

111TH CONGRESS  
1ST SESSION

# H. R. 3570

To amend title 17, United States Code, to reauthorize the satellite statutory license, to conform the satellite and cable statutory licenses to all-digital transmissions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2009

Mr. CONYERS (for himself, Mr. BOUCHER, Ms. WASSERMAN SCHULTZ, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 17, United States Code, to reauthorize the satellite statutory license, to conform the satellite and cable statutory licenses to all-digital transmissions, 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 Home Viewer  
5 Update and Reauthorization Act of 2009”.

6 **SEC. 2. REFERENCE.**

7 Except as otherwise provided, whenever in this Act  
8 an amendment is made to a section or other provision,

1 the reference shall be considered to be made to such sec-  
2 tion or provision of title 17, United States Code.

3 **SEC. 3. MODIFICATIONS TO STATUTORY LICENSE FOR SAT-**  
4 **ELLITE CARRIERS.**

5 (a) HEADING RENAMED.—

6 (1) IN GENERAL.—The heading of section 119  
7 is amended by striking “**superstations and net-**  
8 **work stations for private home viewing**”  
9 and inserting “**distant television program-**  
10 **ming by satellite**”.

11 (2) TABLE OF CONTENTS.—The table of con-  
12 tents for chapter I is amended by striking the item  
13 relating to section 119 and inserting the following:

“119. Limitations on exclusive rights: Secondary transmissions of distant tele-  
vision programming by satellite.”.

14 (b) UNSERVED HOUSEHOLD DEFINED.—Section  
15 119(d)(10) is amended—

16 (1) by striking subparagraph (A) and inserting  
17 the following:

18 “(A) cannot receive, through the use of a  
19 conventional, stationary, outdoor rooftop receiv-  
20 ing antenna, an over-the-air signal containing  
21 the primary video or qualified multicast video of  
22 a primary network station located in that  
23 household’s local market and affiliated with  
24 that network of—

1           “(i) if the signal originates as an ana-  
2           log signal, Grade B intensity as defined by  
3           the Federal Communications Commission  
4           under section 73.683(a) of title 47, Code  
5           of Federal Regulations, as in effect on  
6           January 1, 1999; or

7           “(ii) if the signal originates as a dig-  
8           ital signal, intensity defined in the values  
9           for digital television noise-limited service  
10          contour, as defined in regulations issued by  
11          the Federal Communications Commission  
12          under section 73.622(e) of title 47, Code of  
13          Federal Regulations, as such regulations  
14          may be amended from time to time;”;

15          (2) in subparagraph (B)—

16                 (A) by striking “subsection (a)(14)” and  
17                 inserting “subsection (a)(13),”; and

18                 (B) by striking “Satellite Home Viewer  
19                 Extension and Reauthorization Act of 2004”  
20                 and inserting “Satellite Home Viewer Update  
21                 and Reauthorization Act of 2009”;

22          (3) in subparagraph (D)—

23                 (A) by striking “(a)(12)” and inserting  
24                 “(a)(11)”; and

25                 (B) by striking “or”;

1 (4) in subparagraph (E), by striking the period  
2 at the end and inserting “; or”; and

3 (5) by adding at the end the following new sub-  
4 paragraph:

5 “(F) is a subscriber who was lawfully re-  
6 ceiving, by reason of subparagraph (A) of this  
7 paragraph, as in effect on the day before the  
8 date of the enactment of the Satellite Home  
9 Viewer Update and Reauthorization Act of  
10 2009, secondary transmissions of the primary  
11 transmission of a network station affiliated with  
12 that network.”.

13 (c) FILING FEE.—Section 119(b)(1) is amended—

14 (1) in subparagraph (A), by striking “and”  
15 after the semicolon at the end;

16 (2) in subparagraph (B), by striking the period  
17 and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(C) a filing fee, as determined by the  
20 Register of Copyrights pursuant to section  
21 708(a).”.

22 (d) EMERGENCY MONITORING, PLANNING, OR RE-  
23 SPONDING.—Section 119(a) is amended by adding at the  
24 end the following:

1           “(17) RETRANSMISSION FOR EMERGENCY  
2 PREPARATION, RESPONSE, OR RECOVERY.—

3           “(A) AUTHORITY.—The secondary trans-  
4 mission by a satellite carrier of a performance  
5 or display of a work embodied in a primary  
6 transmission of a television broadcast station is  
7 not an infringement of copyright if such sec-  
8 ondary transmission is made—

9           “(i) to a Federal governmental body  
10 designated by the Secretary of Homeland  
11 Security or an organization established  
12 with the purpose of carrying out a system  
13 of national and international relief efforts  
14 and chartered under section 300101 of  
15 title 36;

16           “(ii) to officers or employees of such  
17 body or such organization as a part of the  
18 official duties or employment of such offi-  
19 cers or employees;

20           “(iii) at the request of the Secretary  
21 of Homeland Security; and

22           “(iv) for the sole purpose of preparing  
23 for, responding to, or recovering from an  
24 emergency described under subparagraph  
25 (B).

1           “(B) EMERGENCIES.—An emergency is de-  
2           scribed under this subparagraph if the Sec-  
3           retary of Homeland Security identifies such  
4           emergency as a major disaster, a catastrophe,  
5           an act of terrorism, or a transportation security  
6           incident.

7           “(C) REGULATIONS.—Not later than 6  
8           months after the date of the enactment of this  
9           paragraph, the Secretary of Homeland Security  
10          shall issue regulations to protect copyright own-  
11          ers by preventing the unauthorized access to  
12          the secondary transmissions described in sub-  
13          paragraph (A).

14          “(D) REPORTS TO CONGRESSIONAL COM-  
15          MITTEES.—Not later than one year after the  
16          date of the enactment of this paragraph and by  
17          September 30 of each year thereafter, the Sec-  
18          retary of Homeland Security shall submit a re-  
19          port to the Committee on the Judiciary of the  
20          House of Representatives and the Committee  
21          on the Judiciary of the Senate describing—

22                  “(i) the manner in which the author-  
23                  ity granted under subparagraph (A) is  
24                  being used; and

1 “(ii) any additional legislative rec-  
2 ommendations the Secretary may have.

3 “(E) DEFINITIONS.—As used in this para-  
4 graph:

5 “(i) TERRORISM.—The term ‘ter-  
6 rorism’ has the meaning given that term in  
7 section 2(16) of the Homeland Security  
8 Act of 2002 (6 U.S.C. 101(16)).

9 “(ii) TRANSPORTATION SECURITY IN-  
10 CIDENT.—The term ‘transportation secu-  
11 rity incident’ has the meaning given that  
12 term in section 70101 of title 46.

13 “(F) EFFECTIVE DATE.—This paragraph  
14 shall take effect with respect to a secondary  
15 transmission described under subparagraph (A)  
16 that is made after the end of the 30-day period  
17 beginning on the effective date of the regula-  
18 tions issued by the Secretary of Homeland Se-  
19 curity under subparagraph (C).”.

20 (e) LICENSE PROVIDED FOR CERTAIN NETWORKS OF  
21 NONCOMMERCIAL EDUCATIONAL BROADCAST STA-  
22 TIONS.—Section 119(a)(2)(C) is amended by adding at  
23 the end the following new clause:

24 “(vi) NETWORKS OF NONCOMMERCIAL  
25 EDUCATIONAL BROADCAST STATIONS.—In

1 the case of a system of three or more non-  
2 commercial educational broadcast stations  
3 licensed by a single State, public agency,  
4 or political, educational, or special purpose  
5 subdivision of a State, the statutory license  
6 provided for in subparagraph (A) shall  
7 apply to the secondary transmission of the  
8 primary transmission of such system to  
9 any subscriber in any county within such  
10 State, if such subscriber is located in a  
11 designated market area that is not other-  
12 wise eligible to receive the secondary trans-  
13 mission of the primary transmission of  
14 such system pursuant to section 122(a).”.

15 (f) DEPOSIT OF STATEMENTS AND FEES;  
16 VERIFICATION PROCEDURES.—Section 119(b) is amend-  
17 ed—

18 (1) by amending the subsection heading to read  
19 as follows: “(b) DEPOSIT OF STATEMENTS AND  
20 FEES; VERIFICATION PROCEDURES.—”;

21 (2) by redesignating paragraphs (2), (3), and  
22 (4) as paragraphs (3), (4), and (5), respectively;

23 (3) by inserting after paragraph (1) the fol-  
24 lowing:

1           “(2) VERIFICATION OF ACCOUNTS AND FEE  
2 PAYMENTS.—The Register of Copyrights shall issue  
3 regulations to permit interested parties to verify and  
4 audit the statements of account and royalty fees  
5 submitted by satellite carriers under this sub-  
6 section.”;

7           (4) in paragraph (3), as redesignated, by strik-  
8 ing “paragraph (4)” and inserting “paragraph (5)”;

9           (5) in paragraph (4), as redesignated—

10           (A) by striking “paragraph (2)” and in-  
11 sserting “paragraph (3)”;

12           (B) by striking “paragraph (4)” each place  
13 it appears and inserting “paragraph (5)”;

14           (6) in paragraph (5), as redesignated, by strik-  
15 ing “paragraph (2)” and inserting “paragraph (3)”.

16           (g) ADJUSTMENT OF ROYALTY FEES.—Section  
17 119(c) is amended as follows:

18           (1) Paragraph (1) is amended—

19           (A) in the heading for such paragraph, by  
20 striking “ANALOG”;

21           (B) in subparagraph (A)—

22           (i) by striking “primary analog trans-  
23 missions” and inserting “primary trans-  
24 missions”; and

1 (ii) by striking “July 1, 2004” and in-  
2 serting “July 1, 2009”;

3 (C) in subparagraph (B)—

4 (i) by striking “January 2, 2005, the  
5 Librarian of Congress” and inserting  
6 “January 4, 2010, the Copyright Royalty  
7 Judges”;

8 (ii) by striking “primary analog trans-  
9 mission” and inserting “primary trans-  
10 missions”; and

11 (iii) by adding at the end the fol-  
12 lowing: “A separate fee shall be established  
13 for each stream of a multicast trans-  
14 mission included in the secondary trans-  
15 mission to the subscriber.”;

16 (D) in subparagraph (C), by striking “Li-  
17 brarian of Congress” and inserting “Copyright  
18 Royalty Judges”;

19 (E) in subparagraph (D)—

20 (i) in clause (i)—

21 (I) by striking “(i) Voluntary  
22 agreements” and inserting the fol-  
23 lowing:

24 “(i) VOLUNTARY AGREEMENTS; FIL-  
25 ING.—Voluntary agreements”; and

1 (II) by striking “that a parties”  
2 and inserting “that are parties”; and  
3 (ii) in clause (ii)—

4 (I) by striking “(ii)(I) Within”  
5 and inserting the following:

6 “(ii) PROCEDURE FOR ADOPTION OF  
7 FEES.—

8 “(I) PUBLICATION OF NOTICE.—  
9 Within”;

10 (II) in subclause (I), by striking  
11 “an arbitration proceeding pursuant  
12 to subparagraph (E)” and inserting  
13 “a proceeding under subparagraph  
14 (F)”;

15 (III) in subclause (II), by strik-  
16 ing “(II) Upon receiving a request  
17 under subclause (I), the Librarian of  
18 Congress” and inserting the following:

19 “(II) PUBLIC NOTICE OF  
20 FEES.—Upon receiving a request  
21 under subclause (I), the Copyright  
22 Royalty Judges”; and

23 (IV) in subclause (III)—

1 (aa) by striking “(III) The  
2 Librarian” and inserting the fol-  
3 lowing:

4 “(III) ADOPTION OF FEES.—The  
5 Copyright Royalty Judges”;

6 (bb) by striking “an arbitra-  
7 tion proceeding” and inserting  
8 “the proceeding under subpara-  
9 graph (F)”;

10 (cc) by striking “the arbitra-  
11 tion proceeding” and inserting  
12 “that proceeding”;

13 (F) in subparagraph (E)—

14 (i) by striking “Copyright Office” and  
15 inserting “Copyright Royalty Judges”; and

16 (ii) by striking “December 31, 2009”  
17 and inserting “December 31, 2014”; and

18 (G) in subparagraph (F)—

19 (i) in the heading, by striking “COM-  
20 PULSORY ARBITRATION” and inserting  
21 “COPYRIGHT ROYALTY JUDGES PRO-  
22 CEEDING”;

23 (ii) in clause (i)—

1 (I) in the heading, by striking  
2 “PROCEEDINGS” and inserting “THE  
3 PROCEEDING”;

4 (II) in the matter preceding sub-  
5 clause (I)—

6 (aa) by striking “May 1,  
7 2005, the Librarian of Congress”  
8 and inserting “May 3, 2010, the  
9 Copyright Royalty Judges”;

10 (bb) by striking “arbitration  
11 proceedings” and inserting “a  
12 proceeding”;

13 (cc) by striking “fee to be  
14 paid” and inserting “fees to be  
15 paid”;

16 (dd) by striking “primary  
17 analog transmission” and insert-  
18 ing “the primary transmissions”;  
19 and

20 (ee) by striking “distribu-  
21 tors” and inserting “distribu-  
22 tors—”;

23 (III) in subclause (II)—

1 (aa) by striking “Librarian  
2 of Congress” and inserting  
3 “Copyright Royalty Judges”; and

4 (bb) by striking “arbitra-  
5 tion”; and

6 (IV) by amending the last sen-  
7 tence to read as follows: “Such pro-  
8 ceeding shall be conducted under  
9 chapter 8.”;

10 (iii) in clause (ii), by amending the  
11 matter preceding subclause (I) to read as  
12 follows:

13 “(ii) ESTABLISHMENT OF ROYALTY  
14 FEES.—In determining royalty fees under  
15 this subparagraph, the Copyright Royalty  
16 Judges shall establish fees for the sec-  
17 ondary transmissions of the primary trans-  
18 missions of network stations and non-net-  
19 work stations that most clearly represent  
20 the fair market value of secondary trans-  
21 missions, except that the Copyright Roy-  
22 alty Judges shall adjust royalty fees to ac-  
23 count for the obligations of the parties  
24 under any applicable voluntary agreement  
25 filed with the Copyright Royalty Judges in

1 accordance with subparagraph (D). In de-  
 2 termining the fair market value, the  
 3 Judges shall base their decision on eco-  
 4 nomic, competitive, and programming in-  
 5 formation presented by the parties, includ-  
 6 ing—”;

7 (iv) by amending clause (iii) to read  
 8 as follows:

9 “(iii) EFFECTIVE DATE FOR DECISION  
 10 OF COPYRIGHT ROYALTY JUDGES.—The  
 11 obligation to pay the royalty fees estab-  
 12 lished under a determination that is made  
 13 by the Copyright Royalty Judges in a pro-  
 14 ceeding under this paragraph shall be ef-  
 15 fective as of January 1, 2010.”; and

16 (v) in clause (iv)—

17 (I) in the heading, by striking  
 18 “FEE” and inserting “FEES”; and

19 (II) by striking “fee” and insert-  
 20 ing “fees”.

21 (2) Paragraph (2) is amended to read as fol-  
 22 lows:

23 “(2) ANNUAL ROYALTY FEE ADJUSTMENT.—  
 24 Effective January 1 of each year, the royalty fee  
 25 payable under subsection (b)(1)(B) for the sec-

1       ondary transmission of the primary transmissions of  
2       network stations and non-network stations shall be  
3       adjusted by the Copyright Royalty Judges to reflect  
4       any changes occurring in the cost of living as deter-  
5       mined by the most recent Consumer Price Index (for  
6       all consumers and for all items) published by the  
7       Secretary of Labor before December 1 of the pre-  
8       ceding year. Notification of the adjusted fees shall  
9       be published in the Federal Register at least 25 days  
10      before January 1.”.

11      (h) DEFINITIONS.—

12           (1) SUBSCRIBER.—Section 119(d)(8) is amend-  
13      ed to read as follows:

14           “(8) SUBSCRIBER.—The term ‘subscriber’  
15      means a person or entity that receives a secondary  
16      transmission service from a satellite carrier and pays  
17      a fee for the service, directly or indirectly, to the sat-  
18      ellite carrier or to a distributor.”.

19           (2) LOW POWER TELEVISION STATION.—Sec-  
20      tion 119(d)(12) is amended by striking “low power  
21      television as” and inserting “low power TV station  
22      as”.

23           (3) LOCAL MARKET.—Section 119(d)(11) is  
24      amended to read as follows:

1           “(11) LOCAL MARKET.—The term ‘local mar-  
2           ket’ has the meaning given such term under section  
3           122(j).”.

4           (4) NONCOMMERCIAL EDUCATIONAL BROAD-  
5           CAST STATION.—Section 119(d) is amended—

6                   (A) in paragraph (2)(B), by striking “(as  
7                   defined in section 397 of the Communications  
8                   Act of 1934)”; and

9                   (B) by adding at the end the following:

10           “(14) NONCOMMERCIAL EDUCATIONAL BROAD-  
11           CAST STATION.—The term ‘noncommercial edu-  
12           cational broadcast station’ means a television broad-  
13           cast station that—

14                   “(A) under the rules and regulations of the  
15                   Federal Communications Commission in effect  
16                   on November 2, 1978, is eligible to be licensed  
17                   by the Federal Communications Commission as  
18                   a noncommercial educational television broad-  
19                   cast station and is owned and operated by a  
20                   public agency or nonprofit private foundation,  
21                   corporation, or association; or

22                   “(B) is owned and operated by a munici-  
23                   pality and transmits only noncommercial pro-  
24                   grams for education purposes.”.

1           (5)   MULTICAST    TRANSMISSION.—Section  
2   119(d) is amended by adding at the end the fol-  
3   lowing:

4           “(15)   MULTICAST    TRANSMISSION.—A  
5   ‘multicast transmission’ is a transmission by a tele-  
6   vision station that contains more than one channel  
7   or digital stream, each containing its own distinct  
8   programming.”.

9           (6)   QUALIFIED   MULTICAST   VIDEO.—Section  
10   119(d), as amended by paragraph (5), is further  
11   amended by adding at the end the following new  
12   paragraph:

13           “(16) QUALIFIED MULTICAST VIDEO.—A ‘quali-  
14   fied multicast video’ is a video stream other than the  
15   primary video that, with respect to a particular sat-  
16   ellite carrier either—

17           “(A) was carried by that satellite carrier  
18           on July 1, 2009, and remains affiliated with the  
19           same network; or

20           “(B) exists on January 1, 2013, and re-  
21           mains affiliated with the same network.”.

22           (7)   PRIMARY    VIDEO.—Section   119(d), as  
23   amended by paragraph (6), is further amended by  
24   adding at the end the following new paragraph:

1           “(17) PRIMARY VIDEO.—The term ‘primary  
2 video’ means the single programming stream and as-  
3 sociated data that received the highest aggregate  
4 viewership ratings of all programming streams of-  
5 fered by that station as of the date of enactment of  
6 the Satellite Home Viewer Update and Reauthoriza-  
7 tion Act of 2009, offered by a television broadcast  
8 station.”.

9           (8) CLERICAL AMENDMENT.—Section 119(d) is  
10 amended in paragraphs (1),(2), and (5) by striking  
11 “which” each place it appears and inserting “that”.

12           (i) SUPERSTATION REDESIGNATED AS NON-NET-  
13 WORK STATION.—Section 119 is amended—

14           (1) by striking “superstation” each place it ap-  
15 pears in a heading and each place it appears in text  
16 and inserting “non-network station”; and

17           (2) by striking “superstations” each place it ap-  
18 pears in a heading and each place it appears in text  
19 and inserting “non-network stations”.

20           (j) LOW POWER TELEVISION STATIONS.—Section  
21 119(a)(15) is amended to read as follows:

22           “(15) SECONDARY TRANSMISSIONS OF LOW  
23 POWER TELEVISION PROGRAMMING.—

24           “(A) IN GENERAL.—Notwithstanding para-  
25 graph (2)(B), and subject to subparagraphs (B)

1 through (D) of this paragraph, the statutory li-  
2 cense provided for in paragraph (1) shall apply  
3 to the secondary transmission by a satellite car-  
4 rier of the primary transmission of the pro-  
5 gramming of a non-network station that is li-  
6 censed as a low power television station, to a  
7 subscriber who resides within the same des-  
8 ignated market area as the station that origi-  
9 nates the programming signal.

10 “(B) NO APPLICABILITY TO REPEATERS  
11 AND TRANSLATORS.—Secondary transmissions  
12 provided for in subparagraph (A) shall not  
13 apply to any low power television station that  
14 retransmits the programs and signals of an-  
15 other television station for more than 2 hours  
16 each day.

17 “(C) ROYALTY FEES.—A satellite carrier  
18 whose secondary transmission of the primary  
19 transmission of the programming of a low  
20 power television station is subject to statutory  
21 licensing under this section shall be subject to  
22 royalty payments under subsection (b)(1)(B)  
23 for any transmission to a subscriber outside of  
24 the local market of the low power television sta-  
25 tion.

1           “(D) LIMITATION TO SUBSCRIBERS TAK-  
2           ING LOCAL-INTO-LOCAL SERVICE.—Secondary  
3           transmissions provided for in subparagraph (A)  
4           may be made by a satellite carrier only to sub-  
5           scribers who receive secondary transmissions of  
6           primary transmissions from that satellite car-  
7           rier pursuant to the statutory license under sec-  
8           tion 122.”.

9           (k) REMOVAL OF SIGNIFICANTLY VIEWED PROVI-  
10          SION.—

11           (1) REMOVAL OF PROVISION.—Section 119(a)  
12          is amended by striking paragraph (3) and redesign-  
13          ating paragraphs (4) through (17) as paragraphs  
14          (3) through (16), respectively.

15           (2) CONFORMING AMENDMENTS.—Section 119  
16          is amended—

17           (A) in subsection (a)—

18           (i) in paragraph (1), by striking “(5),  
19           (6), and (8)” and inserting “(4), (5), and  
20           (7)”;

21           (ii) in paragraph (2)—

22           (I) in subparagraph (A), by strik-  
23           ing “paragraphs (5), (6), (7), and  
24           (8)” and inserting “paragraphs (4),  
25           (5), (6), and (7)”;

1 (II) in subparagraph (B)(i), by  
2 striking the second sentence; and

3 (III) in subparagraph (D), by  
4 striking clauses (i) and (ii) and insert-  
5 ing the following:

6 “(i) INITIAL LISTS.—A satellite car-  
7 rier that makes secondary transmissions of  
8 a primary transmission made by a network  
9 station pursuant to subparagraph (A)  
10 shall, not later than 90 days after com-  
11 mencing such secondary transmissions,  
12 submit to the network that owns or is af-  
13 filiated with the network station a list  
14 identifying (by name and address, includ-  
15 ing street or rural route number, city,  
16 State, and 9-digit zip code) all subscribers  
17 to which the satellite carrier makes sec-  
18 ondary transmissions of that primary  
19 transmission to subscribers in unserved  
20 households.

21 “(ii) MONTHLY LISTS.—After the sub-  
22 mission of the initial lists under clause (i),  
23 the satellite carrier shall, not later than  
24 the 15th of each month, submit to the net-  
25 work a list identifying (by name and ad-

1 dress, including street or rural route num-  
 2 ber, city, State, and 9-digit zip code) any  
 3 persons who have been added or dropped  
 4 as subscribers under clause (i) since the  
 5 last submission under clause (i).”; and

6 (iii) in paragraph (3)(E) (as redesign-  
 7 nated)—

8 (I) by striking “under paragraph  
 9 (3) or”; and

10 (II) by striking “paragraph (12)”  
 11 and inserting “paragraph (11)”; and

12 (B) in subsection (b)(1), by striking the  
 13 final sentence.

14 (I) MODIFICATIONS TO PROVISIONS FOR SECONDARY  
 15 TRANSMISSIONS BY SATELLITE CARRIERS.—

16 (1) PREDICTIVE MODEL.—Section  
 17 119(a)(2)(B)(ii) is amended by adding at the end  
 18 the following:

19 “(III) ACCURATE PREDICTIVE  
 20 MODEL WITH RESPECT TO DIGITAL  
 21 SIGNALS.—Notwithstanding subclause  
 22 (I), in determining presumptively  
 23 whether a person resides in an  
 24 unserved household under subsection  
 25 (d)(10)(A) with respect to digital sig-

1 nals, a court shall rely on a predictive  
2 model set forth by the Federal Com-  
3 munications Commission pursuant to  
4 a rulemaking as provided in section  
5 339(c)(3) of the Communications Act  
6 of 1934 (47 U.S.C. 339(c)(3)), as  
7 that model may be amended by the  
8 Commission over time under such sec-  
9 tion to increase the accuracy of that  
10 model. Until such time as the Com-  
11 mission sets forth such model, a court  
12 shall rely on the predictive model en-  
13 dorsed by the Commission in FCC  
14 05–199, released December 9, 2005.”.

15 (2) MODIFICATIONS TO STATUTORY LICENSE  
16 WHERE RETRANSMISSIONS INTO LOCAL MARKET  
17 AVAILABLE.—Section 119(a)(3) (as redesignated) is  
18 amended—

19 (A) by striking “analog” each place it ap-  
20 pears in a heading and text; and

21 (B) by amending subparagraph (B) to read  
22 as follows:

23 “(B) RULES FOR OTHER SUBSCRIBERS.—  
24 The statutory license under paragraph (2) shall  
25 not apply to the secondary transmission by a

1 satellite carrier of a primary transmission of a  
2 network station to a person who—

3 “(i) is not a subscriber lawfully receiv-  
4 ing such secondary transmission as of the  
5 date of the enactment of the Satellite  
6 Home Viewer Update and Reauthorization  
7 Act of 2009; or

8 “(ii) at the time such person seeks to  
9 subscribe to receive such secondary trans-  
10 mission, resides in a local market where  
11 the satellite carrier makes available to that  
12 person the secondary transmission of the  
13 primary transmission of a local network  
14 station affiliated with the same television  
15 network pursuant to the statutory license  
16 under section 122, and such secondary  
17 transmission of such primary transmission  
18 can reach such person.”;

19 (C) by striking subparagraphs (C) and  
20 (D);

21 (D) by redesignating subparagraphs (E),  
22 (F), and (G) as subparagraphs (C), (D), and  
23 (E), respectively;

1 (E) in subparagraph (D) (as redesignated),  
2 by striking “(C) or (D)” and inserting “(B)”;  
3 and

4 (F) in subparagraph (E) (as redesignated),  
5 by inserting “9-digit” before “zip code”.

6 (3) STATUTORY DAMAGES FOR TERRITORIAL  
7 RESTRICTIONS.—Section 119(a)(6) (as redesignated)  
8 is amended—

9 (A) by striking “\$5” and inserting  
10 “\$250”; and

11 (B) by striking “\$250,000” each place it  
12 appears and inserting “\$2,500,000”.

13 (4) CLERICAL AMENDMENT.—Section  
14 119(a)(2)(B)(iii)(II) is amended by striking “In this  
15 clause” and inserting “In this clause,”.

16 (m) MORATORIUM EXTENSION.—Section 119(e) is  
17 amended by striking “2009” and inserting “2014”.

18 (n) CLERICAL AMENDMENTS.—Section 119 is  
19 amended—

20 (1) by striking “of the Code of Federal Regula-  
21 tions” each place it appears and inserting “, Code  
22 of Federal Regulations”; and

23 (2) in subsection (d)(6), by striking “or the Di-  
24 rect” and inserting “, or the Direct”.

1 **SEC. 4. MODIFICATIONS TO STATUTORY LICENSE FOR SAT-**  
 2 **ELLITE CARRIERS IN LOCAL MARKETS.**

3 (a) HEADING RENAMED.—

4 (1) IN GENERAL.—The heading of section 122  
 5 is amended by striking “**by satellite carriers**  
 6 **within local markets**” and inserting “**of local**  
 7 **television programming by satellite**”.

8 (2) TABLE OF CONTENTS.—The table of con-  
 9 tents for chapter I is amended by striking the item  
 10 relating to section 122 and inserting the following:

“122. Limitations on exclusive rights: Secondary transmissions of local television  
 programming by satellite.”.

11 (b) STATUTORY LICENSE.—Section 122(a) is amend-  
 12 ed to read as follows:

13 “(a) SECONDARY TRANSMISSIONS INTO LOCAL MAR-  
 14 KETS.—

15 “(1) SECONDARY TRANSMISSIONS OF TELE-  
 16 VISION BROADCAST STATIONS WITHIN A LOCAL MAR-  
 17 KET.—A secondary transmission of a performance  
 18 or display of a work embodied in a primary trans-  
 19 mission of a television broadcast station into the sta-  
 20 tion’s local market shall be subject to statutory li-  
 21 censing under this section if—

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

1           “(B) with regard to secondary trans-  
2           missions, the satellite carrier is in compliance  
3           with the rules, regulations, or authorizations of  
4           the Federal Communications Commission gov-  
5           erning the carriage of television broadcast sta-  
6           tion signals; and

7           “(C) the satellite carrier makes a direct or  
8           indirect charge for the secondary transmission  
9           to—

10                   “(i) each subscriber receiving the sec-  
11                   ondary transmission; or

12                   “(ii) a distributor that has contracted  
13                   with the satellite carrier for direct or indi-  
14                   rect delivery of the secondary transmission  
15                   to the public.

16           “(2) SIGNIFICANTLY VIEWED STATIONS.—

17                   “(A) IN GENERAL.—The statutory license  
18                   under paragraph (1) shall apply to the sec-  
19                   ondary transmission of the primary trans-  
20                   mission of a network station or a non-network  
21                   station to a subscriber who resides outside the  
22                   station’s local market but within a community  
23                   in which the signal has been determined by the  
24                   Federal Communications Commission to be sig-  
25                   nificantly viewed in such community, pursuant

1 to the rules, regulations, and authorizations of  
2 the Federal Communications Commission in ef-  
3 fect on April 15, 1976, applicable to deter-  
4 mining with respect to a cable system whether  
5 signals are significantly viewed in a community.

6 “(B) LIMITATION.—Subparagraph (A)  
7 shall apply only to secondary transmissions of  
8 the primary transmissions of network stations  
9 or non-network stations to subscribers who re-  
10 ceive secondary transmissions from a satellite  
11 carrier pursuant to the statutory license under  
12 paragraph (1).

13 “(C) WAIVER.—A subscriber who is denied  
14 the secondary transmission of the primary  
15 transmission of a network station or a non-net-  
16 work station under subparagraph (B) may re-  
17 quest a waiver from such denial by submitting  
18 a request, through the subscriber’s satellite car-  
19 rier, to the network station or non-network sta-  
20 tion in the local market affiliated with the same  
21 network or non-network where the subscriber is  
22 located. The network station or non-network  
23 station shall accept or reject the subscriber’s re-  
24 quest for a waiver within 30 days after receipt  
25 of the request. If the network station or non-

1 network station fails to accept or reject the sub-  
2 scriber's request for a waiver within that 30-  
3 day period, that network station or non-network  
4 station shall be deemed to agree to the waiver  
5 request.

6 “(3) SECONDARY TRANSMISSION OF LOW  
7 POWER PROGRAMMING.—

8 “(A) IN GENERAL.—Subject to subpara-  
9 graphs (B) through (D) of this paragraph, the  
10 statutory license provided under paragraph (1)  
11 shall apply to the secondary transmission by a  
12 satellite carrier of the primary transmission of  
13 a network station or a non-network station that  
14 is licensed as a low power television station, to  
15 a subscriber who resides within the same local  
16 market as the station that originates the trans-  
17 mission.

18 “(B) NO APPLICABILITY TO REPEATERS  
19 AND TRANSLATORS.—Secondary transmissions  
20 by a satellite carrier provided for in subpara-  
21 graph (A) shall not apply to any low power tele-  
22 vision station that retransmits the programs  
23 and signals of another television station for  
24 more than 2 hours each day.

1           “(C) LIMITATION TO SUBSCRIBERS TAKING  
2 LOCAL-INTO-LOCAL SERVICE.—Secondary trans-  
3 missions by a satellite carrier provided for in  
4 subparagraph (A) may be made only to sub-  
5 scribers who receive secondary transmissions of  
6 primary transmissions from that satellite car-  
7 rier pursuant to the statutory license in para-  
8 graph (1), and only in conformity with the re-  
9 quirements under section 340(b) of the Com-  
10 munications Act of 1934, as in effect on the  
11 date of the enactment of the Satellite Home  
12 Viewer Update and Reauthorization Act of  
13 2009.

14           “(D) NO IMPACT ON OTHER SECONDARY  
15 TRANSMISSIONS OBLIGATIONS.—A satellite car-  
16 rier that makes secondary transmissions of a  
17 primary transmission of a low power television  
18 station under a statutory license provided under  
19 this section is not required, by reason of such  
20 secondary transmissions, to make any other sec-  
21 ondary transmissions.”.

22           (c) REPORTING REQUIREMENTS.—Section 122(b) is  
23 amended—

1           (1) in paragraph (1), by striking “station a  
2 list” and all that follows through the end and insert-  
3 ing the following: “station—

4                   “(A) a list identifying (by name in alpha-  
5 betical order and street address, including coun-  
6 ty and 9-digit zip code) all subscribers to which  
7 the satellite carrier makes secondary trans-  
8 missions of that primary transmission under  
9 subsection (a); and

10                   “(B) a separate list, aggregated by des-  
11 ignated market area (by name and address, in-  
12 cluding street or rural route number, city,  
13 State, and 9-digit zip code), which shall indicate  
14 those subscribers being served pursuant to sub-  
15 section (a)(2), relating to significantly viewed  
16 stations.”; and

17           (2) in paragraph (2), by striking “network a  
18 list” and all that follows through the end and insert-  
19 ing the following: “network—

20                   “(A) a list identifying (by name in alpha-  
21 betical order and street address, including coun-  
22 ty and 9-digit zip code) any subscribers who  
23 have been added or dropped as subscribers  
24 since the last submission under this subsection;  
25 and

1           “(B) a separate list, aggregated by des-  
2           gnated market area (by name and street ad-  
3           dress, including street or rural route number,  
4           city, State, and 9-digit zip code), identifying  
5           those subscribers whose service pursuant to  
6           subsection (a)(2), relating to significantly  
7           viewed stations, has been added or dropped  
8           since the last submission under this sub-  
9           section.”.

10       (d) VIOLATIONS FOR TERRITORIAL RESTRICTIONS.—

11       (1) MODIFICATION TO STATUTORY DAMAGES.—Sec-  
12       tion 122(f) is amended—

13           (A) in paragraph (1)(B), by striking “\$5” and  
14           inserting “\$250”; and

15           (B) in paragraph (2), by striking “\$250,000”  
16           each place it appears and inserting “\$2,500,000”.

17       (2) CONFORMING AMENDMENT FOR SIGNIFICANTLY  
18       VIEWED STATIONS.—Section 122 is amended—

19           (A) in subsection (f), by striking “section 119  
20           or” each place it appears and inserting the fol-  
21           lowing: “section 119, subject to statutory licensing  
22           by reason of subsection (a)(2)(A), or subject to”;  
23           and

1 (B) in subsection (g), by striking “section 119  
2 or” and inserting the following: “section 119, sub-  
3 section (a)(2)(A), or”.

4 (e) DEFINITIONS.—Section 122(j) is amended—

5 (1) in paragraph (1), by striking “which contracts”  
6 and inserting “that contracts”;

7 (2) by amending paragraph (2)(A) to read as follows:

8 “(A) IN GENERAL.—The term ‘local mar-  
9 ket’ means—

10 “(i) in the case of a television broad-  
11 cast station that is not a low power tele-  
12 vision station, the designated market area  
13 in which such station is located, and—

14 “(I) in the case of a commercial  
15 television broadcast station, all com-  
16 mercial television broadcast stations  
17 licensed to a community within the  
18 same designated market area are  
19 within the same local market; and

20 “(II) in the case of a non-  
21 commercial educational television  
22 broadcast station, any station that is  
23 licensed to a community within the  
24 same designated market area as the

1 noncommercial educational television  
2 broadcast station; and

3 “(ii) in the case of a low power tele-  
4 vision broadcast station, the area that is  
5 both—

6 “(I) within the designated mar-  
7 ket area in which such station is lo-  
8 cated; and

9 “(II) within the area within 35  
10 miles of the transmitter site of such  
11 station, except that in the case of  
12 such a station located in a standard  
13 metropolitan statistical area that has  
14 1 of the 50 largest populations of all  
15 standard metropolitan statistical areas  
16 (based on the 1980 decennial census  
17 of population taken by the Secretary  
18 of Commerce), the area within 20  
19 miles of the transmitter site of such  
20 station.”;

21 (3) in paragraph (3)—

22 (A) in the heading of such paragraph, by insert-  
23 ing “NON-NETWORK STATION;” after “NETWORK  
24 STATION;”; and

1 (B) by inserting “‘non-network station,’” after  
2 “‘network station,’”;

3 (4) by amending paragraph (4) to read as follows:

4 “(4) SUBSCRIBER.—The term ‘subscriber’  
5 means a person or entity that receives a secondary  
6 transmission service from a satellite carrier and pays  
7 a fee for the service, directly or indirectly, to the sat-  
8 ellite carrier or to a distributor.”; and

9 (5) by adding at the end the following:

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

20 **SEC. 5. MODIFICATIONS TO CABLE SYSTEM SECONDARY**  
21 **TRANSMISSION RIGHTS UNDER SECTION 111.**

22 (a) **HEADING RENAMED.—**

23 (1) **IN GENERAL.—**The heading of section 111  
24 is amended by inserting at the end the following:

25 **“of television programming by cable”.**

1           (2) TABLE OF CONTENTS.—The table of con-  
 2           tents for chapter I is amended by striking the item  
 3           relating to section 111 and inserting the following:

“111. Limitations on exclusive rights: Secondary transmissions of television pro-  
 gramming by cable.”.

4           (b) NATIONAL EMERGENCY MONITORING EXEMP-  
 5 TION.—Section 111 is amended—

6           (1) in subsection (a)—

7           (A) in paragraph (4), by striking “; or”  
 8           and inserting “or section 122;”;

9           (B) in paragraph (5), by striking the pe-  
 10          riod and inserting “; or”; and

11          (C) by adding at the end the following new  
 12          paragraph:

13          “(6) the secondary transmission is made by a  
 14          cable system for emergency preparation, response, or  
 15          recovery as described under subsection (g).”; and

16          (2) by adding at the end the following new sub-  
 17          section:

18          “(g) RETRANSMISSION FOR EMERGENCY PREPARA-  
 19 TION, RESPONSE, OR RECOVERY.—

20          “(1) AUTHORITY.—For purposes of subsection  
 21          (a)(6), a secondary transmission by a cable system  
 22          of a performance or display of a work embodied in  
 23          a primary transmission by a television broadcast sta-

1       tion is made for emergency preparation, response, or  
2       recovery if such transmission is made—

3               “(A) by a cable system to a Federal gov-  
4               ernmental body designated by the Secretary of  
5               Homeland Security or an organization estab-  
6               lished with the purpose of carrying out a sys-  
7               tem of national and international relief efforts  
8               and chartered under section 300101 of title 36;

9               “(B) to officers or employees of such body  
10              or such organization as a part of the official du-  
11              ties or employment of such officers or employ-  
12              ees;

13              “(C) at the request of the Secretary of  
14              Homeland Security; and

15              “(D) for the sole purpose of preparing for,  
16              responding to, or recovering from an emergency  
17              described under paragraph (2).

18              “(2) EMERGENCIES.—An emergency is de-  
19              scribed under this paragraph if the Secretary of  
20              Homeland Security identifies such emergency as a  
21              major disaster, a catastrophe, an act of terrorism, or  
22              a transportation security incident.

23              “(3) REGULATIONS.—Not later than 6 months  
24              after the date of the enactment of this subsection,  
25              the Secretary of Homeland Security shall issue regu-

1 lations to protect copyright owners by preventing the  
2 unauthorized access to the secondary transmissions  
3 described in paragraph (1).

4 “(4) REPORTS TO CONGRESSIONAL COMMIT-  
5 TEES.—Not later than one year after the date of the  
6 enactment of this subsection and by September 30  
7 of each year thereafter, the Secretary of Homeland  
8 Security shall submit a report to the Committee on  
9 the Judiciary of the House of Representatives and  
10 the Committee on the Judiciary of the Senate de-  
11 scribing—

12 “(A) the manner in which the authority  
13 granted under paragraph (1) is being used; and

14 “(B) any additional legislative rec-  
15 ommendations the Secretary may have.

16 “(5) DEFINITIONS.—As used in this subsection:

17 “(A) TERRORISM.—The term ‘terrorism’  
18 has the meaning given that term in section  
19 2(16) of the Homeland Security Act of 2002 (6  
20 U.S.C. 101(16)).

21 “(B) TRANSPORTATION SECURITY INCI-  
22 DENT.—The term ‘transportation security inci-  
23 dent’ has the meaning given that term in sec-  
24 tion 70101 of title 46.

1           “(6) EFFECTIVE DATE.—This subsection shall  
2           take effect with respect to a secondary transmission  
3           described under paragraph (1) that is made after  
4           the end of the 30-day period beginning on the effec-  
5           tive date of the regulations issued by the Secretary  
6           of Homeland Security under paragraph (3).”.

7           (c) STATUTORY LICENSE FOR SECONDARY TRANS-  
8           MISSIONS BY CABLE SYSTEMS.—Section 111(d) is amend-  
9           ed—

10           (1) in paragraph (1)—

11           (A) in the matter preceding subparagraph

12           (A)—

13           (i) by striking “A cable system whose  
14           secondary” and inserting the following:  
15           “STATEMENT OF ACCOUNT AND ROYALTY  
16           FEES.—A cable system whose secondary”;  
17           and

18           (ii) by striking “by regulation—” and  
19           inserting “by regulation the following:”;

20           (B) in subparagraph (A)—

21           (i) by striking “a statement of ac-  
22           count” and inserting “A statement of ac-  
23           count”; and

24           (ii) by striking “;and” and inserting a  
25           period; and

1 (C) by striking subparagraphs (B), (C),  
2 and (D), and inserting the following:

3 “(B) A total royalty fee for the period cov-  
4 ered by the statement, computed on the basis of  
5 specified percentages of the gross receipts from  
6 subscribers to the cable service during such pe-  
7 riod for the basic service of providing secondary  
8 transmissions of primary broadcast transmit-  
9 ters, as follows:

10 “(i) 1.064 percent for the privilege of  
11 further transmitting, beyond the local serv-  
12 ice area of such primary transmitter, any  
13 non-network programming of a primary  
14 transmitter in whole or in part, such  
15 amount to be applied against the fee, if  
16 any, payable pursuant to clauses (ii)  
17 through (iv);

18 “(ii) 1.064 percent of such gross re-  
19 ceipts for the first distant signal equiva-  
20 lent;

21 “(iii) 0.701 percent of such gross re-  
22 ceipts for each of the second, third, and  
23 fourth distant signal equivalents; and

24 “(iv) 0.330 percent of such gross re-  
25 ceipts for the fifth distant signal equivalent

1 and each distant signal equivalent there-  
2 after.

3 “(C) In computing amounts under clauses  
4 (ii) through (iv) of subparagraph (B)—

5 “(i) any fraction of a distant signal  
6 equivalent shall be computed at its frac-  
7 tional value;

8 “(ii) in the case of any cable system  
9 located partly within and partly outside of  
10 the local service area of a primary trans-  
11 mitter, gross receipts shall be limited to  
12 those gross receipts derived from sub-  
13 scribers located outside of the local service  
14 area of such primary transmitter; and

15 “(iii) if a cable system provides a sec-  
16 ondary transmission of a primary trans-  
17 mitter to some but not all communities  
18 served by that cable system—

19 “(I) the gross receipts and the  
20 distant signal equivalent values for  
21 such secondary transmission shall be  
22 derived solely on the basis of the sub-  
23 scribers in those communities where  
24 the cable system provides such sec-  
25 ondary transmission; and

1                   “(II) the total royalty fee for the  
2                   period paid by such system shall not  
3                   be less than the royalty fee calculated  
4                   under subparagraph (B)(i) multiplied  
5                   by the gross receipts from all sub-  
6                   scribers to the system.

7                   “(D) A cable system that, on a statement  
8                   submitted before the date of the enactment of  
9                   the Satellite Home Viewer Update and Reau-  
10                  thorization Act of 2009, computed its royalty  
11                  fee consistent with the methodology under this  
12                  paragraph or that amends a statement filed be-  
13                  fore such date of enactment to compute the roy-  
14                  alty fee due using such methodology shall not  
15                  be subject to an action for infringement, or eli-  
16                  gible for any royalty refund, arising out of its  
17                  use of such methodology on such statement.

18                  “(E) If the actual gross receipts paid by  
19                  subscribers to a cable system for the period cov-  
20                  ered by the statement for the basic service of  
21                  providing secondary transmissions of primary  
22                  broadcast transmitters total \$263,800 or less—

23                         “(i) gross receipts of the cable system  
24                         for the purpose of this paragraph shall be  
25                         computed by subtracting from such actual

1 gross receipts the amount by which  
2 \$263,800 exceeds such actual gross re-  
3 cepts, except that in no case shall a cable  
4 system's gross receipts be reduced to less  
5 than \$10,400; and

6 “(ii) the royalty fee payable under this  
7 paragraph shall be 0.5 percent, regardless  
8 of the number of distant signal equiva-  
9 lents, if any.

10 “(F) If the actual gross receipts paid by  
11 subscribers to a cable system for the period cov-  
12 ered by the statement for the basic service of  
13 providing secondary transmissions of primary  
14 broadcast transmitters are more than \$263,800  
15 but less than \$527,600, the royalty fee payable  
16 under this paragraph shall be—

17 “(i) 0.5 percent of any gross receipts  
18 up to \$263,800, regardless of the number  
19 of distant signal equivalents, if any; and

20 “(ii) 1 percent of any gross receipts in  
21 excess of \$263,800, but less than  
22 \$527,600, regardless of the number of dis-  
23 tant signal equivalents, if any.

1           “(G) A filing fee, as determined by the  
2           Register of Copyrights pursuant to section  
3           708(a).”;

4           (2) in paragraph (2), by striking “The Register  
5           of Copyrights” and inserting the following: “HAN-  
6           DLING OF FEES.—The Register of Copyrights”;

7           (3) in paragraph (3)—

8           (A) by striking “The royalty fees” and in-  
9           serting the following: “DISTRIBUTION OF ROY-  
10          ALTY FEES TO COPYRIGHT OWNERS.—The roy-  
11          alty fees”;

12          (B) in subparagraph (A)—

13           (i) by striking “any such” and insert-  
14           ing “Any such”; and

15           (ii) by striking “; and” and inserting  
16           a period;

17          (C) in subparagraph (B)—

18           (i) by striking “any such” and insert-  
19           ing “Any such”; and

20           (ii) by striking “; and” and inserting  
21           a period; and

22          (D) in subparagraph (C), by striking “any  
23          such” and inserting “Any such”;

24          (4) in paragraph (4), by striking “The royalty  
25          fees” and inserting the following: “PROCEDURES

1 FOR ROYALTY FEE DISTRIBUTION.—The royalty  
2 fees”; and

3 (5) by adding at the end the following new  
4 paragraphs:

5 “(5) VERIFICATION OF ACCOUNTS AND FEE  
6 PAYMENTS.—The Register of Copyrights shall issue  
7 regulations to provide for the confidential  
8 verification and audit of the information reported on  
9 the semi-annual statement of account filed after the  
10 date of the enactment of the Satellite Home Viewer  
11 Update and Reauthorization Act of 2009. The regu-  
12 lations shall provide for a single verification proce-  
13 dure, with respect to the semi-annual statements of  
14 account filed by a cable system, to be conducted by  
15 a qualified independent auditor on behalf of all copy-  
16 right owners whose works were the subject of a sec-  
17 ondary transmission to the public by a cable system  
18 of a performance or display of a work embodied in  
19 a primary transmission and for a mechanism to re-  
20 view and cure defects identified by any such audit.

21 “(6) ACCEPTANCE OF ADDITIONAL DEPOSITS.—  
22 Any royalty fee payments received by the Copyright  
23 Office from cable systems for the secondary trans-  
24 mission of primary transmissions that are in addi-  
25 tion to the payments calculated and deposited in ac-

1 cordance with this subsection shall be deemed to  
2 have been deposited for the particular accounting pe-  
3 riod during which they are received and shall be dis-  
4 tributed as specified under this subsection.”.

5 (d) DEFINITIONS.—Section 111(f) is amended—

6 (1) in the first undesignated paragraph, by  
7 striking “A ‘primary transmission’ is a trans-  
8 mission” and inserting the following:

9 “(1) PRIMARY TRANSMISSION.—A ‘primary  
10 transmission’ is a transmission, including a  
11 multicast transmission,”;

12 (2) in the second undesignated paragraph—

13 (A) by striking “A ‘secondary trans-  
14 mission’” and inserting the following:

15 “(2) SECONDARY TRANSMISSION.—A ‘secondary  
16 transmission’”; and

17 (B) by striking “‘cable system’” and in-  
18 serting “cable system”;

19 (3) in the third undesignated paragraph—

20 (A) by striking “A ‘cable system’” and in-  
21 serting the following:

22 “(3) CABLE SYSTEM.—A ‘cable system’”; and

23 (B) by striking “Territory, Trust Terri-  
24 tory, or Possession” and inserting “territory,

1 trust territory, or possession of the United  
2 States”;

3 (4) in the fourth undesignated paragraph—

4 (A) in the first sentence, by striking “The  
5 ‘local service area of a primary transmitter’ ”  
6 and inserting the following:

7 “(4) LOCAL SERVICE AREA OF A PRIMARY  
8 TRANSMITTER.—The ‘local service area of a primary  
9 transmitter’ ”;

10 (B) by striking “76.59 of title 47 of the  
11 Code of Federal Regulations” and inserting the  
12 following: “76.59 of title 47, Code of Federal  
13 Regulations, or within the noise-limited contour  
14 as defined in 73.622(e)(1) of title 47, Code of  
15 Federal Regulations”; and

16 (C) by striking “as defined by the rules  
17 and regulations of the Federal Communications  
18 Commission,”;

19 (5) by amending the fifth undesignated para-  
20 graph to read as follows:

21 “(5) DISTANT SIGNAL EQUIVALENT.—

22 “(A) IN GENERAL.—Except as provided  
23 under subparagraph (B), a ‘distant signal  
24 equivalent’—

1           “(i) is the value assigned to the sec-  
2           ondary transmission of any non-network  
3           television programming carried by a cable  
4           system in whole or in part beyond the local  
5           service area of the primary transmitter of  
6           such programming; and

7           “(ii) is computed by assigning a value  
8           of one to each channel or digital stream  
9           carrying independent television program-  
10          ming, and a value of one-quarter to each  
11          channel or digital stream carrying network  
12          television programming or noncommercial  
13          educational television programming trans-  
14          mitted by a television broadcast station  
15          pursuant to the rules, regulations, and au-  
16          thorizations of the Federal Communica-  
17          tions Commission.

18          “(B) EXCEPTIONS.—The values for inde-  
19          pendent, network, and noncommercial edu-  
20          cational programming specified in subparagraph  
21          (A) are subject to the following:

22                 “(i) Where the rules and regulations  
23                 of the Federal Communications Commis-  
24                 sion require a cable system to omit the fur-  
25                 ther transmission of a particular program

1 and such rules and regulations also permit  
2 the substitution of another program em-  
3 bodying a performance or display of a  
4 work in place of the omitted transmission,  
5 or where such rules and regulations in ef-  
6 fect on the date of enactment of the Copy-  
7 right Act of 1976 permit a cable system,  
8 at its election, to effect such omission and  
9 substitution of a nonlive program or to  
10 carry additional programs not transmitted  
11 by primary transmitters within whose local  
12 service area the cable system is located, no  
13 value shall be assigned for the substituted  
14 or additional program.

15 “(ii) Where the rules, regulations, or  
16 authorizations of the Federal Communica-  
17 tions Commission in effect on the date of  
18 enactment of the Copyright Act of 1976  
19 permit a cable system, at its election, to  
20 omit the further transmission of a par-  
21 ticular program and such rules, regula-  
22 tions, or authorizations also permit the  
23 substitution of another program embodying  
24 a performance or display of a work in  
25 place of the omitted transmission, the

1 value assigned for the substituted or addi-  
2 tional program shall be, in the case of a  
3 live program, the value of one full distant  
4 signal equivalent multiplied by a fraction  
5 that has as its numerator the number of  
6 days in the year in which such substitution  
7 occurs and as its denominator the number  
8 of days in the year.

9 “(iii) In the case of a channel or dig-  
10 ital stream carried pursuant to the late-  
11 night or specialty programming rules of  
12 the Federal Communications Commission,  
13 or a channel or digital stream carried on a  
14 part-time basis where full-time carriage is  
15 not possible because the cable system lacks  
16 the activated channel capacity to re-  
17 transmit on a full-time basis all signals  
18 that it is authorized to carry, the values  
19 for independent, network, and noncommer-  
20 cial educational programming set forth in  
21 subparagraph (A), as the case may be,  
22 shall be multiplied by a fraction that is  
23 equal to the ratio of the broadcast hours of  
24 such channel or digital stream carried by

1           the cable system to the total broadcast  
2           hours of the channel or digital stream.”;

3           (6) in the sixth undesignated paragraph—

4           (A) by striking “A ‘network station’” and  
5           inserting the following:

6           “(6) NETWORK STATION.—

7           “(A) IN GENERAL.—A ‘network station’”;

8           and

9           (B) by adding at the end the following:

10           “(B) NETWORK PROGRAMMING.—The term  
11           ‘network television programming’ means pro-  
12           gramming that is transmitted by a network sta-  
13           tion.”;

14           (7) by striking the seventh undesignated para-  
15           graph and inserting the following:

16           “(7) INDEPENDENT STATION.—

17           “(A) IN GENERAL.—An ‘independent sta-  
18           tion’ is a commercial television broadcast sta-  
19           tion other than a network station.

20           “(B) INDEPENDENT PROGRAMMING.—The  
21           term ‘independent television programming’  
22           means all programming other than ‘network tel-  
23           evision programming’ or ‘noncommercial edu-  
24           cational television programming’.”;

1           (8) by striking the eighth undesignated para-  
2 graph and inserting the following:

3           “(8) NONCOMMERCIAL EDUCATIONAL STA-  
4 TION.—

5           “(A) IN GENERAL.—A ‘noncommercial  
6 educational station’ is a television or radio  
7 broadcast station that—

8           “(i) under the rules and regulations of  
9 the Federal Communications Commission  
10 in effect on November 2, 1978, is eligible  
11 to be licensed by the Federal Communica-  
12 tions Commission as a noncommercial edu-  
13 cational radio or television broadcast sta-  
14 tion and that is owned and operated by a  
15 public agency or nonprofit private founda-  
16 tion, corporation, or association; or

17           “(ii) is owned and operated by a mu-  
18 nicipality and that transmits only non-  
19 commercial programs for education pur-  
20 poses.

21           “(B) NONCOMMERCIAL EDUCATIONAL PRO-  
22 GRAMMING.—The term ‘noncommercial edu-  
23 cational television programming’ means pro-  
24 gramming that is transmitted by a noncommer-  
25 cial educational station.”; and

1 (9) by adding at the end the following:

2 “(9) MULTICAST TRANSMISSION.—A ‘multicast  
3 transmission’ is a transmission by a television sta-  
4 tion that contains more than one channel or digital  
5 stream, each containing its own distinct program-  
6 ming.

7 “(10) SUBSCRIBER.—The term ‘subscriber’  
8 means a person or entity that receives a secondary  
9 transmission service from a cable system and pays  
10 a fee for the service, directly or indirectly, to the  
11 cable system.”.

12 (e) TIMING OF SECTION 111 PROCEEDINGS.—Sec-  
13 tion 804(b)(1) is amended by striking “2005” each place  
14 it appears and inserting “2015”.

15 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

16 (1) CORRECTIONS TO FIX LEVEL DESIGNA-  
17 TIONS.—Section 111 is amended—

18 (A) in subsections (a), (c), and (e), by  
19 striking “clause” each place it appears and in-  
20 serting “paragraph”;

21 (B) in subsection (c), by striking “clauses”  
22 and inserting “paragraphs”; and

23 (C) in subsection (e)(1)(F), by striking  
24 “subclause” each place it appears and inserting  
25 “subparagraph”.

1           (2) CONFORMING AMENDMENT TO HYPHENATE  
2           NONNETWORK.—Section 111 is amended by striking  
3           “nonnetwork” each place it appears and inserting  
4           “non-network”.

5           (3) PREVIOUSLY UNDESIGNATED PARA-  
6           GRAPH.—Section 111(e)(1) is amended by striking  
7           “second paragraph of subsection (f)” and inserting  
8           “subsection (f)(2)”.

9           (4) REMOVAL OF SUPERFLUOUS ANDS.—Sec-  
10          tion 111(e) is amended—

11           (A) in paragraph (1)(A), by striking “and”  
12           at the end;

13           (B) in paragraph (1)(B), by striking  
14           “and” at the end;

15           (C) in paragraph (1)(C), by striking “and”  
16           at the end;

17           (D) in paragraph (1)(D), by striking  
18           “and” at the end; and

19           (E) in paragraph (2)(A), by striking “and”  
20           at the end;

21          (5) REMOVAL OF VARIANT FORMS REF-  
22          ERENCES.—Section 111 is amended—

23           (A) in subsection (e)(4), by striking “, and  
24           each of its variant forms,”; and

1 (B) in subsection (f), by striking “and  
2 their variant forms”.

3 (6) CORRECTION TO TERRITORY REFERENCE.—  
4 Section 111(e)(2) is amended in the matter pre-  
5 ceding subparagraph (A) by striking “three terri-  
6 tories” and inserting “five entities”.

7 **SEC. 6. CERTAIN WAIVERS GRANTED TO PROVIDERS OF**  
8 **LOCAL-INTO-LOCAL SERVICE FOR ALL DMAS.**

9 Section 119 is amended by adding at the end the fol-  
10 lowing new subsection:

11 “(g) CERTAIN WAIVERS GRANTED TO PROVIDERS OF  
12 LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.—

13 “(1) INJUNCTION WAIVER.—A court that issued  
14 an injunction pursuant to subsection (a)(7)(B) be-  
15 fore the date of the enactment of this subsection  
16 shall waive such injunction if the court recognizes  
17 the entity against which the injunction was issued as  
18 a qualified carrier.

19 “(2) LIMITED TEMPORARY WAIVER.—

20 “(A) IN GENERAL.—Upon a request made  
21 by a satellite carrier, a court that issued an in-  
22 junction against such carrier under subsection  
23 (a)(7)(B) before the date of the enactment of  
24 this subsection shall waive such injunction with  
25 respect to the statutory license provided under

1 subsection (a)(2) to the extent necessary to  
2 allow such carrier to retransmit distant network  
3 signals to unserved households located in short  
4 markets in which such carrier was not pro-  
5 viding local service pursuant to the license  
6 under section 122 as of December 31, 2009.

7 “(B) EXPIRATION OF TEMPORARY WAIV-  
8 ER.—A temporary waiver of an injunction  
9 under subparagraph (A) shall expire after the  
10 end of the 120-day period beginning on the  
11 date such temporary waiver is made unless ex-  
12 tended for good cause by the court making the  
13 temporary waiver.

14 “(C) FAILURE TO MAKE GOOD FAITH EF-  
15 FORT TO PROVIDE LOCAL-INTO-LOCAL SERVICE  
16 TO ALL DMAS.—

17 “(i) WILLFUL FAILURE.—If the court  
18 making a temporary waiver under subpara-  
19 graph (A) determines that the satellite car-  
20 rier that made the request for such waiver  
21 has failed to make a good faith effort to  
22 provide local-into-local service to all DMAs  
23 and determines that such failure was will-  
24 ful, such failure—

1           “(I) is actionable as an act of in-  
2           fringement under section 501 and the  
3           court may in its discretion impose the  
4           remedies provided for in section 502  
5           through 506 and subsection (a)(6)(B)  
6           of this section; and

7           “(II) shall result in the termi-  
8           nation of the waiver provided under  
9           subparagraph (A).

10          “(ii) NONWILLFUL FAILURE.—If the  
11          court making a temporary waiver under  
12          subparagraph (A) determines that the sat-  
13          ellite carrier that made the request for  
14          such waiver has failed to make a good  
15          faith effort to provide local-into-local serv-  
16          ice to all DMAs and determines that such  
17          failure was nonwillful, the court may in its  
18          discretion impose financial penalties that  
19          reflect—

20                 “(I) the degree of control the  
21                 carrier had over the circumstances  
22                 that resulted in the failure;

23                 “(II) the quality of the carrier’s  
24                 efforts to remedy the failure; and

1                   “(III) the severity and duration  
2                   of the service interruption.

3                   “(D) SINGLE TEMPORARY WAIVER AVAIL-  
4                   ABLE.—An entity may only receive one tem-  
5                   porary waiver under this paragraph.

6                   “(E) SHORT MARKET DEFINED.—For pur-  
7                   poses of this paragraph, the term ‘short mar-  
8                   ket’ means a local market in which program-  
9                   ming of one or more of the four most widely  
10                  viewed television networks nationwide as meas-  
11                  ured on the date of enactment of this sub-  
12                  section is not offered on the primary signal of  
13                  any local television broadcast station.

14                  “(3) ESTABLISHMENT OF QUALIFIED CARRIER  
15                  RECOGNITION.—

16                  “(A) STATEMENT OF ELIGIBILITY.—An  
17                  entity seeking to be recognized as a qualified  
18                  carrier under this subsection shall file a state-  
19                  ment of eligibility with the court that imposed  
20                  the injunction. A statement of eligibility must  
21                  include—

22                          “(i) an affidavit that the entity is pro-  
23                          viding local-into-local service to all DMAs;

24                          “(ii) a request for a waiver of the in-  
25                          junction; and

1                   “(iii) a certification issued pursuant  
2                   to section **[X]** of **[E&C Act]**.”

3                   “(B) GRANT OF RECOGNITION AS A QUALI-  
4                   FIED CARRIER.—Upon receipt of a statement of  
5                   eligibility, the court shall recognize the entity as  
6                   a qualified carrier and issue the waiver under  
7                   paragraph (1).

8                   “(C) VOLUNTARY TERMINATION.—At any  
9                   time, an entity recognized as a qualified carrier  
10                  may file a statement of voluntary termination  
11                  with the court certifying that it no longer wish-  
12                  es to be recognized as a qualified carrier. Upon  
13                  receipt of such statement, the court shall rein-  
14                  state the injunction waived under paragraph  
15                  (1).

16                  “(D) LOSS OF RECOGNITION PREVENTS  
17                  FUTURE RECOGNITION.—No entity may be rec-  
18                  ognized as a qualified carrier if such entity had  
19                  previously been recognized as a qualified carrier  
20                  and subsequently lost such recognition or volun-  
21                  tarily terminated such recognition under sub-  
22                  paragraph (C).

23                  “(4) QUALIFIED CARRIER OBLIGATIONS AND  
24                  COMPLIANCE.—

1           “(A) IN GENERAL.—An entity recognized  
2 as a qualified carrier shall continue to provide  
3 local-into-local service to all DMAs.

4           “(B) COMPLIANCE DETERMINATION.—  
5 Upon the motion of an aggrieved television  
6 broadcast station, the court recognizing an enti-  
7 ty as a qualified carrier may make a determina-  
8 tion of whether the entity is providing local-  
9 into-local service to all DMAs.

10           “(C) PLEADING REQUIREMENT.—In any  
11 motion brought under subparagraph (B), the  
12 party making such motion shall specify one or  
13 more designated market areas (as such term is  
14 defined in section 122(j)(2)(C)) for which the  
15 failure to provide service is being alleged, and,  
16 for each such designated market area, shall  
17 plead with particularity the circumstances of  
18 the alleged failure.

19           “(D) BURDEN OF PROOF.—In any pro-  
20 ceeding to make a determination under sub-  
21 paragraph (B), and with respect to a des-  
22 ignated market area for which failure to provide  
23 service is alleged, the entity recognized as a  
24 qualified carrier shall have the burden of prov-  
25 ing that the entity provided local-into-local serv-

1 ice with a good quality satellite signal to 90  
2 percent of the households in such designated  
3 market area at the time and place alleged.

4 “(5) FAILURE TO PROVIDE SERVICE.—

5 “(A) PENALTIES.—If the court recognizing  
6 an entity as a qualified carrier finds that such  
7 entity has willfully failed to provide local-into-  
8 local service to all DMAs, such finding shall re-  
9 sult in the loss of recognition of the entity as  
10 a qualified carrier and the termination of the  
11 waiver provided under paragraph (1), and the  
12 court may, in its discretion—

13 “(i) treat such failure as an act of in-  
14 fringement under section 501, and subject  
15 such infringement to the remedies provided  
16 for in sections 502 through 506 and sub-  
17 section (a)(6)(B) of this section; and

18 “(ii) impose a fine of no greater than  
19 \$250,000.

20 “(B) EXCEPTION FOR NONWILLFUL VIOLA-  
21 TION.—If the court determines that the failure  
22 to provide local-into-local service to all DMAs is  
23 nonwillful, the court may in its discretion im-  
24 pose financial penalties for noncompliance that  
25 reflect—

1                   “(i) the degree of control the entity  
2                   had over the circumstances that resulted in  
3                   the failure;

4                   “(ii) the quality of the entity’s efforts  
5                   to remedy the failure and restore service;  
6                   and

7                   “(iii) the severity and duration of the  
8                   service interruption.

9                   “(6) PENALTIES FOR VIOLATIONS OF LI-  
10                  CENSE.—A court that finds, under subsection  
11                  (a)(6)(A), that an entity recognized as a qualified  
12                  carrier has willfully made a secondary transmission  
13                  of a primary transmission made by a network sta-  
14                  tion and embodying a performance or display of a  
15                  work to a subscriber who is not eligible to receive  
16                  the transmission under this section shall reinstate  
17                  the injunction waived under paragraph (1), and the  
18                  court may order statutory damages of not to exceed  
19                  \$2,500,000.

20                  “(7) LOCAL-INTO-LOCAL SERVICE TO ALL DMAS  
21                  DEFINED.—For purposes of this subsection:

22                  “(A) IN GENERAL.—An entity provides  
23                  ‘local-into-local service to all DMAs’ if the enti-  
24                  ty provides local service in all designated mar-  
25                  ket areas (as such term is defined in section

1 122(j)(2)(C)) pursuant to the license under sec-  
2 tion 122.

3 “(B) HOUSEHOLD COVERAGE.—For pur-  
4 poses of subparagraph (A), an entity that  
5 makes available local-into-local service with a  
6 good quality satellite signal to 90 percent of the  
7 households in a designated market area based  
8 on the most recent census data shall be consid-  
9 ered to be providing local service to such des-  
10 ignated market area.

11 “(C) GOOD QUALITY SATELLITE SIGNAL  
12 DEFINED.—The term ‘good quality signal’ has  
13 the meaning given such term under section **[X]**  
14 of **[E&C Act]**.”.

15 **SEC. 7. TERMINATION OF LICENSE.**

16 Section 119, as amended by this Act, shall cease to  
17 be effective on December 31, 2014.

○