour were eligible for those signals.

Following the passage of SHVA, some satellite carriers began to offer distant signals to served as well as unserved households. Network broadcasters brought suit against one satellite carrier, Primetime 24, asserting that it willfully violated SHVA by providing distant network signals to households that did not meet the definition of "unserved." In 1998, the court found for the broadcasters and issued a permanent injunction prohibiting Primetime 24 from using the section 119 license to offer distant network signals. The injunction was to take effect in stages the following year and would have resulted in over 2 million subscribers who were illegally receiving the signals losing access to distant network signals. While this service was terminated for some subscribers, the parties agreed to postpone the termination of service for the remaining subscribers until the end of 1999.

Satellite Home Viewer Improvement Act (SHVIA)

By the end of 1999, Congress had passed SHVIA. SHVIA extended the compulsory license regime of SHVA for an additional five years and grandfathered certain customers who were illegally receiving distant signals prior to its passage. SHVIA also established a "waiver process" under which consumers in an unserved market who cannot receive local broadcast stations over-the-air, despite residing within a Grade B contour, may seek a waiver to receive distant signals from their satellite carrier.

A significant change in SHVIA was the creation of a new, permanent, and free compulsory copyright license in section 122 of the Copyright Act. The section 122 license permits satellite carriers to retransmit local broadcast signals back into the same local market from which they originated (known as "local-into-local service"). The local market was defined by reference to the Nielsen Designated Market Area (DMA). This provision was intended to increase competition between satellite and cable operators, who previously were the only pay TV services able to provide consumers with access to their local broadcast television stations. Congress determined that over-the-air television would not be adversely impacted by the new license and that advertising revenue would increase because more viewers would have access to local stations.

Under section 122 (and related provisions in the Communications Act), satellite carriers are not required to provide local-into-local service to subscribers within a DMA. If an operator decides to provide local programming in a market, though, it is required to carry all the local broadcast stations in the market. This so-called "carry one, carry all" provision, which is codified in section 338 of the Communications Act, has an exception for certain duplicative stations and requires the broadcaster seeking carriage to provide a good quality signal.

Generally, under section 325 of the Communications Act, cable and satellite carriers are prohibited (with some exceptions) from retransmitting the signal of a broadcast television station without the express authority of that station. In SHVIA, Congress exempted a satellite carrier from having to obtain retransmission consent with respect solely to distant network signals for five years. Sat-

ellite carriers, however, still must comply with other FCC rules and regulations, including the network non-duplication rule, the syndicated exclusivity rule, and, to the extent feasible, the sports blackout rule. Finally, SHVIA instituted the rule that broadcasters must engage in "good faith" negotiations to come to a retransmission consent agreement (a duty later extended equally to MVPDs in retransmission consent negotiations).

Satellite Home Viewer Extension and Reauthorization Act (SHVERA)

Five years later, driven by the expiration of the compulsory copyright licenses in section 119 of the Copyright Act and the retransmission consent exemption in section 325 of the Communications Act, Congress passed SHVERA, which was enacted on December 8, 2004. In addition to extending the distant signal license and the retransmission consent exemption for distant signals until December 31, 2009, SHVERA acknowledged that stations were starting to transition to digital broadcasting. In particular, Congress directed the FCC to study and report on a digital signal strength standard as well as testing procedures for digital over-the-air broadcast television signals (meant eventually to replace the standards and procedures for analog over-the-air signals).

SHVERA also established a regime for the delivery of certain "significantly viewed" signals to consumers living in a DMA adjacent to the DMA from which a signal originated. "Significantly viewed" means a TV station has a significant level of viewers in an area outside of the station's local market. Being designated as "significantly viewed" gives a station the right to seek carriage by pay TV providers in an area outside of its home market without violating another station's market exclusivity rights. The FCC maintains a list of significantly viewed stations. Stations may be added to or removed from that list on a community-by-community basis. Under SHVIA, broadcast signals originating from neighboring DMAs would not be considered local even if members of a community could view them over the air. SHVERA created a copyright license that gives satellite carriers the option to offer subscribers signals from an adjacent DMA, if they live in a community that meets the "significantly viewed" definition. SHVERA also granted satellite carriers retransmission rights for such "significantly viewed" signals.

In addition, SHVERA sought to rationalize a patchwork of local and distant network signal services that grew as satellite carriers offered local-into-local service in more markets. It did so by establishing a framework for when subscribers were eligible to receive distant versus local signals. For example, in areas where local signals were offered, certain subscribers who illegally received distant signals prior to SHVIA had to elect whether to receive local or distant network signals. They could no longer receive both. In comparison, with limited exceptions, new customers in markets where local-into-local service is offered may only receive local signals. In effect, SHVERA formalized what is commonly known as the "if local, no distant" rule – namely that a DBS subscriber who has available local-into-local service pursuant to the Communications and Copyright Acts is not eligible to receive distant signals.

On June 12, 2009, the nation's full power television stations ceased analog broadcasts and began broadcasting only digital signals. This shift necessitated a series of amendments to the Communications Act to both remove references to analog broadcast television signals and to ensure that the FCC adjusted its rules related to the retransmission of digital broadcast signals in a timely manner. The shift to digital broadcasting also informed Congress's development of its SHVERA reauthorization legislation.

Satellite Television Extension and Localism Act (STELA)

After a series of short-term extensions to SHVERA, Congress passed STELA on May 12, 2010. STELA extended both the compulsory copyright license in section 119 of the Copyright Act and the expiring elements of section 325 (the exemption from retransmission consent for distant signals and the good faith requirement for retransmission consent negotiations) of the Communications Act until December 31, 2014.

STELA also made various updates to existing law to reflect the transition of full-power television stations from analog to digital broadcasts. It directed the FCC to update its testing models to determine which subscribers are eligible for distant signals, including giving the FCC the flexibility to alter the antenna standard used in its testing model (in the past, the FCC was required to base the model on the presumed use of a 30-foot outdoor antenna by consumers). It also created new incentives for satellite TV providers to enhance consumer access to public television programming. Finally, STELA updated certain exceptions to the "if local, no distant" principle.

STELA also rationalized several other aspects of copyright law. Specifically, STELA altered the definition of unserved household to protect multicast channels transmitting network programming in a local market from duplication by a distant signal, as well as assisting satellite TV providers to import a distant signal into "short markets" where they are otherwise providing local-into-local service. Short markets are DMAs that lack one or more local TV network affiliates. STELA permits a DBS provider to import a distant signal to fill in for the missing local affiliate. It also resolved issues surrounding situations where a signal "bleeds over" from an adjacent market and prevents some consumers from receiving broadcast signals to which they would otherwise be entitled. Finally, STELA revised the carriage rules for significantly viewed signals to enhance access to those signals on satellite pay TV systems.

Separately, STELA addressed an issue pertaining to the ability of DISH Network to provide distant network television signals under the section 119 copyright license. In 2003, DISH Network was permanently enjoined from utilizing the section 119 license due to failures to comply with the restrictions on delivery of those signals only to eligible consumers. That injunction was later upheld on appeal. STELA created a process through which DISH Network could resume service under the section 119 license (vitiating the injunction). That process required DISH Network to deliver local-into-local service in all 210 DMAs. DISH Network began to offer that service not long after STELA's passage, and presently is permitted once again to provide distant signals under the section 119 license.

Finally, STELA included additional provisions designed to enhance access to local TV programming on satellite systems. First, STELA instructed the FCC to conduct a study of the current DMA system, including the extent to which consumers in each local market have access to in-State broadcast programming. Second, STELA directed satellite carriers to submit annual local network channel broadcast reports and study what incentives would induce satellite carriers to provide local service to every market in the country. Third, STELA required the Comptroller General to prepare a report on the changes to communications laws and regulations that would be necessary or beneficial to consumers should Congress phase-out the statutory licensing requirements set forth under sections 111, 119, and 122 of the Copyright Act.

SUMMARY OF PROVISIONS

S. 2799, STAVRA, would amend the Communications Act to extend for five years various provisions set to expire at the end of 2014. Specifically, retransmission of distant television broadcast network signals would continue to be exempt from the retransmission consent process. In addition, STAVRA would renew the reciprocal obligation for both MVPDs and broadcast television stations to negotiate retransmission consent in good faith. Finally, STAVRA would continue to ban broadcast television stations from granting exclusive retransmission consent rights to an MVPD.

STAVRA also proposes a number of changes to video policy under the Communications Act. First, STAVRA would create a television market modification process for satellite carriers similar to the one already used for cable operators and governed by the FCC under section 614(h) of the Communications Act. Second, it would bar the practice of joint retransmission consent negotiations by independent broadcast television stations in the same market, prohibit the use of retransmission consent agreements to limit the ability of an MVPD to carry other broadcast television signals they are otherwise authorized to carry under the Communications Act (such as importing significantly viewed TV signals, distant signals, or signals added to a TV market through the market modification process), and direct the FCC to consider additional changes to its rules that govern retransmission consent negotiations as part of a rulemaking to update its totality of the circumstances test for good faith. Third, STAVRA proposes to provide additional transparency on how retransmission consent costs affect cable rates as part of the FCC's yearly cable rates report. Fourth, STAVRA would sunset the FCC's existing "integration ban" related to set-top boxes rented from a cable operator two years after STAVRA's passage, while establishing a working group overseen by the FCC to consider technical standards for a next-generation set-top box security architecture meant to help foster increased retail set-top box competition. Fifth, STAVRA would direct the FCC to consider changes to the administrative rules for the filing of petitions to prove effective competition by small cable companies, while preserving the obligation of the cable company to actually prove that such competition exists. Finally, STAVRA would require the FCC to produce a report on the current DMA system and alternatives to such system, including examination of local programming in States that are served entirely by DMAs which are not principally located in such State.

LEGISLATIVE HISTORY

In the 113th Congress, the Satellite Television Access and Viewer Rights Act (S. 2799) was introduced by Senator Rockefeller on September 11, 2014, and referred to the Senate Committee on Commerce, Science, and Transportation. The bill is co-sponsored by Senator Thune. On April 1, 2014, the Committee's Subcommittee on Communications, Technology, and the Internet held a hearing on "Reauthorization of the Satellite Television Extension and Localism Act."

On September 17, 2014, the Committee considered the bill, as amended in the nature of a substitute, in an open Executive Session. Senator Pryor offered an amendment to require the FCC to make information about the market modification process available to consumers on its website. Senator Booker, on behalf of himself and Senator Fischer, offered an amendment to require a report by the FCC on designated market areas. Senator Pryor's and Senator Booker's amendments were adopted, as modified, by unanimous consent. The Committee, without objection, ordered that S. 2799, as amended, be reported.

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. 2799—Satellite Television Access and Viewer Rights Act

Summary: Under current law, satellite carriers pay royalty fees for the right to transmit certain television signals to their subscribers without obtaining permission from copyright holders. S. 2799 would extend provisions of current law that allow satellite carriers to transmit copyrighted material but would not extend the license that allows transmission without specific authorization from the copyright holders. That license will expire on December 31, 2014. The bill also would direct the Federal Communications Commission (FCC) to amend certain regulations affecting television stations and cable and satellite carriers.

Implementing S. 2799 would have a negligible net effect on discretionary spending over the 2015–2019 period, CBO estimates. Enacting S. 2799 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 2799 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. 2799 contains private-sector mandates, as defined in UMRA, on television broadcasters, cable operators, and satellite carriers. CBO estimates that the aggregate cost of the mandates in the bill would fall below the annual threshold established in UMRA for private-sector mandates ($152 million in 2014, adjusted annually for inflation).

Estimated cost to the Federal Government: Based on information from the FCC, CBO estimates that implementing S. 2799 would cost about $2 million over the 2015–2019 period for the required reports and regulatory actions, assuming the availability of appropriated funds. Further, the FCC is authorized to collect fees to off-

set its operating costs each year; therefore, we estimate that implementing S. 2799 would have a negligible effect on net discretionary spending each year.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: S. 2799 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

S. 2799 contains private-sector mandates, as defined in UMRA, on television broadcasters, cable operators, and satellite carriers. It would extend existing mandates and impose new ones related to the retransmission of broadcast programs. The cost of complying with those mandates would be any net income forgone. Based on information from the FCC and industry sources, CBO estimates that the aggregate cost of the mandates in the bill would fall below the annual threshold established in UMRA for private-sector mandates ($152 million in 2014, adjusted annually for inflation).

The bill would extend for five years three existing mandates related to the retransmission of broadcast programs. It would extend the mandate on television broadcasters that prohibits them from receiving compensation from satellite carriers for retransmitting distant (non-local) network signals to subscribers who cannot receive the signals of local network affiliates. Second, it would extend the mandate on television broadcasters that prohibits them from entering into certain exclusive contracts for the rights to carry (retransmit) their programs. The bill also would extend the mandate on broadcasters, cable operators, and satellite carriers that requires them to negotiate retransmission agreements in good faith. Based on information from industry sources, CBO estimates that the cost of extending those mandates would be small.

The bill would impose two additional mandates related to negotiating agreements for retransmitting broadcast programs. It would prohibit television broadcasters from engaging in coordinated or joint negotiations with other television broadcasters in the same local market for the retransmission of their broadcast programs. The prohibition would not apply to broadcast stations in the same market under common control. Current law prohibits such joint negotiations among the top four stations in a local market. According to industry sources, the broader ban in the bill would affect only a small number of stations, and would be unlikely to have a large cost. The bill also would prohibit local broadcasters from using retransmission agreements to limit the ability of cable operators or satellite carriers to retransmit other broadcast signals they are authorized to carry. The existing standards for good faith negotiations tend to discourage such behavior and industry experts find limited evidence of such practices. Therefore, CBO estimates that the cost of this mandate would be small.

Previous CBO estimates: On June 3, 2014, CBO transmitted a cost estimate for H.R. 4572, the STELA Reauthorization Act of 2014, as ordered reported by the House Committee on Energy and Commerce on May 9, 2014. H.R. 4572 would extend provisions of current law that allow satellite carriers to transmit copyrighted material but would not extend the license that allows such transmission without permission from the copyright holders. CBO estimated that implementing H.R. 4572 would cost about $1 million over the 2015–2019 period, assuming appropriation of the nec-

essary amounts, for reports and regulatory actions by the Federal Communications Commission.

On July 17, 2014, CBO transmitted a cost estimate for H.R. 5036, the Satellite Television Access Reauthorization Act of 2014, as ordered reported by the House Committee on the Judiciary on July 10, 2014. H.R. 5036 would extend the statutory license that allows transmission of television signals that are copyrighted without first obtaining permission from the copyright holder. CBO estimated that implementing H.R. 5036 would have an insignificant effect on the federal budget.

On July 3, 2014, CBO transmitted a cost estimate for S. 2454, the Satellite Television Reauthorization Act of 2014, as ordered reported by the Senate Committee on the Judiciary on June 26, 2014. S. 2454 would extend the statutory license that allows transmission of television signals that are copyrighted without first obtaining permission from the copyright holder. CBO estimated that implementing S. 2454 would have an insignificant effect on the federal budget.

Estimate prepared by: Federal costs: Susan Willie; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Tristan Hanon.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

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. 2799 would reauthorize and amend certain provisions of the Communications Act that govern satellite retransmission of television broadcast signals. It also would amend various existing statutes and rules governing existing video policy. The bill would affect broadcasters and multichannel video programming distributors (e.g. cable and satellite operators) already subject to these obligations under the Communication Act, and, therefore, the number of persons covered should be consistent with the current levels of individuals impacted under the provisions that are addressed in the bill.

ECONOMIC IMPACT

S. 2799 would not have an adverse impact on the Nation's economy.

PRIVACY

The reported bill would have no impact on the personal privacy of U.S. citizens.

PAPERWORK

The reported bill would not significantly increase paperwork requirements for individuals and businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 1 would provide that the legislation may be cited as the "Satellite Television Access and Viewer Rights Act."

Section 2. References to Communications Act of 1934.

Section 2 would provide that wherever in STAVRA an amendment or repeal is expressed as an amendment to, or repeal of, a section, that reference shall be considered to be made to a section or other provision of the Communications Act.

Title I. Satellite television.

Section 101. Extension of authority.

Section 101 of the bill would amend section 325(b) of the Communications Act to extend for five years the statutory provision that permits a satellite carrier to retransmit, without first having to obtain consent, the signal of a distant network station to certain unserved households. The section also would extend the provisions in the Communications Act requiring that retransmission consent negotiations be in good faith and prohibiting exclusive carriage deals by local broadcast television stations.

Section 102. Modification of television markets to further consumer access to relevant television programming.

Section 102(a) of the bill would amend section 338 of the Communications Act to create a television market modification process for satellite carriers. It would add to section 338 a definition of designated market area (defined as the DMAs determined by Nielsen Media Research) and local market (which is a television broadcast station's DMA and includes any modifications made to a commercial television broadcast station's market under the market modification process).

Section 102(a) of the bill would then add a new subsection (l) to section 338 of the Communications Act. This new subsection would create a written petition process whereby the FCC could modify the local market of a commercial television broadcast station for purposes of carriage by a satellite carrier. Such petitions could be used to add or subtract communities from the local market of a commercial television broadcast station. As part of the review of a market modification request, the FCC may determine that a community is part of more than one local market. The FCC must grant or deny a modification request within 120 days of its filing.

The Committee intends that the process established by the FCC under the authority granted by section 102(a) of the bill should be modeled upon the television market modification process established by the FCC under section 614(h). In judging the merits of a petition filed under new section 338(l), the FCC must afford par-

ticular attention to the value of localism. In so doing, it must consider the following factors: (1) whether the television station, or others in the same area, have historically been carried on the cable or satellite pay TV providers serving such community; (2) whether the television station provides coverage or other local service to such community; (3) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence; (4) whether any other television station eligible to be carried by a satellite carrier in such community provides news coverage of issues of concern to that community or provides coverage of sports or other events of interest to the community; and (5) evidence of viewing patterns in households that do and do not subscribe to MVPD services in that community.

The Committee is aware that many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances, have expressed concerns that they lack access to local television programming that is relevant to their everyday lives. The Committee intends that the FCC should consider the plight of these consumers when judging the merits of a petition filed under the process created by this subsection (as well as a petition filed using the process already in place for cable operators under section 614(h)) of the Communications Act, even if granting such modification would pose an economic challenge to various local television broadcast stations.

The Committee also is aware that local television market determinations in Alaska, particularly with respect to the white spaces in that State presently unassigned to a specific DMA, pose their own unique challenges. The Committee does not intend for this subsection to displace the present system for assigning such areas in Alaska to DMAs pursuant to section 119 of title 17, United States Code.

A market determination under section 102(a) of the bill shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish that carriage by means of its satellites in operation at the time the petition was filed. Additionally, a satellite carrier may not delete from carriage the signal of a commercial television broadcast station during the pendency of a proceeding under subsection 338(l). The Committee recognizes that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate; the Committee believes, though, that claims of the existence of such difficulties should be well substantiated and carefully examined by the FCC as part of the petition consideration process. The Committee also intends that a petitioner may refile its petition if at a later time a satellite carrier has deployed new satellites that could change this feasibility determination.

Finally, a market modification under new section 338(l) of the Communications Act shall not have any effect on the eligibility of households in the community affected by such modification to receive distant signals pursuant to section 339 of the Communications Act.

Section 102(b) of the bill would make several conforming amendments to section 614(h) of the Communications Act, which governs television market modifications for cable operators.

Section 102(c) of the bill would direct the FCC, as part of its rulemaking to implement section 102, to make sure that the procedures for the filing and consideration of a written market modification request fully effectuate the purposes of the amendments made by section 102. Additionally, as part of that rulemaking, the FCC shall update what it considers to be a community for purposes of the filing of a television market modification petition. The Committee intends for the FCC, when examining what it considers to be a community, to consider alternative definitions for community that could make the market modification process more effective and useful.

Section 102(d) of the bill would require the FCC to make information available to consumers on its website regarding the television market modification processes under sections 338 and 614(h) of the Communications Act. The information posted on the FCC's website must include details on who may petition for a television market modification and the factors that the FCC considers when reviewing such petition.

Title II. Video policy reforms.

Section 201. Consumer protections in retransmission consent.

Section 201(a) of the bill would amend section 325(b) of the Communications Act to bar television broadcast stations in the same local market from coordinating negotiations for retransmission consent, or negotiating retransmission consent on a joint basis, unless such stations are directly or indirectly under common de jure control permitted under the FCC's regulations. The Committee intends that stations who are considered under "de facto" control of another station owner under the FCC's regulations, such as those situations where ownership of a station is attributed to another due to the use of joint sales agreements, local marketing agreements, or other sharing agreements, do not fall within the scope of the exception set forth in section 201(a) and section 201(b) for stations under "common de jure control."

In addition, the Committee intends that the exception for stations under "common de jure control" when "permitted under the regulations of the FCC," should ensure that only those stations in compliance with the Commission's ownership rules may negotiate jointly for retransmission consent. For example, if two or more stations are considered commonly owned under the attribution rules but such common ownership violates the FCC's ownership rules such that the arrangement must be ended unless the FCC grants a waiver of its rules, it is the intent of the Committee that neither of those stations should be permitted by section 201(a) to negotiate jointly for retransmission consent, or utilize the exception set forth in section 201(b), even if the FCC has granted a temporary transition period for such combinations to come into compliance with its rules.

Section 201(b) of the bill would further amend section 325(b) of the Communications Act to prohibit a television broadcast station, in its local market, from limiting the ability of an MVPD to carry

a television signal that has been deemed significantly viewed under the FCC's rules, or any other television broadcast signal that such MVPD is authorized to carry under sections 338, 339, 340, and 614 of the Communications Act. This prohibition does not apply to stations that are directly or indirectly under common de jure control permitted under the FCC's regulations. The Committee intends this provision to be interpreted broadly by the FCC to ensure that a television broadcast station is not able to limit MVPD carriage of signals that it is permitted to carry pursuant to the Communications Act. The Committee does not intend, though, for this provision to alter, expand, or otherwise change what broadcast television station signals a satellite carrier or cable operator is permitted to carry under the Communications Act.

Section 201(c) of the bill would direct the FCC to conduct a rulemaking to review and update its totality of the circumstances test for good faith negotiations under section 325(b) of the Communications Act. Specifically, the FCC shall make sure that its test encourages both parties to a retransmission consent negotiation to present bona fide proposals on the material terms of a retransmission consent agreement during negotiations and engage in timely negotiations to reach an agreement.

The Committee intends that the rulemaking directed by section 201(c) of the bill should be used to update the FCC's totality of the circumstances test so that the test will take a broad look at all facets of how both television broadcast station owners and MVPDs approach retransmission consent negotiations to make sure that the tactics engaged in by both parties meet the good faith standard set forth in the Communications Act. Evidence collected by the Committee suggests that the negotiations surrounding retransmission consent have become significantly more complex in recent years, and that in some cases one or both parties to a negotiation may be engaging in tactics that push those negotiations toward a breakdown and result in consumer harm from programming blackouts. The Committee expects the FCC's totality of the circumstances test to include a robust examination of negotiating practices, including whether certain substantive terms offered by a party may increase the likelihood of the negotiations breaking down. The Committee also expects that the test should examine the practices engaged in by both parties if negotiations have broken down and a retransmission consent agreement has expired.

The Committee believes that it may be appropriate for the FCC to provide additional specific guidance as to actions that, taken as a whole, evidence bad faith based on the totality of the circumstances. Such guidance would help provide more certainty to the parties to a negotiation and ultimately give consumers greater faith in the retransmission consent process.

The Committee also expects as part of this rulemaking that the FCC would examine the role digital rights and online video programming have begun to play in retransmission consent negotiations. The Committee is concerned by reports that parties in retransmission consent negotiations have begun to block access to online programming during those negotiations or after a retransmission consent agreement has expired and a blackout has occurred, including for consumers of a MVPD who subscribe only to the broadband service offered by such MVPD. Finally, the Com-

mittee intends, as part of this rulemaking, for the FCC to examine whether its current process for filing bad faith allegations based on the totality of the circumstances test is effective and actually helps to promote bona fide negotiations and protect consumers.

Section 202. Update to cable rates report.

Section 202 of the bill would amend section 623(k) of the Communications Act to include in the FCC's yearly cable rates report specific information about the aggregate average total amount paid by cable systems in compensation to television broadcast stations under section 325 of the Communications Act. This information shall be published in a manner substantially similar to the way other information, such as monthly prices for basic cable service and other cable programming, is published in the FCC's annual report.

All signals carried under section 325 are required by law to be included on a cable system's basic service tier. Further, all cable subscribers are required by law to purchase the basic service tier. For these reasons, the Committee finds that including information regarding compensation under section 325 in the FCC's annual cable rates report is important for consumers, policymakers, and industry participants.

The Committee intends that information included under section 202 show how compensation under section 325 has changed or may change over time. In implementing section 202 and thereafter, the Committee therefore intends that the FCC include compensation under section 325 for as many prior periods as it determines such information is attainable without unnecessary burden.

Section 203. Competitive device availability.

Section 203(a) of the bill would provide that the second sentence of section 76.1204(a)(1) of title 47 of the Code of Federal Regulations (commonly referred to as the cable set-top box integration ban) would terminate effective two years from the date of STAVRA's enactment. Not later than 180 days after that date, the FCC must revise its regulations to strike that sentence from its rules and make any necessary conforming amendments to its rules. The Committee intends that nothing in section 203(a) shall affect in any way the underlying authority held by the FCC under section 629 of the Communications Act to take steps to promote a competitive retail set-top box marketplace.

Section 203(b) of the bill would direct the FCC to convene a working group of technical experts from a variety of stakeholders to identify, report, and recommend performance and technical standards for a software-based downloadable security system in order to promote the competitive availability of set-top boxes, including boxes from third parties available at retail. Such system must be not unduly burdensome, uniform, and technology- and platform-neutral. The working group must hold its initial meeting within 180 days of STAVRA's enactment, and file a report on its work with the FCC within 540 days of STAVRA's enactment. The Chairman of the FCC may appoint a FCC staff member to moderate and direct the work of the working group and provide technical assistance to the working group's members.

Section 204. Administrative reforms to effective competition petitions.

Section 204 of the bill would amend section 623 of the Communications Act to direct the FCC to complete a rulemaking within 180 days of the enactment of STAVRA to establish a streamlined process for small cable operators, particularly those who serve primarily rural areas, to file petitions for effective competition under that section. Nothing in section 204, however, shall be construed to have any effect on the obligation of small cable operators filing petitions to prove the existence of effective competition pursuant to section 623 of the Communications Act.

Section 205. Report on designated market areas.

Section 205 of the bill would direct the FCC, within 18 months of the enactment of STAVRA, to submit a report to various named congressional committees on DMAs. That report must include an analysis of (1) the extent to which consumers have access to programming from television broadcast stations located outside their local television market; (2) whether there are alternatives to the DMA system that would provide consumers with more local programming options; and (3) the impact such alternatives to the DMA system could have on localism, as well as broadcast television locally, regionally, and nationally.

The report also must contain recommendations on how to foster increased localism in counties served by out-of-State DMAs. In making these recommendations, the FCC must consider (1) the impact DMAs that cross State lines have on access to local programming; (2) the impact DMAs have on local programming in rural areas; and (3) the state of local programming in States served exclusively by out-of-State DMAs.

The Committee intends that the FCC's report will interpret local programming to include not only television programming (in particular news, sports, weather, and other programming containing content relevant to a consumer's daily life) originating from and about the DMA in which a consumer resides, but also television programming originating from and about the State in which a consumer resides. The Committee also intends that the analysis concerning alternatives to the DMA system should explore in detail the merits and advantages to those alternatives to consumers, and not just the impact those alternatives may have on broadcast television.

Title III. Miscellaneous.

Section 301. Implementation.

Section 301 of the bill would direct the FCC to prescribe regulations to implement the requirements of this Act, or any amendments made by this Act, within 270 days of its enactment, except as otherwise expressly provided in this Act.

Section 302. Severability.

Section 302 of the bill would provide that if any provision or application of a provision is held unconstitutional, the remainder of this Act, the amendments made by the Act, and the application of such provisions shall not be affected thereby.

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):

COMMUNICATIONS ACT OF 1934

[47 U.S.C. 151 et seq.]

SEC. 325. FALSE, FRAUDULENT, OR UNAUTHORIZED TRANSMISSIONS.

[47 U.S.C. 325]

(a) FALSE DISTRESS SIGNALS; REBROADCASTING PROGRAMS.—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 signal 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) CONSENT TO RETRANSMISSION OF BROADCASTING STATION SIGNALS.—

(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 nonduplication, syndicated exclusivity, and sports blackout rules adopted by the Commission under section 339(b) of this Act;

(C) until [December 31, 2014] *December 31, 2019*, 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 multichannel 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) 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 reg-

ulations as are necessary to administer the limitations contained in paragraph (2). Such regulations shall—

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

(ii) until [January 1, 2015] *January 1, 2020*, 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[; and]

(iii) until [January 1, 2015] *January 1, 2020*, 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[.]*;*

(iv) prohibit a television broadcast station from coordinating negotiations or negotiating on a joint basis with another television broadcast station in the same local market (as defined in section 338 of this Act) to grant retransmission consent under this section to a multichannel video programming distributor, unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Federal Communications Commission; and

(v) prohibit a television broadcast station from limiting the ability of a multichannel video programming distributor to carry a television signal that has been deemed significantly viewed, within the meaning of section 76.54 of title 47, Code of Federal Regulations, or any successor regulation, or any other television broadcast signal such distributor is authorized to carry under section 338, 339, 340, or 614 of this Act, into the local market of such station, unless such stations are directly or indirectly under common de jure control permitted by the Commission.

(D) UPDATE TO GOOD FAITH RULES.—The Commission shall commence a rulemaking to review and update its totality of the circumstances test for good faith negotiations. As part of that rulemaking, the Commission shall ensure that such test encourages parties to a retransmission consent negotiation to present bona fide proposals on the material terms of a retransmission consent agreement during negotiations and engage in timely negotiations to reach an agreement.

(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) 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) BROADCAST TO FOREIGN COUNTRIES FOR REBROADCAST TO UNITED STATES; PERMIT.—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 cause 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) APPLICATION FOR PERMIT.—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.

* * * * * * *

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

[47 U.S.C. 338]

(a) Carriage obligations.

(1) IN GENERAL.—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.—In addition to the remedies available to television broadcast stations under section 501(f) of title 17, United States Code, the Commission may use the Commission's authority under this Act to assure compliance with the obligations of this subsection, but in no instance shall a Commission enforcement proceeding be required as a predicate to the pursuit of a remedy available under such section 501(f).

(3) LOW POWER STATION CARRIAGE OPTIONAL.—No low power television station whose signals are provided under section 119(a)(14) of title 17, United States Code, shall be entitled to insist on carriage under this section, regardless of whether the satellite carrier provides secondary transmissions of the primary transmissions of other stations in the same local market pursuant to section 122 of such title, nor shall any such carriage be considered in connection with the requirements of subsection (c) of this section.

(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 (A) within 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after such date of enactment retransmit the signals originating as digital signals of each such station. 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.

(5) NONDISCRIMINATION IN CARRIAGE OF HIGH DEFINITION SIGNALS OF NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS.—

(A) EXISTING CARRIAGE OF HIGH DEFINITION SIGNALS.—If, before the date of enactment of the Satellite Television Ex-

tension and Localism Act of 2010, an eligible satellite carrier is providing, under section 122 of title 17, United States Code, any secondary transmissions in high definition format to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, then such satellite carrier shall carry the signals in high-definition format of qualified noncommercial educational television stations located within that local market in accordance with the following schedule:

(i) By December 31, 2010, in at least 50 percent of the markets in which such satellite carrier provides such secondary transmissions in high definition format.

(ii) By December 31, 2011, in every market in which such satellite carrier provides such secondary transmissions in high definition format.

(B) NEW INITIATION OF SERVICE.—If, on or after the date of enactment of the Satellite Television Extension and Localism Act of 2010, an eligible satellite carrier initiates the provision, under section 122 of title 17, United States Code, of any secondary transmissions in high definition format to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, then such satellite carrier shall carry the signals in high-definition format of all qualified noncommercial educational television stations located within that local market.

(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)(1), 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 RECEPTION ANTENNA.—

(1) SINGLE RECEPTION ANTENNA.—Each satellite carrier that retransmits the signals of local television broadcast stations in

a local market shall retransmit such stations in such market so that a subscriber may receive such stations by means of a single reception antenna and associated equipment.

(2) ADDITIONAL RECEPTION ANTENNA.—If the carrier retransmits the signals of local television broadcast stations in a local market in high definition format, the carrier shall retransmit such signals in such market so that a subscriber may receive such signals by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used to comply with paragraph (1).

(h) ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.—

(1) NOTICES TO AND ELECTIONS BY SUBSCRIBERS CONCERNING GRANDFATHERED SIGNALS.—Any carrier that provides a distant signal of a network station to a subscriber pursuant [to] section 339(a)(2)(A) shall—

(A) within 60 days after the local signal of a network station of the same television network is available pursuant to section 338, or within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, whichever is later, send a notice to the subscriber—

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

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

(B) if the subscriber—

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

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

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

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

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

(i) of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the car-

rier's proposed local receive facility for that local market;

(ii) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

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

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

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

(i) PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.—

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

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

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

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

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

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

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

(A) the term "personally identifiable information" does not include any record of 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 satellite carrier that are used in the provision of satellite service; and

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

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

(ii) provides any wire or radio communications service.

(3) PROHIBITIONS.—

(A) CONSENT TO COLLECTION.—Except as provided in subparagraph (B), a satellite carrier shall not use any facilities used by the satellite carrier to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(B) EXCEPTIONS.—A satellite carrier may use such facilities to collect such information in order to—

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

(ii) detect unauthorized reception of satellite communications.

(4) DISCLOSURE.—

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

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

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

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

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

(I) the satellite carrier has provided the subscriber the opportunity to prohibit or limit such disclosure; and

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

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

(bb) the nature of any transaction made by the subscriber over any facilities used by the satellite carrier; or

(iv) to a government entity as authorized under chapter 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include

records revealing satellite subscriber selection of video programming from a satellite carrier.

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

(6) DESTRUCTION OF INFORMATION.—A satellite carrier shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under paragraph (5) or pursuant to a court order.

(7) PENALTIES.—Any person aggrieved by any act of a satellite carrier in violation of this section may bring a civil action in a United States district court. The court may award—

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

(B) punitive damages; and

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

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

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

(9) COURT ORDERS.—Except as provided in paragraph (4)(B)(iv), a governmental entity may obtain personally identifiable information concerning a satellite subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

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

(j) 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).

(k) DEFINITIONS.—As used in this section:

(1) DESIGNATED MARKET AREA.—The term "designated market area" means a designated market area as determined by Nielsen Media Research.

[(1)**]***(2)* DISTRIBUTOR.—The term "distributor" means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a pack-

age with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

[(2)]*(3)* ELIGIBLE SATELLITE CARRIER.—The term "eligible satellite carrier" means any satellite carrier that is not a party to a carriage contract that—

(A) governs carriage of at least 30 qualified noncommercial educational television stations; and

(B) is in force and effect within 150 days after the date of enactment of the Satellite Television Extension and Localism Act of 2010.

[(3)]*(4)* 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.

[(4)]*(5)* [LOCAL MARKET.—The term "local market" has the meaning given that term under section 122(j) of title 17, United States Code.]*LOCAL MARKET.—The term "local market", in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a television broadcast station is located, including with respect to a commercial television broadcast station any modifications to such market pursuant to subsection (l).*

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

[(6)]*(7)* QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term "qualified noncommercial educational television station" means any full-power television broadcast station that—

(A) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational broadcast station and is owned and operated by a public agency, nonprofit foundation, nonprofit corporation, or nonprofit association; and

(B) has as its licensee an entity that is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of this title.

[(7)]*(8)* SATELLITE CARRIER.—The term "satellite carrier" has the meaning given such term under section 119(d) of title 17, United States Code.

[(8)]*(9)* SECONDARY TRANSMISSION.—The term "secondary transmission" has the meaning given such term in section 119(d) of title 17, United States Code.

[(9)]*(10)* SUBSCRIBER.—The term "subscriber" has the meaning given that term under section 122(j) of title 17, United States Code.

[(10)]*(11)* TELEVISION BROADCAST STATION.—The term "television broadcast station" has the meaning given such term in section 325(b)(7).

(l) MARKET DETERMINATIONS.—

(1) IN GENERAL.—Following a written request, the Commission may, with respect to a particular commercial television broadcast station, include additional communities within its local market or exclude communities from such station's local market to better effectuate the purposes of this section.

(2) CONSIDERATIONS.—In considering requests filed under paragraph (1), the Commission—

(A) may determine that particular communities are part of more than one local market;

(B) shall afford particular attention to the value of localism by taking into account such factors as—

(i) whether the station, or other stations located in the same area—

(I) have been historically carried on the cable system or systems within such community; or

(II) have been historically carried on the satellite carrier or carriers serving such community;

(ii) whether the television station provides coverage or other local service to such community;

(iii) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;

(iv) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(v) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.

(3) CARRIAGE OF SIGNALS.—

(A) CARRIAGE OBLIGATION.—A market determination under this subsection shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.

(B) DELETION OF SIGNALS.—A satellite carrier shall not delete from carriage the signal of a commercial television broadcast station during the pendency of any proceeding under this subsection.

(4) DETERMINATIONS.—Not later than 120 days after the date that a written request is filed under paragraph (1), the Commission shall grant or deny the request.

(5) NO EFFECT ON ELIGIBILITY TO RECEIVE DISTANT SIGNALS.—No modification of a commercial broadcast television station's local market pursuant to this subsection shall have

any effect on the eligibility of households in the community affected by such modification to receive distant signals pursuant to section 339 of this Act.

SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

[47 U.S.C. 534]

* * * * * * *

(h) DEFINITIONS.—

(1) LOCAL COMMERCIAL TELEVISION STATION.—

(A) IN GENERAL.—For purposes of this section, the term "local commercial television station" means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 615(l)(1), licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

(B) EXCLUSIONS.—The term "local commercial television station" shall not include—

(i) low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

(ii) a television broadcast station that would be considered a distant signal under section 111 of title 17, United States Code, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

(iii) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

(C) MARKET DETERMINATIONS.—

(i) For purposes of this section, a broadcasting station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

(ii) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as—

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such [community] *community or on the satellite carrier or carriers serving such community*;[1]

(III) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;

[(III)]*(IV)* whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

[(IV)]*(V)* [evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.] *evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.*

(iii) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

(iv) Within 120 days after the date on which a request is filed under this subparagraph (or 120 days after the date of enactment of the Telecommunications Act of 1996, if later), the Commission shall grant or deny the request.

(2) QUALIFIED LOW POWER STATION.—The term "qualified low power station" means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if—

(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations;

(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station

[1] This amendment appears to be in error. An amendment to subclause (I) would be consistent with the other amendments under the bill.

would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

(C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations;

(D) such station is located no more than 35 miles from the cable system's headend, and delivers to the principal headend of the cable system an over-the-air signal of good quality, as determined by the Commission;

(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on the date of enactment of this section.

SEC. 623. REGULATION OF RATES.

[47 U.S.C. 543]

(a) COMPETITION PREFERENCE; LOCAL AND FEDERAL REGULATION.—

(1) IN GENERAL.—No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

(2) PREFERENCE FOR COMPETITION.—If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition—

(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

(3) QUALIFICATION OF FRANCHISING AUTHORITY.—A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that—

(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

(4) APPROVAL BY COMMISSION.—A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that—

(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

(5) REVOCATION OF JURISDICTION.—Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

(6) EXERCISE OF JURISDICTION BY COMMISSION.—If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the fran-

chising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

(7) AGGREGATION OF EQUIPMENT COSTS.—

(A) IN GENERAL.—The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3), to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

(B) REVISION TO COMMISSION RULES; FORMS.—Within 120 days of the date of enactment of the Telecommunications Act of 1996, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (A).

(b) ESTABLISHMENT OF BASIC SERVICE TIER RATE REGULATIONS.—

(1) COMMISSION OBLIGATION TO SUBSCRIBERS.—The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

(2) COMMISSION REGULATIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission—

(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission;

(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

(C) shall take into account the following factors:

(i) the rates for cable systems, if any, that are subject to effective competition;

(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance

with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

(3) EQUIPMENT.—The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for—

(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

(B) installation and monthly use of connections for additional television receivers.

(4) COSTS OF FRANCHISE REQUIREMENTS.—The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

(5) IMPLEMENTATION AND ENFORCEMENT.—The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include—

(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing

the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

(6) NOTICE.—The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

(7) COMPONENTS OF BASIC TIER SUBJECT TO RATE REGULATION.—

(A) MINIMUM CONTENTS.—Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

(B) PERMITTED ADDITIONS TO BASIC TIER.—A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

(8) BUY-THROUGH OF OTHER TIERS PROHIBITED.—

(A) PROHIBITION.—A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

(B) EXCEPTION; LIMITATION.—The prohibition in subparagraph (A) shall not apply to a cable system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after—

(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

(ii) 10 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (C).

(C) WAIVER.—If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

(c) REGULATION OF UNREASONABLE RATES.—

(1) COMMISSION REGULATIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any franchising authority (in accordance with paragraph (3)) alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of the first complaint filed with the franchising authority under paragraph (3) and that are determined to be unreasonable.

(2) FACTORS TO BE CONSIDERED.—In establishing the criteria for determining in individual cases whether rates for cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors—

(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

(B) the rates for cable systems, if any, that are subject to effective competition;

(C) the history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the sys-

tem, other than programming provided on a per channel or per program basis;

(E) capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

(F) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.

(3) REVIEW OF RATE CHANGES.—The Commission shall review any complaint submitted by a franchising authority after the date of enactment of the Telecommunications Act of 1996 concerning an increase in rates for cable programming services and issue a final order within 90 days after it receives such a complaint, unless the parties agree to extend the period for such review. A franchising authority may not file a complaint under this paragraph unless, within 90 days after such increase becomes effective it receives subscriber complaints.

(4) SUNSET OF UPPER TIER RATE REGULATION.—This subsection shall not apply to cable programming services provided after March 31, 1999.

(d) UNIFORM RATE STRUCTURE REQUIRED.—A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system. This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

(e) DISCRIMINATION; SERVICES FOR THE HEARING IMPAIRED.—Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority from—

(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

(f) NEGATIVE OPTION BILLING PROHIBITED.—A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's

proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

(g) COLLECTION OF INFORMATION.—The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

(h) PREVENTION OF EVASIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

(i) SMALL SYSTEM BURDENS.—In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

(j) RATE REGULATION AGREEMENTS.—During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

[(k) REPORTS ON AVERAGE PRICES.—The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment, of—

[(1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2), compared with

[(2) cable systems that the Commission has found are not subject to such effective competition.]

(k) REPORTS ON AVERAGE PRICES.—

(1) IN GENERAL.—The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment of cable systems that the Commission has found are subject to effective competition under subsection (a)(2) compared with cable systems that the Commission has found are not subject to such effective competition.

(2) INCLUSION IN ANNUAL REPORT.—

(A) IN GENERAL.—The Commission shall include in its report under paragraph (1), the aggregate average total amount paid by cable systems in compensation under section 325.

(B) FORM.—The Commission shall publish information under this paragraph in a manner substantially similar to the way other comparable information is published in such report.

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

(1) The term "effective competition" means that—

(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

(B) the franchise area is—

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area;

(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area; or

(D) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

(2) The term "cable programming service" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.

(m) SPECIAL RULES FOR SMALL COMPANIES.—

(1) IN GENERAL.—Subsections (a), (b), and (c) do not apply to a small cable operator with respect to—

(A) cable programming services, or

(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994,

in any franchise area in which that operator services 50,000 or fewer subscribers.

(2) DEFINITION OF SMALL CABLE OPERATOR.—For purposes of this subsection, the term "small cable operator" means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.

(n) TREATMENT OF PRIOR YEAR LOSSES.—Notwithstanding any other provision of this section or of section 612, losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for

any tier of service or any type of equipment that is subject to regulation under this section are lawful.

(o) STREAMLINED PETITION PROCESS FOR SMALL CABLE OPERATORS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Satellite Television Access and Viewer Rights Act, the Commission shall complete a rulemaking to establish a streamlined process for filing of an effective competition petition pursuant to this section for small cable operators, particularly those who serve primarily rural areas.

(2) CONSTRUCTION.—Nothing in this subsection shall be construed to have any effect on the duty of a small cable operator to prove the existence of effective competition under this section.

(3) DEFINITION OF SMALL CABLE OPERATOR.—In this subsection, the term "small cable operator" has the meaning given the term in subsection (m)(2).

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