

106TH CONGRESS
1ST SESSION

S. 303

To amend the Communications Act of 1934 to enhance the ability of direct broadcast satellite and other multichannel video providers to compete effectively with cable television systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 1999

Mr. MCCAIN (for himself and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to enhance the ability of direct broadcast satellite and other multichannel video providers to compete effectively with cable television systems, and for other purposes.

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 Television Act
5 of 1999”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1 (1) In the Cable Television Consumer Protec-
2 tion and Competition Act of 1992, Congress stated
3 its policy of promoting competition in cable services
4 and making available to the public a diversity of
5 views and information through cable television and
6 other video media.

7 (2) In the Telecommunications Act of 1996,
8 Congress stated its policy of securing lower prices
9 and higher quality service for American tele-
10 communications consumers and encouraging the
11 rapid deployment of new telecommunications tech-
12 nologies.

13 (3) In most places throughout America, cable
14 television system operators still do not face effective
15 competition from other providers of multichannel
16 video service.

17 (4) Absent effective competition, the market
18 power exercised by cable television operators enables
19 them to raise the price of cable service to consumers,
20 and to control the price and availability of cable pro-
21 gramming services to other multichannel video serv-
22 ice providers. Current Federal Communications
23 Commission rules have been inadequate in constrain-
24 ing cable price increases.

1 (5) Direct Broadcast Satellite service has over
2 8 million subscribers and constitutes the most sig-
3 nificant competitive alternative to cable television
4 service.

5 (6) Direct Broadcast Satellite Service currently
6 suffers from a number of statutory, regulatory, and
7 technical barriers that keep it from being an effec-
8 tive competitor to cable television in the provision of
9 multichannel video services.

10 (7) The most prominent of these barriers is the
11 inability to provide subscribers with local television
12 broadcast signals by satellite.

13 (8) Permitting providers of direct broadcast
14 satellite service to retransmit local television signals
15 to their subscribers would greatly enhance the ability
16 of direct broadcast satellite service to compete more
17 effectively in the provision of multichannel video
18 services.

19 (9) Due to capacity limitations and in the inter-
20 est of providing service in as many markets as pos-
21 sible, providers of direct broadcast satellite service,
22 unlike cable television systems, cannot at this time
23 carry all local television broadcast signals in all the
24 local television markets they seek to serve.

1 (10) It would be in the public interest for pro-
2 viders of direct broadcast satellite service to fully
3 comply with the mandatory signal carriage rules at
4 the earliest possible date. In the interim, requiring
5 full compliance with the mandatory signal carriage
6 rules would substantially limit the ability of direct
7 broadcast satellite service providers to compete in
8 the provision of multichannel video services and
9 would not serve the public interest.

10 (11) Maintaining the viability of free, over-the-
11 air local television service is a matter of preeminent
12 public interest.

13 (12) All subscribers to multichannel video serv-
14 ices should be able to receive the signal of at least
15 one station affiliated with each of the major broad-
16 cast television networks.

17 (13) Millions of subscribers to direct broadcast
18 satellite service currently receive the signals of net-
19 work-affiliated stations not located in these subscrib-
20 ers' local television markets. In those cases where
21 cable service is not available and where conventional
22 rooftop antennas are not effective distant network
23 signals may be these subscribers' only source of net-
24 work television service.

1 (14) There is a direct link between the wide-
2 spread carriage of distant network stations in local
3 network affiliates' markets and a local affiliate's loss
4 of audience share and revenues, which could in turn
5 harm the station's ability to serve its local commu-
6 nity.

7 (15) Abrupt termination of satellite carriers'
8 provision of distant network signals could have a
9 negative impact on the ability of direct broadcast
10 satellite service to compete effectively in the provi-
11 sion of multichannel video services.

12 (16) The public interest would be served by per-
13 mitting direct broadcast satellite service providers to
14 continue existing carriage of a distant network affili-
15 ate station's signal where—

16 (A) there is no local network affiliate;

17 (B) the local network affiliate cannot be
18 adequately received off-air; or

19 (C) continued carriage would not be likely
20 to materially harm local television service.

21 **SEC. 3. PURPOSE.**

22 The purpose of this Act is to permit subscribers of
23 Direct Broadcast Satellite service who currently receive
24 distant network stations to continue to receive this service
25 to the extent that the Federal Communications Commis-

1 sion affirmatively finds that no local station would be like-
 2 ly to sustain audience and revenue loss that would materi-
 3 ally affect that station's ability to continue to serve its
 4 local audience.

5 **SEC. 4. MUST-CARRY FOR SATELLITE CARRIERS RE-**
 6 **TRANSMITTING TELEVISION BROADCAST SIG-**
 7 **NALS.**

8 Part I of title III of the Communications Act of 1934
 9 (47 U.S.C. 301 et seq.) is amended by adding at the end
 10 thereof the following:

11 **“SEC. 337. CARRIAGE OF LOCAL TELEVISION SIGNALS BY**
 12 **SATELLITE CARRIERS.**

13 “(a) PURPOSE.—The purpose of this section is to
 14 promote competition in the provision of multichannel video
 15 services while protecting the availability of free, over-the-
 16 air television, particularly for the 40 percent of American
 17 television households that do not subscribe to any multi-
 18 channel video programming service, by—

19 “(1) enabling providers of direct broadcast serv-
 20 ice to offer their subscribers the signals of local tele-
 21 vision stations;

22 “(2) protecting the availability of free, over-the-
 23 air television broadcasting by requiring satellite car-
 24 riers who rely on a compulsory copyright license to
 25 carry all local stations; and

1 “(3) accommodating, for an interim period, the
2 inability of providers of direct broadcast service from
3 carrying all local signals in all local television mar-
4 kets they seek to serve.

5 “(b) APPLICATION OF MANDATORY CARRIAGE TO
6 SATELLITE CARRIERS.—The mandatory carriage provi-
7 sions of sections 614 and 615 of the Communications Act
8 will apply in a local market no later than January 1, 2002,
9 to satellite carriers retransmitting any television broadcast
10 station in that local market and pursuant to the compul-
11 sory license provided by section 122 of title 17, United
12 States Code.

13 “(c) GOOD SIGNAL REQUIRED.—A local television
14 broadcast station eligible for carriage under subsection (b)
15 may be required to bear the costs associated with deliver-
16 ing a good quality signal to the designated local receive
17 facility of the satellite carrier. The selection of a local re-
18 ceive facility by a satellite carrier shall not be made in
19 a manner that frustrates the purposes of this Act. The
20 Commission shall promulgate any regulations necessary to
21 assure that selection of local receive facilities is made in
22 compliance with the intent of this Act.

23 “(d) RULEMAKING REQUIRED.—

24 “(1) SINGLE RULEMAKING REQUIRED.—The
25 Commission shall institute a single rulemaking, com-

1 pliant with subchapter II of chapter 5 of title 5,
2 United States Code, to examine the extent to which
3 carriage of distant network stations already provided
4 to subscribers on March 1, 1998, may continue with-
5 out causing a projected loss of audience and revenue
6 of such magnitude as to cause material harm to the
7 viability of local stations.

8 “(2) DETERMINATION REQUIRED.—As part of
9 the rulemaking required by this subsection, the
10 Commission shall determine whether the application
11 of network exclusivity, syndicated exclusivity, or
12 sports exclusivity rules to carriage of distant net-
13 work stations would serve the public interest.

14 “(3) TIMEFRAME.—The Commission shall com-
15 plete all actions necessary to prescribe regulations it
16 may adopt as a result of this rulemaking to be effec-
17 tive within 180 days after the enactment of the Sat-
18 ellite Television Act of 1999. Direct broadcast sat-
19 ellite service providers may continue existing car-
20 riage of distant network stations within local sta-
21 tions’ Grade B contours until the effective date of
22 such new regulations.

23 “(4) TWO-THIRDS VOTE REQUIRED.—Any regu-
24 lations adopted under this subsection must be adopt-

1 ed by an affirmative vote of at least two-thirds of
2 the members of the Commission.

3 “(5) CERTAIN DBS SIGNALS.—Direct broadcast
4 satellite service providers may continue to carry the
5 signals of distant network stations without regard to
6 the provisions of this subsection in any situation in
7 which such carriage would be consistent with rules
8 adopted by the Commission in CS Docket 98–201.

9 “(e) CABLE TELEVISION SYSTEM DIGITAL SIGNAL
10 CARRIAGE NOT COVERED.—Nothing in this section ap-
11 plies to the carriage of the digital signals of television
12 broadcast stations by cable television systems.

13 “(f) NO REMISSION OF LIABILITY.—No action taken
14 by the Commission pursuant to subsection (d) shall relieve
15 any person from any liability for any violation of title 17,
16 United States Code, or from the imposition of any remedy
17 therefor.

18 “(g) DEFINITIONS.—In this section:

19 “(1) TELEVISION BROADCAST STATION.—The
20 term ‘television broadcast station’ means a full
21 power local television broadcast station, but does not
22 include a low-power or translator television broad-
23 cast station.

24 “(2) BROADCASTING NETWORK.—The term
25 ‘broadcasting network’ means a television network in

1 the United States which offers an interconnected
2 program service on a regular basis for 15 or more
3 hours per week to at least 25 affiliated broadcast
4 stations in 10 or more States.

5 “(3) NETWORK STATION.—The term ‘network
6 station’ means a television broadcast station that is
7 owned or operated by, or affiliated with, a broad-
8 casting network.

9 “(4) LOCAL MARKET.—The term ‘local market’
10 means the designated market area in which a station
11 is located. For a noncommercial educational tele-
12 vision broadcast station, the local market includes
13 any station that is licensed to a community within
14 the same designated market area as the noncommer-
15 cial educational television broadcast station.

16 “(5) LOCAL RECEIVE FACILITY.—The term
17 ‘local receive facility’ means the reception point in
18 the local market of a television broadcast station or
19 in a market contiguous to the local market of a tele-
20 vision broadcast station at which a satellite carrier
21 initially receives the signal of the station for pur-
22 poses of transmission of such signals to the facility
23 which uplinks the signals to the carrier’s satellites
24 for secondary transmission to the satellite carrier’s
25 subscribers.

1 “(6) SATELLITE CARRIER.—The term ‘satellite
2 carrier’ has the meaning given it by section 119(d)
3 of title 17, United States Code.”.

4 **SEC. 5. RETRANSMISSION CONSENT.**

5 (a) AMENDMENT OF SECTION 325(b).—Section
6 325(b) of the Communications Act of 1934 (47 U.S.C.
7 325(b)) is amended striking the subsection designation
8 and paragraphs (1) and (2) and inserting the following:
9 “(b)(1) No cable system or other multichannel video
10 programming distributor shall retransmit the signal of a
11 broadcasting station, or any part thereof, except—

12 “(A) with the express authority of the station;
13 or

14 “(B) pursuant to section 614 or section 615, in
15 the case of a station electing, in accordance with this
16 subsection, to assert the right to carriage under such
17 section.

18 “(2) The provisions of this subsection shall not apply
19 to—

20 “(A) retransmission of the signal of a television
21 broadcast station outside the station’s local market
22 by a satellite carrier directly to subscribers if—

23 “(i) such station was a superstation on
24 May 1, 1991; and

1 “(ii) as of July 1, 1998, such station was
2 transmitted under the compulsory license of
3 section 119 of title 17, United States Code, by
4 satellite carriers directly to at least 250,000
5 subscribers;

6 “(B) retransmission of the distant signal of a
7 broadcasting station that is owned or operated by, or
8 affiliated with, a broadcasting network directly to a
9 home satellite antenna, if the subscriber resides in
10 an unserved household; or

11 “(C) retransmission by a cable operator or
12 other multichannel video programming distributor
13 (other than by a satellite carrier direct to its sub-
14 scribers) of the signal of a television broadcast sta-
15 tion outside the station’s local market, if such signal
16 was obtained from a satellite carrier and—

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

19 “(ii) the originating station was a network
20 station on December 31, 1997, and its signal
21 was retransmitted by a satellite carrier directly
22 to subscribers.

23 “(3) Any term used in this subsection that is defined
24 in section 337(g) of this Act has the meaning given to
25 it by that section.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) take effect on January 1, 1999.

3 **SEC. 6. DESIGNATED MARKET AREAS.**

4 Nothing in this Act, or in the amendments made by
5 this Act, prevents the Federal Communications Commis-
6 sion from revising the listing of designated market areas
7 (as defined in this Act) or reassigning such areas if the
8 revision or reassignment is done in the same manner and
9 to the same extent as the Commission's cable television
10 mandatory carriage rules provide.

11 **SEC. 7. SEVERABILITY.**

12 If any provision of this Act or section 325(b) or 337
13 of the Communications Act of 1934 (47 U.S.C. 325(b),
14 337), or the application of that provision to any person
15 or circumstance, is held by a court of competent jurisdic-
16 tion to violate any provision of the Constitution of the
17 United States, then the other provisions of that section,
18 and the application of that provision to other persons and
19 circumstances, shall not be affected.

20 **SEC. 8. DEFINITIONS.**

21 In this Act:

22 (1) TERMS DEFINED IN COMMUNICATIONS ACT
23 OF 1934.—Any term used in this Act that is defined
24 in section 337(g) of the Communications Act of

1 1934, as added by section 4 of this Act, has the
2 meaning given to it by that section.

3 (7) DESIGNATED MARKET AREA.—The term
4 “designated market area” means a designated mar-
5 ket area, as determined by Nielsen Media Research
6 and published in the DMA Market and Demographic
7 Report.

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