

**Union Calendar No. 385**

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 1103**

**[Report No. 103-703]**

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**A BILL**

To amend title 17, United States Code, with respect to secondary transmissions of superstations and network stations for private home viewing, and with respect to cable systems.

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AUGUST 16, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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**IN THE HOUSE OF REPRESENTATIVES**

FEBRUARY 24, 1993

Mr. HUGHES (for himself and Mr. MOORHEAD) introduced the following bill;  
which was referred to the Committee on the Judiciary

AUGUST 16, 1994

Additional sponsors: Mr. PETERSON of Minnesota, Mr. CHAPMAN, Mr. SPRATT, Mr. OBERSTAR, Mr. STUPAK, Mr. PAYNE of New Jersey, Mr. PAYNE of Virginia, Mr. WISE, and Mr. WILLIAMS

AUGUST 16, 1994

Reported with an amendment, committed to the Committee of the Whole  
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[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 24, 1993]

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**A BILL**

To amend title 17, United States Code, with respect to secondary transmissions of superstations and network stations for private home viewing, and with respect to cable systems.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        *This Act may be cited as the “Satellite Home Viewer*  
5 *Act of 1994”.*

6 **SEC. 2. STATUTORY LICENSE FOR SATELLITE CARRIERS.**

7        *Section 119 of title 17, United States Code, is amended*  
8 *as follows:*

9            (1) *Subsection (a)(2)(C) is amended—*

10                  (A) *by striking “90 days after the effective*  
11 *date of the Satellite Home Viewer Act of 1988,*  
12 *or”;*

13                  (B) *by striking “whichever is later,”;*

14                  (C) *by inserting “name and” after “identi-*  
15 *fying (by” each place it appears; and*

16                  (D) *by striking “, on or after the effective*  
17 *date of the Satellite Home Viewer Act of 1988,”.*

18            (2) *Subsection (a)(5) is amended by adding at*  
19 *the end the following:*

20                  “(D) *BURDEN OF PROOF.—In any action*  
21 *brought under this paragraph, the satellite car-*  
22 *rier shall have the burden of proving that its sec-*  
23 *ondary transmission of a primary transmission*  
24 *by a network station is for private home viewing*  
25 *to an unserved household.”.*

1           (3) *Subsection (b)(1)(B) is amended—*

2                   (A) *in clause (i) by striking “12 cents” and*  
3 *inserting “17.5 cents per subscriber in the case*  
4 *of superstations not subject to syndicated exclu-*  
5 *sivity under the regulations of the Federal Com-*  
6 *munications Commission, and 14 cents per sub-*  
7 *scriber in the case of superstations subject to*  
8 *such syndicated exclusivity”;* and

9                   (B) *in clause (ii) by striking “3” and in-*  
10 *serting “6”;*

11           (4) *Subsection (c) is amended—*

12                   (A) *in paragraph (1) by striking “December*  
13 *31, 1992,”;*

14                   (B) *in paragraph (2)—*

15                           (i) *in subparagraph (A) by striking*  
16 *“July 1, 1991” and inserting “January 1,*  
17 *1996”;* and

18                           (ii) *in subparagraph (D) by striking*  
19 *“December 31, 1994” and inserting “De-*  
20 *cember 31, 1999, or in accordance with the*  
21 *terms of the agreement, whichever is later”;*

22                   (C) *in paragraph (3)—*

23                           (i) *in subparagraph (A) by striking*  
24 *“December 31, 1991” and inserting “July*  
25 *1, 1996”;*

1                   (ii) by amending subparagraph (D) to  
2                   read as follows:

3                   “(D) *ESTABLISHMENT OF FAIR MARKET*  
4                   *RATES.—In determining royalty fees under this*  
5                   *paragraph, the Arbitration Panel shall establish*  
6                   *a rate, for the secondary transmission of network*  
7                   *stations and superstations, that reflects the fair*  
8                   *market value of such secondary transmissions.*  
9                   *The Arbitration Panel shall base its decision*  
10                   *upon economic, competitive, and programming*  
11                   *information presented by the parties, and shall*  
12                   *take into account the competitive environment in*  
13                   *which such programming is distributed.”;*

14                   (iii) in subparagraph (E) by striking  
15                   “60” and inserting “180”; and

16                   (iv) in subparagraph (G) by striking  
17                   “, or until December 31, 1994”.

18                   (5) Subsection (a) is amended—

19                   (A) in paragraph (5)(C) by striking “the  
20                   *Satellite Home Viewer Act of 1988*” and insert-  
21                   ing “this section”; and

22                   (B) by adding at the end the following:

23                   “(8) *TRANSITIONAL SIGNAL INTENSITY MEAS-*  
24                   *UREMENT PROCEDURES.—*

1           “(A) *IN GENERAL.*—Subject to subpara-  
2 graph (C), upon a challenge by a network station  
3 regarding whether a subscriber is an unserved  
4 household within the predicted Grade B Contour  
5 of the station, the satellite carrier shall, within  
6 60 days after the receipt of the challenge—

7           “(i) terminate service to that household  
8 of the signal that is the subject of the chal-  
9 lenge, and within 30 days thereafter notify  
10 the network station that made the challenge  
11 that service to that household has been ter-  
12 minated; or

13           “(ii) conduct a measurement of the sig-  
14 nal intensity of the subscriber’s household to  
15 determine whether the household is an  
16 unserved household.

17           “(B) *EFFECT OF MEASUREMENT.*—If the  
18 satellite carrier conducts a signal intensity  
19 measurement under subparagraph (A) and the  
20 measurement indicates that—

21           “(i) the household is not an unserved  
22 household, the satellite carrier shall, within  
23 60 days after the measurement is conducted,  
24 terminate the service to that household of  
25 the signal that is the subject of the chal-

1           *lenge, and within 30 days thereafter notify*  
2           *the network station that made the challenge*  
3           *that service to that household has been ter-*  
4           *minated; or*

5                     *“(ii) the household is an unserved*  
6                     *household, the station challenging the service*  
7                     *shall reimburse the satellite carrier for the*  
8                     *costs of the signal measurement within 60*  
9                     *days after receipt of the measurement re-*  
10                    *sults and a statement of the costs of the*  
11                    *measurement.*

12                    *“(C) LIMITATION ON MEASUREMENTS.—(i)*  
13                    *Notwithstanding subparagraph (A), a satellite*  
14                    *carrier may not be required to conduct signal in-*  
15                    *tensity measurements during any calendar year*  
16                    *in excess of 5 percent of the number of subscrib-*  
17                    *ers within the network station’s local market*  
18                    *that have subscribed to the service as of the effec-*  
19                    *tive date of the Satellite Home Viewer Act of*  
20                    *1994.*

21                    *“(ii) If a network station challenges whether*  
22                    *a subscriber is an unserved household in excess*  
23                    *of 5 percent of the subscribers within the net-*  
24                    *work’s station local market within a calendar*  
25                    *year, subparagraph (A) shall not apply to chal-*

1           *lenges in excess of such 5 percent, but the station*  
2           *may conduct its own signal intensity measure-*  
3           *ment of the subscriber's household. If such meas-*  
4           *urement indicates that the household is not an*  
5           *unserved household, the carrier shall, within 60*  
6           *days after receipt of the measurement, terminate*  
7           *service to the household of the signal that is the*  
8           *subject of the challenge and within 30 days there-*  
9           *after notify the network station that made the*  
10          *challenge that service has been terminated. The*  
11          *carrier shall also, within 60 days after receipt of*  
12          *the measurement and a statement of the costs of*  
13          *the measurement, reimburse the network station*  
14          *for the cost it incurred in conducting the meas-*  
15          *urement.*

16                 “(D) *OUTSIDE THE PREDICTED GRADE B*  
17                 *CONTOUR.—(i) If a network station challenges*  
18                 *whether a subscriber is an unserved household*  
19                 *outside the predicted Grade B Contour of the sta-*  
20                 *tion, the station may conduct a measurement of*  
21                 *the signal intensity of the subscriber's household*  
22                 *to determine whether the household is an*  
23                 *unserved household.*

1           “(ii) If the network station conducts a sig-  
2           nal intensity measurement under clause (i) and  
3           the measurement indicates that—

4                   “(I) the household is not an unserved  
5                   household, the station shall forward the re-  
6                   sults to the satellite carrier who shall, with-  
7                   in 60 days after receipt of the measurement,  
8                   terminate the service to the household of the  
9                   signal that is the subject of the challenge,  
10                  and shall reimburse the station for the costs  
11                  of the measurement within 60 days after re-  
12                  ceipt of the measurement results and a  
13                  statement of such costs; or

14                  “(II) the household is an unserved  
15                  household, the station shall pay the costs of  
16                  the measurement.

17           “(9) LOSER PAYS FOR SIGNAL INTENSITY MEAS-  
18           UREMENT; RECOVERY OF MEASUREMENT COSTS IN A  
19           CIVIL ACTION.—In any civil action filed relating to  
20           the eligibility of subscribing households as unserved  
21           households—

22                   “(A) a network station challenging such eli-  
23                   gibility shall reimburse the satellite carrier for  
24                   any signal intensity measurement that is con-  
25                   ducted by that carrier in response to a challenge

1           *by the network station and that establishes the*  
2           *household is an unserved household; and*

3           *“(B) a satellite carrier shall reimburse the*  
4           *network station challenging such eligibility for*  
5           *any signal intensity measurement that is con-*  
6           *ducted by that station and that establishes the*  
7           *household is not an unserved household.*

8           *“(10) INABILITY TO CONDUCT MEASUREMENT.—*  
9           *If a network station makes a reasonable attempt to*  
10          *conduct a site measurement of its signal at a sub-*  
11          *scriber’s household and is denied access for the pur-*  
12          *pose of conducting the measurement, the satellite car-*  
13          *rier shall within 60 days notice thereof, terminate*  
14          *service of the station’s network to that household.”.*

15          *(6) Subsection (d) is amended—*

16                 *(A) by amending paragraph (2) to read as*  
17                 *follows:*

18                 *“(2) NETWORK STATION.—The term ‘network*  
19                 *station’ means—*

20                         *“(A) a television broadcast station, includ-*  
21                         *ing any translator station or terrestrial satellite*  
22                         *station that rebroadcasts all or substantially all*  
23                         *of the programming broadcast by a network sta-*  
24                         *tion, that is owned or operated by, or affiliated*  
25                         *with, one or more of the television networks in*

1           *the United States which offer an interconnected*  
2           *program service on a regular basis for 15 or*  
3           *more hours per week to at least 25 of its affili-*  
4           *ated television licensees in 10 or more States; or*  
5           *“(B) a noncommercial educational broad-*  
6           *cast station (as defined in section 397 of the*  
7           *Communications Act of 1934).”;*

8           *(B) in paragraph (6) by inserting “and op-*  
9           *erates in the Fixed-Satellite Service under part*  
10          *25 of title 47 of the Code of Federal Regulations*  
11          *or the Direct Broadcast Satellite Service under*  
12          *part 100 of title 47 of the Code of Federal Regu-*  
13          *lations” after “Commission”; and*

14          *(C) by adding at the end the following:*

15          *“(11) LOCAL MARKET.—The term ‘local market’*  
16          *means the area encompassed within a network sta-*  
17          *tion’s predicted Grade B contour as that contour is*  
18          *defined by the Federal Communications Commis-*  
19          *sion.”.*

20    **SEC. 3. DEFINITIONS.**

21          *(a) CABLE SYSTEM.—Section 111(f) of title 17, United*  
22          *States Code, is amended in the paragraph relating to the*  
23          *definition of “cable system” by inserting “microwave,” after*  
24          *“wires, cables,”.*

1           (b) *LOCAL SERVICE AREA.*—Section 111(f) of title 17,  
2 *United States Code*, is amended in the paragraph relating  
3 to the definition of “local service area of a primary trans-  
4 mitter” by inserting after “April 15, 1976,” the following:  
5 “or such station’s television market as defined in section  
6 76.55(e) of title 47, *Code of Federal Regulations* (as in effect  
7 on September 18, 1993), or any modifications to such tele-  
8 vision market made, on or after September 18, 1993, pursu-  
9 ant to section 76.55(e) or 76.59 of title 47 of the *Code of*  
10 *Federal Regulations*,”.

11 **SEC. 4. TERMINATION.**

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

15           (b) *CONFORMING AMENDMENT.*—Section 207 of the  
16 *Satellite Home Viewer Act of 1988 (17 U.S.C. 119 note)*  
17 *is repealed*.

18 **SEC. 5. EFFECTIVE DATE.**

19           (a) *IN GENERAL.*—Except as provided in subsections  
20 (b) and (d), *this Act and the amendments made by this*  
21 *Act take effect on the date of the enactment of this Act*.

22           (b) *BURDEN OF PROOF PROVISIONS.*—The provisions  
23 of section 119(a)(5)(D) of title 17, *United States Code* (as  
24 added by section 2(2) of *this Act*) relating to the burden  
25 of proof of satellite carriers, shall take effect on January

1 1, 1997, with respect to civil actions relating to the eligi-  
2 bility of subscribers who subscribed to service as an  
3 unserved household before the date of the enactment of this  
4 Act.

5 (c) *TRANSITIONAL SIGNAL INTENSITY MEASUREMENT*  
6 *PROCEDURES.*—The provisions of section 119(a)(8) of title  
7 17, United States Code (as added by section 2(5) of this  
8 Act), relating to transitional signal intensity measure-  
9 ments, shall cease to be effective on December 31, 1996.

10 (d) *LOCAL SERVICE AREA OF A PRIMARY TRANSMIT-*  
11 *TER.*—The amendment made by section 3(b), relating to the  
12 definition of the local service area of a primary transmitter,  
13 shall take effect on July 1, 1994.