

Union Calendar No. 398

105TH CONGRESS
2^D SESSION

H. R. 2921

[Report No. 105-661, Parts I and II]

A BILL

To amend the Communications Act of 1934 to require the Federal Communications Commission to conduct an inquiry into the impediments to the development of competition in the market for multichannel video programming distribution.

SEPTEMBER 10, 1998

Reported from the Committee on the Judiciary with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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To amend the Communications Act of 1934 to require the Federal Communications Commission to conduct an inquiry into the impediments to the development of competition in the market for multichannel video programming distribution.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 7, 1997

Mr. TAUZIN (for himself, Mr. MARKEY, and Mr. BOUCHER) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY 30, 1998

Reported from the Committee on Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

JULY 30, 1998

Referral to the Committee on the Judiciary extended for a period ending not later than September 11, 1998

SEPTEMBER 10, 1998

Additional sponsors: Mr. WHITFIELD, Mr. SHIMKUS, Mr. NORWOOD, Mr. HALL of Texas, Mr. GREENWOOD, Mr. STEARNS, Mr. HILL, Mr. McHUGH, Mr. PACKARD, Mr. BONILLA, Mr. HINCHEY, Mr. JOHN, Mr. MILLER of Florida, Mr. BURR of North Carolina, Mr. DEAL of Georgia, Mr. SESSIONS, Mr. LaFALCE, Mr. RAHALL, Mr. WALSH, Mr. SKELTON, Mr. CALLAHAN, Mr. BARCIA, Mrs. CUBIN, Mr. BURTON of Indiana, Mr. STENHOLM, Mr. SMITH of Oregon, Mr. McINNIS, Mr. HAMILTON, Mrs. THURMAN, Mr. SPRATT, Mr. BISHOP, Mr. BOEHNER, Mr. BOSWELL, Mr. DeFAZIO, Mr. PETRI, Mr. NUSSLE, Mr. BALLENGER, Mr. LATHAM, Mr. JONES, Mr. THORNBERRY, Ms. DANNER, Mr. CRAPO, Mr. LARGENT, Mr. CLYBURN, Mr. LATOURETTE, Mr. BEREUTER, Mr. DICKEY, Mr. CAMP,

Mr. COBURN, Mr. FRANK of Massachusetts, Mr. DAN SCHAEFER of Colorado, Mr. POSHARD, Mr. KLINK, Mr. GILLMOR, Mr. BERRY, Mrs. EMERSON, Mr. BARRETT of Nebraska, Mr. TANNER, Mrs. KELLY, Mr. SOLOMON, Mr. PETERSON of Minnesota, Mr. STUMP, Mr. NETHERCUTT, Mr. BOYD, Mr. GOSS, Mr. TAYLOR of North Carolina, Mr. SKEEN, Mr. ROGAN, Mr. MALONEY of Connecticut, Mr. UPTON, Mr. YOUNG of Alaska, Mr. COMBEST, Mr. OXLEY, Mr. CHRISTENSEN, Mr. WISE, Mr. HUTCHINSON, Mrs. MORELLA, Mr. HORN, Mr. PARKER, Mrs. MYRICK, Ms. ESHOO, Mrs. CHENOWETH, Mr. KIND, Mr. CLEMENT, Mr. COOK, Mr. KNOLLENBERG, Mr. MORAN of Kansas, Mr. GEJDENSON, Mr. TRAFICANT, Mr. PETERSON of Pennsylvania, Mr. LEWIS of Kentucky, Mr. WOLF, Mr. HASTERT, Mr. GUTKNECHT, Mr. BILBRAY, Mr. PICKERING, Mr. HILLEARY, Mr. LUCAS of Oklahoma, Ms. STABENOW, Mr. MINGE, Mr. MCGOVERN, Mr. STUPAK, Mr. SHAYS, Mr. MURTHA, Mr. KENNEDY of Massachusetts, Mr. GOODLING, Mrs. LINDA SMITH of Washington, Mr. CANNON, Mr. BOEHLERT, Mr. GILCHREST, Mr. WELDON of Pennsylvania, Mr. HEFNER, Mr. DAVIS of Florida, Mr. COLLINS, Mr. LANTOS, Mr. ETHERIDGE, Mrs. FOWLER, Mr. TURNER, Mr. SANDLIN, Mr. QUINN, Mr. NEY, Mr. HASTINGS of Washington, Mr. BATEMAN, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. RIVERS, Mr. ADERHOLT, Mr. KILDEE, Mr. SMITH of Texas, Mr. REYES, Mr. ENSIGN, Mr. OLVER, Mr. EWING, Mr. PICKETT, Mr. HAYWORTH, Mr. STRICKLAND, Mr. SAM JOHNSON of Texas, Mr. NEAL of Massachusetts, Mr. MILLER of California, Mr. GILMAN, Mr. THOMPSON, Mr. HULSHOF, Mr. GANSKE, Mr. KLUG, Mr. MCINTYRE, Mr. BLUNT, Mr. ENGEL, Mr. CHAMBLISS, Mr. SANDERS, Ms. KAPTUR, Mr. LAMPSON, Mr. FARR of California, Mr. POMEROY, Ms. SLAUGHTER, Mr. DEUTSCH, and Mr. EVANS

SEPTEMBER 10, 1998

Reported from the Committee on the Judiciary with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part in black brackets and insert the part printed in boldface roman]

A BILL

To amend the Communications Act of 1934 to require the Federal Communications Commission to conduct an inquiry into the impediments to the development of competition in the market for multichannel video programming distribution.

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 “Multichannel Video
5 Competition and Consumer Protection Act of 1997”.

6 **SEC. 2. INQUIRY REQUIRED.**

7 Section ~~623~~ of the Communications Act of 1934 (47
8 U.S.C. ~~623~~) is amended by adding at the end the following
9 new subsection:

10 “(o) INQUIRY ON IMPEDIMENTS TO DEVELOPMENT
11 OF EFFECTIVE COMPETITION.—

12 “(1) INQUIRY REQUIRED.—Within 30 days
13 after the date of enactment of this subsection, the
14 Commission shall initiate an inquiry on the extent to
15 which the differential fee decision constitutes an im-
16 pediment to the development of effective competition
17 in the market for multichannel video programming
18 distribution from multichannel video programming
19 distributors described in subsection (l)(1)(B).

20 “(2) REPORT REQUIRED.—Within 90 days after
21 the date of enactment of this subsection, the Com-
22 mission shall submit a report on the results of the
23 inquiry to the Committee on Commerce and the
24 Committee on the Judiciary of the House of Rep-
25 resentatives and the Committee on Commerce,

1 Science, and Transportation and the Committee on
2 the Judiciary of the Senate.

3 “(3) RULEMAKING.—Within 180 days after the
4 date of enactment of this subsection, the Commis-
5 sion shall complete any actions necessary (including
6 any reconsideration) to make such changes as the
7 Commission may determine to be necessary to its
8 regulations on the basis of the inquiry required by
9 this subsection.

10 “(4) DEFINITION.—For the purposes of this
11 subsection, the term ‘differential fee decision’ means
12 the decision of the Librarian of Congress on October
13 27, 1997, relating to the per subscriber per month
14 royalty fee for the retransmission of superstation
15 and distant network signals by direct-to-home sat-
16 ellite service providers.”.

17 **SEC. 3. DIRECT-TO-HOME SATELLITE PIRACY PREVENTION.**

18 Section 705(d)(6) of the Communications Act of
19 1934 (47 U.S.C. 605(d)(6)) is amended by inserting “or
20 direct-to-home satellite services (as defined in section
21 303(v))” after “satellite cable programming”.

22 **SEC. 4. STAY PENDING COMPLETION OF INQUIRY.**

23 Until 120 days after the submission of the report re-
24 quired by section 623(o) of the Communications Act of
25 1934 (as added by section 2 of this Act), no officer or

1 employee of the United States shall take any action to im-
2 plement or enforce, and no obligation or liability shall ac-
3 crue pursuant to, the differential fee decision described in
4 paragraph (4) of such section.

5 **[SECTION 1. SHORT TITLE.**

6 **[***This Act may be cited as the “Multichannel Video*
7 *Competition and Consumer Protection Act of 1998”.*

8 **[SEC. 2. INQUIRY REQUIRED.**

9 **[***Section 623 of the Communications Act of 1934 (47*
10 *U.S.C. 543) is amended by adding at the end the following*
11 *new subsection:*

12 **[***“(o) INQUIRY ON IMPEDIMENTS TO DEVELOPMENT OF*
13 *EFFECTIVE COMPETITION.—*

14 **[***“(1) INQUIRY REQUIRED.—Within 30 days*
15 *after the date of enactment of this subsection, the*
16 *Commission shall initiate an inquiry on the extent to*
17 *which the differential fee decision constitutes an im-*
18 *pediment to the development of effective competition*
19 *in the market for multichannel video programming*
20 *distribution from multichannel video programming*
21 *distributors described in subsection (l)(1)(B).*

22 **[***“(2) REPORT REQUIRED.—Within 90 days*
23 *after the date of enactment of this subsection, the*
24 *Commission shall submit a report on the results of the*
25 *inquiry to the Committee on Commerce and the Com-*

1 *mittee on the Judiciary of the House of Representa-*
2 *tives and the Committee on Commerce, Science, and*
3 *Transportation and the Committee on the Judiciary*
4 *of the Senate.*

5 【“(3) *RULEMAKING.*—*Within 180 days after the*
6 *date of enactment of this subsection, the Commission*
7 *shall complete any actions necessary (including any*
8 *reconsideration) to make such changes as the Commis-*
9 *sion may determine to be necessary to its regulations*
10 *on the basis of the inquiry required by this subsection.*】

11 【“(4) *DEFINITION.*—*For the purposes of this*
12 *subsection, the term ‘differential fee decision’ means*
13 *the decision of the Librarian of Congress on October*
14 *27, 1997, relating to the per subscriber per month*
15 *royalty fee for the retransmission of superstation and*
16 *distant network signals by direct-to-home satellite*
17 *service providers.’.】*

18 **SECTION 1. SHORT TITLE.**

19 **This Act may be cited as the “Copyright**
20 **Compulsory License Improvement Act of**
21 **1998.”**

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

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

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

10 **“(a) SECONDARY TRANSMISSIONS OF TELE-**
11 **VISION BROADCAST STATIONS BY SATELLITE CAR-**
12 **RIERS.—A secondary transmission into the**
13 **local market of a television broadcast station**
14 **of a primary transmission made by that sta-**
15 **tion and embodying the performance or dis-**
16 **play of a work shall be subject to statutory li-**
17 **censing under this section if—**

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

20 **“(2) the secondary transmission is**
21 **permissible under the rules, regulations,**
22 **or authorizations of the Federal Commu-**
23 **nications Commission; and**

24 **“(3) the satellite carrier makes a di-**
25 **rect or indirect charge for the secondary**
26 **transmission to—**

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

3 “(B) a distributor that has con-
4 tracted with the satellite carrier for
5 direct or indirect delivery of the sec-
6 ondary transmission to the public.

7 “(b) REPORTING REQUIREMENTS.—

8 “(1) INITIAL LISTS.—A satellite carrier
9 that makes secondary transmissions of a
10 primary transmission made by a network
11 station pursuant to subsection (a) shall,
12 within 90 days after commencing such
13 secondary transmissions, submit to the
14 network that owns or is affiliated with
15 the network station a list identifying (by
16 name and street address, including coun-
17 ty and ZIP code) all subscribers to which
18 the satellite carrier currently makes sec-
19 ondary transmissions of that primary
20 transmission.

21 “(2) SUBSEQUENT LISTS.—After the list
22 is submitted under paragraph (1), the sat-
23 ellite carrier shall, on the 15th of each
24 month, submit to the network a list iden-
25 tifying (by name and street address, in-

1 including county and zip code) any sub-
2 scribers who have been added or dropped
3 as subscribers since the last submission
4 under this subsection.

5 “(3) USE OF SUBSCRIBER INFORMA-
6 TION.—Subscriber information submitted
7 by a satellite carrier under this sub-
8 section may be used only for the pur-
9 poses of monitoring compliance by the
10 satellite carrier with this section.

11 “(4) REQUIREMENTS OF NETWORKS.—The
12 submission requirements of this sub-
13 section shall apply to a satellite carrier
14 only if the network to whom the submis-
15 sions are to be made places on file with
16 the Register of Copyrights a document
17 identifying the name and address of the
18 person to whom such submissions are to
19 be made. The Register shall maintain for
20 public inspection a file of all such docu-
21 ments.

22 “(c) NO ROYALTY FEE REQUIRED.—A sat-
23 ellite carrier whose secondary transmissions
24 are subject to statutory licensing under sub-
25 section (a) shall have no obligation to pay roy-

1 alties under this title for such secondary
2 transmissions.

3 “(d) **NONCOMPLIANCE WITH REPORTING RE-**
4 **QUIREMENTS.—**Notwithstanding subsection (a),
5 the willful or repeated secondary trans-
6 mission to the public by a satellite carrier
7 into the local market of a television broadcast
8 station of a primary transmission made by
9 that station and embodying a performance or
10 display of a work is actionable as an act of in-
11 fringement under section 501, and is fully sub-
12 ject to the remedies provided under sections
13 502 through 506 and 509, if the satellite car-
14 rier has not complied with the reporting re-
15 quirements of subsection (b).

16 “(e) **WILLFUL ALTERATIONS.—**Notwith-
17 standing subsection (a), the secondary trans-
18 mission to the public by a satellite carrier
19 into the local market of a television broadcast
20 station of a primary transmission made by
21 that television broadcast station and embody-
22 ing a performance or display of a work is ac-
23 tionable as an act of infringement under sec-
24 tion 501, and is fully subject to the remedies
25 provided by sections 502 through 506 and sec-

1 tions 509 and 510, if the content of the par-
2 ticular program in which the performance or
3 display is embodied, or any commercial ad-
4 vertising or station announcement transmit-
5 ted by the primary transmitter during, or im-
6 mediately before or after, the transmission of
7 such program, is in any way willfully altered
8 by the satellite carrier through changes, dele-
9 tions, or additions, or is combined with pro-
10 gramming from any other broadcast signal.

11 “(f) VIOLATION OF TERRITORIAL RESTRIC-
12 TIONS ON STATUTORY LICENSE FOR TELEVISION
13 BROADCAST STATIONS.—

14 “(1) INDIVIDUAL VIOLATIONS.—The will-
15 ful or repeated secondary transmission to
16 the public by a satellite carrier of a pri-
17 mary transmission made by a television
18 broadcast station and embodying a per-
19 formance or display of a work to a sub-
20 scriber who does not reside in that sta-
21 tion’s local market, and is not subject to
22 statutory licensing under section 119, is
23 actionable as an act on infringement
24 under section 501 and is fully subject to

1 the remedies provided by sections 502
2 through 506 and 509, except that—

3 “(A) no damages shall be awarded
4 for such act of infringement if the
5 satellite carrier took corrective ac-
6 tion by promptly withdrawing service
7 from the ineligible subscriber; and

8 “(B) any statutory damages shall
9 not exceed \$5 for such subscriber for
10 each month during which the viola-
11 tion occurred.

12 “(2) PATTERN OF VIOLATIONS.—If a sat-
13 ellite carrier engages in a willful or re-
14 peated pattern or practice of secondarily
15 transmitting to the public a primary
16 transmission made by a television broad-
17 cast station and embodying a perform-
18 ance or display of a work to subscribers
19 who do not reside in that station’s local
20 market, and are not subject to statutory
21 licensing under section 119, then in addi-
22 tion to the remedies set forth in para-
23 graph (1)—

24 “(A) if the pattern or practice has
25 been carried out on a substantially

1 **nationwide basis, the court shall**
2 **order a permanent injunction barring**
3 **the secondary transmission by the**
4 **satellite carrier of the primary trans-**
5 **missions of any television broadcast**
6 **station, and the court may order stat-**
7 **utory damages not exceeding \$250,000**
8 **for each 6-month period during which**
9 **the pattern or practice was carried**
10 **out; and**

11 **“(B) if the pattern or practice has**
12 **been carried out on a local or re-**
13 **gional basis with respect to more**
14 **than one television broadcast station,**
15 **the court shall order a permanent in-**
16 **junction barring the secondary trans-**
17 **mission in that locality or region by**
18 **the satellite carrier of the primary**
19 **transmissions of any television broad-**
20 **cast station, and the court may order**
21 **statutory damages not exceeding**
22 **\$250,000 for each 6-month period dur-**
23 **ing which the pattern or practice was**
24 **carried out.**

1 “(g) **BURDEN OF PROOF.**—In any action
2 brought under subsection (d), (e) or (f), the
3 satellite carrier shall have the burden of prov-
4 ing that its secondary transmission of a pri-
5 mary transmission by a television broadcast
6 station is made only to subscribers located
7 within that station’s local market.

8 “(h) **GEOGRAPHIC LIMITATION ON SECOND-**
9 **ARY TRANSMISSIONS.**—The statutory license
10 created by this section shall apply only to sec-
11 ondary transmissions to locations in the
12 United States.

13 “(i) **EXCLUSIVITY WITH RESPECT TO SECOND-**
14 **ARY TRANSMISSIONS OF BROADCAST STATIONS BY**
15 **SATELLITE TO MEMBERS OF THE PUBLIC.**—No
16 provision of section 111 or any other law
17 (other than this section and section 119) shall
18 be construed to contain any authorization, ex-
19 emption, or license through which secondary
20 transmissions by satellite carriers of pro-
21 gramming contained in a primary trans-
22 mission made by a television broadcast sta-
23 tion may be made without obtaining the con-
24 sent of the copyright owner.

1 **“(j) STATUTORY LICENSE CONTINGENT ON**
2 **COMPLIANCE WITH SATELLITE MUST-CARRY RE-**
3 **QUIREMENTS.—Notwithstanding subsection (a),**
4 **the willful or repeated secondary trans-**
5 **mission to the public into the local market of**
6 **a television broadcast station by a satellite**
7 **carrier of a primary transmission made by**
8 **that station and embodying a performance or**
9 **display of a work is actionable as an act of in-**
10 **fringement under section 501, and is fully sub-**
11 **ject to the remedies provided by sections 502**
12 **through 506 and 509, if at the time of such**
13 **transmission the satellite carrier is not in**
14 **compliance with the requirements of sub-**
15 **section (k) to carry television stations.**

16 **“(k) CARRIAGE OBLIGATIONS.—**

17 **“(1) IN GENERAL.—Each satellite car-**
18 **rier providing secondary transmissions**
19 **to subscribers located within the local**
20 **market of a television broadcast station**
21 **of a primary transmission made by that**
22 **station shall carry upon request all tele-**
23 **vision broadcast stations located within**
24 **that local market, subject to subsection**
25 **(l), except that the carriage obligations of**

1 **this subsection shall apply only to sat-**
2 **ellite carriers that retransmit the signals**
3 **of broadcast television stations pursuant**
4 **to the statutory license under this sec-**
5 **tion. Carriage of additional broadcast**
6 **stations within that local market shall be**
7 **at the discretion of the satellite carrier,**
8 **subject to subsection (1). The satellite car-**
9 **rier shall carry the entire signal of each**
10 **local television station carried pursuant**
11 **to this subsection.**

12 **“(2) DUPLICATION NOT REQUIRED.—Not-**
13 **withstanding paragraph (1), a satellite**
14 **carrier shall not be required to carry**
15 **upon request the signal of any local tele-**
16 **vision broadcast station that substan-**
17 **tially duplicates the signal of another tel-**
18 **evision broadcast station within the same**
19 **local market which is secondarily trans-**
20 **mitted by the satellite carrier, or to carry**
21 **upon request the signals of more than**
22 **one local television broadcast station in a**
23 **single local market that is affiliated with**
24 **a particular broadcast network (as the**

1 term ‘broadcast network’ is defined by
2 the Register of Copyrights by regulation).

3 “(3) CARRIAGE OF ALL LOCAL TELE-
4 VISION STATIONS ON CONTIGUOUS CHAN-
5 NELS.—All local television broadcast sta-
6 tions retransmitted by a satellite carrier
7 to subscribers in the stations’ local mar-
8 kets shall be made available to subscrib-
9 ers in their local markets on contiguous
10 channels and in a nondiscriminatory
11 manner on any navigational device, on-
12 screen program guide, or menu.

13 “(4) COMPENSATION FOR CARRIAGE.—A
14 satellite carrier shall not accept or re-
15 quest monetary payment or other valu-
16 able consideration in exchange either for
17 carriage of local television broadcast sta-
18 tions in fulfillment of the requirements of
19 this subsection or for channel positioning
20 rights provided to such stations under
21 this subsection, except that any such sta-
22 tion may be required to bear the costs as-
23 sociated with delivering a good quality
24 signal to the designated local receive fa-
25 cility of the satellite carrier.

1 **“(5) REMEDIES.—**

2 **“(A) COMPLAINTS BY BROADCAST**
3 **STATIONS.—Whenever a local tele-**
4 **vision broadcast station believes that**
5 **a satellite carrier has failed to meet**
6 **its obligations under this subsection,**
7 **such station shall notify the carrier,**
8 **in writing, of the alleged failure and**
9 **identify its reasons for believing that**
10 **the satellite carrier is obligated to**
11 **carry upon request the signal of such**
12 **station or has otherwise failed to**
13 **comply with other requirements of**
14 **this subsection. The satellite carrier**
15 **shall, within 30 days of such written**
16 **notification, respond in writing to**
17 **such notification and either begin**
18 **carrying the signal of such station in**
19 **accordance with the terms requested**
20 **or state its reasons for believing that**
21 **it is not obligated to carry such signal**
22 **or is in compliance with other re-**
23 **quirements of this subsection, as the**
24 **case may be. A local television broad-**
25 **cast station that is denied carriage in**

1 **accordance with this subsection by a**
2 **satellite carrier or is otherwise**
3 **harmed by a response by a satellite**
4 **carrier that it is in compliance with**
5 **other requirements of this subsection**
6 **may obtain review of such denial or**
7 **response by filing a complaint with**
8 **the Register of Copyrights. Such com-**
9 **plaint shall allege the manner in**
10 **which such satellite carrier has failed**
11 **to meet its obligations and the basis**
12 **for such allegations.**

13 **“(B) OPPORTUNITY TO RESPOND.—**
14 **The Register shall afford the satellite**
15 **carrier against which a complaint is**
16 **filed under subparagraph (A) an op-**
17 **portunity to present data and argu-**
18 **ments to establish that there has**
19 **been no failure to meet its obligations**
20 **under this subsection.**

21 **“(C) REMEDIAL ACTIONS; DISMIS-**
22 **SAL.—Within 120 days after the date a**
23 **complaint is filed under subpara-**
24 **graph (A), the Register shall deter-**
25 **mine whether the satellite carrier has**

1 met its obligations under this chap-
2 ter. If the Register determines that
3 the satellite carrier has failed to meet
4 such obligations, the Register shall
5 order the satellite carrier, in the case
6 of an obligation to carry a station, to
7 begin carriage of the station and to
8 continue such carriage for at least 12
9 months, or, in the case of the failure
10 to meet other obligations under this
11 subsection, shall take other appro-
12 priate remedial action. If the Register
13 determines that the satellite carrier
14 has fully met the requirements of this
15 chapter, the Register shall dismiss
16 the complaint.

17 “(6) REGULATIONS BY REGISTER OF
18 COPYRIGHTS.—Within 180 days after the
19 effective date of this section, the Register
20 of Copyrights shall, following a rule-
21 making proceeding, issue regulations im-
22 plementing the requirements imposed by
23 this subsection.

24 “(1) RETRANSMISSION CONSENT.—

1 **“(1) RETRANSMISSION CONSENT RE-**
2 **QUIRED.—No satellite carrier shall re-**
3 **transmit the signal of a television broad-**
4 **cast station, or any part thereof, except—**

5 **“(A) with the express authority of**
6 **the station; or**

7 **“(B) pursuant to subsection (k) of**
8 **this section, in the case of a station**
9 **electing, in accordance with this sub-**
10 **section, to assert the right to carriage**
11 **under such subsection.**

12 **“(2) EXCLUSIONS.—The provisions of**
13 **this subsection shall not apply to—**

14 **“(A) retransmission of the signal**
15 **of a noncommercial television broad-**
16 **cast station;**

17 **“(B) retransmission of the signal**
18 **of a superstation by a satellite carrier**
19 **to subscribers for private home view-**
20 **ing if the originating station was a**
21 **superstation on May 1, 1991, and on**
22 **December 31, 1997, such station was a**
23 **network station and its signal was re-**
24 **transmitted by a satellite carrier di-**

1 rectly to at least 500,000 subscribers
2 for private home viewing; or

3 “(C) retransmission of the signal
4 of a television broadcast station that
5 is owned or operated by, or affiliated
6 with, a broadcasting network directly
7 to a home satellite antenna, if the
8 household receiving the signal is an
9 unserved household.

10 “(3) PROMULGATION OF REGULATIONS.—
11 Within 45 days after the effective date of
12 the Copyright Compulsory License Im-
13 provement Act of 1998, the Register of
14 Copyrights shall commence a rulemaking
15 proceeding to promulgate regulations
16 governing the exercise by television
17 broadcast stations of the right to grant
18 retransmission consent under this sub-
19 section, and such other regulations as are
20 necessary to administer the limitation
21 contained in paragraph (2). Such regula-
22 tions shall establish election time periods
23 that correspond with those regulations
24 adopted under subparagraph (B) of sec-
25 tion 325(b)(3) of the Communications Act

1 of 1934. The rulemaking shall be com-
2 pleted within 180 days after the effective
3 date of the Copyright Compulsory Li-
4 cense Improvement Act of 1998.

5 “(m) DEFINITIONS.— In this section:

6 “(1) DESIGNATED MARKET AREA.—The
7 term ‘designated market area’ means a
8 designated market area, as determined
9 by the Nielsen Media Research and pub-
10 lished in the DMA Market and Demo-
11 graphic Report.

12 “(2) DISTRIBUTOR.—The term ‘distribu-
13 tor’ means an entity which contracts to
14 distribute secondary transmissions from
15 a satellite carrier and, either as a single
16 channel or in a package with other pro-
17 gramming, provides the secondary trans-
18 mission either directly to individual sub-
19 scribers or indirectly through other pro-
20 gram distribution entities.

21 “(3) LOCAL MARKET.—(A) In the case of
22 both commercial and noncommercial tel-
23 evision broadcast stations, the term ‘local
24 market’ means the designated market
25 area in which a station is located.

1 **“(B) In the case of a commercial tele-**
2 **vision broadcast station, all commercial**
3 **television broadcast stations licensed to a**
4 **community within the same designated**
5 **market area are within the same local**
6 **market.**

7 **“(C) Following a written request, the**
8 **Register of Copyrights may, with respect**
9 **to a particular local market, include addi-**
10 **tional commercial television broadcast**
11 **stations to better effectuate the purposes**
12 **of this section. In considering such a re-**
13 **quest, the Register shall primarily con-**
14 **sider evidence of historic viewing pat-**
15 **terns within the local market concerned.**
16 **The Register may determine that particu-**
17 **lar commercial television broadcast sta-**
18 **tions serve more than one local market**

19 **“(D) In the case of a noncommercial**
20 **educational television broadcast station,**
21 **the local market includes any station that**
22 **is licensed to a community within the**
23 **same designated market area as the non-**
24 **commercial educational television broad-**
25 **cast station.**

1 **“(4) LOCAL RECEIVE FACILITY.—**The
2 **term ‘local receive facility’ means the re-**
3 **ception point in the local market of a tel-**
4 **evision broadcast station or in a market**
5 **contiguous to the local market of a tele-**
6 **vision broadcast station at which a sat-**
7 **ellite carrier initially receives the signal**
8 **of the station for purposes of trans-**
9 **mission of such signals to the facility**
10 **which uplinks the signals to the carrier’s**
11 **satellites for secondary transmission to**
12 **the satellite carrier’s subscribers. The**
13 **designation of a local receive facility by a**
14 **satellite carrier shall not be used to un-**
15 **dermine or evade the carriage require-**
16 **ments imposed by this chapter.**

17 **“(5) SUBSCRIBER.—**The term ‘sub-
18 **scriber’ means an entity that receives a**
19 **secondary transmission service by means**
20 **of a secondary transmission from a sat-**
21 **ellite and pays a fee for the service, di-**
22 **rectly or indirectly, to the satellite car-**
23 **rier or to a distributor.**

24 **“(6) TELEVISION BROADCAST STATION.—**
25 **The term ‘television broadcast station’**

1 means an over-the-air commercial or non-
2 commercial television broadcast station
3 licensed by the Federal Communications
4 Commission under subpart E of part 73 of
5 title 47, Code of Federal Regulations, as
6 such regulations are in effect on August
7 4, 1998, and as they may be amended
8 thereafter.

9 “(7) SATELLITE CARRIER, ETC.—The
10 terms ‘private home viewing’, ‘satellite
11 carrier’, ‘secondary transmission’, ‘super-
12 station’, and ‘unserved household’ have
13 the meanings given such terms in section
14 119(d).”.

15 (b) STANDING TO SUE FOR SATELLITE CAR-
16 RIER FAILURE TO CARRY ALL LOCAL TELEVISION
17 BROADCAST STATIONS.—Section 501 of title 17,
18 United States Code, is amended by adding at
19 the end the following:

20 “(f) With respect to any satellite carrier
21 making a secondary transmission of a pri-
22 mary transmission made by a television
23 broadcast station to subscribers located with-
24 in the local market of such station that fails
25 to carry all television broadcast stations lo-

1 cated within that market as required by sec-
2 tion 122, any station that has not given re-
3 transmission consent and is improperly de-
4 nied carriage shall have standing to bring a
5 copyright infringement action with respect to
6 the unauthorized performance or display of
7 works embodied in the secondary trans-
8 mission.

9 “(g) With respect to any secondary trans-
10 mission that is made by a satellite carrier of
11 a primary transmission embodying the per-
12 formance or display of a work and that is ac-
13 tionable as an act of infringement under sec-
14 tion 122, a television broadcast station hold-
15 ing a copyright or other license to transmit or
16 perform the same version of that work shall,
17 for purposes of subsection (b) of this section,
18 be treated as a legal or beneficial owner of
19 that work if such secondary transmission oc-
20 curs within the local market of that station.
21 For purposes of this subsection and sub-
22 section (f), the definitions contained in sec-
23 tion 122 of this title apply.”.

24 (c) ADDITIONAL REMEDIES FOR FAILURE BY
25 SATELLITE CARRIERS TO CARRY ALL LOCAL TEL-

1 **TELEVISION BROADCAST STATIONS.—Chapter 5 of**
2 **title 17, United States Code, is amended by**
3 **adding at the end the following:**

4 **“§ 512. Remedies for failure by satellite carriers to**
5 **carry all local broadcast stations**

6 **“(a) In any action filed pursuant to section**
7 **122(j), the following remedies shall be avail-**
8 **able:**

9 **“(1) If the action is brought by a**
10 **party identified in subsection (b) of sec-**
11 **tion 501, the remedies provided by sec-**
12 **tions 502 through 505, and the remedy**
13 **provided by subsection (b) of this section.**

14 **“(2) If an action is brought by a tele-**
15 **vision broadcast station identified in sub-**
16 **section (f) of section 501, the remedies**
17 **provided by sections 502 and 505, to-**
18 **gether with any actual damages suffered**
19 **by such station as a result of the infringe-**
20 **ment, and the remedy provided by sub-**
21 **section (b) of this section.**

22 **“(b) In any action filed pursuant to sec-**
23 **tion 122(j) of this title in which carriage of a**
24 **television broadcast station has been improv-**
25 **erly denied, the court shall decree that the**

1 **satellite carrier is deprived of the statutory li-**
2 **cense under section 122 of this title until car-**
3 **riage of such station has been restored.”.**

4 **(d) TECHNICAL AND CONFORMING AMEND-**
5 **MENTS.—(1) The table of sections for chapter**
6 **1 of title 17, United States Code, is amended**
7 **by adding after the item relating to section**
8 **121 the following:**

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

9 **(2) The table of sections for chapter 5 of**
10 **title 17, United States Code, is amended by**
11 **adding after the item relating to section 511**
12 **the following:**

**“512. Remedies for failure by satellite carriers to carry all local
broadcast stations.”.**

13 **SEC. 3. EXTENSION OF APPLICABILITY OF SECTION 119 OF**
14 **TITLE 17, UNITED STATES CODE.**

15 **Section 4(a) of the Satellite Home Viewer**
16 **Act of 1994 (17 U.S.C. 119 note; Public Law**
17 **103–369) is amended by striking “December**
18 **31, 1999” and inserting “December 31, 2004”.**

19 **SEC. 4. UNSERVED HOUSEHOLDS.**

20 **Section 119(d)(10) of title 17, United States**
21 **Code, is amended to read as follows:**

22 **“(10) UNSERVED HOUSEHOLD.—The**
23 **term ‘unserved household’, with respect**

1 to a particular television network, means
2 a household that cannot receive, through
3 the use of a conventional outdoor rooftop
4 receiving antenna, an over-the-air signal
5 of grade B intensity (as defined by the
6 Federal Communications Commission) of
7 a primary network station affiliated with
8 that network.”.

9 SEC. 5. PUBLIC BROADCASTING SERVICE SATELLITE FEED;
10 APPLICATION OF FEDERAL COMMUNICA-
11 TIONS COMMISSION REGULATIONS.

12 (a) SECONDARY TRANSMISSIONS.—Section
13 119(a) of title 17, United States Code, is
14 amended—

15 (1) in paragraph (1)—

16 (A) by striking the paragraph
17 heading and inserting “(1) SUPERSTA-
18 TIONS AND PBS SATELLITE FEED.—”;

19 (B) by inserting “or by the Public
20 Broadcasting Service satellite feed”
21 after “superstation”; and

22 (C) by inserting “is permissible
23 under the rules, regulations, or au-
24 thorizations of the Federal Commu-
25 nications Commission,” after “sat-

1 **ellite carrier to the public for private**
2 **home viewing,”; and**

3 **(2) in paragraph (2), by inserting “is**
4 **permissible under the rules, regulations,**
5 **or authorizations of the Federal Commu-**
6 **nications Commission,” after “satellite**
7 **carrier to the public for private home**
8 **viewing,”.**

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

12 **“(12) PUBLIC BROADCASTING SERVICE**
13 **SATELLITE FEED.—The term ‘Public Broad-**
14 **casting Service satellite feed’ means the**
15 **national satellite feed distributed by the**
16 **Public Broadcasting Service, consisting**
17 **of educational and informational pro-**
18 **gramming intended for private home**
19 **viewing, to which the Public Broadcast-**
20 **ing Service holds national terrestrial**
21 **broadcast rights.”.**

22 **SEC. 6. TEMPORARY STAY OF SATELLITE ROYALTY FEE IN-**
23 **CREASE.**

24 **Notwithstanding any other provision of**
25 **law, the Copyright Office shall not before De-**

1 **ember 31, 1999, implement, enforce, collect,**
2 **or award copyright royalty fees pursuant to**
3 **the decision of the Librarian of Congress on**
4 **October 28, 1997, which established a royalty**
5 **fee of \$0.27 per subscriber per month for the**
6 **retransmission of distant broadcast signals by**
7 **satellite carriers, and no obligation or liabil-**
8 **ity for copyright royalty fees shall accrue be-**
9 **fore December 31, 1999, pursuant to that deci-**
10 **sion. This section shall not affect implement-**
11 **ing, enforcing, collecting, or awarding copy-**
12 **right royalty fees pursuant to the royalty fee**
13 **structure affected by the decision, as it ex-**
14 **isted prior to October 28, 1997.**

15 **SEC. [3.] 7. DIRECT-TO-HOME SATELLITE PIRACY PREVEN-**
16 **TION.**

17 *Section 705(d)(6) of the Communications Act of 1934*
18 *(47 U.S.C. 605(d)(6)) is amended by inserting “or direct-*
19 *to-home satellite services (as defined in section 303(v))”*
20 *after “satellite cable programming”.*

21 **[SEC. 4. STAY PENDING COMPLETION OF INQUIRY.**

22 **[***During the period beginning January 1, 1998, and*
23 *ending 275 days after the submission of the report required*
24 *by section 623(o) of the Communications Act of 1934 (as*
25 *added by section 2 of this Act), no officer or employee of*

1 *the United States shall take any action to implement or*
2 *enforce, and no obligation or liability shall accrue pursuant*
3 *to, the differential fee decision described in paragraph (4)*
4 *of such section.】*

Amend the title so as to read “A bill to provide for statutory copyright licensing of secondary transmissions by satellite carriers of primary transmissions of television broadcast stations within the local markets of such stations, and for other purposes.”.