

106TH CONGRESS
1ST SESSION

H. R. 1554

To amend the provisions of title 17, United States Code, and the Communications Act of 1934, relating to copyright licensing and carriage of broadcast signals by satellite.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 1999

Mr. COBLE (for himself, Mr. TAUZIN, Mr. BERMAN, Mr. MARKEY, Mr. HYDE, Mr. BLILEY, Mr. CONYERS, Mr. DINGELL, Mr. SENSENBRENNER, Mr. OXLEY, Mr. DELAHUNT, Mr. RUSH, Mr. GOODLATTE, Mr. STEARNS, Mr. WEXLER, Mr. BOUCHER, Mr. CANNON, Mr. PICKERING, Mr. MCCOLLUM, Mr. SAWYER, Mr. GALLEGLY, Mr. UPTON, Mr. ROGAN, Mr. GILLMOR, Mr. PEASE, Mr. STUPAK, Mr. JENKINS, and Mr. HILLEARY) introduced the following bill; Title I, referred to the Committee on Commerce; Title II, referred to the Committee on the Judiciary

A BILL

To amend the provisions of title 17, United States Code, and the Communications Act of 1934, relating to copyright licensing and carriage of broadcast signals by satellite.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Satellite Copyright,
5 Competition, and Consumer Protection Act of 1999”.

1 **TITLE I—SATELLITE COMPETI-**
2 **TION AND CONSUMER PRO-**
3 **TECTION**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Satellite Competition
6 and Consumer Protection Act”.

7 **SEC. 102. RETRANSMISSION CONSENT.**

8 Section 325(b) of the Communications Act of 1934
9 (47 U.S.C. 325(b)) is amended—

10 (1) by amending paragraphs (1) and (2) to
11 read as follows:

12 “(b)(1) No cable system or other multichannel video
13 programming distributor shall retransmit the signal of a
14 television broadcast station, or any part thereof, except—

15 “(A) with the express authority of the origi-
16 nating station;

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

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

23 “(2) The provisions of this subsection shall not
24 apply—

1 “(A) to retransmission of the signal of a non-
2 commercial television broadcast station;

3 “(B) to retransmission of the signal of a tele-
4 vision broadcast station outside the station’s local
5 market by a satellite carrier directly to its sub-
6 scribers, if—

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

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

13 “(iii) the satellite carrier complies with all
14 network nonduplication, syndicated exclusivity,
15 and sports blackout rules adopted by the Com-
16 mission pursuant to section 712 of this Act;

17 “(C) until 7 months after the date of enactment
18 of the Satellite Competition and Consumer Protec-
19 tion Act, to retransmission of the signal of a tele-
20 vision network station directly to a satellite antenna,
21 if the subscriber receiving the signal is located in an
22 area outside the local market of such station; or

23 “(D) to retransmission by a cable operator or
24 other multichannel video provider, other than a sat-
25 ellite carrier, of the signal of a television broadcast

1 station outside the station's local market if such sig-
2 nal was obtained from a satellite carrier and—

3 “(i) the originating station was a supersta-
4 tion on May 1, 1991; and

5 “(ii) as of July 1, 1998, such station was
6 retransmitted by a satellite carrier under the
7 statutory license of section 119 of title 17,
8 United States Code.”;

9 (2) by adding at the end of paragraph (3) the
10 following new subparagraph:

11 “(C) Within 45 days after the date of enactment of
12 the Satellite Competition and Consumer Protection Act,
13 the Commission shall commence a rulemaking proceeding
14 to revise the regulations governing the exercise by tele-
15 vision broadcast stations of the right to grant retrans-
16 mission consent under this subsection, and such other reg-
17 ulations as are necessary to administer the limitations
18 contained in paragraph (2). The Commission shall com-
19 plete all actions necessary to prescribe such regulations
20 within one year after such date of enactment. Such regula-
21 tions shall—

22 “(i) establish election time periods that cor-
23 respond with those regulations adopted under sub-
24 paragraph (B) of this paragraph; and

1 “(ii) until January 1, 2006, prohibit television
2 broadcast stations that provide retransmission con-
3 sent from engaging in discriminatory practices, un-
4 derstandings, arrangements, and activities, including
5 exclusive contracts for carriage, that prevent a mul-
6 tichannel video programming distributor from ob-
7 taining retransmission consent from such stations.”;

8 (3) in paragraph (4), by adding at the end the
9 following new sentence: “If an originating television
10 station elects under paragraph (3)(C) to exercise its
11 right to grant retransmission consent under this
12 subsection with respect to a satellite carrier, the pro-
13 visions of section 338 shall not apply to the carriage
14 of the signal of such station by such satellite car-
15 rier.”;

16 (4) in paragraph (5), by striking “614 or 615”
17 and inserting “338, 614, or 615”; and

18 (5) by adding at the end the following new
19 paragraph:

20 “(7) For purposes of this subsection, the term ‘tele-
21 vision broadcast station’ means an over-the-air commercial
22 or noncommercial television broadcast station licensed by
23 the Commission under subpart E of part 73 of title 47,
24 Code of Federal Regulations, except that such term does
25 not include a low-power or translator television station.”.

1 **SEC. 103. MUST-CARRY FOR SATELLITE CARRIERS RE-**
2 **TRANSMITTING TELEVISION BROADCAST SIG-**
3 **NALS.**

4 Title III of the Communications Act of 1934 is
5 amended by inserting after section 337 (47 U.S.C. 337)
6 the following new section:

7 **“SEC. 338. CARRIAGE OF LOCAL TELEVISION SIGNALS BY**
8 **SATELLITE CARRIERS.**

9 “(a) CARRIAGE OBLIGATIONS.—

10 “(1) IN GENERAL.—Subject to the limitations
11 of paragraph (2), each satellite carrier providing sec-
12 ondary transmissions to subscribers located within
13 the local market of a television broadcast station of
14 a primary transmission made by that station shall
15 carry upon request all television broadcast stations
16 located within that local market, subject to section
17 325(b), by retransmitting the signal or signals of
18 such stations that are identified by Commission reg-
19 ulations for purposes of this section.

20 “(2) EFFECTIVE DATE.—No satellite carrier
21 shall be required to carry local television broadcast
22 stations under paragraph (1) until January 1, 2002.

23 “(b) GOOD SIGNAL REQUIRED.—

24 “(1) COSTS.—A television broadcast station as-
25 serting its right to carriage under subsection (a)
26 shall be required to bear the costs associated with

1 delivering a good quality signal to the designated
2 local receive facility of the satellite carrier or to an-
3 other facility that is acceptable to at least one-half
4 the stations asserting the right to carriage in the
5 local market.

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

9 “(c) DUPLICATION NOT REQUIRED.—

10 “(1) COMMERCIAL STATIONS.—Notwithstanding
11 subsection (a), a satellite carrier shall not be re-
12 quired to carry upon request the signal of any local
13 commercial television broadcast station that substan-
14 tially duplicates the signal of another local commer-
15 cial television broadcast station which is secondarily
16 transmitted by the satellite carrier within the same
17 local market, or to carry upon request the signals of
18 more than 1 local commercial television broadcast
19 station in a single local market that is affiliated with
20 a particular television network.

21 “(2) NONCOMMERCIAL STATIONS.—The Com-
22 mission shall prescribe regulations limiting the car-
23 riage requirements under subsection (a) of satellite
24 carriers with respect to the carriage of multiple local
25 noncommercial television broadcast stations. To the

1 extent possible, such regulations shall provide the
2 same degree of carriage by satellite carriers of such
3 multiple stations as is provided by cable systems
4 under section 615.

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

16 “(e) COMPENSATION FOR CARRIAGE.—A satellite
17 carrier shall not accept or request monetary payment or
18 other valuable consideration in exchange either for car-
19 riage of local television broadcast stations in fulfillment
20 of the requirements of this section or for channel posi-
21 tioning rights provided to such stations under this section,
22 except that any such station may be required to bear the
23 costs associated with delivering a good quality signal to
24 the local receive facility of the satellite carrier.

25 “(f) REMEDIES.—

1 “(1) COMPLAINTS BY BROADCAST STATIONS.—
2 Whenever a local television broadcast station believes
3 that a satellite carrier has failed to meet its obliga-
4 tions under this section, such station shall notify the
5 carrier, in writing, of the alleged failure and identify
6 its reasons for believing that the satellite carrier is
7 obligated to carry upon request the signal of such
8 station or has otherwise failed to comply with other
9 requirements of this section. The satellite carrier
10 shall, within 30 days of such written notification, re-
11 spond in writing to such notification and either
12 begin carrying the signal of such station in accord-
13 ance with the terms requested or state its reasons
14 for believing that it is not obligated to carry such
15 signal or is in compliance with other requirements of
16 this section, as the case may be. A local television
17 broadcast station that is denied carriage in accord-
18 ance with this section by a satellite carrier or is oth-
19 erwise harmed by a response by a satellite carrier
20 that it is in compliance with other requirements of
21 this section may obtain review of such denial or re-
22 sponse by filing a complaint with the Commission.
23 Such complaint shall allege the manner in which
24 such satellite carrier has failed to meet its obliga-
25 tions and the basis for such allegations.

1 “(2) OPPORTUNITY TO RESPOND.—The Com-
2 mission shall afford the satellite carrier against
3 which a complaint is filed under paragraph (1) an
4 opportunity to present data and arguments to estab-
5 lish that there has been no failure to meet its obliga-
6 tions under this section.

7 “(3) REMEDIAL ACTIONS; DISMISSAL.—Within
8 120 days after the date a complaint is filed under
9 paragraph (1), the Commission shall determine
10 whether the satellite carrier has met its obligations
11 under this chapter. If the Commission determines
12 that the satellite carrier has failed to meet such obli-
13 gations, the Commission shall order the satellite car-
14 rier, in the case of an obligation to carry a station,
15 to begin carriage of the station and to continue such
16 carriage for at least 12 months, or, in the case of
17 the failure to meet other obligations under this sec-
18 tion, shall take other appropriate remedial action. If
19 the Commission determines that the satellite carrier
20 has fully met the requirements of this chapter, the
21 Commission shall dismiss the complaint.

22 “(g) REGULATIONS BY COMMISSION.—Within 180
23 days after the date of enactment of this section, the Com-
24 mission shall, following a rulemaking proceeding, issue
25 regulations implementing this section.

1 “(h) DEFINITIONS.—As used in this section:

2 “(1) SUBSCRIBER.—The term ‘subscriber’
3 means a person that receives a secondary trans-
4 mission service by means of a secondary trans-
5 mission from a satellite and pays a fee for the serv-
6 ice, directly or indirectly, to the satellite carrier or
7 to a distributor.

8 “(2) DISTRIBUTOR.—The term ‘distributor’
9 means an entity which contracts to distribute sec-
10 ondary transmissions from a satellite carrier and, ei-
11 ther as a single channel or in a package with other
12 programming, provides the secondary transmission
13 either directly to individual subscribers or indirectly
14 through other program distribution entities.

15 “(3) LOCAL RECEIVE FACILITY.—The term
16 ‘local receive facility’ means the reception point in
17 each local market which a satellite carrier designates
18 for delivery of the signal of the station for purposes
19 of retransmission.

20 “(4) TELEVISION BROADCAST STATION.—The
21 term ‘television broadcast station’ has the meaning
22 given such term in section 325(b)(7).

23 “(5) SECONDARY TRANSMISSION.—The term
24 ‘secondary transmission’ has the meaning given such

1 term in section 119(d) of title 17, United States
2 Code.”.

3 **SEC. 104. NONDUPLICATION OF PROGRAMMING BROAD-**
4 **CAST BY LOCAL STATIONS.**

5 Section 712 of the Communications Act of 1934 (47
6 U.S.C. 612) is amended to read as follows:

7 **“SEC. 712. NONDUPLICATION OF PROGRAMMING BROAD-**
8 **CAST BY LOCAL STATIONS.**

9 “(a) EXTENSION OF NETWORK NONDUPLICATION,
10 SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT TO
11 SATELLITE RETRANSMISSION.—Within 45 days after the
12 date of enactment of the Satellite Competition and Con-
13 sumer Protection Act, the Commission shall commence a
14 single rulemaking proceeding to establish regulations that
15 apply network nonduplication protection, syndicated exclu-
16 sivity protection, and sports blackout protection to the re-
17 transmission of broadcast signals by satellite carriers to
18 subscribers. To the extent possible consistent with sub-
19 section (b), such regulations shall provide the same degree
20 of protection against retransmission of broadcast signals
21 as is provided by the network nonduplication (47 C.F.R.
22 76.92), syndicated exclusivity (47 C.F.R. 151), and sports
23 blackout (47 C.F.R. 76.67) rules applicable to cable tele-
24 vision systems. The Commission shall complete all actions
25 necessary to prescribe regulations required by this section

1 so that the regulations shall become effective within 1 year
2 after such date of enactment.

3 “(b) ESTABLISHMENT OF NETWORK NONDUPLICA-
4 TION BOUNDARIES.—

5 “(1) ESTABLISHMENT OF SIGNAL STANDARD
6 FOR NETWORK NONDUPLICATION REQUIRED.—The
7 Commission shall establish a signal intensity stand-
8 ard for purposes of determining the network non-
9 duplication rights of local television broadcast sta-
10 tions. Until revised pursuant to subsection (c), such
11 standard shall be the Grade B field strength stand-
12 ard prescribed by the Commission in section 73.683
13 of the Commission’s regulations (47 C.F.R. 73.683).
14 For purposes of this section, the standard estab-
15 lished under this paragraph is referred to as the
16 ‘Network Nonduplication Signal Standard’.

17 “(2) ESTABLISHMENT OF IMPROVED PRE-
18 DICTIVE MODEL REQUIRED.—Within 180 days after
19 the date of enactment of the Satellite Competition
20 and Consumer Protection Act, the Commission shall
21 take all actions necessary, including any reconsider-
22 ation, to develop and prescribe by rule a point-to-
23 point predictive model for reliably and presumptively
24 determining the ability of individual locations to re-
25 ceive signals in accordance with the Network Non-

1 duplication Signal Standard. In prescribing such
2 model, the Commission shall ensure that such model
3 takes into account terrain, building structures, and
4 other land cover variations. The Commission shall
5 establish procedures for the continued refinement in
6 the application of the model by the use of additional
7 data as it becomes available. For purposes of this
8 section, such model is referred to as the ‘Network
9 Nonduplication Reception Model’, and the area en-
10 compassing locations that are predicted to have the
11 ability to receive such a signal of a particular broad-
12 cast station is referred to as that station’s ‘Recep-
13 tion Model Area’.

14 “(3) NETWORK NONDUPLICATION.—The net-
15 work nonduplication regulations required under sub-
16 section (a) shall allow a television network station to
17 assert nonduplication rights as follows:

18 “(A) If a satellite carrier is retransmitting
19 that station, or any other television broadcast
20 stations located in the same local market, to
21 subscribers located in that station’s local mar-
22 ket, the television network station may assert
23 nonduplication rights against the satellite car-
24 rier throughout the area within which that sta-
25 tion may assert such rights under the rules ap-

1 plicable to cable television systems (47 C.F.R.
2 76.92).

3 “(B) If a satellite carrier is not retransmit-
4 ting any television broadcast stations located in
5 the television network station’s local market to
6 subscribers located in such market, the tele-
7 vision network station may assert nonduplica-
8 tion rights against the satellite carrier in the
9 geographic area that is within such station’s
10 Reception Model Area, but such geographic
11 area shall not extend beyond the local market
12 of such station.

13 “(4) WAIVERS.—A subscriber may request a
14 waiver from network nonduplication by submitting a
15 request, through such subscriber’s satellite carrier,
16 to the television network station asserting non-
17 duplication rights. The television network station
18 shall accept or reject a subscriber’s request for a
19 waiver within 30 days after receipt of the request.
20 The network nonduplication protection described in
21 paragraph (3)(B) shall not apply to a subscriber if
22 such station agrees to the waiver request and files
23 with the satellite carrier a written waiver with re-
24 spect to that subscriber allowing the subscriber to
25 receive satellite retransmission of another network

1 station affiliated with that same network. The tele-
2 vision network station and the satellite carrier shall
3 maintain a file available to the public that contains
4 such waiver requests and the acceptances and rejec-
5 tions thereof.

6 “(5) OBJECTIVE VERIFICATION.—

7 “(A) IN GENERAL.—If a subscriber’s re-
8 quest for a waiver under paragraph (4) is re-
9 jected and the subscriber submits to the sub-
10 scriber’s satellite carrier a request for a test
11 verifying the subscriber’s inability to receive a
12 signal that meets the Network Nonduplication
13 Signal Standard, the satellite carrier and the
14 television network station or stations asserting
15 nonduplication rights with respect to that sub-
16 scriber shall select a qualified and independent
17 person to conduct a test in accordance with the
18 provisions of section 73.686(d) of title 47, Code
19 of Federal Regulations, or any successor regula-
20 tion. Such test shall be conducted within 30
21 days after the date the subscriber submits a re-
22 quest for the test. If the written findings and
23 conclusions of a test conducted in accordance
24 with the provisions of such section (or any suc-
25 cessor regulation) demonstrate that the sub-

1 subscriber does not receive a signal that meets or
2 exceeds the Network Nonduplication Signal
3 Standard, the network nonduplication rights de-
4 scribed in paragraph (3)(B) shall not apply to
5 that subscriber.

6 “(B) DESIGNATION OF TESTOR AND ALLO-
7 CATION OF COSTS.—If the satellite carrier and
8 the television network station or stations assert-
9 ing nonduplication rights are unable to agree on
10 such a person to conduct the test, the person
11 shall be designated by an independent and neu-
12 tral entity designated by the Commission by
13 rule. Unless the satellite carrier and the tele-
14 vision network station or stations asserting non-
15 duplication rights otherwise agree, the costs of
16 conducting the test under this paragraph shall
17 be borne equally by the satellite carrier and the
18 television network station or stations asserting
19 nonduplication rights. A subscriber may not be
20 required to bear any portion of the cost of such
21 test.

22 “(6) RECREATIONAL VEHICLE LOCATION.—In
23 the case of a subscriber to a satellite carrier who has
24 installed satellite reception equipment in a rec-
25 reational vehicle, and who has permitted any tele-

1 vision network station seeking to assert network
2 nonduplication rights to verify the motor vehicle reg-
3 istration, license, and proof of ownership of such ve-
4 hicle, the subscriber shall be considered to be outside
5 the local market and Reception Model Area of such
6 station. For purposes of this paragraph, the term
7 ‘recreational vehicle’ does not include any residential
8 manufactured home, as defined in section 603(6) of
9 the National Manufactured Housing Construction
10 and Safety Standards Act of 1974 (42 U.S.C.
11 5402(6)).

12 “(c) REVIEW AND REVISION OF STANDARDS AND
13 MODEL.—

14 “(1) ONGOING INQUIRY REQUIRED.—Not later
15 than 2 years after the date of enactment of the Sat-
16 ellite Competition and Consumer Protection Act, the
17 Commission shall conduct an inquiry of the extent to
18 which the Network Nonduplication Signal Standard,
19 the Network Nonduplication Reception Model, and
20 the Reception Model Areas of television stations are
21 adequate to reliably measure the ability of con-
22 sumers to receive an acceptable over-the-air tele-
23 vision broadcast signal.

1 “(2) DATA TO BE CONSIDERED.—In conducting
2 the inquiry required by paragraph (1), the Commis-
3 sion shall consider—

4 “(A) the number of subscribers requesting
5 waivers under subsection (b)(4), and the num-
6 ber of waivers that are denied;

7 “(B) the number of subscribers submitting
8 petitions under subsection (b)(5), and the num-
9 ber of such petitions that are granted;

10 “(C) the results of any consumer research
11 study that may be undertaken to carry out the
12 purposes of this section; and

13 “(D) the extent to which consumers are
14 not legally entitled to install broadcast reception
15 devices assumed in the Commission’s standard.

16 “(3) REPORT AND ACTION.—The Commission
17 shall submit to the Congress a report on the inquiry
18 required by this subsection not later than the end of
19 the 2-year period described in paragraph (1). The
20 Commission shall complete any actions necessary to
21 revise the Network Nonduplication Signal Standard,
22 the Network Nonduplication Reception Model, and
23 the Reception Model Areas of television stations in
24 accordance with the findings of such inquiry not

1 later than 6 months after the end of such 2-year pe-
2 riod.

3 “(4) DATA SUBMISSION.—The Commission
4 shall prescribe by rule the data required to be sub-
5 mitted by television broadcast stations and by sat-
6 ellite carriers to the Commission or such designated
7 entity to carry out this subsection, and the format
8 for submission of such data.”.

9 **SEC. 105. CONSENT OF MEMBERSHIP TO RETRANSMISSION**
10 **OF PUBLIC BROADCASTING SERVICE SAT-**
11 **ELLITE FEED.**

12 Section 396 of the Communications Act of 1934 (47
13 U.S.C. 396) is amended by adding at the end the following
14 new subsection:

15 “(n) The Public Broadcasting Service shall certify to
16 the Board on an annual basis that a majority of its mem-
17 bership supports or does not support the secondary trans-
18 mission of the Public Broadcasting Service satellite feed,
19 and provide notice to each satellite carrier carrying such
20 feed of such certification.”.

21 **SEC. 106. DEFINITIONS.**

22 Section 3 of the Communications Act of 1934 (47
23 U.S.C. 153) is amended—

24 (1) by redesignating—

1 (A) paragraphs (49) through (52) as para-
2 graphs (52) through (55), respectively;

3 (B) paragraphs (39) through (48) as para-
4 graphs (41) through (50), respectively; and

5 (C) paragraphs (27) through (38) as para-
6 graph (28) through (39), respectively;

7 (2) by inserting after paragraph (26) the fol-
8 lowing new paragraph:

9 “(27) LOCAL MARKET.—

10 “(A) IN GENERAL.—The term ‘local mar-
11 ket’, in the case of both commercial and non-
12 commercial television broadcast stations, means
13 the designated market area in which a station
14 is located, and—

15 “(i) in the case of a commercial tele-
16 vision broadcast station, all commercial tel-
17 evision broadcast stations licensed to a
18 community within the same designated
19 market area are within the same local mar-
20 ket; and

21 “(ii) in the case of a noncommercial
22 educational television broadcast station,
23 the market includes any station that is li-
24 censed to a community within the same
25 designated market area as the noncommer-

1 cial educational television broadcast sta-
2 tion.

3 “(B) COUNTY OF LICENSE.—In addition to
4 the area described in subparagraph (A), a sta-
5 tion’s local market includes the county in which
6 the station’s community of license is located.

7 “(C) DESIGNATED MARKET AREA.—For
8 purposes of subparagraph (A), the term ‘des-
9 ignated market area’ means a designated mar-
10 ket area, as determined by Nielsen Media Re-
11 search and published in the DMA Market and
12 Demographic Report.”;

13 (3) by inserting after paragraph (39) (as reded-
14 icated by paragraph (1) of this section) the fol-
15 lowing new paragraph:

16 “(40) SATELLITE CARRIER.—The term ‘sat-
17 ellite carrier’ means an entity that uses the facilities
18 of a satellite or satellite service licensed by the Com-
19 mission, and operates in the Fixed-Satellite Service
20 under part 25 of title 47 of the Code of Federal
21 Regulations or the Direct Broadcast Satellite Service
22 under part 100 of title 47 of the Code of Federal
23 Regulations, to establish and operate a channel of
24 communications for point-to-multipoint distribution
25 of television station signals, and that owns or leases

1 a capacity or service on a satellite in order to pro-
2 vide such point-to-multipoint distribution, except to
3 the extent that such entity provides such distribution
4 pursuant to tariff under this Act.”; and

5 (3) by inserting after paragraph (50) (as reded-
6 icated by paragraph (1) of this section) the fol-
7 lowing new paragraph:

8 “(51) TELEVISION NETWORK; TELEVISION NET-
9 WORK STATION.—

10 “(A) TELEVISION NETWORK.—The term
11 ‘television network’ means a television network
12 in the United States which offers an inter-
13 connected program service on a regular basis
14 for 15 or more hours per week to at least 25
15 affiliated broadcast stations in 10 or more
16 States.

17 “(B) TELEVISION NETWORK STATION.—
18 The term ‘television network station’ means a
19 television broadcast station that is owned or op-
20 erated by, or affiliated with, a television net-
21 work.”.

22 **SEC. 107. COMPLETION OF BIENNIAL REGULATORY RE-**
23 **VIEW.**

24 Within 180 days after the date of enactment of this
25 Act, the Commission shall complete the biennial review re-

1 quired by section 202(h) of the Telecommunications Act
2 of 1996.

3 **SEC. 108. RESULT OF LOSS OF NETWORK SERVICE.**

4 Until the Federal Communications Commission
5 issues regulations under section 712(b)(2) of the Commu-
6 nications Act of 1934, if a subscriber's network service
7 is terminated as a result of the provisions of section 119
8 of title 17, United States Code, the satellite carrier shall,
9 upon the request of the subscriber, provide to the sub-
10 scriber free of charge an over-the-air television broadcast
11 receiving antenna that will provide the subscriber with an
12 over-the-air signal of Grade B intensity for those network
13 stations that were terminated as a result of such section
14 119.

15 **SEC. 109. INTERIM PROVISIONS.**

16 Until the Federal Communications Commission
17 issues and implements regulations under section 712(b)(2)
18 of the Communications Act of 1934, no subscriber whose
19 household is located outside the Grade A contour of a net-
20 work station shall have his or her satellite service of an-
21 other network station affiliated with that same network
22 terminated as a result of the provisions of section 119 of
23 title 17, United States Code.

1 **TITLE II—SECONDARY TRANS-**
 2 **MISSIONS BY SATELLITE CAR-**
 3 **RIERS WITHIN LOCAL MAR-**
 4 **KETS**

5 **SEC. 201. SHORT TITLE.**

6 This title may be cited as the “Satellite Copyright
 7 Compulsory License Improvement Act”.

8 **SEC. 202. LIMITATIONS ON EXCLUSIVE RIGHTS; SEC-**
 9 **ONDARY TRANSMISSIONS BY SATELLITE CAR-**
 10 **RIERS WITHIN LOCAL MARKETS.**

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

14 **“§ 122. Limitations on exclusive rights; secondary**
 15 **transmissions by satellite carriers within**
 16 **local markets**

17 “(a) SECONDARY TRANSMISSIONS OF TELEVISION
 18 BROADCAST STATIONS BY SATELLITE CARRIERS.—A sec-
 19 ondary transmission of a primary transmission of a tele-
 20 vision broadcast station into the station’s local market
 21 shall be subject to statutory licensing under this section
 22 if—

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

1 “(2) the satellite carrier is in compliance with
2 the rules, regulations, or authorizations of the Fed-
3 eral Communications Commission governing the car-
4 riage of television broadcast station signals; and

5 “(3) the satellite carrier makes a direct or indi-
6 rect charge for the secondary transmission to—

7 “(A) each subscriber receiving the sec-
8 ondary transmission; or

9 “(B) a distributor that has contracted with
10 the satellite carrier for direct or indirect deliv-
11 ery of the secondary transmission to the public.

12 “(b) REPORTING REQUIREMENTS.—

13 “(1) INITIAL LISTS.—A satellite carrier that
14 makes secondary transmissions of a primary trans-
15 mission made by a network station under subsection
16 (a) shall, within 90 days after commencing such sec-
17 ondary transmissions, submit to the network that
18 owns or is affiliated with the network station a list
19 identifying (by name in alphabetical order and street
20 address, including county and zip code) all sub-
21 scribers to which the satellite carrier currently
22 makes secondary transmissions of that primary
23 transmission pursuant to this section.

24 “(2) SUBSEQUENT LISTS.—After the list is sub-
25 mitted under paragraph (1), the satellite carrier

1 shall, on the 15th of each month, submit to the net-
2 work a list identifying (by name in alphabetical
3 order and street address, including county and zip
4 code) any subscribers who have been added or
5 dropped as subscribers since the last submission
6 under this subsection.

7 “(3) USE OF SUBSCRIBER INFORMATION.—Sub-
8 scription information submitted by a satellite carrier
9 under this subsection may be used only for the pur-
10 poses of monitoring compliance by the satellite car-
11 rier with this section.

12 “(4) REQUIREMENTS OF STATIONS.—The sub-
13 mission requirements of this subsection shall apply
14 to a satellite carrier only if the network to which the
15 submissions are to be made places on file with the
16 Register of Copyrights a document identifying the
17 name and address of the person to whom such sub-
18 missions are to be made. The Register shall main-
19 tain for public inspection a file of all such docu-
20 ments.

21 “(c) NO ROYALTY FEE REQUIRED.—A satellite car-
22 rier whose secondary transmissions are subject to statu-
23 tory licensing under subsection (a) shall have no royalty
24 obligation for such secondary transmissions.

1 “(d) NONCOMPLIANCE WITH REPORTING AND REGU-
2 LATORY REQUIREMENTS.—Notwithstanding subsection
3 (a), the willful or repeated secondary transmission to the
4 public by a satellite carrier into the local market of a tele-
5 vision broadcast station of a primary transmission made
6 by that television broadcast station and embodying a per-
7 formance or display of a work is actionable as an act of
8 infringement under section 501, and is fully subject to the
9 remedies provided under sections 502 through 506 and
10 509, if the satellite carrier has not complied with the re-
11 porting requirements of subsection (b) or with the rules,
12 regulations, and authorizations of the Federal Commu-
13 nications Commission concerning the carriage of television
14 broadcast signals.

15 “(e) WILLFUL ALTERATIONS.—Notwithstanding
16 subsection (a), the secondary transmission to the public
17 by a satellite carrier into the local market of a television
18 broadcast station of a primary transmission made by that
19 television broadcast station and embodying a performance
20 or display of a work is actionable as an act of infringement
21 under section 501, and is fully subject to the remedies pro-
22 vided by sections 502 through 506 and sections 509 and
23 510, if the content of the particular program in which the
24 performance or display is embodied, or any commercial ad-
25 vertising or station announcement transmitted by the pri-

1 mary transmitter during, or immediately before or after,
2 the transmission of such program, is in any way willfully
3 altered by the satellite carrier through changes, deletions,
4 or additions, or is combined with programming from any
5 other broadcast signal.

6 “(f) VIOLATION OF TERRITORIAL RESTRICTIONS ON
7 STATUTORY LICENSE FOR TELEVISION BROADCAST STA-
8 TIONS.—

9 “(1) INDIVIDUAL VIOLATIONS.—The willful or
10 repeated secondary transmission to the public by a
11 satellite carrier of a primary transmission made by
12 a television broadcast station and embodying a per-
13 formance or display of a work to a subscriber who
14 does not reside in that station’s local market, and is
15 not subject to statutory licensing under section 119,
16 or a private licensing agreement, is actionable as an
17 act of infringement under section 501 and is fully
18 subject to the remedies provided by sections 502
19 through 506 and 509, except that—

20 “(A) no damages shall be awarded for such
21 act of infringement if the satellite carrier took
22 corrective action by promptly withdrawing serv-
23 ice from the ineligible subscriber; and

1 “(B) any statutory damages shall not ex-
2 ceed \$5 for such subscriber for each month dur-
3 ing which the violation occurred.

4 “(2) PATTERN OF VIOLATIONS.—If a satellite
5 carrier engages in a willful or repeated pattern or
6 practice of secondarily transmitting to the public a
7 primary transmission made by a television broadcast
8 station and embodying a performance or display of
9 a work to subscribers who do not reside in that sta-
10 tion’s local market, and are not subject to statutory
11 licensing under section 119, then in addition to the
12 remedies under paragraph (1)—

13 “(A) if the pattern or practice has been
14 carried out on a substantially nationwide basis,
15 the court shall order a permanent injunction
16 barring the secondary transmission by the sat-
17 ellite carrier of the primary transmissions of
18 that television broadcast station (and if such
19 television broadcast station is a network sta-
20 tion, all other television broadcast stations af-
21 filiated with such network), and the court may
22 order statutory damages not exceeding
23 \$250,000 for each 6-month period during which
24 the pattern or practice was carried out; and

1 “(B) if the pattern or practice has been
2 carried out on a local or regional basis with re-
3 spect to more than one television broadcast sta-
4 tion (and if such television broadcast station is
5 a network station, all other television broadcast
6 stations affiliated with such network), the court
7 shall order a permanent injunction barring the
8 secondary transmission in that locality or re-
9 gion by the satellite carrier of the primary
10 transmissions of any television broadcast sta-
11 tion, and the court may order statutory dam-
12 ages not exceeding \$250,000 for each 6-month
13 period during which the pattern or practice was
14 carried out.

15 “(g) BURDEN OF PROOF.—In any action brought
16 under subsection (d), (e), or (f), the satellite carrier shall
17 have the burden of proving that its secondary transmission
18 of a primary transmission by a television broadcast station
19 is made only to subscribers located within that station’s
20 local market or subscribers being served in compliance
21 with section 119.

22 “(h) GEOGRAPHIC LIMITATIONS ON SECONDARY
23 TRANSMISSIONS.—The statutory license created by this
24 section shall apply to secondary transmissions to locations

1 in the United States, and any commonwealth, territory,
2 or possession of the United States.

3 “(i) EXCLUSIVITY WITH RESPECT TO SECONDARY
4 TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE
5 TO MEMBERS OF THE PUBLIC.—No provision of section
6 111 or any other law (other than this section and section
7 119) shall be construed to contain any authorization, ex-
8 emption, or license through which secondary transmissions
9 by satellite carriers of programming contained in a pri-
10 mary transmission made by a television broadcast station
11 may be made without obtaining the consent of the copy-
12 right owner.

13 “(j) DEFINITIONS.—In this section—

14 “(1) DISTRIBUTOR.—The term ‘distributor’
15 means an entity which contracts to distribute sec-
16 ondary transmissions from a satellite carrier and, ei-
17 ther as a single channel or in a package with other
18 programming, provides the secondary transmission
19 either directly to individual subscribers or indirectly
20 through other program distribution entities.

21 “(2) LOCAL MARKET.—The ‘local market’ of a
22 television broadcast station has the meaning given
23 that term under section 3 of the Communications
24 Act of 1934.

1 “(3) NETWORK STATION; SATELLITE CARRIER;
2 SECONDARY TRANSMISSION.—The terms ‘network
3 station’, ‘satellite carrier’ and ‘secondary trans-
4 mission’ have the meanings given such terms under
5 section 119(d).

6 “(4) SUBSCRIBER.—The term ‘subscriber’
7 means a person that receives a secondary trans-
8 mission service by means of a secondary trans-
9 mission from a satellite and pays a fee for the serv-
10 ice, directly or indirectly, to the satellite carrier or
11 to a distributor.

12 “(5) TELEVISION BROADCAST STATION.—The
13 term ‘television broadcast station’ means an over-
14 the-air, commercial or noncommercial television
15 broadcast station licensed by the Federal Commu-
16 nications Commission under subpart E of part 73 of
17 title 47, Code of Federal Regulations.”.

18 (b) INFRINGEMENT OF COPYRIGHT.—Section 501 of
19 title 17, United States Code, is amended by adding at the
20 end the following new subsection:

21 “(f) With respect to any secondary transmission that
22 is made by a satellite carrier of a primary transmission
23 embodying the performance or display of a work and is
24 actionable as an act of infringement under section 122,
25 a television broadcast station holding a copyright or other

1 license to transmit or perform the same version of that
 2 work shall, for purposes of subsection (b) of this section,
 3 be treated as a legal or beneficial owner if such secondary
 4 transmission occurs within the local market of that sta-
 5 tion.”.

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

“122. Limitations on exclusive rights; secondary transmissions by satellite car-
 riers within local market.”.

10 **SEC. 203. EXTENSION OF EFFECT OF AMENDMENTS TO SEC-**
 11 **TION 119 OF TITLE 17, UNITED STATES CODE.**

12 Section 4(a) of the Satellite Home Viewer Act of
 13 1994 (17 U.S.C. 119 note; Public Law 103–369; 108
 14 Stat. 3481) is amended by striking “December 31, 1999”
 15 and inserting “December 31, 2004”.

16 **SEC. 204. COMPUTATION OF ROYALTY FEES FOR SAT-**
 17 **ELLITE CARRIERS.**

18 Section 119(e) of title 17, United States Code, is
 19 amended by adding at the end the following new para-
 20 graph:

21 “(4) REDUCTION.—

22 “(A) SUPERSTATION.—The rate of the
 23 royalty fee in effect on January 1, 1998, pay-

1 able in each case under subsection (b)(1)(B)(i)
2 shall be reduced by 30 percent.

3 “(B) NETWORK.—The rate of the royalty
4 fee in effect on January 1, 1998, payable under
5 subsection (b)(1)(B)(ii) shall be reduced by 45
6 percent.

7 “(5) PUBLIC BROADCASTING SERVICE AS
8 AGENT.—For purposes of section 802, with respect
9 to royalty fees paid by satellite carriers for re-
10 transmitting the Public Broadcasting Service sat-
11 ellite feed, the Public Broadcasting Service shall be
12 the agent for all public television copyright claimants
13 and all Public Broadcasting Service member sta-
14 tions.”.

15 **SEC. 205. PUBLIC BROADCASTING SERVICE SATELLITE**
16 **FEED; DEFINITIONS.**

17 (a) SECONDARY TRANSMISSIONS.—Section 119(a)(1)
18 of title 17, United States Code, is amended—

19 (1) by striking the paragraph heading and in-
20 serting “(1) SUPERSTATIONS AND PBS SATELLITE
21 FEED.—”;

22 (2) by inserting “or by the Public Broadcasting
23 Service satellite feed” after “superstation”; and

1 (3) by adding at the end the following: “In the
2 case of the Public Broadcasting Service satellite
3 feed, subsequent to—

4 “(A) the date when a majority of sub-
5 sscribers to satellite carriers are able to receive
6 the signal of at least one noncommercial edu-
7 cational television broadcast station from their
8 satellite carrier within such stations’ local mar-
9 ket, or

10 “(B) 2 years after the effective date of the
11 Satellite Copyright Compulsory License Im-
12 provement Act,

13 whichever is earlier, the statutory license created by
14 this section shall be conditioned on certification of
15 support pursuant to section 396(n) of the Commu-
16 nications Act of 1934.”.

17 (b) DEFINITIONS.—Section 119(d) of title 17, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 “(12) PUBLIC BROADCASTING SERVICE SAT-
21 ELLITE FEED.—The term ‘Public Broadcasting
22 Service satellite feed’ means the national satellite
23 feed distributed by the Public Broadcasting Service
24 consisting of educational and informational program-
25 ming intended for private home viewing, to which

1 the Public Broadcasting Service holds national ter-
2 restrial broadcast rights.

3 “(13) LOCAL MARKET.—The term ‘local mar-
4 ket’ has the meaning given that term in section
5 122(j)(2).

6 “(14) TELEVISION BROADCAST STATION.—The
7 term ‘television broadcast station’ has the meaning
8 given that term in section 122(j)(5).”.

9 **SEC. 206. DISTANT SIGNAL RETRANSMISSIONS.**

10 Section 119 of title 17, United States Code, is
11 amended—

12 (1) in subsection (a)—

13 (A) in paragraph (2)—

14 (i) by striking subparagraph (B) and
15 inserting the following:

16 “(B) SECONDARY TRANSMISSIONS OF NET-
17 WORK STATIONS.—The statutory license pro-
18 vided for in subparagraph (A) shall be limited
19 to secondary transmissions to persons who are
20 unable to receive a signal of the intensity speci-
21 fied as the Network Nonduplication Signal
22 Standard pursuant to section 712(b) of the
23 Communications Act of 1934.”;

24 (ii) in paragraph (5)—

1 (I) in subparagraph (A) by strik-
2 ing “an unserved household” and in-
3 sserting “a household permitted to re-
4 ceive the secondary transmission
5 under paragraph (2)(B).”;

6 (II) in subparagraph (B) by
7 striking “unserved households” and
8 inserting “households permitted to re-
9 ceive the secondary transmission
10 under paragraph (2)(B).”; and

11 (III) in subparagraph (D) by
12 striking “to an unserved household”
13 and inserting “to a household per-
14 mitted to receive the secondary trans-
15 mission under paragraph (2)(B).”;
16 and

17 (B) by striking paragraph (8) and redesign-
18 ating paragraphs (9) and (10) as paragraphs
19 (8) and (9), respectively; and
20 (2) in subsection (d), by striking paragraphs
21 (10) and (11).

22 **SEC. 207. APPLICATION OF FEDERAL COMMUNICATIONS**
23 **COMMISSION REGULATIONS.**

24 Section 119(a) of title 17, United States Code, is
25 amended—

1 (1) in paragraph (1), by inserting “the satellite
2 carrier is in compliance with the rules, regulations,
3 or authorizations of the Federal Communications
4 Commission governing the carriage of television
5 broadcast station signals,” after “satellite carrier to
6 the public for private home viewing,”;

7 (2) in paragraph (2), by inserting “the satellite
8 carrier is in compliance with the rules, regulations,
9 or authorizations of the Federal Communications
10 Commission governing the carriage of television
11 broadcast station signals,” after “satellite carrier to
12 the public for private home viewing,”; and

13 (3) by adding at the end the following new
14 paragraph:

15 “(10) STATUTORY LICENSE CONTINGENT ON
16 COMPLIANCE WITH FCC RULES AND REMEDIAL
17 STEPS.—Notwithstanding any other provision of this
18 section, the willful or repeated secondary trans-
19 mission to the public by a satellite carrier of a pri-
20 mary transmission made by a broadcast station li-
21 censed by the Federal Communications Commission
22 is actionable as an act of infringement under section
23 501, and is fully subject to the remedies provided by
24 sections 502 through 506 and 509, if, at the time
25 of such transmission, the satellite carrier is not in

1 compliance with the rules, regulations, and author-
2 izations of the Federal Communications Commission
3 concerning the carriage of television broadcast sta-
4 tion signals.”.

5 **SEC. 208. STUDY ON TECHNICAL AND ECONOMIC IMPACT**
6 **OF MUST-CARRY ON DELIVERY OF LOCAL**
7 **SIGNALS.**

8 Not later than July 1, 2000, the Register of Copy-
9 rights and the Assistant Secretary of Commerce for Com-
10 munications and Information shall submit to the Congress
11 a joint report that sets forth in detail their findings and
12 conclusions with respect to the following:

13 (1) The availability of local television broadcast
14 signals in small and rural markets as part of a serv-
15 ice that competes with, or supplements, video pro-
16 gramming containing copyrighted material delivered
17 by satellite carriers or cable operators.

18 (2) The technical feasibility of imposing the re-
19 quirements of section 338 of the Communications
20 Act of 1934 on satellite carriers that deliver local
21 broadcast station signals containing copyrighted ma-
22 terial pursuant to section 122 of title 17, United
23 States Code, and the technical and economic impact
24 of section 338 of the Communications Act of 1934
25 on the ability of satellite carriers to serve multiple

1 television markets with retransmission of local tele-
2 vision broadcast stations, with particular consider-
3 ation given to the ability to serve television markets
4 other than the 100 largest television markets in the
5 United States (as determined by the Nielson Media
6 Research and published in the DMA market and De-
7 mographic Report).

8 (3) The technological capability of dual satellite
9 dish technology to receive effectively over-the-air
10 broadcast transmissions containing copyrighted ma-
11 terial from the local market, the availability of such
12 capability in small and rural markets, and the af-
13 fordability of such capability.

14 (4) The technological capability (including in-
15 terference), availability, and affordability of wireless
16 cable (or terrestrial wireless) delivery of local broad-
17 cast station signals containing copyrighted material
18 pursuant to section 111 of title 17, United States
19 Code, including the feasibility and desirability of the
20 expedited licensing of such competitive wireless tech-
21 nologies for rural and small markets.

22 (5) The technological capability, availability,
23 and affordability of a broadcast-only basic tier of
24 cable service.

1 **SEC. 209. EFFECTIVE DATE.**

2 This title and the amendments made by this title
3 shall take effect on July 1, 1999, except that section 208
4 and the amendments made by section 205 shall take effect
5 on the date of the enactment of this Act.

○