

108TH CONGRESS
2D SESSION

S. 2644

To amend the Communications Act of 1934 with respect to the carriage of direct broadcast satellite television signals by satellite carriers to consumers in rural areas, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2004

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

A BILL

To amend the Communications Act of 1934 with respect to the carriage of direct broadcast satellite television signals by satellite carriers to consumers in rural areas, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Satellite Home Viewer Extension and Rural Consumer
6 Access to Digital Television Act of 2004”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Extension of retransmission consent exception.
 Sec. 3. Carriage of local stations on a single dish.
 Sec. 4. Unserved digital customers.
 Sec. 5. Bargaining obligations.
 Sec. 6. Reduction of required tests.
 Sec. 7. Privacy rights of satellite subscribers.
 Sec. 8. Sponsorship identification rules for DBS.
 Sec. 9. Certain vessels and aircraft.

1 **SEC. 2. EXTENSION OF RETRANSMISSION CONSENT EXCEP-**
 2 **TION.**

3 Section 325(b)(2)(C) of the Communications Act of
 4 1934 (47 U.S.C. 325(b)(2)(C)) is amended by striking
 5 “December 31, 2004,” and inserting “December 31,
 6 2009,”.

7 **SEC. 3. CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.**

8 (a) IN GENERAL.—Section 338 of the Communica-
 9 tions Act of 1934 (47 U.S.C. 338) is amended—

10 (1) by redesignating subsections (g) and (h) as
 11 subsections (h) and (i), respectively; and

12 (2) by inserting after subsection (f) the fol-
 13 lowing:

14 “(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE
 15 DISH.—

16 “(1) GENERAL RULE.—A satellite carrier that
 17 retransmits the signals of local television broadcast
 18 stations in a local market shall retransmit the sig-
 19 nals of all local television broadcast stations retrans-
 20 mitted by that carrier to subscribers in that market

1 by means of a single reception antenna and associ-
2 ated equipment.

3 “(2) EXCEPTION FOR DIGITAL TELEVISION
4 SERVICE.—Notwithstanding paragraph (1), if the
5 carrier retransmits signals in the digital television
6 service, the carrier shall retransmit the digital tele-
7 vision service signals of all the local television broad-
8 cast stations retransmitted by that carrier to sub-
9 scribers in that market by means of a single recep-
10 tion antenna and associated equipment, but the an-
11 tenna and associated equipment may be separate
12 from the single reception antenna and associated
13 equipment used for signals that are not in the dig-
14 ital television service.”.

15 (b) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), subsection (g) of section 338 of the Com-
18 munications Act of 1934 (47 U.S.C. 338), as added
19 by subsection (a) of this section, takes effect 180
20 days after the date of enactment of this Act.

21 (2) PHASE-IN FOR EXISTING 2-DISH MAR-
22 KETS.—

23 (A) SCHEDULE.—In the case of a satellite
24 carrier that, as of July 1, 2004, is retransmit-
25 ting local television broadcast signals to sub-

1 scribers in local markets by means of more than
2 a single reception antenna and associated
3 equipment, subsection (g) of section 338 of the
4 Communications Act of 1934 (47 U.S.C. 338),
5 as added by subsection (a) of this section, shall
6 first apply to that carrier in those local markets
7 in accordance with the following schedule:

8 (i) Beginning 180 days after the date
9 of enactment of this Act, to all but 33 of
10 those local markets, as selected by the sat-
11 ellite carrier.

12 (ii) By December 31, 2005, to all but
13 28 of those local markets, as selected by
14 the satellite carrier.

15 (iii) By December 31, 2006, to all but
16 14 of those local markets, as selected by
17 the satellite carrier.

18 (iv) By December 31, 2007, to all
19 those local markets.

20 (B) ENFORCEMENT.—If a satellite carrier
21 to which subparagraph (A) applies fails to com-
22 ply with the implementation schedule set forth
23 in that subparagraph—

24 (i) the failure to comply shall be pun-
25 ishable under section 503(b) of the Com-

1 communications Act of 1934 (47 U.S.C.
2 503(b)) to the same extent as if such fail-
3 ure were a failure to comply with section
4 338(g) of the Communications Act of
5 1934;

6 (ii) each market with respect to which
7 the satellite carrier fails to comply shall be
8 considered to be a separate violation; and

9 (iii) each day of a continuing violation
10 shall be considered to be a separate viola-
11 tion.

12 **SEC. 4. UNSERVED DIGITAL CUSTOMERS.**

13 (a) PROVISIONS RELATING TO CARRIAGE OF DIS-
14 TANT SIGNALS.—Section 339(a)(1) of the Communica-
15 tions Act of 1934 (47 U.S.C. 339(a)(1)) is amended to
16 read as follows:

17 “(1) CARRIAGE PERMITTED.—

18 “(A) ANALOG SIGNALS.—

19 “(i) IN GENERAL.—Subject to section
20 119 of title 17, United States Code, a sat-
21 ellite carrier may provide the analog sig-
22 nals of no more than 2 network stations in
23 a single day for each television network to
24 any household not located within the local
25 markets of those network stations.

1 “(ii) ADDITIONAL SERVICE.—To the
2 extent consistent with sections 119 and
3 122 of title 17, United States Code, a sat-
4 ellite carrier may also provide service
5 under the statutory license of those sec-
6 tions to the local market within which such
7 household is located in addition to the sig-
8 nals provided under clause (i).

9 “(B) DIGITAL SIGNALS.—To the extent
10 consistent with section 119 of title 17, United
11 States Code, a satellite carrier may provide the
12 digital signals of no more than 2 network sta-
13 tions in a single day for each television network
14 to any household not located within the local
15 markets of those network stations.”.

16 (b) DISTANT DIGITAL SIGNAL RETRANSMISSION.—
17 Section 339 of the Communications Act of 1934 (47
18 U.S.C. 339) is amended—

19 (1) by redesignating subsection (d) as sub-
20 section (e);

21 (2) by striking “(d)(4),” in subsection (e)(5)
22 and inserting “(e)(4),”; and

23 (3) by inserting after subsection (e) the fol-
24 lowing:

1 “(d) ELIGIBILITY FOR RETRANSMISSION OF DISTANT
2 DIGITAL SIGNALS.—

3 “(1) IN GENERAL.—For purposes of identifying
4 an unserved digital household under section
5 119(d)(10) of title 17, United States Code, within 2
6 years after the date of enactment of the Satellite
7 Home Viewer Extension and Rural Consumer Access
8 to Digital Television Act of 2004, the Commission
9 shall conclude a proceeding—

10 “(A) to determine the appropriate signal
11 standard for determining eligibility for retrans-
12 missions of the digital signals of network sta-
13 tions;

14 “(B) to develop and prescribe by rule a
15 point-to-point predictive model for reliably and
16 presumptively determining the ability of indi-
17 vidual locations to receive digital signals in ac-
18 cordance with the signal standard determined
19 under subparagraph (A), and in prescribing
20 that model, the Commission shall—

21 “(i) ensure that it takes into account
22 terrain, building structures, and other land
23 cover variations; and

24 “(ii) establish procedures for the con-
25 tinued refinement in the application of the

1 model by the use of additional data as it
2 becomes available; and

3 “(C) to establish appropriate waiver and
4 objective verification procedures, similar to the
5 procedures under paragraphs (2) and (4) of
6 subsection (c), to apply to unserved digital
7 household determinations made pursuant to the
8 model.

9 “(2) INTERIM ELIGIBILITY DETERMINATIONS.—
10 Until the Commission completes the proceeding re-
11 quired by paragraph (1), an unserved household for
12 purposes of section 119(d)(10) of title 17, United
13 States Code, with respect to the digital signals of a
14 particular network, is a household that—

15 “(A) is eligible to receive retransmission of
16 analog signals pursuant to subsection (c) of this
17 section and section 119(a) of title 17, United
18 States Code; or

19 “(B) after December 31, 2004, is deter-
20 mined, pursuant to the predictive model estab-
21 lished by subsection (c) not to receive the ana-
22 log signal of a network station affiliated with
23 that network that is licensed by the Commission
24 for its fully authorized digital facility; and—

1 “(i) is located in a local market in
2 which a network station affiliated with that
3 network is not broadcasting a digital sig-
4 nal; or

5 “(ii) is located outside the city of li-
6 cense of a network station that is under a
7 Commission grant of special temporary au-
8 thority to operate at less than its author-
9 ized facility.

10 “(3) CIRCUMSTANCES BEYOND NETWORK STA-
11 TION’S CONTROL.—For purposes of subparagraph
12 (B) of paragraph (2), a network station that has
13 been granted an extension of its construction permit
14 or a special temporary authority to operate at re-
15 duced facilities due to noneconomic circumstances
16 beyond its control is deemed to be operating at fully
17 authorized facilities.

18 “(4) NOTICES.—

19 “(A) BY CARRIER TO CUSTOMERS TO
20 WHOM DIGITAL SIGNAL WILL BE PROVIDED.—
21 A satellite carrier providing a distant digital
22 signal pursuant to paragraph (2) shall notify its
23 customers in a clear and conspicuous manner
24 before offering the distant digital signal that it
25 will cease providing that digital signal within

1 120 days after the date on which it is notified
2 that the household ceases to be an unserved
3 household with respect to digital signals.

4 “(B) BY NETWORK STATION TO SAT-
5 ELLITE CARRIER.—Within not more than 48
6 hours after filing with the Commission a license
7 application for its fully authorized facilities or
8 filing an application for special temporary au-
9 thority, a network station shall notify all sat-
10 ellite carriers of the filing.

11 “(C) BY SATELLITE CARRIERS TO NET-
12 WORK STATIONS.—

13 “(i) RESPONSE TO STATION NO-
14 TICE.—Within 60 days after receiving noti-
15 fication under subparagraph (B) from a
16 network station, a satellite carrier shall
17 transmit a list identifying (by name and
18 street address, including county and zip
19 code) all subscribers to which the satellite
20 carrier provides a distant digital signal in
21 the local market of the network station
22 whose service will be terminated under
23 paragraph (5).

24 “(ii) COMPLETION OF COMMISSION
25 PROCEEDING.—Within 120 days after the

1 Commission completes the proceeding re-
2 quired by paragraph (1), each satellite car-
3 rier shall transmit a comprehensive list to
4 the network stations that, as a result of
5 the proceeding, are providing a digital sig-
6 nal to the satellite carrier's subscribers,
7 containing the information required by
8 clause (i).

9 “(D) LIST USED ONLY FOR COMPLI-
10 ANCE.—It is unlawful for any person to use a
11 list provided under this paragraph, or informa-
12 tion derived from such a list, for any purpose
13 other than compliance with the requirements of
14 this section.

15 “(5) TERMINATION OF CARRIAGE TO HOUSE-
16 HOLDS THAT LOSE UNSERVED STATUS.—Within 120
17 days after the date on which a satellite carrier re-
18 ceives notice under paragraph (4)(B), it shall cease
19 providing the distant digital signal to subscribers in
20 households, determined on the basis of the notice,
21 that will cease to be unserved households with re-
22 spect to digital signals. Within 120 days after the
23 date on which the Commission completes the pro-
24 ceeding required by paragraph (1) (or on such date
25 as the Commission in that proceeding may otherwise

1 specify), a satellite carrier shall cease providing dis-
2 tant digital signals to households required as a re-
3 sult of the Commission's action.

4 “(6) ENFORCEMENT.—

5 “(A) IN GENERAL.—Compliance with this
6 section shall be enforced under titles IV and V
7 of this Act.

8 “(B) SPECIAL RULE FOR SATELLITE CAR-
9 RIER LIST REQUIREMENT.—If a satellite carrier
10 fails to provide a complete list of subscribers in
11 accordance with the requirements of paragraph
12 (4)(C)(i), then each household with respect to
13 which such failure occurs shall constitute a sep-
14 arate violation.

15 “(C) SPECIAL RULE FOR TERMI-
16 NATIONS.—If a satellite carrier providing a dis-
17 tant digital signal pursuant to paragraph (2)
18 fails to comply with the requirements of para-
19 graph (5), then—

20 “(i) each household with respect to
21 which the satellite carrier fails to comply
22 shall be considered to be a separate viola-
23 tion for purposes of section 503(b) of this
24 Act; and

1 “(ii) each day of a continuing viola-
2 tion shall be considered to be a separate
3 violation.

4 “(7) APPLICATION OF SECTION 338.—Nothing
5 in this subsection affects the obligations of a sat-
6 ellite carrier under section 338(a) of this Act.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) DISTANT ANALOG SIGNAL RETRANS-
9 MISSION.—Section 339(c) of the Communications
10 Act of 1934 (47 U.S.C. 339(c)) is amended by in-
11 serting “OF DISTANT ANALOG SIGNALS.—” after
12 “RETRANSMISSION” in the subsection heading.

13 (2) 2-NETWORK STATION RULE APPLIES WITH-
14 OUT REGARD TO TYPE OF SIGNALS.—Section 119 of
15 title 17, United States Code, is amended—

16 (A) by striking the first sentence of clause
17 (i) of subsection (a)(2)(B) and inserting “The
18 statutory license provided for in subparagraph
19 (A) shall be limited to secondary transmissions
20 of the analog and digital signals of no more
21 than 2 network stations in a single day for each
22 television network to persons who reside in
23 unserved households.”;

1 (B) by striking “(d)(10)(A)” in subclauses
2 (I) and (II) of subsection (a)(2)(B)(ii) and in-
3 serting “(d)(10)”;

4 (C) by striking “339(c)(3)” in subclause
5 (I) of subsection (a)(2)(B)(ii) and inserting
6 “339”;

7 (D) by striking “339(c)(4)” in subclause
8 (II) of subsection (a)(2)(B)(ii) and inserting
9 “339”; and

10 (E) by striking subsection (d)(10) and in-
11 serting the following:

12 “(10) UNSERVED HOUSEHOLD.—

13 “(A) IN GENERAL.—The term ‘unserved
14 household’, with respect to a particular tele-
15 vision network, means an unserved analog
16 household or an unserved digital household.

17 “(B) UNSERVED ANALOG HOUSEHOLD.—
18 In this paragraph, the term ‘unserved analog
19 household’ means, with respect to an analog
20 signal, a household that—

21 “(i) cannot receive, through the use of
22 a conventional, stationary, outdoor rooftop
23 receiving antenna, an over-the-air signal of
24 a primary network station affiliated with
25 that network of Grade B intensity as de-

1 fined by the Federal Communications
2 Commission under section 73.683(a) of
3 title 47 of the Code of Federal Regula-
4 tions, as in effect on January 1, 1999;

5 “(ii) is subject to a waiver granted
6 under regulations established under section
7 339(e)(2) of the Communications Act of
8 1934;

9 “(iii) is a subscriber to whom sub-
10 section (e) applies;

11 “(iv) is a subscriber to whom sub-
12 section (a)(11) applies; or

13 “(v) is a subscriber to whom the ex-
14 emption under subsection (a)(2)(B)(iii) ap-
15 plies.

16 “(C) UNSERVED DIGITAL HOUSEHOLD.—

17 In this paragraph, the term ‘unserved digital
18 household’ means, with respect to a digital sig-
19 nal, a household that is eligible to receive dis-
20 tant digital signals pursuant to section 339(d)
21 of the Communications Act of 1934 (47 U.S.C.
22 339(d)).”.

1 **SEC. 5. BARGAINING OBLIGATIONS.**

2 (a) AMENDMENTS.—Section 325(b)(3)(C) of the
3 Communications Act of 1934 (47 U.S.C. 325(b)(3)(C)) is
4 amended—

5 (1) by striking “Within 45 days” and all that
6 follows through “1999, the” and inserting “The”;

7 (2) by striking the second sentence;

8 (3) by striking “and” at the end of clause (i);

9 (4) in clause (ii)—

10 (A) by striking “January 1, 2006” and in-
11 serting “January 1, 2010”

12 (B) by striking the period at the end and
13 inserting “; and”; and

14 (5) by adding at the end the following new
15 clauses:

16 “(iii) until January 1, 2010, prohibit
17 a multichannel video programming dis-
18 tributor from failing to negotiate in good
19 faith for retransmission consent under this
20 section, and it shall not be a failure to ne-
21 gotiate in good faith if the distributor en-
22 ters into retransmission consent agree-
23 ments containing different terms and con-
24 ditions, including price terms, with dif-
25 ferent broadcast stations if such different

1 terms and conditions are based on com-
2 petitive marketplace considerations.”.

3 (b) DEADLINE.—The Federal Communications Com-
4 mission shall prescribe regulations to implement the
5 amendments made by subsection (a)(5) within 180 days
6 after the date of enactment of this Act.

7 **SEC. 6. REDUCTION OF REQUIRED TESTS.**

8 Section 339(c)(4) of the Communications Act of 1934
9 (47 U.S.C. 339(c)(4) is amended by inserting after sub-
10 paragraph (C) the following new subparagraphs:

11 “(D) REDUCTION OF VERIFICATION BUR-
12 DENS.—Within one year after the date of enact-
13 ment of the Satellite Home Viewer Extension
14 and Rural Consumer Access to Digital Tele-
15 vision Act of 2004, the Commission shall by
16 rule exempt from the verification requirements
17 of subparagraph (A) any request for a test
18 made by a subscriber to a satellite carrier—

19 “(i) to whom the retransmission of
20 the signals of local broadcast stations is
21 available under section 122 of title 17,
22 United States Code, from such carrier; or

23 “(ii) for whom the predictive model
24 required by paragraph (3) predicts a signal
25 intensity that exceeds the signal intensity

1 standard in effect under section
2 119(d)(11)(A) of such title by such num-
3 ber of decibels as the Commission specifies
4 in such rule.

5 “(E) EXCEPTION.—Notwithstanding any
6 provision of this Act, this section does not pro-
7 hibit a subscriber who is predicted to receive a
8 signal that meets or exceeds such signal inten-
9 sity standard from conducting a signal strength
10 test at the subscriber’s own expense for the pur-
11 pose of determining their eligibility for distant
12 signals under this section.”

13 **SEC. 7. PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.**

14 Section 631 of the Communications Act of 1934 (47
15 U.S.C. 551) is amended by adding at the end the fol-
16 lowing:

17 “(i) APPLICATION TO DBS PROVIDERS.—

18 “(1) IN GENERAL.—The provisions of this sec-
19 tion shall apply to satellite carriers in the same way
20 and to the same extent as they apply to cable opera-
21 tors.

22 “(2) SPECIAL RULE.—For the purpose of ap-
23 plying the last sentence of subsection (a)(1) to a sat-
24 ellite carrier, the phrase ‘the date of enactment of
25 the Satellite Home Viewer Extension and Rural

1 Consumer Access to Digital Television Act of 2004,’
2 shall be substituted for the phrase ‘the effective date
3 of this section,’.

4 “(3) SATELLITE CARRIER.—In this subsection,
5 the term ‘satellite carrier’ means any person using
6 the facilities of a satellite or satellite service licensed
7 by the Federal Communications Commission and op-
8 erating in the Fixed-Satellite Service, or the Direct
9 Broadcast Satellite Service, under part 25 of title 47
10 of the Code of Federal Regulations to establish and
11 operate a channel of communications for distribution
12 of signals, and owning or leasing a capacity or serv-
13 ice on a satellite in order to provide such distribu-
14 tion.”.

15 **SEC. 8. SPONSORSHIP IDENTIFICATION RULES FOR DBS.**

16 Within 180 days after the date of enactment of this
17 Act, the Federal Communications Commission shall mod-
18 ify section 76.1615 of its rules (47 CFR 76.1615) to apply
19 the requirements of section 317 of the Communications
20 Act of 1934 (47 U.S.C. 317) to all multichannel video pro-
21 gram distributors.

22 **SEC. 9. CERTAIN VESSELS AND AIRCRAFT.**

23 Section 119(a)(11) of title 17, United States Code,
24 is amended—

1 (1) by striking “RECREATIONAL VEHICLES AND
2 COMMERCIAL TRUCKS.—” in the heading and insert-
3 ing “RECREATIONAL VEHICLE, VESSELS, AIRCRAFT,
4 AND COMMERCIAL TRUCKS.—”;

5 (2) by striking “and” after the semicolon in
6 subparagraph (A)(i)(I);

7 (3) by striking “Regulations.” in subparagraph
8 (A)(i)(II) and inserting “Regulations;”;

9 (4) by inserting after subclause (II) of subpara-
10 graph (A)(i) the following:

11 “(III) recreational vessels (as defined
12 in section 2101(25) of title 46, United
13 States Code, documented in accordance
14 with section 12101 of title 46 or State law;
15 and

16 “(IV) aircraft registered under section
17 44103 of title 49.”;

18 (5) by striking “vehiele or” each place it ap-
19 pears in subparagraph (A)(ii), and inserting “vehi-
20 cle, vessel, aircraft, or”;

21 (6) by striking “vehicle” in subparagraph
22 (A)(iii) and inserting “vehicle, recreational vessel,
23 aircraft”;

24 (7) by striking “vehiele or” each place it ap-
25 pears in subparagraph (B), other than in clause (ii),

1 and inserting “vehicle, recreational vessel, aircraft,
2 or”;

3 (8) by inserting after “vehicle.” in clause (ii) of
4 subparagraph (B) the following: “In the case of a
5 recreational vessel, a copy of the current certificate
6 of documentation issued under section 12103 of title
7 46 for the vessel or the State certificate of registra-
8 tion. In the case of an aircraft, a copy of the certifi-
9 cate of registration for the aircraft issued under sec-
10 tion 44103 of title 49.”; and

11 (9) by striking “vehicle or” in subparagraph
12 (C) and inserting “vehicle, recreational vessel, air-
13 craft, or”.

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