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SATELLITE HOME VIEWER REAUTHORIZATION ACT OF 2009

DECEMBER 2, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. WAXMAN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2994]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2994) to reauthorize the Satellite Home Viewer Extension and Reauthorization Act of 2004, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Satellite Home Viewer Reauthorization Act of 2009".

SEC. 2. EXTENSION OF AUTHORITY.

Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended—

(1) in paragraph (2)(C), by striking "December 31, 2009" and inserting "December 31, 2014"; and

(2) in paragraph (3)(C), by striking "January 1, 2010" each place it appears in clauses (ii) and (iii) and inserting "January 1, 2015".

SEC. 3. SIGNIFICANTLY VIEWED STATIONS.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 340(b) of such Act (47 U.S.C. 340(b)) are amended to read as follows:

"(1) SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—This section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal from that satellite carrier pursuant to section 338.

"(2) SERVICE LIMITATIONS.—A satellite carrier may retransmit to a subscriber in high definition format the signal of a station determined by the Commission to be significantly viewed under subsection (a) only if such carrier also retransmits in high definition format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station.".

(b) RULEMAKING REQUIRED.—Within 180 days after the date of the enactment of this Act, the Federal Communications Commission shall take all actions necessary to promulgate a rule to implement the amendments made by subsection (a).

SEC. 4. CONFORMING AMENDMENTS.

(a) SECTION 338.—Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is amended—

(1) in subsection (a), by striking "(3) EFFECTIVE DATE.—No satellite" and all that follows through "until January 1, 2002."; and

(2) by amending subsection (g) to read as follows:

"(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE RECEPTION ANTENNA.—

"(1) SINGLE RECEPTION ANTENNA.—Each satellite carrier that retransmits the signals of local television broadcast stations in a local market shall retransmit such stations in such market so that a subscriber may receive such stations by means of a single reception antenna and associated equipment.

"(2) ADDITIONAL RECEPTION ANTENNA.—If the carrier retransmits the signals of local television broadcast stations in a local market in high definition format, the carrier shall retransmit such signals in such market so that a subscriber may receive such signals 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 to comply with paragraph (1).".

(b) SECTION 339.—Section 339 of such Act (47 U.S.C. 339) is amended—

(1) in subsection (a)—

(A) in paragraph (1)(B), by striking "Such two network stations" and all that follows through "more than two network stations."; and

(B) in paragraph (2)—

(i) in the heading for subparagraph (A), by striking "TO ANALOG SIGNALS";

(ii) in subparagraph (A)—

(I) in the heading for clause (i), by striking "ANALOG";

(II) in clause (i)—

(aa) by striking "analog" each place it appears; and

(bb) by striking "October 1, 2004" and inserting "October 1, 2009";

(III) in the heading for clause (ii), by striking "ANALOG"; and

(IV) in clause (ii)—

(aa) by striking "analog" each place it appears; and

(bb) by striking "2004" and inserting "2009";

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

"(B) RULES FOR OTHER SUBSCRIBERS.—

"(i) IN GENERAL.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station under this section (in this clause 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 satellite carrier makes available to that subscriber, on January 1, 2005, the signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network the list and statement required by subparagraph (F)(i).

"(II) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the signal of a local network station pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber if—

"(aa) that subscriber seeks to subscribe to such distant signal before the date on which such carrier commences to carry pursuant to section 338 the signals of stations from the local market of such local network station; and

"(bb) the satellite carrier, within 60 days after such date, submits to each television network the list and statement required by subparagraph (F)(ii).

"(ii) SPECIAL CIRCUMSTANCES.—A subscriber of a satellite carrier who was lawfully receiving the distant signal of a network station on the day before the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009 may receive both such distant signal and the local signal of a network station affiliated with the same network until such subscriber chooses to no longer receive such distant signal from such carrier.";

(iv) in subparagraph (C)—

(I) by striking "analog";

(II) in clause (i), by striking "the Satellite Home Viewer Extension and Reauthorization Act of 2004" and inserting "the Satellite Home Viewer Reauthorization Act of 2009"; and

(III) by amending clause (ii) to read as follows:

"(ii) either—

"(I) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the signal of a local network station affiliated with the same television network pursuant to section 338, and the retransmission of such signal by such carrier can reach such subscriber; or

"(II) receives from the satellite carrier the signal of a network station affiliated with the same network that is broadcast by a local station in the market where the subscriber resides, but is not the local station's primary video.";

(v) in subparagraph (D)—

(I) by striking clauses (i), (iii) through (v), (vii) through (ix), and (xi);

(II) by redesignating clause (vi) as clause (i) and transfering such clause to appear before clause (ii);

(III) by amending such clause (i) (as so redesignated) to read as follows:

"(i) SIGNAL TESTING.—A subscriber shall be eligible to receive a distant signal of a distant network station affiliated with the same network under this section if such subscriber is determined, based on a test conducted in accordance with section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, not to be able to re-

ceive a signal that exceeds the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations.";

(IV) in clause (ii)—

(aa) by striking "DIGITAL" in the heading;

(bb) by striking "digital" the first two places such term appears;

(cc) by striking "Satellite Home Viewer Extension and Reauthorization Act of 2004" and inserting "Satellite Home Viewer Reauthorization Act of 2009"; and

(dd) by striking ", whether or not such subscriber elects to subscribe to local digital signals";

(V) by inserting after clause (ii) the following new clause:

"(iii) TIME-SHIFTING PROHIBITED.—In a case in which the satellite carrier makes available to an eligible subscriber under this subparagraph the signal of a local network station pursuant to section 338, the carrier may only provide the distant signal of a station affiliated with the same network to that subscriber if, in the case of any local market in the 48 contiguous States of the United States, the distant signal is the secondary transmission of a station whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market."; and

(VI) by redesignating clause (x) as clause (iv); and

(vi) in subparagraph (E), by striking "distant analog signal or" and all that follows through "(B), or (D))" and inserting "distant signal";

(2) in subsection (c)—

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

"(3) ESTABLISHMENT OF IMPROVED PREDICTIVE MODEL AND ON-LOCATION TESTING REQUIRED.—

"(A) PREDICTIVE MODEL.—Within 180 days after the date of the enactment of the Satellite Home Viewer Reauthorization Act of 2009, the Commission shall take all actions necessary to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through the use of a conventional, stationary, outdoor rooftop receiving antenna, to receive signals in accordance with the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, including to account for the continuing operation of translator stations and low power television stations. In prescribing such model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the Commission in CS Docket No. 98-201, as previously revised with respect to analog signals, and as recommended by the Commission with respect to digital signals in its Report to Congress in ET Docket No. 05-182, FCC 05-199 (released December 9, 2005). The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available.

"(B) ON-LOCATION TESTING.—The Commission shall issue an order completing its rulemaking proceeding in ET Docket No. 06-94 within 180 days after the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009.

"(C) STUDY OF TYPES OF ANTENNAS AVAILABLE TO RECEIVE DIGITAL SIGNALS.—

"(i) STUDY REQUIRED.—Not later than 1 year after the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009, the Commission shall complete a study regarding whether, for purposes of identifying if a household is unserved by an adequate digital signal under section 119(d)(10) of title 17, United States Code, the digital signal strength standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, or the testing procedures in section 73.686 of title 47, Code of Federal Regulations, such statutes or regulations should be revised to take into account the types of antennas that are available to and used by consumers.

"(ii) STUDY CONSIDERATION.—In conducting the study under clause (i), the Commission shall consider whether to account for the fact that an antenna can be mounted on a roof or placed in a home and can be fixed or capable of rotating.

"(iii) REPORT.—Not later than 1 year after the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009, the Commission shall submit to the Committee on Energy and Commerce of the

House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

"(I) the results of the study conducted under clause (i); and

"(II) recommendations, if any, regarding changes to be made to Federal statutes or regulations.";

(B) by amending paragraph (4)(A) to read as follows:

"(A) IN GENERAL.—If a subscriber's request for a waiver under paragraph (2) is rejected and the subscriber submits to the subscriber's satellite carrier a request for a test verifying the subscriber's inability to receive a signal of the signal intensity referenced in clause (i) of subsection (a)(2)(D), the satellite carrier and the network station or stations asserting that the retransmission is prohibited with respect to that subscriber shall select a qualified and independent person to conduct the test referenced in such clause. Such test shall be conducted within 30 days after the date the subscriber submits a request for the test. If the written findings and conclusions of a test conducted in accordance with such clause demonstrate that the subscriber does not receive a signal that meets or exceeds the requisite signal intensity standard in such clause, the subscriber shall not be denied the retransmission of a signal of a network station under section 119 of title 17, United States Code.";

(C) in paragraph (4)(B), by striking "the signal intensity" and all that follows through "United States Code" and inserting "such requisite signal intensity standard"; and

(D) in paragraph (4)(E), by striking "Grade B intensity".

(c) SECTION 340.—Section 340(i) of such Act (47 U.S.C. 340(i)) is amended by striking paragraph (4).

SEC. 5. APPLICATION PENDING COMPLETION OF RULEMAKINGS.

(a) IN GENERAL.—Between the date of enactment of this Act and the adoption of rules by the Federal Communications Commission pursuant to the amendments to the Communications Act of 1934 made by sections 3 and 4 of this Act, the Federal Communications Commission shall follow its rules and regulations promulgated pursuant to sections 338, 339, and 340 of the Communications Act of 1934 as in effect on the day before the date of enactment of this Act.

(b) TRANSLATOR STATIONS AND LOW POWER TELEVISION STATIONS.—Notwithstanding subsection (a), for purposes of determining whether a subscriber within the local market served by a translator station or a low power television station affiliated with a television network is eligible to receive distant signals under section 339 of such Act, the Federal Communications Commission shall follow its rules and regulations for determining such subscriber's eligibility as in effect on the day before the date of enactment of this Act until the date on which the translator station or low power television station is licensed to broadcast a digital signal.

(c) DEFINITIONS.—As used in this Act:

(1) LOCAL MARKET; LOW POWER TELEVISION STATION; SATELLITE CARRIER; SUBSCRIBER; TELEVISION BROADCAST STATION.—The terms "local market", "low power television station", "satellite carrier", "subscriber", and "television broadcast station" have the meanings given such terms in section 338(k) of the Communications Act of 1934.

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

SEC. 6. PROCESS FOR ISSUING QUALIFIED CARRIER CERTIFICATION.

Part I of title III of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 342. PROCESS FOR ISSUING QUALIFIED CARRIER CERTIFICATION.

"(a) CERTIFICATION.—The Commission shall issue a certification for the purposes of section 119(g)(3)(A)(iii) of title 17, United States Code, if the Commission determines that—

"(1) a satellite carrier is providing local service pursuant to the statutory license under section 122 of such title in each designated market area; and

"(2) with respect to each designated market area in which such satellite carrier was not providing such local service as of the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009—

"(A) the satellite carrier's satellite beams are designed, and predicted by the satellite manufacturer's pre-launch test data, to provide a good quality satellite signal to 90 percent of the households in each such designated market area based on the most recent census data released by the United States Census Bureau; and

"(B) there is no material evidence that there has been a satellite or subsystem failure subsequent to the satellite's launch that precludes the ability of the satellite carrier to satisfy the requirements of subparagraph (A).

"(b) INFORMATION REQUIRED.—Any entity seeking the certification provided for in subsection (a) shall submit to the Commission the following information:

"(1) An affidavit stating that, to the best of the affiant's knowledge, the satellite carrier provides local service in all designated market areas pursuant to the statutory license provided for in section 122 of title 17, United States Code, and listing those designated market areas in which local service was provided as of the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009.

"(2) For each designated market area not listed in paragraph (1):

"(A) Identification of each such designated market area and the location of its local receive facility.

"(B) Data showing the number of households, and maps showing the geographic distribution thereof, in each such designated market area based on the most recent census data released by the United States Census Bureau.

"(C) Maps, with superimposed effective isotropically radiated power predictions obtained in the satellite manufacturer's pre-launch tests, showing that the contours of the carrier's satellite beams as designed and the geographic area that the carrier's satellite beams are designed to cover are predicted to provide a good quality satellite signal to 90 percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau.

"(D) For any satellite relied upon for certification under this section, an affidavit stating that, to the best of the affiant's knowledge, there have been no satellite or sub-system failures subsequent to the satellite's launch that would degrade the design performance to such a degree that a satellite transponder used to provide local service to any such designated market area is precluded from delivering a good quality satellite signal to 90 percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau.

"(E) Any additional engineering, designated market area, or other information the Commission considers necessary to determine whether the Commission shall grant a certification under this section.

"(c) CERTIFICATION ISSUANCE.—

"(1) PUBLIC COMMENT.—The Commission shall provide 30 days for public comment on a request for certification under this section.

"(2) DEADLINE FOR DECISION.—The Commission shall grant or deny a request for certification within 90 days after the date on which such request is filed.

"(d) SUBSEQUENT AFFIRMATION.—An entity granted qualified carrier status pursuant to section 119(g) of title 17, United States Code, shall file an affidavit with the Commission 30 months after such status was granted stating that, to the best of the affiant's knowledge, it is in compliance with the requirements for a qualified carrier.

"(e) DEFINITIONS.—For the purposes of this section:

"(1) DESIGNATED MARKET AREA.—The term 'designated market area' has the meaning given such term in section 122(j)(2)(C) of title 17, United States Code.

"(2) GOOD QUALITY SATELLITE SIGNAL.—

"(A) IN GENERAL.—The term "good quality satellite signal" means—

"(i) a satellite signal whose power level as designed shall achieve reception and demodulation of the signal at an availability level of at least 99.7 percent using models of satellite antennas normally used by the satellite carrier's subscribers and the same calculation methodology used by the satellite carrier to determine predicted signal availability in the top 100 designated market areas; and

"(ii) a video signal transmitted by satellite carrier such that, taking into account whether a signal is in standard definition format or high definition format, compression methodology, modulation, error correction, power level, and utilization of advances in technology that does not circumvent the intent of this section to provide for non-discriminatory treatment with respect to any comparable television broadcast station signal—

"(I) the satellite carrier treats all television broadcast station's signals the same with respect to statistical multiplexer prioritization; and

"(II) the number of video signals in the relevant satellite transponder is not more than the then current greatest number of video

signals carried on any equivalent transponder serving the top 100 designated market areas.

"(B) DETERMINATION.—For the purposes of subparagraph (A), the top 100 designated market areas shall be as determined by Nielsen Media Research and published in the Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication as of the date of a satellite carrier's application for certification under this section.".

SEC. 7. SAVINGS CLAUSE REGARDING DEFINITIONS.

Nothing in this Act or the amendments made by this Act shall be construed to affect the definitions of "program related" and "primary video" in the Communications Act of 1934 or in any regulations promulgated pursuant to such Act by the Federal Communications Commission.

SEC. 8. SAVINGS CLAUSE REGARDING USE OF NON-COMPULSORY LICENSES; REPORT.

(a) IN GENERAL.—Nothing in this Act, the Communications Act of 1934, or regulations promulgated by the Federal Communications Commission under this Act or the Communications Act of 1934 shall limit the ability of a satellite carrier to retransmit a performance or display of a work pursuant to an authorization granted by the copyright owner or, if within the scope of its authorization, its licensee.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Federal Communications Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing an analysis of—

(1) the number of households in a State that receive local broadcast stations from a station of license that is located in a different State;

(2) the extent to which consumers have access to in-state broadcast programming; and

(3) whether there are alternatives to the use of designated market areas, as defined in section 122 of title 17, United States Code, to define local markets that would provide more consumers with in-state broadcast programming.

SEC. 9. NONDISCRIMINATION IN CARRIAGE OF HIGH DEFINITION DIGITAL SIGNALS OF NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS.

(a) IN GENERAL.—Section 338(a) of the Communications Act of 1934 (47 U.S.C. 338(a)) is amended by adding at the end the following new paragraph:

"(5) NONDISCRIMINATION IN CARRIAGE OF HIGH DEFINITION SIGNALS OF NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS.—

"(A) EXISTING CARRIAGE OF HIGH DEFINITION SIGNALS.—Each eligible satellite carrier providing, under section 122 of title 17, United States Code, any secondary transmissions in high definition to subscribers located within the local market of a television broadcast station of a primary transmission made by that station prior to the date of enactment of this paragraph shall carry the high-definition signals of qualified noncommercial educational television stations located within that local market in accordance with the following schedule:

"(i) By December 31, 2010, in at least 50 percent of the markets in which such satellite carrier provides such secondary transmissions in high definition.

"(ii) By December 31, 2011, in every market in which such satellite carrier provides such secondary transmissions in high definition.

"(B) NEW INITIATION OF SERVICE.—Each eligible satellite carrier that initiates the provision, under section 122 of title 17, United States Code, of any secondary transmissions in high definition to subscribers located within the local market of a television broadcast station of a primary transmission made by that station after the date of enactment of this paragraph shall carry the high-definition signals of all qualified noncommercial educational television stations located within that local market.".

(b) DEFINITIONS.—Section 338(k) of such Act (47 U.S.C. 338(k)) is amended—

(1) by redesignating paragraphs (2) through (8) as paragraphs (3) through (9), respectively;

(2) by inserting after paragraph (1) the following new paragraph:

"(2) ELIGIBLE SATELLITE CARRIER.—The term 'eligible satellite carrier' means any satellite carrier that is not a party to a carriage contract with a qualified noncommercial educational television station, or its representative, that is in force and effect as of the date of enactment of this paragraph.";

(3) by redesignating paragraphs (6) through (9) (as previously redesignated) as paragraphs (7) through (10), respectively; and

(4) by inserting after paragraph (5) (as so redesignated) the following new paragraph:

"(6) QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term 'qualified noncommercial educational television station' has the meaning given such term in section 615(l)(1) of this Act.".

PURPOSE AND SUMMARY

The purpose of H.R. 2994, the "Satellite Home Viewer Reauthorization Act of 2009" (SHVRA), is to reauthorize and amend certain provisions of the Communications Act of 1934 that govern satellite retransmission of television broadcast signals. The bill amends the Communications Act to account for the completion of the digital television transition; reauthorizes provisions of the Communications Act set to expire at the end of 2009; improves regulatory parity between cable and satellite; creates incentives to expand local-into-local service to every television market in the United States; and directs the Federal Communications Commission (FCC or Commission) to study two issues relating to the ability of consumers to receive local television signals.

BACKGROUND AND NEED FOR LEGISLATION

Millions of consumers across the United States subscribe to direct broadcast satellite (DBS) service. The FCC estimates that in 2006 approximately 87% of households in the United States that watched television subscribed to a pay-television service from a multichannel video programming distributor (MVPD). MVPDs include DBS carriers, cable companies, and traditional phone companies offering video services. According to the FCC, consumers are selecting DBS carriers for pay television service at an increasing rate, and as of mid-2006 (the most recent data available) DBS carriers had garnered nearly 30% of the MVPD market.

On June 12, 2009, the nation's full power television stations ceased analog broadcasts and began broadcasting only digital signals. This shift necessitates a series of amendments to the Communications Act to both remove references to analog broadcast television signals and to ensure that the Commission adjusts its rules related to the retransmission of digital broadcast signals in a timely manner.

From time to time Congress revisits the rules related to the retransmission of television broadcast stations by satellite carriers to ensure that consumers continue to benefit from these services. Since 1988, most of these changes have occurred during reauthorization of the Satellite Home Viewer Act.

The Satellite Home Viewer Act (1988).[1] In 1988, Congress enacted the Satellite Home Viewer Act (SHVA), which enabled satellite carriers to use a compulsory copyright license to provide some out-of-market, or distant, network programming to their subscribers. Specifically, Congress authorized use of the compulsory license to provide distant network programming to so-called "unserved" households, or households that could not receive the signal of a station affiliated with a particular network over the air. This provision was intended to ensure that all households had some ability to receive network programming.

[1] P.L. 100–667

SHVA defined a household as "unserved" if it could not "receive . . . an over-the-air signal of grade B intensity" from the local affiliate of the same network. The accuracy of the Grade B standard and the attendant predictive model prescribed by the Commission have been the subject of debate as local terrain or other conditions may affect a household's ability to receive the signal.

To facilitate the ability of satellite carriers to deliver signals to unserved households, SHVA also created provisions exempting these carriers from having to negotiate with distant broadcast stations to retransmit the signals of out-of-market stations to unserved consumers.[2] The retransmission-consent exemption created by SHVA expires every five years and will terminate on December 31, 2009, unless it is extended.[3]

The importation of distant signals has, at times, been controversial. In 1998, several broadcasters and content owners sued EchoStar Communications for copyright infringement.[4] They alleged that the satellite carrier was illegally providing distant network programming to numerous households that did not meet the statutory definition of "unserved." In 2006, the United States Court of Appeals for the Eleventh Circuit determined that EchoStar had violated the distant signal compulsory copyright license codified in section 119 of title 17 and issued a nationwide permanent injunction preventing the satellite carrier from using the distant signal compulsory copyright license to retransmit any out-of-market network programming to any of its subscribers.

The Satellite Home Viewer Act (1994).[5] Congress passed another Satellite Home Viewer Act in 1994. The 1994 SHVA focused on royalty rates paid for use of the compulsory license, extended the license for another five years, and modified the signal strength testing procedures used to determine whether a consumer is eligible to receive the retransmission of a distant network signal.

The Satellite Home Viewer Improvement Act (1999).[6] In 1999, Congress enacted the "Satellite Home Viewer Improvement Act of 1999" (SHVIA). In SHVIA, Congress expanded on the original Satellite Home Viewer Act by amending the Communications Act to authorize satellite carriers to also use a compulsory copyright license to provide consumers with local broadcast signals, often referred to as "local-into-local" service. In order to deliver a local broadcast signal to a household using the compulsory license, however, a satellite carrier must carry all of the local broadcast stations in a market that requests carriage. This requirement is sometimes referred to as the "carry one, carry all" rule.[7]

As of October 2009, DirecTV, the largest DBS carrier, provides local service in 150 of the 210 local markets or designated market areas (DMAs).[8] The second largest DBS carrier, DISH Network, provides local service in 182 of the 210 DMAs.[9]

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[2] *See* 47 U.S.C. 325(b).
[3] *See* 47 U.S.C. 325(b)(2)(C).
[4] EchoStar Communications is now a separately traded company. DISH Network LLC (DISH) is the successor company and the entity that provides satellite television service to consumers.
[5] P.L. 103–369.
[6] P.L. 106–113.
[7] *See* 47 U.S.C. 338.
[8] DirecTV to Deliver Local Programming in Bluefield-Beckley, W.VA (Sept. 24, 2009) available online at http://investor.directv.com/releasedetail.cfm?ReleaseID=411500
[9] Dish Network Adds 2 More HD Markets, *Multichannel News* (Aug. 19, 2009).

Congress also inserted new sections 338 and 339 into the Communications Act. Section 338 governs satellite retransmission of local broadcast signals and section 339 governs satellite retransmission of distant network signals. SHVIA also imposed an obligation on broadcast stations not to enter into exclusive contracts for carriage and to negotiate retransmission consent agreements with MVPDs in good faith until January 1, 2005.

The Satellite Home Viewer Extension and Reauthorization Act (2004).[10] In 2004, Congress again reauthorized and amended SHVA in the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA). SHVERA extended once more the exemption in section 325 for satellite carriers from needing to obtain retransmission consent to offer distant network signals to unserved households. It also renewed for an additional five years the prohibition on broadcast stations entering into exclusive carriage deals and the requirement that broadcast stations bargain in good faith in retransmission consent negotiations. SHVERA also made the good faith negotiation provision reciprocal, so that it applied to both the MVPD and broadcast stations when negotiating retransmission consent agreements.

In SHVERA, Congress also created a new section 340 of the Communications Act to permit a satellite carrier, such as a cable operator, to retransmit a distant network signal to counties in a local market where the Commission has deemed that signal to be "significantly viewed."

LEGISLATIVE HISTORY

The Subcommittee on Communications, Technology, and the Internet held an oversight hearing on issues related to the reauthorization of provisions of the Communications Act that govern the retransmission of television broadcast signals by satellite carriers on February 24, 2009. The Subcommittee received testimony from the following witnesses: Bob Gabrielli, Senior Vice President, Broadcasting Operations and Distribution, DIRECTV, Inc.; Charles W. Ergen, Chairman, President, and Chief Executive Officer of DISH Network Corporation; Martin D. Franks, Executive Vice President, Policy, Planning and Government Relations, CBS Corporation; Willard Rowland, President and CEO, Colorado Public Television, on behalf of the Association of Public Television Stations; K. James Yager, CEO, Barrington Broadcasting Group, LLC, on behalf of the National Association of Broadcasters; Gigi B. Sohn, President and Co-Founder, Public Knowledge, on behalf of Public Knowledge, Consumers Union, and Free Press; and W. Kenneth Ferree, President, Progress & Freedom Foundation.

The Subcommittee held a legislative hearing on a discussion draft of the Satellite Home Viewer Reauthorization Act of 2009 (SHVRA) on June 16, 2009. The Subcommittee received testimony from the following witnesses: Preston Padden, Executive Vice President, Worldwide Government Relations, The Walt Disney Company; Mike Mountford, Chief Executive Officer, NPS LLC; Paul Karpowicz, President, Meredith Corporation, on behalf of the National Association of Broadcasters; Derek Chang, Executive Vice

[10] P.L. 108–447, passed as Division J of Title IV of the FY2005 Consolidated Appropriations Act.

President, Content Strategy and Development, DIRECTV, Inc.; and R. Stanton Dodge, Executive Vice President, General Counsel and Secretary, DISH Network.

H.R. 2994, a bill to reauthorize the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), and for other purposes, was introduced on June 23, 2009, and was referred to the Committee on Energy and Commerce. The bill was subsequently referred to the Subcommittee on Communications, Technology, and the Internet on June 24, 2009.

COMMITTEE CONSIDERATION

The Subcommittee on Communications, Technology, and the Internet met in open markup session on June 25, 2009, to consider H.R. 2994. An amendment in the nature of a substitute, offered as a manager's amendment by Subcommittee Chairman Boucher, was agreed to by a voice vote. The Subcommittee forwarded H.R. 2994, amended, favorably to the full Committee by a voice vote.

The full Committee met in open markup session on October 15, 2009, to consider H.R. 2994, as forwarded by the Subcommittee on Communications, Technology, and the Internet on June 25, 2009. An amendment in the nature of a substitute was offered by Mr. Boucher and Mr. Stearns. Ms. Eshoo offered an amendment to the AINS that was agreed to by a roll call vote of 31 yeas to 20 nays. Subsequently, the Boucher amendment in the nature of a substitute, as amended by the Eshoo amendment, was adopted by a voice vote. H.R. 2994 was ordered favorably reported, amended, to the House by a voice vote.

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. A motion by Mr. Waxman to order H.R. 2994 favorably reported to the House, amended, was agreed to by a voice vote. The following is a record of the recorded vote on the amendment offered by Ms. Eshoo, including the names of those Members voting for and against:

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 123

BILL: **H.R. 2994**, the "Satellite Home Viewer Reauthorization Act of 2009".

AMENDMENT: An amendment to the Boucher amendment in the nature of a substitute offered by Ms. Eshoo, # 1B, to add at the end of the bill a new section entitled "Nondiscrimination in Carriage of High Definition Digital Signals of Noncommercial Educational Television Stations."

DISPOSITION: **AGREED TO** by a roll call vote of 31 yeas to 20 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman				Mr. Barton		X	
Mr. Dingell	X			Mr. Hall			
Mr. Markey	X			Mr. Upton		X	
Mr. Boucher		X		Mr. Stearns		X	
Mr. Pallone	X			Mr. Deal		X	
Mr. Gordon	X			Mr. Whitfield		X	
Mr. Rush	X			Mr. Shimkus		X	
Ms. Eshoo	X			Mr. Shadegg		X	
Mr. Stupak	X			Mr. Blunt		X	
Mr. Engel	X			Mr. Buyer		X	
Mr. Green	X			Mr. Radanovich			
Ms. DeGette				Mr. Pitts		X	
Mrs. Capps	X			Ms. Bono Mack		X	
Mr. Doyle	X			Mr. Walden		X	
Ms. Harman	X			Mr. Terry		X	
Ms. Schakowsky	X			Mr. Rogers			
Mr. Gonzalez	X			Mrs. Myrick			
Mr. Inslee	X			Mr. Sullivan		X	
Ms. Baldwin	X			Mr. Murphy of PA		X	
Mr. Ross	X			Mr. Burgess		X	
Mr. Weiner	X			Ms. Blackburn		X	
Mr. Matheson	X			Mr. Gingrey		X	
Mr. Butterfield	X			Mr. Scalise			
Mr. Melancon							
Mr. Barrow	X						
Mr. Hill		X					
Ms. Matsui	X						
Mrs. Christensen	X						
Ms. Castor	X						
Mr. Sarbanes	X						
Mr. Murphy of CT	X						
Mr. Space	X						
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Welch	X						

STATEMENT OF COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2994 would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 2994. Article I, section 8, clauses 3 and 18 of the Constitution of the United States grants the Congress the power to enact this law.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 2994 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

FEDERAL ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b).

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

The Committee finds that H.R. 2994 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 Public Law 104–1.

FEDERAL MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement whether the provisions of the reported bill includes unfunded mandates. In compliance with this requirement the Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate of H.R. 2994 prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Office Act of 1974, the Committee has received the following cost estimate for H.R. 2994 from the Director of the Congressional Budget Office:

NOVEMBER 5, 2009.

Hon. HENRY A. WAXMAN,
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. 2994, the Satellite Home Viewer Reauthorization Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2994—Satellite Home Viewer Reauthorization Act of 2009

Under current law, satellite carriers pay royalty fees for the right to transmit certain television signals to their subscribers without obtaining specific permission from copyright holders. H.R. 2994 would extend provisions of current law that allow satellite carriers to transmit copyrighted material without specific permission but would not extend the requirement to pay royalties on those copyrighted transmissions. The requirement to pay royalties will expire on December 31, 2009. The bill also would require the Federal Communications Commission (FCC) to conduct several studies related to the transmission of satellite broadcasts.

CBO estimates that implementing H.R. 2994 would not significantly affect spending subject to appropriation; enacting the bill would not affect direct spending or revenues.

H.R. 2994 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 2994 would impose private-sector mandates, as defined in UMRA, on satellite carriers and television broadcasters. Based on information from industry sources, CBO estimates that the aggregate cost of complying with all of the mandates in the bill would fall below the annual threshold for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

The bill would require that, in each market for which a satellite carrier chooses to provide local channels in high definition, the carrier must also provide high definition signals of any local noncommercial, educational stations by December 31, 2011. Assuming agreements with such stations could be reached, CBO estimates

that the cost for satellite carriers to comply with this mandate would probably be small relative to the annual threshold.

The bill also would extend an existing mandate on broadcasters that prohibits them from entering certain exclusive contracts for the rights to broadcast their programs and requires them to negotiate in good faith. The cost of the mandate to broadcasters would be the net income forgone as a result of the requirement to negotiate contracts with multiple carriers. Based on information from industry sources, CBO expects that few exclusive contracts would be reached. Therefore, CBO estimates that the cost of the mandate would be small. Additionally, the bill would impose a mandate on network broadcasters by extending a provision that allows satellite carriers to retransmit distant network signals to unserved households without obtaining consent or providing compensation to broadcasters. The cost of the mandate would be the forgone net income broadcasters could obtain by charging satellite carriers for such transmissions. Based upon information from industry sources, CBO estimates the cost would be minimal.

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Sam Wice (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 of the bill establishes the short title as the "Satellite Home Viewer Reauthorization Act of 2009" (SHVRA).

Section 2. Extension of authority

Section 2 of the bill amends section 325(b) of the Communications Act of 1934 to extend for five years the statutory provision that permits a satellite carrier to retransmit, without first having to obtain a broadcaster's consent, the signal of a distant network station to certain unserved households. Section 2 also extends for five years the provision in the same section that requires television broadcast stations and MVPDs to negotiate retransmission consent agreements in good faith and prohibits exclusive carriage deals.

Section 3. Significantly viewed stations

Section 3(a) of the bill amends section 340 of the Communications Act regarding the carriage by a satellite carrier of "significantly viewed" signals. Congress first created section 340 in SHVERA. Section 340 allows a satellite carrier to offer a subscriber the signal from a station in a nearby market if the signal is viewed over the air by a "significant" number of consumers within the subscriber's market. This "significantly viewed" provision was adopted in SHVERA to create parity with cable operators, who already had such authority. Because some stations were only just beginning their transition to digital, and because in-market stations not yet broadcasting in high-definition format were concerned about competition with out of market stations that were broadcasting in high definition format, section 340 required satellite carriers to dedicate "equivalent bandwidth" to local signals and significantly viewed signals.

The Commission's implementation of section 340, including its interpretation of the "equivalent bandwidth" requirement, has generally served to discourage satellite carriers from using section 340 to provide significantly viewed signals to qualified households.

Under the Commission's interpretation of this section, a satellite carrier must reduce a significantly viewed signal in high-definition format to standard-definition format any time the local signal was not broadcast in high-definition format. The Commission required this even if the satellite carriers were providing the local signal in high definition format whenever it was broadcast in such format. Because it is impractical for satellite carriers to match the format of the local and significantly viewed signals moment-by-moment, satellite carriers rarely provide the significantly viewed signals.

To address this, section 3(a) of the bill amends section 340(b) to clarify that a satellite carrier may provide a significantly viewed signal in high-definition format even when the local signal affiliated with the same network is not broadcast in high-definition format as long as it provides the local signal affiliated with the same network in high-definition format when it is available in that format.

Section 3(b) of the bill requires the Commission to take all actions necessary to promulgate a rule to implement the amendments made by section 3(a) within 180 days of the date of enactment of the bill.

Section 4. Conforming amendments

Section 4 of the bill makes a series of amendments to sections 338 and 339 of the Communications Act to account for the transition from analog to digital-only television broadcasts, including addressing the predictive model the Commission will use to determine whether a satellite carrier may retransmit distant digital network signals to certain households and carrying forward the grandfathering of the eligibility of certain satellite subscribers to receive distant network signals.

Section 4 of the bill, among other things, adds to section 339 of the Communications Act provisions regarding when a satellite carrier may retransmit distant network signals to households that can receive network programming over-the-air because a local station is providing that network programming on a multicast stream. Digital broadcast technology allows broadcasters to use their 6 MHz channel to transmit more than one programming stream, a practice known as multicasting. In some markets that lack a full complement of local network affiliates (sometimes referred to as "short markets"), the network that is not present in the market may contract with the local affiliate of another network to multicast the missing network's programming. Section 4 inserts new language to ensure that households to which a satellite carrier is lawfully retransmitting distant network programming do not lose access to that programming when a satellite carrier begins retransmitting the signal of a multicast station affiliated with the same network in a local market.

Section 4(a) of the bill adapts for the digital television transition the requirement from SHVERA that a satellite carrier offering local-into-local service in a market provide to a subscriber any analog signals of the local broadcasters in that market on a single re-

ception antenna device, or dish, as well as provide any digital signals of the local broadcasters on a single dish. This requirement meant that households in some markets that wanted to receive local programming might be required to obtain two dishes in order to receive a full complement of local stations. In practice, consumers were less likely to view some local stations because they might not want to go through the process of obtaining and installing a second dish or might have concerns about how a second dish might look on or near their home.

Section 4(a)(2) of the bill amends section 338(g) of the Communications Act to clarify that after the digital television transition, a satellite carrier must retransmit local broadcast signals in such a manner that a subscriber may receive all local signals using one reception antenna.

Section 4(a)(2) of the bill also provides that a satellite carrier offering local broadcast signals in high definition format must retransmit those signals in such a manner that a subscriber may receive all of them using a single reception antenna; however, the reception antenna used to receive the local signals in high-definition format may be different from the reception antenna used to receive the signals in non-high definition, or standard definition, format, provided that all local stations carried pursuant to section 338 are available on one reception antenna; either the one used to receive signals in standard definition format or the one used to receive signals in high definition format.

Section 4(b) of the bill updates section 339 of the Communications Act to reflect the end of the transition of full-power television broadcast stations to digital broadcasting. Section 4(b) also updates so-called "grandfathering" provisions that ensure that certain consumers that are lawfully receiving distant signals do not automatically lose access to those signals because of a change in law or a change in broadcast signal availability. The Committee has routinely established such provisions in the past to prevent unnecessary disruptions to consumers.

Section 4(b)(1)(A) of the bill updates the requirement that a satellite carrier may retransmit no more than two distant signals affiliated with the same television network to a household that is unserved with respect to that television network.

In SHVIA, Congress allowed some subscribers who were receiving a distant signal of a network affiliate 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. Some of these subscribers—those residing in the so-called "Grade B doughnut"[11]—could continue to receive that distant signal until they chose to receive a local signal affiliated with the same network from the satellite carrier. The grandfathered status of these subscribers is set to expire on December 31, 2009, and section 4(b)(1)(B) of the bill allows them to continue to receive a distant signal until they elect to receive the corresponding local signal.

Other subscribers (non-Grade B doughnut subscribers) already lawfully receiving a distant network signal from a satellite carrier at the time SHVRA is enacted may continue to receive that signal

[11] Satellite carriers were retransmitting distant network signals to households in the Grade B doughnut even though they were predicted to receive an analog signal of Grade B intensity over the air.

whether or not they subsequently decide also to receive from the satellite carrier a signal of that network from the local affiliate.

Section 4(b)(1)(B)(iv) of the bill provides that a satellite carrier may not provide a distant signal to a household after the satellite carrier has begun to offer the corresponding local signal of a television network in a local market, including where the station affiliated with that network is provided as a multicast stream.

Section 4(b)(1)(B)(v) of the bill makes a series of changes to account for the conclusion of the transition of full-power television broadcast stations to digital. Amended section 339(a)(2)(D)(i) provides that a subscriber is eligible to receive the distant signal of a television network if the subscriber is determined, based on a test conducted in accordance with the Commission's regulations, not to be able to receive over the air a signal of the same network exceeding the signal intensity standard in the Commission's rules.

To account for the digital transition, amended section 339(a)(2)(D)(iii) updates the requirement that a satellite carrier may not use distant signals to "time-shift" programming. A satellite carrier may only retransmit the distant signal of a television network to a subscriber in a local market if the prime time network programming associated with that distant signal is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market.

Section 4(b)(2) of the bill directs the Commission to complete all actions necessary to prescribe by rule a point-to-point predictive model to determine presumptively whether a household is eligible to receive a distant network signal, within 180 days of the date of enactment of SHVRA. The new digital predictive model will replace the current predictive model used by the Commission, which is based on a household's ability to receive an analog over-the-air signal of Grade B intensity. The Commission is directed to rely on the existing Individual Location Longley-Rice model as previously revised with respect to analog signals and as recommended to Congress in a December 2005 report required by SHVERA and to refine the predictive model in the future as additional data becomes available.

Until the Commission implements the digital predictive model, it is the Committee's expectation and understanding that satellite carriers have agreed not to qualify households as unserved by reference to an analog Grade B television signal, but instead to qualify households as unserved by reference to procedures that reflect the ability of households to receive digital over-the-air signals. The Committee expects and has been assured repeatedly that satellite carriers will stand by this commitment.

Section 4(b)(2) of the bill also requires the Commission to complete a pending rulemaking concerning on-location testing of a household's ability to receive an over-the-air digital signal, within 180 days of the date of enactment of SHVRA. Section 4(b)(2) of the bill also requires the Commission to conduct a study and issue a report to Congress within one year of the date of enactment to determine whether, for purposes of identifying if a household is unserved by an adequate digital signal, the Commission should revise the digital signal strength standard or the testing procedures

in its rules to take into account the types of antennas available to and used by consumers.

The Committee expects the Commission to consider the types of antennae that are readily available for purchase by consumers to receive the signals of local digital television broadcast stations over the air. Just as there are some households that, prior to the digital television transition, could not receive analog signals over the air, so there are, after the digital television transition, some households that cannot receive digital signals over the air. The purpose of the study and subsequent report to Congress is to provide Congress with the information it may need to determine whether there is a need to revise the existing standard for measuring a household's ability to receive a distant network signal.

Section 5. Application pending completion of rulemaking

Section 5(a) of the bill states that between the date of enactment of SHVRA and the adoption of rules by the Commission pursuant to SHVRA, the Commission shall follow its rules and regulations as in effect on the day before the date of enactment of SHVRA. The Committee intends that, until the Commission completes the rulemaking proceedings required by SHVRA, the Commission's current rules shall continue to remain in effect.

Section 5(b) of the bill states that for purposes of determining whether a subscriber within the local market served by a translator station or a low power television station affiliated with a television network is eligible to receive distant signals under section 339 of the Act, the Commission shall follow its rules and regulations for determining such subscriber's eligibility as in effect on the day before the date of enactment of this Act until the date on which the translator station or low power television station is licensed to broadcast a digital signal.

Section 5(c) of the bill contains definitions.

Section 6. Process for issuing qualified carrier certification

Section 6 of the bill creates a new section 342 of the Communications Act. The Committee on the Judiciary's companion legislation to SHVRA establishes a process by which a federal court will lift an injunction that prevents a satellite carrier from using the distant signal compulsory copyright license once the Commission determines that the satellite carrier provides local-into-local service in all 210 DMAs in the United States. Section 6 of the bill sets forth the requirements such a satellite carrier must meet to obtain a certification of compliance from the FCC. The satellite carrier may then present the certificate to the court, which will lift the injunction.

In SHVIA, Congress, recognizing the capacity constraints faced by satellite carriers, adopted a requirement that satellite carriers provide the signal of all local broadcast stations requesting carriage in a market when they provide at least one such signal pursuant to the local-into-local compulsory copyright license. In this way,

satellite carriers could decide in which DMAs they wanted to roll out local-into-local service, and when.[12]

The majority of DMAs that lack local service from a satellite carrier are in rural areas, and many of these markets do not have a full complement of local network affiliates.[13]

According to the satellite carriers, because these communities are often sparsely populated and often lack a full complement of local network affiliates, these areas are less economic for satellite carriers to serve. Simply put, the cost of providing local service in these areas cannot be supported through the addition of new subscribers. Absent a financial or regulatory incentive or a government mandate to extend local service to these remote areas, many of these markets may never receive local television service delivered by satellite.

DISH is currently the only satellite carrier barred from using the distant signal compulsory copyright license to retransmit any out-of-market network programming to any of its subscribers. This is the result of a nationwide permanent injunction issued by the United States Court of Appeals for the Eleventh Circuit. The inability to offer distant network programming makes it difficult for DISH to commence local-into-local service in short markets because it cannot use the distant signal license to offer out-of-market programming to provide a missing local network affiliate. DISH has informed the Committee that it would commit to offer local-into-local service in all 210 DMAs if it were provided a mechanism by which the company could seek to have the permanent injunction lifted.

The Judiciary Committee's companion legislation establishes a method by which DISH can seek a waiver of the permanent injunction, subject to certain conditions and FCC certification.

New section 342(a) of the bill directs the FCC to issue a certification in compliance with 17 U.S.C. 119(g)(3)(A)(iii) if the Commission determines: (1) that the requesting satellite carrier is offering local-into-local service in all 210 DMAs in the United States; (2) that the requesting satellite carrier's satellite beams are designed to provide a good quality signal to 90% of the households in each DMA in which the satellite carrier is not offering local-into-local service as of the date of enactment of SHVRA; and (3) that there is no material evidence that there has been a satellite or sub-system failure subsequent to the satellite's launch that precludes the ability of the satellite carrier to meet the requirement to provide a good quality signal to 90% of the households in each DMA in which the satellite carrier is not offering local-into-local service as of the date of enactment of SHVRA.

New section 342(b) of the bill sets forth the minimum information that a requesting satellite carrier must provide to the Commission when requesting a certification.

New section 342(c) of the bill sets forth the timeframe for the Commission to seek comment on a request for certification and to grant or deny the request.

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[12] As of November 2009, DirecTV provides local service in 152 markets, and DISH Network provided local service in 182 markets. This means that roughly 30 DMAs have no local-into-local service. See footnotes 8 and 9, supra.

[13] As noted above, such markets are often referred to as "short markets."

New section 342(d) of the bill requires a satellite carrier that receives a certification from the Commission to file an affidavit 30 months after the certification is granted stating that the satellite carrier is still in compliance with the requirements for a qualified carrier.

New section 342(e) of the bill defines the terms used in this section.

Section 7. Savings clause regarding definitions

Section 7 of the bill states that nothing in SHVRA shall be construed to affect the definitions of "program related" and "primary video" in the Communications Act or any regulations promulgated pursuant to that Act by the Commission. The purpose of this language is to ensure that the treatment of multicast signals in SHVRA and in the Judiciary Committee's companion legislation have no effect, one way or the other, on ongoing consideration by the Commission of policy issues relating to multicast signals.

Section 8. Savings clause regarding use of non-compulsory licenses; report

Section 8(a) of the bill states that nothing in SHVRA, the Communications Act, or any Commission regulation shall limit the ability of a satellite carrier and a copyright owner to make contractual arrangements to retransmit programming pursuant to an authorization granted by the copyright owner outside of the purview of the distant or local signal compulsory licenses. It is the Committee's understanding and intent that section 8(a) is simply a restatement and clarification of existing communications law, which does not preclude parties with the requisite rights from entering into agreements to retransmit programming outside of the compulsory copyright license regime.

Section 8(b) directs the Commission to submit within one year to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation a report on: (1) the number of households in a state that receive local broadcast signals from stations with a community of license located in a different state; (2) the extent to which consumers have access to in-state broadcast programming; and (3) whether alternatives exist to the use of DMAs for defining local markets that would provide more consumers with in-state broadcast programming.

The Committee notes that the problem of so-called "orphan" counties is one that receives significant congressional attention during each Satellite Home Viewer Act reauthorization cycle and is of concern to consumers located in such counties. Orphan counties are counties assigned by The Nielsen Company to a local market in which most of the other counties in that DMA are located in a different state. Households in these orphan counties may not be receiving signals from in-state broadcast stations and therefore might not be receiving news, sports, and public affairs programming relevant to their state, though in some cases they are receiving such programming. The Committee also notes that the existing DMA system is critically interwoven with the predominant broadcasting business model. As such, proposed changes to that system deserve full exploration and careful consideration.

In addition to quantifying the number of households in any given state that receive local broadcast signals from a different state, the Committee intends for the Commission to consider alternatives that might provide such households with more non-duplicating, "in-state" programming, such as in-state news, public affairs, election coverage, weather, and public service programming that is not available from in-market stations. The study is not intended to facilitate carriage by MVPDs of duplicating network and syndicated programming from out-of-market stations that is already available to these viewers through local stations. Rather, the focus of the FCC study should be on options to provide these households with non-duplicating programming that the consumer may consider more relevant and "local" than the programming the DMA system might otherwise assign to them.

The Committee is aware that cable systems in some areas currently import non-duplicating, in-state news, weather, and other local programming from out-of-market, in-state stations. It appears, however, that satellite carriers typically do not. The Commission should examine this issue.

Section 9. Nondiscrimination in carriage of high definition digital signals of noncommercial educational television stations

Section 9(a) of the bill amends section 338(a) of the Communications Act by adding a new section 338(a)(5). This new section requires each satellite carrier that is not as of the date of enactment of SHVRA party to a carriage contract with a qualified noncommercial educational television station, or its representative, and is retransmitting local signals in high definition format in any local market before the date of enactment of SHVRA, to provide the high definition signal of qualified noncommercial educational television stations in each such local market by December 31, 2011. New section 338(a)(5)(B) requires each satellite carrier not a party to such a contract that launches high definition service in any local market after the date of enactment of SHVRA to provide immediately the high definition signals of all qualified noncommercial educational television stations in that local market. At the time SHVRA was passed by the Committee, DirecTV was a party to such a carriage contract, but DISH was not.

Section 9(b) of the bill amends section 338(k) of the Act to add definitions of "eligible satellite carrier" and "qualified noncommercial educational television station".

EXPLANATION OF AMENDMENT

During full Committee markup on October 15, 2009, the Committee adopted an amendment by Ms. Eshoo that addresses the carriage of local public television broadcast signals in high definition format by satellite carriers.

At the time SHVRA was passed by the Committee, satellite carriage of local public television station signals in high definition format was available on most, but not all MVPDs. For example, the second largest DBS provider carries the signal of local public television stations in high definition format in only two markets, Alaska and Hawaii. Notably, in both states such carriage is mandated by law.

Public television representatives have reached high definition format carriage agreements with the cable industry, Verizon and the largest DBS operator, DirecTV. Despite ongoing efforts to reach agreement with all DBS operators, these efforts have been unsuccessful. As a result, millions of consumers do not have access to public broadcasting in high definition format. The Committee believes this constitutes discriminatory treatment of locally-owned and controlled stations that serve their communities with high-quality, local, educational, and cultural content. Absent a private agreement, the Committee believes it is in the public interest for Congress to require the carriage of local public television programming in high definition format.

The amendment adopted by the Committee requires a satellite carrier that is not a party to a carriage contract with a qualified noncommercial educational station, or its representative, to begin carrying the high definition format signals of qualified noncommercial educational television stations in at least 50% of the markets where it offers local high definition format service by December 31, 2010, and in 100% of markets where it offers local high definition format service by December 31, 2011. It further requires such a satellite provider to carry the high definition format signal of the qualified noncommercial educational television station when it begins offering high definition format service in a market on a prospective basis.

Given the Committee's strong preference for privately negotiated carriage agreements, the amendment contains a provision that nullifies the carriage requirement if there is a contract between a qualified noncommercial educational television station, or its representative, and an eligible satellite carrier prior to final passage of the bill.

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—SPECIAL 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, 2009] *December 31, 2014*, to retransmission of the signals of network stations directly to a home satellite antenna, if the subscriber receiving the signal—

(i) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

(C) The Commission 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). Such regulations shall—

(i) * * *

(ii) until [January 1, 2010] *January 1, 2015*, 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] *January 1, 2015*, 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) CARRIAGE OBLIGATIONS.—

(1) * * *

* * * * * * *

[(3) EFFECTIVE DATE.—No satellite carrier shall be required to carry local television broadcast stations under paragraph (1) until January 1, 2002.]

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(5) NONDISCRIMINATION IN CARRIAGE OF HIGH DEFINITION SIGNALS OF NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS.—

(A) EXISTING CARRIAGE OF HIGH DEFINITION SIGNALS.—Each eligible satellite carrier providing, under section 122 of title 17, United States Code, any secondary transmissions in high definition to subscribers located within

the local market of a television broadcast station of a primary transmission made by that station prior to the date of enactment of this paragraph shall carry the high-definition signals of qualified noncommercial educational television stations located within that local market in accordance with the following schedule:

(i) By December 31, 2010, in at least 50 percent of the markets in which such satellite carrier provides such secondary transmissions in high definition.

(ii) By December 31, 2011, in every market in which such satellite carrier provides such secondary transmissions in high definition.

(B) NEW INITIATION OF SERVICE.—Each eligible satellite carrier that initiates the provision, under section 122 of title 17, United States Code, of any secondary transmissions in high definition to subscribers located within the local market of a television broadcast station of a primary transmission made by that station after the date of enactment of this paragraph shall carry the high-definition signals of all qualified noncommercial educational television stations located within that local market.

* * * * * * *

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

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

[(2) EXCEPTION.—If the carrier retransmits signals in the digital television service, the carrier shall retransmit such digital signals 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 analog television service signals.

[(3) EFFECTIVE DATE.—The requirements of paragraphs (1) and (2) of this subsection shall apply on and after 18 months 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 15 months 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.]

(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE RECEPTION ANTENNA.—

(1) SINGLE RECEPTION ANTENNA.—Each satellite carrier that retransmits the signals of local television broadcast stations in a local market shall retransmit such stations in such market so that a subscriber may receive such stations by means of a single reception antenna and associated equipment.

(2) ADDITIONAL RECEPTION ANTENNA.—If the carrier retransmits the signals of local television broadcast stations in a local market in high definition format, the carrier shall retransmit such signals in such market so that a subscriber may receive such signals 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 to comply with paragraph (1).

* * * * * * *

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

(1) * * *

(2) ELIGIBLE SATELLITE CARRIER.—The term "eligible satellite carrier" means any satellite carrier that is not a party to a carriage contract with a qualified noncommercial educational television station, or its representative, that is in force and effect as of the date of enactment of this paragraph.

[(2)] *(3)* LOCAL RECEIVE FACILITY.—The term "local receive facility" means the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

[(3)] *(4)* LOCAL MARKET.—The term "local market" has the meaning given that term under section 122(j) of title 17, United States Code.

[(4)] *(5)* LOW POWER TELEVISION STATION.—The term "low power television station" means a low power television station as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term "low power television station" includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

(6) QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term "qualified noncommercial educational television station" has the meaning given such term in section 615(l)(1) of this Act.

[(5)] *(7)* SATELLITE CARRIER.—The term "satellite carrier" has the meaning given such term under section 119(d) of title 17, United States Code.

[(6)] *(8)* SECONDARY TRANSMISSION.—The term "secondary transmission" has the meaning given such term in section 119(d) of title 17, United States Code.

[(7)] *(9)* SUBSCRIBER.—The term "subscriber" has the meaning given that term under section 122(j) of title 17, United States Code.

[(8)] *(10)* TELEVISION BROADCAST STATION.—The term "television broadcast station" has the meaning given such term in section 325(b)(7).

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

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

(1) CARRIAGE PERMITTED.—

(A) * * *

(B) ADDITIONAL SERVICE.—In addition to signals provided under subparagraph (A), any satellite carrier may also provide service under the statutory license of section 122 of title 17, United States Code, to the local market within which such household is located. The service provided under section 122 of such title may be in addition to the two signals provided under section 119 of such title. [Such two network stations may be comprised of both the analog signal and digital signal of not more than two network stations.]

(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 [TO ANALOG SIGNALS].—

(i) FOR THOSE RECEIVING DISTANT [ANALOG] SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the [analog] 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 [analog] signal"), and who, as of [October 1, 2004] *October 1, 2009*, is receiving the distant [analog] signal of that network station, the following shall apply:

(I) In a case in which the satellite carrier makes available to the subscriber the [analog] signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant [analog] signal of a station affiliated with the same network to that subscriber—

(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of this Act, the subscriber elects to retain the distant [analog] signal; but

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

(II) Notwithstanding subclause (I), the carrier may not retransmit the distant [analog] signal to any subscriber who is eligible to receive the [analog] 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 Ex-

tension and Reauthorization Act of 2004, submits to that television network the list and statement required by subparagraph (F)(i).

(ii) FOR THOSE NOT RECEIVING DISTANT [ANALOG] SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant [analog] signal of a network station solely by reason of section 119(e) of title 17, United States Code, and who did not receive a distant [analog] signal of a station affiliated with the same network on October 1, [2004] *2009*, the carrier may not provide the secondary transmissions of the distant [analog] signal of a station affiliated with the same network to that subscriber.

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

[(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the analog signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliate with the same network to that subscriber if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network the list and statement required by subparagraph (F)(i).

[(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the analog signal of a local network station pursuant to section 338, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber if—

[(I) that subscriber seeks to subscribe to such distant analog signal before the date on which such carrier commences to carry pursuant to section 338 the analog signals of stations from the local market of such local network station; and

[(II) the satellite carrier, within 60 days after such date, submits to each television network the list and statement required by subparagraph (F)(ii).]

(B) RULES FOR OTHER SUBSCRIBERS.—

(i) IN GENERAL.—In the case of a subscriber of a satellite carrier who is eligible to receive the signal of a network station under this section (in this clause 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 satellite carrier makes available to that subscriber, on January 1, 2005, the signal of a local network station affiliated with

the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network the list and statement required by subparagraph (F)(i).

(II) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the signal of a local network station pursuant to section 338, the carrier may only provide the secondary transmissions of the distant signal of a station affiliated with the same network to that subscriber if—

(aa) that subscriber seeks to subscribe to such distant signal before the date on which such carrier commences to carry pursuant to section 338 the signals of stations from the local market of such local network station; and

(bb) the satellite carrier, within 60 days after such date, submits to each television network the list and statement required by subparagraph (F)(ii).

(ii) SPECIAL CIRCUMSTANCES.—A subscriber of a satellite carrier who was lawfully receiving the distant signal of a network station on the day before the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009 may receive both such distant signal and the local signal of a network station affiliated with the same network until such subscriber chooses to no longer receive such distant signal from such carrier.

(C) FUTURE APPLICABILITY.—A satellite carrier may not provide a distant **[**analog**]** signal (within the meaning of subparagraph (A) or (B)) to a person who—

(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of **[**the Satellite Home Viewer Extension and Reauthorization Act of 2004**]** *the Satellite Home Viewer Reauthorization Act of 2009*; and

[(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the signal of a local network station affiliated with the same television network pursuant to section 338, and the retransmission of such signal by such carrier can reach such subscriber.**]**

(ii) either—

(I) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the signal of a local network station affiliated with the same television network pursuant to section 338, and the retrans-

mission of such signal by such carrier can reach such subscriber; or

(II) receives from the satellite carrier the signal of a network station affiliated with the same network that is broadcast by a local station in the market where the subscriber resides, but is not the local station's primary video.

(D) SPECIAL RULES FOR DISTANT DIGITAL SIGNALS.—

[(i) ELIGIBILITY.—In the case of a subscriber of a satellite carrier who, with respect to a local network station—

[(I) is a subscriber whose household is located outside the coverage area of the analog signal of such station as predicted by the model specified in subsection (c)(3) of this section for the signal intensity required under section 73.683(a) of title 47 of the Code of Federal Regulations, or a successor regulation;

[(II) is in an unserved household as determined under section 119(d)(1)(A) of title 17, United States Code; or

[(III) is, after the date on which the conditions required by clause (vii) are met with respect to such station, determined under clause (vi) of this subparagraph to be unable to receive a digital signal of such local network station that exceeds the signal intensity standard specified in such clause;

such subscriber is eligible to receive the digital signal of a distant network station affiliated with the same network under this section (in this subparagraph referred to as a "distant digital signal") subject to the provisions of this subparagraph.

[(vi) SIGNAL TESTING FOR DIGITAL SIGNALS.—

[(I) A subscriber shall be eligible for a distant digital signal under clause (i)(III) if such subscriber is determined, based on a test conducted in accordance with section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, not to be able to receive a signal that exceeds the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, as in effect on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

[(II) Such test shall be conducted, upon written request for a digital signal strength test by the subscriber to the satellite carrier, within 30 days after the date the subscriber submits such request for the test. Such test shall be conducted by a qualified and independent person selected by the satellite carrier and the network station or stations, or who has been previously approved by the satellite carrier and by each affected network station but not previously disapproved. A tester may

not be so disapproved for a test after the tester has commenced such test.

[(III) Unless the satellite carrier and the network station or stations otherwise agree, the costs of conducting the test shall be borne as follows:

[(aa) If the subscriber is not eligible for a distant digital signal under clause (i)(I) of this subparagraph (by reason of being outside of the coverage area of the analog signal), the satellite carrier may request the station licensee for a waiver.

[(bb) If the licensee agrees to a waiver, or fails to respond to a waiver request within 30 days, the subscriber may receive such distant digital signal.

[(cc) If the licensee refuses to grant a waiver, the subscriber may request the satellite carrier to conduct the test.

[(dd) If the satellite carrier requests the test and—

[(AA) the station's signal is determined to exceed such signal intensity standard, the costs of the test shall be borne by the satellite carrier; and

[(BB) the station's signal is determined to not exceed such signal intensity standard, the costs of the test shall be borne by the licensee.

[(ee) If the satellite carrier does not request the test, or fails to respond within 30 days, the subscriber may request the test be conducted under the supervision of the carrier, and the costs of the test shall be borne by the subscriber in accordance with regulations prescribed by the Commission. Such regulations shall also require the carrier to notify the subscriber of the typical costs of such test.]

(i) SIGNAL TESTING.—A subscriber shall be eligible to receive a distant signal of a distant network station affiliated with the same network under this section if such subscriber is determined, based on a test conducted in accordance with section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, not to be able to receive a signal that exceeds the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations.

(ii) PRE-ENACTMENT DISTANT [DIGITAL] SIGNAL SUBSCRIBERS.—Any eligible subscriber under this subparagraph who is a lawful subscriber to such a distant [digital] signal as of the date of enactment of the [Satellite Home Viewer Extension and Reauthorization Act of 2004] *Satellite Home Viewer Reauthorization Act of 2009* may continue to receive such distant [digital] signal[, whether or not such subscriber elects to subscribe to local digital signals].

(iii) TIME-SHIFTING PROHIBITED.—In a case in which the satellite carrier makes available to an eligible subscriber under this subparagraph the signal of a local network station pursuant to section 338, the carrier may only provide the distant signal of a station affiliated with the same network to that subscriber if, in the case of any local market in the 48 contiguous States of the United States, the distant signal is the secondary transmission of a station whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market.

[(iii) LOCAL-TO-LOCAL ANALOG MARKETS.—In a case in which the satellite carrier makes available to an eligible subscriber under this subparagraph the analog signal of a local network station pursuant to section 338, the carrier may only provide the distant digital signal of a station affiliated with the same network to that subscriber if—

[(I) in the case of any local market in the 48 contiguous States of the United States, the distant digital signal is the secondary transmission of a station whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market;

[(II) in any local market, the retransmission of the distant digital signal of the distant station occupies at least the equivalent bandwidth (as such term is defined by the Commission under section 340(h)(4)) as the digital signal broadcast by such station; and

[(III) the subscriber subscribes to the analog signal of such local network station within 60 days after such signal is made available by the satellite carrier, and adds to or replaces such analog signal with the digital signal from such local network station within 60 days after such signal is made available by the satellite carrier, except that such distant digital signal may continue to be provided to a subscriber who cannot be reached by the satellite transmission of the local digital signal.

[(iv) LOCAL-TO-LOCAL DIGITAL MARKETS.—After the date on which a satellite carrier makes available the digital signal of a local network station, the carrier may not offer the distant digital signal of a network station affiliated with the same television network to any new subscriber to such distant digital signal after such date, except that such distant digital signal may be provided to a new subscriber who cannot be reached by the satellite transmission of the local digital signal.

[(v) NON-LOCAL-TO-LOCAL MARKETS.—After the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, if the satellite carrier does not make available the digital signal of a local network station in a local market, the satellite carrier may offer a new subscriber after such date who is eligible under this subparagraph a distant digital signal from a station affiliated with the same network and, in the case of any local market in the 48 contiguous States of the United States, whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market, except that—

[(I) such carrier may continue to provide such distant digital signal to such a subscriber after the date on which the carrier makes available the digital signal of a local network station affiliated with such network only if such subscriber subscribes to the digital signal from such local network station; and

[(II) the limitation contained in subclause (I) of this clause shall not apply to a subscriber that cannot be reached by the satellite transmission of the local digital signal.

[(vii) TRIGGER EVENTS FOR USE OF TESTING.—A subscriber shall not be eligible for a distant digital signal under clause (i)(III) pursuant to a test conducted under clause (vii) until—

[(I) in the case of a subscriber whose household is located within the area predicted to be served (by the predictive model for analog signals under subsection (b)(3) of this section) by the signal of a local network station and who is seeking a distant digital signal of a station affiliated with the same network as that local network station—

[(aa) April 30, 2006, if such local network station is within the top 100 television markets and—

[(AA) has received a tentative digital television service channel designation that is the same as such station's current digital television service channel; or

[(BB) has been found by the Commission to have lost interference protection; or

[(bb) July 15, 2007, for any other local network stations, other than translator stations licensed to broadcast on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; or

[(II) in the case of a translator station, 1 year after the date on which the Commission completes all actions necessary for the allocation and assign-

ment of digital television licenses to television translator stations.

[(viii) TESTING WAIVERS.—Upon request by a local network station, the Commission may grant a waiver with respect to such station to the beginning of testing under clause (vii), and prohibit subscribers from receiving digital signal strength testing with respect to such station. Such a request shall be filed not less than 5 months prior to the implementation deadline specified in such clause, and the Commission shall act on such request by such implementation deadline. Such a waiver shall expire at the end of not more than 6 months, except that a waiver may be renewed upon a proper showing. The Commission may only grant such a request upon submission of clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the following:

[(I) the need for international coordination or approvals;

[(II) clear zoning or environmental legal impediments;

[(III) force majeure;

[(IV) the station experiences a substantial decrease in its digital signal coverage area due to necessity of using side-mounted antenna;

[(V) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or

[(VI) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 in the local market.

Under no circumstances may such a waiver be based upon financial exigency.

[(ix) SPECIAL WAIVER PROVISION FOR TRANSLATORS.—Upon request by a television translator station, the Commission may grant, for not more than 3 years, a waiver with respect to such station to the beginning of testing under clause (vii), and prohibit subscribers from receiving digital signal strength testing with respect to such station, if the Commission determines that the translator station is not broadcasting a digital signal due to one or more of the following:

[(I) frequent occurrence of inclement weather; or

[(II) mountainous terrain at the transmitter tower location.]

[(x)] *(iv)* SAVINGS PROVISION.—Nothing in this subparagraph shall be construed to affect a satellite carrier's obligations under section 338.

[(xi) DEFINITION.—For purposes of clause (viii), the term "emergency response providers" means Federal, State, or local governmental and nongovernmental emergency public safety, law enforcement, fire, emer-

gency response, emergency medical (including hospital emergency facilities), and related personnel, organizations, agencies, or authorities.]

(E) AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.—This paragraph shall not prohibit a retransmission of a [distant analog signal or distant digital signal (within the meaning of subparagraph (A), (B), or (D))] *distant signal* of any distant network station to any subscriber to whom the signal of a local network station affiliated with the same network is available, if and to the extent that such local network station has affirmatively granted a waiver from the requirements of this paragraph to such satellite carrier with respect to retransmission of such distant network station to such subscriber.

* * * * * * *

(c) ELIGIBILITY FOR RETRANSMISSION.—

(1) * * *

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[(3) ESTABLISHMENT OF IMPROVED PREDICTIVE MODEL REQUIRED.—Within 180 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall take all actions necessary, including any reconsideration, to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations to receive signals in accordance with the signal intensity standard in effect under section 119(d)(10)(A) of title 17, United States Code. In prescribing such model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the Federal Communications Commission in Docket No. 98–201 and ensure that such model takes into account terrain, building structures, and other land cover variations. The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available.]

(3) ESTABLISHMENT OF IMPROVED PREDICTIVE MODEL AND ON-LOCATION TESTING REQUIRED.—

(A) PREDICTIVE MODEL.—Within 180 days after the date of the enactment of the Satellite Home Viewer Reauthorization Act of 2009, the Commission shall take all actions necessary to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations, through the use of a conventional, stationary, outdoor rooftop receiving antenna, to receive signals in accordance with the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, including to account for the continuing operation of translator stations and low power television stations. In prescribing such model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the Commission in CS Docket No. 98-201, as previously revised with respect to analog signals, and as recommended by the Commission with respect to digital signals in its Report to Congress in ET Docket No. 05-182, FCC 05-199 (re-

leased December 9, 2005). The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available.

(B) ON-LOCATION TESTING.—The Commission shall issue an order completing its rulemaking proceeding in ET Docket No. 06-94 within 180 days after the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009.

(C) STUDY OF TYPES OF ANTENNAS AVAILABLE TO RECEIVE DIGITAL SIGNALS.—

(i) STUDY REQUIRED.—Not later than 1 year after the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009, the Commission shall complete a study regarding whether, for purposes of identifying if a household is unserved by an adequate digital signal under section 119(d)(10) of title 17, United States Code, the digital signal strength standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, or the testing procedures in section 73.686 of title 47, Code of Federal Regulations, such statutes or regulations should be revised to take into account the types of antennas that are available to and used by consumers.

(ii) STUDY CONSIDERATION.—In conducting the study under clause (i), the Commission shall consider whether to account for the fact that an antenna can be mounted on a roof or placed in a home and can be fixed or capable of rotating.

(iii) REPORT.—Not later than 1 year after the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009, the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

(I) the results of the study conducted under clause (i); and

(II) recommendations, if any, regarding changes to be made to Federal statutes or regulations.

(4) OBJECTIVE VERIFICATION.—

[(A) IN GENERAL.—If a subscriber's request for a waiver under paragraph (2) is rejected and the subscriber submits to the subscriber's satellite carrier a request for a test verifying the subscriber's inability to receive a signal that meets the signal intensity standard in effect under section 119(d)(10)(A) of title 17, United States Code, the satellite carrier and the network station or stations asserting that the retransmission is prohibited with respect to that subscriber shall select a qualified and independent person to conduct a test in accordance with section 73.686(d) of its regulations (47 CFR 73.686(d)), or any successor regulation. Such test shall be conducted within 30 days after the date the subscriber submits a request for the test. If the written findings and conclusions of a test conducted in accordance with such section (or any successor regulation)

demonstrate that the subscriber does not receive a signal that meets or exceeds the signal intensity standard in effect under section 119(d)(10)(A) of title 17, United States Code, the subscriber shall not be denied the retransmission of a signal of a network station under section 119 of title 17, United States Code.]

(A) IN GENERAL.—If a subscriber's request for a waiver under paragraph (2) is rejected and the subscriber submits to the subscriber's satellite carrier a request for a test verifying the subscriber's inability to receive a signal of the signal intensity referenced in clause (i) of subsection (a)(2)(D), the satellite carrier and the network station or stations asserting that the retransmission is prohibited with respect to that subscriber shall select a qualified and independent person to conduct the test referenced in such clause. Such test shall be conducted within 30 days after the date the subscriber submits a request for the test. If the written findings and conclusions of a test conducted in accordance with such clause demonstrate that the subscriber does not receive a signal that meets or exceeds the requisite signal intensity standard in such clause, the subscriber shall not be denied the retransmission of a signal of a network station under section 119 of title 17, United States Code.

(B) DESIGNATION OF TESTER AND ALLOCATION OF COSTS.—If the satellite carrier and the network station or stations asserting that the retransmission is prohibited are unable to agree on such a person to conduct the test, the person shall be designated by an independent and neutral entity designated by the Commission by rule. Unless the satellite carrier and the network station or stations otherwise agree, the costs of conducting the test under this paragraph shall be borne by the satellite carrier, if the station's signal meets or exceeds [the signal intensity standard in effect under section 119(d)(10)(A) of title 17, United States Code] *such requisite signal intensity standard*, or by the network station, if its signal fails to meet or exceed such standard.

* * * * * * *

(E) EXCEPTION.—A satellite carrier may refuse to engage in the testing process. If the carrier does so refuse, a subscriber in a local market in which the satellite carrier does not offer the signals of local broadcast stations under section 338 may, at his or her own expense, authorize a signal intensity test to be performed pursuant to the procedures specified by the Commission in section 73.686(d) of title 47, Code of Federal Regulations, by a tester who is approved by the satellite carrier and by each affected network station, or who has been previously approved by the satellite carrier and by each affected network station but not previously disapproved. A tester may not be so disapproved for a test after the tester has commenced such test. The tester shall give 5 business days advance written notice to the satellite carrier and to the affected network station or stations. A signal intensity test conducted in ac-

cordance with this subparagraph shall be determinative of the signal strength received at that household for purposes of determining whether the household is capable of receiving a [Grade B intensity] signal.

* * * * * * *

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

(a) * * *

(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 network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338.

[(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 section 338 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 is comprised of the entire bandwidth of the digital signal broadcast by such local network station.]

(1) SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—This section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal from that satellite carrier pursuant to section 338.

(2) SERVICE LIMITATIONS.—A satellite carrier may retransmit to a subscriber in high definition format the signal of a station determined by the Commission to be significantly viewed under subsection (a) only if such carrier also retransmits in high definition format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station.

* * * * * * *

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

(1) * * *

* * * * * * *

[(4) BANDWIDTH.—The terms "equivalent bandwidth" and "entire bandwidth" shall be defined by the Commission by regulation, except that this paragraph shall not be construed—

[(A) to prevent a satellite operator from using compression technology;

[(B) to require a satellite operator to use the identical bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting;

[(C) to require a satellite operator to use the identical bandwidth or bit rate for a local network station as it does for a distant network station;

[(D) to affect a satellite operator's obligations under subsection (a)(1); or

[(E) to affect the definitions of "program related" and "primary video".]

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SEC. 342. PROCESS FOR ISSUING QUALIFIED CARRIER CERTIFICATION.

(a) CERTIFICATION.—The Commission shall issue a certification for the purposes of section 119(g)(3)(A)(iii) of title 17, United States Code, if the Commission determines that—

(1) a satellite carrier is providing local service pursuant to the statutory license under section 122 of such title in each designated market area; and

(2) with respect to each designated market area in which such satellite carrier was not providing such local service as of the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009—

(A) the satellite carrier's satellite beams are designed, and predicted by the satellite manufacturer's pre-launch test data, to provide a good quality satellite signal to 90 percent of the households in each such designated market area based on the most recent census data released by the United States Census Bureau; and

(B) there is no material evidence that there has been a satellite or sub-system failure subsequent to the satellite's launch that precludes the ability of the satellite carrier to satisfy the requirements of subparagraph (A).

(b) INFORMATION REQUIRED.—Any entity seeking the certification provided for in subsection (a) shall submit to the Commission the following information:

(1) An affidavit stating that, to the best of the affiant's knowledge, the satellite carrier provides local service in all designated market areas pursuant to the statutory license provided for in section 122 of title 17, United States Code, and listing those designated market areas in which local service was provided as of the date of enactment of the Satellite Home Viewer Reauthorization Act of 2009.

(2) For each designated market area not listed in paragraph (1):

(A) Identification of each such designated market area and the location of its local receive facility.

(B) Data showing the number of households, and maps showing the geographic distribution thereof, in each such designated market area based on the most recent census data released by the United States Census Bureau.

(C) Maps, with superimposed effective isotropically radiated power predictions obtained in the satellite manufacturer's pre-launch tests, showing that the contours of the carrier's satellite beams as designed and the geographic

area that the carrier's satellite beams are designed to cover are predicted to provide a good quality satellite signal to 90 percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau.

(D) For any satellite relied upon for certification under this section, an affidavit stating that, to the best of the affiant's knowledge, there have been no satellite or sub-system failures subsequent to the satellite's launch that would degrade the design performance to such a degree that a satellite transponder used to provide local service to any such designated market area is precluded from delivering a good quality satellite signal to 90 percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau.

(E) Any additional engineering, designated market area, or other information the Commission considers necessary to determine whether the Commission shall grant a certification under this section.

(c) CERTIFICATION ISSUANCE.—

(1) PUBLIC COMMENT.—The Commission shall provide 30 days for public comment on a request for certification under this section.

(2) DEADLINE FOR DECISION.—The Commission shall grant or deny a request for certification within 90 days after the date on which such request is filed.

(d) SUBSEQUENT AFFIRMATION.—An entity granted qualified carrier status pursuant to section 119(g) of title 17, United States Code, shall file an affidavit with the Commission 30 months after such status was granted stating that, to the best of the affiant's knowledge, it is in compliance with the requirements for a qualified carrier.

(e) DEFINITIONS.—For the purposes of this section:

(1) DESIGNATED MARKET AREA.—The term "designated market area" has the meaning given such term in section 122(j)(2)(C) of title 17, United States Code.

(2) GOOD QUALITY SATELLITE SIGNAL.—

(A) IN GENERAL.—The term "good quality satellite signal" means—

(i) a satellite signal whose power level as designed shall achieve reception and demodulation of the signal at an availability level of at least 99.7 percent using models of satellite antennas normally used by the satellite carrier's subscribers and the same calculation methodology used by the satellite carrier to determine predicted signal availability in the top 100 designated market areas; and

(ii) a video signal transmitted by satellite carrier such that, taking into account whether a signal is in standard definition format or high definition format, compression methodology, modulation, error correction, power level, and utilization of advances in technology that does not circumvent the intent of this section to provide for non-discriminatory treatment with respect to any comparable television broadcast station signal—

(I) the satellite carrier treats all television broadcast station's signals the same with respect to statistical multiplexer prioritization; and

(II) the number of video signals in the relevant satellite transponder is not more than the then current greatest number of video signals carried on any equivalent transponder serving the top 100 designated market areas.

(B) DETERMINATION.—For the purposes of subparagraph (A), the top 100 designated market areas shall be as determined by Nielsen Media Research and published in the Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication as of the date of a satellite carrier's application for certification under this section.

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MINORITY VIEWS

We, the undersigned Members of the Committee on Energy and Commerce, submit the following comments on H.R. 2994 to express our concerns with the amending language that mandates high-definition carriage of public broadcasting stations.

Section 9 of the bill is designed to cajole the DISH Network into carrying public broadcast stations in high-definition format. Such congressional intervention is neither necessary nor appropriate, as there is no market failure. We note that the issue here is not DISH subscribers' access to public broadcasting, as DISH carries public broadcasters in standard definition. Moreover, most consumers can get public television in high-definition format over-the-air, from a cable operator, from a phone company, or from DirecTV.

DISH has chosen not to provide the public broadcast programming in high definition. The company knows its needs and business model better than the government. Carrying programming in high definition as opposed to standard definition uses additional capacity and has costs—costs that could be borne by the consumer. For example, to carry public broadcasters in high definition as well as in standard definition, DISH may need to drop other programming that it believes its subscribers prefer—such as sports programming, movies, or foreign language programming. It may need to delay rollout of local-into-local service in additional markets. By pushing DISH to carry public broadcasting in high-definition format, the government is making business decisions for DISH that may or may not be sound.

Supporters of the bill argue that the provision does not compel carriage, but rather allows DISH discretion. They downplay, however, the level of compulsion. Section 9(a) adds new Section 338(a)(5) to the Communications Act. New Section 338(a)(5) requires a satellite carrier—that (1) has not entered into a carriage contract with a qualified, noncommercial, educational television station by the date of enactment and (2) that is providing other broadcast stations' signals in high-definition format in a market under the local compulsory copyright license as of the date of enactment—to provide non-commercial stations' signals in high-definition format in that market by December 31, 2011. New Section 338(a)(5)(B) requires a satellite carrier that has not entered into such a carriage contract by the date of enactment and that launches local high-definition service in any market after the date of enactment must provide the high-definition signals of all qualified, noncommercial, educational television stations in that local market. At the time SHVRA was passed by the Committee, DirecTV was a party to such a carriage contract, but DISH was not. Section 9 was added by an amendment offered by Ms. Eshoo and narrowly adopted by the Committee.

The provision allows DISH to escape the compelled carriage by entering into a separate carriage agreement with public broadcasters, but that is not the same thing as providing DISH with discretion. Indeed, it appears the very aim of this provision is to present certain disadvantageous consequences to DISH in order to encourage it to enter into agreements it might not otherwise accept. Such influence is all the more unwarranted when one considers that DISH will be required to carry public broadcasters in high definition in stages by 2013 anyway, in light of the digital carriage order the Federal Communication Commission (FCC) issued in March 2008. (*See In re Carriage of Digital Television Broadcast Signals*: Amendment to Part 76 of the Commission's Rules, Second Report and Order, 23 FCC Rcd 5351 (2008).) The FCC established the schedule, taking into account satellite carriers' capacity and technological constraints, and DISH as well as DirecTV have been designing their business and satellite launch plans around that timetable. Advocates of this provision may argue that the FCC's timetable has had the negative effect of discouraging DISH from entering into a negotiated carriage deal with public broadcasters any earlier than 2013. But that is more an indictment of government intervention in video carriage arrangements in the first place than justification for this provision.

DISH should be given the flexibility to determine how best to allocate its resources to serve its subscribers' needs. Providers distinguish themselves in various ways with different packages of content, and should be left to decide what segment of the market to go after and how. If DISH makes a poor business decision, consumers have many other options. We therefore believe there is no reason for congressional intervention, and oppose inclusion of Section 9.

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