

COPYRIGHT COMPULSORY LICENSE IMPROVEMENT ACT

APRIL 12, 1999.—Ordered to be printed

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

REPORT

[To accompany H.R. 1027]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1027) to provide for the carriage by satellite carriers of local broadcast station signals, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
The Amendment	1
Purpose and Summary	9
Background and Need for the Legislation	9
Hearings	10
Committee Consideration	11
Vote of the Committee	11
Committee Oversight Findings	11
Committee on Government Reform and Oversight Findings	11
New Budget Authority and Tax Expenditures	11
Committee Cost Estimate	11
Constitutional Authority Statement	11
Section-by-Section Analysis	12
Changes in Existing Law Made by the Bill, as Reported	18

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Copyright Compulsory License Improvement Act”.

SEC. 2. LIMITATIONS ON EXCLUSIVE RIGHTS; SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS WITHIN LOCAL MARKETS.

(a) IN GENERAL.—Chapter 1 of title 17, United States Code, is amended by adding after section 121 the following new section:

“§ 122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets

“(a) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE CARRIERS.—A secondary transmission of a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if—

“(1) the secondary transmission is made by a satellite carrier to the public;

“(2) the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and

“(3) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

“(A) each subscriber receiving the secondary transmission; or

“(B) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

“(b) REPORTING REQUIREMENTS.—

“(1) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to that station a list identifying (by name in alphabetical order and street address, including county and zip code) only those subscribers located in that station’s local market to which the satellite carrier currently makes secondary transmissions of that primary transmission.

“(2) SUBSEQUENT LISTS.—After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the station a list identifying (by name and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.

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

“(4) REQUIREMENTS OF STATIONS.—The submission requirements of this subsection shall apply to a satellite carrier only if the station to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

“(c) NO ROYALTY FEE REQUIRED.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall have no royalty obligation for such secondary transmissions.

“(d) NONCOMPLIANCE WITH REPORTING REQUIREMENTS.—Notwithstanding subsection (a), the willful or repeated secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided under sections 502 through 506 and 509, if the satellite carrier has not complied with the reporting requirements of subsection (b).

“(e) WILLFUL ALTERATIONS.—Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

“(f) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR TELEVISION BROADCAST STATIONS.—

“(1) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work to a subscriber who does not reside in that station’s local market, and is not subject to statutory licensing under section 119, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

“(A) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber; and

“(B) any statutory damages shall not exceed \$5 for such subscriber for each month during which the violation occurred.

“(2) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of secondarily transmitting to the public a primary transmission made by a television broadcast station and embodying a performance or display of a work to subscribers who do not reside in that station’s local market, and are not subject to statutory licensing under section 119, then in addition to the remedies under paragraph (1)—

“(A) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of that television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), and the court may order statutory damages not exceeding \$250,000 for each 6-month period during which the pattern or practice was carried out; and

“(B) if the pattern or practice has been carried out on a local or regional basis with respect to more than one television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), the court shall order a permanent injunction barring the secondary transmission in that locality or region by the satellite carrier of the primary transmissions of any television broadcast station, and the court may order statutory damages not exceeding \$250,000 for each 6-month period during which the pattern or practice was carried out.

“(g) BURDEN OF PROOF.—In any action brought under subsection (d), (e), or (f), the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a television broadcast station is made only to subscribers located within that station’s local market.

“(h) GEOGRAPHIC LIMITATIONS ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply to secondary transmissions to locations in the United States, and any commonwealth, territory, or possession of the United States.

“(i) EXCLUSIVITY WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 or any other law (other than this section and section 119) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers of programming contained in a primary transmission made by a television broadcast station may be made without obtaining the consent of the copyright owner.

“(j) DEFINITIONS.—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) LOCAL MARKET.—The ‘local market’ of a television broadcast station has the meaning given that term under rules, regulations, and authorizations of the Federal Communications Commission relating to carriage of television broadcast signals by satellite carriers.

“(3) NETWORK STATION; SATELLITE CARRIER; SECONDARY TRANSMISSION.—The terms ‘network station’, ‘satellite carrier’ and ‘secondary transmission’ have the meanings given such terms under section 119(d).

“(4) SUBSCRIBER.—The term ‘subscriber’ means an entity that receives a secondary transmission service by means of a secondary transmission from a satellite and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

“(5) TELEVISION BROADCAST STATION.—The term ‘television broadcast station’ means an over-the-air, commercial or noncommercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations.”

(b) INFRINGEMENT OF COPYRIGHT.—Section 501 of title 17, United States Code, is amended by adding at the end the following new subsection:

“(f) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is

actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 1 of title 17, United States Code, is amended by adding after the item relating to section 121 the following:

“122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local market.”.

SEC. 3. EXTENSION OF EFFECT OF AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.

Section 4(a) of the Satellite Home Viewer Act of 1994 (17 U.S.C. 119 note; Public Law 103–369; 108 Stat. 3481) is amended by striking “December 31, 1999” and inserting “December 31, 2004”.

SEC. 4. COMPUTATION OF ROYALTY FEES FOR SATELLITE CARRIERS.

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

“(4) REDUCTION.—

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

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

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

SEC. 5. PUBLIC BROADCASTING SERVICE SATELLITE FEED; DEFINITIONS.

(a) SECONDARY TRANSMISSIONS.—Section 119(a)(1) of title 17, United States Code, is amended—

(1) by striking the paragraph heading and inserting “(1) SUPERSTATIONS AND PBS SATELLITE FEED.—”;

(2) by inserting “or by the Public Broadcasting Service satellite feed” after “superstation”; and

(3) by adding at the end the following: “In the case of the Public Broadcasting Service satellite feed, subsequent to—

“(A) the date when a majority of subscribers to satellite carriers are able to receive the signal of at least one noncommercial educational television broadcast station from their satellite carrier within such stations’ local market, or

“(B) 2 years after the effective date of the Copyright Compulsory License Improvement Act,

whichever is earlier, the statutory license created by this section shall be conditioned on the Public Broadcasting Service certifying to the Copyright Office on an annual basis that its membership supports the secondary transmission of the Public Broadcasting Service satellite feed, and providing notice to the satellite carrier of such certification.”.

(b) DEFINITIONS.—Section 119(d) of title 17, United States Code, is amended by adding at the end the following:

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

“(13) LOCAL MARKET.—The term ‘local market’ has the meaning given that term in section 122(j)(2).

“(14) TELEVISION BROADCAST STATION.—The term ‘television broadcast station’ has the meaning given that term in section 122(j)(5).”.

SEC. 6. LOCAL RETRANSMISSIONS.

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

(1) in subsection (a)—

(A) in paragraph (1), by striking “(6)” and inserting “(5)”;

(B) in paragraph (2)—

(i) by striking

“(2) NETWORK STATIONS.—

“(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6)”

and inserting

“(2) NETWORK STATIONS.—Subject to the provisions of paragraphs (3), (4), and (5)” and running in the remaining text of the subparagraph;

(ii) by adding at the end of paragraph (2) the following: “Notwithstanding the preceding provisions of this paragraph, secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall not be subject to statutory licensing under this section in a local market in which the satellite carrier, or another satellite carrier, is serving subscribers in that market with 2 or more television broadcast stations located in that market pursuant to section 122.”; and

(iii) by striking subparagraphs (B) and (C);

(C) in paragraph (3), by striking “, or has failed to make the submissions to networks required by paragraph (2)(C)”;

(D) by striking paragraphs (5), (8), (9), and (10) and redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively; and

(2) in subsection (d), by striking paragraphs (10) and (11).

SEC. 7. APPLICATION OF FEDERAL COMMUNICATIONS COMMISSION REGULATIONS.

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

(1) in paragraph (1), by inserting “the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals,” after “satellite carrier to the public for private home viewing,”; and

(2) in paragraph (2), by inserting “the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals,” after “satellite carrier to the public for private home viewing.”.

SEC. 8. RETRANSMISSION CONSENT.

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

(1) by striking paragraphs (1) and (2) and inserting the following:

“(b)(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 station;

“(B) pursuant to 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) pursuant to section 337, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

“(2) The provisions of this subsection shall not apply to—

“(A) retransmission of the signal of a noncommercial broadcasting station;

“(B) 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; and

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

“(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is located in an area in which such station may not assert its rights not to have its signal duplicated under the Commission’s network nonduplication regulations; or

“(D) retransmission by a cable operator or other multichannel video provider 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 provided in section 119 of title 17, United States Code.”;

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

“(C) Within 45 days after the effective date of the Satellite Television Improvement Act, 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 limitation contained in paragraph (2). Such regulations shall establish election time periods that correspond with those regulations

adopted under subparagraph (B). The rulemaking shall be completed within 180 days after the effective date of the Satellite Television Improvement Act.”; and

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

“(7) For purposes of this subsection:

“(A) The term ‘superstation’ means a television broadcast station, other than a network station, licensed by the Commission that is secondarily transmitted by a satellite carrier.

“(B) The term ‘satellite carrier’ has the meaning given that term in section 119(d) of title 17, United States Code.”.

SEC. 9. MUST-CARRY FOR SATELLITE CARRIERS RETRANSMITTING TELEVISION BROADCAST SIGNALS.

Title III of the Communications Act of 1934 is amended by inserting after section 337 the following new section:

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

“(a) CARRIAGE OBLIGATIONS.—Each satellite carrier providing direct to home service of a television broadcast station to subscribers located within the local market of such station pursuant to section 122 of title 17, United States Code, shall, not later than January 1, 2002, carry all television broadcast stations located within that local market. Carriage of additional television broadcast stations within the local market shall be at the discretion of the satellite carrier, subject to section 325(b).

“(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. The selection of a local receive facility by a satellite carrier shall not be made in a manner that frustrates the purposes of this section.

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

“(c) DUPLICATION NOT REQUIRED.—Notwithstanding subsection (a), a satellite carrier shall not be required to carry the signal of any local television broadcast station that substantially duplicates the signal of another local television broadcast station which is secondarily transmitted by the satellite carrier, or to carry the signals of more than one local television broadcast station affiliated with a particular broadcast network (as the term is defined by regulation).

“(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 station to subscribers in that station’s local market on contiguous channels 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 this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The satellite carrier shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning or other requirements of this section. A local television broadcast station that is denied carriage or channel positioning or repositioning in accordance with this section by a satellite carrier may obtain review of such denial 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 such satellite carrier and 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, the Commission shall determine whether the satellite carrier has met its obligations under this section. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the satellite carrier has fully met the requirements of this section, it shall dismiss the complaint.

“(g) REGULATIONS BY COMMISSION.—Within 180 days after the effective date of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section.

“(h) DEFINITIONS.—As used in this section:

“(1) TELEVISION BROADCAST STATION.—The term ‘television broadcast station’ means a full-power television broadcast station, and does not include a low-power or translator television broadcast station.

“(2) LOCAL MARKET.—The term ‘local market’ means the designated market area in which a station is located.

“(3) DESIGNATED MARKET AREA.—The term ‘designated market area’ means a designated market area, as determined by the Nielsen Media Research and published in the DMA Market and Demographic Report or, if no longer published, as determined by another commercial publication that delineates television markets based on viewing patterns.

“(4) LOCAL RECEIVE FACILITY.—The term local receive facility means the reception point in the local market of a television broadcast station or in a market contiguous to the local market of a television broadcast station at which a satellite carrier initially receives the signal of the station for purposes of transmission of such signals to the facility which uplinks the signals to the carrier’s satellites for secondary transmission to the satellite carrier’s subscribers. The designation of a local receive facility by a satellite carrier shall not be used to undermine or evade the carriage requirements imposed by this section.”

SEC. 10. NETWORK NONDUPLICATION; SYNDICATED EXCLUSIVITY AND SPORTS BLACKOUT.

(a) REGULATIONS.—

(1) IN GENERAL.—Within 45 days after the effective date of this Act, the Federal Communications Commission shall commence a rulemaking to establish regulations that apply network nonduplication protection, syndicated exclusivity protection, and sports blackout protection to the retransmission of broadcast signals by satellite carriers to subscribers. To the extent possible, and where technologically feasible and economically reasonable, such regulations shall, subject to paragraph (2), include the same level of protection accorded retransmissions of television broadcast signals by cable systems for network nonduplication (47 C.F.R. 76.92), syndicated exclusivity (47 C.F.R. 151), and sports blackout (47 C.F.R. 76.67). The Commission shall complete all action necessary to prescribe the regulations required by this section so that the regulations shall become effective within 1 year after the date of the enactment of this Act.

(2) NETWORK NONDUPLICATION.—The network nonduplication regulations required under paragraph (1) shall allow a network television broadcast station to assert nonduplication rights—

(A) against a satellite carrier throughout that station’s local market if that satellite carrier is retransmitting that station pursuant to section 122 of title 17, United States Code, or other television broadcast stations located in the same local market pursuant to section 122 of title 17, United States Code, except for television broadcast stations located in that same market that are affiliated with the same network as the station, to subscribers located in that station’s local market; or

(B) against a satellite carrier retransmitting television broadcast stations pursuant to section 119 of title 17, United States Code, in the geographic area in which the signal of that television broadcast station is of Grade B intensity as defined by the Federal Communications Commission on March 1, 1999, in section 73.683(a) of title 47, Code of Federal Regulations, based upon the Individually Located Longley-Rice methodology described by the Federal Communications Commission in its Docket No. 98–201, but such geographic area shall not extend beyond the local market of such station.

If a subscriber's network service is terminated as a result of network non-duplication protection asserted by a local network television broadcast station under subparagraph (B), or as a result of the provisions of section 119 of title 17, United States Code, the satellite carrier shall provide to the subscriber free of charge an over-the-air television broadcast receiving antenna that will provide the subscriber with an over-the-air signal of Grade B intensity for those network stations that were terminated as a result of subparagraph (B).

(3) **WAIVERS.**—(A) The network nonduplication protection described in paragraph (2)(b) shall not apply to a subscriber located in the geographic area that is identified by the Individually Located Longley-Rice methodology described by the Federal Communications Commission in its Docket No. 98–201 who files with the satellite carrier a written waiver with respect to that subscriber's household obtained from the network station whose local market is in that geographic area, allowing the subscriber to receive satellite service of another network station affiliated with that same network. The local network station and the satellite carrier shall maintain a file available to the public that contains such waiver.

(B) If a subscriber within the local market of a network station petitions the Federal Communications Commission with the written findings and conclusions of a test conducted in accordance with the provisions of section 73.686(d) of title 47, Code of Federal Regulations, as in effect on March 1, 1999, demonstrating that the household in which the subscriber resides does not receive an over-the-air signal of the network station of Grade B intensity, the network station shall have 30 days in which to file with the Commission an objection to the petition. If the network station does not file a timely objection, then the station may not assert network nonduplication protection described in paragraph (2)(B) with respect to that subscriber's household. If the station does file a timely objection, then the Commission shall have 120 days in which to determine the sufficiency of the subscriber's petition. If the Commission determines that the petition is sufficient, then the network nonduplication protection described in paragraph (2)(B) shall not apply to that subscriber's household.

(4) **INTERIM PROVISIONS.**—Until the Federal Communications Commission issues regulations under paragraphs (1) and (3), no subscriber whose household is located outside the Grade A contour of a network station shall have his or her satellite service of another network station affiliated with that same network terminated as a result of the provisions of section 119 of title 17, United States Code.

(5) **LOCAL MARKET DEFINED.**—The term “local market” has the meaning provided in section 337(h) of the Communications Act of 1934, as added by section 3 of this Act.

(b) **DEFERRED APPLICABILITY OF AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.**—Notwithstanding the amendments to section 119 of title 17, United States Code, made by this Act, until the regulations regarding network non-duplication protection are established under subsection (a), the statutory license under subsection (a) of such section 119 for secondary transmissions of primary transmissions of programming contained in a primary transmission made by a network station (as defined in section 119(d) of title 17, United States Code, as in effect on the day before the effective date of this Act) shall be limited to secondary transmissions to persons who reside in unserved households (as defined in section 119(d) of title 17, United States Code, as in effect on the day before the effective date of this Act).

SEC. 11. STUDY ON TECHNICAL AND ECONOMIC IMPACT OF MUST-CARRY ON DELIVERY OF LOCAL SIGNALS.

Not later than July 1, 2000, the Register of Copyrights and the Federal Communications Commission shall submit to the Congress a joint report that sets forth in detail their findings and conclusions with respect to the technical feasibility of imposing the requirements of section 337 of the Communications Act of 1934 on satellite carriers that deliver local signals, and the technical and economic impact of such section on the ability of satellite carriers to serve multiple television markets with retransmission of local television broadcast stations. In preparing this report, the Register of Copyrights and the Commission shall give particular consideration to how section 337 of the Communications Act of 1934 affects the technical limitations and economic incentives for satellite retransmissions of local television broadcast signals in television markets other than the 100 largest television markets in the United States (as determined by the Nielsen Media Research and published in the DMA Market and Demographic Report).

SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on July 1, 1999, except that—

- (1) the amendments made by section 5 shall take effect on the date of the enactment of this Act; and
- (2) the amendment made by section 6(1)(B)(ii) shall take effect on the date that is 1 year after the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 1027, the “Copyright Compulsory License Improvement Act,” extends and enhances the statutory framework for the retransmission of television broadcast signals by satellite carriers to their subscribers. H.R. 1027: (1) creates a new copyright statutory license for the retransmission of local television broadcast stations; (2) extends the expiration date of the section 119 copyright compulsory license for the retransmission of distant television broadcast stations, and reduces the royalty fee for that license; (3) creates full must-carry rights for all television broadcast stations in a local market once a satellite carrier begins local service in that market, and prohibits the importation of distant signals in that market that duplicate the network programming of a local station as conditions of the copyright license; and (4) protects local broadcaster programming exclusivity rights through imposition of network nonduplication, syndicated exclusivity and sports blackout modeled after the rules applicable to the cable industry, making the protection of such rights a condition of the copyright license.

BACKGROUND AND NEED FOR THE LEGISLATION

When Congress passed the Satellite Home Viewer Act in 1988, few Americans were familiar with satellite television. Those who were typically resided in rural areas of the country where the only means of receiving television programming was through use of a large, backyard C-band satellite dish. Congress recognized the importance of providing these people with access to broadcast programming and created a compulsory copyright license in the Satellite Home Viewer Act that enabled satellite carriers to easily license the copyrights to the broadcast programming that they retransmitted to their subscribers.

The 1988 Act fostered a boom in the satellite television industry. Coupled with the development of high-powered digital satellite service, or DBS, which delivers programming to a satellite dish practically the size of a dinner plate, the satellite industry now serves homes nationwide with a wide range of high quality programming. Satellite is no longer a rural service, and it offers a competitive alternative to other providers of multichannel video programming; in particular, cable television. Because satellite can provide direct competition with the cable industry, it is in the interest of Congress to ensure that satellite operates under a copyright framework that permits it to be an effective competitor.

The compulsory copyright license created by the 1988 Act was limited to a five-year period to enable Congress to consider its effectiveness and renew it where necessary. The license was renewed in 1994 for an additional five years and amendments made that were intended to increase the enforcement of the network territorial restrictions of the compulsory license. Two-year transitional

provisions were created to enable local network broadcasters to challenge satellite subscribers' receipt of satellite network service where the local network broadcaster had reason to believe that these subscribers received an adequate off-the-air signal from the broadcaster.

The satellite license is slated to expire at the end of this year, requiring Congress to again consider the copyright licensing regime for satellite retransmission of over-the-air television broadcast stations. In passing this legislation, the Committee was guided by several principles. First, the Committee believes that promotion of competition in the marketplace for delivery of multichannel video programming is an effective policy to reduce costs to consumers. To that end, it is important that the satellite industry be afforded a statutory scheme for licensing television broadcast programming similar to that of the cable industry. At the same time, the practical differences between the two industries must be recognized and accounted for.

Second, the Committee reasserts the importance of protecting and fostering the system of television networks as they relate to the concept of localism. It is well recognized that television broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities. To that end, the Committee has adopted provisions that grant local broadcast stations retransmission rights in their signals; must-carry rights to assure that when one local station is being retransmitted in a market by a satellite carrier, then all must be carried; and network nonduplication, syndicated exclusivity and sports blackout provisions to protect local broadcasters' program exclusivity rights.

Finally, the Committee has structured the legislation in an effort to encourage satellite carriers to offer their subscribers local television signals and eliminate the satellite industry's reliance upon retransmission of distant signals. Although the legislation promotes satellite retransmission of local stations, the Committee recognizes the continued need to monitor the effects of distant signal importation by satellite. To that end, the compulsory license for retransmission of distant signals is extended for a period of five years, to afford Congress the opportunity to evaluate the effectiveness and continuing need for that license at the end of the five-year period.

HEARINGS

On Thursday, February 25, 1999, the Committee held a legislative hearing on H.R. 768, the "Copyright Compulsory License Improvement Act." The provisions of H.R. 768 were incorporated by amendment into H.R. 1027 during consideration by the Subcommittee on Courts and Intellectual Property on March 18, 1999. The following individuals testified at the hearing: Williams J. Roberts, Senior Attorney for Compulsory Licenses, Copyright Office of the United States; Cullie Tarleton, General Manager of WCCB-TV on behalf of the National Association of Broadcasters; David Moskowitz, Senior Vice President and General Counsel for Echostar Communications; Michael R. Mountford, Executive Vice President for DSI Systems, Incorporated; John H. Hutchinson, Ex-

ecutive Vice President and Chief Operating Officer for Local TV on Satellite; Fritz E. Attaway, Senior Vice President for Congressional Affairs and General Counsel for the Motion Picture Association of America; and Thomas J. Ostertag, General Counsel of the Office of the Commissioner of Major League Baseball.

COMMITTEE CONSIDERATION

On March 18, 1999, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill H.R. 1027 with an amendment in the nature of a substitute, and one amendment to the amendment in the nature of a substitute, by a voice vote, a quorum being present. On March 24, 1999, the Committee met in open session and ordered reported favorably the bill H.R. 1027 with an en bloc amendment, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

H.R. 1027 was reported by voice vote on March 24, 1999, with no objection heard.

COMMITTEE OVERSIGHT FINDINGS

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

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will have no cost for the current fiscal year 2000, and that there will be no cost incurred in carrying out H.R. 1027 for the next five fiscal years.

CONSTITUTIONAL AUTHORITY STATEMENT

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

SECTION-BY-SECTION ANALYSIS

Section 1—Title

The title of the bill is the “Copyright Compulsory License Improvement Act.”

Section 2—Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets

Section 2 of the bill creates a new, permanent compulsory license, found at section 122 of the Copyright Act of 1976, for the retransmission of television broadcast stations by satellite carriers to subscribers located within the local markets of those stations.

Creation of a new compulsory license for retransmission of local signals is necessary because the current section 119 license is limited to the retransmission of distant signals by satellite. The section 122 license allows satellite carriers for the first time to provide their subscribers with the TV signals they want most: their local stations. A carrier may retransmit the signal of a network station (or superstation) to all subscribers who reside within the local market of that station, without the burden of determining whether the subscriber resides in an unserved household. The local market for a television station will be determined by the Federal Communications Commission and will correspond to the zone established by the Commission for mandatory carriage by satellite of local signals.

Because the section 122 license is permanent, subscribers may obtain their local networks and superstations without fear that their broadcast service may be turned off at a future date. In addition, satellite carriers may deliver local stations to commercial establishments as well as homes, as the cable industry does under its license. These amendments create parity between the satellite and cable industries in the provision of television broadcast stations.

In order for a satellite carrier to be eligible for this license, the carrier must be in full compliance with all applicable rules and regulations of the Federal Communications Commission, including any must-carry or programming exclusivity requirements that the Commission may adopt by regulation or law. Failure to fully comply with Commission rules with respect to retransmission of one or more stations in the local market precludes the carrier from making use of the section 122 license for all local retransmission in that market. Thus, for example, if a satellite carrier fails to carry a local station as required by Commission rule or regulation, then the carrier loses the section 122 license for the stations that it is retransmitting in the local market of those stations.

Because the copyrighted programming contained on local broadcast programming is already licensed with the expectation that all viewers in the local market will be able to view the programming, the section 122 license is a royalty-free license. Satellite carriers must, however, provide local broadcasters with lists of their subscribers receiving local stations so that broadcasters may verify that satellite carriers are making proper use of the license. For each television broadcast station that the satellite carrier retransmits locally, the satellite carrier must send a list of only those subscribers, listed alphabetically including their street address, county and zip code, in the market that are receiving the station. The sub-

scriber information supplied to broadcasters is for verification purposes only and may not be used by broadcasters for other reasons.

Satellite carriers are liable for copyright infringement, and subject to the full remedies of the Copyright Act, if they violate one or more of the following requirements of the section 122 license. First, satellite carriers may not in any way willfully alter the programming contained on a local broadcast station.

Second, satellite carriers may not use the section 122 license to retransmit a television broadcast station to a subscriber located outside the local market of the station. Retransmission of a station to a subscriber located outside the station's local market is covered by section 119, provided that all conditions of that license are satisfied. If a carrier willfully or repeatedly violates this limitation on a nationwide basis, then the carrier may be enjoined from retransmitting that signal. If the broadcast station involved is a network station, then the carrier could lose the right to retransmit any network stations affiliated with that same network. If the willful or repeated violation of the restriction is performed on a local or regional basis, then the right to retransmit the station (or, if a network station, then all other stations affiliated with that network) can be enjoined on a local or regional basis, depending upon the circumstances. In addition to termination of service on a nationwide or local or regional basis, statutory damages are available up to \$250,000 for each 6-month period during which the pattern or practice of violations was carried out. Satellite carriers have the burden of proving that they are not improperly making use of the section 122 license to serve subscribers outside the local markets of the television broadcast stations they are providing. Local broadcasters are given standing to sue for infringement of the section 122 license by amendment of chapter 501 of the Copyright Act.

The section 122 license is limited in geographic scope to locations in the United States, including any commonwealth, territory or possession of the United States. In addition, the bill makes it clear that local retransmission of television broadcast stations to subscribers for viewing is governed solely by the section 122 license and that no provision of the section 111 cable compulsory license should be interpreted to allow satellite carriers to make local retransmission of television broadcast stations under that license. Likewise, no provision of the section 119 license (or any other law) should be interpreted as authorizing local-into-local retransmission by satellite, since the section 119 license is limited to retransmission by satellite of distant television broadcast signals.

The Committee acknowledges that authorization and encouragement of local signals on satellite will result in a proliferation of the number of television stations that will be uplinked and available on satellites that serve the United States. The Committee does not intend, however, that the section 122 license be construed in such a way as to prevent stations that are uplinked principally for delivery as local signals under section 122 be prohibited from also being delivered as distant signals under section 119, provided that all the requirements of section 119 are met. If a satellite carrier uplinks a station and delivers it to a subscriber located in that station's local market, then the carrier may make use of the section 122 license. The carrier may also retransmit that same station to sub-

scribers in distant markets under the section 119 license, provided that all the requirements of section 119 are met.

Section 3—Extension of effect of amendments to section 119 of title 17, United States Code.

The section 119 satellite compulsory license is extended for a period of five years by changing the expiration date of the legislation from December 31, 1999, to December 31, 2004. It is understood that should the section 119 license be allowed to expire in 2004, it shall do so at midnight on December 31, 2004, so that the license will cover the entire period of the second accounting period of 2004.

Section 4—Computation of royalty fees for satellite carriers

H.R. 1027 reduces the royalty fees currently paid by satellite carriers for the retransmission of network and superstations by 45 percent and 30 percent, respectively. These are reductions of the 27-cent royalty fees made effective by the Librarian of Congress on January 1, 1998. The reductions take effect on July 1, 1999, which is the beginning of the second accounting period for 1999, and apply to all accounting periods for the five-year extension of the section 119 license.

In addition, section 119(c) of title 17 is amended to clarify that in royalty distribution proceedings conducted under section 802 of the Copyright Act, the Public Broadcasting Service may act as agent for all public television copyright claimants and all Public Broadcasting Service member stations.

Section 5—Public Broadcasting Service satellite feed

H.R. 1027 extends the section 119 license to cover the copyrighted programming carried on the Public Broadcasting Service's national satellite feed. The national satellite feed is treated as a superstation for compulsory license purposes, thereby avoiding the unserved household restriction applicable to network signals. Also, the bill requires that PBS must certify to the Copyright Office on an annual basis—subsequent to the date on which a majority of satellite subscribers are able to receive at least one noncommercial educational television broadcast station located in their local market, or two years after the effective date of H.R. 1027, whichever is earlier—that the PBS membership continues to support retransmission of the national satellite feed under the section 119 compulsory license.

Section 6—Local to local limitations retransmission

The “unserved household” limitation of the section 119 license, is removed from the Copyright Act and contained under the rubric of network nonduplication protection. Network nonduplication protection is established in section 10 of the bill.

In addition to creating network nonduplication protection, the Committee is making another significant amendment to the section 119 compulsory license in an effort to encourage the satellite industry to provide their subscribers with their local network signals and reduce the reliance upon distant signals. In those circumstances where a satellite carrier begins local service of two or more network stations in a television market, no distant signals of

those networks that the carrier is providing locally may be imported into the market. This provision applies to both the satellite carrier providing the local service—such that the carrier cannot provide both the local and a distant affiliate of the same network—as well as other satellite carriers operating in the market, who would be prohibited from importing a distant signal of the same network that another carrier is providing locally in the market. The Committee believes that the provision will create a strong incentive for all satellite carriers to offer local network signals and will reduce the satellite industry’s reliance on distant network signals.

Section 7—Application of Federal Communications Commission regulations

The section 119 license is amended to clarify that satellite carriers must comply with all rules, regulations, and authorizations of the Federal Communications Commission in order to obtain the benefits of the section 119 license. This would include any programming exclusivity provisions that the Commission may adopt by law or regulation. Thus, for example, if a satellite carrier retransmitted a network station to a subscriber or subscribers in violation of FCC network nonduplication rules, then the carrier could not claim that it had a copyright compulsory license to make such retransmission and would be subject to an action for infringement if it distributed programming without authorization from the owner.

Section 8—Retransmission consent

H.R. 1027 amends the retransmission consent provisions of section 325(b) of the Communications Act to account for changes in the satellite delivery of television broadcast stations. As a general rule, a satellite carrier must obtain retransmission consent from every television broadcast station that it retransmits to its subscribers. Two exemptions to retransmission consent are created for certain satellite retransmission. First, a satellite carrier need not obtain retransmission consent to retransmit a distant television broadcast station to its subscribers if the station was a superstation, as defined under section 119 of the Copyright Act, on May 1, 1991, and was retransmitted under the section 119 license as of July 1, 1998. This exemption from retransmission consent is intended to apply to television broadcast stations such as WGN, Chicago, Illinois, that were previously considered exempt from retransmission consent but, because of their change in status to a network station under the Copyright Act, lost that exemption under current law.

Second, retransmission consent does not apply to a network station that is retransmitted to subscribers who are outside the area of nonduplication protection that may be asserted by the local affiliate of the same network. This exemption allows satellite carriers to retransmit distant network signals to subscribers who previously resided in “unserved households.”

Third, a more general exemption to retransmission consent is created that applies to cable operators, satellite carriers, and other multichannel video providers. Retransmission consent need not be obtained for a television broadcast station that was a superstation,

as defined under section 119 of the Copyright Act, on May 1, 1991, and was retransmitted by a satellite carrier under the section 119 license as of July 1, 1998. The intention of this exemption is to grant superstations that have become cable networks, such as WTBS, retransmission consent rights to prohibit a satellite carrier from retransmitting the stations without their permission.

The Federal Communications Commission is directed to commence a rulemaking proceeding within 45 days of enactment of H.R. 1027 to establish procedures for the exercise of retransmission consent rights. The rulemaking must be completed no later than 180 days from date of enactment.

Section 9—Must-carry for satellite carriers retransmitting television broadcast signals

H.R. 1027 creates must-carry obligations for satellite carriers retransmitting television broadcast signals as a condition of the copyright license. The provisions are similar to those applicable to the cable industry. Any satellite carrier that retransmits a television broadcast signal to subscribers residing within the local market of that signal must carry all the television stations in the local market to subscribers residing in the local market. This approach of “carry one, then carry all” is subject to the retransmission consent election of section 8 of the bill. Thus, a satellite carrier does not have to carry a local television broadcast station if the station elects retransmission consent rather than must-carry. The “local market” of a broadcast station is defined as the station’s Designated Market Area, as determined by Nielsen Media Research.

The legislation tracks the cable must-carry provisions of the 1992 Cable Act by relieving satellite carriers from the burden of having to carry more than one affiliate of the same network if both of the affiliates are located in the same local market. Local broadcasters are also afforded some channel positioning rights and are required to provide a good quality signal to the satellite carrier’s local receive facility in order to assert must-carry rights. Satellite carriers are forbidden from obtaining compensation from local broadcasters in exchange for carriage. The bill also provides a means for broadcasters to seek redress from the Federal Communications Commission for violations of the must-carry obligations.

The Federal Communications Commission is directed to adopt regulations within 6 months of enactment of the legislation to implement the must-carry obligations for satellite. In no event shall the Commission impose less than full must-carry on satellite carriers that make local retransmission of television broadcast stations later than January 1, 2002.

Section 10—Network nonduplication; syndicated exclusivity and sports blackout

The Federal Communications Commission is directed to adopt network nonduplication, syndicated exclusivity and sports blackout rules applicable to satellite retransmission of television broadcast signals. To the extent possible, the Commission should model its new regulations after those that currently apply to the cable industry.

The bill sets forth express network nonduplication provisions that will solve the problems associated with satellite delivery of network signals and the recent shut-offs of network signals that have occurred as the result of federal court injunctions. Local network broadcasters are granted network nonduplication protection against satellite carriers under two circumstances. First, for the satellite carrier that provides local retransmission, the local network broadcaster can assert nonduplication protection throughout its local market to insure that the satellite carrier offering local retransmission carries only the local network broadcaster, and does not provide a distant network station affiliated with that same network. Thus, satellite subscribers who reside within the local market of a network affiliate will receive only the local affiliate and not distant affiliates, which is the same restriction that applies to the cable industry.

Second, the bill provides network nonduplication protection for the local broadcaster against a satellite carrier that does not offer local retransmission and is importing distant network signals. The local network station will receive nonduplication protection for all areas within its local market where the Individually Located Longley-Rice (ILLR) maps, recently adopted by the Federal Communications Commission, predicts that an over-the-air signal of Grade B intensity can be received. A satellite carrier would be prohibited from providing subscribers located in these areas with distant network stations unless one of two things occurs. First, if a subscriber located in such an area has obtained a written waiver from the local network broadcaster, then nonduplication protection would not apply. Second, if a subscriber conducts a signal intensity measurement at his or her household that is in accordance with FCC-prescribed standards, then the subscriber may petition the Commission to waive nonduplication protection and allow the subscriber to receive distant network signals. Any discrepancies regarding the sufficiency of the test will be resolved by the Commission.

If a satellite subscriber's network service is terminated as a result of nonduplication protection asserted by a local affiliate, or as a result of the provisions of section 119 of the Copyright Act, then the satellite carrier must provide the subscriber with a free over-the-air television broadcast receiving antenna that will provide the subscriber with an over-the-air signal of Grade B intensity for those network stations that were terminated.

The network nonduplication provisions of the bill will protect local broadcasters in addition to assuring that every consumer will have access to network broadcast stations. During the period in which the Federal Communications Commission adopts its network nonduplication regulations, the unserved household limitation in section 119 of the Copyright Act shall remain in place.

Section 11—Study on technical and economic impact of must-carry on delivery of local signals

The Federal Communications Commission and the Copyright Office are directed to report jointly to Congress on the effects of full must-carry for the retransmission of local signals by satellite, particularly in smaller television markets throughout the country.

Section 12—Effective date

The amendments made by the bill take effect on July 1, 1999, the first day of a new copyright accounting period for satellite carriers, except the amendments made by section 5, which take effect on date of enactment, and section 6(l)(B)(ii) which takes effect one year after date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

* * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF
COPYRIGHT

Sec.

101. Definitions.

* * * * *

122. *Limitations on exclusive rights; secondary transmissions by satellite carriers within local market.*

* * * * *

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

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

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

(A) the date when a majority of subscribers to satellite carriers are able to receive the signal of at least one non-commercial educational television broadcast station from their satellite carrier within such stations' local market, or

(B) 2 years after the effective date of the Copyright Compulsory License Improvement Act, whichever is earlier, the statutory license created by this section shall be conditioned on the Public Broadcasting Service certifying to the Copyright Office on an annual basis that its membership supports the secondary transmission of the Public Broadcasting Service satellite feed, and providing notice to the satellite carrier of such certification.

[(2) NETWORK STATIONS.—

[(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6).

[(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

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

(2) NETWORK STATIONS.—Subject to the provisions of paragraphs (3), (4), and (5) of this subsection and section 114(d), secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission. Notwithstanding the preceding provisions of this paragraph, secondary transmissions of program-

ming contained in a primary transmission made by a network station and embodying a performance or display of a work shall not be subject to statutory licensing under this section in a local market in which the satellite carrier, or another satellite carrier, is serving subscribers in that market with 2 or more television broadcast stations located in that market pursuant to section 122.

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

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

【(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

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

【(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

【(ii) any statutory damages shall not exceed \$5 for such subscriber for each month during which the violation occurred.

【(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to sub-

scribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

[(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$250,000 for each 6-month period during which the pattern or practice was carried out; and

[(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$250,000 for each 6-month period during which the pattern or practice was carried out.

[(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before November 16, 1988.

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

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

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

[(8) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—

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

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

challenge that service to that household has been terminated; or

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

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

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

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

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

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

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

after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement.

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

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

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

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

[(A) a network station challenging such eligibility shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the satellite carrier for any signal intensity measurement that is conducted by that carrier in response to a challenge by the network station and that establishes the household is an unserved household; and

[(B) a satellite carrier shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the network station challenging such eligibility for any signal intensity measurement that is conducted by that station and that establishes the household is not an unserved household.

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

* * * * *

(c) ADJUSTMENT OF ROYALTY FEES.—

(1) * * *

* * * * *

(4) REDUCTION.—

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

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

(5) PUBLIC BROADCASTING SERVICE AS AGENT.—*For purposes of section 802, with respect to royalty fees paid by satellite carriers for retransmitting the Public Broadcasting Service sat-*

ellite feed, the Public Broadcasting Service shall be the agent for all public television copyright claimants and all Public Broadcasting Service member stations.

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

(1) * * *

* * * * *

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

[(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

[(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

[(11) LOCAL MARKET.—The term “local market” means the area encompassed within a network station’s predicted Grade B contour as that contour is defined by the Federal Communications Commission.]

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

(13) LOCAL MARKET.—*The term “local market” has the meaning given that term in section 122(j)(2).*

(14) TELEVISION BROADCAST STATION.—*The term “television broadcast station” has the meaning given that term in section 122(j)(5).*

* * * * *

§ 122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets

(a) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE CARRIERS.—*A secondary transmission of a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if—*

(1) *the secondary transmission is made by a satellite carrier to the public;*

(2) *the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and*

(3) *the satellite carrier makes a direct or indirect charge for the secondary transmission to—*

- (A) each subscriber receiving the secondary transmission;
or
(B) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

(b) **REPORTING REQUIREMENTS.**—

(1) **INITIAL LISTS.**—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to that station a list identifying (by name in alphabetical order and street address, including county and zip code) only those subscribers located in that station's local market to which the satellite carrier currently makes secondary transmissions of that primary transmission.

(2) **SUBSEQUENT LISTS.**—After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the station a list identifying (by name and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.

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

(4) **REQUIREMENTS OF STATIONS.**—The submission requirements of this subsection shall apply to a satellite carrier only if the station to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(c) **NO ROYALTY FEE REQUIRED.**—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall have no royalty obligation for such secondary transmissions.

(d) **NONCOMPLIANCE WITH REPORTING REQUIREMENTS.**—Notwithstanding subsection (a), the willful or repeated secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided under sections 502 through 506 and 509, if the satellite carrier has not complied with the reporting requirements of subsection (b).

(e) **WILLFUL ALTERATIONS.**—Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station an-

nouncement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(f) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR TELEVISION BROADCAST STATIONS.—

(1) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

(A) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber; and

(B) any statutory damages shall not exceed \$5 for such subscriber for each month during which the violation occurred.

(2) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of secondarily transmitting to the public a primary transmission made by a television broadcast station and embodying a performance or display of a work to subscribers who do not reside in that station's local market, and are not subject to statutory licensing under section 119, then in addition to the remedies under paragraph (1)—

(A) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of that television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), and the court may order statutory damages not exceeding \$250,000 for each 6-month period during which the pattern or practice was carried out; and

(B) if the pattern or practice has been carried out on a local or regional basis with respect to more than one television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), the court shall order a permanent injunction barring the secondary transmission in that locality or region by the satellite carrier of the primary transmissions of any television broadcast station, and the court may order statutory damages not exceeding \$250,000 for each 6-month period during which the pattern or practice was carried out.

(g) BURDEN OF PROOF.—In any action brought under subsection (d), (e), or (f), the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a tele-

vision broadcast station is made only to subscribers located within that station's local market.

(h) *GEOGRAPHIC LIMITATIONS ON SECONDARY TRANSMISSIONS.*—The statutory license created by this section shall apply to secondary transmissions to locations in the United States, and any commonwealth, territory, or possession of the United States.

(i) *EXCLUSIVITY WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.*—No provision of section 111 or any other law (other than this section and section 119) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers of programming contained in a primary transmission made by a television broadcast station may be made without obtaining the consent of the copyright owner.

(j) *DEFINITIONS.*—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) *LOCAL MARKET.*—The “local market” of a television broadcast station has the meaning given that term under rules, regulations, and authorizations of the Federal Communications Commission relating to carriage of television broadcast signals by satellite carriers.

(3) *NETWORK STATION; SATELLITE CARRIER; SECONDARY TRANSMISSION.*—The terms “network station”, “satellite carrier” and “secondary transmission” have the meanings given such terms under section 119(d).

(4) *SUBSCRIBER.*—The term “subscriber” means an entity that receives a secondary transmission service by means of a secondary transmission from a satellite and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(5) *TELEVISION BROADCAST STATION.*—The term “television broadcast station” means an over-the-air, commercial or non-commercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations.

* * * * *

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

* * * * *

§ 501. Infringement of copyright

(a) * * *

* * * * *

(f) *With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 122, a television broadcast station holding a*

copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.

* * * * *

SECTION 4 OF THE SATELLITE HOME VIEWER ACT OF 1994

SEC. 4. TERMINATION.

(a) EXPIRATION OF AMENDMENTS.—Section 119 of title 17, United States Code, as amended by section 2 of this Act, ceases to be effective on December 31, **[1999] 2004.**

* * * * *

COMMUNICATIONS ACT OF 1934

* * * * *

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * *

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

(a) * * *

[(b)(1) Following the date that is one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, 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; or

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

[(2) The provisions of this subsection shall not apply to—

[(A) retransmission of the signal of a noncommercial broadcasting station;

[(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

[(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

[(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a super-

station if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991. For purposes of this paragraph, the terms “satellite carrier”, “superstation”, and “unserved household” have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.】

(b)(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 station;

(B) pursuant to 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) pursuant to section 337, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

(2) The provisions of this subsection shall not apply to—

(A) retransmission of the signal of a noncommercial broadcasting station;

(B) 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; and

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

(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is located in an area in which such station may not assert its rights not to have its signal duplicated under the Commission’s network nonduplication regulations; or

(D) retransmission by a cable operator or other multichannel video provider 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 provided in section 119 of title 17, United States Code.

*(3)(A) * * **

** * * * **

(C) Within 45 days after the effective date of the Satellite Television Improvement Act, the Commission shall commence a rule-making 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 limitation contained in paragraph (2). Such regulations shall establish election time periods that correspond with those regulations adopted under subparagraph (B).

The rulemaking shall be completed within 180 days after the effective date of the Satellite Television Improvement Act.

* * * * *

(7) *For purposes of this subsection:*

(A) *The term “superstation” means a television broadcast station, other than a network station, licensed by the Commission that is secondarily transmitted by a satellite carrier.*

(B) *The term “satellite carrier” has the meaning given that term in section 119(d) of title 17, United States Code.*

* * * * *

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

(a) *CARRIAGE OBLIGATIONS.—Each satellite carrier providing direct to home service of a television broadcast station to subscribers located within the local market of such station pursuant to section 122 of title 17, United States Code, shall, not later than January 1, 2002, carry all television broadcast stations located within that local market. Carriage of additional television broadcast stations within the local market shall be at the discretion of the satellite carrier, subject to section 325(b).*

(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. The selection of a local receive facility by a satellite carrier shall not be made in a manner that frustrates the purposes of this section.*

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

(c) *DUPLICATION NOT REQUIRED.—Notwithstanding subsection (a), a satellite carrier shall not be required to carry the signal of any local television broadcast station that substantially duplicates the signal of another local television broadcast station which is secondarily transmitted by the satellite carrier, or to carry the signals of more than one local television broadcast station affiliated with a particular broadcast network (as the term is defined by regulation).*

(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 station to subscribers in that station’s local market on contiguous channels 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 this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The satellite carrier shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning or other requirements of this section. A local television broadcast station that is denied carriage or channel positioning or repositioning in accordance with this section by a satellite carrier may obtain review of such denial 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 such satellite carrier and 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, the Commission shall determine whether the satellite carrier has met its obligations under this section. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the satellite carrier has fully met the requirements of this section, it shall dismiss the complaint.

(g) *REGULATIONS BY COMMISSION.*—Within 180 days after the effective date of this section, the Commission shall, following a rule-making proceeding, issue regulations implementing the requirements imposed by this section.

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

(1) *TELEVISION BROADCAST STATION.*—The term “television broadcast station” means a full-power television broadcast station, and does not include a low-power or translator television broadcast station.

(2) *LOCAL MARKET.*—The term “local market” means the designated market area in which a station is located.

(3) *DESIGNATED MARKET AREA.*—The term “designated market area” means a designated market area, as determined by the Nielsen Media Research and published in the DMA Market and Demographic Report or, if no longer published, as determined by another commercial publication that delineates television markets based on viewing patterns.

(4) *LOCAL RECEIVE FACILITY.*—The term local receive facility means the reception point in the local market of a television broadcast station or in a market contiguous to the local market of a television broadcast station at which a satellite carrier initially receives the signal of the station for purposes of transmission of such signals to the facility which uplinks the signals to the carrier's satellites for secondary transmission to the satellite carrier's subscribers. The designation of a local receive facility by a satellite carrier shall not be used to undermine or evade the carriage requirements imposed by this section.

* * * * *

