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111TH CONGRESS
1ST SESSION

H. R. 3570

[Report No. 111-319]

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.

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

OCTOBER 28, 2009

Reported with technical amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

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

11 **SEC. 3. MODIFICATIONS TO STATUTORY LICENSE FOR SAT-**

12 **ELLITE CARRIERS.**

13 (a) HEADING RENAMED.—

14 (1) IN GENERAL.—The heading of section 119
 15 is amended by striking “**superstations and net-**
 16 **work stations for private home viewing**”
 17 and inserting “**distant television program-**
 18 **ming by satellite**”.

19 (2) TABLE OF CONTENTS.—The table of con-
 20 tents for ~~chapter I~~ *chapter 1* is amended by striking
 21 the item relating to section 119 and inserting the
 22 following:

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

23 (b) UNSERVED HOUSEHOLD DEFINED.—Section
 24 119(d)(10) is amended—

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

3 “(A) cannot receive, through the use of a
4 conventional, stationary, outdoor rooftop receiv-
5 ing antenna, an over-the-air signal containing
6 the primary video or qualified multicast video of
7 a primary network station located in that
8 household’s local market and affiliated with
9 that network of—

10 “(i) if the signal originates as an ana-
11 log signal, Grade B intensity as defined by
12 the Federal Communications Commission
13 under section 73.683(a) of title 47, Code
14 of Federal Regulations, as in effect on
15 January 1, 1999; or

16 “(ii) if the signal originates as a dig-
17 ital signal, intensity defined in the values
18 for digital television noise-limited service
19 contour, as defined in regulations issued by
20 the Federal Communications Commission
21 under section 73.622(e) of title 47, Code of
22 Federal Regulations, as such regulations
23 may be amended from time to time;”;

24 (2) in subparagraph (B)—

1 (A) by striking “subsection (a)(14)” and
2 inserting “subsection (a)(13),”; and

3 (B) by striking “Satellite Home Viewer
4 Extension and Reauthorization Act of 2004”
5 and inserting “Satellite Home Viewer Update
6 and Reauthorization Act of 2009”;

7 (3) in subparagraph (D)—

8 (A) by striking “(a)(12)” and inserting
9 “(a)(11)”; and

10 (B) by striking “or”;

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

13 (5) by adding at the end the following new sub-
14 paragraph:

15 “(F) is a subscriber who was lawfully re-
16 ceiving, by reason of subparagraph (A) of this
17 paragraph, as in effect on the day before the
18 date of the enactment of the Satellite Home
19 Viewer Update and Reauthorization Act of
20 2009, secondary transmissions of the primary
21 transmission of a network station affiliated with
22 that network.”.

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

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

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

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

4 “(C) a filing fee, as determined by the
5 Register of Copyrights pursuant to section
6 708(a).”.

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

10 “(17) RETRANSMISSION FOR EMERGENCY
11 PREPARATION, RESPONSE, OR RECOVERY.—

12 “(A) AUTHORITY.—The secondary trans-
13 mission by a satellite carrier of a performance
14 or display of a work embodied in a primary
15 transmission of a television broadcast station is
16 not an infringement of copyright if such sec-
17 ondary transmission is made—

18 “(i) to a Federal governmental body
19 designated by the Secretary of Homeland
20 Security or an organization established
21 with the purpose of carrying out a system
22 of national and international relief efforts
23 and chartered under section 300101 of
24 title 36;

1 “(ii) to officers or employees of such
2 body or such organization as a part of the
3 official duties or employment of such offi-
4 cers or employees;

5 “(iii) at the request of the Secretary
6 of Homeland Security; and

7 “(iv) for the sole purpose of preparing
8 for, responding to, or recovering from an
9 emergency described under subparagraph
10 (B).

11 “(B) EMERGENCIES.—An emergency is de-
12 scribed under this subparagraph if the Sec-
13 retary of Homeland Security identifies such
14 emergency as a major disaster, a ~~catastrophe~~
15 *catastrophic incident*, an act of terrorism, or a
16 transportation security incident.

17 “(C) REGULATIONS.—Not later than 6
18 months after the date of the enactment of this
19 paragraph, the Secretary of Homeland Security
20 shall issue regulations to protect copyright own-
21 ers by preventing the unauthorized access to
22 the secondary transmissions described in sub-
23 paragraph (A).

24 “(D) REPORTS TO CONGRESSIONAL COM-
25 MITTEES.—Not later than one year after the

1 date of the enactment of this paragraph and by
2 September 30 of each year thereafter, the Sec-
3 retary of Homeland Security shall submit a re-
4 port to the Committee on the Judiciary *and the*
5 *Committee on Homeland Security* of the House
6 of Representatives and the Committee on the
7 Judiciary of the Senate describing—

8 “(i) the manner in which the author-
9 ity granted under subparagraph (A) is
10 being used; and

11 “(ii) any additional legislative rec-
12 ommendations the Secretary may have.

13 “(E) DEFINITIONS.—As used in this para-
14 graph:

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

19 “(ii) TRANSPORTATION SECURITY IN-
20 CIDENT.—The term ‘transportation secu-
21 rity incident’ has the meaning given that
22 term in section 70101 of title 46.

23 “(iii) CATASTROPHIC INCIDENT.—*The*
24 *term ‘catastrophic incident’ means any nat-*
25 *ural disaster, act of terrorism, or other*

1 *man-made disaster that results in extraor-*
 2 *dinary levels of casualties or damage or dis-*
 3 *ruption severely affecting the population*
 4 *(including mass evacuations), infrastruc-*
 5 *ture, the environment, the economy, na-*
 6 *tional morale, or government functions in a*
 7 *geographic area.*

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

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

19 “(vi) NETWORKS OF NONCOMMERCIAL
 20 EDUCATIONAL BROADCAST STATIONS.—In
 21 the case of a system of three or more non-
 22 commercial educational broadcast stations
 23 licensed by a to a single State, public agen-
 24 cy, or political, educational, or special pur-
 25 pose subdivision of a State, the statutory

1 license provided for in subparagraph (A)
2 shall apply to the secondary transmission
3 of the primary transmission of such system
4 to any subscriber in any county within
5 such State, if such subscriber is located in
6 a designated market area that is not other-
7 wise eligible to receive the secondary trans-
8 mission of the primary transmission of
9 such system pursuant to section 122(a).”.

10 (f) DEPOSIT OF STATEMENTS AND FEES;
11 VERIFICATION PROCEDURES.—Section 119(b) is amend-
12 ed—

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

16 (2) by redesignating paragraphs (2), (3), and
17 (4) as paragraphs (3), (4), and (5), respectively;

18 (3) by inserting after paragraph (1) the fol-
19 lowing:

20 “(2) VERIFICATION OF ACCOUNTS AND FEE
21 PAYMENTS.—The Register of Copyrights shall issue
22 regulations to permit interested parties to verify and
23 audit the statements of account and royalty fees
24 submitted by satellite carriers under this sub-
25 section.”;

1 (4) in paragraph (3), as redesignated, by strik-
2 ing “paragraph (4)” and inserting “paragraph (5)”;
3 (4) in paragraph (3), as redesignated—

4 (A) by inserting “(including the filing fee
5 specified in paragraph (1)(C))” after “shall re-
6 ceive all fees”; and

7 (B) by striking “paragraph (4)” and insert-
8 ing “paragraph (5)”;

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

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

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

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~~ *COPYRIGHT* ROYALTY JUDGES
22 PROCEEDING”;

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~~ *program-related material* that received
4 the highest aggregate viewership ratings (*as deter-*
5 *mined by Nielsen Media Research*) of all program-
6 ming streams offered by that station as of the date
7 of enactment of the Satellite Home Viewer Update
8 and Reauthorization Act of 2009, offered by a tele-
9 vision broadcast station.”.

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

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

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

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

21 (j) LOW POWER TELEVISION STATIONS.—Section
22 119(a)(15) is amended to read as follows:

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

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

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

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

1 the local market of the low power television sta-
 2 tion.

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

11 (k) REMOVAL OF SIGNIFICANTLY VIEWED PROVI-
 12 SION.—

13 (1) REMOVAL OF PROVISION.—Section 119(a),
 14 *as amended by subsections (d) and (j)*, is amended by
 15 striking paragraph (3) and redesignating paragraphs
 16 (4) through (17) as paragraphs (3) through (16), re-
 17 spectively.

18 (2) CONFORMING AMENDMENTS.—Section 119
 19 is amended—

20 (A) in subsection (a)—

21 (i) in paragraph (1), by striking “(5),
 22 (6), and (8)” and inserting “(4), (5), and
 23 (7)”;

24 (ii) in paragraph (2)—

1 (I) in subparagraph (A), by strik-
2 ing “paragraphs (5), (6), (7), and
3 (8)” and inserting “paragraphs (4),
4 (5), (6), and (7)”;

5 (II) in subparagraph (B)(i), by
6 striking the second sentence; and

7 (III) in subparagraph (D), by
8 striking clauses (i) and (ii) and insert-
9 ing the following:

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

1 “(ii) MONTHLY LISTS.—After the sub-
 2 mission of the initial lists under clause (i),
 3 the satellite carrier shall, not later than
 4 the 15th of each month, submit to the net-
 5 work a list identifying (by name and ad-
 6 dress, including street or rural route num-
 7 ber, city, State, and 9-digit zip code) any
 8 persons who have been added or dropped
 9 as subscribers under clause (i) since the
 10 last submission under clause (i).”; and

11 (iii) in ~~paragraph (3)(E)~~ *subpara-*
 12 *graph (E) of paragraph (3)* (as redesign-
 13 nated)—

14 (I) by striking “under paragraph
 15 (3) or”; and

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

18 (B) in subsection (b)(1), by striking the
 19 final sentence.

20 (I) MODIFICATIONS TO PROVISIONS FOR SECONDARY
 21 TRANSMISSIONS BY SATELLITE CARRIERS.—

22 (1) PREDICTIVE MODEL.—Section
 23 119(a)(2)(B)(ii) is amended by adding at the end
 24 the following:

1 “(III) ACCURATE PREDICTIVE
2 MODEL WITH RESPECT TO DIGITAL
3 SIGNALS.—Notwithstanding subclause
4 (I), in determining presumptively
5 whether a person resides in an
6 unserved household under subsection
7 (d)(10)(A) with respect to digital sig-
8 nals, a court shall rely on a predictive
9 model set forth by the Federal Com-
10 munications Commission pursuant to
11 a rulemaking as provided in section
12 339(c)(3) of the Communications Act
13 of 1934 (47 U.S.C. 339(c)(3)), as
14 that model may be amended by the
15 Commission over time under such sec-
16 tion to increase the accuracy of that
17 model. Until such time as the Com-
18 mission sets forth such model, a court
19 shall rely on the predictive model en-
20 dorsed by the Commission in FCC
21 05–199, released December 9, 2005.”.

22 (2) MODIFICATIONS TO STATUTORY LICENSE
23 WHERE RETRANSMISSIONS INTO LOCAL MARKET
24 AVAILABLE.—Section 119(a)(3) (as redesignated) is
25 amended—

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

3 (B) by amending subparagraph (B) to read
4 as follows:

5 “(B) RULES FOR OTHER SUBSCRIBERS.—
6 The statutory license under paragraph (2) shall
7 not apply to the secondary transmission by a
8 satellite carrier of a primary transmission of a
9 network station to a person who—

10 “(i) is not a subscriber lawfully receiv-
11 ing such secondary transmission as of the
12 date of the enactment of the Satellite
13 Home Viewer Update and Reauthorization
14 Act of 2009; or

15 “(ii) at the time such person seeks to
16 subscribe to receive such secondary trans-
17 mission, resides in a local market where
18 the satellite carrier makes available to that
19 person the secondary transmission of the
20 primary transmission of a local network
21 station affiliated with the same television
22 network pursuant to the statutory license
23 under section 122, and such secondary
24 transmission of such primary transmission
25 can reach such person.”;

1 (C) by striking subparagraphs (C) and
2 (D);

3 (D) by redesignating subparagraphs (E),
4 (F), and (G) as subparagraphs (C), (D), and
5 (E), respectively;

6 (E) in subparagraph (D) (as redesignated),
7 by striking “(C) or (D)” and inserting “(B)”;
8 and

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

11 (3) STATUTORY DAMAGES FOR TERRITORIAL
12 RESTRICTIONS.—Section 119(a)(6) (as redesignated)
13 is amended—

14 (A) by striking “\$5” and inserting
15 “\$250”; and

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

18 (4) CLERICAL AMENDMENT.—Section
19 119(a)(2)(B)(iii)(II) is amended by striking “In this
20 clause” and inserting “In this clause,”.

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

23 (n) CLERICAL AMENDMENTS.—Section 119 is
24 amended—

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

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

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

8 (a) HEADING RENAMED.—

9 (1) IN GENERAL.—The heading of section 122
 10 is amended by striking “**by satellite carriers**
 11 **within local markets**” and inserting “**of local**
 12 **television programming by satellite**”.

13 (2) TABLE OF CONTENTS.—The table of con-
 14 tents for ~~chapter I~~ *chapter 1* is amended by striking
 15 the item relating to section 122 and inserting the
 16 following:

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

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

19 “(a) SECONDARY TRANSMISSIONS INTO LOCAL MAR-
 20 KETS.—

21 “(1) SECONDARY TRANSMISSIONS OF TELE-
 22 VISION BROADCAST STATIONS WITHIN A LOCAL MAR-
 23 KET.—A secondary transmission of a performance
 24 or display of a work embodied in a primary trans-

1 mission of a television broadcast station into the sta-
2 tion's local market shall be subject to statutory li-
3 censing under this section if—

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

6 “(B) with regard to secondary trans-
7 missions, the satellite carrier is in compliance
8 with the rules, regulations, or authorizations of
9 the Federal Communications Commission gov-
10 erning the carriage of television broadcast sta-
11 tion signals; and

12 “(C) the satellite carrier makes a direct or
13 indirect charge for the secondary transmission
14 to—

15 “(i) each subscriber receiving the sec-
16 ondary transmission; or

17 “(ii) a distributor that has contracted
18 with the satellite carrier for direct or indi-
19 rect delivery of the secondary transmission
20 to the public.

21 “(2) SIGNIFICANTLY VIEWED STATIONS.—

22 “(A) IN GENERAL.—The statutory license
23 under paragraph (1) shall apply to the sec-
24 ondary transmission of the primary trans-
25 mission of a network station or a non-network

1 station to a subscriber who resides outside the
2 station's local market but within a community
3 in which the signal has been determined by the
4 Federal Communications Commission to be sig-
5 nificantly viewed in such community, pursuant
6 to the rules, regulations, and authorizations of
7 the Federal Communications Commission in ef-
8 fect on April 15, 1976, applicable to deter-
9 mining with respect to a cable system whether
10 signals are significantly viewed in a community.

11 “(B) LIMITATION.—Subparagraph (A)
12 shall apply only to secondary transmissions of
13 the primary transmissions of network stations
14 or non-network stations to subscribers who re-
15 ceive secondary transmissions from a satellite
16 carrier pursuant to the statutory license under
17 paragraph (1).

18 “(C) WAIVER.—A subscriber who is denied
19 the secondary transmission of the primary
20 transmission of a network station or a non-net-
21 work station under subparagraph (B) may re-
22 quest a waiver from such denial by submitting
23 a request, through the subscriber's satellite car-
24 rier, to the network station or non-network sta-
25 tion in the local market affiliated with the same

1 network or non-network where the subscriber is
2 located. The network station or non-network
3 station shall accept or reject the subscriber's re-
4 quest for a waiver within 30 days after receipt
5 of the request. If the network station or non-
6 network station fails to accept or reject the sub-
7 scriber's request for a waiver within that 30-
8 day period, that network station or non-network
9 station shall be deemed to agree to the waiver
10 request.

11 “(3) SECONDARY TRANSMISSION OF LOW
12 POWER PROGRAMMING.—

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

23 “(B) NO APPLICABILITY TO REPEATERS
24 AND TRANSLATORS.—Secondary transmissions
25 by a satellite carrier provided for in subpara-

1 graph (A) shall not apply to any low power tele-
2 vision station that retransmits the programs
3 and signals of another television station for
4 more than 2 hours each day.

5 “(C) LIMITATION TO SUBSCRIBERS TAKING
6 LOCAL-INTO-LOCAL SERVICE.—Secondary trans-
7 missions by a satellite carrier provided for in
8 subparagraph (A) may be made only to sub-
9 scribers who receive secondary transmissions of
10 primary transmissions from that satellite car-
11 rier pursuant to the statutory license in para-
12 graph (1), and only in conformity with the re-
13 quirements under section 340(b) of the Com-
14 munications Act of 1934, as in effect on the
15 date of the enactment of the Satellite Home
16 Viewer Update and Reauthorization Act of
17 2009.

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

1 (c) REPORTING REQUIREMENTS.—Section 122(b) is
2 amended—

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

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

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

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

22 “(A) a list identifying (by name in alpha-
23 betical order and street address, including coun-
24 ty and 9-digit zip code) any subscribers who
25 have been added or dropped as subscribers

1 since the last submission under this subsection;
2 and

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

12 (d) VIOLATIONS FOR TERRITORIAL RESTRICTIONS.—

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

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

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

19 (2) CONFORMING AMENDMENT FOR SIGNIFICANTLY
20 VIEWED STATIONS.—Section 122 is amended—

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

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

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

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

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

21 “(II) in the case of a non-
22 commercial educational television
23 broadcast station, any station that is
24 licensed to a community within the
25 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
23 inserting “NON-NETWORK STATION;” after
24 “NETWORK STATION;”; and

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

3 (4) by amending paragraph (4) to read as fol-
 4 lows:

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

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

11 “(6) LOW POWER TELEVISION STATION.—The
 12 term ~~“low power television station”~~ *‘low power tele-*
 13 *vision station’* means a low power TV station as de-
 14 fined under section 74.701(f) of title 47, Code of
 15 Federal Regulations, as in effect on June 1, 2004.
 16 For purposes of this paragraph, the term ~~“low~~
 17 ~~power television station”~~²² *‘low power television sta-*
 18 *tion’* includes a low power television station that has
 19 been accorded primary status as a Class A television
 20 licensee under section 73.6001(a) of title 47, Code
 21 of Federal Regulations.”.

22 **SEC. 5. MODIFICATIONS TO CABLE SYSTEM SECONDARY**
 23 **TRANSMISSION RIGHTS UNDER SECTION 111.**

24 (a) **HEADING RENAMED.—**

1 (1) IN GENERAL.—The heading of section 111
 2 is amended by inserting at the end the following:
 3 **“of television programming by cable”**.

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

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

8 (b) NATIONAL EMERGENCY MONITORING EXEMP-
 9 TION.—Section 111 is amended—

10 (1) in subsection (a)—

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

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

15 (C) by adding at the end the following new
 16 paragraph:

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

20 (2) by adding at the end the following new sub-
 21 section:

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

1 “(1) AUTHORITY.—For purposes of subsection
2 (a)(6), a secondary transmission by a cable system
3 of a performance or display of a work embodied in
4 a primary transmission by a television broadcast sta-
5 tion is made for emergency preparation, response, or
6 recovery if such transmission is made—

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

13 “(B) to officers or employees of such body
14 or such organization as a part of the official du-
15 ties or employment of such officers or employ-
16 ees;

17 “(C) at the request of the Secretary of
18 Homeland Security; and

19 “(D) for the sole purpose of preparing for,
20 responding to, or recovering from an emergency
21 described under paragraph (2).

22 “(2) EMERGENCIES.—An emergency is de-
23 scribed under this paragraph if the Secretary of
24 Homeland Security identifies such emergency as a
25 major disaster, a ~~catastrophe~~ *catastrophic incident*,

1 an act of terrorism, or a transportation security inci-
2 dent.

3 “(3) REGULATIONS.—Not later than 6 months
4 after the date of the enactment of this subsection,
5 the Secretary of Homeland Security shall issue regu-
6 lations to protect copyright owners by preventing the
7 unauthorized access to the secondary transmissions
8 described in paragraph (1).

9 “(4) REPORTS TO CONGRESSIONAL COMMIT-
10 TEES.—Not later than one year after the date of the
11 enactment of this subsection and by September 30
12 of each year thereafter, the Secretary of Homeland
13 Security shall submit a report to the Committee on
14 the Judiciary *and the Committee on Homeland Secu-*
15 *rity* of the House of Representatives and the Com-
16 mittee on the Judiciary of the Senate describing—

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

19 “(B) any additional legislative rec-
20 ommendations the Secretary may have.

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

22 “(A) TERRORISM.—The term ‘terrorism’
23 has the meaning given that term in section
24 2(16) of the Homeland Security Act of 2002 (6
25 U.S.C. 101(16)).

1 “(B) TRANSPORTATION SECURITY INCI-
2 DENT.—The term ‘transportation security inci-
3 dent’ has the meaning given that term in sec-
4 tion 70101 of title 46.

5 “(C) CATASTROPHIC INCIDENT.—*The term*
6 *‘catastrophic incident’ means any natural dis-*
7 *aster, act of terrorism, or other man-made dis-*
8 *aster that results in extraordinary levels of cas-*
9 *ualties or damage or disruption severely affect-*
10 *ing the population (including mass evacuations),*
11 *infrastructure, the environment, the economy,*
12 *national morale, or government functions in a*
13 *geographic area.*

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

20 (c) STATUTORY LICENSE FOR SECONDARY TRANS-
21 MISSIONS BY CABLE SYSTEMS.—Section 111(d) is amend-
22 ed—

23 (1) in paragraph (1)—

24 (A) in the matter preceding subparagraph

25 (A)—

1 (i) by striking “A cable system whose
 2 secondary” and inserting the following:
 3 “STATEMENT OF ACCOUNT AND ROYALTY
 4 FEES.—A cable system whose secondary”;
 5 and

6 (ii) by striking “by regulation—” and
 7 inserting “by regulation the following:”;
 8 (B) in subparagraph (A)—

9 (i) by striking “a statement of ac-
 10 count” and inserting “A statement of ac-
 11 count”; and

12 (ii) by striking “; and” and inserting
 13 a period; and

14 (C) by striking subparagraphs (B), (C),
 15 and (D), and inserting the following:

16 “(B) ~~A total~~ *Except in the case of a cable*
 17 *system whose royalty is specified in subpara-*
 18 *graph (E) or (F), a total* royalty fee for the pe-
 19 riod covered by the statement, computed on the
 20 basis of specified percentages of the gross re-
 21 cepts from subscribers to the cable service dur-
 22 ing such period for the basic service of pro-
 23 viding secondary transmissions of primary
 24 broadcast transmitters, as follows:

1 “(i) 1.064 percent *of such gross re-*
2 *ceipts* for the privilege of further transmit-
3 ting, beyond the local service area of such
4 primary transmitter, any non-network pro-
5 gramming of a primary transmitter in
6 whole or in part, such amount to be ap-
7 plied against the fee, if any, payable pursu-
8 ant to clauses (ii) through (iv);

9 “(ii) 1.064 percent of such gross re-
10 ceipts for the first distant signal equiva-
11 lent;

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

15 “(iv) 0.330 percent of such gross re-
16 ceipts for the fifth distant signal equivalent
17 and each distant signal equivalent there-
18 after.

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

21 “(i) any fraction of a distant signal
22 equivalent shall be computed at its frac-
23 tional value;

24 “(ii) in the case of any cable system
25 located partly within and partly outside of

1 the local service area of a primary trans-
2 mitter, gross receipts shall be limited to
3 those gross receipts derived from sub-
4 sscribers located outside of the local service
5 area of such primary transmitter; and

6 “(iii) if a cable system provides a sec-
7 ondary transmission of a primary trans-
8 mitter to some but not all communities
9 served by that cable system—

10 “(I) the gross receipts and the
11 distant signal equivalent values for
12 such secondary transmission shall be
13 derived solely on the basis of the sub-
14 sscribers in those communities where
15 the cable system provides such sec-
16 ondary transmission; and

17 “(II) the total royalty fee for the
18 period paid by such system shall not
19 be less than the royalty fee calculated
20 under subparagraph (B)(i) multiplied
21 by the gross receipts from all sub-
22 sscribers to the system.

23 “(D) A cable system that, on a statement
24 submitted before the date of the enactment of
25 the Satellite Home Viewer Update and Reau-

1 thorization Act of 2009, computed its royalty
2 fee consistent with the methodology under ~~this~~
3 ~~paragraph~~ *subparagraph (C)(iii)* or that
4 amends a statement filed before such date of
5 enactment to compute the royalty fee due using
6 such methodology shall not be subject to an ac-
7 tion for infringement, or eligible for any royalty
8 refund *or offset*, arising out of its use of such
9 methodology on such statement.

10 “(E) 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 total \$263,800 or less—

15 “(i) gross receipts of the cable system
16 for the purpose of this paragraph shall be
17 computed by subtracting from such actual
18 gross receipts the amount by which
19 \$263,800 exceeds such actual gross re-
20 ceipts, except that in no case shall a cable
21 system’s gross receipts be reduced to less
22 than \$10,400; and

23 “(ii) the royalty fee payable under this
24 paragraph shall be 0.5 percent, regardless

1 of the number of distant signal equiva-
2 lents, if any.

3 “(F) If the actual gross receipts paid by
4 subscribers to a cable system for the period cov-
5 ered by the statement for the basic service of
6 providing secondary transmissions of primary
7 broadcast transmitters are more than \$263,800
8 but less than \$527,600, the royalty fee payable
9 under this paragraph shall be—

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

13 “(ii) 1 percent of any gross receipts in
14 excess of \$263,800, but less than
15 \$527,600, regardless of the number of dis-
16 tant signal equivalents, if any.

17 “(G) A filing fee, as determined by the
18 Register of Copyrights pursuant to section
19 708(a).”;

20 ~~(2) in paragraph (2), by striking “The Register~~
21 ~~of Copyrights” and inserting the following: “HAN-~~
22 ~~DLING OF FEES.—The Register of Copyrights”;~~

23 ~~(2) in paragraph (2)—~~

1 (A) by striking “*The Register of Copy-*
2 *rights*” and inserting the following “*HANDLING*
3 *OF FEES.—The Register of Copyrights*”; and

4 (B) by inserting “(including the filing fee
5 specified in paragraph (1)(G))” after “shall re-
6 ceive”;

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” *the semicolon*
21 and inserting 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~~ *for* which they are received and shall be
 4 distributed as specified under this subsection.”.

5 *(d) EFFECTIVE DATE OF NEW ROYALTY FEE*
 6 *RATES.—The royalty fee rates established in section*
 7 *111(d)(1)(B) of title 17, United States Code, as amended*
 8 *by subsection (c)(1)(C) of this section, shall take effect com-*
 9 *mencing with the first accounting period occurring in 2010.*

10 ~~(d)~~ *(e) DEFINITIONS.—Section 111(f) is amended—*

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

14 “(1) PRIMARY TRANSMISSION.—A ‘primary
 15 transmission’ is a transmission, including a
 16 multicast transmission,”;

17 (2) in the second undesignated paragraph—

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

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

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

24 (3) in the third undesignated paragraph—

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

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

4 (B) by striking “Territory, Trust Terri-
5 tory, or Possession” and inserting “territory,
6 trust territory, or possession of the United
7 States”;

8 (4) in the fourth undesignated paragraph—

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

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

15 (B) by striking “76.59 of title 47 of the
16 Code of Federal Regulations” and inserting the
17 following: “76.59 of title 47, Code of Federal
18 Regulations, or within the noise-limited contour
19 as defined in 73.622(e)(1) of title 47, Code of
20 Federal Regulations”; and

21 (C) by striking “as defined by the rules
22 and regulations of the Federal Communications
23 Commission,”;

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

1 “(5) DISTANT SIGNAL EQUIVALENT.—

2 “(A) IN GENERAL.—Except as provided
3 under subparagraph (B), a ‘distant signal
4 equivalent’—

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

11 “(ii) is computed by assigning a value
12 of one to each channel or digital ~~stream~~
13 *stream* carrying independent television pro-
14 gramming, and a value of one-quarter to
15 each channel or digital stream carrying
16 network television programming or non-
17 commercial educational television program-
18 ming transmitted by a television broadcast
19 station pursuant to the rules, regulations,
20 and authorizations of the Federal Commu-
21 nications Commission.

22 “(B) EXCEPTIONS.—The values for inde-
23 pendent, network, and noncommercial edu-
24 cational programming specified in subparagraph
25 (A) are subject to the following:

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

19 “(ii) Where the rules, regulations, or
20 authorizations of the Federal Communica-
21 tions Commission in effect on the date of
22 enactment of the Copyright Act of 1976
23 permit a cable system, at its election, to
24 omit the further transmission of a par-
25 ticular program and such rules, regula-

1 tions, or authorizations also permit the
2 substitution of another program embodying
3 a performance or display of a work in
4 place of the omitted transmission, the
5 value assigned for the substituted or addi-
6 tional program shall be, in the case of a
7 live program, the value of one full distant
8 signal equivalent multiplied by a fraction
9 that has as its numerator the number of
10 days in the year in which such substitution
11 occurs and as its denominator the number
12 of days in the year.

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

1 shall be multiplied by a fraction that is
2 equal to the ratio of the broadcast hours of
3 such channel or digital stream carried by
4 the cable system to the total broadcast
5 hours of the channel or digital stream.”;

6 (6) in the sixth undesignated paragraph—

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

9 “(6) NETWORK STATION.—

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

11 and

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

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

17 (7) by striking the seventh undesignated para-
18 graph and inserting the following:

19 “(7) INDEPENDENT STATION.—

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

23 “(B) INDEPENDENT PROGRAMMING.—The
24 term ‘independent television programming’
25 means all programming other than ‘network tel-

1 evision programming’ or ‘noncommercial edu-
2 cational television programming’.”;

3 (8) by striking the eighth undesignated para-
4 graph and inserting the following:

5 “(8) NONCOMMERCIAL EDUCATIONAL STA-
6 TION.—

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

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

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

23 “(B) NONCOMMERCIAL EDUCATIONAL PRO-
24 GRAMMING.—The term ‘noncommercial edu-
25 cational television programming’ means pro-

1 gramming that is transmitted by a noncommer-
2 cial educational station.”; and

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

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

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

14 ~~(e)~~ (f) TIMING OF SECTION 111 PROCEEDINGS.—
15 Section 804(b)(1) is amended by striking “2005” each
16 place it appears and inserting “2015”.

17 ~~(f)~~ (g) TECHNICAL AND CONFORMING AMEND-
18 MENTS.—

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

21 (A) in subsections (a), (c), and (e), by
22 striking “clause” each place it appears and in-
23 serting “paragraph”;

1 (B) in ~~subsection (e)~~ *subsection (c)(1)*, by
2 striking “clauses” and inserting “paragraphs”;
3 and

4 (C) in subsection (e)(1)(F), by striking
5 “subclause” ~~each place it appears~~ and inserting
6 “subparagraph”.

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

11 (3) PREVIOUSLY UNDESIGNATED PARA-
12 GRAPH.—Section 111(e)(1) is amended by striking
13 “second paragraph of subsection (f)” and inserting
14 “subsection (f)(2)”.

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

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

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

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

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

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

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

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

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

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

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

15 Section 119 is amended by adding at the end the fol-
 16 lowing new subsection:

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

19 “(1) INJUNCTION WAIVER.—A court that issued
 20 an injunction pursuant to subsection (a)(7)(B) be-
 21 fore the date of the enactment of this subsection
 22 shall waive such injunction if the court recognizes
 23 the entity against which the injunction was issued as
 24 a qualified carrier.

25 “(2) LIMITED TEMPORARY WAIVER.—

1 “(A) IN GENERAL.—Upon a request made
2 by a satellite carrier, a court that issued an in-
3 junction against such carrier under subsection
4 (a)(7)(B) before the date of the enactment of
5 this subsection shall waive such injunction with
6 respect to the statutory license provided under
7 subsection (a)(2) to the extent necessary to
8 allow such carrier to retransmit distant network
9 signals to unserved households located in short
10 markets in which such carrier was not pro-
11 viding local service pursuant to the license
12 under section 122 as of December 31, 2009.

13 “(B) EXPIRATION OF TEMPORARY WAIV-
14 ER.—A temporary waiver of an injunction
15 under subparagraph (A) shall expire after the
16 end of the 120-day period beginning on the
17 date such temporary waiver is made unless ex-
18 tended for good cause by the court making the
19 temporary waiver.

20 “(C) FAILURE TO MAKE GOOD FAITH EF-
21 FORT TO PROVIDE LOCAL-INTO-LOCAL SERVICE
22 TO ALL DMAS.—

23 “(i) WILLFUL FAILURE.—If the court
24 making a temporary waiver under subpara-
25 graph (A) determines that the satellite car-

1 rier that made the request for such waiver
2 has failed to make a good faith effort to
3 provide local-into-local service to all DMAs
4 and determines that such failure was will-
5 ful, such failure—

6 “(I) is actionable as an act of in-
7 fringement under section 501 and the
8 court may in its discretion impose the
9 remedies provided for in section 502
10 through 506 and subsection (a)(6)(B)
11 of this section; and

12 “(II) shall result in the termi-
13 nation of the waiver provided under
14 subparagraph (A).

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

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

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

6 “(III) the severity and duration
7 of the service interruption.

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

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

19 “(3) ESTABLISHMENT OF QUALIFIED CARRIER
20 RECOGNITION.—

21 “(A) STATEMENT OF ELIGIBILITY.—An
22 entity seeking to be recognized as a qualified
23 carrier under this subsection shall file a state-
24 ment of eligibility with the court that imposed

1 the injunction. A statement of eligibility must
2 include—

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

5 “(ii) a request for a waiver of the in-
6 junction; and

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

9 “(B) GRANT OF RECOGNITION AS A QUALI-
10 FIED CARRIER.—Upon receipt of a statement of
11 eligibility, the court shall recognize the entity as
12 a qualified carrier and issue the waiver under
13 paragraph (1).

14 “(C) VOLUNTARY TERMINATION.—At any
15 time, an entity recognized as a qualified carrier
16 may file a statement of voluntary termination
17 with the court certifying that it no longer wish-
18 es to be recognized as a qualified carrier. Upon
19 receipt of such statement, the court shall rein-
20 state the injunction waived under paragraph
21 (1).

22 “(D) LOSS OF RECOGNITION PREVENTS
23 FUTURE RECOGNITION.—No entity may be rec-
24 ognized as a qualified carrier if such entity had
25 previously been recognized as a qualified carrier

1 and subsequently lost such recognition or volun-
2 tarily terminated such recognition under sub-
3 paragraph (C).

4 “(4) QUALIFIED CARRIER OBLIGATIONS AND
5 COMPLIANCE.—

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

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

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

24 “(D) BURDEN OF PROOF.—In any pro-
25 ceeding to make a determination under sub-

1 paragraph (B), and with respect to a des-
2 ignated market area for which failure to provide
3 service is alleged, the entity recognized as a
4 qualified carrier shall have the burden of prov-
5 ing that the entity provided local-into-local serv-
6 ice with a good quality satellite signal to 90
7 percent of the households in such designated
8 market area at the time and place alleged.

9 “(5) FAILURE TO PROVIDE SERVICE.—

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

18 “(i) treat such failure as an act of in-
19 fringement under section 501, and subject
20 such infringement to the remedies provided
21 for in sections 502 through 506 and sub-
22 section (a)(6)(B) of this section; and

23 “(ii) impose a fine of no greater than
24 \$250,000.

1 “(B) EXCEPTION FOR NONWILLFUL VIOLA-
2 TION.—If the court determines that the failure
3 to provide local-into-local service to all DMAs is
4 nonwillful, the court may in its discretion im-
5 pose financial penalties for noncompliance that
6 reflect—

7 “(i) the degree of control the entity
8 had over the circumstances that resulted in
9 the failure;

10 “(ii) the quality of the entity’s efforts
11 to remedy the failure and restore service;
12 and

13 “(iii) the severity and duration of the
14 service interruption.

15 “(6) PENALTIES FOR VIOLATIONS OF LI-
16 CENSE.—A court that finds, under subsection
17 (a)(6)(A), that an entity recognized as a qualified
18 carrier has willfully made a secondary transmission
19 of a primary transmission made by a network sta-
20 tion and embodying a performance or display of a
21 work to a subscriber who is not eligible to receive
22 the transmission under this section shall reinstate
23 the injunction waived under paragraph (1), and the
24 court may order statutory damages of not to exceed
25 \$2,500,000.

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

3 “(A) IN GENERAL.—An entity provides
4 ‘local-into-local service to all DMAs’ if the enti-
5 ty provides local service in all designated mar-
6 ket areas (as such term is defined in section
7 122(j)(2)(C)) pursuant to the license under sec-
8 tion 122.

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

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

21 **SEC. 7. TERMINATION OF LICENSE.**

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

Union Calendar No. 182

111TH CONGRESS
1ST Session

H. R. 3570

[Report No. 111-319]

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.

OCTOBER 28, 2009

Reported with technical amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed