

SATELLITE HOME VIEWER EXTENSION AND
REAUTHORIZATION ACT OF 2004

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JULY 22, 2004.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. BARTON of Texas, from the Committee on Energy and
Commerce, submitted the following

R E P O R T

[To accompany H.R. 4501]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4501) to extend the statutory license for secondary transmissions under section 119 of title 17, United States Code, and to amend the Communications Act of 1934 with respect to such transmissions, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 4501, the “Satellite Home Viewer Extension and Reauthorization Act of 2004” (SHVERA), is to modernize satellite television policy and enhance competition between satellite and cable operators. The bill does so by reauthorizing certain provisions of the Communications Act that govern satellite retransmission of distant broadcast signals; increasing regulatory parity by extending to satellite operators the same type of authority cable operators already have to carry “significantly viewed” signals into a market; amending other provisions to reflect the increased carriage by satellite operators of local broadcast signals; and beginning to address how satellite operators may retransmit digital broadcast signals.

BACKGROUND AND NEED FOR LEGISLATION

Direct Broadcast Satellite (DBS) operators have become significant facilities-based competitors to cable operators in the multi-channel video programming distribution (MVPD) market since the introduction of DBS about a decade ago. Approximately 20.4 million U.S. television households subscribed to DBS service as of June 30, 2003, representing 19.1 percent of television households and 21.6 percent of MVPD subscribers, according to the Federal Communications Commission. See *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03–172, Tenth Annual Report, 19 FCC Rcd 1606, at ¶¶ 61, 65 & Tbl. B–1 (2004). This figure represents more than twice the households that were receiving DBS service in June 1999, just prior to the enactment of the Satellite Home Viewer Improvement Act (SHVIA), when DBS had 10.1 percent TV household penetration and 12.5 percent of the MVPD market. See Ninth Annual Report, 17 FCC Rcd 26901, at Tbl. B–1 (2002).

DBS retransmission of broadcast programming, and particularly local programming, is responsible for much of the growth. Approximately 58 percent of DBS subscribers receive local or distant broadcast signals from a DBS provider. Tenth Annual Report, 19 FCC Rcd 1606, at ¶ 69. Some consumers have trouble receiving television signals over the air for reasons such as intervening terrain or their distance from a broadcast station. Consequently, the Satellite Home Viewer Act of 1988 (SHVA) amended the Communications Act to authorize a satellite operator to deliver the signal of an out-of-market broadcast affiliate to a consumer who is “unserved” by the over-the-air signal of a local affiliate of that network. See 47 U.S.C. § 339. To facilitate that regime, SHVA also created provisions exempting satellite operators from having to negotiate with distant broadcast stations to retransmit the distant stations’ signals to consumers who are unserved over the air. See 47 U.S.C. § 325(b). The retransmission-consent exemption created by SHVA expires Dec. 31, 2004. See 47 U.S.C. § 325(b)(2)(C).

In SHVIA, Congress expanded on SHVA by further amending the Communications Act to authorize satellite operators to provide consumers with local broadcast signals. As a general rule, a satellite operator must carry all the local broadcast stations in a market if it chooses to carry any local broadcast stations in that market. See 47 U.S.C. § 338. As of December 2003, such local-into-local service

was offered by at least one DBS operator in 106 of the 210 Designated Market Areas (DMAs), covering 86 percent of U.S. television households. Tenth Annual Report, 19 FCC Rcd 1606, at ¶ 69. This represents an increase from 64 DMAs, according to the prior year's report. *Id.* As of July 2004, DirecTV alone listed local service in 106 markets on its web site, and indicated plans to add 18 more markets by the end of 2004. EchoStar listed 137 local markets on its web site as of June 2004, and has stated that it intends to reach 147 by the end of 2004.

Satellite-delivered television service started as a way to serve consumers, particularly in rural areas, who could not get adequate over-the-air reception and did not have access to cable. But DBS does more than serve otherwise unserved areas. Its nationwide coverage allows it to compete against cable operators, and in so doing it improves consumer options. The General Accounting Office (GAO) reports that the carriage by satellite operators of local stations in a market leads cable operators to offer approximately 5 percent more cable channels. See U.S. General Accounting Office, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (Oct. 2003). The availability of DBS has also forced cable operators to upgrade their infrastructure to allow consumers to receive high-quality video and more channels, as well as interactive, broadband, and video-on-demand services. See Tenth Annual Report, at ¶ 12. The FCC also reports that "as DBS offerings have become more comparable to cable service (including the provision of advanced video and non-video services), and pursuant to Congress' authorization of the retransmission of local broadcast signals, DBS subscribership has grown rapidly." Tenth Annual Report, at ¶ 5. Although some DBS customers never before subscribed to MVPD service, many switch from cable. Indeed, DirecTV has told the FCC that 70 percent of its customers switched from cable the first time they subscribed to DirecTV. Tenth Annual Report, at ¶ 65.

H.R. 4501 is necessary to maintain and increase these competitive pressures. It does so by reauthorizing Communications Act provisions regarding satellite retransmission of distant broadcast signals, amending and adding other provisions to reflect the increasing retransmission by satellite of local signals, improving regulatory parity between cable and satellite, and beginning to consider how to treat satellite retransmission of digital broadcast signals.

During the hearings and legislative markups on satellite television reauthorization legislation, the Committee discussed whether satellite and cable operators should be required to offer programming on an a la carte or themed-tier basis, or allowed to do so voluntarily, and whether there were any regulatory barriers to the provision of such services on a voluntary basis. A la carte service generally involves allowing consumers to design their own programming packages by selecting content on a channel-by-channel basis, or by choosing from among a variety of themed tiers of channels. Currently, satellite and cable operators generally organize channels based on their own business judgments, negotiations with programmers, and certain regulations.

The Committee concluded that adding a la carte or themed-tier provisions to this satellite television reauthorization legislation

would be inappropriate at this time. A la carte and themed-tier issues apply to cable as well as satellite, while this legislation is focused on reauthorizing provisions governing satellite retransmission of broadcast television signals. Moreover, the Committee needs a fuller understanding of the implications of a la carte legislation, including whether there are any market or regulatory barriers to providing such service today, and whether a la carte regulation would help or harm consumer rates and programming choices. Consequently, the Committee held an MVPD competition hearing July 21, 2004, that addressed a la carte. The Committee has also directed the FCC to initiate an inquiry on the subject.

HEARINGS

The Subcommittee on Telecommunications and the Internet held two hearings on satellite-delivered broadcast television during the second session of the 108th Congress. The Subcommittee received testimony in an oversight hearing on March 10, 2004, from: David Moskowitz, Senior Vice President & General Counsel, EchoStar Communications Corp.; Robert Lee, President & General Manager, WDBJ-TV, on behalf of the National Association of Broadcasters; Matthew Polka, President, American Cable Association; Gene Kimmelman, Senior Director of Public Policy and Advocacy, Consumers Union; Martin Franks, Executive Vice President, CBS Television; and, Eddy Hartenstein, Vice Chairman, Hughes Electronics Corp. The Subcommittee received testimony in a legislative hearing on April 1, 2004, from: Eloise Gore, Assistant Division Chief, Media Bureau's Policy Division, Federal Communications Commission; David Moskowitz, Senior Vice President & General Counsel, EchoStar Communications Corp.; Eddy Hartenstein, Vice Chairman, The DirecTV Group; Robert Lee, President & General Manager, WDBJ-TV, on behalf of the National Association of Broadcasters; and Frank Wright, President, National Religious Broadcasters.

COMMITTEE CONSIDERATION

On Wednesday, April 28, 2004, the Subcommittee on Telecommunications and the Internet met in open markup session and approved a Committee Print for Full Committee consideration, as amended, a quorum being present. On Thursday, June 3, 2004, the Full Committee met in open markup session and ordered a Committee Print reported to the House, amended, by voice vote, a quorum being present. A request by Mr. Barton to file a report on a bill to be introduced, and that the actions of the Committee be deemed as action on that bill, was agreed to by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering the Committee Print reported. A motion by Mr. Barton to order the Committee Print reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held legislative and oversight hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 4501 is to promote facilities-based competition in the provision of video programming. It does so by reauthorizing certain expiring statutory provisions regarding satellite retransmission of distant broadcast signals, amending and adding other provisions to reflect the increasing satellite retransmission of local signals, and increasing regulatory parity between cable and satellite operators.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4501, the Satellite Home Viewer Extension and Reauthorization Act of 2004, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 8, 2004.

Hon. JOE BARTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4501, the Satellite Home Viewer Extension and Reauthorization Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Melissa E. Zimmerman (for federal costs), and Jean Talarico and Philip Webre (for the private sector-impact).

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 4501—Satellite Home Viewer Extension and Reauthorization Act of 2004

Summary: H.R. 4501 would amend current law relating to satellite retransmission of television broadcasting. CBO estimates that enacting only the provisions of H.R. 4501 would not affect direct spending or revenues. However, if the authority to collect and distribute copyright royalties for satellite retransmissions were extended by subsequent legislation, CBO estimates that enacting the bill (together with that extension) would decrease revenues by about \$1 million over the five-year period beginning in calendar year 2005 and also would decrease direct spending by about \$1 million over the 10-year period beginning in calendar year 2005. The bill would not have a significant effect on spending subject to appropriation.

H.R. 4501 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs would be minimal and would not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

H.R. 4501 would impose private-sector mandates as defined in UMRA on satellite companies. CBO estimates that the aggregate cost of those mandates 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: Under current law, the use of certain copyrighted material by the public operates under a compulsory license. Users of copyrighted material do not need specific permission from owners to use material with a compulsory license, but must pay royalties and abide by certain conditions when using the material. The federal Copyright Office collects royalties from users of compulsory licenses and then later distributes the royalties to owners of copyrighted works using guidelines agreed upon in private negotiations between users and owners of copyrighted work. The receipt of royalties from users of copyrighted material are recorded in the budget as federal revenues, and the distributions to copyright owners are recorded as federal spending.

H.R. 4501 would extend current law to allow satellite companies to use copyrighted material without specific permission from copyright owners, but would not extend the requirement for satellite companies to pay royalties in exchange for the use of copyrighted material. Under current law, the requirement to pay royalties will expire on December 31, 2004. Several provisions in H.R. 4501 would make changes affecting royalties collected and distributed for satellite transmissions; however, without extending the requirement for satellite companies to pay royalties for use of copyrighted material, these changes would have no effect after December 31, 2004.

Basis of estimate

Revenues and direct spending

CBO estimates that enacting H.R. 4501 by itself would have no effect on revenues or direct spending from enactment through the end of calendar year 2009. However, if the Congress extends royalty requirements for satellite retransmission of broadcast signals

at the rate effective under current law, CBO estimates that enacting the bill (together with that extension) would decrease revenues by about \$1 million over the five-year period beginning in calendar year 2005. With lower royalty collections, the payments to copyright owners would also decrease.

Satellite retransmission of distant and local signals. According to the FCC, about 20 million households subscribe to a 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 204 would require certain satellite subscribers to choose between receiving distant-into-local and local-into-local signals.

While satellite companies pay royalties for retransmitting distant-into-local signals, they do not pay royalties for retransmitting local-into-local signals. Under section 204, satellite companies would pay fewer royalties because they would be retransmitting distant-into-local signals to a smaller number of subscribers than they would if the current copyright laws were extended.

CBO estimates that enacting section 204 (and an extension of the current-law requirements for royalties from satellite retransmission) would decrease revenue collections by about \$1 million over the five-year period beginning in calendar year 2005. In addition, payments to copyright owners would decrease, causing a decrease in direct spending of about \$1 million over the 10-year period beginning in calendar year 2005.

Spending subject to appropriation

Section 208 of the bill would require the FCC to conduct a study identifying consumers who will be unserved by over-the-air signals starting in 2007, when those signals will no longer be broadcast. Based on information provided by the FCC, CBO estimates that completing this study would not have a significant effect on spending subject to appropriation.

Estimated impact on state, local, and tribal governments: H.R. 4501 contains an intergovernmental mandate as defined in UMRA because it would establish procedures for appeal of FCC orders, by satellite carriers, that would supersede any other appeal rights under state law. CBO estimates that the resulting costs to states of this preemption would be minimal and would not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 4501 would impose private-sector mandates as defined in UMRA on satellite companies. Specifically, the bill would impose mandates on satellite companies by requiring them to:

- Reallocate their retransmission of local television channels to a single dish;
- Replace “distant-into-local” signals with “local-into-local” signals for certain subscribers;
- Notify subscribers of their privacy rights; and

- Notify television broadcast stations of plans to begin “local-into-local” satellite service in their markets and provide them with the right to elect carriage of their stations.

CBO estimates that the aggregate cost of those mandates would not exceed the annual threshold for private-sector mandates established by UMRA (\$120 million in 2004, adjusted annually for inflation).

Carriage of local stations in a single dish

Section 203 would require satellite companies to reallocate their retransmission of local television channels in such a way that satellite subscribers can receive all of the local channels with only one satellite antenna (or satellite dish) and associated equipment. Local channels are those channels that can be received over the air with a conventional antenna and television set. The bill would provide an exception to this requirement in the case of digital local channels. Satellite carriers may retransmit local digital channels to subscribers by means of a separate dish, but must transmit all local digital channels to the same dish. Section 203 also would require satellite companies to notify their licensees (broadcast television stations) and subscribers of the reallocation of the channels and inform them of the need for new reception antenna or equipment.

In many television markets, some subscribers to satellite service require two dishes to receive all the local channels. (Many subscribers in those markets do not have a second dish and so do not receive some local channels.) Satellite companies estimate that currently only 15 percent to 20 percent of subscribers have two dishes nationally, but that proportion of subscribers varies by market.

The bill would require carriers to meet the retransmission requirements of section 203 within a year of enactment. Given the one-year time frame, affected companies could comply with the mandate in one of two ways. First, satellite carriers could exit the market for retransmission of local channels. CBO assumes that satellite companies would not abandon local service entirely because the affected companies would risk losing valuable customers to rival satellite companies and cable providers. Second, carriers could reallocate their satellite transmissions so that, in each market, subscribers received all their local channels from a single satellite. In some markets, receiving those local channels would require that the companies provide a second dish to subscribers. The largest cost facing affected companies would be the cost of installing those additional dishes. CBO estimates that providing additional dishes could cost the companies about \$150 to \$160 per customer, including installation, notification, and equipment.

Service to as many as two million subscribers could be subject to the reallocation requirements under the current configuration of local television channels on the satellites. Engineering studies, however, suggest that reallocation of local channels on the satellites could reduce the number of subscribers needing a second dish to 350,000 to 400,000. Such relocation of local channels to a second dish would most likely occur in the relatively smaller markets served by satellite carriers. The affected number of subscribers might be reduced further by technical changes available to satellite companies.

Based on those figures, CBO estimates that satellite companies could spend \$50 million to \$65 million to comply with this mandate.

Replacement of distant signals with local signals

Until recently, satellite carriers did not have the technological capability to redistribute multiple local broadcast signals back to the communities serviced by the local broadcast stations (“local-into-local”) service. So satellite providers retransmitted “distant network signals” from locations such as New York, Atlanta, or Denver (“distant-into-local” service). Currently, some satellite providers have the capability of retransmitting local signals into many local markets.

Section 204 would prohibit satellite companies from providing a distant-into-local signal to certain subscribers that are currently receiving that signal. The companies would be required to send notices to subscribers offering to substitute the local-into-local signal for the distant-into-local signal. The companies would then adjust the subscriber’s package so that the subscriber would receive the appropriate signal. The bill also would require companies to send a list to television networks with each subscriber that receives a distant-into-local signal. Based on information from the industry, the cost to not transmit a signal would be minor. CBO estimates that the cost to send those notices would not be great.

Privacy rights of satellite subscribers

Section 206 would require satellite companies to notify their subscribers in a separate written statement of their privacy rights. The bill also would prohibit the satellite companies from collecting and disclosing program selection or personally identifiable information concerning any subscriber without prior consent from the subscriber. In addition, satellite companies would be required to provide a subscriber access to all personally identifiable information that is collected and maintained by the satellite company regarding the subscriber. When that information is no longer necessary and a request by the subscriber for access is not pending, the company must destroy that information. The main cost of these provisions would be the one-time cost of notifying subscribers. Accordingly to the FCC, there are about 20 million subscribers of satellite services. CBO estimates that the cost to comply with those mandates could be between \$10 million and \$20 million.

Additional notices

Section 205 would require satellite companies to inform each television broadcast station licensee within a local market of the company’s intention to begin local-into-local service and to provide them with the right to elect carriage of their station. This section also would require satellite companies to send a notice to any television broadcast station in a local market that it will begin transmitting significantly viewed stations. CBO estimates that the cost to send those notices would be small.

Estimate prepared by: Federal Costs: Melissa E. Zimmerman; Impact on State, Local, and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Jean Talarico and Philip Webre.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 of the bill establishes the short title, the “Satellite Home Viewer Extension and Reauthorization Act of 2004” (SHVERA).

Section 201. Extension of retransmission consent exemption

Section 201 of the bill extends to Dec. 31, 2009, from Dec. 31, 2004, the retransmission consent exemption in Section 325(b) of the Communications Act (47 U.S.C. § 325(b)). Ordinarily, a satellite operator must obtain consent from a broadcaster to retransmit that broadcaster’s television signal to a distant market. Section 325(b) of the Communications Act, however, exempts a satellite operator from having to obtain consent from a network broadcast affiliate to provide that affiliate’s television signal to a consumer in a distant market who cannot receive an over-the-air signal from an affiliate of that network. The Committee chose to extend the exemption to help satellite-delivered television continue to grow as a multi-channel video competitor.

Section 202. Cable/satellite comparability

Section 202 of the bill creates Section 340 of the Communications Act to allow a satellite operator to retransmit to a subscriber a signal of an out-of-market broadcast station if the signal is “significantly viewed” over the air in the subscriber’s local community. Nielsen Media Research organizes the country into designated market areas (DMAs) that determine which television broadcasters are deemed “local” for consumers in a particular community. These de-

terminations affect whether and how satellite and cable operators may retransmit broadcast stations into a community. The reach of a broadcast station's over-the-air signal does not necessarily coincide with the Nielsen-defined local market, however. Consequently, Section 340 allows a satellite operator to treat as local in a community any signal that is significantly viewed by consumers over the air in that community. A signal is "significantly viewed" based on the amount of viewership it garners in non-cable households, i.e. over the air. Cable operators already have authority to treat such significantly viewed signals as local. See 47 C.F.R. §§ 76.5(i), 76.54. Section 340 is designed to promote competition by increasing regulatory parity.

Section 340 is also intended to help consumers receive satellite retransmissions of in-state broadcasts when they are assigned to DMAs that contain local broadcasters from another state. State boundaries, just like the reach of over-the-air signals, do not necessarily coincide with the Nielsen-defined local markets. Nielsen defines television markets in a way that some consumers near state lines fall in "local" markets "outside" their states. For these consumers, network-affiliated broadcast stations within their states are technically distant signals, and satellite operators generally may not provide these consumers the signals of distant network-affiliated stations unless the consumers cannot receive over the air the out-of-state "local" signals of the corresponding network-affiliated stations in their DMAs. See 47 U.S.C. § 339. Consequently, consumers who can receive network signals over the air in these "out of state" local markets may find that current law prevents them from receiving by satellite the news, sports, or community programming from within their states that they consider truly local. Section 340 can help remedy this problem by allowing satellite operators to provide some consumers in out-of-state DMAs with in-state, significantly viewed, network-affiliated distant signals in addition to the out-of-state, but technically local, signals.

Thus, new section 340(a) authorizes a satellite operator to retransmit an out-of-market signal to a subscriber in a community if the FCC has determined that the signal is significantly viewed in the community for purposes of cable carriage. The Committee intends section 340 to authorize the retransmission of a significantly viewed signal by a satellite operator on a signal-specific basis, rather than a station-specific basis. Thus, a station's analog signal must be significantly viewed under the FCC's quantitative criteria to qualify for satellite carriage, and a station's digital signal must be independently significantly viewed under the FCC's quantitative criteria to qualify for satellite carriage.

Section 340(a) also makes clear that a satellite operator may carry an unlimited number of significantly viewed signals—just as a cable operator may—by stating that satellite operators may retransmit such signals "[i]n addition to the broadcast signals that subscribers may receive under section 338 [governing carriage of local signals] and 339 [governing carriage of distant signals]." The exemption for significantly viewed signals is necessary because section 339 of the Communications Act (47 U.S.C. § 339) prohibits a satellite carrier from providing a household with the signals of more than two distant affiliates of a particular network per day.

Section 340(b)(1) provides that a satellite operator may retransmit a significantly viewed distant analog signal to a subscriber in a local market only if the subscriber also receives local-into-local service. The provision adds this condition to protect and promote localism. Cable operators are subject to must-carry obligations that generally require them to carry all local broadcast television stations. See 47 U.S.C. § 534. Consequently, any time a cable operator is retransmitting into a market a distant broadcast affiliate of a network, it is generally also retransmitting into that market any local affiliate of that network. In recognition of capacity constraints, Congress subjects satellite operators, by contrast, to a “carry-one, carry all” obligation. That obligation generally requires satellite operators to retransmit all local stations in a market if they retransmit any local stations in the market, but allows satellite operators to forgo carrying local stations in the market altogether. See 47 U.S.C. § 338. As a result, absent section 340(b)(1), a satellite operator could retransmit into a market a distant significantly viewed signal of a network affiliate without also retransmitting a signal of any local affiliate of the network.

Section 340(b)(2)(A) conditions retransmission to a subscriber of a network broadcast station’s distant significantly viewed digital signal on retransmission to that subscriber of a digital signal broadcast by a local affiliate of the same network. Like section 340(b)(1), section 340(b)(2)(A) protects localism by helping ensure that the satellite operator cannot retransmit into a market a significantly viewed digital signal of a network broadcast station from a distant market without also retransmitting into the market a digital signal of any local affiliate from the same network.

Section 340(b)(2)(B) prevents the satellite operator from retransmitting a local affiliate’s digital signal in a less robust format than a significantly viewed digital signal of a distant affiliate of the same network, such as by down-converting the local affiliate’s signal but not the distant affiliate’s signal from high-definition digital format to analog or standard definition digital format. Section 340(b)(2)(B)(i) speaks of “equivalent bandwidth” to recognize, for example, that a local affiliate may be multicasting while a distant affiliate of the same network may be broadcasting in high-definition, and to ensure that the local affiliate’s choice to multicast does not prevent the satellite operator from retransmitting a significantly viewed signal of a distant affiliate of the network that chooses to broadcast in high-definition. Section 340(b)(2)(B)(ii) speaks of “entire bandwidth” to ensure that a satellite operator may still retransmit a distant significantly viewed digital signal of a network affiliate in a more robust format than a digital signal of a local broadcaster of the same network so long as the satellite operator is carrying the digital signal of the local affiliate in its original format. For example, if a local broadcaster chooses to transmit only a single, standard definition digital broadcast stream, the satellite operator may still retransmit multicast or high-definition streams from the distant affiliate of the same network if the satellite operator carries the local broadcaster’s standard definition stream and meets the other conditions for the provision of significantly viewed signals. Section 340(i)(3), discussed below, directs the FCC to define “equivalent bandwidth” and “entire bandwidth.”

The Committee does not intend section 340(b)(2)(B) to prevent a satellite operator from using compression technology; to require a satellite operator to use the exact bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting; or to require a satellite operator to use the exact bandwidth or bit rate for a local broadcaster as it does for a distant broadcaster. Nor does the Committee intend section 340(b)(2)(B) to affect a satellite operator's carry-one, carry-all obligations, or the definitions of "program related" and "primary video." The Committee also does not intend the limitations of section 340(b)(2) to apply to satellite provision of a significantly viewed distant digital signal of a non-network broadcast station.

Section 340(b)(3) provides that the absence of an affiliate of a particular network in a local market does not prevent a satellite operator from retransmitting a significantly viewed signal of a distant broadcast station from that network. More than 70 markets do not have a full complement of network affiliates. This provision allows a satellite provider to retransmit into such a market a distant significantly viewed analog signal of a network broadcast station even though the market does not have a local affiliate from the same network. Similarly, it allows a satellite operator to retransmit into a market a distant significantly viewed digital signal of a network broadcast station if the market does not have a local affiliate from the same network.

Section 340(b)(3) does not allow provision of a distant significantly viewed digital signal of a network broadcast station if a local affiliate from the same network is present in the market but not yet broadcasting a digital signal. Section 340(b)(3) operates in this fashion to ensure that a satellite operator may not retransmit the distant significantly viewed digital signal of a network broadcast station if an affiliate of that network is present in the local market but has never begun to offer a digital signal for a reason excused by the FCC.

Section 340(b)(4) allows a local network affiliate to waive the limitations in sections 340(b)(1) or 340(b)(2) as they apply to the retransmission, into the local affiliate's local market, of a distant significantly viewed signal of a station affiliated with the same network. The waiver can be as broad or as narrow as the affiliate wants. For example, a local affiliate can waive the application of sections 340(b)(1) or 340(b)(2) to one or more consumers in the local market, and with respect to one or more specific distant affiliates of the same network. It may do so as part of a negotiated agreement and for any reason, including common ownership among the stations. The Committee does not intend the FCC to grant these waivers or preside over the waiver process. Whether to grant a waiver is a decision to be made solely based on the broadcaster's own business judgment, although the Committee anticipates that a local broadcaster may grant a waiver as part of an agreement made with a satellite operator or other parties. The Committee also does not intend to require a local broadcaster to execute any particular document as part of the waiver process, although the Committee expects that parties who intend to rely on such a waiver or any attendant agreement will want to reduce the waiver and the agreement to writing, so that they have something to refer to should any dispute arise in the future. Nor does the Committee in-

tend such waivers or agreements to be subject to the section 325 good-faith negotiation requirement. The Committee intends that section 340(b)(4) will help provide consumers with more viewing choices without causing undue harm to local broadcasters in a market.

Section 340(c)(1) allows a satellite operator to initiate an FCC determination that a signal of a distant broadcast station is significantly viewed. The Committee intends for the FCC to maintain a unified list of significantly viewed stations and communities that applies to both cable and satellite.

Section 340(c)(2) provides for significantly viewed determinations in areas without cable service. Because current regulations provide only for cable carriage of significantly viewed signals, significantly viewed determinations currently focus on cable communities. In areas of the country that do not have cable service, there is no cable community. Section 340(c)(2) is intended to allow satellite operators to carry significantly viewed signals in a community where no cable franchise exists so long as a signal is significantly viewed in the community based on the same quantitative criteria as currently apply to cable operators. See 47 C.F.R. §§ 76.5(i), 76.54. The Committee intends that any signal determined to be significantly viewed for purposes of satellite carriage in an area where cable is not present would also be significantly viewed for cable carriage should a cable operator enter the community in the future.

Section 340(d)(1) makes clear that carriage in a local market of a distant significantly viewed signal is not mandatory. Cable operators are under no obligation to carry in a local market a distant significantly viewed signal, and the Committee intends satellite carriage of such a distant signal in a local market to be similarly voluntary. Section 340(d)(1) also makes clear that any right of a station to have its signal carried in a local market under the carry-one, carry-all provisions of section 338 is not affected by the significantly viewed status of the signal in another market.

Section 340(d)(2) provides that the status of a distant signal as significantly viewed does not affect whether a satellite operator must get retransmission consent to carry that signal into a local market. Cable operators must obtain retransmission consent to carry distant significantly viewed signals into a local market and the Committee intends the same obligation to apply to satellite. If the satellite operator is exempt from having to obtain retransmission consent for other reasons, however, then retransmission consent would not be necessary. For example, a satellite operator is exempt under section 325(b) (47 U.S.C. § 325(b)) from having to obtain retransmission consent when providing a distant signal of a network to an unserved subscriber who cannot receive an over-the-air signal from an affiliate of the same network. The satellite operator would still be exempt from having to negotiate retransmission consent when providing a significantly viewed signal if it was providing it as a distant signal to an unserved consumer.

Section 340(e) allows the FCC to apply its network non-duplication and syndicated exclusivity rules to “remove” stations from the significantly viewed list as applied to satellite operators in a similar manner as it currently does with cable operators. Many, if not all, broadcast stations enter into contracts to be the sole providers of particular network or syndicated programming within a certain

geographic radius. See 47 C.F.R. §§ 76.93, 76.103. When broadcast stations do so, the FCC's network non-duplication and syndicated exclusivity rules generally require cable operators to black out the duplicative programming when they retransmit signals from distant stations into the protected areas. See 47 C.F.R. §§ 76.92, 76.101. If the FCC determines that a distant signal is significantly viewed in a community, the FCC exempts the signal from the network non-duplication and syndicated exclusivity rules so that the cable operator can carry the distant signal, including the duplicative programming, into the local market. See 47 C.F.R. §§ 76.92(f), 76.106(a). If the signal ever loses viewership such that it no longer qualifies as significantly viewed, the FCC does not literally remove the signal from the significantly viewed list, but parties can petition the FCC to re-impose the blackout obligations.

In the satellite context, however, the network non-duplication and syndicated exclusivity rules ordinarily apply only to retransmission of nationally distributed superstations. See 47 C.F.R. §§ 76.120(b), 76.122, 76.123. They do not currently apply to retransmission of distant signals of network stations or non-network stations that are not superstations. Section 340(e)(1) is intended to give the FCC authority to apply the network non-duplication and syndicated exclusivity rules to distant signals of network or non-network stations in a way that replicates, where and when appropriate, the way the FCC "removes" signals from the significantly viewed list for cable. Section 340(e)(2) makes clear that section 340(e)(1) does not authorize the FCC to apply the network non-duplication and syndicated exclusivity rules to other lawful retransmissions of distant signals of network or non-network stations, such as when a consumer is unserved over the air.

Section 340(f) creates a mechanism to enforce the new provisions regarding satellite delivery of significantly viewed signals. Section 340(f) is modeled after existing satellite-retransmission-related enforcement mechanisms in 47 U.S.C. § 325(e).

Section 340(g)(1) gives the FCC 180 days from enactment to commence a proceeding to implement the provisions of section 340. The notice of proposed rulemaking commencing the proceeding is to include a list of the signals already deemed significantly viewed for purposes of cable carriage and thus that are eligible for satellite carriage. The Committee intends for the FCC to continue to use this list, and add and "remove" stations in accordance with the other provisions of section 340. The FCC will have one year from enactment to adopt rules implementing section 340. Section 340(g)(2) makes clear that satellite may start carrying the signals on the list pending adoption of the rules.

Section 340(h)(1) gives the FCC until April 30, 2005, to revise its rules so that a television broadcast station may elect "carry-one, carry-all status" from a satellite operator on a community-by-community basis within a local market. Under current law, when a satellite operator offers local-into-local service in a market, the local broadcasters may choose between carry-one, carry-all status and retransmission consent. If the local broadcaster elects carry-one, carry-all status, the satellite operator must carry the station, but the station is not entitled to compensation. If the station chooses retransmission consent, the broadcaster can try to negotiate for compensation, but runs the risk of not getting carried at all.

Because cable systems are subject to local franchising, each community within a local market generally has a separate cable system. If a cable system is carrying a significantly viewed signal in a community, a local broadcaster of the same network can elect must-carry for that system, but still negotiate retransmission consent for cable systems elsewhere in the local market where no significantly viewed signal for the same network is being carried.

Because satellite operators have a nationwide—rather than local-franchise-based—service area, however, local broadcasters ordinarily must choose between carry-one, carry-all status and retransmission consent as an all-or-nothing proposition throughout the entire local market. To accommodate the new significantly viewed authority for satellite operators and to recreate, as best as possible, a similar bargaining framework for local broadcasters as exists with cable systems, section 340(h)(1) allows a local broadcaster to elect carry-one, carry-all status in communities with a significantly viewed signal from the same network, while continuing to negotiate retransmission consent in other communities in the market.

To ease the administrative burden on the satellite operator, section 340(h)(2) specifies that the community-by-community elections within a local market shall take place in a unified negotiation between each satellite operator and broadcaster. The Committee does not intend to set any particular time limit on the negotiation, or to suggest that it must take place in one sitting, but does mean to require the broadcaster to “lay all its elections on the table at once” so that the satellite operator can see the entire picture in anticipation of any retransmission consent negotiations that may be necessary in the communities where the broadcaster does not elect “carry-one, carry all.” To facilitate the community-by-community election process, section 340(h)(3) gives the FCC until April 30, 2005, to revise its rules to require satellite operators to notify broadcasters in advance of any communities in which they intend to carry significantly viewed signals. The satellite operators are permitted to carry significantly viewed signals only in communities for which the satellite operators provide such notice.

Section 203. Carriage of local stations on a single dish

Section 203 of the bill amends section 338 of the Communications Act (47 U.S.C. § 338) to require a satellite operator that offers local-into-local service in a market to provide to a subscriber any analog signals of the local broadcasters in that market on a single reception antenna device—often referred to as a “dish”—as well as to provide any digital signals of the local broadcasters on a single dish. The satellite operator may, however, carry any analog signals of the local broadcasters on a separate dish from any digital signals of the local broadcasters.

Satellite operators will have one year from enactment to comply. Within 270 days of enactment, a satellite operator offering local-into-local service will be obligated to notify local broadcasters and subscribers in the local market: (1) what broadcast or non-broadcast signals, if any, it intends to move among dishes to comply with these requirements; (2) whether subscribers will need to obtain additional equipment to receive such signals; and, (3) whether it plans to stop carrying any broadcast or non-broadcast signals to comply.

DirecTV does not currently split local broadcasters between dishes. As of May 2004, EchoStar split local broadcasters in 38 markets. The Committee does not expect EchoStar to withdraw from local markets, or significantly delay roll-out into additional local markets, to comply with the one-year deadline. DirecTV has stated it will be in 124 markets by the end of 2004, and in all 210 sometime between 2006 and 2008. EchoStar has said it does not intend to let DirecTV serve more local markets than it does. Therefore, it will likely keep up a fairly aggressive pace. In any event, even if EchoStar did drop local markets or slowed down its roll-out, consumers would likely still be able to get local broadcast signals from DirecTV or other MVPD providers.

Section 204. Replacement of distant signals with local signals

Section 204 of the bill amends section 339 of the Communications Act (47 U.S.C. §339) to require a satellite operator to stop providing distant-signal service to certain subscribers in a market once the operator begins providing local-into-local service in that market.

New section 339(a)(2)(A) requires certain grandfathered subscribers to choose between receiving a distant signal of a network and a local signal. With SHVIA, Congress allowed some subscribers who were receiving a distant signal to continue to do so even though the subscribers were deemed as a matter of law to be “served” over the air from an affiliate of the same network. The grandfathered status of these subscribers is set to expire at the end of this year. Section 339(a)(2)(A) allows a satellite operator to continue retransmitting a distant signal to such a grandfathered subscriber who affirmatively elects to receive such a signal. The satellite operator may do so, however, only until the subscriber elects to receive a local signal of the network as part of the satellite operator’s local-into-local service.

New section 339(a)(2)(B) allows certain subscribers who are deemed unserved by an over-the-air signal of a network affiliate to receive from their satellite operator both a distant signal and a local signal of that network. Under section 339(a)(2)(B), a subscriber who is deemed unserved by an over-the-air signal of a network affiliate, and who at the date of enactment is already receiving from a satellite operator both a local and a distant signal of that network, can continue to receive both signals. If, however, an unserved subscriber is receiving from a satellite operator a signal from only a distant affiliate of the network, even though the subscriber had the option on the date of enactment to receive from the satellite operator a signal from a local affiliate of that network, the subscriber may continue to receive the distant signal, but only until the subscriber elects to receive the local signal. If a satellite operator was not offering at the date of enactment a signal from a local affiliate of a network, the satellite operator may provide a signal of a distant affiliate of that network to an unserved consumer who was a subscriber of the satellite operator at the date of enactment, or who became a subscriber of that operator before the operator began offering the local signal, but only until the subscriber elects to receive the local signal.

New section 339(a)(2)(C) provides that a satellite operator may not provide a signal of a distant affiliate of a network to a con-

sumer in a local market who becomes a subscriber to the satellite operator after the operator has begun to make available a signal of a local affiliate of that network in that local market.

New section 339(a)(2)(D) allows a local affiliate to waive any of the limitations in section 339(a)(2) as they apply to the retransmission, into the local affiliate's local market, of the distant signals of a station affiliated with the same network. The local affiliate may waive application of the limitations as to one or more consumers in the local market, and with respect to one or more distant affiliates of the same network. It may do so as part of a negotiated agreement and for any reason, including common ownership among the stations. The Committee does not intend the FCC to grant these waivers or preside over the waiver process. Whether to grant a waiver is a decision to be made solely based on the broadcaster's own business judgment, although the Committee anticipates that a local broadcaster may grant a waiver as part of an agreement made with a satellite operator or other parties. The Committee also does not intend to require a local broadcaster to execute any particular document as part of the waiver process, although the Committee expects that parties who intend to rely on such a waiver or any attendant agreement will want to reduce the waiver and the agreement to writing, so that they have something to refer to should any dispute arise in the future. Nor does the Committee intend such waivers or agreements to be subject to the section 325 good-faith negotiation requirement. The Committee intends that section 339(a)(2)(D) will help provide consumers with more viewing choices without causing undue harm to local broadcasters in that market.

New section 339(a)(2)(E) makes clear that the distant-signal limitations of section 339(a)(2) do not apply to the provision of significantly viewed signals under new section 340, or to the provision of distant signals to trucks and recreational vehicles.

Section 205. Additional notices to subscribers, networks, and stations concerning signal carriage

Section 205 of the bill creates new section 338(h) of the Communications Act (47 U.S.C. § 338(h)) obligating satellite operators to provide subscribers, networks and stations certain additional notices regarding the satellite operators' carriage of signals. Section 338(h)(1) gives a satellite operator a certain amount of time to notify a subscriber who receives a distant signal of a network about the availability, if any, of a signal of a local affiliate of that network, and to offer to replace the distant signal with the local signal. If the subscriber does not respond within 60 days, the satellite operator is to stop providing the distant signal to the subscriber within another 10 days.

Section 338(h)(2) gives a satellite operator 60 days from enactment to provide each network with information regarding the distant signals of that network that the operator retransmits, and to certify that it does so lawfully to the best of its knowledge. This provision is designed to help networks and stations monitor satellite compliance with the new Communications Act limitations the SHVERA creates on the provision of distant signals.

Section 338(h)(3) gives the FCC 180 days from enactment to revise its rules governing the form of the notice satellite operators

must provide local broadcasters when the operators begin offering local-into-local service in a market. The purpose of this section is to make sure such notices more clearly indicate to local broadcasters the rights and responsibilities they have under the carry-one, carry-all provisions of the Communications Act and FCC regulations, as well as the consequences of failing to respond to such notices. This provision is also intended to require satellite operators to send such notices by certified mail. Broadcasters are already required to send their carry-one, carry-all elections to satellite operators by certified mail to ensure that the satellite operators take notice. Section 338(h)(3) is intended to create a similar obligation for satellite operators to ensure the broadcasters take notice of the satellite operators' announcements that they are commencing local-into-local service.

Section 338(h)(4) requires satellite operators to notify local broadcasters of any intent to begin retransmitting into a market the signal of distant stations that are significantly viewed over the air in the local market. The Committee intends this provision to help local broadcasters monitor satellite compliance with the conditions SHVERA creates on the provision of significantly viewed signals, and to exercise their option of negotiating retransmission consent on a community-by-community basis under new section 340. This provision also requires satellite operators to list on their web sites the significantly viewed signals they offer so that consumers are aware of the signals available to them.

Section 206. Privacy rights of satellite subscribers

Section 206 of the bill creates new section 338(i) of the Communications Act (47 U.S.C. § 338(i)). Section 338(i) obligates satellite operators to abide by the same privacy obligations that section 631 of the Communications Act (57 U.S.C § 551) applies to cable operators. The Committee wishes to make clear that satellite operators may disclose to broadcasters the information required by sections 338(h) and 340(h) without violating new section 338(i). Such disclosures are "necessary to render, or conduct a legitimate business activity related to, a satellite service provided by the satellite carrier to the subscriber," and so fall within new section 338(i)(4)(B)(i).

Section 207. Reciprocal bargaining obligations

Section 207 of the bill extends until Jan. 1, 2010, the obligations broadcasters have under section 325(b)(3)(C)(ii) (47 U.S.C. § 325(b)(3)(C)(ii)) to negotiate retransmission consent in good faith and not to enter into exclusive retransmission consent agreements. The good-faith and non-exclusivity requirements currently expire Jan. 1, 2006. In light of evidence that retransmission negotiations continue to be contentious, the Committee chose to extend these obligations, and also to begin applying the good-faith obligations to MVPDs. The Committee intends the MVPD good-faith obligations to be analogous to those that apply to broadcasters, and not to affect the ultimate ability of an MVPD to decide not to enter into a retransmission consent agreement with a broadcaster.

Section 208. Unserved digital customers

Section 208 of the bill requires the FCC to recommend to Congress by Dec. 31, 2005, a methodology for determining whether a

particular consumer would be unserved over the air by the digital signal of a specific network as transmitted by a broadcast station after the broadcasters in that consumer's market have ceased to broadcast in analog because of the implementation of section 309(j)(14) of the Communications Act. A consumer is unserved if the consumer cannot receive a network affiliate signal of adequate signal strength as set out by FCC regulations. If possible, the FCC is also to report whether it might be possible to determine prior to the end of the digital television transition if there will be particular parts of the country that will be unserved over the air by the digital signals of the affiliates of particular networks after the transition, and what those parts of the country might be. The Committee intends the FCC to base its methodology on the FCC's existing technical specifications for digital television service and the individual location Longley-Rice algorithm.

Just as there are consumers today who cannot receive analog signals over the air, there will be consumers who cannot receive digital signals over the air once the digital television transition is complete. The Committee intends this report to help provide Congress the information it needs to consider whether to enact additional legislation governing the way satellite operators may provide consumers with distant digital signals.

Section 209. Reduction of required tests

Section 209 of the bill amends the provisions of section 339(c)(4) of the Communications Act (47 U.S.C § 339(c)(4)) governing signal-strength testing. Under current law, if the FCC's predictive model indicates that a consumer can receive an adequate analog signal over the air—making the consumer ineligible for analog distant-signal service—the consumer may challenge that prediction by requesting an on-location signal-strength test. If the test determines that the consumer is, in fact, served, the satellite operator must pay for the test. If the test indicates that the consumer is not served, the broadcaster must pay for the test. New section 339(c)(4)(D)(i) makes a consumer in a local-into-local market ineligible for a test at the expense of a broadcaster or satellite operator because under this bill such consumers are no longer eligible for distant-signal service if they do not have it already, making the test irrelevant. New section 339(c)(4)(D)(ii) makes a consumer ineligible for a test at satellite provider or broadcaster expense if the FCC's predictive model reports a signal-strength within a certain margin of error to be determined by the FCC by rule within one year of enactment. In such circumstances, on-location tests are unlikely to return results different than the predictive model. New section 339(c)(4)(E), however, allows consumers to pay for their own tests if the FCC's model predicts the consumer to be "served" over the air. The Committee intends the satellite operator to provide a consumer who requests a signal-strength test under section 339(c)(4)(E) with a good-faith estimate of the costs usually incurred by the satellite operator or broadcaster when the satellite operator and the broadcaster follow the ordinary procedures under section 339(c)(4)(A) and (B) for arranging such a test. If the consumer agrees to pay those costs, the Committee intends the satellite operator and the broadcaster to engage in those procedures, intends the satellite operator to report the results to the consumer, and intends

the satellite operator and broadcaster to respect the results of those tests as if the satellite operator or broadcaster had requested it.

Section 210. Carriage of certain additional stations

Section 210 of the bill adds new section 340(c)(3) of the Communications Act to help consumers in certain small communities receive by satellite certain television broadcasts from within their states. New section 340, as created by Section 202 of the bill and discussed above, helps consumers who Nielsen Media Research assigns to “local” markets outside their states receive by satellite certain distant broadcast signals from within their states if those signals are significantly viewed over the air in the consumers’ Nielsen-defined local markets. Some small communities assigned by Nielsen to out-of-state markets, however, have no significantly viewed over-the-air signals from within their own states. Section 340(c)(3) allows satellite providers to offer consumers in certain small communities in out-of-state markets receive by satellite certain broadcast signals from stations within their states, in addition to signals from their Nielsen-defined local markets.

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

COMMUNICATIONS ACT OF 1934

* * * * *

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * *

SEC. 325. FALSE DISTRESS SIGNALS; REBROADCASTING; STUDIOS OF FOREIGN STATIONS.

(a) * * *

(b)(1) * * *

(2) This subsection shall not apply—

(A) * * *

* * * * *

(C) until December 31, **[2004]** *2009*, to retransmission of the signals of network stations directly to a home satellite antenna, if the subscriber receiving the signal—

(i) * * *

* * * * *

(3)(A) * * *

* * * * *

(C) **[Within 45 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, the]** *The Commis-*

sion shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitations contained in paragraph (2). [The Commission shall complete all actions necessary to prescribe such regulations within 1 year after such date of enactment.] Such regulations shall—

(i) establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph; [and]

(ii) until January 1, [2006] 2010, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations[.]; and

(iii) until January 1, 2010, prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations.

* * * * *

SEC. 338. CARRIAGE OF LOCAL TELEVISION SIGNALS BY SATELLITE CARRIERS.

(a) * * *

* * * * *

(g) *CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.—*

(1) *SINGLE DISH.—Each satellite carrier that retransmits the signals of local television broadcast stations in a local market shall retransmit the signals of all local television broadcast stations retransmitted by that carrier to subscribers in such market by means of a single reception antenna and associated equipment.*

(2) *EXCEPTION.—Notwithstanding paragraph (1), if the carrier retransmits signals in the digital television service, the carrier shall retransmit the digital television service signals of all the local television broadcast stations retransmitted by that carrier to subscribers in such market by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used for signals that are not in the digital television service.*

(3) *EFFECTIVE DATE.—The requirements of paragraphs (1) and (2) of this subsection shall apply on and after one year after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.*

(4) *NOTICE OF DISRUPTIONS.*—A carrier that is providing signals of a local television broadcast station in a local market under this section on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 shall, not later than 270 days after such date of enactment, provide to the licensees for such stations and the carrier’s subscribers in such local market a notice that displays prominently and conspicuously a clear statement of—

(A) any reallocation of signals between different reception antennas and associated equipment that the carrier intends to make in order to comply with the requirements of this subsection;

(B) the need, if any, for subscribers to obtain an additional reception antenna and associated equipment to receive such signals; and

(C) any cessation of carriage or other material change in the carriage of signals as a consequence of the requirements of this paragraph.

(5) *ENFORCEMENT.*—Notwithstanding any other provision of this section, the Commission may enforce this section and any regulation thereunder in accordance with titles IV and V of this Act.

(h) *ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.*—

(1) *NOTICES TO AND ELECTIONS BY SUBSCRIBERS CONCERNING GRANDFATHERED SIGNALS.*—Any carrier that provides a distant signal of a network station to a subscriber pursuant to a statutory license under section 119(a)(4)(A) of title 17, United States Code, shall—

(A) within 60 days after the local signal of a network station of the same television network is available pursuant to a statutory license under section 122, or within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, whichever is later, send a notice to the subscriber—

(i) offering to substitute the local network signal for the duplicating distant network signal; and

(ii) informing the subscriber that, if the subscriber fails to respond in 60 days, the subscriber will lose the distant network signal but will be permitted to subscribe to the local network signal; and

(B) if the subscriber—

(i) elects to substitute such local network signal within such 60 days, switch such subscriber to such local network signal within 10 days after the end of such 60-day period; or

(ii) fails to respond within such 60 days, terminate the distant network signal within 10 days after the end of such 60-day period.

(2) *NOTICES TO NETWORKS OF DISTANT SIGNAL SUBSCRIBERS.*—Within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, each satellite carrier that provides a distant signal of a network station to a subscriber pursuant to a statutory license

under section 119(a)(4)(A) or 119(a)(4)(B)(i) of title 17, United States Code, shall submit to each network—

(A) a list, aggregated by designated market area, identifying each subscriber provided such a signal by—

- (i) name;
 - (ii) address (street or RFD number, city, state, and zip code); and
 - (iii) the distant network signal or signals received;
- and

(B) a statement that, to the best of the carrier's knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to a statutory license under section 119(a)(4)(A) or 119(a)(4)(B)(i) of title 17, United States Code.

(3) NOTICE TO STATION LICENSEES OF COMMENCEMENT OF LOCAL-INTO-LOCAL SERVICE.—

(A) NOTICE REQUIRED.—Within 180 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall revise the regulations under this section relating to notice to broadcast station licensees to comply with the requirements of this paragraph.

(B) CONTENTS OF COMMENCEMENT NOTICE.—The notice required by such regulations shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage—

(i) of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

(ii) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

(iii) that such licensee has 30 days from the date of the receipt of such notice to make such election; and

(iv) that failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

(C) TRANSMISSION OF NOTICES.—Such regulations shall require that each satellite carrier shall transmit the notices required by such regulation via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

(4) NOTICES CONCERNING SIGNIFICANTLY VIEWED STATIONS.—Each satellite carrier that proposes to commence the retransmission of a station pursuant to section 340 in any local market shall—

(A) not less than 60 days before commencing such retransmission, provide a written notice to any television

broadcast station in such local market of a such proposal;
and

(B) designate on such carrier's website all significantly viewed signals carried pursuant to section 340 and the communities in which the signals are carried.

(i) **PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.**—

(1) **NOTICE.**—At the time of entering into an agreement to provide any satellite service or other service to a subscriber and at least once a year thereafter, a satellite carrier shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the satellite carrier;

(D) the times and place at which the subscriber may have access to such information in accordance with paragraph (5); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a satellite carrier and the right of the subscriber under paragraphs (7) and (9) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this subsection, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) **DEFINITIONS.**—For purposes of this subsection, other than paragraph (9)—

(A) the term “personally identifiable information” does not include any record of aggregate data which does not identify particular persons;

(B) the term “other service” includes any wire or radio communications service provided using any of the facilities of a satellite carrier that are used in the provision of satellite service; and

(C) the term “satellite carrier” includes, in addition to persons within the definition of satellite carrier, any person who—

(i) is owned or controlled by, or under common ownership or control with, a satellite carrier; and

(ii) provides any wire or radio communications service.

(3) **PROHIBITIONS.**—

(A) **CONSENT TO COLLECTION.**—Except as provided in subparagraph (B), a satellite carrier shall not use any facilities used by the satellite carrier to collect programming selection or subscription information from such a subscriber to collect personally identifiable information con-

cerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(B) *EXCEPTIONS.*—A satellite carrier may use such facilities to collect such information in order to—

(i) obtain information necessary to render a satellite service or other service provided by the satellite carrier to the subscriber; or

(ii) detect unauthorized reception of satellite communications.

(4) *DISCLOSURE.*—

(A) *CONSENT TO DISCLOSURE.*—Except as provided in subparagraph (B), a satellite carrier shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or satellite carrier.

(B) *EXCEPTIONS.*—A satellite carrier may disclose such information if the disclosure is—

(i) necessary to render, or conduct a legitimate business activity related to, a satellite service or other service provided by the satellite carrier to the subscriber;

(ii) subject to paragraph (9), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

(iii) a disclosure of the names and addresses of subscribers to any satellite service or other service, if—

(I) the satellite carrier has provided the subscriber the opportunity to prohibit or limit such disclosure; and

(II) the disclosure does not reveal, directly or indirectly, the—

(aa) extent of any viewing or other use by the subscriber of a satellite service or other service provided by the satellite carrier; or

(bb) the nature of any transaction made by the subscriber over any facilities used by the satellite carrier to collect programming selection or subscription information from such a subscriber; or

(iv) to a government entity as authorized under chapters 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include records revealing satellite subscriber selection of video programming from a satellite carrier.

(5) *ACCESS BY SUBSCRIBER.*—A satellite subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a satellite carrier. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such satellite carrier. A satellite subscriber shall be provided reasonable opportunity to correct any error in such information.

(6) *DESTRUCTION OF INFORMATION.*—A satellite carrier shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under paragraph (5) or pursuant to a court order.

(7) *PENALTIES.*—Any person aggrieved by any act of a satellite carrier in violation of this section may bring a civil action in a United States district court. The court may award—

(A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

The remedy provided by this subsection shall be in addition to any other lawful remedy available to a satellite subscriber.

(8) *RULE OF CONSTRUCTION.*—Nothing in this title shall be construed to prohibit any State from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(9) *COURT ORDERS.*—Except as provided in paragraph (4)(B)(iv), a governmental entity may obtain personally identifiable information concerning a satellite subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(B) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

[(g)] (j) *REGULATIONS BY COMMISSION.*—Within 1 year after the date of the enactment of this section, the Commission shall issue regulations implementing this section following a rulemaking proceeding. The regulations prescribed under this section shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(3) and (4) and 615(g)(1) and (2).

[(h)] (k) *DEFINITIONS.*—As used in this section:

(1) *DISTRIBUTOR.*—The term “distributor” means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

* * * * *

SEC. 339. CARRIAGE OF DISTANT TELEVISION STATIONS BY SATELLITE CARRIERS.

(a) *PROVISIONS RELATING TO CARRIAGE OF DISTANT SIGNALS.*—

(1) * * *

(2) *REPLACEMENT OF DISTANT SIGNALS WITH LOCAL SIGNALS.*—Notwithstanding any other provision of paragraph (1), the following rules shall apply after the date of enactment of the

Satellite Home Viewer Extension and Reauthorization Act of 2004:

(A) *RULES FOR GRANDFATHERED SUBSCRIBERS.—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 section 119(e) of title 17, United States Code (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 pursuant to the statutory license under section 122 by that satellite carrier to the subscriber, the carrier may only provide the secondary transmissions 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)(1) 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 carrier may not retransmit the distant signal to any subscriber who is eligible to receive the signal of a network station solely by reason of section 119(e) of title 17, United States Code, unless such 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 the list and statement required by section 338(h)(2).*

(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 section 119(a)(2) of title 17, United States Code (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 pursuant to the statutory license under section 122 by that satellite carrier to the subscriber on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may only provide the secondary transmissions 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 the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network the list and statement required by section 338(h)(2); 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 pursuant to the statutory license under section 122 by that satellite carrier to a subscriber on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may only provide the secondary transmissions of the distant signal of such network station to that subscriber—

(I) who is a 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 made available by the carrier,

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

(C) FUTURE APPLICABILITY.—A satellite carrier may not provide a distant signal (within the meaning of subparagraph (A) or (B)) to any person in a location to which the signal of a local network station affiliated with the same television network was made available by that carrier pursuant to the statutory license under section 122 of title 17, United States Code, before the person becomes a subscriber to that carrier.

(D) AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.—Notwithstanding the provisions of this paragraph, a satellite carrier may provide the distant signal (within the meaning of subparagraph (A) or (B)) of any distant network station to any person to whom the signal of a local network station is available pursuant to the statutory license under section 122 of title 17, United States Code, if and to the extent that such local network station has granted a waiver from the requirements of this paragraph to such satellite carrier with respect to such distant network station.

(E) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the eligibility of a subscriber to receive secondary transmissions under section 119(a)(3) of title 17, United States Code, or as an unserved household included under section 119(a)(12) of such title.

[(2)] (3) PENALTY FOR VIOLATION.—Any satellite carrier that knowingly and willfully provides the signals of television stations to subscribers in violation of this subsection shall be liable for a forfeiture penalty under section 503 in the amount of \$50,000 for each violation or each day of a continuing violation.

* * * * *

(c) ELIGIBILITY FOR RETRANSMISSION.—

(1) * * *

* * * * *

(4) OBJECTIVE VERIFICATION.—

(A) * * *

* * * * *

(D) REDUCTION OF VERIFICATION BURDENS.—*Within one year after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall by rule exempt from the verification requirements of subparagraph (A) any request for a test made by a subscriber to a satellite carrier—*

(i) to whom the retransmission of the signals of local broadcast stations is available under section 122 of title 17, United States Code, from such carrier; or

(ii) for whom the predictive model required by paragraph (3) predicts a signal intensity that exceeds the signal intensity standard in effect under section 119(d)(11)(A) of such title by such number of decibels as the Commission specifies in such rule.

(E) EXCEPTION.—*Notwithstanding any provision of this Act, this section does not prohibit a subscriber who is predicted to receive a signal that meets or exceeds such signal intensity standard from conducting a signal strength test at the subscriber's own expense for the purpose of determining their eligibility for distant signals under this section.*

* * * * *

SEC. 340. SIGNIFICANTLY VIEWED SIGNALS PERMITTED TO BE CARRIED.

(a) SIGNIFICANTLY VIEWED STATIONS.—*In addition to the broadcast signals that subscribers may receive under section 338 and 339, a satellite carrier is also authorized to retransmit to subscribers located in a community the signal of any station that a cable system in the same community is authorized to retransmit pursuant to section 111 of title 17, United States Code, if such station is treated as significantly viewed in the county within which such community is located in accordance with the rules, regulations, and authorizations of the Commission.*

(b) LIMITATIONS.—

(1) ANALOG SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—*With respect to a signal that originates as an analog signal of a television broadcast station, this section shall apply only to retransmissions to subscribers who receive retransmissions from a satellite carrier pursuant to the statutory license under section 122 of title 17, United States Code.*

(2) DIGITAL SERVICE LIMITATIONS.—*With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—*

(A) the subscriber receives from the satellite carrier pursuant to the statutory license under section 122 of title 17, United States Code, the retransmission of the digital signal of a network station in the subscriber's local market that is affiliated with the same television network; and

(B) either—

(i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or

(ii) the retransmission of the local network station carries the entire bandwidth of the digital signal broadcast by such local network station.

(3) *LIMITATION NOT APPLICABLE WHERE NO NETWORK AFFILIATES.*—The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

(4) *AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.*—Notwithstanding paragraphs (1) and (2), a satellite carrier may provide to subscribers the retransmission of a network station that is determined to be significantly viewed under this section, if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to such significantly viewed station.

(c) *MODIFICATIONS OF LIST.*—

(1) *PETITIONS FROM SATELLITE CARRIERS.*—In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders—

(A) by which stations and communities may be added to those that are eligible for retransmission under subsection (a); and

(B) by which stations and communities may be determined to be eligible for retransmission under paragraph (2) of this subsection.

(2) *APPLICATION OF CRITERIA TO COMMUNITIES WITHOUT CABLE SERVICE.*—In addition to the stations and communities that are eligible for retransmission under subsection (a), in a community that is not served by a cable system, a satellite carrier is also authorized to retransmit to subscribers located in such community the signal of any station that a cable system in that community would be authorized to retransmit pursuant to section 111 of title 17, United States Code, if such signal would be treated as significantly viewed in the county within which such community is located in accordance with the rules, regulations, and authorizations of the Commission.

(3) *CARRIAGE OF CERTAIN ADDITIONAL STATIONS.*—

(A) *ADDITIONAL STATIONS AUTHORIZED.*—In addition to the signals that are eligible to be carried under subsection (a) and paragraph (2) of this subsection, a satellite carrier is also authorized to retransmit to subscribers in no more than two counties in a State that are in a local market principally comprised of counties in another State, the signals of any television station located in the capital city 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 Nielson Media Research.

(B) *TREATMENT AS SIGNIFICANTLY VIEWED; LIMITATIONS.*—Such signals shall be deemed, solely for purposes of this section, to be significantly viewed in such two countries. In total, a satellite carrier that carries one or more additional signals under this paragraph may retransmit no more than four television broadcast stations in such countries pursuant to this paragraph. All rules applicable to carriage of stations pursuant to subsection (a) or paragraph (2) of this subsection shall apply to carriage of stations pursuant to this paragraph.

(d) *EFFECT ON OTHER OBLIGATIONS AND RIGHTS.*—

(1) *NO EFFECT ON CARRIAGE OBLIGATIONS.*—Carriage of a signal under this section is not mandatory, and any right of a station licensee to have the signal of such station carried under section 338 is not affected by the eligibility of such station to be carried under this section.

(2) *RETRANSMISSION CONSENT RIGHTS NOT AFFECTED.*—The eligibility of the signal of a station to be carried under this section does not affect the right of the licensee of such station to grant (or withhold) retransmission consent under section 325(b)(1).

(e) *NETWORK NONDUPLICATION AND SYNDICATED EXCLUSIVITY.*—

(1) *NOT APPLICABLE EXCEPT AS PROVIDED BY COMMISSION REGULATIONS.*—Signals eligible to be carried under this section are not subject to the Commission's regulations concerning network nonduplication or syndicated exclusivity unless, pursuant to regulations adopted by the Commission, the Commission determines to permit network nonduplication or syndicated exclusivity to apply within the appropriate zone of protection.

(2) *LIMITATION.*—Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclusivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under section 119(a)(2)(A) or (B), with respect to persons who reside in unserved households, under 119(a)(4)(A), or under section 119(a)(12).

(f) *ENFORCEMENT PROCEEDINGS.*—

(1) *NOTICE BY TELEVISION BROADCAST STATIONS.*—If a television broadcast station believes that a satellite carrier has retransmitted to any subscriber in the local market of such station the signal of another television broadcast station affiliated with the same television network in violation of this section, the station may provide the satellite carrier with written notice of such violation. Such notice shall be provided via overnight delivery, addressed to the chief executive officer of the satellite carrier at its principal place of business and marked "URGENT LITIGATION MATTER" on the outer packaging. Such notification shall set forth—

(A) the name, address, and call letters of the station that is claimed to have been unlawfully retransmitted (for purposes of this subsection, the "imported station");

(B) the name and address of the satellite carrier;

(C) the dates on which the alleged retransmission occurred;

(D) the street address of at least one person to whom the alleged retransmission was made;

(E) a statement that the retransmission was not permitted because—

(i) the Commission had not determined that the imported station is significantly viewed in the relevant community;

(ii) the subscriber is not eligible for the retransmission of the signal because of the limitation in subsection (b) (1) or (2);

(iii) the satellite carrier had not provided the notification required by subsection (h)(3); or

(iv) two or more of the above; and

(F) the name and address of counsel for the station.

(2) COMPLAINTS BY TELEVISION BROADCAST STATIONS.—If, within 30 days of providing to the satellite carrier a notice pursuant to paragraph (1), the satellite carrier has not cured the alleged retransmission in violation of this section, or if the satellite carrier cures the alleged violation after notice and then renews such violation within the next two years, the station may file a complaint with the Commission. Such complaint shall set forth the information provided in a notice under paragraph (1).

(3) SERVICE OF COMPLAINTS ON SATELLITE CARRIERS.—For purposes of any proceeding under this subsection, any satellite carrier that retransmits the signal of any broadcast station shall be deemed to designate the Secretary of the Commission as its agent for service of process. A television broadcast station may serve a satellite carrier with a complaint concerning an alleged violation of this section through retransmission of a station within the local market of such station by filing the original and two copies of the complaint with the Secretary of the Commission and serving a copy of the complaint on the satellite carrier by means of two commonly used overnight delivery services, each addressed to the chief executive officer of the satellite carrier at its principal place of business, and each marked “URGENT LITIGATION MATTER” on the outer packaging. Service shall be deemed complete one business day after a copy of the complaint is provided to the delivery services for overnight delivery. On receipt of a complaint filed by a television broadcast station under this subsection, the Secretary of the Commission shall send the original complaint by United States mail, postage prepaid, receipt requested, addressed to the chief executive officer of the satellite carrier at its principal place of business.

(4) ANSWERS BY SATELLITE CARRIERS.—Within 20 business days after the date of service, the satellite carrier shall file an answer with the Commission and shall serve the answer by a commonly used overnight delivery service and by United States mail, on the counsel designated in the complaint at the address listed for such counsel in the complaint. The answer shall include, as a schedule, a complete and accurate list of all subscribers to which the satellite carrier retransmitted the imported station into the community in question pursuant to this section for each month during the relevant time period. Such subscriber information submitted by a satellite carrier may be

used only for purposes of determining compliance by the satellite carrier with this section.

(5) DEFENSES.—

(A) EXCLUSIVE DEFENSES.—*The defenses under this paragraph are the exclusive defenses available to a satellite carrier against which a complaint under this subsection is filed.*

(B) DEFENSES.—*The defenses referred to under subparagraph (A) are the defenses—*

(i) that the satellite carrier did not retransmit the imported station to any person in the complaining station's local market pursuant to this section during the time period specified in the complaint;

(ii) if the complaining station has alleged that the retransmission was unlawful because the Commission had not determined that the station is significantly viewed in the relevant community, that the Commission had in fact made that determination;

(iii) with respect to particular subscribers referenced in the complaint, that those subscribers reside in communities in which the Commission has determined the station to be significantly viewed;

(iv) if the complaining station has alleged that the retransmission is unlawful because the subscriber is ineligible for the retransmission because of the limitation in subsection (b) (1) or (2), that such limitation is inapplicable; and

(v) if the complaining station has alleged that the retransmission was unlawful because the satellite carrier had not provided the notification required by subsection (h)(3), that the satellite carrier had in fact provided that notification.

(6) COUNTING OF VIOLATIONS.—*The unlawful retransmission of a particular television broadcast station on a particular day subsequent to the notice and opportunity to cure described in paragraphs (1) and (2) of this subsection to a single subscriber pursuant to this section shall be considered a separate violation of this section.*

(7) PROCEDURES.—

(A) REGULATIONS.—*Within 60 days after the date of enactment, the Commission shall issue procedural regulations implementing this subsection which shall supersede procedures under section 312.*

(B) DETERMINATIONS.—

*(i) IN GENERAL.—*Within 45 days after the filing of a complaint, the Commission shall issue a final determination in any proceeding brought under this subsection, unless the Commission issues an interim determination in writing that there has been a genuine, reasonable, good faith dispute about the applicability of one of the defenses set forth in paragraph (5), in which case the Commission shall have 135 additional days to issue a final determination. The Commission shall hear witnesses only if it clearly appears, based on written filings by the parties, that there is a genuine dis-

pute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

(ii) *DISCOVERY.*—The Commission may direct the parties to exchange pertinent documents, and if necessary to take prehearing depositions, on such schedule as the Commission may approve, but only if the Commission first determines that such discovery is necessary to resolve a genuine dispute about material facts, consistent with the obligation to make a final determination within 45 days (or 180 days, as appropriate).

(8) *RELIEF.*—If the Commission determines that a satellite carrier has retransmitted the imported stations to at least one person in the complaining station's local market based on this section and has failed to meet its burden of proving one of the defenses under paragraph (5) with respect to such retransmission, the Commission shall be required to—

(A) make a finding that the satellite carrier violated this section with respect to that station; and

(B) issue an order containing—

(i) a cease-and-desist order directing the satellite carrier immediately to stop making any further retransmissions in violation of this section;

(ii) a monetary penalty of \$50 per violation, which may be waived by the Commission only if the Commission determines that there was a genuine, reasonable, good faith dispute about the applicability of one of the defenses set forth in paragraph (5); and

(C) an award to the complainant of the complainant's costs and reasonable attorney's fees.

(9) *COURT PROCEEDINGS ON ENFORCEMENT OF COMMISSION ORDER.*—

(A) *IN GENERAL.*—On entry by the Commission of a final order granting relief under this subsection—

(i) a television broadcast station may apply within 30 days after such entry to the United States District Court for the District of Columbia for a final judgment enforcing all relief granted by the Commission; and

(ii) the satellite carrier may apply within 30 days after such entry to the United States District Court for the District of Columbia for a judgment reversing the Commission's order.

(B) *APPEAL.*—

(i) For cases in which the Commission has not determined that there has been a genuine, reasonable, good faith dispute about the applicability of one of the defenses set forth in paragraph (5), the procedure for an appeal under this subparagraph by the satellite carrier shall supersede any other appeal rights under Federal or State law. The United States District Court for the District of Columbia may find personal jurisdiction based on the satellite carrier's ownership of licenses issued by the Commission. An application by a television broadcast station for an order enforcing any

cease-and-desist relief granted by the Commission shall be resolved on a highly expedited schedule. No discovery may be conducted by the parties in any such proceeding. The district court shall enforce the Commission order unless the Commission record reflects manifest error and an abuse of discretion by the Commission.

(ii) For cases in which the Commission has determined that there has been genuine, reasonable, good faith dispute about the applicability of one of the defenses set forth in paragraph (5), the appeals process set forth in section 402 shall apply, with the following caveats:

(I) If the Commission has found the retransmissions in question to be in violation of this section, the satellite carrier must cease such retransmissions during the pendency of any appeal. Any such retransmissions after the date of the Commission's order but prior to any order overturning the Commission on appeal shall be considered violations under paragraph (6).

(II) If the Commission has found the retransmissions in question to be not in violation of this section, the satellite carrier may continue such retransmissions during the pendency of the appeal. Any such retransmissions after the date of the Commission's order but prior to any order overturning the Commission on appeal shall not be considered violations under paragraph (6).

(g) RULEMAKING.—

(1) REQUIREMENTS.—*The Commission shall—*

(A) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking within 180 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004;

(B) include in such notice a list of the stations or communities eligible for carriage under subsection (a); and

(C) adopt rules pursuant to such rulemaking within one year after such date of enactment.

(2) INTERIM ELIGIBILITY.—*Stations and communities listed as eligible for carriage in the notice of proposed rulemaking issued by the Commission under paragraph (1) may be treated as eligible for carriage under this section on an interim basis pending adoption of such rules and publication of the list of eligible stations and communities under such rules.*

(h) ADDITIONAL CORRESPONDING CHANGES IN REGULATIONS.—

(1) COMMUNITY-BY-COMMUNITY ELECTIONS.—*The Commission shall, no later than April 30, 2005, revise section 76.66 of its regulations (47 CFR 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325) a television broadcast station that is located in a local market into which a satellite carrier retransmits a television broadcast station on the basis of a statutory license under section 122 of title 17, United States Code, to elect, with respect to such satellite carrier, between retransmission consent pursu-*

ant to such section 325 and mandatory carriage pursuant to section 338 separately for each county within such station's local market, if—

(A) the satellite carrier has notified the station, pursuant to paragraph (3), that it intends to carry another affiliate of the same network pursuant to this section during the relevant election period in the station's local market; or

(B) on the date notification under paragraph (3) was due, the satellite carrier was retransmitting into the station's local market pursuant to this section an affiliate of the same television network.

(2) *SINGLE NEGOTIATIONS.*—In revising its regulations as required by paragraph (1), the Commission shall provide that any such station shall conduct a single negotiation for the entire portion of its local market for which retransmission consent is elected.

(3) *ADDITIONAL PROVISIONS.*—The Commission shall, no later than April 30, 2005, revise its regulations to provide the following:

(A) *NOTIFICATIONS BY SATELLITE CARRIER.*—A satellite carrier's retransmission of television broadcast stations pursuant to this section shall be subject to the following limitations:

(i) In any local market in which the satellite carrier provides service on the basis of a statutory license under section 122 of title 17, United States Code, on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of—

(I) each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market pursuant to this section during the next election cycle under such section of such regulations; and

(II) for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions.

(ii) In any local market in which the satellite carrier commences service on the basis of a statutory license under section 122 of title 17, United States Code, after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a station in that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the

next election cycle under such section of such regulations.

(iii) Beginning with the 2005 election cycle, a satellite carrier may only retransmit pursuant to this section during the pertinent election period a signal—

(I) as to which it has provided the notifications set forth in clauses (i) and (ii); or

(II) that it was retransmitting into the local market under this section as of the date such notifications were due.

(B) HARMONIZATION OF ELECTIONS AND RETRANSMISSION CONSENT AGREEMENTS.—If a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

(i) DEFINITIONS.—As used in this section:

(1) LOCAL MARKET; SATELLITE CARRIER; SUBSCRIBER; TELEVISION BROADCAST STATION.—The terms “local market”, “satellite carrier”, “subscriber”, and “television broadcast station” have the meanings given such terms in section 338(k).

(2) NETWORK STATION; TELEVISION NETWORK.—The terms “network station” and “television network” have the meanings given such term in section 339(d).

(3) BANDWIDTH.—The terms “equivalent bandwidth” and “entire bandwidth” shall be defined by the Commission by regulation.

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