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REPORT
108–660

SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT OF 2004

SEPTEMBER 7, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4518]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4518) to extend the statutory license for secondary transmissions under section 119 of title 17, United States Code, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Satellite Home Viewer Extension and Reauthorization Act of 2004".

(b) TABLE OF CONTENTS.—

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

SEC. 101. EXTENSION OF AUTHORITY.

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

(b) EXTENSION FOR CERTAIN SUBSCRIBERS.—Section 119(e) of title 17, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2009".

SEC. 102. REPORTING OF SUBSCRIBERS; SIGNIFICANTLY VIEWED AND OTHER SIGNALS; TECHNICAL AMENDMENTS.

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

(1) in paragraph (1)—

(A) in the paragraph heading, by striking "AND PBS SATELLITE FEED";

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

(C) in the first sentence, by striking "or by the Public Broadcasting Service satellite feed"; and

(D) by striking the second sentence;

(2) in paragraph (2)—

(A) in subparagraph (A), by striking "(3), (4), (5), and (6)" and inserting "(5), (6), (7), and (8)"; and

(B) by striking subparagraph (C) and inserting the following:

"(C) EXCEPTIONS.—

"(i) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the signal of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 CFR 76.51).

"(ii) CERTAIN ADDITIONAL STATIONS.—The statutory license provided for in subparagraph (A) shall apply to the secondary transmission, by a satellite carrier to subscribers in no more than two counties in a State that are in local market principally comprised of counties in another State, of the signals of any network station located in the capital of the State in which such counties are located, if the total number of television households in the two counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

"(D) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

"(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

"(I) a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households; and

"(II) a separate list, aggregated by designated market area (as defined in section 122(j)) (by name and street address, including county and zip code), which shall indicate those subscribers being served pursuant to subsection (a)(3), relating to significantly viewed stations.

"(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), on the 15th of each month, the satellite carrier shall submit to the network—

"(I) a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the last submission under clause (i); and

"(II) a separate list, aggregated by designated market area (by name and street address, including county and zip code), identifying those subscribers whose service pursuant to subsection (a)(3), relating to significantly viewed stations, has been added or dropped.

"(iii) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

"(iv) APPLICABILITY.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.";

(3) by striking paragraph (8);

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

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

(6) by inserting after paragraph (2) the following:

"(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

"(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the signal of a network station or a superstation to a subscriber who resides outside the station's local market (as defined in section 122(j)) but within a community in which the signal of that station was determined by the Federal Communications Commission, on or before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, to be significantly viewed in accordance with the provisions of section 76.54 of title 47, Code of Federal Regulations, as in effect on such date of enactment.

"(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122."; and

(7) in paragraph (2)(B)(i), by adding at the end the following new sentence: "The limitation in this clause shall not apply to secondary transmissions under paragraph (3).".

SEC. 103. STATUTORY LICENSE FOR SATELLITE CARRIERS OUTSIDE LOCAL MARKETS.

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

(1) Subsection (a) is amended by inserting after paragraph (3), as added by section 102 of this Act, the following:

"(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

"(A) RULES FOR SUBSCRIBERS UNDER SUBSECTION (e).—

"(i) FOR THOSE RECEIVING DISTANT SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station solely by reason of subsection (e) (in this subparagraph referred to as a 'distant signal'), and who is receiving the distant signal of a network station on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the following shall apply:

"(I) In a case in which the signal of a local network station affiliated with the same television network is made available by that

satellite carrier to the subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network—

"(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h) of the Communications Act of 1934, the subscriber elects to retain the distant signal; but

"(bb) only until such time as the subscriber elects to receive such local signal.

"(II) Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply with respect to any subscriber who is eligible to receive the distant signal of a television network station solely by reason of subsection (e) and to whom subclause (I) applies unless the satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

"(aa) identifies that subscriber by name and address (street or RFD number, city, State, and zip code) and specifies the distant signals received by the subscriber; and

"(bb) states, to the best of the satellite carrier's knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant signals.

"(ii) FOR THOSE NOT RECEIVING DISTANT SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant signal of a network station solely by reason of subsection (e) and who did not receive a distant signal of a station affiliated with the same network on July 1, 2004, the statutory license under paragraph (2) shall not apply to secondary transmissions by that satellite carrier to that subscriber of that distant signal.

"(B) RULES FOR OTHER SUBSCRIBERS.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as a 'distant signal'), other than subscribers to whom subparagraph (A) applies, the following shall apply:

"(i) In a case in which the signal of a local network station affiliated with the same television network is made available by that satellite carrier, on January 1, 2005, to the subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network if the subscriber's satellite carrier, within 60 days after such date, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that identifies that subscriber by name and address (street or RFD number, city, State, and zip code) and specifies the distant signals received by the subscriber.

"(ii) In a case in which the signal of a local network station affiliated with the same television network is not made available by that satellite carrier, on January 1, 2005, to a subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant signal of a station affiliated with the same network to any person—

"(I) who is a subscriber of that satellite carrier on such date, or

"(II) who becomes a subscriber of that satellite carrier after such date but before the local signal is available,

but only until such time as the subscriber elects to receive the local signal from that satellite carrier.

"(C) FUTURE APPLICABILITY.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of a primary transmission of a network station to a subscriber who—

"(i) does not receive such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

"(ii) resides in a local market where the satellite carrier makes available a network station affiliated with the same television network pursuant to the statutory license under section 122.

"(D) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to unserved households included under paragraph (12).

"(E) AVAILABLE DEFINED.—For purposes of this paragraph, a local signal has been made available by a satellite carrier to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zipcode as that subscriber or person.".

(2) Subsection (b)(1) is amended by striking subparagraph (B) and inserting the following:

"(B) a royalty fee for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of each superstation or network station during each calendar month by the appropriate rate in effect under this section.".

(3) Subsection (b)(1) is further amended by adding at the end the following flush sentence:

"Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a subscriber who resides outside the station's local market (as defined in section 122(j)(2)) but within a community in which the signal of that station was determined by the Federal Communications Commission, on or before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, to be significantly viewed in accordance with the provisions of section 76.54 of title 47, Code of Federal Regulations, as in effect on such date of enactment.".

(4) Subsection (c) is amended—

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

"(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The appropriate rate for purposes of determining the royalty fee under subsection (b)(1)(B) shall be the appropriate rate set forth in part 258 of title 37, Code of Federal Regulations, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, as modified under this subsection.";

(B) by striking paragraph (2);

(C) in paragraph (3)—

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

(ii) in subparagraph (A)—

(I) by striking "January 1, 1997," and inserting "January 1, 2005,"; and

(II) by striking "who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2)";

(iii) in subparagraph (C), by striking "as provided" and all that follows through "later" and inserting "on January 1, 2006"; and

(iv) by striking subparagraph (D); and

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

"(3) COST OF LIVING ADJUSTMENT.—The royalty rates set forth in subsection (b)(1)(B), as adjusted under paragraph (2) of this subsection, shall be adjusted by the Librarian of Congress—

"(A) on January 1, 2005, to reflect any changes occurring during the period beginning on January 1, 2000, and ending on November 30, 2004, in the cost of living as determined by the most recent Consumer Price Index (for all consumers and items) published by the Secretary of Labor during that period; and

"(B) on January 1, 2007, and on January 1 of each year thereafter, to reflect any changes occurring during the preceding 12 months in the cost of living as determined by the most recent Consumer Price Index so published.

"(4) REDUCTIONS.—The rate of the royalty fee determined under paragraph (2)—

"(A) for superstations shall be reduced by 30 percent; and

"(B) for network stations shall be reduced by 45 percent.".

(5) Subsection (d) is amended—

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

"(9) SUPERSTATION.—The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier. ";

(B) in paragraph (10)(D), by striking "(a)(11)" and inserting "(a)(12)"; and

(C) by striking paragraph (12).

(6) Subsection (a)(7), as redesignated by section 102(5) of this Act, is amended—

(A) in subparagraph (A), by striking "who does not reside in an unserved household" and inserting "who is not eligible to receive the transmission under this section";

(B) in subparagraph (B), by striking "who do not reside in unserved households" and inserting "who are not eligible to receive the transmission under this section"; and

(C) in subparagraph (D), by striking "is for private home viewing to an unserved household" and inserting "is to a subscriber who is eligible to receive the transmission under this section".

SEC. 104. WAIVERS.

Section 119(a) of title 17, United States Code, is amended by adding at the end the following new paragraph:

"(14) WAIVERS.—A subscriber who is denied the secondary transmission of a network station under paragraph (4)(C), or is denied the secondary transmission of a network station or a superstation under paragraph (3)(B), may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station or superstation in the local market where the subscriber is located. The network station or superstation shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station or superstation fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station or superstation, as the case may be, shall be deemed to agree to the waiver request. Unless specifically stated by the network station or superstation, a waiver under section 339(c)(2) of the Communications Act shall not constitute a waiver for purposes of this paragraph.".

SEC. 105. STUDY.

No later than June 30, 2008, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register's findings and recommendations on the operation and revision of the statutory licenses under sections 111, 119, and 122 of title 17, United States Code. The report should include, but not be limited to, the following:

(1) A comparison of the royalties paid by licensees under such sections, including historical rates of increases in these royalties, a comparison between the royalties under each such section and the prices paid in the marketplace for comparable programming.

(2) An analysis of the differences in the terms and conditions of the licenses under such sections, an analysis of whether these differences are required or justified by historical, technological, or regulatory differences that affect the satellite and cable industries, and an analysis of whether either the cable or satellite industry is placed in a competitive disadvantage due to these terms and conditions.

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

(4) An analysis of the correlation, if any, between the royalties, or lack thereof, under such sections and the fees charged to cable and satellite subscribers, addressing whether cable and satellite companies have passed to subscribers any savings realized as a result of the royalty structure and amounts under such sections.

SEC. 106. EFFECT ON CERTAIN PROCEEDINGS.

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

SEC. 107. EXPEDITED CONSIDERATION OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.

Section 119 of title 17, United States Code, is amended by adding at the end the following:

"(f) EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.—

"(1) IN GENERAL.—In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more

television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

"(2) DEFINITION.—For purposes of this subsection, the term 'antitrust laws'—

"(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

"(B) includes any State law similar to the laws referred to in paragraph (1).".

PURPOSE AND SUMMARY

The purpose of H.R. 4518 is to extend the copyright compulsory [1] license for the retransmission by satellite carriers of distant over-the-air television broadcast stations for an additional 5 years, provide a process that will enable copyright owners whose works are retransmitted under the distant signal license to receive fair compensation for the statutory use of their creative works, ensure that satellite subscribers are able to continue to receive distant and local network and superstation signals to which they are entitled, and to make other necessary improvements and revisions to § 119 of the Copyright Act.

BACKGROUND AND NEED FOR THE LEGISLATION

American consumers rely upon broadcast, cable, and direct broadcast satellite ("DBS") to deliver most television programming into their homes. Broadcast programming is generally available free to consumers who can receive it over-the-air in the local market of the television station. Cable and DBS dominate the multichannel video programming distribution ("MVPD") marketplace, where providers offer programming to consumers on a fee-for-subscription basis.

According to the most recent data from the Federal Communications Commission ("FCC"), there are approximately 107 million television households in the United States.[2] Of those, 88% choose to subscribe to an MVPD service. Cable serves 75% of subscribers, while DBS serves 22%.[3]

While cable still serves the vast majority of MVPD subscribers, DBS has benefitted from congressional efforts to promote localism [4]

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[1] Compulsory licenses are authorized by the Copyright Act as a limitation on the exclusive rights that are otherwise granted to copyright holders. Also referred to as a statutory license, "[a] compulsory license allows individuals to use protected works without obtaining the consent of the copyright owner upon payment of fees set by the government. In order to take advantage of a compulsory license, the prospective user must comply with certain statutory procedures." ROGER E. SCHECHTER AND JOHN R. THOMAS, INTELLECTUAL PROPERTY: THE LAW OF COPYRIGHTS, PATENTS AND TRADEMARKS § 7, at 114 (2003).

[2] 19 FCC Rcd. 1606, 12622, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-5A1.pdf. The FCC publishes an "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming," which surveys the MVPD market. The current edition was released in January 2004.

[3] *Id.*

[4] Localism is the concept that consumers should be able to view their own local news, weather, emergency, and community-oriented programming. The availability of local programming is

Continued

and encourage competition[5] in the MVPD marketplace. Historically, Congress has attempted to balance these twin goals in order to preserve the ability of Americans to continue to receive free over-the-air television programming, much of it local in nature, while still fostering competition, which provides consumers with a greater variety of choices, improved services, higher quality, and technological innovation, in the fee-for-subscription market. While DBS has provided competition to cable, its impact on cable operations has generally been associated with improved customer service and the expanded offerings of new cable stations rather than a substantial reduction in cable rates.[6]

The two dominant DBS companies, DirecTV (a subsidiary of News Corporation) and EchoStar, which markets its service as the DISH Network, combined to sign up more than 80% of new cable and satellite television subscribers over the last year. Over the last decade, the DBS industry's growth rate has far outpaced that of cable, exceeding it by double digits in nine of those years.[7] Evidence indicates the DBS companies are succeeding in providing effective competition to cable, including luring many customers away from their competitors.[8]

Several provisions of the Copyright Act (Title 17 of the U.S. Code) govern the ability of cable and DBS providers to retransmit copyrighted broadcast programming. The cable and DBS industries are always free to enter into private negotiations with copyright owners and to compensate them for the use of their content under agreed-upon terms. Such privately-negotiated agreements provide the basis for the majority of programming that is retransmitted to subscribers by cable and DBS companies.

In the absence of a freely-negotiated agreement, the cable and DBS industries rely upon separate and distinct copyright compulsory licenses that enable each to provide their subscribers with retransmitted over-the-air television broadcast programming without obtaining the permission of the copyright owners. In enacting each license, Congress has traditionally considered the unique historical, technological, and regulatory circumstances that affect each industry.

Among other differences, the local character of cable systems and the national business model of DBS have resulted in differential public service, carriage, and taxation obligations that ought to be

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largely dependent on the continued health of network affiliates, who use revenue from the sale of advertising, the rates for which depend on audience size, to produce local content.

[5] In 2003, the United States General Accounting Office ("GAO") published a study that concluded there was a direct relationship between Congress's decision to permit DBS operators to provide local signals to subscribers in the Satellite Home Viewer Improvement Act ("SHVIA") and the growth of DBS operators. "Since 1999, when DBS operators acquired the legal right to provide local broadcast stations (such as affiliates of ABC, CBS, Fox, and NBC), these companies have emerged as important competitors to cable operators. In particular, in areas where subscribers can receive local broadcast stations from both primary DBS operators, the DBS penetration rate—that is, the percentage of households that subscribe to satellite service—is approximately 40 percent higher than in areas where subscribers cannot receive local broadcast stations from both primary DBS operators." U.S. General Accounting Office, Issues Related to Competition and Subscriber Rates in the Cable Television Industry, GAO–04–8 at 4 (Washington, DC:October 2003), *available at* http://www.gao.gov/new.items/d048.pdf.

[6] "DBS competition is associated with a slight reduction in cable rates as well as improved quality and service. In terms of rates, we found that a 10 percent higher DBS penetration rate . . . is associated with a slight rate reduction—about 15 cents per month." *Id.* at 11.

[7] 19 FCC Rcd. 1606, 1610. "Since its introduction, the DBS growth rate has exceeded the growth rate of cable by double digits in every year except in the past year, when DBS growth exceeded cable growth by 9.16 percentage points." *Id.*

[8] *Id.* at 1651. "DirecTV states that according to its internal subscriber data, approximately 70% of its customers were cable subscribers at the time they subscribed to DirecTV." *Id.*

objectively reviewed before Congress enacts sweeping changes. Congress has historically sought to balance the interests of the public in having continued access to free, local programming with a desire by some consumers to pay to view additional stations. In achieving equilibrium, it is critical that Congress not compromise the legitimate interests of intellectual property holders nor sacrifice long-term competitive interests by unfairly favoring one industry over another.

The distant signal satellite license, codified in 17 U.S.C. § 119, was first enacted in 1988 as part of the Satellite Home Viewer Act. The license is temporary and applies to the retransmission of both distant network and superstation signals.

Congress has renewed the distant signal satellite license twice before. First, in the Satellite Home Viewer Act of 1994 and, second, in SHVIA in 1999. In addition, SHVIA added a new, permanent 17 U.S.C. § 122 that permits satellite carriers to retransmit local television broadcast stations to their subscribers. The § 119 distant signal license is slated to expire on December 31, 2004.

The distant signal license is important to DBS carriers because it enables them to clear the rights to copyrighted programming contained on distant superstation and network stations by submitting a statement of account and paying a statutorily determined royalty fee to the Copyright Office on a semiannual basis. The ability to clear the rights by the use of a compulsory license permits the DBS industry to avoid the expense and uncertainty associated with negotiating individual terms and fees with copyright owners in advance of retransmitting each protected work.

The abrogation of copyright owners' exclusive rights and the elimination of transaction costs for satellite carriers are valuable accommodations that benefit the DBS industry. The terms and conditions of § 119, therefore, are crafted to represent a careful balance between the interests of satellite carriers who seek to deliver distant broadcast programming to subscribers in a manner that is similar to that offered by cable operators, and the need to provide copyright owners of the retransmitted broadcast programming fair compensation for the use of their works.

The § 119 license applies to two categories of distant broadcast television stations offered by satellite: superstations [9] (i.e. commercial independent over-the-air television broadcast stations), and network stations [10] (i.e. commercial television network stations and noncommercial educational stations). Satellite carriers calculate their royalty payment by multiplying the attendant fee for each superstation signal by the number of subscribers who receive that

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[9] 17 U.S.C. § 119 (d)(9)(A) defines a superstation as a "television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier. Essentially, it is an independent broadcast station. As of May 20, 2004, the Copyright Office reports that six superstations received payments under the distant signal license in recent years. These stations are:

KTLA	Los Angeles, CA
KWGN	Denver, CO
WGN	Chicago, IL
WPIX	New York, NY
WSBK	Boston, MA
WWOR	Secaucus, NJ (reported as New York, NY)

[10] 17 U.S.C. § 119 (d)(2) defines a "network station" as . . . that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more states . . ."

signal for each month of the 6-month accounting period, and by multiplying the different fee for each network station times the number of subscribers who receive that signal for each month of the 6-month accounting period.

The flat, per subscriber royalty mechanism in § 119 stands in stark contrast to the more complicated percentage of gross receipts calculation applied to cable operators in the § 111 license. The cable license royalty is based on the application of vestigial distant signal carriage rules, which were once used by the FCC. The flat, per subscriber royalty mechanism used to calculate distant signal satellite royalties is easier to comprehend, far simpler to calculate, and reduces the time and expense associated with royalty computation.

The current royalty fees for network station and superstation programming were established by a Copyright Arbitration Royalty Panel ("CARP") in 1997, applying a fair market value standard. In other words, the CARP determined what, in the absence of a statutory license, a willing buyer and a willing seller would negotiate as the fair market price for all the programming retransmitted on network stations and superstations. The CARP recommended a single royalty rate for programming on both network stations and superstations.

In SHVIA, Congress mandated two separate royalty rates, one based on network station retransmissions, the other applying to programming on superstations. Congress further required substantial reductions in the CARP-determined rate, applying a statutory discount of 45 percent to programming on network stations and a discount of 30 percent to superstation programming. In spite of increased costs for program production and the cumulative effects of inflation, these royalty rates have been unchanged throughout the current extension of § 119. This has eroded the real value of the royalties paid under the license, inuring greatly to the benefit of the DBS industry.

As a general rule, the distant signal license permits delivery of distant network programming to unserved households [11] only. The unserved household limitation prohibits a DBS provider from retransmitting a distant station of the same network to a subscriber who can otherwise receive the local network signal through-the-air by the use of a conventional rooftop antenna. The license provides limited exceptions for recreational vehicles, commercial trucks, C-band dish owners, and a class of subscribers "grandfathered" [12] by SHVIA.

An element of the § 119 license since inception, the unserved household limitation has been a central tenet of congressional policy on distant signal carriage. Its primary purpose is to ensure that those residing in rural areas or in areas where terrain makes it impossible to receive an acceptable over-the-air signal from their local television stations can receive a "life-line" network television service from a satellite provider.

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[11] 17 U.S.C. § 119(d)(10) generally defines an "unserved household," with respect to a particular television network, as a household that cannot receive an acceptable over-the-air signal of a network affiliate through the use of a conventional, stationary, outdoor rooftop receiving antenna.

[12] The term "grandfathered subscribers" is used to describe a class of individuals to whom DBS providers were not lawfully entitled to transmit distant network signals and to whom their provider was under a Federal district court order to terminate the transmission of such signals after July 11, 1998 but before October 31, 1999.

Where a satellite provider can retransmit a local station's exclusive network programming but chooses to substitute identical programming from a distant network affiliate of the same network instead, the satellite carrier undermines the value of the license negotiated by the local broadcast station as well as the continued viability of the network-local affiliate relationship. In addition to these copyright and contractual concerns, broadcasters contend that the long-term interests and short-term welfare of DBS subscribers are compromised when they are not able to receive timely local news, weather, and emergency information via satellite.

The Committee has consistently considered market-negotiated exclusive arrangements that govern the public performance of broadcast programming in a given geographic area to be preferable to statutory mandates. Accordingly, a second purpose of the unserved household limitation is to confine the abrogation of interests borne by copyright holders and local network broadcasters to only those circumstances that are absolutely necessary to provide the "life-line" service.

To ensure that DBS carriers respect the boundaries of the unserved household limitation, § 119 requires DBS operators to provide television networks with periodic reports that specify the identity and number of subscribers who receive network stations under the license. The purpose of these requirements is to discourage DBS provision of "illegal" signals to subscribers and avoid costly and protracted litigation between broadcast stations and DBS companies. The provision of such signals runs afoul of congressional policy that recognizes the importance of the network-affiliate exclusive licensing relationship, which is intended to promote the continued production and dissemination of local programming.

SHVIA created a royalty-free copyright compulsory license that allows DBS providers to retransmit local network stations and local superstations to their subscribers in a given local market.[13] Local markets are determined by reference to the stations designated market area ("DMA").[14] The practice of retransmitting this programming to subscribers who reside in the local market of these stations is sometimes referred to as "local-into-local."

The terms of this license are contained in § 122 of the Copyright Act. In contrast to the cable license, the DBS local license permits, but does not require, DBS providers to offer local-into-local service in the television markets of their choosing.[15] However, once a DBS operator elects to retransmit one or more stations in a given market, the carrier must retransmit all eligible local stations in that market in a non-discriminatory manner. Despite the fact that these local signals are made available to DBS operators on a copyright royalty free basis, the typical practice of DBS companies is to

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[13] 17 U.S.C. § 122(j)(2)(A) defines a "local market" as the "designated market area in which a station is located, and—

> (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market . . ."

[14] 17 U.S.C. § 122(j)(2)(C) describes the manner for determining a stations DMA "as determined by Nielsen Media Research and published in the . . . Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.

[15] The cable license, contained in § 111 of title 17 is often referred to as a "must carry" provision. The satellite local license, contained in § 122 of title 17 is described as "carry one, carry all" since the decision to carry local stations in a given local market is permissive on the part of DBS operators.

charge their subscribers a monthly fee for the receipt of such programming. In sum, § 122, coupled with § 119, enables DBS companies to provide their subscribers with a full complement of broadcast signals in a manner similar to that afforded to cable operators under the § 111 statutory license.

The Committee is concerned by allegations that DBS operators have been retransmitting superstation signals to commercial establishments, in violation of § 119, which unambiguously restricts such retransmissions to private homes. The Committee encourages all affected parties to continue their efforts to reach an amicable resolution of the past liability for these unlawful transmissions and strongly recommends that they negotiate reasonable terms, rates, and conditions for the prospective availability of a license(s) that will permit the DBS industry to retransmit superstation signals to non-residential customers, as cable providers are permitted to do under current law.

To further promote competition between the cable and DBS industries, it is recommended that the § 119 license be reauthorized for an additional 5 years. The Committee determines this period to be appropriate and consistent with prior extensions. Given the ongoing transition of the broadcast television industry from analog transmissions to digital, it is in the public interest for Congress to reexamine the terms and conditions of the § 119 license in 5 years and to make any necessary adjustments at that time.

HEARINGS

On February 24, 2004, the Committee's Subcommittee on Courts, the Internet and Intellectual Property held an oversight hearing to consider SHVIA [16] and its extension. Testimony was received from four witnesses, who represented the U.S. Copyright Office, the Motion Picture Association of America, Inc., the Satellite Broadcasting Communications Association, and the National Association of Broadcasters. Additional materials were submitted by the American Society of Composers, Authors and Publishers, and Broadcast Music, Inc., the Association of American Publishers, Inc., and the Software & Information Industry Association; and the Association of Public Television Stations.

COMMITTEE CONSIDERATION

On May 6, 2004, the Subcommittee on Courts, the Internet, and Intellectual Property met in open session and ordered favorably reported a Committee Print of legislation on this topic, as amended, by a voice vote, a quorum being present.[17] On July 7, 2004, the Committee met in open session and ordered favorably reported the bill H.R. 4518,[18] with an amendment, by a voice vote, a quorum being present.

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[16] Intellectual Property and Communications Omnibus Reform Act of 1999, Appendix I, Title I, Pub. L. No. 106–113.

[17] The text that the Subcommittee reported became the basis for H.R. 4518, which included proposed changes to the distant signal license codified in 17 U.S.C. § 119.

[18] H.R. 4518 was introduced on June 4, 2004 by the Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property, Rep. Smith of Texas, along with Representatives Conyers and Berman and was referred to the Committee on the Judiciary. The bill was based on the Committee Print reported by the Subcommittee and incorporated input from all stakeholders.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the consideration of H.R. 4518.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increase tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4518, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 22, 2004.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4518, the "Satellite Home Viewer Extension Act of 2004."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa E. Zimmerman, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 4518—Satellite Home Viewer Extension and Reauthorization Act of 2004.

SUMMARY

Under current law, satellite television companies pay a monthly royalty fee for each subscriber to the Copyright Office (within the Library of Congress) for the right to retransmit network and superstation television signals to satellite television subscribers. The Copyright Office later distributes these fees to the copyright owners of the retransmitted material.

H.R. 4518 would extend the requirement, set to expire under current law on January 1, 2005, that satellite carriers pay royalty fees to the Federal Government through December 31, 2009, and would make other changes to current law relating to satellite retransmission of television broadcasting. CBO estimates that enacting the bill would increase revenues by $40 million in 2005, $459 million over the 2005–2009 period, and $557 million over the 2005–2014 period. With higher royalty collections, the payments to copyright owners (including interest earnings) also would increase, resulting in an estimated increase in direct spending of less than $500,000 in 2005, $48 million over the 2005–2009 period, and $582 million over the 2005–2014 period. Thus, the net impact on the Federal budget would be a decrease in the deficit of $40 million in 2005 and $412 million over the 2005–2009 period, but it would increase the deficit by $24 million over the 2005–2014 period. (That net increase over the 10-year period reflects the payment of interest in addition to amounts collected in royalties.) Implementing the bill would not have a significant effect on spending subject to appropriation.

H.R. 4518 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 4518 would impose a private-sector mandate as defined in UMRA on satellite companies. CBO estimates that the cost of the mandate would not exceed the annual threshold for private-sector mandates established by UMRA ($120 million in 2004, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4518 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

By Fiscal Year, in Millions of Dollars

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN REVENUES AND DIRECT SPENDING											
Estimated Revenues	0	40	91	99	108	121	98	0	0	0	0
Estimated Budget Authority	0	40	94	108	122	140	119	19	15	10	5
Estimated Outlays	0	0	0	0	11	37	71	105	126	129	103
Estimated Net Increase or Decrease (–) in the Deficit from Changes in Revenue and Direct Spending	0	–40	–91	–99	–98	–84	–27	105	126	129	103

BASIS OF ESTIMATE

The bill would increase Federal revenues from copyright royalties. Those fees, plus interest, would then be paid out to copyright owners.

Extension of Copyright Royalty Fees

H.R. 4518 would extend, through December 31, 2009, the requirement that satellite companies pay royalty fees to owners of copyrighted material for retransmitting that material to their subscribers. The bill also would require the Copyright Office to set a

new rate on January 1, 2005, to account for increases in the cost of living from 2000 through 2004 and to adjust that rate on January 1st of each year starting in 2007.

CBO estimates that, taken together, these changes would increase revenues by $40 million in 2005, $459 million over the 2005–2009 period, and $557 million over the 2005–2014 period. With higher royalty collections, the payments to copyright owners also would increase. Historical spending patterns indicate that copyright holders may receive the fees and interest several years after the Copyright Office has collected the revenues. Thus, CBO estimates a significant lag between increases in revenue collections and higher payments to copyright holders. CBO estimates that increases in direct spending resulting from increases in royalty collections (and interest on those collections) would be negligible for the next few years but would total $48 million over the 2005–2009 period and $582 million over the 2005–2014 period.

Interest on Copyright Royalties

H.R. 4518 would result in additional spending because all revenues are eventually paid to copyright holders with interest. Therefore, under the bill, budget authority for spending associated with royalty collections would be slightly higher than revenues associated with those collections.

Satellite Retransmission of Distant and Local Signals

According to the Federal Communications Commission (FCC), about 20 million households subscribe to satellite television service in the United States. Under current law, satellite companies are permitted to retransmit signals originally broadcast by television stations back into the same area where they originated ("local-into-local") for most subscribers and may retransmit signals that originate in a distant market into a local area ("distant-into-local") under certain circumstances. As a result, some subscribers are eligible to receive both distant-into-local and local-into-local signals. Section 103 would require certain satellite subscribers to choose between receiving distant-into-local and local-into-local signals.

While satellite companies pay royalties for restransmitting distant-into-local signals, they do not pay royalties for retransmitting local-into-local signals. Under section 103, satellite companies would pay slightly fewer royalties because they would be retransmitting distant-into-local signals to a slightly smaller number of subscribers than they would if the current copyright laws were extended.

CBO estimates that enacting section 103 would decrease revenue collections by about $1 million over the 2005–2010 period. In addition, payments to copyright owners would decrease, causing a decrease in direct spending of about $1 million from 2005–2014.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 4518 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 4518 would impose a private-sector mandate as defined in UMRA on satellite companies. CBO estimates that the cost of the mandate would not exceed the annual threshold for private-sector mandates established by UMRA ($120 million in 2004, adjusted annually for inflation).

H.R. 4518 would require satellite companies to submit to television network stations a list of their subscribers that are receiving signals of "significantly viewed" stations. The FCC determines which over-the-air television broadcast stations are considered significantly viewed stations in a particular community. The satellite companies also would be required to submit an updated list monthly.

PREVIOUS CBO ESTIMATES

On July 8, 2004, CBO transmitted a cost estimate for H.R. 4501, the Satellite Home Viewer Extension and Reauthorization Act of 2004, as ordered reported by the House Committee on Energy and Commerce on June 3, 2004. While H.R. 4518 would extend the copyright royalty fees, H.R. 4501 would not. The cost estimates for the bills reflect this difference. Both bills contain provisions that would make similar changes to satellite retransmission of distant and local signals, and the cost estimate for those provisions are also similar.

On July 22, 2004, CBO transmitted a cost estimate for S. 2013, the Satellite Home Viewer Extension Act of 2004, as ordered reported by the Senate Committee on the Judiciary on June 17, 2004. Both S. 2013 and H.R. 4518 would extend the copyright royalty fees, but each would increase the rates in a slightly different manner. Both bills contain provisions that would make changes to satellite retransmission of distant and local signals, but S. 2013 would affect a smaller number of subscribers. The cost estimates for the bills reflect these differences.

The private-sector mandate on satellite companies in H.R. 4518 and S. 2013 are similar. H.R. 4501 includes the same mandate along with additional ones on satellite companies. The total direct costs of mandates contained in each of the bills would fall below the annual threshold for private-sector mandates established in UMRA.

ESTIMATE PREPARED BY:

Federal Costs: Melissa E. Zimmerman (226–2860)
Impact on State, Local, and Tribal Governments: Sarah Puro (225–3220)
Impact on the Private Sector: Jean Talarico (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

H.R. 4518 will extend the distant signal license for 5 years and make other appropriate laws in this area. The Committee believes

that this will foster continued competition in the MVPD market while also ensuring that copyright owners are fairly compensated.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Because H.R. 4518, the "Satellite Home Viewer Extension and Reauthorization (SHVERA) Act of 2004" was reported with an amendment in the nature of a substitute, the following discussion constitutes an explanation of the bill as reported by the Committee.

Section 1 of the bill sets forth the title of the Act, the "Satellite Home Viewer Extension and Reauthorization Act of 2004."

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

Sec. 101. Extension of Authority.

Subsection (a) extends the sunset date for 17 U.S.C. § 119, for an additional 5 years. Similarly, subsection (b) extends the existing grandfather provision of § 119 for recipients of network signals who would not qualify but for the exception provided in SHVIA over the past 5 years.

Sec. 102. Reporting of Subscribers; Significantly Viewed and Other Signals; Technical Amendments.

Section 102 eliminates expired and obsolete provisions from SHVIA and the Satellite Home Viewer Act of 1994, including those that pertain to the PBS Satellite Feed and a transitional television signal strength testing regime that expired in 1996.

The section also permits satellite carriers to retransmit "significantly viewed" signals to subscribers who receive retransmissions of their local signals from their satellite carrier under the § 122 license. "Significantly viewed" signals are television stations that are located in adjacent television markets that are received over-the-air by a significant number of viewers in the local market but are technically considered to be distant signals. The § 111 cable license permits cable operators to retransmit significantly viewed signals to their subscribers royalty-free. Section 102 amends the § 119 license to permit satellite carriers to retransmit these signals royalty-free to create parity between the two licenses. To be eligible to retransmit significantly viewed signals to subscribers in a local market, satellite carriers must provide initial and monthly lists of subscribers to broadcasters whose signals they carry on a significantly viewed basis.

Section 102 also permits the retransmission, subject to payment of applicable copyright royalties, of certain additional television stations on a basis other than local or significantly viewed. These two exceptions are for States with a single commercial full-power commercial station and in certain other limited circumstances.

Sec. 103. Statutory License for Satellite Carriers Outside Local Markets.

Section 103 prescribes the conditions under which grandfathered subscribers and subscribers residing in unserved households may receive network stations under § 119. The section distinguishes between subscribers who live in a local market where retransmission of the local stations are being offered by the satellite carrier and those subscribers who reside in a local market where such service is not currently offered. For a grandfathered subscriber who receives distant network stations on the date of enactment of the bill and resides in a local market where local stations are being offered by the satellite carrier, the subscriber may continue to receive distant network signals if 1) the subscriber elects to retain the distant network signals within 60 days of notification from the satellite carrier of an offer of local service, and 2) the subscriber declines receipt of the local network signals. Once the subscriber elects to receive local signals, the distant network signals may not be provided under § 119. In addition, to continue retransmission of distant network signals to a subscriber who does not receive local signals, the satellite carrier must submit a list to each television network retransmitted that asserts the subscriber is a grandfathered subscriber and eligible to receive what is otherwise impermissible distant network service. If the subscriber did not actually receive service of distant network signals on July 1, 2004, they are no longer considered to be grandfathered and shall not qualify for the receipt of distant network stations as a grandfathered subscriber after that date.

For a subscriber who resides in an unserved household (i.e. is not a grandfathered subscriber) located in a local market where the satellite carrier offers local signals on January 1, 2005, the subscriber may continue to receive distant network signals only if the satellite carrier submits a list to the networks that identifies such subscribers within 60 days of that date. For a subscriber who resides in an unserved household located in a local market where the satellite carrier does not offer local signals on January 1, 2005, the subscriber may 1) continue to receive distant networks signals under § 119 until such time as the subscriber elects local signals from the carrier, or 2) may sign up for service of distant network signals until such time as the local signals are made available and the subscriber elects the local signals.

Finally, persons who reside in a local market where local signals are made available by their satellite carrier, but who have not sought distant network service from their satellite carrier, shall be ineligible to receive such service under § 119.

Section 103 also contains provisions that relate to the royalty fees due satellite carriers under the § 119 license. Unless superseded by private agreements, the section requires the convening of a CARP in 2005 to establish fair market value rates for network stations and superstations. Identical to Congress's action in enacting the SHVIA in 1999, the rates determined by the CARP, and approved by the Librarian of Congress, will again be reduced by 45 percent for network stations and 30 percent for superstations. While the CARP proceeding is pending, the current § 119 royalty rates will be adjusted for changes in the cost of living over the last 5 years, as determined by the Consumer Price Index ("CPI"). Be-

ginning in 2007, the Librarian of Congress will adjust rates annually to account for changes in the cost of living, as determined by the CPI, over the preceding year for the remainder of the license (2007, 2008, and 2009).

Sec. 104. Waivers.

Section 104 creates a waiver process for subscribers who are not eligible to receive distant network signals under the provisions contained in § 103 of the bill, and for subscribers who are not eligible to receive significantly viewed network and superstation signals because their satellite carrier does not offer service of local signals under § 122 of the Copyright Act. A subscriber may seek a waiver through his/her satellite carrier from the local broadcaster. The waiver is considered granted unless the broadcaster acts within 30 days of receipt to reject the request. The § 104 waiver provision does not apply to waivers from the unserved household restriction in § 119, which are governed by § 339(c)(2) of the Communications Act.

Sec. 105. Study.

Section 105 requires the Copyright Office to conduct a study of the § 119 and § 122 licenses for satellite, and the § 111 license for cable, and to make recommendations for improvements to the Committee and the Senate Committee on the Judiciary no later than June 30, 2008. The Office will analyze the differences among the three licenses and consider whether they should be eliminated, changed, or maintained with the goal of harmonizing their operation.

Sec. 106. Effect on Certain Proceedings.

Section 106 clarifies that nothing in the bill is intended to modify any remedy imposed on a party pursuant to litigation brought under § 119 prior to May 1, 2004.

Sec. 107. Expedited Consideration of Voluntary Agreements to Provide Satellite Secondary Transmissions to Local Markets.

Section 107 requires the Department of Justice to respond within 90 days of receipt of a business review letter from two or more satellite carriers that proposes to make or carry out an agreement to provide local-into-local retransmissions under 17 U.S.C. § 122 (j)(2), into a specific local market or markets where no satellite carrier has made available retransmissions under the § 122 license. By ensuring satellite carriers will receive a timely response addressing whether proposed business conduct violates the antitrust laws, § 107 is intended to provide an additional tool to facilitate the availability of local-into-local retransmissions in small and rural television markets. The Committee intends for this authority to be used only for the limited purpose of ensuring timely consideration of agreements that relate solely to the delivery of local signals.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 4 OF THE SATELLITE HOME VIEWER ACT OF 1994

SEC. 4. TERMINATION.

(a) EXPIRATION OF AMENDMENTS.—Section 119 of title 17, United States Code, as amended by section 2 of this Act, ceases to be effective on December 31, [2004] *2009*.

* * * * * * *

SECTION 119 OF TITLE 17, UNITED STATES CODE

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) SUPERSTATIONS [AND PBS SATELLITE FEED].—Subject to the provisions of paragraphs [(3), (4), and (6)] *(5), (6), and (8)* of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a superstation [or by the Public Broadcasting Service satellite feed] shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing. [In the case of the Public Broadcasting Service satellite feed, the statutory license shall be effective until January 1, 2002.]

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs [(3), (4), (5), and (6)] *(5), (6), (7), and (8)* of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge

for such retransmission service to each subscriber receiving the secondary transmission.

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—

(i) IN GENERAL.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions of the signals of no more than two network stations in a single day for each television network to persons who reside in unserved households. *The limitation in this clause shall not apply to secondary transmissions under paragraph (3).*

* * * * * * *

[(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit xto the network that owns or is affiliated with the network station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.]

(C) EXCEPTIONS.—

(i) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the signal of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 CFR 76.51).

(ii) CERTAIN ADDITIONAL STATIONS.—The statutory license provided for in subparagraph (A) shall apply to the secondary transmission, by a satellite carrier to subscribers in no more than two counties in a State that are in local market principally comprised of counties in another State, of the signals of any network station located in the capital of the State in which such

counties are located, if the total number of television households in the two counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

(D) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

(I) a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households; and

(II) a separate list, aggregated by designated market area (as defined in section 122(j)) (by name and street address, including county and zip code), which shall indicate those subscribers being served pursuant to subsection (a)(3), relating to significantly viewed stations.

(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), on the 15th of each month, the satellite carrier shall submit to the network—

(I) a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the last submission under clause (i); and

(II) a separate list, aggregated by designated market area (by name and street address, including county and zip code), identifying those subscribers whose service pursuant to subsection (a)(3), relating to significantly viewed stations, has been added or dropped.

(iii) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

(iv) APPLICABILITY.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the

signal of a network station or a superstation to a subscriber who resides outside the station's local market (as defined in section 122(j)) but within a community in which the signal of that station was determined by the Federal Communications Commission, on or before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, to be significantly viewed in accordance with the provisions of section 76.54 of title 47, Code of Federal Regulations, as in effect on such date of enactment.

(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122.

(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

(A) RULES FOR SUBSCRIBERS UNDER SUBSECTION (e).—

(i) FOR THOSE RECEIVING DISTANT SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station solely by reason of subsection (e) (in this subparagraph referred to as a "distant signal"), and who is receiving the distant signal of a network station on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the following shall apply:

(I) In a case in which the signal of a local network station affiliated with the same television network is made available by that satellite carrier to the subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network—

(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h) of the Communications Act of 1934, the subscriber elects to retain the distant signal; but

(bb) only until such time as the subscriber elects to receive such local signal.

(II) Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply with respect to any subscriber who is eligible to receive the distant signal of a television network station solely by reason of subsection (e) and to whom subclause (I) applies unless the satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

(aa) identifies that subscriber by name and address (street or RFD number, city,

State, and zip code) and specifies the distant signals received by the subscriber; and

(bb) states, to the best of the satellite carrier's knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant signals.

(ii) FOR THOSE NOT RECEIVING DISTANT SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant signal of a network station solely by reason of subsection (e) and who did not receive a distant signal of a station affiliated with the same network on July 1, 2004, the statutory license under paragraph (2) shall not apply to secondary transmissions by that satellite carrier to that subscriber of that distant signal.

(B) RULES FOR OTHER SUBSCRIBERS.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as a "distant signal"), other than subscribers to whom subparagraph (A) applies, the following shall apply:

(i) In a case in which the signal of a local network station affiliated with the same television network is made available by that satellite carrier, on January 1, 2005, to the subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network if the subscriber's satellite carrier, within 60 days after such date, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that identifies that subscriber by name and address (street or RFD number, city, State, and zip code) and specifies the distant signals received by the subscriber.

(ii) In a case in which the signal of a local network station affiliated with the same television network is not made available by that satellite carrier, on January 1, 2005, to a subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant signal of a station affiliated with the same network to any person—

(I) who is a subscriber of that satellite carrier on such date, or

(II) who becomes a subscriber of that satellite carrier after such date but before the local signal is available,

but only until such time as the subscriber elects to receive the local signal from that satellite carrier.

(C) FUTURE APPLICABILITY.—The statutory license under paragraph (2) shall not apply to the secondary trans-

mission by a satellite carrier of a primary transmission of a network station to a subscriber who—

(i) does not receive such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

(ii) resides in a local market where the satellite carrier makes available a network station affiliated with the same television network pursuant to the statutory license under section 122.

(D) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to unserved households included under paragraph (12).

(E) AVAILABLE DEFINED.—For purposes of this paragraph, a local signal has been made available by a satellite carrier to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zipcode as that subscriber or person.

[(3)**]** *(5)* NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

[(4)**]** *(6)* WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a superstation or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

[(5)**]** *(7)* VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber **[**who does not reside in an unserved household**]** *who is not eligible to receive the transmission under this section* is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

(i) * * *

* * * * * * *

(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers [who do not reside in unserved households] *who are not eligible to receive the transmission under this section*, then in addition to the remedies set forth in subparagraph (A)—

(i) * * *

* * * * * * *

(D) BURDEN OF PROOF.—In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station [is for private home viewing to an unserved household] *is to a subscriber who is eligible to receive the transmission under this section*.

* * * * * * *

[(6)] *(8)* DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a superstation or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

[(7)] *(9)* GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

[(8) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—

[(A) IN GENERAL.—Subject to subparagraph (C), upon a challenge by a network station regarding whether a subscriber is an unserved household within the predicted Grade B Contour of the station, the satellite carrier shall, within 60 days after the receipt of the challenge—

[(i) terminate service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

[(ii) conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the network station of the satellite carrier's intent to conduct the measurement.

[(B) EFFECT OF MEASUREMENT.—If the satellite carrier conducts a signal intensity measurement under subparagraph (A) and the measurement indicates that—

[(i) the household is not an unserved household, the satellite carrier shall, within 60 days after the measurement is conducted, terminate the service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

[(ii) the household is an unserved household, the station challenging the service shall reimburse the satellite carrier for the costs of the signal measurement within 60 days after receipt of the measurement results and a statement of the costs of the measurement.

[(C) LIMITATION ON MEASUREMENTS.—(i) Notwithstanding subparagraph (A), a satellite carrier may not be required to conduct signal intensity measurements during any calendar year in excess of 5 percent of the number of subscribers within the network station's local market that have subscribed to the service as of the effective date of the Satellite Home Viewer Act of 1994.

[(ii) If a network station challenges whether a subscriber is an unserved household in excess of 5 percent of the subscribers within the network station's local market within a calendar year, subparagraph (A) shall not apply to challenges in excess of such 5 percent, but the station may conduct its own signal intensity measurement of the subscriber's household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement. If such measurement indicates that the household is not an unserved household, the carrier shall, within 60 days after receipt of the measurement, terminate service to the household of the signal that is the subject of the challenge and within 30 days thereafter notify the network station that made the challenge that service has been terminated. The carrier shall also, within 60 days after receipt of the measurement and a statement of the costs of the measurement, reimburse the network station for the cost it incurred in conducting the measurement.

[(D) OUTSIDE THE PREDICTED GRADE B CONTOUR.—(i) If a network station challenges whether a subscriber is an unserved household outside the predicted Grade B Contour of the station, the station may conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement.

[(ii) If the network station conducts a signal intensity measurement under clause (i) and the measurement indicates that—

[(I) the household is not an unserved household, the station shall forward the results to the satellite carrier who shall, within 60 days after receipt of the measurement, terminate the service to the household of the signal that is the subject of the challenge, and shall reimburse the station for the costs of the meas-

urement within 60 days after receipt of the measurement results and a statement of such costs; or

[(II) the household is an unserved household, the station shall pay the costs of the measurement.]

[(9)] *(10)* LOSER PAYS FOR SIGNAL INTENSITY MEASUREMENT; RECOVERY OF MEASUREMENT COSTS IN A CIVIL ACTION.—In any civil action filed relating to the eligibility of subscribing households as unserved households—

(A) * * *

* * * * * * *

[(10)] *(11)* INABILITY TO CONDUCT MEASUREMENT.—If a network station makes a reasonable attempt to conduct a site measurement of its signal at a subscriber's household and is denied access for the purpose of conducting the measurement, and is otherwise unable to conduct a measurement, the satellite carrier shall within 60 days notice thereof, terminate service of the station's network to that household.

[(11)] *(12)* SERVICE TO RECREATIONAL VEHICLES AND COMMERCIAL TRUCKS.—

(A) * * *

* * * * * * *

[(12)] *(13)* STATUTORY LICENSE CONTINGENT ON COMPLIANCE WITH FCC RULES AND REMEDIAL STEPS.—Notwithstanding any other provision of this section, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a broadcast station licensed by the Federal Communications Commission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if, at the time of such transmission, the satellite carrier is not in compliance with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast station signals.

(14) WAIVERS.—A subscriber who is denied the secondary transmission of a network station under paragraph (4)(C), or is denied the secondary transmission of a network station or a superstation under paragraph (3)(B), may request a waiver from such denial by submitting a request, through the subscriber's satellite carrier, to the network station or superstation in the local market where the subscriber is located. The network station or superstation shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station or superstation fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station or superstation, as the case may be, shall be deemed to agree to the waiver request. Unless specifically stated by the network station or superstation, a waiver under section 339(c)(2) of the Communications Act shall not constitute a waiver for purposes of this paragraph.

(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to

statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) * * *

[(B) a royalty fee for that 6-month period, computed by—

[(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations;

[(ii) multiplying the number of subscribers receiving each secondary transmission of a network station or the Public Broadcasting Service satellite feed during each calendar month by 6 cents; and

[(iii) adding together the totals computed under clauses (i) and (ii).]

(B) a royalty fee for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of each superstation or network station during each calendar month by the appropriate rate in effect under this section.

Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a subscriber who resides outside the station's local market (as defined in section 122(j)(2)) but within a community in which the signal of that station was determined by the Federal Communications Commission, on or before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, to be significantly viewed in accordance with the provisions of section 76.54 of title 47, Code of Federal Regulations, as in effect on such date of enactment.

* * * * * * *

(c) ADJUSTMENT OF ROYALTY FEES.—

[(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective unless a royalty fee is established under paragraph (2) or (3) of this subsection.

[(2) FEE SET BY VOLUNTARY NEGOTIATION.—

[(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1996, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

[(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Librarian of Congress shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

[(C) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

[(D) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1999, or in accordance with the terms of the agreement, whichever is later.]

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The appropriate rate for purposes of determining the royalty fee under subsection (b)(1)(B) shall be the appropriate rate set forth in part 258 of title 37, Code of Federal Regulations, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, as modified under this subsection.

[(3)] *(2)* FEE SET BY COMPULSORY ARBITRATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before January 1, [1997] *2005*, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers [who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2)]. Such arbitration proceeding shall be conducted under chapter 8.

* * * * * * *

(C) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

(i) * * *

* * * * * * *

shall become effective [as provided in section 802(g) or July 1, 1997, whichever is later] *on January 1, 2006*.

[(D) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in subparagraph (C) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

[(4) REDUCTION.—

[(A) SUPERSTATION.—The rate of the royalty fee in effect on January 1, 1998, payable in each case under subsection (b)(1)(B)(i) shall be reduced by 30 percent.

[(B) NETWORK AND PUBLIC BROADCASTING SATELLITE FEED.—The rate of the royalty fee in effect on January 1, 1998, payable under subsection (b)(1)(B)(ii) shall be reduced by 45 percent.

[(5) PUBLIC BROADCASTING SERVICE AS AGENT.—For purposes of section 802, with respect to royalty fees paid by satellite carriers for retransmitting the Public Broadcasting Service satellite feed, the Public Broadcasting Service shall be the agent for all public television copyright claimants and all Public Broadcasting Service member stations.]

(3) COST OF LIVING ADJUSTMENT.—The royalty rates set forth in subsection (b)(1)(B), as adjusted under paragraph (2) of this subsection, shall be adjusted by the Librarian of Congress—

(A) on January 1, 2005, to reflect any changes occurring during the period beginning on January 1, 2000, and ending on November 30, 2004, in the cost of living as determined by the most recent Consumer Price Index (for all consumers and items) published by the Secretary of Labor during that period; and

(B) on January 1, 2007, and on January 1 of each year thereafter, to reflect any changes occurring during the preceding 12 months in the cost of living as determined by the most recent Consumer Price Index so published.

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

(A) for superstations shall be reduced by 30 percent; and

(B) for network stations shall be reduced by 45 percent.

(d) DEFINITIONS.—As used in this section—

(1) * * *

* * * * * * *

[(9) SUPERSTATION.—The term "superstation"—

[(A) means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier; and

[(B) except for purposes of computing the royalty fee, includes the Public Broadcasting Service satellite feed.]

(9) SUPERSTATION.—The term "superstation" means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

(10) UNSERVED HOUSEHOLD.—The term "unserved household", with respect to a particular television network, means a household that—

(A) * * *

* * * * * * *

(D) is a subscriber to whom subsection [(a)(11)] *(a)(12)* applies; or

* * * * * * *

[(12) PUBLIC BROADCASTING SERVICE SATELLITE FEED.—The term "Public Broadcasting Service satellite feed" means the national satellite feed distributed and designated for purposes of this section by the Public Broadcasting Service consisting of educational and informational programming intended for private home viewing, to which the Public Broadcasting Service holds national terrestrial broadcast rights.]

(e) MORATORIUM ON COPYRIGHT LIABILITY.—Until December 31, [2004] *2009*, a subscriber who does not receive a signal of Grade A intensity (as defined in the regulations of the Federal Communications Commission under section 73.683(a) of title 47 of the Code of Federal Regulations, as in effect on January 1, 1999, or predicted by the Federal Communications Commission using the Individual Location Longley-Rice methodology described by the Federal Communications Commission in Docket No. 98–201) of a local network television broadcast station shall remain eligible to receive signals of network stations affiliated with the same network, if that subscriber had satellite service of such network signal terminated after July 11, 1998, and before October 31, 1999, as required by this section, or received such service on October 31, 1999.

(f) EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.—

(1) IN GENERAL.—In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

(2) DEFINITION.—For purposes of this subsection, the term "antitrust laws"—

(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in paragraph (1).

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 7, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the committee] presiding.

Chairman SENSENBRENNER. The committee will be in order.

[Intervening business.]

Chairman SENSENBRENNER. Now, pursuant to notice, I call up the bill H.R. 4518, the "Satellite Home Viewer Extension and Reauthorization Act of 2004", for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 4518, follows:]

I

108TH CONGRESS
2D SESSION

H. R. 4518

To extend the statutory license for secondary transmissions under section 119 of title 17, United States Code.

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2004

Mr. SMITH of Texas (for himself, Mr. CONYERS, and Mr. BERMAN) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To extend the statutory license for secondary transmissions under section 119 of title 17, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Satellite Home Viewer Extension and Reauthorization Act of 2004''.

(b) TABLE OF CONTENTS.—

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

SEC. 101. EXTENSION OF AUTHORITY.

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

(b) EXTENSION FOR CERTAIN SUBSCRIBERS.—Section 119(e) of title 17, United States Code, is amended by striking ''December 31, 2004'' and inserting ''December 31, 2009''.

SEC. 102. REPORTING OF SUBSCRIBERS; SIGNIFICANTLY VIEWED AND OTHER SIGNALS; TECHNICAL AMENDMENTS.

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

(1) in paragraph (1)—

(A) in the paragraph heading, by striking ''AND PBS SATELLITE FEED'';

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

(C) in the first sentence, by striking ''or by the Public Broadcasting Service satellite feed''; and

(D) by striking the second sentence;

(2) in paragraph (2)—

(A) in subparagraph (A), by striking ''(3), (4), (5), and (6)'' and inserting ''(5), (6), (7), and (8)''; and

(B) by amending subparagraph (C) to read as follows:

''(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

''(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

''(I) a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households; and

''(II) a separate list, aggregated by designated market area (as defined in section 122(j)) (by name and street address, including county and zip code), which shall indicate those subscribers being served pursuant to subsection (a)(3), relating to significantly viewed stations.

''(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), on the 15th of each month, the satellite carrier shall submit to the network—

''(I) a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the last submission under clause (i); and

''(II) a separate list, aggregated by designated market area (by name and street address, including county and zip code), identifying those subscribers whose service pursuant to subsection (a)(3), relating to signifi-

cantly viewed stations, has been added or dropped.

''(iii) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

''(iv) APPLICABILITY.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.'';

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

''(D) STATES WITH SINGLE COMMERCIAL FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1,

1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the signal of that station to any subscriber in a community that is located within that State and that is not within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (47 CFR 76.51).'';

(4) by striking paragraph (8);

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

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

(7) by inserting after paragraph (2) the following:

''(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

''(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the signal of a network station or a superstation to a subscriber who resides outside the sta-

tion's local market (as defined in section 122(j)) but within a community in which the signal of that station is determined to be significantly viewed under section 340 of the Communications Act of 1934.

''(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122.''; and

(8) in paragraph (2)(B)(i), by adding at the end the following new sentence: ''The limitation in this clause shall not apply to secondary transmissions under paragraph (3).''.

SEC. 103. STATUTORY LICENSE FOR SATELLITE CARRIERS OUTSIDE LOCAL MARKETS.

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

(1) Subsection (a) is amended by inserting after paragraph (3), as added by section 102 of this Act, the following:

''(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

''(A) RULES FOR SUBSCRIBERS UNDER SUBSECTION (e).—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station solely by reason of subsection (e) (in this subparagraph referred to as a 'distant signal'), the following shall apply:

''(i) In a case in which the signal of a local network station affiliated with the same television network is made available by that satellite carrier to the subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant signal of such network station to that subscriber—

''(I) if, within 60 days after receiving the notice of the satellite carrier under section 338(h) of the Communications Act of 1934, the subscriber elects to retain the distant signal; but

''(II) only until such time as the subscriber elects to receive such local signal.

''(ii) Notwithstanding clause (i), the statutory license under paragraph (2) shall not apply to any subscriber who is eligible to receive the signal of a network station solely by reason of subsection (e) unless the subscriber's satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

''(I) identifies that subscriber by name and address (street or RFD number, city, State, and zip code) and specifies the distant signals received by the subscriber; and

''(II) states, to the best of the satellite carrier's knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant signals.

''(B) RULES FOR OTHER SUBSCRIBERS.—In the case of a subscriber of a satellite carrier

who is eligible to receive the signal of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as a 'distant signal'), other than subscribers to whom subparagraph (A) applies, the following shall apply:

''(i) In a case in which the signal of a local network station affiliated with the same television network is made available by that satellite carrier, on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, to the subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant signal of such network station to that subscriber—

''(I)(aa) if, on such date of enactment, the subscriber is receiving such distant signal and is also receiving such local signal, and

''(bb) the subscriber's satellite carrier, within 60 days after such date

of enactment, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that identifies that subscriber by name and address (street or RFD number, city, State, and zip code) and specifies the distant signals received by the subscriber; or

''(II)(aa) if, on such date of enactment, the subscriber is receiving such distant signal and is not receiving such local signal; but

''(bb) only until such time as the subscriber elects to receive such local signal.

''(ii) In a case in which the signal of a local network station affiliated with the same television network is not made available by that satellite carrier, on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, to a subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by

that satellite carrier of the distant signal of such network station to any person—

''(I) who is subscriber of that satellite carrier on such date of enactment, or

''(II) who becomes a subscriber of that satellite carrier after such date but before the local signal is available,

but only until such time as the subscriber elects to receive the local signal from that satellite carrier.

''(C) FUTURE APPLICABILITY.—The statutory license under paragraph (2) shall not apply to secondary transmissions by a satellite carrier of a primary transmission of a network station to a subscriber in a location to which the signal of a local network station affiliated with the same television network was made available by that satellite carrier, before that person became a subscriber to that satellite carrier, pursuant to the statutory license under section 122.

''(D) NULLIFICATION OF EXISTING WAIVERS.—In the case of any subscriber to whom subparagraph (B)(i)(II) or (B)(ii) applies, at such time as the subscriber elects to receive the

local signal of a network station, any waiver by that network station under section 339(c)(2) of the Communications Act of 1934 shall cease to be effective with respect to that subscriber.

''(E) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to unserved households included under subsection (a)(12). ''.

(2) Subsection (b)(1) is amended by striking subparagraph (B) and inserting the following:

''(B) a royalty fee for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of each superstation or network station during each calendar month by the appropriate rate in effect under this section.''.

(3) Subsection (b)(1) is further amended by adding at the end the following flush sentence:

''Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a

subscriber who resides outside the station's local market (as defined in section 122(j)(2)) but within a community in which the signal of that station is determined to be significantly viewed under section 340 of the Communications Act of 1934.''.

(4) Subsection (c) is amended—

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

''(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The appropriate rate for purposes of determining the royalty fee under subsection (b)(1)(B) shall be the appropriate rate set forth in part 258 of title 37, Code of Federal Regulations, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, as modified under this subsection.'';

(B) by striking paragraph (2);

(C) in paragraph (3)—

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

(ii) in subparagraph (A)—

(I) by striking ''January 1, 1997,'' and inserting ''January 1, 2005,''; and

(II) by striking ''who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2)'';

(iii) in subparagraph (C), by striking ''as provided'' and all that follows through ''later'' and inserting ''January 1, 2006''; and

(iv) by striking subparagraph (D); and

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

''(3) COST OF LIVING ADJUSTMENT.—The royalty rates set forth in subsection (b)(1)(B), as adjusted under paragraph (2) of this subsection, shall be adjusted by the Librarian of Congress—

''(A) on January 1, 2005, to reflect any changes occurring during the period beginning on January 1, 2000, and ending on November 30, 2004, in the cost of living as determined by the most recent Consumer Price Index (for all consumers and items) published by the Secretary of Labor during that period; and

''(B) on January 1, 2007, and on January 1 of each year thereafter, to reflect any changes

occurring during the preceding 12 months in the cost of living as determined by the most recent Consumer Price Index so published.

''(4) REDUCTIONS.—The rate of the royalty fee determined under paragraph (2)—

''(A) for superstations shall be reduced by 30 percent; and

''(B) for network stations shall be reduced by 45 percent.''.

(5) Subsection (d) is amended—

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

''(9) SUPERSTATION.—The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.'';

(B) in paragraph (10)(D), by striking ''(a)(11)'' and inserting ''(a)(12)''; and

(C) by striking paragraph (12).

SEC. 104. STUDY.

No later than June 30, 2008, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register's findings and rec-

ommendations on the operation and revision of the statutory licenses under sections 111, 119, and 122 of title 17, United States Code. The report should include, but not be limited to, the following:

(1) A comparison of the royalties paid by licensees under such sections, including historical rates of increases in these royalties, a comparison between the royalties under each such section and the prices paid in the marketplace for comparable programming.

(2) An analysis of the differences in the terms and conditions of the licenses under such sections, an analysis of whether these differences are required or justified by historical, technological, or regulatory differences that affect the satellite and cable industries, and an analysis of whether either the cable or satellite industry is placed in a competitive disadvantage due to these terms and conditions.

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

(4) An analysis of the correlation, if any, between the royalties, or lack thereof, under such sections and the fees charged to cable and satellite subscribers, addressing whether cable and satellite com-

panies have passed to subscribers any savings realized as a result of the royalty structure and amounts under such sections.

SEC. 105. EFFECT ON CERTAIN PROCEEDINGS.

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

○

Chairman SENSENBRENNER. The chair recognizes the gentleman from Texas, Mr. Smith, the Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property to explain the bill.

Mr. SMITH. Mr. Chairman, 2 months ago, the Subcommittee on Courts, the Internet, and Intellectual Property reported favorably a Committee print of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

In early June, I introduced H.R. 4518, which contained the core provisions of the Committee print, and I introduced it, along with Ranking Member Conyers and Subcommittee Ranking Member Berman. Over the past several weeks, we have worked together to make changes that are largely technical. At the appropriate time, I will offer an amendment in the nature of a substitute that incorporates these changes.

Mr. Chairman, our goal was a bill that serves not the narrow interests of one constituency, but the broad public interest. The bill before us balances the interests of television viewers, satellite and cable television providers, broadcasters and copyright owners. The urgency is the year-end expiration of a distant-signal statutory copyright license that permits the satellite carriers to retransmit programming to subscribers in unserved households.

The specific goal of the distant-signal license is to allow for a lifeline network television service to those homes beyond the reach of their local television stations. The principal beneficiaries of the license are DirecTV and EchoStar's DISH Network, which together provide TV programming to more than 22 million households.

The distant-signal license permits these companies to retransmit programming to otherwise unserved subscribers at fair market value without having to enter into expensive and time-consuming negotiations with individual content owners. The last time the rates were adjusted for content owners was 1999.

Over the last year, the two dominant satellite companies have combined to sign up more than 8 in 10 new television subscribers, and together they have grossed nearly $14 billion in revenue. They provide formidable competition to the cable industry, and competition provides consumers with more choices, improved services, higher quality and greater technological innovation.

However, there is also no denying the fact that the satellite companies who rely on the distant-signal license have benefitted tremendously from a royalty rate that has been frozen for nearly 5 years. The bill's royalty provision includes the first Cost of Living Adjustment in 5 years, provides for a new Copyright Arbitration Royalty Panel—called CARP—to determine the fair market value of programming and institutes annual Cost of Living Adjustments in 2007.

Unfortunately, one of the satellite companies has misled the public by claiming that Congress is approving an increase in subscriber rates. Let's put the facts regarding EchoStar's royalty payments in context.

In 2003, the company grossed $5.7 billion, while paying less than $26 million or less than one-half of 1 percent to copyright owners. Last year, three executives at the company cashed out stock options that together exceeded EchoStar's total payment to all content owners under the license. I cannot agree with their position

that content owners should be denied a Cost of Living Adjustment in 2005 which reflects inflation over the last 5 years.

But this legislation, Mr. Chairman, is not just a royalty bill. It will allow satellite companies to expand subscriber choice and give them an incentive to make local signals available to all Americans.

Finally, this bill will require the Copyright Office to conduct a comprehensive study of the three licenses—111, 119 and 122—that affect the cable and satellite industries and to make recommendations on whether to harmonize those licenses.

This bill, and the amendment in the nature of a substitute, strike an appropriate balance between the interests of intellectual property owners and the interests of the satellite companies who use their copyrighted programming.

I urge my colleagues to support the bill and the amendment and, Mr. Chairman, I yield back the balance of my time.

[Intervening business.]

Chairman SENSENBRENNER. Getting back to the Satellite Home Viewer Act reauthorization, the gentleman from Michigan?

Mr. CONYERS. Thank you, Mr. Chairman.

Our Ranking Member, Mr. Berman, hasn't arrived yet, but we are in agreement on this side about the bill. The gentleman from Virginia, Mr. Boucher, has a comment about antitrust that I'm sure that we will approve of. Former Chairman Hyde has left us breathless, as usual, about his disposition on this matter.

And before I yield to Mr. Berman, I wanted to observe that the satellite companies feel better—exactly, specifically, DirecTV and EchoStar—about the gray areas in terms of what satellite service customers can get when local-to-local satellite television is available, and the copyright owners, with respect to royalty rates, will receive an adjustment that I think has been worked out very fairly by all of the staff members, and the Committee, and particularly its ranking Subcommittee Member, Mr. Berman, to whom I yield the remainder of the time.

Mr. BERMAN. Thank you very much, Mr. Chairman. I appreciate—and, Mr. Conyers, I appreciate your yielding to me.

H.R. 4518, I'm pleased to cosponsor. While the bill doesn't do everything I might have wanted, I think it represents a good-faith compromise, which has been meticulously hammered out among interested parties, and I would ask this Committee and my colleagues on the Committee to report it favorably.

I think the bill has been summarized by the Chairman of the Subcommittee. Basically, H.R. 4518 reauthorizes section 119 of the Copyright Act. It should be noted that the legislation is of enormous benefit to satellite TV companies. In essence, it provides them with a valuable Government subsidy. It allows them to use copyrighted broadcast programming without the permission of the copyright owners. It guarantees that satellite TV companies will pay a Government-set rate which is far below the fair market rate.

The Government subsidy embodied in section 119 was originally justified as necessary to make satellite television an effective competitor to cable television. With 22 percent of the pay TV market, you could say that satellite television has become a strong and credible competitor to cable. But while the policy rationales beyond section 119 Government subsidy have weakened, the companies' desire for its extension have remained remarkably steady.

If we are going to reauthorize this section 119 license, I think this bill represents a reasonable approach for doing so, and that's why I support it.

I would ask, Mr. Chairman, that the entire statement be included here. And while I would have preferred to talk about it privately, I want to throw out the idea that since we have unanimously, in this body, passed CARP reform, since key parts of this bill are geared on a CARP process, I would like to at least throw out the idea of placing our CARP reform bill already passed by this House into this bill, in this Committee, to make sure that were the parties not to negotiate a rate and were this to go to a CARP process, it would be the new reformed, more efficient and more effective CARP process that we spent a great deal of time working on and passing earlier this year.

And, with that, I yield back.

[The prepared statement of Mr. Berman follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD L. BERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND RANKING MEMBER, SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

Mr. Chairman,

I am pleased to join you in cosponsoring H.R. 4518. While this bill does not contain all that I had hoped, it represents a good-faith compromise meticulously hammered out among interested parties. Thus, I ask my Judiciary colleagues to report it favorably.

The Chairman of the Subcommittee has admirably summarized the purpose and effect of H.R. 4518. As he noted, H.R. 4518 reauthorizes Section 119 of the Copyright Act. In doing so, it enables satellite TV companies to retransmit distant superstation and network signals to subscribers who cannot obtain those signals over the air.

This legislation is of enormous benefit to satellite TV companies. In essence, it provides them with a valuable government subsidy. It allows them to use copyrighted broadcast programming without the permission of the copyright owners. It also guarantees that satellite TV companies will pay a government-set rate far below the fair market rate.

The government subsidy embodied in Section 119 was originally justified as necessary to make satellite television an effective competitor to cable television. With 22% of the pay TV market, you could say that satellite television has become a strong and credible competitor to cable. But while the policy rationales behind Section 119 government subsidy have weakened, the satellite companies' desire for its extension has remained remarkably steady.

If Section 119 reauthorization must occur, H.R. 4518 represents a reasonable approach for doing so.

As did the 1994 and 1999 reauthorizations of the Section 119 license, H.R. 4518 addresses the royalty fees that DBS providers will pay for the right to retransmit distant signals under the Section 119 license. While these fee provisions explicitly deny fair compensation to copyright owners, they represent a carefully-crafted compromise, and for that reason I will support them.

Specifically, H.R. 4518 establishes a process for determining royalty rates that closely mirrors the approach embodied in the Satellite Home Viewer Improvement Act of 1999 (SHVIA). The bill directs that a Copyright Arbitration Royalty Panel, or CARP, establish royalty fees according to the same "fair market" standard utilized by previous CARPs. As was the case in 1999, the "fair market" rate established by the CARP will be reduced by 30% for superstation signals, and 45% for network signals. Thus, H.R. 4518 ensures that satellite companies will pay royalties that represent a huge discount to marketplace rates.

While this approach is very similar to what we did in 1999, several differences do exist.

Regardless of when H.R. 4518 is enacted, a CARP will not be able to establish a new rate before the current rate expires on December 31, 2004. In order to hasten establishment of a new rate by a CARP, the legislation eschews an official, voluntary negotiating period prior to the CARP, and directs that the CARP be concluded by December 31, 2005. This means that the new royalty rates cover the years 2006 through 2009. It also means, in effect, that the months between now and en-

actment of this legislation become the voluntary negotiating period for licensors and licensees.

Because the CARP won't be completed until December 31, 2005, the Committee Print has to set forth a rate that will be in effect during 2005. The language directs that this "interim" royalty rate will be the prior, statutorily-reduced royalty rate adjusted for the cumulative change in the Consumer Price Index (CPI) since 2000.

H.R. 4518 also provides that the rates payable in 2007, 2008, and 2009 shall be adjusted to reflect changes in the CPI over the preceding 12 months. These annual CPI adjustments ensure that, if Congress chooses to reauthorize Section 119 yet again, there will be no need for a 5 year CPI adjustment in 2010, and thus that rates will adjust more gradually over time.

Because the CARP reform bill unanimously passed by the House earlier this year has yet to become law, it has been pointed out that the old, flawed CARP process may be used to establish the new royalty rates under Section 119. I think this is a legitimate concern, and understand the Senate may address this concern by combining CARP reform with the satellite bill. I would support such an outcome.

I yield back the balance of my time.

Chairman SENSENBRENNER. Does the gentleman from Michigan yield back his time?

Mr. CONYERS. Yes, sir, I do.

Chairman SENSENBRENNER. The chair recognizes—without objection, all Members' opening statements will be placed in the record at this point.

[The prepared statement of Mrs. Blackburn follows:]

PREPARED STATEMENT OF THE HONORABLE MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. Chairman, I want to thank you, Chairman Smith and your staff for working with me as we seek to reauthorize the "Satellite Home Viewer Extension and Reauthorization Act of 2004."

The laws that govern who can and cannot receive certain satellite signals are intricate and they have many nuances. I am sure that my office is not the only one with a unique story.

For constituents of mine who live in Henderson County, TN, however, the story is not pleasant. Folks who reside in rural Henderson County cannot receive stations over the air, and they live in a Designated Market Area, the Jackson DMA, that has only one network affiliate, an ABC station.

Since their DMA is "unserved" by NBC, CBS and Fox, the law permits satellite carriers to deliver distant network signals. Unfortunately, DirecTV and EchoStar have chosen to deliver the distant signals from Denver, Atlanta and New York stations rather than stations in Nashville or Memphis. As a result, my constituents are forced to watch the Atlanta Falcons and the Colorado Buffaloes rather then the Tennessee Titans and Volunteers. On a more serious note, they are also deprived of local news, weather and public safety information relevant to their lives and communities.

One of my constituents called me and said, "My buddy has a lake house over in Decatur County and just uses that box in his house in Henderson County and gets the local signals just fine. I want to play by the rules but I want to see the Volunteers and the Titans."

We should be working to help those people that play by the rules. The solution should be fairly simple. Since nothing in the law appears to prohibit DirecTV and EchoStar from delivering an in-state distant signal to unserved subscribers in Henderson County, I contacted representatives of both companies to ask that they replace the Atlanta and Denver stations with in-state signals. After considering my request, DirecTV officials committed to me that they will begin to do so as soon as they start offering local-into-local service in the Jackson DMA. Unfortunately, EchoStar, which owns the DISH Network, has yet to make a similar commitment. It is my hope that EchoStar will follow DirecTV's example and agree to do the same.

Chairman SENSENBRENNER. The chair now recognizes the gentleman from Texas for purposes of offering an amendment in the nature of a substitute.

Mr. SMITH. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment in the nature of a substitute to H.R. 4518, offered by Mr. Smith of Texas.

Chairman SENSENBRENNER. Without objection, the amendment in the nature of a substitute is considered as read.

[The amendment follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 4518

OFFERED BY M__. _____

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Satellite Home Viewer Extension and Reauthorization Act of 2004''.

(b) TABLE OF CONTENTS.—

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

SEC. 101. EXTENSION OF AUTHORITY.

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

(b) EXTENSION FOR CERTAIN SUBSCRIBERS.—Section 119(e) of title 17, United States Code, is amended by striking ''December 31, 2004'' and inserting ''December 31, 2009''.

SEC. 102. REPORTING OF SUBSCRIBERS; SIGNIFICANTLY VIEWED AND OTHER SIGNALS; TECHNICAL AMENDMENTS.

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

(1) in paragraph (1)—

(A) in the paragraph heading, by striking ''AND PBS SATELLITE FEED'';

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

(C) in the first sentence, by striking ''or by the Public Broadcasting Service satellite feed''; and

(D) by striking the second sentence;

(2) in paragraph (2)—

(A) in subparagraph (A), by striking ''(3), (4), (5), and (6)'' and inserting ''(5), (6), (7), and (8)''; and

(B) by striking subparagraph (C) and insert the following:

''(C) EXCEPTIONS.—

"(i) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the signal of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 CFR 76.51).

"(ii) CERTAIN ADDITIONAL STATIONS.—The statutory license provided for in subparagraph (A) shall apply to the secondary transmission, by a satellite carrier to subscribers in no more than two counties in a State that are in local market principally comprised of counties in another State, of the signals of any network station located in the capital of the State in which such counties are located, if the total number of television households in

the two counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

''(D) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

''(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

''(I) a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households; and

''(II) a separate list, aggregated by designated market area (as defined in section 122(j)) (by name and street address, including county and zip code), which shall indicate those sub-

scribers being served pursuant to subsection (a)(3), relating to significantly viewed stations.

''(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), on the 15th of each month, the satellite carrier shall submit to the network—

''(I) a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the last submission under clause (i); and

''(II) a separate list, aggregated by designated market area (by name and street address, including county and zip code), identifying those subscribers whose service pursuant to subsection (a)(3), relating to significantly viewed stations, has been added or dropped.

''(iii) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of

monitoring compliance by the satellite carrier with this subsection.

''(iv) APPLICABILITY.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.'';

(3) by striking paragraph (8);

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

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

(6) by inserting after paragraph (2) the following:

''(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

''(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and

(2) shall apply to the secondary transmission of the signal of a network station or a superstation to a subscriber who resides outside the station's local market (as defined in section 122(j)) but within a community in which the signal of that station was determined by the Federal Communications Commission, on or before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, to be significantly viewed in accordance with the provisions of section 76.54 of title 47, Code of Federal Regulations, as in effect on such date of enactment.

''(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122.''; and

(7) in paragraph (2)(B)(i), by adding at the end the following new sentence: ''The limitation in this clause shall not apply to secondary transmissions under paragraph (3).''.

SEC. 103. STATUTORY LICENSE FOR SATELLITE CARRIERS OUTSIDE LOCAL MARKETS.

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

(1) Subsection (a) is amended by inserting after paragraph (3), as added by section 102 of this Act, the following:

''(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

''(A) RULES FOR SUBSCRIBERS UNDER SUBSECTION (e).—

''(i) FOR THOSE RECEIVING DISTANT SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station solely by reason of subsection (e) (in this subparagraph referred to as a 'distant signal'), and who is receiving the distant signal of a network station on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the following shall apply:

''(I) In a case in which the signal of a local network station affiliated with the same television network is made available by that satellite carrier

to the subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network—

"(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h) of the Communications Act of 1934, the subscriber elects to retain the distant signal; but

"(bb) only until such time as the subscriber elects to receive such local signal.

"(II) Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply with respect to any subscriber who is eligible to receive the distant signal of a television network station solely by reason of subsection (e) and to whom subclause (I) applies unless the satellite carrier,

within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

"(aa) identifies that subscriber by name and address (street or RFD number, city, State, and zip code) and specifies the distant signals received by the subscriber; and

"(bb) states, to the best of the satellite carrier's knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant signals.

"(ii) FOR THOSE NOT RECEIVING DISTANT SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant signal of a network station solely by reason of subsection (e)

and who did not receive a distant signal of a station affiliated with the same network on July 1, 2004, the statutory license under paragraph (2) shall not apply to secondary transmissions by that satellite carrier to that subscriber of that distant signal.

''(B) RULES FOR OTHER SUBSCRIBERS.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as a 'distant signal'), other than subscribers to whom subparagraph (A) applies, the following shall apply:

''(i) In a case in which the signal of a local network station affiliated with the same television network is made available by that satellite carrier, on January 1, 2005, to the subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated

with the same television network if the subscriber's satellite carrier, within 60 days after such date, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that identifies that subscriber by name and address (street or RFD number, city, State, and zip code) and specifies the distant signals received by the subscriber.

''(ii) In a case in which the signal of a local network station affiliated with the same television network is not made available by that satellite carrier, on January 1, 2005, to a subscriber pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant signal of a station affiliated with the same network to any person—

''(I) who is a subscriber of that satellite carrier on such date, or

''(II) who becomes a subscriber of that satellite carrier after such date but before the local signal is available, but only until such time as the subscriber elects to receive the local signal from that satellite carrier.

''(C) FUTURE APPLICABILITY.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of a primary transmission of a network station to a subscriber who—

''(i) does not receive such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

''(ii) resides in a local market where the satellite carrier makes available a network station affiliated with the same television network pursuant to the statutory license under section 122.

''(D) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to

unserved households included under paragraph (12).

''(E) AVAILABLE DEFINED.—For purposes of this paragraph, a local signal has been made available by a satellite carrier to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zipcode as that subscriber or person.''.

(2) Subsection (b)(1) is amended by striking subparagraph (B) and inserting the following:

''(B) a royalty fee for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of each superstation or network station during each calendar month by the appropriate rate in effect under this section.''.

(3) Subsection (b)(1) is further amended by adding at the end the following flush sentence:

''Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a subscriber who resides outside the station's local market (as defined in section 122(j)(2)) but within

a community in which the signal of that station was determined by the Federal Communications Commission, on or before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, to be significantly viewed in accordance with the provisions of section 76.54 of title 47, Code of Federal Regulations, as in effect on such date of enactment.''.

(4) Subsection (c) is amended—

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

''(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The appropriate rate for purposes of determining the royalty fee under subsection (b)(1)(B) shall be the appropriate rate set forth in part 258 of title 37, Code of Federal Regulations, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, as modified under this subsection.'';

(B) by striking paragraph (2);

(C) in paragraph (3)—

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

(ii) in subparagraph (A)—

(I) by striking ''January 1, 1997,'' and inserting ''January 1, 2005,''; and

(II) by striking ''who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2)'';

(iii) in subparagraph (C), by striking ''as provided'' and all that follows through ''later'' and inserting ''January 1, 2006''; and

(iv) by striking subparagraph (D); and

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

''(3) COST OF LIVING ADJUSTMENT.—The royalty rates set forth in subsection (b)(1)(B), as adjusted under paragraph (2) of this subsection, shall be adjusted by the Librarian of Congress—

''(A) on January 1, 2005, to reflect any changes occurring during the period beginning on January 1, 2000, and ending on November 30, 2004, in the cost of living as determined by the most recent Consumer Price Index (for all

consumers and items) published by the Secretary of Labor during that period; and

''(B) on January 1, 2007, and on January 1 of each year thereafter, to reflect any changes occurring during the preceding 12 months in the cost of living as determined by the most recent Consumer Price Index so published.

''(4) REDUCTIONS.—The rate of the royalty fee determined under paragraph (2)—

''(A) for superstations shall be reduced by 30 percent; and

''(B) for network stations shall be reduced by 45 percent.''.

(5) Subsection (d) is amended—

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

''(9) SUPERSTATION.—The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier. '';

(B) in paragraph (10)(D), by striking ''(a)(11)'' and inserting ''(a)(12)''; and

(C) by striking paragraph (12).

(6) Subsection (a)(7), as redesignated by section 102(5) of this Act, is amended—

(A) in subparagraph (A), by striking ''who does not reside in an unserved household'' and inserting ''who is not eligible to receive the transmission under this section'';

(B) in subparagraph (B), by striking ''who do not reside in unserved households'' and inserting ''who are not eligible to receive the transmission under this section''; and

(C) in subparagraph (D), by striking ''is for private home viewing to an unserved household'' and inserting ''is to a subscriber who is eligible to receive the transmission under this section''.

SEC. 104. WAIVERS.

Section 119(a) of title 17, United States Code, is amended by adding at the end the following new paragraph:

''(14) WAIVERS.—A subscriber who is denied the secondary transmission of a network station under paragraph (4)(C), or is denied the secondary transmission of a network station or a superstation under paragraph (3)(B), may request a waiver from such denial by submitting a request, through the

subscriber's satellite carrier, to the network station or superstation in the local market where the subscriber is located. The network station or superstation shall accept or reject the subscriber's request for a waiver within 30 days after receipt of the request. If the network station or superstation fails to accept or reject the subscriber's request for a waiver within that 30-day period, that network station or superstation, as the case may be, shall be deemed to agree to the waiver request. Unless specifically stated by the network station or superstation, a waiver under section 339(c)(2) of the Communications Act shall not constitute a waiver for purposes of this paragraph.''.

SEC. 105. STUDY.

No later than June 30, 2008, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register's findings and recommendations on the operation and revision of the statutory licenses under sections 111, 119, and 122 of title 17, United States Code. The report should include, but not be limited to, the following:

(1) A comparison of the royalties paid by licensees under such sections, including historical rates of

increases in these royalties, a comparison between the royalties under each such section and the prices paid in the marketplace for comparable programming.

(2) An analysis of the differences in the terms and conditions of the licenses under such sections, an analysis of whether these differences are required or justified by historical, technological, or regulatory differences that affect the satellite and cable industries, and an analysis of whether either the cable or satellite industry is placed in a competitive disadvantage due to these terms and conditions.

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

(4) An analysis of the correlation, if any, between the royalties, or lack thereof, under such sections and the fees charged to cable and satellite subscribers, addressing whether cable and satellite companies have passed to subscribers any savings realized as a result of the royalty structure and amounts under such sections.

SEC. 106. EFFECT ON CERTAIN PROCEEDINGS.

Nothing in this title shall modify any remedy imposed on a party that is required by the judgment of a court

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in any action that was brought before May 1, 2004, against that party for a violation of section 119 of title 17, United States Code.

Chairman SENSENBRENNER. Are there any second-degree amendments to the Smith amendment in the nature of a substitute?

The gentleman from Illinois, Mr. Hyde?

Mr. HYDE. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 4518, offered by Mr. Hyde.

Mr. HYDE. Mr. Chairman, I ask that reading of the amendment be dispensed with.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 4518 OFFERED BY MR. HYDE

Insert the following after section 103 and redesignate the succeeding sections accordingly:

SEC. 104. STATUTORY LICENSE FOR SATELLITE CARRIERS SERVING COMMERCIAL ESTABLISHMENTS.

(a) STATUTORY LICENSE.—Section 119 of title 17, United States Code, is amended—

(1) in the section heading, by striking ''for private home viewing'';

(2) in subsection (a)(1)—

(A) by inserting ''or for viewing in a commercial establishment'' after ''for private home viewing'' each place it appears; and

(B) by striking ''household'' and inserting ''subscriber'';

(3) in subsection (b), by striking ''for private home viewing'' each place it appears; and

(4) in subsection (d)—

(A) in paragraph (1)—

(i) by striking ''for private home viewing''; and

(ii) by inserting ''in accordance with the provisions of this section'' before the period;

(B) in paragraph (6), by inserting ''under this section'' before the period; and

(C) in paragraph (8)—

(i) by striking ''who'' and inserting ''or entity that'';

(ii) by striking ''for private home viewing''; and

(iii) by inserting ''in accordance with the provisions of this section'' before the period.

(b) CONFORMING AMENDMENTS.—

(1) Section 111 of title 17, United States Code, is amended in subsections (a)(4) and (d)(1)(A), by striking ''for private home viewing'' .

(2) The item relating to section 119 in the table of contents for title 17, United States Code, is amended to read as follows:

''119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations.''.

Page 18, line 3, insert '', or a network station described in subsection (a)(7)(E)'' before the period.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HYDE. Mr. Chairman, what I propose is a simple matter of parity. The lone remaining national superstation issue is Chicago's WGN retransmitted nationwide to over 60 million homes. That number is growing. I understand that Comcast, the dominant cable provider, is adding WGN in millions of subscriber homes, including many thousands in the Washington, D.C., area.

WGN is also available to patrons of commercial establishments that subscribe to cable, but not to the many restaurants and other businesses that subscribe to satellite services. This is due to a disparity in the statutory licenses under the Copyright Act.

If two restaurant patrons want to see the Cubs play the Milwaukee Brewers this Thursday night or the newscast that follows the game, the patron in the restaurant is hooked up to cable, and he will be able to see the game, but the customer in the restaurant with the satellite dish will not.

The same holds true for the White Sox games, the Chicago Bulls telecasts and other programming on WGN. This programming is not available elsewhere on broadcast or basic networks to satellite viewers. Even Major League baseball's premium Extra Innings service blacks out Cubs and White Sox telecasts within the teams' exclusive territory created by baseball under its antitrust exemption: Northern Illinois, Iowa and Indiana.

As all here might guess, I have been a long-suffering Cubs baseball fan for many unrequited years and never in my lifetime have the Cubs and Sox been the legitimate pennant contenders they are this season. With all the tension in the world—and I am biased, I concede—watching day baseball from Wrigley Field is one of life's simple and enduring pleasures. To do so amongst fellow fans at a local sports hangout is equally enjoyable for the many who cannot be there in person.

Part of our policy objective in renewing the Satellite Home Viewer Act is to balance the playing field to ensure that cable and satellite compete on an equal footing. My amendment encourages competition between the two pay TV services. My amendment does not set rates. All I seek is parity and for you to support the legions of sports fans nationwide that seek the lifting of this unnecessary restriction.

Now, I understand that Mr. Smith, the Chairman of the Subcommittee, has agreed to include in the Committee report clarifying language that creation of a compulsory license to permit carriage of WGN telecasts to sports bars must be an integral part of the ongoing royalty discussions. And if that is so, I will ask leave to withdraw my amendment, and I yield to Mr. Smith.

Mr. SMITH. I thank the gentleman from Illinois for yielding.

And the quick response is, yes, the gentleman from Illinois, with this amendment, has raised some very serious issues that have far-reaching implications, and I would welcome the opportunity not only to discuss those issues with him, but to try putting clarifying language in report language that would satisfy the gentleman from Illinois as well.

Mr. HYDE. I thank the gentleman for his remarks, and I ask leave to withdraw the amendment.

Chairman SENSENBRENNER. Will the gentleman yield for a second?

Mr. HYDE. Surely.

Chairman SENSENBRENNER. I certainly think that the offer that has been made by the gentleman from Texas is a very good one. Now, I can understand why Cubs fans would need to go to the bar to watch their team, which has now just lost twice in a row to the poor, hapless Milwaukee Brewers.

I yield back. [Laughter.]

Mr. HYDE. The gentleman has an unkind streak in him. [Laughter.]

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Mr. BOUCHER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia?

Mr. BOUCHER. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 4518, offered by Mr. Boucher and Mr. Goodlatte.

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 4518 OFFERED BY MR. BOUCHER AND MR. GOODLATTE

Add at the end of title I the following:

SEC. 107. EXPEDITED CONSIDERATION OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.

Section 119 of title 17, United States Code, is amended by adding at the end the following:

''(f) EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.—

''(1) IN GENERAL.—In a local market, as defined in section 122(j)(2), in which no satellite carrier makes available to subscribers located in that market the secondary transmission of one or more television broadcast stations licensed by the Federal Communications Commission to that market, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on

July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission to such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

''(2) DEFINITION.—For purposes of this subsection, the term 'antitrust laws'—

''(A) has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

''(B) includes any State law similar to the laws referred to in paragraph (1).''.

Chairman SENSENBRENNER. The gentleman from Virginia will be recognized for 5 minutes.

Mr. BOUCHER. Thank you very much, Mr. Chairman. I am pleased to offer this amendment with our Virginia colleague, Mr. Goodlatte, with whom I have long been working to bring local television signals delivered by satellite to the Nation's 211 local television markets.

Today, we are taking another step in that effort by proposing that any agreement entered into between the satellite carriers to share satellite capacity solely for the purpose of delivering local signals be considered quickly by the Department of Justice when a business review letter is submitted to the DOJ. Specifically, our amendment directs that the review by DOJ be completed within 90 days of the date of receipt by the DOJ of a business review letter.

At the present time, EchoStar is serving about 120 of the 211 local television markets across the Nation. DirecTV serves approximately 60 local markets with local TV signals, but soon will match the 120 markets that EchoStar is serving with local delivery.

Unfortunately, due to constraints in satellite capacity and the very high cost of building and launching new satellites valued at about $500 million per satellite, neither carrier has announced plans to expand local service to additional markets any time in the near future. And the result is that the less-densely populated markets, the rural markets ranging in population to thinner levels from 120 to 211, including many small cities across the United States, are not going to be getting local television delivery by satellite any time soon.

If the carriers agree to share their satellites solely to deliver the local signals, they can accomplish twice as much with the existing satellites already in orbit. They would be able to serve all 211 local markets very soon after a capacity sharing plan is put into effect.

Separately, the chief executive officers of both EchoStar and DirecTV have indicated a strong interest in entering into a satellite capacity sharing arrangement very similar to what I have just described. In fact, Mr. Murdoch testified that he would like to have such an agreement negotiated with EchoStar at the time that he testified before the Energy and Commerce Committee in support of his acquisition of DirecTV last year. Mr. Ergen, on behalf of EchoStar, had said something very similar on a previous occasion.

The amendment that we're offering would assure that if a satellite sharing agreement is achieved, the antitrust review would occur quickly and remove any concern that the review would be held up for a lengthy period by the antitrust authority.

I want to thank Mr. Goodlatte, Mr. Smith, Chairman Sensenbrenner, Mr. Conyers, and the members of their staffs who have assisted in the review and drafting of this measure, and I very much hope it will be the Committee's pleasure to adopt an amendment that will well serve the interests of television viewers in rural America.

Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith?

Mr. SMITH. Mr. Chairman, I'd like to thank Mr. Goodlatte and Mr. Boucher for offering this amendment. What they have tried to achieve, and have succeeded in achieving, I believe, is trying to

make sure that satellite signals are available particularly to the small markets in the rural areas. And I thank them for this constructive amendment and urge my colleagues to support it.

And I will yield the balance of my time to the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. I thank the gentleman for yielding, and I am pleased to offer this amendment with my friend and colleague, Mr. Boucher of Virginia. And I want to thank Chairman Smith, Chairman Sensenbrenner and others who have worked closely with us to fashion this amendment.

This is something that I have worked on, Congressman Boucher has worked on, and we have been joined by the overwhelming majority of the Members of the House over the past several years in our efforts to get local-to-local service to every community in America so that everyone can have the opportunity to have their local news, weather, emergency information, sports, community affairs information available to them by satellite. It provides access to information that many in remote areas would not have otherwise. It provides competition for those who do have access to an antenna or a cable system.

And I think it is vital that the effort be pushed forward to continue to reach all of these markets. The smaller the market, the more difficult this becomes. The House, in fact, the Congress, passed legislation a few years ago to create incentives to do this. Market activities have, in some respects, overtaken that effort.

And this effort to encourage those in the market—the major satellite companies—to have the ability to cooperate and get antitrust exemptions, as need be, to be able to share these very, very expensive pieces of equipment—satellites mainly—is an important step forward, and it will continue to show the Congress's strong support for having rural America included in a new technology that is being enjoyed by the overwhelming majority of American citizens today at least having access to local service on their satellite.

Mr. Chairman, I have a full statement that I would ask be made part of the record.

Chairman SENSENBRENNER. Without objection.

[The prepared statement of Mr. Goodlatte follows:]

PREPARED STATEMENT OF THE HONORABLE BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

MR. CHAIRMAN, I AM PLEASED TO OFFER THIS AMENDMENT WITH MY FRIEND AND COLLEAGUE, MR. BOUCHER OF VIRGINIA.

WITH MANY RURAL CONSUMERS STILL MISSING OUT ON LOCAL-INTO-LOCAL SERVICE, SATELLITE COMPANIES NEED INCENTIVES TO ROLL OUT THIS SERVICE INTO RURAL AREAS SO THAT RURAL CONSUMERS CAN ENJOY THE SAME QUALITY PROGRAMMING THAT THOSE IN MORE URBAN AREAS ALREADY ENJOY. LOCAL-INTO-LOCAL SERVICE IS THE ONLY WAY THAT MANY PEOPLE IN RURAL AREAS WILL HAVE ACCESS TO THE LOCAL NEWS AND EMERGENCY INFORMATION PROVIDED BY THEIR LOCAL TELEVISION BROADCAST STATIONS.

THIS AMENDMENT WOULD REQUIRE THAT THE DEPARTMENT OF JUSTICE PROVIDE AN EXPEDITED REVIEW OF APPLICATIONS SUBMITTED BY SATELLITE PROVIDERS WHO SEEK ADVICE AS TO WHETHER THEIR COLLABORATION EFFORTS TO PROVIDE LOCAL-INTO-LOCAL SERVICE TO UNSERVED MARKETS WOULD VIOLATE THE ANTITRUST LAWS.

UNDER THE PROVISIONS OF THIS AMENDMENT, THE DEPARTMENT OF JUSTICE MUST RESPOND TO ANY SUCH APPLICATION WITHIN 90 DAYS AFTER IT IS FILED. THIS EXPEDITED PROCESS WILL HELP ENSURE THAT SATELLITE PROVIDERS SEEKING AN OPINION AS TO WHETHER THEIR

PROPOSED ACTIVITY WOULD VIOLATE THE ANTITRUST LAWS WILL RECEIVE AN ANSWER IN A TIMELY MANNER, THUS PROVIDING CERTAINTY THAT THESE COMPANIES NEED WHEN DECIDING WHETHER TO WORK TOGETHER TO ROLL OUT LOCAL-INTO-LOCAL SERVICE TO CONSUMERS.

THIS AMENDMENT IS SIMPLY AN ADDITIONAL STEP IN THE EFFORT TO GET LOCAL-INTO-LOCAL SERVICE TO ALL 210 MARKETS AS SOON AS POSSIBLE, AND I ENCOURAGE THE MEMBERS OF THE COMMITTEE TO SUPPORT THIS IMPORTANT AMENDMENT.

Mr. GOODLATTE. I yield back.

Mr. SMITH. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. And I won't take 5 minutes, unless the answer to my question takes longer than I anticipate.

I'm just wondering what are the consequences if there is a failure to respond to this request letter within the 90-day period that this amendment says. And I will yield to Mr. Boucher to educate me on that. I'm a little concerned that we might be putting the Antitrust Division or the Department of Justice in an untenable position here.

Mr. BOUCHER. Well, I thank the gentleman for his inquiry, and I thank him also for yielding.

There is no penalty contained within the amendment if the Department of Justice fails to respond within the allotted time. And if they did, it certainly wouldn't be the first time that an agency failed to observe a requirement passed by the Congress that an agency act within a certain time frame.

On the other hand——

Mr. WATT. So the word "shall" on line 5, Page 2, doesn't really mean "shall." I mean, there are no—if there is a failure to respond, it doesn't automatically occur is what is the question that I'm——

Mr. BOUCHER. That is correct. There would be no automatic approval of the business review of the business plan simply upon the failure of DOJ to respond within the allotted time frame. That would not be the effect of the amendment.

Mr. GOODLATTE. Would the gentleman yield?

Mr. WATT. I yield to Mr. Goodlatte.

Mr. GOODLATTE. I would add, and I hope the gentleman from Virginia would agree with me, that "shall" does mean "shall," when the Congress says that. If somebody does not abide by that, then that's an issue we have to address when we confront that. But we should not put in the record here a suggestion that "shall" does not mean "shall."

Mr. WATT. Well, I think I'll—I guess the Court would take judicial notice that the word "shall" does mean "shall," but I think we would be—could possibly be doing a disservice if the word "shall" automatically resulted in a consequence that might be counterproductive to the public interest, and that's the only concern I had. And as long as—do you agree that there's no automatic consequence, there's no automatic granting or approval of the agreement if they don't respond within the 90 days? That's the only question I'm concerned with.

Mr. GOODLATTE. I do agree with that, but I don't want to leave the impression that the congressional intent is other than that they should act in that time frame.

Mr. WATT. Okay. I think that satisfies my inquiry, and I will yield back.

Chairman SENSENBRENNER. The question is on the Boucher second-degree amendment to the Smith amendment in the nature of a substitute.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The amendment to the amendment in the nature of a substitute is agreed to.

Are there further second-degree amendments to the amendment in the nature of a substitute?

[No response.]

Chairman SENSENBRENNER. If not, the question occurs on the amendment in the nature of a substitute, as amended, offered by the gentleman from Texas.

All in favor, say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to.

A reporting quorum is present. The question occurs on the motion to report the bill H.R. 4518 favorably, as amended.

All in favor, say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. Then, all Members will be given 2 days, as provided by the rules, in which to submit additional, dissenting, supplemental or minority views.

This concludes the items on the agenda today. The chair would like to thank the Members for their prompt attendance. We were able to get all this done in 33 minutes. Hopefully, that will set an example for the rest of our consideration this year, and the Committee stands adjourned.

[Whereupon, at 10:32 a.m., the Committee was adjourned.]

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