

***In the House of Representatives, U. S.,***

*September 20, 1994.*

*Resolved*, That the bill from the Senate (S. 2406) entitled “An Act to amend title 17, United States Code, relating to the definition of a local service area of a primary transmitter, and for other purposes”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

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

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

5 *Section 119 of title 17, United States Code, is amended*  
6 *as follows:*

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

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

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

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

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

1           (2) Subsection (a)(5) is amended by adding at  
2           the end the following:

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

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

10                   (A) in clause (i) by striking “12 cents” and  
11                   inserting “17.5 cents per subscriber in the case  
12                   of superstations not subject to syndicated exclu-  
13                   sivity under the regulations of the Federal Com-  
14                   munications Commission, and 14 cents per sub-  
15                   scriber in the case of superstations subject to  
16                   such syndicated exclusivity”; and

17                   (B) in clause (ii) by striking “3” and in-  
18                   serting “6”.

19           (4) Subsection (c) is amended—

20                   (A) in paragraph (1) by striking “December  
21                   31, 1992,”;

22                   (B) in paragraph (2)—

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

1           (ii) in subparagraph (D) by striking  
2           “December 31, 1994” and inserting “De-  
3           cember 31, 1999, or in accordance with the  
4           terms of the agreement, whichever is later”;  
5           and

6           (C) in paragraph (3)—

7           (i) in subparagraph (A) by striking  
8           “December 31, 1991” and inserting “Janu-  
9           ary 1, 1997”;

10           (ii) by amending subparagraph (D) to  
11           read as follows:

12           “(D) ESTABLISHMENT OF ROYALTY FEES.—  
13           In determining royalty fees under this para-  
14           graph, the Copyright Arbitration Panel shall es-  
15           tablish fees for the retransmission of network sta-  
16           tions and superstations that most clearly rep-  
17           resent the fair market value of secondary trans-  
18           missions. In determining the fair market value,  
19           the Panel shall base its decision on economic,  
20           competitive, and programming information pre-  
21           sented by the parties, including—

22           “(i) the competitive environment in  
23           which such programming is distributed, the  
24           cost for similar signals in similar private  
25           and compulsory license marketplaces, and

1           *any special features and conditions of the*  
 2           *retransmission marketplace;*

3           “(ii) *the economic impact of such fees*  
 4           *on copyright owners and satellite carriers;*  
 5           *and*

6           “(iii) *the impact on the continued*  
 7           *availability of secondary transmissions to*  
 8           *the public.”;*

9           (iii) *in subparagraph (E) by striking*  
 10          “60” *and inserting “180”; and*

11          (iv) *in subparagraph (G)—*

12                (I) *by striking “, or until Decem-*  
 13                *ber 31, 1994”; and*

14                (II) *by inserting “or July 1,*  
 15                *1997, whichever is later” after “section*  
 16                *802(g)”.*

17          (5) *Subsection (a) is amended—*

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

21                (B) *by adding at the end the following:*

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

24                “(A) *IN GENERAL.—Subject to subpara-*  
 25                *graph (C), upon a challenge by a network station*

1        *regarding whether a subscriber is an unserved*  
2        *household within the predicted Grade B Contour*  
3        *of the station, the satellite carrier shall, within*  
4        *60 days after the receipt of the challenge—*

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

11               *“(ii) conduct a measurement of the sig-*  
12               *nal intensity of the subscriber’s household to*  
13               *determine whether the household is an*  
14               *unserved household after giving reasonable*  
15               *notice to the network station of the satellite*  
16               *carrier’s intent to conduct the measurement.*

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 after giving*  
4           *reasonable notice to the satellite carrier of the*  
5           *network station's intent to conduct the measure-*  
6           *ment. If such measurement indicates that the*  
7           *household is not an unserved household, the car-*  
8           *rier shall, within 60 days after receipt of the*  
9           *measurement, terminate service to the household*  
10          *of the signal that is the subject of the challenge*  
11          *and within 30 days thereafter notify the network*  
12          *station that made the challenge that service has*  
13          *been terminated. The carrier shall also, within*  
14          *60 days after receipt of the measurement and a*  
15          *statement of the costs of the measurement, reim-*  
16          *burse the network station for the cost it incurred*  
17          *in conducting the measurement.*

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

1           to the satellite carrier of the network station's in-  
2           tent to conduct the measurement.

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

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

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

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

24                   “(A) a network station challenging such eli-  
25                   gibility shall, within 60 days after receipt of the

1           *measurement results and a statement of such*  
2           *costs, reimburse the satellite carrier for any sig-*  
3           *nal intensity measurement that is conducted by*  
4           *that carrier in response to a challenge by the*  
5           *network station and that establishes the house-*  
6           *hold is an unserved household; and*

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

14          “(10) *INABILITY TO CONDUCT MEASUREMENT.*—  
15          *If a network station makes a reasonable attempt to*  
16          *conduct a site measurement of its signal at a sub-*  
17          *scriber’s household and is denied access for the pur-*  
18          *pose of conducting the measurement, and is otherwise*  
19          *unable to conduct a measurement, the satellite carrier*  
20          *shall within 60 days notice thereof, terminate service*  
21          *of the station’s network to that household.”.*

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

23                  (A) *by amending paragraph (2) to read as*  
24                  *follows:*

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

3                   “(A) a television broadcast station, includ-  
4                   ing any translator station or terrestrial satellite  
5                   station that rebroadcasts all or substantially all  
6                   of the programming broadcast by a network sta-  
7                   tion, that is owned or operated by, or affiliated  
8                   with, one or more of the television networks in  
9                   the United States which offer an interconnected  
10                  program service on a regular basis for 15 or  
11                  more hours per week to at least 25 of its affili-  
12                  ated television licensees in 10 or more States; or

13                  “(B) a noncommercial educational broad-  
14                  cast station (as defined in section 397 of the  
15                  Communications Act of 1934).”;

16                  (B) in paragraph (6) by inserting “and op-  
17                  erates in the Fixed-Satellite Service under part  
18                  25 of title 47 of the Code of Federal Regulations  
19                  or the Direct Broadcast Satellite Service under  
20                  part 100 of title 47 of the Code of Federal Regu-  
21                  lations” after “Commission”; and

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

23                  “(11) *LOCAL MARKET*.—The term ‘local market’  
24                  means the area encompassed within a network sta-  
25                  tion’s predicted Grade B contour as that contour is

1       *defined by the Federal Communications Commis-*  
2       *sion.”.*

3       **SEC. 3. DEFINITIONS.**

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

8       (b) *LOCAL SERVICE AREA.*—Section 111(f) of title 17,  
9       United States Code, is amended in the paragraph relating  
10      to the definition of “local service area of a primary trans-  
11      mitter” by inserting after “April 15, 1976,” the following:  
12      “or such station’s television market as defined in section  
13      76.55(e) of title 47, Code of Federal Regulations (as in effect  
14      on September 18, 1993), or any modifications to such tele-  
15      vision market made, on or after September 18, 1993, pursu-  
16      ant to section 76.55(e) or 76.59 of title 47 of the Code of  
17      Federal Regulations,”.

18      **SEC. 4. TERMINATION.**

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

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

1 **SEC. 5. LIMITATION.**

2 *The amendments made by this section apply only to*  
3 *section 119 of title 17, United States Code.*

4 **SEC. 6. EFFECTIVE DATE.**

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

8 *(b) BURDEN OF PROOF PROVISIONS.—The provisions*  
9 *of section 119(a)(5)(D) of title 17, United States Code (as*  
10 *added by section 2(2) of this Act) relating to the burden*  
11 *of proof of satellite carriers, shall take effect on January*  
12 *1, 1997, with respect to civil actions relating to the eligi-*  
13 *bility of subscribers who subscribed to service as an*  
14 *unserved household before the date of the enactment of this*  
15 *Act.*

16 *(c) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT*  
17 *PROCEDURES.—The provisions of section 119(a)(8) of title*  
18 *17, United States Code (as added by section 2(5) of this*  
19 *Act), relating to transitional signal intensity measure-*  
20 *ments, shall cease to be effective on December 31, 1996.*

21 *(d) LOCAL SERVICE AREA OF A PRIMARY TRANSMIT-*  
22 *TER.—The amendment made by section 3(b), relating to the*

- 1 *definition of the local service area of a primary transmitter,*
- 2 *shall take effect on July 1, 1994.*

Attest:

*Clerk.*

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

**S. 2406**

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**AMENDMENT**