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111TH CONGRESS }
2d Session }

SENATE

{ REPORT
111-385 }

SATELLITE TELEVISION EXTENSION AND
LOCALISM ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2764



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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SATELLITE TELEVISION EXTENSION AND LOCALISM ACT OF 2009

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Mr. ROCKEFELLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 2764]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2764) to reauthorize the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2764, the Satellite Television Extension and Localism Act of 2009 (STELA) is to reauthorize and amend certain provisions of the Communications Act of 1934 that govern satellite retransmission of television broadcast signals that are set to expire at the end of 2009 and to update the Communications Act to reflect the transition of full-power television stations from analog to digital systems.

BACKGROUND AND NEEDS

Direct broadcast satellite (DBS) service is a nationally distributed subscription service that delivers video and audio programming over satellite to a small antenna located at a subscriber's residence. The Federal Communications Commission (Commission or FCC) first authorized the service in 1988, which became commercially available in 1994. Currently, there are two major DBS providers, DIRECTV and Dish Network.

Over the past 15 years, subscribership to DBS service has grown substantially, and satellite carriers have become significant competitors to cable operators. As of June 2006, approximately 87 percent of households in the United States subscribed to a multi-channel video programming distributor (MVPD), which includes cable operators, satellite carriers, and new telephone company entrants offering comparable video programming packages. Of the total number of MVPD subscribers, 29.2 percent are satellite customers. As of that date, DIRECTV was the largest DBS provider and the second largest MVPD. Dish Network was the second largest DBS provider and the third largest MVPD.

Where satellite carriers offer subscribers access to local broadcast signals, they have been more successful in competing with terrestrial-based MVPDs. The licensing and regulatory regime that enables satellite operators to retransmit broadcast signals to subscribers has developed through a series of laws, of which SHVERA is the latest.

Satellite Home Viewer Act (SHVA). Starting in the 1960s, the cable industry began to offer broadcast programming to its customers without paying broadcast television stations copyright royalties. To address this, Congress passed the Copyright Revision Act of 1976 (Copyright Act), which made cable provider retransmission of broadcast signals without a license a copyright violation. It also established a compulsory copyright license and statutory royalty regime to allow the retransmission of broadcast programming.

In 1988, Congress passed SHVA, creating a similar compulsory copyright license in section 119 of the Copyright Act for satellite carriers. A significant difference was that it allowed satellite carriers to retransmit broadcast network and superstation (e.g., WGN) programming only to those households unable to receive viewable signals using over-the-air antennas (so-called “unserved households”). The reason for this limitation was to preserve “localism” and to prevent non-local or “distant” signals from taking viewers away from local stations that provide community-focused programming such as local news and weather. SHVA established a 5-year compulsory copyright license, under which a satellite carrier may retransmit distant network signals to unserved households without permission from the copyright owners as well as established a government-set copyright royalty to be paid by such carrier.

SHVA also established the “Grade B contour” around a broadcast tower as the determining factor as to whether a particular household was eligible to receive distant signals from a satellite operator. Individuals living inside a Grade B contour were not allowed to receive distant signals, while those outside the contour were. Following the passage of SHVA, some satellite carriers began to offer distant signals to unserved as well as unserved households. Network broadcasters brought suit against one satellite carrier, Primetime 24, asserting that it willfully violated SHVA by providing distant network signals to households that did not meet the definition of “unserved.” In 1998, the court found for the broadcasters and issued a permanent injunction prohibiting Primetime 24 from using the section 119 license to offer distant network signals. The injunction was to take effect in stages the following year and would have resulted in over 2 million subscribers who were receiving the signals illegally losing access to distant network signals. While this

service was terminated for some subscribers, the parties agreed to postpone the termination of service for the remaining subscribers until the end of 1999.

Satellite Home Viewer Improvement Act (SHVIA). By the end of 1999, Congress had passed SHVIA. The act extended the compulsory license regime of SHVA for an additional 5 years and grandfathered certain customers who were receiving distant signals illegally. SHVIA also established a “waiver process” under which consumers in an unserved market who cannot receive local broadcast stations over-the-air, despite residing within a Grade B contour, may seek a waiver to receive distant signals.

A significant change in SHVIA was the creation of a new, permanent, and free compulsory copyright license in section 122 of the Copyright Act, which permits satellite carriers to retransmit local broadcast signals back into the same local market from which they originated (local-into-local service). The local market was defined by reference to the Nielsen Designated Market Area (DMA). This provision was intended to increase competition between satellite and cable operators. Congress determined that over-the-air television would not be adversely impacted and that advertising revenue would increase because more viewers would have access to local stations.

Satellite carriers are not required to provide local-into-local service to subscribers within a DMA, but if an operator decides to provide local programming in a market, it is required to carry all the local broadcast stations in the market. This so-called “carry one, carry all” provision, which is codified in section 338 of the Communications Act, has an exception for duplicative stations and requires the broadcaster seeking carriage to provide a good quality signal.

Generally, under section 325 of the Communications Act, cable and satellite carriers are prohibited (with some exceptions) from retransmitting the signal of a broadcast television station without the express authority of the station. In SHVIA, Congress exempted a satellite carrier from having to obtain retransmission consent with respect to distant network signals for five years. Satellite carriers, however, still must comply with other FCC rules and regulations, including the network non-duplication rule, the syndicated exclusivity rule, and, to the extent feasible, the sports blackout rule.

SHVERA. Five years later, driven by the expiration of the compulsory copyright licenses in section 119 of the Copyright Act and the retransmission consent exception in section 325 of the Communications Act, Congress passed SHVERA, which was enacted on December 8, 2004. In addition to extending the distant signal license and the retransmission consent exemption for distant signals until December 31, 2009, SHVERA acknowledged that stations were starting to transition to digital broadcasting. Congress directed the FCC to study and report on a digital signal strength standard as well as testing procedures.

SHVERA also established a regime for the delivery of certain “significantly viewed” signals to consumers living in a DMA adjacent to the DMA from which a signal originated. Under SHVIA, broadcast signals originating from neighboring DMAs would not be considered local even if members of a community could view them

over the air. SHVERA created a copyright license that gives satellite carriers the option to offer subscribers signals from an adjacent DMA, if they live in a community that meets the “significantly viewed” definition. SHVERA also grants satellite carriers retransmission rights for such “significantly viewed” signals.

In addition, the act sought to rationalize a patchwork of local and distant network signal service that grew as satellite carriers offered local-into-local service in more markets. SHVERA established a framework for when subscribers were eligible to receive distant versus local signals. For example, in areas where local signals were offered, certain subscribers who illegally received distant signals prior to SHVIA had to elect whether to receive local or distant network signals. They could no longer receive both. In comparison, with limited exceptions, new customers in markets where local-into-local service is offered may only receive local signals.

Transition to Digital. 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.

SUMMARY OF PROVISIONS

S. 2764, the Satellite Television Extension and Localism Act of 2009, would amend the Communications Act to extend for five years various provisions set to expire at the end of 2009; to reflect the transition of full-power television stations from analog to digital; direct the FCC to complete its on-location testing proceeding and consider ways to minimize consumer burdens associated with such testing; to make sure consumers who are lawfully receiving distant network signals as of the date of enactment do not lose access to those signals; to require satellite carriers within two years to carry the high definition (HD) local signals of noncommercial, educational television stations into markets where the satellite carrier offers other local HD stations; to direct the FCC to conduct a study of the current DMA system, including the extent to which consumers in each local market have access to in-state broadcast programming; to encourage satellite carriers to carry state-wide public affairs networks; and to direct the Comptroller General to study and report within 12 months of enactment on the changes to communications laws and regulations that would be necessary or beneficial to consumers should Congress phase-out the statutory licensing requirements set forth under sections 111, 119, and 122 of the Copyright Act.

LEGISLATIVE HISTORY

In the 111th Congress, the Satellite Television Extension and Localism Act of 2009 (S. 2764) was introduced by Senator Rockefeller on November 10, 2009 and referred to the Senate Committee on Commerce, Science, and Transportation. The bill is co-sponsored by Senator Kerry. On October 7, 2009, the Committee’s Subcommittee on Communications, Technology, and the Internet held a hearing on “Reauthorization of the Satellite Home Viewer Extension and

Reauthorization Act of 2004.” On November 19, 2009, the Committee considered the bill, as amended in the nature of a substitute, in an open executive session. Senator Cantwell offered an amendment to allow satellite providers to count the carriage of State public affairs networks for the purpose of meeting the provider’s noncommercial programming carriage obligation. Senator McCaskill offered an amendment to require satellite providers to report information to the Commission regarding their carriage of local broadcast stations and to direct the Commission to study ways to incentivize such providers to offer local broadcast stations to subscribers in local markets. Senator Cantwell’s and Senator McCaskill’s amendments were adopted as part of a manager’s package. The Committee, without objection, ordered that S. 2764, as amended, be reported.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 2764—Satellite Television Extension and Localism 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. S. 2764 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 a study on local network channel broadcasts and the Government Accountability Office to conduct a report on satellite and cable company licenses.

CBO estimates that implementing S. 2764 would not significantly affect spending subject to appropriation; enacting the bill would not affect direct spending or revenues.

S. 2764 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.

S. 2764 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 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 non-commercial, 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. In addition, the bill would require satellite carriers to submit a report to the FCC containing certain information about the markets in which they provide local service. Based on information from indus-

try sources about the availability of such information, CBO estimates that the cost of this mandate would be minimal.

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.

On November 5, 2009, CBO transmitted a cost estimate for H.R. 2994, the Satellite Home Viewer Reauthorization Act of 2009, as ordered reported by the House Committee on Energy and Commerce on October 15, 2009. The two pieces of legislation are similar and the CBO cost estimates (including mandate statements) are the same.

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

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2764 would reauthorize and amend certain provisions of the Communications Act that govern satellite retransmission of television broadcast signals. The bill would affect broadcasters and multichannel video programming distributors (e.g. cable and satellite operators) already subject to these obligations under the Communication Act, and, therefore, the number of persons covered should be consistent with the current levels of individuals impacted under the provisions that are addressed in the bill.

ECONOMIC IMPACT

S. 2764 would not have an adverse impact on the nation's economy.

PRIVACY

The reported bill would have no impact on the personal privacy of U.S. citizens.

PAPERWORK

The reported bill would not significantly increase paperwork requirements for individuals and businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no items contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section would provide that the legislation may be cited as the “Satellite Television Extension and Localism Act of 2009.”

Section 2. Extension of Authority

Section 2 would amend section 325(b) of the Communications Act to extend for five years the statutory provision that permits a satellite carrier to retransmit, without first having to obtain consent, the signal of a distant network station to certain unserved households. The section also would extend the provisions in the Communications Act requiring that retransmission consent negotiations be in good faith and prohibiting exclusive carriage deals.

Section 3. Significantly Viewed Stations

Section 3(a) of the bill would amend section 340(b) of the Communications Act to provide that a satellite carrier may offer a significantly viewed station in high definition format only if the carrier also provides the local station’s programming in high definition format, if such format is available from the local station.

Section 3(b) of the bill would require the FCC to take all actions necessary to implement the amendments in section 3(a) within 180 days of the enactment of this bill.

Section 4. Conforming Amendments

This section would make modifications to sections 338, 339 and 340 of the Communications Act of 1934, as amended, to address the transition of full-power broadcast stations from analog to digital television.

Section 4(a) of the bill would amend section 338(g) to require satellite carriers to retransmit local broadcast signals in such a manner that a subscriber may receive all local signals using one reception antenna. Section 4(a) also would amend section 338(g) to require satellite carriers to carry high definition local television broadcasts on a single 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 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 would update the so-called “grandfathering” provisions that make sure that certain consumers that are lawfully receiving distant signals do not lose access to those signals because of a change in law or a change in broadcast signal availability. The Committee has established such provisions in the past to prevent unnecessary disruptions to consumers.

Section 4(b)(1)(iv) of the bill would amend section 339(a)(2)(B) to provide that a satellite subscriber who is lawfully receiving a distant network signal on the day before the date of enactment of STELA does not lose access to that signal and may continue to receive such a distant signal until such subscriber chooses to no longer receive such distant signal from such carrier, whether or not such subscriber elects to subscribe to local signals.

Section 4(b)(1)(v) of the bill would amend section 339(a)(2)(C) to not allow a satellite carrier to provide a distant signal to a person who is not lawfully receiving that distant signal as of the date of the enactment of STELA and either at the time such person seeks to subscribe to receive such distant signal, 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 of the Communications Act and the retransmission of such signal by such carrier can reach such subscriber; or 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.

Section 4(b)(1)(vi) of the bill would amend section 339(a)(2)(D) to provide that a subscriber would be eligible to receive a distant signal of a network station if the subscriber either is determined, based on the Commission’s predictive model, 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, or successor rules, or is determined to be an unserved household by the definition in section 119(d)(10)(A) of the Copyright Act.

This section also would update 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) would amend section 339(c) to direct the Commission to complete all actions necessary to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of an individual location, through the use of an antenna, to receive a distant network signal, within 180 days of the date of enactment of STELA. The Committee provides the Commission the discretion to determine the appropriate type of antenna that should be used for purposes of establishing the new predictive model.

The section also would direct the Commission to compete, within 180 days of the date of enactment of STELA, its rulemaking proceeding concerning on-location testing of a household’s ability to receive an over-the-air digital signal. The Commission is directed to

seek ways to minimize consumer burdens associated with on-location testing. The Committee intends that the Commission consider how best to make these on-location testing procedures as minimally burdensome on consumers as possible.

The section also would amend the waiver provisions of section 339(c)(4)(A) of the Communications Act.

Section 5. Application Pending Completion of Rulemaking

This section would direct the FCC to follow its current rules and regulations until the FCC adopts new rules pursuant to this Act.

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

Section 5(b) of the bill would provide 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 6. Savings Clause Regarding Definitions

Section 6 of the bill would provide that nothing in this Act shall be construed to affect the definitions of "program related" and "primary video" in the Communications Act of 1934 or any regulations promulgated pursuant to that Act by the FCC. The purpose of this language is to ensure that the treatment of multicast signals in STELA 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 7. Nondiscrimination in Carriage of High Definition Digital Signals of Noncommercial Educational Television Stations

Section 7 of the bill addresses the carriage of local public television broadcast signals in high definition format by satellite carriers.

In 1952, the Commission set aside 242 channels for the exclusive use of local public television broadcasting. Congress recognized the value of such stations to the public and provided funding for public broadcasting starting in 1962. The federal government continues to fund public television stations in order to support its mission to inform, enlighten, and enrich the public, particularly unserved and underserved audiences such as children and minorities. Congress further supported noncommercial, educational stations by requiring that cable and satellite providers set aside capacity for such programming. As more people used MVPD services, Congress determined that carriage obligations were necessary to ensure Americans' access to public television.

As technology has changed, Congress has modified the obligations on MVPDs, including satellite providers, to make sure consumers have access to noncommercial, educational programming. This section would be a step toward requiring of equal access and treatment of high definition noncommercial, educational programming.

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 satellite operators, these efforts have been unsuccessful. As a result, millions of consumers do not receive public broadcasting in high definition format from their MVPD service. 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.

Section 7(a) of the bill would amend section 338(a) of the Communications Act of 1934 to provide that an eligible satellite carrier offer subscribers the high definition signals of qualified non-commercial educational television stations in local markets in which the carrier currently offers local television broadcasts in high definition. The section would provide that such an eligible carrier begin providing the high definition format signals of qualified non-commercial education television stations in at least 50 percent of the markets where it offers local high definition format service by December 31, 2010, and in 100 percent of those markets by December 31, 2011. This section also would require, after the date of enactment of STELA, such a satellite provider, when it initiates the provision of high definition local broadcast format in a local market, to carry the high definition format signals of the qualified non-commercial educational television station in that market.

Section 7(b) of the bill would amend section 338(k) of the Communications Act to reflect the Committee's strong preference for privately negotiated carriage agreements. Specifically, the bill would define eligible satellite carrier in a way to nullify the above carriage requirements if a carrier is a party to a carriage contract with a qualified noncommercial educational television station or its representative that governs carriage of more than 30 such stations and is in force and effect as of the date of enactment of STELA.

Section 8. Report on Communications Implications of Statutory Licensing Modifications

Section 8(a) of the bill would direct the Comptroller General to study and report on the changes to communications laws and regulations that would be necessary or beneficial to consumers should Congress phase-out the statutory licensing requirements set forth under sections 111, 119, and 122 of the Copyright Act. The section would direct the Comptroller General, as part of the study, to consider, among other things, the impact such a phase-out and related changes to carriage requirements would have on consumer prices and access to programming.

In June 2008, the United States Copyright Office issued a report pursuant to section 109 of SHVERA. Congress charged the Copy-

right Office with examining the compulsory statutory licenses and making recommendations to improve the current system. The principal recommendation of the Copyright Office report was to move towards abolishing the licenses.

Section 8(b) of the bill would direct the Comptroller General to report the results of the study to the Committee and the House of Representatives Committee on Energy and Commerce not later than 12 months after the date of enactment of this Act, including any recommendations for legislative or administrative actions.

Section 9. Local Network Channel Broadcast Reports

Section 9 of the bill would direct the FCC to conduct a study of the current DMA system, including the extent to which consumers in each local market have access to in-state broadcast programming.

Section 9(a) of the bill would require satellite carriers to submit a report to the FCC beginning six months after enactment of this Act. Each satellite carrier would be required to submit a report that contains: each local market in which it provides signals of one or more network stations licensed to provide signals in that market; detailed information regarding the use of satellite capacity for the provision of local signals into local markets; each local market in which it has commenced providing such signals in the six-month period covered by the report; and each local market in which it has ceased to provide such signals in the six-month period covered by the report.

Section 9(b) of the bill would direct the FCC to initiate a study as soon as practicable after the date of enactment of STELA, to study the incentives that would induce a satellite carrier to provide the signals of one or more television stations licensed to provide signals in local markets in which the satellite carrier does not provide such signals; and the economic and satellite capacity conditions affecting delivery of local signals by satellite carriers to these markets. The FCC would be required to submit its report, containing its findings, conclusions and recommendations, within one year after enactment of this Act to the Committee and the House of Representatives Committee on Energy and Commerce.

Section 10. State Public Affairs Broadcasts

Section 10 of the bill would encourage satellite carriers to carry State public affairs networks by reducing the carrier's required reserve for the retransmission of educational or informational non-commercial programming pursuant to section 335(b) of the Communications Act.

This section would amend section 335(b) of the Communications Act to reduce the portion of channel capacity that a "qualified satellite provider" is required to reserve exclusively for noncommercial programming of an educational or information nature from a minimum of 4 percent to 3.5 percent of channel capacity.

The section would define "qualified satellite provider" as any provider that provides the retransmission of the "State public affairs network" of at least 15 different States upon reasonable prices, terms, and conditions, and one that does not delete any of the non-commercial education or information programming in connection with the carriage of a State public affairs network.

The section would define “State public affairs network” as a non-commercial, non-broadcast network or a noncommercial educational television station whose programming consists of information about State government deliberations and public policy events, and that is operated by a State government, a 501(c)(3) organization that is governed by an independent board of directors, or a cable system.

Section 11. Severability

This section would provide that if any provision or application of a provision is held unconstitutional, the remainder of this Act, the amendments made by the Act, and the application of such provisions shall not be affected thereby.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

SEC. 325. FALSE, FRAUDULENT, OR UNAUTHORIZED TRANSMISSIONS.

[47 U.S.C. 325]

(A) FALSE DISTRESS SIGNALS; REBROADCASTING PROGRAMS.—No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

(b) CONSENT TO RETRANSMISSION OF BROADCASTING STATION SIGNALS.—(1) No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

(A) with the express authority of the originating station;

(B) under section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or

(C) under section 338, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

(2) This subsection shall not apply—

(A) to retransmission of the signal of a noncommercial television broadcast station;

(B) to retransmission of the signal of a television broadcast station outside the station's local market by a satellite carrier directly to its subscribers, if—

(i) such station was a superstation on May 1, 1991;

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code; and

(iii) the satellite carrier complies with any network non-duplication, syndicated exclusivity, and sports blackout rules adopted by the Commission under section 339(b) of this Act;

(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) is located in an area outside the local market of such stations; and
 - (ii) resides in an unserved household;
- (D) to retransmission by a cable operator or other multi-channel video provider, other than a satellite carrier, of the signal of a television broadcast station outside the station's local market if such signal was obtained from a satellite carrier and—
- (i) the originating station was a superstation on May 1, 1991; and
 - (ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code; or
- (E) during the 6-month period beginning on the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, to the retransmission of the signal of a television broadcast station within the station's local market by a satellite carrier directly to its subscribers under the statutory license of section 122 of title 17, United States Code.

For purposes of this paragraph, the terms "satellite carrier" and "superstation" have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of the enactment of the Cable Television Consumer Protection and Competition Act of 1992, the term "unserved household" has the meaning given that term under section 119(d) of such title, and the term "local market" has the meaning given that term in section 122(j) of such title.

(3)(A) Within 45 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable. Such rulemaking proceeding shall be completed within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.

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

(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.

(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system. If an originating television station elects under paragraph (3)(C) to exercise its right to grant retransmission consent under this subsection with respect to a satellite carrier, section 338 shall not apply to the carriage of the signal of such station by such satellite carrier.

(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 338, 614, or 615 of any station electing to assert the right to signal carriage under that section.

(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.

(7) For purposes of this subsection, the term—

(A) “network station” has the meaning given such term under section 119(d) of title 17, United States Code; and

(B) “television broadcast station” means an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(c) Broadcast to foreign countries for rebroadcast to United States; permit. No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from

which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and cause to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.

(d) APPLICATION FOR PERMIT.—Such application shall contain such information as the Commission may by regulation prescribe, and the granting or refusal thereof shall be subject to the requirements of section 309 hereof with respect to applications for station licenses or renewal or modification thereof, and the license or permission so granted shall be revocable for false statements in the application so required or when the Commission, after hearings, shall find its continuation no longer in the public interest.

(e) ENFORCEMENT PROCEEDINGS AGAINST SATELLITE CARRIERS CONCERNING RETRANSMISSIONS OF TELEVISION BROADCAST STATIONS IN THE RESPECTIVE LOCAL MARKETS OF SUCH CARRIERS.—

(1) COMPLAINTS BY TELEVISION BROADCAST STATIONS.—If after the expiration of the 6-month period described under subsection (b)(2)(E) a television broadcast station believes that a satellite carrier has retransmitted its signal to any person in the local market of such station in violation of subsection (b)(1), the station may file with the Commission a complaint providing—

- (A) the name, address, and call letters of the station;
- (B) the name and address of the satellite carrier;
- (C) the dates on which the alleged retransmission occurred;
- (D) the street address of at least one person in the local market of the station to whom the alleged retransmission was made;
- (E) a statement that the retransmission was not expressly authorized by the television broadcast station; and
- (F) the name and address of counsel for the station.

(2) SERVICE OF COMPLAINTS ON SATELLITE CARRIERS.—For purposes of any proceeding under this subsection, any satellite carrier that retransmits the signal of any broadcast station shall be deemed to designate the Secretary of the Commission as its agent for service of process. A television broadcast station may serve a satellite carrier with a complaint concerning an alleged violation of subsection (b)(1) through retransmission of a station within the local market of such station by filing the original and two copies of the complaint with the Secretary of the Commission and serving a copy of the complaint on the satellite carrier by means of two commonly used overnight delivery services, each addressed to the chief executive officer of the satellite carrier at its principal place of business, and each marked “URGENT LITIGATION MATTER” on the outer packaging. Service shall be deemed complete one business day after a copy of the complaint is provided to the delivery services for overnight delivery. On receipt of a complaint filed by a television broadcast station under this subsection, the Secretary of

the Commission shall send the original complaint by United States mail, postage prepaid, receipt requested, addressed to the chief executive officer of the satellite carrier at its principal place of business.

(3) ANSWERS BY SATELLITE CARRIERS.—Within five business days after the date of service, the satellite carrier shall file an answer with the Commission and shall serve the answer by a commonly used overnight delivery service and by United States mail, on the counsel designated in the complaint at the address listed for such counsel in the complaint.

(4) DEFENSES.—

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

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

(i) the satellite carrier did not retransmit the television broadcast station to any person in the local market of the station during the time period specified in the complaint;

(ii) the television broadcast station had, in a writing signed by an officer of the television broadcast station, expressly authorized the retransmission of the station by the satellite carrier to each person in the local market of the television broadcast station to which the satellite carrier made such retransmissions for the entire time period during which it is alleged that a violation of subsection (b)(1) has occurred;

(iii) the retransmission was made after January 1, 2002, and the television broadcast station had elected to assert the right to carriage under section 338 as against the satellite carrier for the relevant period; or

(iv) the station being retransmitted is a noncommercial television broadcast station.

(5) COUNTING OF VIOLATIONS.—The retransmission without consent of a particular television broadcast station on a particular day to one or more persons in the local market of the station shall be considered a separate violation of subsection (b)(1).

(6) BURDEN OF PROOF.—With respect to each alleged violation, the burden of proof shall be on a television broadcast station to establish that the satellite carrier retransmitted the station to at least one person in the local market of the station on the day in question. The burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under paragraph (4)(B)(i).

(7) PROCEDURES.—

(A) REGULATIONS.—Within 60 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall issue procedural regulations implementing this subsection which shall supersede procedures under section 312.

(B) DETERMINATIONS.—

(i) IN GENERAL.—Within 45 days after the filing of a complaint, the Commission shall issue a final determination in any proceeding brought under this subsection. The Commission's final determination shall specify the number of violations committed by the satellite carrier. The Commission shall hear witnesses only if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

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

(8) RELIEF.—if the Commission determines that a satellite carrier has retransmitted the television broadcast station to at least one person in the local market of such station and has failed to meet its burden of proving one of the defenses under paragraph (4) with respect to such retransmission, the Commission shall be required to—

(A) make a finding that the satellite carrier violated subsection (b)(1) with respect to that station; and

(B) issue an order, within 45 days after the filing of the complaint, containing—

(i) a cease-and-desist order directing the satellite carrier immediately to stop making any further retransmissions of the television broadcast station to any person within the local market of such station until such time as the Commission determines that the satellite carrier is in compliance with subsection (b)(1) with respect to such station;

(ii) if the satellite carrier is found to have violated subsection (b)(1) with respect to more than two television broadcast stations, a cease-and-desist order directing the satellite carrier to stop making any further retransmission of any television broadcast station to any person within the local market of such station, until such time as the Commission, after giving notice to the station, that the satellite carrier is in compliance with subsection (b)(1) with respect to such stations; and

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

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

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

(i) a television broadcast station may apply within 30 days after such entry to the United States District

Court for the Eastern District of Virginia for a final judgment enforcing all relief granted by the Commission; and

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

(B) APPEAL.—The procedure for an appeal under this paragraph by the satellite carrier shall supersede any other appeal rights under Federal or State law. A United States district court shall be deemed to have personal jurisdiction over the satellite carrier if the carrier, or a company under common control with the satellite carrier, has delivered television programming by satellite to more than 30 customers in that district during the preceding 4-year period. If the United States District Court for the Eastern District of Virginia does not have personal jurisdiction over the satellite carrier, an enforcement action or appeal shall be brought in the United States District Court for the District of Columbia, which may find personal jurisdiction based on the satellite carrier's ownership of licenses issued by the Commission. An application by a television broadcast station for an order enforcing any cease-and-desist relief granted by the Commission shall be resolved on a highly expedited schedule. No discovery may be conducted by the parties in any such proceeding. The district court shall enforce the Commission order unless the Commission record reflects manifest error and an abuse of discretion by the Commission.

(10) CIVIL ACTION FOR STATUTORY DAMAGES.—Within 6 months after issuance of an order by the Commission under this subsection, a television broadcast station may file a civil action in any United States district court that has personal jurisdiction over the satellite carrier for an award of statutory damages for any violation that the Commission has determined to have been committed by a satellite carrier under this subsection. Such action shall not be subject to transfer under section 1404(a) of title 28, United States Code. On finding that the satellite carrier has committed one or more violations of subsection (b), the District Court shall be required to award the television broadcast station statutory damages of \$ 25,000 per violation, in accordance with paragraph (5), and the costs and attorney's fees incurred by the station. Such statutory damages shall be awarded only if the television broadcast station has filed a binding stipulation with the court that such station will donate the full amount in excess of \$ 1,000 of any statutory damage award to the United States Treasury for public purposes. Notwithstanding any other provision of law, a station shall incur no tax liability of any kind with respect to any amounts so donated. Discovery may be conducted by the parties in any proceeding under this paragraph only if and to the extent necessary to resolve a genuinely disputed issue of fact concerning one of the defenses under paragraph (4). In any such action, the defenses under paragraph (4) shall be exclu-

sive, and the burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under paragraph (4)(B)(i). A judgment under this paragraph may be enforced in any manner permissible under Federal or State law.

(11) APPEALS.—

(A) IN GENERAL.—The nonprevailing party before a United States district court may appeal a decision under this subsection to the United States Court of Appeals with jurisdiction over that district court. The Court of Appeals shall not issue any stay of the effectiveness of any decision granting relief against a satellite carrier unless the carrier presents clear and convincing evidence that it is highly likely to prevail on appeal and only after posting a bond for the full amount of any monetary award assessed against it and for such further amount as the Court of Appeals may believe appropriate.

(B) APPEAL.—If the Commission denies relief in response to a complaint filed by a television broadcast station under this subsection, the television broadcast station filing the complaint may file an appeal with the United States Court of Appeals for the District of Columbia Circuit.

(12) SUNSET.—No complaint or civil action may be filed under this subsection after December 31, 2001. This subsection shall continue to apply to any complaint or civil action filed on or before such date.

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SEC. 335. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.

[47 U.S.C. 335]

(a) PROCEEDING REQUIRED TO REVIEW DBS RESPONSIBILITIES.—The Commission shall, within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

(b) CARRIAGE OBLIGATIONS FOR NONCOMMERCIAL, EDUCATIONAL, STATE PUBLIC AFFAIRS, AND INFORMATIONAL PROGRAMMING.—

[(1) CHANNEL CAPACITY REQUIRED.—The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.]

(1) CHANNEL CAPACITY REQUIRED.—

(A) *Except as provided in subparagraph (B), the Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.*

(B) *The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a qualified satellite provider of direct broadcast satellite service providing video programming, that such provider reserve a portion of its channel capacity, equal to not less than 3.5 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.*

(2) USE OF UNUSED CHANNEL CAPACITY.—A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial programming of an educational or informational nature.

(3) PRICES, TERMS, AND CONDITIONS; EDITORIAL CONTROL.—A provider of direct broadcast satellite service shall meet the requirements of this subsection by making channel capacity available to national educational programming suppliers, upon reasonable prices, terms, and conditions, as determined by the Commission under paragraph (4). The provider of direct broadcast satellite service shall not exercise any editorial control over any video programming provided pursuant to this subsection.

(4) LIMITATIONS.—In determining reasonable prices under paragraph (3)—

(A) the Commission shall take into account the nonprofit character of the programming provider and any Federal funds used to support such programming;

(B) the Commission shall not permit such prices to exceed, for any channel made available under this subsection, 50 percent of the total direct costs of making such channel available; and

(C) in the calculation of total direct costs, the Commission shall exclude—

(i) marketing costs, general administrative costs, and similar overhead costs of the provider of direct broadcast satellite service; and

(ii) the revenue that such provider might have obtained by making such channel available to a commercial provider of video programming.

(5) DEFINITIONS.—For purposes of this subsection—

(A) The term “provider of direct broadcast satellite service” means—

(i) a licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or

(ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations.

(B) The term “national educational programming supplier” includes any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions.

(C) *The term “qualified satellite provider” means any provider of direct broadcast satellite service that—*

(i) provides the retransmission of the State public affairs networks of at least 15 different States;

(ii) offers the programming of State public affairs networks upon reasonable prices, terms, and conditions as determined by the Commission under paragraph (4) of this subsection; and

(iii) does not delete any noncommercial programming of an educational or informational nature in connection with the carriage of a State public affairs network.

(D) *The term “State public affairs network” means a noncommercial non-broadcast network or a noncommercial educational television station—*

(i) whose programming consists of information about State government deliberations and public policy events; and

(ii) that is operated by—

(I) a State government;

(II) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of such Code and that is governed by an independent board of directors; or

(III) a cable system.

* * * * *

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

[47 U.S.C. 338]

(a) CARRIAGE OBLIGATIONS.—

(1) IN GENERAL.—Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b).

(2) REMEDIES FOR FAILURE TO CARRY.—In addition to the remedies available to television broadcast stations under section 501(f) of title 17, United States Code, the Commission may use the Commission’s authority under this Act to assure compliance with the obligations of this subsection, but in no instance shall a Commission enforcement proceeding be required

as a predicate to the pursuit of a remedy available under such section 501(f).

(3) **LOW POWER STATION CARRIAGE OPTIONAL.**—No low power television station whose signals are provided under section **[[119(a)(14)] 119(a)(15)** of title 17, United States Code, shall be entitled to insist on carriage under this section, regardless of whether the satellite carrier provides secondary transmissions of the primary transmissions of other stations in the same local market pursuant to section 122 of such title, nor shall any such carriage be considered in connection with the requirements of subsection (c) of this section.

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

(4) **CARRIAGE OF SIGNALS OF LOCAL STATIONS IN CERTAIN MARKETS.**—A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall (A) within 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after such date of enactment retransmit the signals originating as digital signals of each such station. The retransmissions of such stations shall be made available to substantially all of the satellite carrier's subscribers in each station's local market, and the retransmissions of the stations in at least one market in the State shall be made available to substantially all of the satellite carrier's subscribers in areas of the State that are not within a designated market area. The cost to subscribers of such retransmissions shall not exceed the cost of retransmissions of local television stations in other States. Within 1 year after the date of enactment of that Act, the Commission shall promulgate regulations concerning elections by television stations in such State between mandatory carriage pursuant to this section and retransmission consent pursuant to section 325(b), which shall take into account the schedule on which local television stations are made available to viewers in such State.

(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 the Satellite Television Extension and Localism Act of 2009 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 the Satellite Television Extension and Localism Act of 2009 shall carry the high definition signals of all qualified noncommercial educational television stations located within that local market.*

(b) **GOOD SIGNAL REQUIRED.—**

(1) **COSTS.—**A television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) **REGULATIONS.—**The regulations issued under subsection (g) shall set forth the obligations necessary to carry out this subsection.

(c) **DUPLICATION NOT REQUIRED.—**

(1) **COMMERCIAL STATIONS.—**Notwithstanding subsection (a)(1), a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) **NONCOMMERCIAL STATIONS.—**The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulations shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under section 615.

(d) **CHANNEL POSITIONING.—**No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

(e) COMPENSATION FOR CARRIAGE.—A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.

(f) REMEDIES.—

(1) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under subsections (b) through (e) of this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations. The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations. A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(2) OPPORTUNITY TO RESPOND.—The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e). If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint.

[(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).*

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

(1) *NOTICES TO AND ELECTIONS BY SUBSCRIBERS CONCERNING GRANDFATHERED SIGNALS.*—Any carrier that provides a distant signal of a network station to a subscriber pursuant section 339(a)(2)(A) shall—

(A) within 60 days after the local signal of a network station of the same television network is available pursuant to section 338, or within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, whichever is later, send a notice to the subscriber—

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

(ii) informing the subscriber that, if the subscriber fails to respond in 60 days, the subscriber will lose the

distant network signal but will be permitted to subscribe to the local network signal; and

(B) if the subscriber—

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

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

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

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

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

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

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

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

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

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

(i) PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.—

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

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

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

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

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

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

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

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

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

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

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

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

(ii) provides any wire or radio communications service.

(3) PROHIBITIONS.—

(A) CONSENT TO COLLECTION.—Except as provided in subparagraph (B), a satellite carrier shall not use any facilities used by the satellite carrier to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

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

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

(ii) detect unauthorized reception of satellite communications.

(4) DISCLOSURE.—

(A) CONSENT TO DISCLOSURE.—Except as provided in subparagraph (B), a satellite carrier shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are nec-

essary to prevent unauthorized access to such information by a person other than the subscriber or satellite carrier.

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

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

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

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

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

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

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

(bb) the nature of any transaction made by the subscriber over any facilities used by the satellite carrier; or

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

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

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

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

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

(B) punitive damages; and

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

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

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

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

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

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

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

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

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

(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—*

(A) *governs carriage of more than 30 such stations; and*

(B) *is in force and effect as of the date of enactment of the Satellite Television Extension and Localism Act of 2009.*

[(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 tele-*

vision 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.

[47 U.S.C. 339]

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

(1) CARRIAGE PERMITTED.—

(A) IN GENERAL.—Subject to section 119 of title 17, United States Code, any satellite carrier shall be permitted to provide the signals of no more than two network stations in a single day for each television network to any household not located within the local markets of those network stations.

(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:】 *Satellite Television Extension and Localism Act of 2009*:

(A) RULES FOR 【GRANDFATHERED SUBSCRIBERS TO ANALOG SIGNALS.—】 *CERTAIN GRANDFATHERED SUBSCRIBERS.*—

(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 Extension 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.—A subscriber of a satellite carrier, other than a subscriber to whom subparagraph (A) applies, who was lawfully receiving the distant signal of a network station on the day before the date of enactment of the Satellite Television Extension and Localism Act of 2009 may continue to receive such distant signal until such subscriber chooses to no longer receive such distant signal from such carrier, whether or not such subscriber elects to subscribe to local signals.

(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 Television Extension and Localism 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 analog 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 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.

[(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.

[(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 may continue to receive such distant digital signal, whether or not such subscriber elects to subscribe to local digital signals.

[(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.

[(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.

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

(D) SPECIAL RULES FOR DISTANT SIGNALS.—

(i) IN GENERAL.—*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 not predicted by the model specified in subsection (c)(3) of this section to receive the signal intensity required under section 73.622(e)(1) or 73.683(a) of 47 of the Code of Federal Regulations, or a successor regulation, or

(II) is in an unserved household, as determined under section 119(d)(10)(A) of title 17, United States Code,

such subscriber is eligible to receive the signal of a distant network station affiliated with the same network under this section, subject to the provisions of this subparagraph.

(ii) 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) or 73.683(a) of title 47, Code of Federal Regulations.*

(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 affi-*

ated 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 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.

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

(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.

(F) NOTICES TO NETWORKS OF DISTANT SIGNAL SUBSCRIBERS.—

(i) Within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, each satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (A) or (B)(i) of this paragraph shall submit to each network—

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

- (aa) name;
- (bb) address (street or rural route number, city, State, and zip code); and
- (cc) the distant network signal or signals received; and

(II) a statement that, to the best of the carrier's knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (A) or (B)(i) of this paragraph.

(ii) Within 60 days after the date a satellite carrier commences to carry pursuant to section 338 the signals of stations from a local market, such a satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (B)(ii) of this paragraph shall submit to each network—

(I) a list identifying each subscriber in that local market provided such a signal by—

- (aa) name;

(bb) address (street or rural route number, city, State, and zip code); and

(cc) the distant network signal or signals received; and

(II) a statement that, to the best of the carrier's knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (B)(ii) of this paragraph.

(G) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the eligibility of a subscriber to receive secondary transmissions under section 340 of this Act or as an unserved household included under section 119(a)(12) of title 17, United States Code.

(H) AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes available a local signal to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zip code as that subscriber or person.

(3) PENALTY FOR VIOLATION.—Any satellite carrier that knowingly and willfully provides the signals of television stations to subscribers in violation of this subsection shall be liable for a forfeiture penalty under section 503 in the amount of \$ 50,000 for each violation or each day of a continuing violation, except that paragraph (2)(D) of this subsection, relating to the provision of distant digital signals, shall be enforceable under the provisions of section 340(f).

(b) EXTENSION OF NETWORK NONDUPLICATION, SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT TO SATELLITE RETRANSMISSION.—

(1) EXTENSION OF PROTECTIONS.—Within 45 days after the date of the enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall commence a single rulemaking proceeding to establish regulations that—

(A) apply network nonduplication protection (47 CFR 76.92) syndicated exclusivity protection (47 CFR 76.151), and sports blackout protection (47 CFR 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers to subscribers; and

(B) to the extent technically feasible and not economically prohibitive, apply sports blackout protection (47 CFR 76.67) to the retransmission of the signals of network stations by satellite carriers to subscribers.

(2) DEADLINE FOR ACTION.—The Commission shall complete all actions necessary to prescribe regulations required by this section so that the regulations shall become effective within 1 year after such date of enactment.

(c) ELIGIBILITY FOR RETRANSMISSION.—

(1) STUDY OF DIGITAL STRENGTH TESTING PROCEDURES.—

(A) STUDY REQUIRED.—Not later than 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall complete an inquiry 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(d) 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 consumers.

(B) STUDY CONSIDERATIONS.—In conducting the study under this paragraph, the Commission shall consider whether—

(i) 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;

(ii) section 73.686(d) of title 47, Code of Federal Regulations, should be amended to create different procedures for determining if the requisite digital signal strength is present than for determining if the requisite analog signal strength is present;

(iii) a standard should be used other than the presence of a signal of a certain strength to ensure that a household can receive a high-quality picture using antennas of reasonable cost and ease of installation;

(iv) to develop a predictive methodology for determining whether a household is unserved by an adequate digital signal under section 119(d)(10) of title 17, United States Code;

(v) there is a wide variation in the ability of reasonably priced consumer digital television sets to receive over-the-air signals, such that at a given signal strength some may be able to display high-quality pictures while others cannot, whether such variation is related to the price of the television set, and whether such variation should be factored into setting a standard for determining whether a household is unserved by an adequate digital signal; and

(vi) to account for factors such as building loss, external interference sources, or undesired signals from both digital television and analog television stations using either the same or adjacent channels in nearby markets, foliage, and man-made clutter.

(C) REPORT.—Not later than 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, 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—

(i) the results of the study under this paragraph; and

(ii) recommendations, if any, as to what changes should be made to Federal statutes or regulations.

(2) WAIVERS.—A subscriber who is denied the retransmission of a signal of a network station under section 119 of title 17,

United States Code, may request a waiver from such denial by submitting a request, through such subscriber's satellite carrier, to the network station asserting that the retransmission is prohibited. The network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request. The subscriber shall be permitted to receive such retransmission under section 119(d)(10)(B) of title 17, United States Code, if such station agrees to the waiver request and files with the satellite carrier a written waiver with respect to that subscriber allowing the subscriber to receive such retransmission. If a television network station fails to accept or reject a subscriber's request for a waiver within the 30-day period after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver.

[(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 Television Extension and Localism 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 an 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 Television Extension and Localism Act of 2009. In conducting such rulemaking, the Commission shall seek ways to minimize consumer burdens associated with on-location testing.

(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 other-

wise 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.

(C) AVOIDANCE OF UNDUE BURDEN.—Commission regulations prescribed under this paragraph shall seek to avoid any undue burden on any party.

(D) REDUCTION OF VERIFICATION BURDENS.—Within 1 year after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall by rule exempt from the verification requirements of subparagraph (A) any request for a test made by a subscriber to a satellite carrier to whom the retransmission of the signals of local broadcast stations is available under section 338 from such carrier.

(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 accordance 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.

(5) DEFINITION.—Notwithstanding subsection (d)(4), for purposes of paragraphs (2) and (4) of this subsection, the term “satellite carrier” includes a distributor (as defined in section 119(d)(1) of title 17, United States Code), but only if the satellite distributor's relationship with the subscriber includes billing, collection, service activation, and service deactivation.

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

(1) LOCAL MARKET.—The term “local market” has the meaning given that term under section 122(j) of title 17, United States Code.

(2) NATIONALLY DISTRIBUTED SUPERSTATION.—The term “nationally distributed superstation” means a television broadcast station, licensed by the Commission, that—

(A) is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or

more hours per week to at least 25 affiliated television licensees in 10 or more States;

(B) on May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and

(C) was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code.

(3) NETWORK STATION.—The term “network station” has the meaning given such term under section 119(d) of title 17, United States Code.

(4) SATELLITE CARRIER.—The term “satellite carrier” has the meaning given such term under section 119(d) of title 17, United States Code.

(5) TELEVISION NETWORK.—The term “television network” means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

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

[47 U.S.C. 340]

(a) SIGNIFICANTLY VIEWED STATIONS.—In addition to the broadcast signals that subscribers may receive under section 338 and 339, a satellite carrier is also authorized to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal—

(1) has, before the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission’s network nonduplication and syndicated exclusivity rules; or

(2) is, after such date of enactment, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.

(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.*

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

(4) *AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.*—*Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.*

(c) *PUBLICATION AND MODIFICATIONS OF LISTS; REGULATIONS.*—

(1) *IN GENERAL.*—*The Commission shall—*

(A) *within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004—*

(i) *publish a list of the stations that are eligible for retransmission under subsection (a)(1) and the communities in which such stations are eligible for such retransmission; and*

(ii) *commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking;*

(B) *adopt rules pursuant to such rulemaking within 1 year after such date of enactment.*

(2) *PUBLIC AVAILABILITY OF LIST.*—*The Commission shall make readily available to the public in electronic form, on the*

Internet website of the Commission or other comparable facility, a list of the stations that are eligible for retransmission under subsection (a) and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities.

(3) MODIFICATIONS.—In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders—

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

(B) by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e).

(d) EFFECT ON OTHER OBLIGATIONS AND RIGHTS.—

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

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

(e) NETWORK NONDUPLICATION AND SYNDICATED EXCLUSIVITY.—

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

(2) LIMITATION.—Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclusivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under section 119(a)(2)(A) or (B) of title 17, United States Code, with respect to persons who reside in unserved households, under 119(a)(4)(A), or under section 119(a)(12), of such title.

(f) ENFORCEMENT.—

(1) ORDERS AND DAMAGES.—Upon complaint, the Commission shall issue a cease and desist order to any satellite carrier found to have violated this section in carrying any television broadcast station. Such order may, if a complaining station requests damages—

(A) provide for the award of damages to a complaining station that establishes that the violation was committed in bad faith, in an amount up to \$ 50 per subscriber, per station, per day of the violation; and

(B) provide for the award of damages to a prevailing satellite carrier if the Commission determines that the complaint was frivolous, in an amount up to \$ 50 per subscriber alleged to be in violation, per station alleged, per day of the alleged violation.

(2) COMMISSION DECISION.—The Commission shall issue a final determination resolving a complaint brought under this subsection not later than 180 days after the submission of a complaint under this subsection. The Commission may hear witnesses if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

(3) REMEDIES IN ADDITION. THE REMEDIES UNDER THIS SUBSECTION ARE IN ADDITION TO ANY REMEDIES AVAILABLE UNDER TITLE 17, UNITED STATES CODE.

(4) NO EFFECT ON COPYRIGHT PROCEEDINGS.—Any determination, action, or failure to act of the Commission under this subsection shall have no effect on any proceeding under title 17, United States Code, and shall not be introduced in evidence in any proceeding under that title. In no instance shall a Commission enforcement proceeding under this subsection be required as a predicate to the pursuit of a remedy available under title 17.

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

(1) not less than 60 days before commencing such retransmission, provide a written notice to any television broadcast station in such local market of such proposal; and

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

(h) ADDITIONAL CORRESPONDING CHANGES IN REGULATIONS.—

(1) COMMUNITY-BY-COMMUNITY ELECTIONS.—The Commission shall, no later than October 30, 2005, revise section 76.66 of its regulations (47 CFR 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325) a television broadcast station that is located in a local market into which a satellite carrier retransmits a television broadcast station pursuant to section 338, to elect, with respect to such satellite carrier, between retransmission consent pursuant to such section 325 and mandatory carriage pursuant to section 338 separately for each county within such station's local market, if—

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

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

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

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

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

(i) In any local market in which the satellite carrier provides service pursuant to section 338 on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of—

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

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

(ii) In any local market in which the satellite carrier commences service pursuant to section 338 after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a station in that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle under such section of such regulations.

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

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

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

(B) HARMONIZATION OF ELECTIONS AND RETRANSMISSION CONSENT AGREEMENTS.—If a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station

may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

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

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

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

(3) COMMUNITY.—The term “community” means—

(A) a county or a cable community, as determined under the rules, regulations, and authorizations of the Commission applicable to determining with respect to a cable system whether signals are significantly viewed; or

(B) a satellite community, as determined under such rules, regulations, and authorizations (or revisions thereof) as the Commission may prescribe in implementing the requirements of this section.

[(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”.