

105TH CONGRESS  
1ST SESSION

# S. 1422

To amend the Communications Act of 1934 to promote competition in the market for delivery of multichannel video programming and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. MCCAIN (for himself, Mr. BURNS, Mr. CONRAD, and Mr. DORGAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Communications Act of 1934 to promote competition in the market for delivery of multichannel video programming and for other purposes.

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 “Federal Communica-  
5 tions Commission Satellite Carrier Oversight Act”.

6 **SEC. 2. FINDINGS.**

7 (a) The Congress finds that:

8 (1) Signal theft represents a serious threat to  
9 direct-to-home satellite television. In the Tele-

1 communications Act of 1996, Congress confirmed  
2 the applicability of penalties for unauthorized  
3 decryption of direct-to-home satellite services. Never-  
4 theless, concerns remain about civil liability for such  
5 unauthorized decryption.

6 (2) In view of the desire to establish competi-  
7 tion to the cable television industry, Congress au-  
8 thorized consumers to utilize direct-to-home satellite  
9 systems for viewing video programming through the  
10 Cable Communications Policy Act of 1984.

11 (3) Congress found in the Cable Television  
12 Consumer Protection and Competition Act of 1992  
13 that without the presence of another multichannel  
14 video programming distributor, a cable television op-  
15 erator faces no local competition and that the result  
16 is undue market power for the cable operator as  
17 compared to that of consumers and other video pro-  
18 grammers.

19 (4) The Federal Communications Commission,  
20 under the Cable Television Consumer Protection and  
21 Competition Act of 1992, has the responsibility for  
22 reporting annually to the Congress on the state of  
23 competition in the market for delivery of multi-  
24 channel video programming.

1           (5) In the Cable Television Consumer Protec-  
2           tion and Competition Act of 1992, Congress stated  
3           its policy of promoting the availability to the public  
4           of a diversity of views and information through cable  
5           television and other video distribution media.

6           (6) Direct-to-home satellite television service is  
7           the fastest growing multichannel video programming  
8           service with approximately 8 million households sub-  
9           scribing to video programming delivered by satellite  
10          carriers.

11          (7) Direct-to-home satellite television service is  
12          the service that most likely can provide effective  
13          competition to cable television service.

14          (8) Through the compulsory copyright license  
15          created by Section 119 of the Satellite Home Viewer  
16          Act of 1988, satellite carriers have paid a royalty fee  
17          per subscriber, per month to retransmit network and  
18          superstation signals by satellite to subscribers for  
19          private home viewing.

20          (9) Congress set the 1988 fees to equal the av-  
21          erage fees paid by cable television operators for the  
22          same superstation and network signals.

23          (10) Effective May 1, 1992, the royalty fees  
24          payable by satellite carriers were increased through  
25          compulsory arbitration to \$0.06 per subscriber per

1 month for retransmission of network signals and  
2 \$0.175 per subscriber per month for retransmission  
3 of superstation signals, unless all of the program-  
4 ming contained in the superstation signal is free  
5 from syndicated exclusivity protection under the  
6 rules of the Federal Communications Commission, in  
7 which case the fee was decreased to \$0.14 per sub-  
8 scriber per month. These fees were 40–70 percent  
9 higher than the royalty fees paid by cable television  
10 operators to retransmit the same signals.

11 (11) On October 27, 1997, the Librarian of  
12 Congress adopted the recommendation of the Copy-  
13 right Arbitration Royalty Panel and approved rais-  
14 ing the royalty fees of satellite carriers to \$0.27 per  
15 subscriber per month for both superstation and net-  
16 work signals, effective January 1, 1998.

17 (12) The fees adopted by the Librarian are 270  
18 percent higher for superstations and 900 percent  
19 higher for network signals than the royalty fees paid  
20 by cable television operators for the exact same sig-  
21 nals.

22 (13) To be an effective competitor to cable, di-  
23 rect-to-home satellite television must have access to  
24 the same programming carried by its competitors  
25 and at comparable rates. In addition, consumers liv-

1 ing in areas where over-the-air network signals are  
2 not available rely upon satellite carriers for access to  
3 important news and entertainment.

4 (14) The Copyright Arbitration Royalty Panel  
5 did not adequately consider the adverse competitive  
6 effect of the differential in satellite and cable royalty  
7 fees on promoting competition among multichannel  
8 video programming providers and the importance of  
9 evaluating the fees satellite carries pay in the con-  
10 text of the competitive nature of the multichannel  
11 video programming marketplace.

12 (15) If the recommendation of the Copyright  
13 Arbitration Royalty Panel is allowed to stand, the  
14 direct-to-home satellite industry, whose total sub-  
15 scriber base is equivalent in size to approximately 11  
16 percent of all cable households, will be paying royalti-  
17 ties that equal half the size of the cable royalty pool,  
18 thus giving satellite subscribers a disproportionate  
19 burden for paying copyright royalties when com-  
20 pared to cable television subscribers.

21 **SEC. 3. DBS SIGNAL SECURITY.**

22 (a) Section 605(d) of the Communications Act of  
23 1934 (47 U.S.C. 605) is amended by adding after “sat-  
24 ellite cable programming,” the following: “or direct-to-  
25 home satellite services,”.

1 **SEC. 4. PROCEEDING ON RETRANSMISSION OF DISTANT**  
2 **BROADCAST SIGNALS; REPORT ON EFFECT**  
3 **OF INCREASED ROYALTY FEES FOR SAT-**  
4 **ELLITE CARRIERS ON COMPETITION IN THE**  
5 **MARKET FOR DELIVERY OF MULTICHANNEL**  
6 **VIDEO PROGRAMMING.**

7 (a) Section 628 of the Communications Act of 1934  
8 (47 U.S.C. 548) is amended—

9 (1) by adding at the end of subsection (g):  
10 “The Commission shall, within 180 days of enact-  
11 ment of this amendment initiate a notice of inquiry  
12 to determine the best way in which to facilitate the  
13 retransmission of distant broadcast signals such that  
14 it is more consistent with the 1992 Cable Act’s goal  
15 of promoting competition in the market for delivery  
16 of multichannel video programming and the public  
17 interest. The Commission also shall within 180 days  
18 of enactment report to Congress on the effect of the  
19 increase in royalty fees paid by satellite carriers pur-  
20 suant to the decision by the Librarian of Congress  
21 on competition in the market for delivery of multi-  
22 channel video programming and the ability of the di-  
23 rect-to-home satellite industry to compete.”.

24 **SEC. 5. EFFECTIVE DATE OF INCREASED ROYALTY FEES.**

25 (a) Notwithstanding any other provision of law, the  
26 Copyright Office shall be prohibited from implementing,

1 enforcing, collecting or awarding copyright royalty fees,  
2 and no obligation or liability for copyright royalty fees  
3 shall accrue pursuant to the decision of the Librarian of  
4 Congress on October 27, 1997, which established a royalty  
5 fee of \$0.27 per subscriber per month for the retrans-  
6 mission of distant broadcast signals by satellite carriers,  
7 before January 1, 1999.

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