

Calendar No. 584

108TH CONGRESS
2D SESSION

S. 2013

To amend section 119 of title 17, United States Code, to extend satellite home viewer provisions.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 2004

Mr. HATCH (for himself, Mr. LEAHY, Mr. DEWINE, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 17, 2004

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend section 119 of title 17, United States Code, to extend satellite home viewer provisions.

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 Home Viewer
5 Extension Act of 2004”.

1 **SEC. 2. EXTENSION.**

2 (a) **IN GENERAL.**—Section 119 of title 17, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “(f) This section shall cease to be effective after De-
6 cember 31, 2009.”.

7 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—

8 Section 4 of the Satellite Home Viewer Act of 1994 (17
9 U.S.C. 119 note) is amended by striking subsection (a).

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Satellite Home Viewer*
12 *Extension Act of 2004”.*

13 **SEC. 2. EXTENSION OF AUTHORITY.**

14 (a) **IN GENERAL.**—Section 4(a) of the Satellite Home
15 Viewer Act of 1994 (17 U.S.C. 119 note; Public Law 103–
16 369; 108 Stat. 3481) is amended by striking “December 31,
17 2004” and inserting “December 31, 2009”.

18 (b) **EXTENSION FOR CERTAIN SUBSCRIBERS.**—Section
19 119(e) of title 17, United States Code, is amended by strik-
20 ing “December 31, 2004” and inserting “December 31,
21 2009”.

22 **SEC. 3. REPORTING OF SUBSCRIBERS; SIGNIFICANTLY**
23 **VIEWED AND OTHER SIGNALS; TECHNICAL**
24 **AMENDMENTS.**

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

1 (1) *in paragraph (1)—*

2 (A) *in the paragraph heading, by striking*
3 “AND PBS SATELLITE FEED”;

4 (B) *in the first sentence, by striking “(3),*
5 (4), and (6)” and inserting “(5), (6), and (8)”;

6 (C) *in the first sentence, by striking “or by*
7 *the Public Broadcasting Service satellite feed”;*
8 *and*

9 (D) *by striking the second sentence;*

10 (2) *in paragraph (2)—*

11 (A) *in subparagraph (A), by striking “(3),*
12 (4), (5), and (6)” and inserting “(5), (6), (7),

13 *and (8)”;*
14 (B) *by amending subparagraph (C) to read*
15 *as follows:*

16 “(C) *SUBMISSION OF SUBSCRIBER LISTS TO*
17 *NETWORKS.—*

18 “(i) *INITIAL LISTS.—A satellite carrier*
19 *that makes secondary transmissions of a*
20 *primary transmission made by a network*
21 *station pursuant to subparagraph (A) shall,*
22 *90 days after commencing such secondary*
23 *transmissions, submit to the network that*
24 *owns or is affiliated with the network sta-*
25 *tion—*

1 “(I) a list identifying (by name
2 and street address, including county
3 and zip code) all subscribers to which
4 the satellite carrier makes secondary
5 transmissions of that primary trans-
6 mission to subscribers in unserved
7 households; and

8 “(II) a separate list, aggregated
9 by designated market area (as defined
10 in section 122(j)) (by name and street
11 address, including county and zip
12 code), which shall indicate those sub-
13 scribers being served pursuant to sub-
14 section (a)(3), relating to significantly
15 viewed stations.

16 “(i) MONTHLY LISTS.—After the sub-
17 mission of the initial lists under clause (i),
18 on the 15th of each month, the satellite car-
19 rier shall submit to the network—

20 “(I) a list identifying (by name
21 and street address, including county
22 and zip code) any persons who have
23 been added or dropped as subscribers
24 under clause (i)(I) since the last sub-
25 mission under clause (i); and

1 “(II) a separate list, aggregated
2 by designated market area (by name
3 and street address, including county
4 and zip code), identifying those sub-
5 scribers whose service pursuant to sub-
6 section (a)(3), relating to significantly
7 viewed stations, has been added or
8 dropped.

9 “(iii) *USE OF SUBSCRIBER INFORMA-*
10 *TION.—Subscriber information submitted by*
11 *a satellite carrier under this subparagraph*
12 *may be used only for purposes of moni-*
13 *toring compliance by the satellite carrier*
14 *with this subsection.*

15 “(iv) *APPLICABILITY.—The submission*
16 *requirements of this subparagraph shall*
17 *apply to a satellite carrier only if the net-*
18 *work to whom the submissions are to be*
19 *made places on file with the Register of*
20 *Copyrights a document identifying the*
21 *name and address of the person to whom*
22 *such submissions are to be made. The Reg-*
23 *ister shall maintain for public inspection a*
24 *file of all such documents.”; and*

25 *(C) by adding at the end the following:*

1 “(D) *ADJACENT MARKET EXCEPTIONS.*—

2 “(i) *STATES WITH SINGLE COMMERCIAL FULL-POWER NETWORK STATION.*—*In*
3 *a State in which there is licensed by the*
4 *Federal Communications Commission a*
5 *single full-power station that was a network*
6 *station on January 1, 1995, the statutory*
7 *license provided for in subparagraph (A)*
8 *shall apply to the secondary transmission*
9 *by a satellite carrier of the signal of that*
10 *station to any subscriber in a community*
11 *that is located within that State and that is*
12 *not within the first 50 major television*
13 *markets as listed in the regulations of the*
14 *Commission as in effect on such date (sec-*
15 *tion 76.51 of title 47 of the Code of Federal*
16 *Regulations).*

17 “(ii) *STATES WITH ALL NETWORK STA-*
18 *TIONS AND SUPERSTATIONS IN SAME LOCAL*
19 *MARKET.*—*In a State in which all network*
20 *stations and superstations licensed by the*
21 *Federal Communications Commission with-*
22 *in that State as of January 1, 1995, are as-*
23 *signed to the same local market and that*
24 *local market does not encompass all counties*
25

1 of that State, the statutory license provided
 2 under subparagraph (A) shall apply to the
 3 secondary transmission by a satellite car-
 4 rier of the signals of such station to all sub-
 5 scribers in the State who reside in a local
 6 market that is within the first 50 major tel-
 7 evision markets as listed in the regulations
 8 of the Commission as in effect on such date
 9 (section 76.51 of title 47 of the Code of Fed-
 10 eral Regulations).”;

11 (3) by striking paragraph (8);

12 (4) by redesignating paragraphs (9) through (12)
 13 as paragraphs (10) through (13), respectively;

14 (5) by redesignating paragraphs (3) through (7)
 15 as paragraphs (5) through (9), respectively;

16 (6) by inserting after paragraph (2) the fol-
 17 lowing:

18 “(3) *SECONDARY TRANSMISSIONS OF SIGNIFI-*
 19 *CANTLY VIEWED SIGNALS.—*

20 “(A) *IN GENERAL.—*Notwithstanding the
 21 provisions of paragraph (2)(B), and subject to
 22 subparagraph (B) of this paragraph, the statu-
 23 tory license provided for in paragraphs (1) and
 24 (2) shall apply to the secondary transmission of
 25 the signal of a network station or a superstation

1 to a subscriber who resides outside the local mar-
 2 ket of the station (as defined in section 122(j))
 3 but within a community in which the signal of
 4 that station is determined to be significantly
 5 viewed in accordance with the provisions of sec-
 6 tion 76.54 of title 47 of the Code of Federal Reg-
 7 ulations, as in effect on the date of enactment of
 8 the *Satellite Home Viewer Extension Act of*
 9 *2004.*

10 “(B) *LIMITATION.*—Subparagraph (A) shall
 11 apply only to secondary transmissions of net-
 12 work stations and superstations to subscribers
 13 who receive secondary transmissions from a sat-
 14 ellite carrier pursuant to the statutory license
 15 under section 122.”; and

16 (7) in paragraph (2)(B)(i), by adding at the end
 17 the following: “The limitation in this clause shall not
 18 apply to secondary transmissions under paragraph
 19 (3).”.

20 **SEC. 4. STATUTORY LICENSE FOR SATELLITE CARRIERS**
 21 **OUTSIDE LOCAL MARKETS.**

22 Section 119 of title 17, United States Code, is amended
 23 as follows:

1 (1) *Subsection (a) is amended by inserting after*
2 *paragraph (3), as added by section 3 of this Act, the*
3 *following:*

4 “(4) *STATUTORY LICENSE WHERE RETRANS-*
5 *MISSIONS INTO LOCAL MARKET AVAILABLE.—*

6 “(A) *IN GENERAL.—In the case of a sub-*
7 *scriber of a satellite carrier who is eligible to re-*
8 *ceive the signal of a network station under the*
9 *statutory license under paragraph (2), or solely*
10 *by reason of subsection (e) (in this subparagraph*
11 *both such signals shall be referred to as a ‘dis-*
12 *tant signal’), the following shall apply:*

13 “(i) *In a case in which the signal of a*
14 *local network station affiliated with the*
15 *same television network pursuant to the*
16 *statutory license under section 122 is made*
17 *available by that satellite carrier to the sub-*
18 *scriber on January 1, 2005, the statutory*
19 *license under paragraph (2) shall apply*
20 *only to secondary transmissions by that sat-*
21 *ellite carrier of the distant signal of a net-*
22 *work station affiliated with the same net-*
23 *work to that subscriber—*

24 “(I)(aa) *if, on January 1, 2005,*
25 *the subscriber is receiving such distant*

1 *signal and is also receiving such local*
2 *signal; and*

3 *“(bb) the satellite carrier of the*
4 *subscriber submits to that television*
5 *network a list, aggregated by des-*
6 *ignated market area (as defined in sec-*
7 *tion 122(j)(2)(C)), that identifies that*
8 *subscriber by name and address (street*
9 *or RFD number, city, State, and zip*
10 *code) and specifies the distant signals*
11 *received by the subscriber not later*
12 *than—*

13 *“(AA) 60 days after the date*
14 *of enactment of the Satellite Home*
15 *Viewer Extension Act of 2004; or*

16 *“(BB) March 1, 2005; or*

17 *“(II)(aa) if, on January 1, 2005,*
18 *the subscriber is receiving such distant*
19 *signal and is not receiving such local*
20 *signal; but*

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

24 *“(ii) In a case in which the signal of*
25 *a local network station affiliated with the*

1 *same television network pursuant to the*
2 *statutory license under section 122 is not*
3 *made available by that satellite carrier to a*
4 *subscriber on January 1, 2005, the statu-*
5 *tory license under paragraph (2) shall*
6 *apply only to secondary transmissions by*
7 *that satellite carrier of the distant signal of*
8 *a network station affiliated with the same*
9 *network to any person—*

10 *“(I) who is subscriber of that sat-*
11 *ellite carrier on January 1, 2005; or*

12 *“(II) who becomes a subscriber of*
13 *that satellite carrier after such date but*
14 *before the local signal is available,*
15 *but only until such time as the subscriber*
16 *elects to receive the local signal from that*
17 *satellite carrier.*

18 *“(B) FUTURE APPLICABILITY.—The statu-*
19 *tory license under paragraph (2) shall not apply*
20 *to secondary transmissions by a satellite carrier*
21 *of a primary transmission of a network station*
22 *to a subscriber in a location to which the signal*
23 *of a local network station affiliated with the*
24 *same television network was made available by*
25 *that satellite carrier, before that person seeks to*

1 *subscribe to a distant network station, pursuant*
2 *to the statutory license under section 122.*

3 “(C) *OTHER PROVISIONS NOT AFFECTED.*—
4 *This paragraph shall not affect the applicability*
5 *of the statutory license to secondary trans-*
6 *missions under paragraph (3) or to unserved*
7 *households included under subsection (a)(12).*

8 “(D) *SIGNALS MADE AVAILABLE.*—*For pur-*
9 *poses of this paragraph, a local signal shall be*
10 *considered to be made available to a subscriber*
11 *if the satellite carrier in question offers that local*
12 *signal to any subscriber within the same zip*
13 *code.”.*

14 (2) *Subsection (b)(1) is amended by striking sub-*
15 *paragraph (B) and inserting the following:*

16 “(B) *a royalty fee for that 6-month period,*
17 *computed by multiplying the total number of*
18 *subscribers receiving each secondary trans-*
19 *mission of each superstation or network station*
20 *during each calendar month by the appropriate*
21 *rate in effect under this section.”.*

22 (3) *Subsection (b)(1) is further amended by add-*
23 *ing at the end the following flush sentence:*

24 “*Notwithstanding the provisions of subparagraph (B),*
25 *a satellite carrier whose secondary transmissions are*

1 *subject to statutory licensing under paragraph (1) or*
2 *(2) of subsection (a) shall have no royalty obligation*
3 *for secondary transmissions to a subscriber who re-*
4 *sides outside the local market of the station (as de-*
5 *fined in section 122(j)(2)) but within a community in*
6 *which the signal of that station is determined to be*
7 *significantly viewed in accordance with the provisions*
8 *of section 76.54 of title 47 of the Code of Federal Regu-*
9 *lations, as in effect on the date of enactment of the*
10 *Satellite Home Viewer Extension Act of 2004.”.*

11 *(4) Subsection (c) is amended—*

12 *(A) by amending paragraph (1) to read as*
13 *follows:*

14 *“(1) APPLICABILITY AND DETERMINATION OF*
15 *ROYALTY FEES.—The appropriate rate for purposes of*
16 *determining the royalty fee under subsection (b)(1)(B)*
17 *shall be the appropriate rate set forth in part 258 of*
18 *title 37, Code of Federal Regulations, as in effect on*
19 *the date of the enactment of the Satellite Home View-*
20 *er Extension Act of 2004, until such rate expires on*
21 *May 31, 2005. Beginning on June 1, 2005, the roy-*
22 *alty fee under subsection (b)(1)(B) shall be such rate*
23 *as modified under this subsection.”;*

24 *(B) by striking paragraph (2);*

25 *(C) in paragraph (3)—*

1 (i) by redesignating that paragraph as
2 paragraph (2);

3 (ii) in subparagraph (A)—

4 (I) by striking “January 1,
5 1997,” and inserting “June 1, 2005”;

6 (II) by striking “who are not par-
7 ties to a voluntary agreement filed
8 with the Copyright Office in accord-
9 ance with paragraph (2) and inserting
10 “who are not parties to a voluntary
11 agreement filed with the Copyright Of-
12 fice by January 1, 2005”; and

13 (III) by striking “Such arbitra-
14 tion proceeding shall be conducted
15 under chapter 8.”;

16 (iii) in subparagraph (C), by striking
17 “as provided” and all that follows through
18 “later” and inserting “as provided under
19 section 802(g), or on June 1, 2005”; and

20 (iv) by striking subparagraph (D); and

21 (D) by striking paragraphs (4) and (5) and
22 inserting the following:

23 “(3) *COST OF LIVING ADJUSTMENT.*—*The royalty*
24 *rates set forth in subsection (b)(1)(B), as adjusted*
25 *under paragraph (2) of this subsection, shall be ad-*

1 *justed by the Librarian of Congress on January 1,*
2 *2006, and on January 1 of each year thereafter, to*
3 *reflect any changes occurring during the preceding 12*
4 *months in the cost of living as determined by the most*
5 *recent Consumer Price Index so published.*

6 “(4) *REDUCTIONS.*—*The rate of the royalty fee*
7 *determined under paragraph (2)—*

8 “(A) *for superstations shall be reduced by*
9 *30 percent; and*

10 “(B) *for network stations shall be reduced*
11 *by 45 percent.”.*

12 “(5) *Subsection (d) is amended—*

13 (A) *by amending paragraph (9) to read as*
14 *follows:*

15 “(9) *SUPERSTATION.*—*The term ‘superstation’*
16 *means a television broadcast station, other than a*
17 *network station, licensed by the Federal Communica-*
18 *tions Commission that is secondarily transmitted by*
19 *a satellite carrier.”;*

20 (B) *in paragraph (10)(D), by striking*

21 *“(a)(11)” and inserting “(a)(12)”;* and

22 (C) *by striking paragraph (12).*

1 **SEC. 5. LOW POWER TELEVISION STATIONS.**

2 (a) *IN GENERAL.*—Section 119(a) of title 17, United
3 States Code (as amended by sections 3 and 4 of this Act),
4 is further amended by adding at the end the following:

5 “(14) *CARRIAGE OF LOW POWER TELEVISION*
6 *STATIONS.*—

7 “(A) *IN GENERAL.*—Notwithstanding para-
8 graph (2)(B), and subject to subparagraphs (B)
9 through (F) of this paragraph, the statutory li-
10 cense provided for in paragraphs (1) and (2)
11 shall apply to the secondary transmission of the
12 signal of a network station or a superstation
13 that is licensed as a low power television station,
14 to a subscriber who resides within the same local
15 market.

16 “(B) *GEOGRAPHIC LIMITATION.*—

17 “(i) *NETWORK STATIONS.*—With re-
18 spect to network stations, secondary trans-
19 missions provided for in subparagraph (A)
20 shall be limited to secondary transmissions
21 to subscribers who—

22 “(I) reside in the same local mar-
23 ket as the station originating the sig-
24 nal; and

25 “(II) reside within 35 miles of the
26 transmitter site of such station, except

1 *that in the case of such a station located*
2 *in a standard metropolitan statistical*
3 *area which has 1 of the 50 largest popu-*
4 *lations of all standard metropolitan*
5 *statistical areas (based on the 1980 de-*
6 *cennial census of population taken by*
7 *the Secretary of Commerce), the number*
8 *of miles shall be 20.*

9 “(ii) *SUPERSTATIONS.—With respect*
10 *to superstations, secondary transmissions*
11 *provided for in subparagraph (A) shall be*
12 *limited to secondary transmissions to sub-*
13 *scribers who reside in the same local market*
14 *as the station originating the signal.*

15 “(C) *NO APPLICABILITY TO REPEATERS AND*
16 *TRANSLATORS.—Secondary transmissions pro-*
17 *vided for in subparagraph (A) shall not apply to*
18 *any low power television station that retransmits*
19 *the programs and signals of another television*
20 *station for more than 2 hours each day.*

21 “(D) *ROYALTY FEES.—Notwithstanding*
22 *subsection (b)(1)(B), a satellite carrier whose sec-*
23 *ondary transmissions of a low power television*
24 *station are subject to statutory licensing under*
25 *this section shall have no royalty obligation for*

1 *secondary transmissions to a subscriber who re-*
2 *sides within 35 miles of the transmitter site of*
3 *such station, except that in the case of such a*
4 *station located in a standard metropolitan sta-*
5 *tistical area which has 1 of the 50 largest popu-*
6 *lations of all standard metropolitan statistical*
7 *areas (based on the 1980 decennial census of*
8 *population taken by the Secretary of Commerce),*
9 *the number of miles shall be 20. Carriage of a*
10 *superstation that is a low power television sta-*
11 *tion within the station's local market, but out-*
12 *side of the 35-mile or 20-mile radius described in*
13 *the preceding sentence, shall be subject to royalty*
14 *payments under section (b)(1)(B).*

15 “(E) *LIMITATION TO SUBSCRIBERS TAKING*
16 *LOCAL-INTO-LOCAL SERVICE.—Secondary trans-*
17 *missions provided for in subparagraph (A) shall*
18 *be made only to subscribers who receive sec-*
19 *ondary transmissions of signals from that sat-*
20 *ellite carrier pursuant to the statutory license*
21 *under section 122 of this title. A satellite carrier*
22 *may make secondary transmissions of any signal*
23 *that originates as the digital signal of a low*
24 *power television station only if the satellite car-*
25 *rier does so in conformity with the bandwidth*

1 *requirements equivalent to those under section*
2 *340(b)(2) of the Communications Act of 1934 (47*
3 *U.S.C. 340(b)(2)).*

4 “(F) *OPTIONAL CARRIAGE.*—*No low power*
5 *television station whose signals are secondarily*
6 *transmitted under this paragraph shall be enti-*
7 *tled to insist on carriage under section 338(a) of*
8 *the Communications Act of 1934 (47 U.S.C.*
9 *338(a)), regardless of whether the satellite carrier*
10 *retransmits other stations in the same local mar-*
11 *ket pursuant to section 122, nor shall any such*
12 *carriage be considered in connection with section*
13 *338(c) of the Communications Act of 1934 (47*
14 *U.S.C. 338(c)).”.*

15 (b) *DEFINITION OF NETWORK STATION, SUPERSTA-*
16 *TION, LOCAL MARKET, AND LOW POWER (INCLUDING CLASS*
17 *A) STATION.*—*Section 119(d) of title 17, United States*
18 *Code, (as amended by section 4 of this Act), is further*
19 *amended—*

20 (1) *in paragraph (2)(A), by striking “a tele-*
21 *vision broadcast station” and inserting “a television*
22 *station licensed by the Federal Communications Com-*
23 *mission”;*

1 (2) *in paragraph (9), by striking “a television*
2 *broadcast station” and inserting “a television sta-*
3 *tion”;* and

4 (3) *by striking paragraph (11) and inserting the*
5 *following:*

6 “(11) *LOCAL MARKET.—The term “local market”*
7 *has the meaning given such term under section 122(j),*
8 *except that with respect to a low power television sta-*
9 *tion, the term “local market” means the designated*
10 *market area in which the station is located.*

11 “(12) *LOW POWER TELEVISION STATION.—The*
12 *term “low power television station means a low power*
13 *television as defined under section 74.701(f) of title 47*
14 *of the Code of Federal Regulations, as in effect on*
15 *June 1, 2004. For purposes of this paragraph, the*
16 *term “low power television station” includes a low*
17 *power television station that has been accorded pri-*
18 *mary status as a Class A television licensee under sec-*
19 *tion 73.6001(a) of title 47 of the Code of Federal Reg-*
20 *ulations.”.*

21 **SEC. 6. STUDY.**

22 *No later than June 30, 2008, the Register of Copy-*
23 *rights, in consultation and coordination with the Federal*
24 *Communications Commission, shall report to the Com-*
25 *mittee on the Judiciary of the House of Representatives and*

1 *the Committee on the Judiciary of the Senate the Register's*
2 *findings and recommendations on the operation and revi-*
3 *sion of the statutory licenses under sections 111, 119, and*
4 *122 of title 17, United States Code. The report should in-*
5 *clude, but not be limited to, the following:*

6 (1) *A comparison of the royalties paid by licens-*
7 *ees under such sections, including historical rates of*
8 *increases in these royalties, a comparison between the*
9 *royalties under each such section and the prices paid*
10 *in the marketplace for comparable programming.*

11 (2) *An analysis of the differences in the terms*
12 *and conditions of the licenses under such sections, an*
13 *analysis of whether these differences are required or*
14 *justified by historical, technological, or regulatory dif-*
15 *ferences that affect the satellite and cable industries,*
16 *and an analysis of whether either the cable or satellite*
17 *industry is placed in a competitive disadvantage due*
18 *to these terms and conditions.*

19 (3) *An analysis of whether the licenses under*
20 *such sections are still justified by the bases upon*
21 *which they were originally created.*

22 (4) *An analysis and estimate, if possible, of the*
23 *royalties that would be paid by each satellite carrier*
24 *if they were treated as a cable system and section 111*

1 *were applied in the same manner, and to the same*
2 *extent, as to a cable system.*

3 **SEC. 7. EFFECT ON CERTAIN PROCEEDINGS.**

4 *Nothing in this Act shall modify any remedy imposed*
5 *on a party that is required by a judgment of a court in*
6 *any action that was brought before May 1, 2004, against*
7 *that party for a violation of section 119 of title 17, United*
8 *States Code.*

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2^D SESSION

S. 2013

A BILL

To amend section 119 of title 17, United States Code, to extend satellite home viewer provisions.

JUNE 17, 2004

Reported with an amendment