

and Darlington Asset Management of Geneva, Switzerland. But a big part of his heart was always in the mountains.

Charley's love of climbing has taken him throughout Colorado's mountainous landscape, especially the backcountry peaks in Rocky Mountain National Park. He also climbed in the Swiss Alps and the Cascades along the Pacific Northwest.

Raised with a belief that volunteer service is the price one pays for living on this planet, it did not take long before his love of the mountains and his passion to serve the community combined into an almost 20-year commitment to the mountain rescue community.

In 1985, Charley joined the Alpine Rescue Team, a volunteer mountain rescue group that provides rescue services in portions of the Front Range and Summit County, including 4 of Colorado's Fourteeners (peaks with elevations over 14,000 feet, for those unfamiliar with the term). Within 4 years he was president of Alpine Rescue Team, and over the years he has served as the team's mission leader, public information officer and helicopter specialist.

In 1997, Charley was honored by the Colorado Search and Rescue Board with the Hunter Holloway Spirit Award for his work developing Colorado's "Avalanche Awareness Week." Avalanches are a serious issue in Colorado and other mountainous western states. Sadly, lives are lost every year to avalanches and western states frequently encounter road closures due to avalanches, which affects local economies and tourism. As a result, Charley's contributions here are very significant and worthy of such recognition.

Eventually Charley's focus expanded from the Alpine Rescue Team and Colorado search and rescue activities to the national Mountain Rescue Association (MRA) and international rescue consulting. He has served as chair of the MRA's Rocky Mountain Region and continues to serve as chair of the organization's Education Committee. Charley is the author of several national MRA manuals, including "Accidents in Mountain Rescue Operations," "Search and Rescue for Outdoor Leaders," "Helicopters in Search and Rescue Operations," and "Avalanche Rescue Operations." He is a frequent lecturer at meetings of the Wilderness Medical Society, the Mountain Rescue Association and the International Technical Rescue Symposium, and has consulted with government agencies and rescue groups throughout the world.

Despite these awards and accomplishments, Charley's most personally rewarding search and rescue mission was the 1990 rescue of a lost hiker in which he served as incident commander. The hiker was found after 12 hours, but, more importantly, the "reporting party" was a woman who later became Charley's wife. It was the only instance anyone in the mountain rescue community can recall in which a person who reported a search eventually married one of the rescuers.

In May 1993, Charley left the corporate world to work full time on climbing and mountaineering issues as the executive director of the American Alpine Club (AAC), a national association of climbers and mountaineers dedicated to promoting climbing knowledge, conserving mountain environments and representing the American climbing community. At that time, the AAC had a membership base of 1,700 members, annual operating revenue of \$300,000 and net assets of \$2.8 million.

Charley often remarked that the AAC's greatest asset was its potential. Over his 11-year tenure as executive director, he spurred the Club into action on a number of fronts. The AAC, in partnership with the Colorado Mountain Club, bought and renovated the historic (and then vacant) Junior High School building in Golden, Colorado at the foot of the Front Range, turning it from a public eyesore into the American Mountaineering Center, a facility housing several regional and national climbing organizations and hosting climbing-related conferences and events. He oversaw a transformation in the Club's library from an obscure collection of unorganized mountaineering books into arguably the finest mountaineering library in the world, fully cataloged and electronically searchable by any Internet user in the world. He expanded the AAC's advocacy efforts on behalf of climbers so that the Club was a leading voice on such issues as mountain rescue, climbing ethics, conservation of alpine regions, and management of climbing destinations both domestically and abroad. Charley was an enthusiastic advocate of the AAC Press, the Club's publishing arm, which documented world climbing and published award winning historical guidebooks to several climbing disciplines.

In October, Charley resigned from the AAC and accepted a position as Executive Director of the Colorado Association of Nonprofit Organizations. When he left the AAC, it had grown to 7,500 members, an annual operating budget of \$1.3 million and net assets of \$7 million—an almost four-fold increase in most categories. The organization's staff grew in both size and professional capability during his tenure. Though his leadership will be missed by American climbers, he looks forward to new challenges rallying the Colorado nonprofit community to similar gains.

HONORING PRIVATE FIRST CLASS
HARLOW E. KENDING FOR HIS
SERVICE IN WORLD WAR II

HON. GINNY BROWN-WAITE

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 2004

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I rise to honor Private First Class Harlow E. Kending for his valiant deeds during military service in World War II.

As a member of the Headquarters Battery, 448th Anti-Aircraft Artillery Automatic Weapons Battalion, Mr. Kending fought against the scourge of Nazism that threatened to overtake the globe. On November 23, 1944, while in Morhange, France, Mr. Kending's battery was attacked by enemy artillery. During this attack, an ammunition truck was struck and a fire ensued. Disregarding the impending dangers, Private Kending heroically took command of the situation, jumped into the nearest fuel truck, and drove it to a safer location. As the salvos rained down, Private Kending remained undaunted in evacuating the remaining vehicles and labored in the thick of battle until the fire was contained.

For his heroic actions, Mr. Kending was awarded the Purple Heart and the Bronze Star. It is my pleasure to present to him these medals after nearly sixty years of waiting.

The heroism and dedication of Private First Class Harlow E. Kending is what makes our

military the greatest fighting force in the world. The courage he displayed during his service in World War II is exemplary of the American spirit. Mr. Kending's bravery will not be forgotten as Americans and freedom loving people all over the world remain forever indebted to his service.

H.R. 4518, THE SATELLITE HOME
VIEWER EXTENSION AND REAUTHORIZATION ACT OF 2004

HON. FRED UPTON

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 2004

Mr. UPTON. Mr. Speaker, I would like to submit the following Remarks for the Record. We have before us H.R. 4518, the "Satellite Home Viewer Extension and Reauthorization Act of 2004" (SHVERA). H.R. 4518 reauthorizes certain expiring communications and copyright act provisions that govern the retransmission of broadcast television signals by direct broadcast satellite (DBS) providers such as DirecTV and EchoStar. It also modernizes other provisions to enhance consumer choice, increase parity between satellite and cable operators, and further promote competition. Because the bill implicates both communications and copyright issues, the House Energy and Commerce Committee and the House Judiciary Committee have worked closely in drafting the legislation.

Indeed, pursuant to a compromise between the House Energy and Commerce Committee and the House Judiciary Committee, H.R. 4518 has now been amended to combine its copyright provisions with the Communications Act provisions of H.R. 4501. H.R. 4501 resulted from an extensive examination of satellite television issues in the House Energy and Commerce Committee. The Subcommittee on Telecommunications and the Internet held an oversight hearing on March 10, 2004, and a legislative hearing on April 1, 2004. The Subcommittee then marked up legislation on April 28, 2004, and the full Committee marked up legislation on June 3, 2004. That legislation became H.R. 4501. The Committee filed a report on H.R. 4501 (H. Rept. 108-634) on July 22, 2004.

What follows is a section-by-section analysis of some of the Communications provisions in Title II of H.R. 4518, as amended, that have changed from the provisions that originated in H.R. 4501. Mr. BARTON, Chairman of the House Energy and Commerce Committee, has also addressed some of the changes.

SECTION 202. CABLE/SATELLITE COMPARABILITY

Section 340(f) creates a mechanism to enforce the new provisions regarding satellite delivery of significantly viewed signals. Under section 340(f)(1), the FCC may issue a cease and desist order if it finds in response to a complaint that satellite operators are carrying broadcast signals in violation of Section 340. If a broadcast station seeks damages, section 340(f)(1)(A) authorizes the FCC to award the station up to \$50 per subscriber illegally served, per station illegally carried, per day of the violation if the FCC finds that the satellite operator did not have a good-faith belief that provision of the signal was lawful. Conversely, if a broadcaster seeks damages and the FCC finds that the broadcaster's claims were made

in bad faith, section 340(f)(1)(B) allows the FCC to award the satellite operator up to \$50 per subscriber, per station, per day that the broadcaster alleged the satellite operator was serving in violation of Section 340. If the broadcaster does not seek damages, however, the FCC may not grant damages to either the broadcaster or the satellite operator. Section 340(f)(2) gives the FCC 180 days from the submission of a complaint to render a decision. If the pleadings indicate that material facts underlying the case are subject to genuine dispute, the FCC may—but is not required—to hear witnesses. Section 340(f)(3) makes clear that an FCC proceeding under Section 340 is available in addition to any remedies that may be available under the Copyright Act. For example, a broadcaster who also holds copyrights in the programming it carries might bring a claim before the FCC if it believes a satellite operator has carried a signal in a way that violates the Communications Act conditions for providing significantly viewed signals, as well as a suit in court if it believes that the same carriage also violates the terms under which a compulsory license is available under the Copyright Act. Section 340(f)(4) makes clear that any action or inaction by the FCC in response to a section 340 complaint shall have no bearing on a copyright suit, and that filing a section 340 complaint with the FCC is not a prerequisite for filing a suit in court alleging that carriage of a purportedly significantly viewed signal has violated a copyright.

Section 340(g) requires satellite operators to give local broadcasters 60 days notice before retransmitting into a market the signal of distant stations that are significantly viewed over the air in the local market, and to list on their web sites the significantly viewed signals they carry. This provision is intended to help make consumers aware of what signals the satellite operators are offering. It is also intended to help local broadcasters monitor satellite compliance with the conditions SHVERA creates for the provision of significantly viewed signals.

Section 340(h)(1) gives the FCC until April 30, 2005, to revise its rules so that a network 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 ordi-

narily 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. There is no particular time limit on the negotiation. Nor must it take place in one sitting. The broadcaster shall, however, “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)(A) 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 340(h)(3)(B) recognizes that a satellite carrier could begin importing a “significantly viewed” signal after the expiration of a long-term retransmission consent contract but before the next three-year election cycle would allow the television station to choose between retransmission consent and carry one, carry all on a community-by-community basis. Consequently, section 340(h)(3)(B) allows a broadcaster to choose between retransmission consent and carry one, carry all on a community-by-community basis for any portion of the three-year cycle not covered by an existing retransmission consent agreement.

One way the FCC might implement section 340(h)(3) for a station that entered into a retransmission consent agreement before the effective date of the Act, and that expires before the end of 2005, would be to require the satellite operator to send the station, by certified mail, at least 60 days before the agreement expires, the required notification for any period between the date of expiration of that agreement and December 31, 2005. If the satellite carrier gives that notice, the station could then, within 30 days of receipt, choose retransmission consent or mandatory carriage for those communities covered by the notification for the period between the date of expiration of the agreement and the end of 2005. For existing retransmission contracts that expire later but between election periods under 47 C.F.R. 76.66, the FCC could require the satellite carrier to provide the station by certified mail, at least 60 days before the election date under section 76.66 that immediately precedes the expiration date of the contract, the required notification for any period between the date of expiration of the agreement and the end of the next three-year election cycle under section 76.66. If the satellite carrier

gives that notice, the station could then, on the same schedule provided under section 76.66, elect retransmission consent or mandatory carriage for those communities covered by the satellite carrier’s notification for the period between the date of expiration of the agreement and the date of expiration of the next three-year election cycle. Retransmission consent contracts entered into after the effective date of the Act will not be affected by this harmonization provision, because negotiators will be able to take into account the possible importation of significantly-viewed stations in the future.

SECTION 203. CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH

Section 203(b)(1) of the bill amends sections 338(a)(1) and (a)(2) of the Communications Act (47 U.S.C. 338(a)(1)–(2)) to make clear that the FCC may enforce satellite operators’ carry-one, carry-all obligations. The Communications Act currently grants the FCC authority to enforce cable operator’s must-carry obligations to carry all local broadcast stations upon request. There apparently is some ambiguity regarding the FCC’s authority to enforce satellite operators’ analogous carry-one, carry-all obligations. Section 203(b)(1) of the bill is intended to remove any doubt that a carrier can seek enforcement from the FCC under the Communications Act, in addition to any remedies it may have in court under the Copyright Act.

Section 203(b)(1) of the bill also adds section 338(a)(3) of the Communications Act (47 U.S.C. § 338(a)(3)) to clarify that satellite carriage of low-power television stations is permissive, not mandatory. Section 104 of the bill grants satellite operators a compulsory copyright license to carry low-power stations. Section 338(a)(3) of the Act, as amended, makes clear that carriage of such stations does not fall within the carry-one, carry-all requirements of Section 338.

Sections 203(b)(2) and (b)(3) of the bill make conforming changes to the Act to implement section 203(b)(1) of the bill, and to define “low power television station” for purposes of that section.

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 signals of a network to certain subscribers in a market once the operator begins providing local signals of that network in that market, absent a waiver from the affected network station. It does, however, permit certain subscribers to continue receiving distant signals, and allows future distant signal subscribers in non-local-into-local markets to continue receiving such signals under certain circumstances. Section 204 does not apply to carriage of distant signals from non-network stations.

New section 339(a)(2)(A) requires certain grandfathered subscribers to choose between receiving a distant and a local signal of a network. Under SHVIA, some households that can receive a “Grade B” intensity over-the-air signal from a local network affiliate but not a “Grade A” signal qualify as “unserved” by that network because of a grandfathering provision in the Copyright Act (17 U.S.C. § 119(e)). These grandfathered customers are sometimes referred to as “Grade B doughnut” households. The grandfathered status of these

subscribers is set to expire at the end of this year. Under section 339(a)(2)(A), once a satellite operator makes the local signal of a network available under section 338 to customers receiving the distant signal under the Grade B doughnut provisions, the customers must choose between the local signal and the distant signal. They may continue to receive the distant signal if they elect to do so, but the subscribers may not receive both the distant and local signals of the network. Customers who were eligible for distant signals under the Grade B doughnut provisions but were not receiving such signals under those provisions on October 1, 2004, will no longer be eligible for such grandfathering. Thus, the universe of grandfathered households is fixed as of that day and cannot be expanded thereafter.

New section 339(a)(2)(B) allows a satellite operator to provide both a local and a distant signal of a network to a subscriber who is unserved over-the-air by a Grade B signal of the network's local affiliate, so long as the satellite operator was offering the local signal of the network pursuant to section 338 by Jan. 1, 2005, and complies with certain notice obligations. If the satellite operator was not offering the local signal of the network pursuant to section 338 by Jan. 1, 2005, the satellite operator may provide both the distant and local signals to the subscriber only if the subscriber sought to subscribe to the distant signal before the satellite operator made the local signal available, and the satellite operator meets certain notice obligations.

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 consumer if the consumer is not lawfully receiving the signal from the satellite operator on the date of enactment of SHVERA and the consumer seeks to receive the distant signal after the satellite operator began making the local signal of that network available in the 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 waiver can be as broad or as narrow as the affiliate wants. For example, a local affiliate can waive the application of section 339(a)(2) to one or more consumers in the local market, with respect to one or more specific distant affiliates of the same network, and with respect to one or more satellite operators. The broadcaster may do so as part of a negotiated agreement and for any reason, including common ownership among the stations. This is intended to be a private negotiation, not one over which the FCC or any other governmental body must preside; nor must any governmental body grant or approve the waiver. Whether to grant a waiver is a decision to be made solely based on the broadcaster's own business judgment, although a broadcaster may grant a waiver as part of an agreement made with a satellite operator or other parties. A broadcaster is also not required to execute any particular document as part of the waiver process, although parties who intend to rely on such a waiver or any attendant agreement will likely 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. Such waivers are distinct from the waivers referred to in section 339(c)(2) of the Communications Act, al-

though broadcasters are free to execute both types of waivers in tandem or with a single document. Unlike the section 339(c)(2) waivers, broadcasters must affirmatively grant section 339(a)(2)(D) waivers; they shall not be deemed granted by the broadcaster just because the broadcaster has not responded to a request within a certain amount of time. Nor are section 339(a)(2)(D) waivers or agreements subject to the section 325 good-faith negotiation requirement. Section 339(a)(2)(D) will facilitate agreements that provide consumers with more viewing choices.

New section 339(a)(2)(E) requires satellite operators to provide networks, within 60 days after enactment of SHVERA, with lists of certain subscribers to whom they offer distant signals. It also requires satellite operators, within 60 days after commencing in a market local-into-local service under section 338, to provide networks with lists of the subscribers to whom they offer certain distant signals. The notice obligations are designed to help networks monitor compliance with the new "no-distant-where-local" requirements that SHVERA creates.

New section 339(a)(2)(F) 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.

Nothing in section 204 of the bill is intended to affect any existing waivers under section 339(c)(2) of the Communications Act.

H.R. 4518, THE SATELLITE HOME
VIEWER EXTENSION AND REAUTHORIZATION ACT OF 2004

HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 16, 2004

Mr. BARTON of Texas. Mr. Speaker, I would like to submit the following remarks for the Record.

We have before us H.R. 4518, the "Satellite Home Viewer Extension and Reauthorization Act of 2004" (SHVERA). The bill will also be known as "The W.J. 'Billy' Tauzin Satellite Television Act of 2004," in honor of our former House Energy and Commerce Committee chairman. Naming this bill after Chairman Tauzin is only fitting, as he has done so much to foster the growth of satellite television, increase television service competition, and improve choices for consumers. Chairman Tauzin is currently recovering from a bout with cancer. My understanding is that he is doing so with his characteristic vigor and good humor, and is faring well. I am sure all join me in wishing him a speedy recovery.

H.R. 4518 reauthorizes certain expiring communications and copyright act provisions that govern the retransmission of broadcast television signals by direct broadcast satellite (DBS) providers such as DirecTV and EchoStar. It also modernizes other provisions to enhance consumer choice, increase parity between satellite and cable operators, and further promote competition. Because the bill implicates both communications and copyright issues, the House Energy and Commerce Committee and the House Judiciary Committee have worked closely in drafting the legislation.

Indeed, pursuant to a compromise between the House Energy and Commerce Committee and the House Judiciary Committee, H.R. 4518 has now been amended to combine its copyright provisions with the Communications Act provisions of H.R. 4501. H.R. 4501 resulted from an extensive examination of satellite television issues in the House Energy and Commerce Committee. The Subcommittee on Telecommunications and the Internet held an oversight hearing on March 10, 2004, and a legislative hearing on April 1, 2004. The Subcommittee then marked up legislation on April 28, 2004, and the full Committee marked up legislation on June 3, 2004. That legislation became H.R. 4501. The Committee filed a report on H.R. 4501 (H. Rept. 108-634) on July 22, 2004.

What follows is a section-by-section analysis of some of the Communications provisions in Title II of H.R. 4518, as amended, that have changed from the provisions that originated in H.R. 4501. Mr. Upton, Chairman of the House Energy and Commerce Subcommittee on Telecommunications and the Internet, also will address some of the changes.

SECTION 202. CABLE/SATELLITE COMPARABILITY

Section 340(a) authorizes a satellite operator to retransmit an out-of-market signal to a subscriber in a community if the signal is significantly viewed over the air in the community. A satellite operator may carry such a signal whether or not the station is affiliated with a network, as evidenced by section 340(a)'s reference to the carriage of "the signal of any station located outside the local market" that is significantly viewed, as opposed to any "network station" (emphasis added). In the cable context, the FCC allows a cable operator to carry the digital signal of a broadcast station as significantly viewed once the FCC has ruled that the analog signal of the station is significantly viewed. In re Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120, First Report and Order & Further Notice of Proposed Rulemaking, FCC 01-22, at ¶ 100. In implementing Section 340, the FCC should treat satellite operators in a comparable fashion to cable operators to the greatest extent possible with respect to carriage of significantly viewed stations, in terms of both current and future significantly viewed rulings.

Section 340(a) also provides that a satellite operator may carry an unlimited number of significantly viewed signals, just as a cable operator may. Section 340(a) does so by explicitly 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]." This clarification 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(a)(1) provides that satellite operators are allowed to carry as significantly viewed any signal that the FCC has previously determined to be significantly viewed for purposes of cable carriage subject, however, to the FCC's network non-duplication and syndicated exclusivity rules. Satellite carriers are authorized upon enactment of SHVERA to carry such signals.