

Reauthorization of the Satellite Television Extension and Localism Act (STELA)

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Summary

One hundred sixteen million U.S. households watch television. Approximately 86% of those households subscribe to a service that carries the retransmitted signals of broadcast stations over fiber optic cables, telephone lines, or through satellite dishes on the premises. Such services, known as multichannel video programming distributors (MVPDs), retransmit broadcast television signals pursuant to a regulatory framework constructed by Congress and the Federal Communications Commission (FCC). The remaining households generally use an individual antenna that receives broadcast signals directly over the air from a television station.

On December 4, 2014, President Barack Obama signed the Satellite Television Extension and Localism Act Reauthorization Act (STELA Reauthorization Act; P.L. 113-200), extending legal provisions governing retransmission of distant network broadcast signals via satellite. In addition, the law both extends and changes rules for retransmission consent negotiations between television station owners and operators of satellite and cable systems. These portions of the regulatory framework are scheduled to expire on December 31, 2019.

The STELA Reauthorization Act limits the ability of separately owned broadcasters to jointly enter retransmission consent negotiations (applying FCC rules to more stations), but extends their ability to jointly sell advertising time (delaying enforcement of FCC rules). The act also eliminates FCC rules barring satellite and cable operators from deleting broadcasters' programming or changing their channel assignments during certain periods. In addition, it repeals the FCC's ban on integrating the security and navigation functions of cable set-top boxes on December 5, 2015, one year after the law's enactment. The act directs the FCC to develop a streamlined process for small cable operators to file "effective competition" petitions that would free them from FCC rate regulation of their basic tiers of service.

The act also has provisions to facilitate viewers' access to in-state programming. It directs the FCC, when considering whether to modify the local market of a television station to enable it to be carried on an MVPD, to consider whether doing so would promote consumers' access to in-state programming. The act directs the FCC to post information about the market modification process on its website. The act also extends the market modification process, previously applicable only to cable operators, to satellite operators as well. Finally, the act directs the FCC to issue a report to Congress analyzing alternatives to its current definition of local television markets.

c11173008

Contents

Background 1
Retransmission and Copyright of Broadcast Television Signals 3
Renewed Provisions of STELA 7
2014 STELA Reauthorization Act 8
- Copyright—Expiring Provisions 8
- Copyright—Additional Provision 8
  - GAO Report Considering Phase-Out of Compulsory Copyright 8
- Communications Act—Expiring Provisions 9
- Communications Act—Additional Provisions 10
  - Additional Retransmission Consent Negotiations Provisions 10
  - Additional Provisions Impacting Cable Operators 12
  - Broadcast Ownership/Attribution Provisions 13
  - Additional Provisions Impacting Satellite Operators 14

Orphan Counties 14
- Background 14
- Provisions in 2014 STELA Reauthorization 15
  - Market Modification 15
  - Significantly Viewed Stations 17
  - FCC Reports to Congress on Designated Market Areas 17

"Local Choice" 18

Tables

Table 1. How Consumers Receive Their Television Signals 1
Table 2. History of Satellite Television Law 4

Contacts

Author Contact Information 19

c11173008

Background

There are two primary ways for a household to receive broadcast television signals: (1) by using an individual antenna that receives broadcast signals directly over the air from a television station, or (2) by subscribing to a multichannel video programming distributor (MVPD), which brings the retransmitted signals of broadcast stations to homes through a copper wire, a fiber optic cable, or a satellite dish installed on the premises. In 2014, approximately 86% of the 116.4 million U.S. television households subscribed to MVPD services (**Table 1**).

Table 1. How Consumers Receive Their Television Signals

(as of Q3 2014)

	Number of Households (Thousands)	Percentage of Television Households	Percentage of MVPD Subscribers
Cable	52,986	45.5%	52.7%
Direct broadcast satellite	34,723	29.8%	34.5%
Telco television (primarily Verizon FIOS and AT&T U-verse)	12,887	11.1%	12.8%
Over the air	12,167	10.5%	N/A
Broadband only[a]	2,572	2.1%	N/A
Total television households	116,400	100%	

Source: CRS analysis of data from the Nielsen Company. The Nielsen Company, *The Total Audience Report*, December 2014, p. 18; The Nielsen Company, *Nielsen Estimates More Than 116 Million TV Homes in the USA*, August 29, 2014, http://www.nielsen.com/us/en/insights/news/2014/nielsen-estimates-more-than-116-million-tv-homes-in-the-us.html.

Notes: Numbers are approximate due to rounding; some households may subscribe to multiple services.

a. "Television households" include broadband-only households with at least one operable television/monitor that receives video exclusively via a broadband Internet connection instead of via over-the-air transmission or an MVPD.

Currently two direct broadcast satellite (DBS) companies—DIRECTV and DISH Network—offer video service to most of the land area and population of the United States. As of September 2014, DIRECTV had approximately 20.2 million U.S. subscribers, while DISH Network had approximately 14.0 million U.S. subscribers.[1]

With the rise of cable and satellite television since the 1970s, Congress and the Federal Communications Commission (FCC) constructed a regulatory framework for the retransmission of broadcast television signals by both cable and satellite television operators.[2] The satellite and

[1] DIRECTV, Securities and Exchange Commission (SEC) Form 10-Q for the Quarterly Period ended September 30, 2014, p. 61; DISH Network Corporation, SEC Form 10-Q for the Quarterly Period ended September 30, 2014, p. 58.

[2] Not all MVPDs fit clearly within a satellite or cable regulatory framework. AT&T considers its "U-Verse" MVPD service to be "video service" rather than a traditional cable service under the Communications Act. AT&T Inc., SEC Form 10-Q for the fiscal year ended December 31, 2013, p. 3. Verizon, on the other hand, states that its MVPD service is regulated like a traditional cable service. Verizon Communications Inc., SEC Form 10-K for the fiscal year ended December 31, 2013.

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cable regulatory frameworks attempt to balance a number of long-standing, but potentially conflicting, public policy goals—most notably, competitive provision of video services, competitive provision of devices used to access video services, support of property rights considerations in copyright law, preservation of free over-the-air broadcast television, localism, and the provision of "lifeline" network television services via satellite to homes unable to receive them over the air.[3] The regulatory frameworks also attempt to balance the interests of the satellite, cable, broadcast, program content, and device manufacturing industries, as well as the interests of small businesses and consumers.

MVPD operators typically offer their customers broadcast stations (e.g., Sinclair Broadcasting's WJLA or NBC Universal's WRC in Washington, DC) as well as cable networks (such as the Walt Disney Corporation's ESPN or Viacom Inc.'s MTV). In order to provide their customers with the entertainment, news, sports, and other programming on broadcast channels, MVPDs must retransmit local and, in limited cases, distant broadcast stations. Retransmission of broadcast signals by satellite and cable operators is subject to two different legal regimes:

- Sections 325, 338, and 339 of the Communications Act of 1934 (Title 47 U.S.C. §§325, 338, 339), as amended, specify procedures and rules for "retransmission consent," the process of how MVPDs may or may not be required to obtain the consent of the broadcaster to retransmit their signals. The provisions addressing retransmission consent are administered by the FCC. While the Communications Act has provisions related to satellite operators' carriage of distant television signals, it does not have similar provisions for cable operators.[4] The Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce oversee the Communications Act and the other statutes related to telecommunications in Title 47.
- Sections 111, 119, and 122 of the Copyright Act of 1976 (Title 17 U.S.C. §§111, 119, 122), as amended, specify procedures for licensing the public performance of copyrighted music and programming on retransmitted broadcast signals. Cable and satellite operators can take advantage of special no-royalty or low-royalty rates if they meet certain requirements set out in those sections. These statutory licenses allow cable and satellite operators to avoid negotiating with every copyright holder (e.g., television studios, sports leagues, and music publishers) of every broadcast program.[5] While the provisions enabling cable operators to

[3] According to the FCC, "Broadcast radio and television are distinctly local media. They are licensed to local communities, and the FCC has long required broadcasters to serve the needs and interests of the communities to which they are licensed. Congress has also required that the FCC assign broadcast stations to communities around the country to assure widespread service, and the commission has given priority to affording local service as part of this requirement. Broadcast 'localism' encompasses these requirements." Federal Communications Commission, *FCC Consumer Facts*, "Broadcasting and Localism," at http://transition.fcc.gov/localism/Localism_Fact_Sheet.pdf. See also, U.S. Congress, House Committee on Commerce, *Intellectual Property and Communications Omnibus Reform Act of 1999*, committee print, 106th Cong., 1st sess., November 8, 1999, 106-464 (Washington: GPO, 1999), pp. 92-93, 96.

[4] In part this difference reflects the local business models of cable operators and the national business models of satellite operators. U.S. Congress, House Committee on the Judiciary, *Satellite Home Viewer Extension and Reauthorization Act of 2004*, committee print, 108th Cong., 2nd sess., September 7, 2004, 108-660, pp. 7-9.

[5] Sections 111(d) and 119(b) of the 1976 Copyright Act allow parties to form groups to negotiate and allocate royalties. Copyright owners have organized themselves into claimant groups based upon content categories. These groups include (1) "Program Suppliers" (commercial entertainment programming); (2) "Joint Sports Claimants" (professional and college sports programming); (3) "Commercial Television Claimants" (local commercial television programming); (4) "Public Television Claimants" (national and local noncommercial television programming); (continued...)

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retransmit distant broadcast television signals and superstations are permanent, those applying to satellite operators are subject to five-year sunset clauses. The provisions addressing the payment of royalties are administered by the U.S. Copyright Office, while the Copyright Royalty Board distributes royalty fees and adjudicates disputes. The Senate Committee on the Judiciary and the House Committee on the Judiciary oversee the Copyright Act provisions in Title 17.

Retransmission and Copyright of Broadcast Television Signals

Through a series of laws, beginning with the 1988 Satellite Home Viewer Act (SHVA; P.L. 100-667) and most recently amended by the 2014 Satellite Television Extension and Localism Act Reauthorization Act (2014 STELA Reauthorization Act; P.L. 113-200), Congress created new sections or modified existing sections of the Copyright Act and the Communications Act to regulate the satellite retransmission of broadcast television and to encourage competition between satellite and cable operators (**Table 2**). In order to retransmit a broadcaster's signals to subscribers, a satellite operator, with certain exceptions, must have the legal rights to retransmit the copyrighted content contained in the broadcast, and must obtain the consent of the broadcaster for retransmission of the broadcast signal. The law specifies distinct copyright license and retransmission requirements for signals transmitted by various categories of broadcast television stations, including local commercial and noncommercial stations, distant network-affiliated[6] and noncommercial stations, non-network stations, nationally distributed superstations,[7] and "significantly viewed" stations.[8]

(...continued)

(5) "Devotional Claimants" (religious television programming); and (6) "Music Claimants" (musical works included in television programming). U.S. Copyright Office, *Satellite Television Extension and Localism Act Section 302 Report* [2011 Copyright Office STELA Report], August 28, 2011, p. 37, n. 106.

[6] Under Section 119(d) of the Copyright Act, a "network station" includes affiliates of ABC, NBC, CBS, FOX (which transmit at least 25 hours of programming to 25 stations in 10 states), and noncommercial public broadcast stations (e.g., PBS affiliates). 2011 Copyright Office STELA Report, p. 21, n.38.

[7] The Communications Act identifies a class of "nationally distributed superstations" (47 U.S.C. §339(d)(2)) that is limited to seven stations that were in operation prior to May 1, 1991. These are independent stations whose broadcast signals are picked up and redistributed by satellite to local cable television operators and satellite television operators across the United States. The nationally distributed superstations are in effect treated like cable networks rather than local broadcast television stations. As of 2011, the superstations include WGN (Chicago), KWGN (Denver), WPIX (New York), KTLA (Los Angeles), WSBK (Boston), and WWOR (New York/New Jersey). WTBS converted from a superstation to the TBS cable network. 2011 Copyright Office STELA Report, p. 23. WGN intends to become a cable network by 2016, in order to receive payments from MVPDs directly rather than through the Copyright Royalty Board. David Lieberman, "Tribune CEO Says He's 'Not Pleased' with CW's Performance," *Deadline Hollywood*, May 15, 2015, http://deadline.com/2014/05/tribune-ceo-says-hes-not-pleased-with-cws-performance-731112/#.

[8] In 1972, the FCC adopted the concept of significantly viewed signals to differentiate between out-of-market television stations "that have sufficient audience to be considered local and those that do not." Federal Communications Commission, "Cable Television Report and Order," 36 *FCC Record* 143, 174, February 3, 1972. The FCC concluded at that time that it would not be reasonable if choices on cable were more limited than choices over the air, and gave cable carriage rights to stations in communities where the stations had significant over-the-air viewing. Stations that the FCC determines to be significantly viewed also are considered local for copyright purposes. This provision applies to cable systems as well as satellite systems; see 47 U.S.C. §614 and 47 C.F.R. §§76.54, 76.59, and 76.66. Per statute, however, for satellite carriage, broadcast stations must be "significantly viewed" pursuant to the FCC rules in effect on April 15, 1976 (17 U.S.C. §122(a)(2)(A). Retransmission consent is required for the carriage of out-of-market significantly viewed signals, per 47 U.S.C. §340(d)(2).

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Table 2. History of Satellite Television Law

Statute	Year Enacted	Highlights
Satellite Home Viewer Act (SHVA; P.L. 100-667)	1988	Established six-year compulsory copyright license to allow satellite operators to carry broadcast programming from distant network affiliates (of ABC, CBS, and NBC—similar to definition for cable compulsory licensing) and superstations, generally to residents in rural areas using home satellite dishes. Entitled network stations to higher royalty rates than "non-network" stations.
Satellite Home Viewer Act of 1994 (P.L. 103-369)	1994	Renewed compulsory license for an additional five years. Broadened definition of network station to include PBS and FOX affiliates. Limited satellite importation of broadcast television signals to "unserved households" 1) unable to receive over-the-air signals and 2) which had not subscribed to cable for 90 days before commencing satellite service. Placed burden of proof on satellite operators to demonstrate that households are eligible to receive distant broadcast signals. Broadened definition of satellite carriers to include Direct Broadcast Satellite services (Dish and DIRECTV), scheduled to begin operating in 1994.
Satellite Home Viewer Improvement Act (SHVIA; P.L. 106-113)	1999	Increased parity between satellite and cable services. Created permanent legal and regulatory framework permitting satellite operators to retransmit local broadcast signals ("local-into-local" service). In contrast to nationwide "must carry" provisions applying to cable operators, applied "must carry" provisions to satellite operators on a market-by-market basis ("carry one, carry all"). Allowed satellite operators same rights as cable operators to deliver local stations to commercial establishments as well as homes. Imposed five-year good faith retransmission consent obligations on broadcasters, subject to competitive marketplace conditions.
Satellite Home Viewer Extension and Reauthorization Act (SHVERA; P.L. 108-447)	2004	Expanded parity between satellite and cable services. Created a "local" copyright license that gave satellite carriers the option to offer subscribers "significantly viewed" signals from an adjacent DMA and granted them retransmission rights for the signals. Restricted satellite operators from offering distant signals to customers in a market where they are also offering the local affiliate of the same network (the "no distant where local" rule). Created five-year "compulsory license" (subsequently renewed) enabling satellite operators to transmit distant network signals to unserved households, similar to permanent compulsory licensing scheme for cable operators. Permitted satellite operators to transmit superstations to commercial establishments, similar to cable operators. Made five-year good faith bargaining requirements (subsequently renewed) for retransmission consent negotiations reciprocal between MVPDs and broadcast stations.

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Statute	Year Enacted	Highlights
Satellite Television Extension and Localism Act (STELA; P.L. 111-175)	2010	Provided that satellite operators may only offer "significantly viewed" stations in high definition format if they provide local stations in high definition format as well. Modified criteria for determining satellite subscribers' eligibility to receive distant signals (i.e., "unserved households") to account for broadcast stations' conversion from analog to digital signals. Allowed satellite operators to import a distant signal of a network affiliate in "short markets" without a local affiliate of that network.
Satellite Television Extension and Localism Act Reauthorization Act (STELA; P.L. 113-200)	2014	Extends rules for modification of cable operators' "local markets" to satellite operators, and directs FCC to factor consumers' access to in-state programming when modifying markets. Eliminates FCC rules barring MVPDs from deleting broadcasters' programming or changing channel positions during "sweeps" weeks. Prohibits separately owned broadcast stations from jointly negotiating retransmission consent in same market. Repeals FCC ban on integration of navigation and security functions within cable set-top boxes effective December 4, 2015.

Sources: Excerpted by CRS from Testimony of Eloise Gore, Associate Bureau Chief, Enforcement Bureau, FCC, before the House Subcommittee on Communications and Technology, Committee on Energy and Commerce, February 13, 2013; P.L. 113-200; U.S. Congress, House Committee on Commerce, *Intellectual Property and Communications Reform Act of 1999*, committee print, 106th Congress, 1st session, November 9, 1999, 106-464 (Washington: GPO, 1999); U.S. Congress, Senate Committee on the Judiciary, *Satellite Compulsory License Extension Act of 1994*, committee print, 103rd Congress, 2nd session, October 7, 1994, 103-407 (Washington: GPO, 1994). FCC, *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent,* MB Docket No. 10-71, Report and Order and Further Notice of Proposed Rulemaking, March 31, 2014, at http://www.fcc.gov/document/fcc-strengthens-retransmission-consent-rules-0; P.L. 113-200.

The law governing satellite transmission makes a fundamental distinction between local signals and distant signals.

Local signals are transmitted over the air by local broadcasters to households within the local market of the subscriber ("local-into-local service"). The FCC uses Designated Market Areas (DMAs) constructed by the Nielsen Company to define local television markets for the purposes of retransmission consent.[9] Nielsen has constructed 210 DMAs by assigning each county in the United States to a specific DMA, based on the predominance of viewing of broadcast television stations licensed to operate in a given Standard Metropolitan Statistical Area.[10] Some households

[9] The statutory provisions for satellite explicitly require the use of Nielsen's DMAs. (17 U.S.C. §122(j)(2)(A) and (C)). The statutory provisions for cable instruct the FCC to make market determinations "using, where available, commercial publications which delineate television markets based on viewing patterns" (47 U.S.C. §534(h)(1)(C)). After Arbitron ceased publication of television viewing data, the FCC began to rely on data from the Nielsen Company. See FCC, *Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules, CS Docket No. 95-178, Implementation of Section 301(d) of the Telecommunications Act of 1996, Market Determinations, FCC Record*, vol. 11 (1996), p. 6201.

[10] Testimony of Paul Donato, Executive Vice President and Chief Research Officer, Nielsen, before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Courts, Intellectual Property and the Internet, September 10, 2013, pp. 2-4 at http://judiciary.house.gov/_files/hearings/113th/09102013/
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that subscribe to satellite television service in rural or remote areas may not be able to receive over-the-air local broadcast signals and therefore rely on DBS to watch local broadcast channels. DBS operators are allowed, but not required, to provide local-into-local service. If they choose to provide any local signal they must also carry the signals of all other full-power television broadcast stations located within the local area that request carriage. However, if a local broadcast station and a satellite operator fail to reach a retransmission consent agreement, the satellite operator may not include that station's signal in its local-into-local offering. The statutory provisions within the Copyright Act (17 U.S.C. §122) and Communications Act (47 U.S.C. §338) enabling satellite operators to retransmit local broadcast television signals are permanent.

Distant signals are broadcast signals imported by the DBS operator from outside a subscriber's local area. A satellite operator is allowed, but not required, to retransmit

- the signals of up to two distant stations affiliated with a network (ABC, CBS, FOX, NBC, or PBS), to that subset of subscribing households that are deemed "unserved" with respect to that network;
- the signals of significantly viewed stations to subscribers located in the markets for which those stations qualify as significantly viewed; and
- the signals of superstations and other independent stations to all of its subscribers.

A household is considered "unserved" if it cannot receive the signals of a local network-affiliated station because either

- the satellite operator does not offer local-into-local service in the local market and the household is located too far from the transmitter to receive signals of a certain quality using a rooftop antenna;
- the network does not have a local network-affiliated station in the household's local market (referred to as a "short" market); or
- the subscriber falls under a small number of grandfathered situations in which subscribers who do have access to local-into-local service continue to be eligible to receive distant signals from their satellite operator.

To retransmit the signals of a distant network station to unserved subscribers, a satellite operator need not obtain the consent of that distant network station nor comply with the FCC's network nonduplication and syndicated exclusivity rules.[11]

(...continued)

DONATO%20TESTIMONY.pdf. Each March, Nielsen reviews viewing data to verify that the dominant share of viewing from each DMA county continues to be from broadcast stations licensed to operate from within the same home SMSA. If Nielsen determines that a county's residents mainly view stations operating from another SMSA, it may reassign that county to another DMA.

[11] Broadcasters typically carry network and syndicated programming on their local television stations but must purchase distribution rights from broadcast networks and syndicators that own or hold the rights to that programming. These network/affiliate or syndication agreements generally include provisions which grant the local station exclusive rights to the programming within the station's local service area. Network nonduplication refers to the local commercial or noncommercial broadcast television station's contractual rights to be the exclusive distributor of network programming within a specific geographic area. Syndicated exclusivity applies to exclusive contracts for syndicated programming, rather than network programming, and applies only to commercial television stations. In (continued...)

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Renewed Provisions of STELA

Certain provisions in STELA are set to expire on December 31, 2019. The provisions are:

- Section 119 of the Copyright Act (17 U.S.C. §119). This section enables satellite operators to obtain rights to copyrighted programming carried by distant broadcast network affiliates, superstations, and other independent stations. Under this regime, the satellite operators submit a statement of account and pay a statutorily determined royalty fee to the U.S. Copyright Office on a semiannual basis, avoiding the transactions costs of negotiating with each individual copyright holder.[12] Furthermore, Section 119 enables satellite operators, similar to cable operators, to transmit superstations to commercial establishments as well as distant independent stations to households (whether or not they are "unserved"). Section 119 also grandfathers through December 31, 2019 certain distant signal subscribers who retain eligibility to receive distant signals.[13]
- Section 339 of the Communications Act (47 U.S.C. §339), which permits carriage of distant television stations by satellite operators. Several portions of this section cross reference Section 119 of the Copyright Act (47 U.S.C. §119). Therefore, although the STELA Reauthorization does not specifically reference Section 339, portions of this section would become ineffective after December 31, 2019, if Congress does not renew Section 119.
- Section 325(b)(2)(C) of the Communications Act. This section allows a satellite operator to retransmit the signals of distant network stations, without first obtaining the retransmission consent of those distant stations, to those subscribing households that cannot receive the signals of local broadcast television network affiliates. Absent this provision, a satellite operator would have to negotiate compensation terms with those distant network stations whose signals it retransmits to those "unserved" subscribers. This provision is similar to the permanent compulsory licensing scheme for cable operators, which dates back to 1976.[14]
- Section 325(b)(3)(C)(ii) of the Communications Act, which prohibits a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith. Section 325(b)(3)(C)(iii) also prohibits a satellite or cable operator from failing to negotiate in good faith for retransmission consent. Consequently, the FCC's rules

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general a local broadcast station that has obtained exclusive rights may request that an MVPD delete duplicative network or syndicated programming that is brought into the geographic area for which it holds such rights. See 47 C.F.R. §§76.92, 76.93, 76.101, 76.122, and 76.123.

[12] The U.S. Copyright Office, while acknowledging that statutory licensing has ensured "the efficient and cost-effective delivery of television programming," has characterized the process as "an artificial construct created in an earlier era." U.S. Congress, House Committee on the Judiciary, *Satellite Home Viewer Extension and Reauthorization Act of 2004*, committee print, 108th Cong., September 7, 2004, 108-660 (Washington: GPO, 2004), pp. 8-10.

[13] See Testimony of Eloise Gore, Associate Bureau Chief, Enforcement Bureau, FCC, before the House Subcommittee on Communications and Technology, Committee on Energy and Commerce, Satellite Video 101 Hearing, February 13, 2013, p. 4.

[14] 17 U.S.C. §111.

c11173008

related to violations of good faith standards, including its prohibition on joint retransmission consent negotiations between two separately owned top-four stations within the same market, would become moot if Congress does not extend this section beyond December 31, 2019. Expiration of these provisions would increase the likelihood of impasses in retransmission consent negotiations, leading to subscribers losing access to broadcast programming.

2014 STELA Reauthorization Act

The 113th Congress reauthorized STELA, including five-year extensions of expiring provisions of the Copyright Act and the Communications Act.

Copyright—Expiring Provisions

Reauthorization

Section 201 extends until December 31, 2019, the provisions in the Copyright Act (17 U.S.C. §119) that allow DBS operators to retransmit (to unserved or grandfathered households) distant broadcast network affiliates under a statutory copyright license. It also extends until December 31, 2019, the Copyright Act provisions that allow satellite operators to transmit superstations and other distant non-network stations to commercial establishments and homes under a statutory copyright license.

Copyright—Additional Provision

GAO Report Considering Phase-Out of Compulsory Copyright

Section 107 requires the Government Accountability Office (GAO) to evaluate and analyze the changes to carriage requirements imposed on MVPDs under the Communications Act of 1934 (47 U.S.C. §151 et seq.) it considers appropriate, if Congress were to phase out the statutory compulsory copyright requirements that govern broadcast content (i.e., Sections 111, 119, and 122 of Title 17, U.S.C.). GAO must submit the report to Congress no later than May 4, 2016.

This study will cover much the same ground as an August 2011 Copyright Office report to Congress on the possible repeal of the statutory licensing provisions of Sections 111, 119, and 122 of Title 17, U.S.C.[15] The report provided recommendations for commencing and carrying out such repeal, addressing: (1) possible methods for implementing a phase-out (including allowing stakeholders the opportunity to develop market licenses); and (2) possible mechanisms for ensuring a timely and effective phase-out (including adopting a date-certain and a tiered schedule). It recommended that[16]

- Congress permit copyright owners to develop marketplace licensing options to replace the compulsory provisions of Sections 111, 119, and 122;

[15] 2011 Copyright Office STELA Report.

[16] 2011 U.S. Copyright Office STELA Report, pp. 139-140.

c11173008

- Congress provide a date-specific trigger for the phase-out and eventual repeal of the distant signal licenses, but delay repeal of the local signal licenses in order to provide stakeholders (including copyright owners and professionals in broadcast, cable, and satellite industries) with an opportunity to test new business models with the least likelihood of disruption to consumers;
- Congress evaluate the concerns of stakeholders who operate with limited resources in the broadcast programming distribution chain, such as public television stations, small cable operators, and independent program producers, and determine whether special consideration is advisable;[17]before determining the date-specific trigger and transition period for the phase-out of distant signal licenses, and
- during the transition period, Congress refrain from applying the statutory licenses to any broadcast station that 1) elects retransmission consent (instead of must-carry or carry one, carry all), and 2) has obtained the rights to retransmit all of the content carried on its signal.

In addition to the 2011 STELA report, the U.S. Copyright Office submitted three other reports in 1992, 1997, and 2008 on the statutory licensing scheme.[18]

Communications Act—Expiring Provisions

Reauthorization

By extending 17 U.S.C. §119, Section 201 also extends Section 339 of the Communications Act (47 U.S.C. §339), which permits satellite operators to carry distant television signals subject to the circumstances described above.

Section 101 extends until December 31, 2019, other provisions in the Communications Act. These include Section 325(b)(2)(C) of the Communications Act (47 U.S.C. §325(b)(2)(C)), which allows a satellite operator to retransmit the signals of distant network stations, without first obtaining the retransmission consent of those distant stations, to those subscribing households that cannot receive the signals of local broadcast television network affiliates.

Extension of Good Faith Requirements for Retransmission Consent Negotiations

Section 101 also extends 325(b)(3)(C)(ii) and (iii) of the Communications Act (47 U.S.C. §325(b)(2)(C)(ii) and (iii)) until January 1, 2020. These provisions relate to the effective dates of FCC rules that prohibit broadcasters from engaging in exclusive contracts for carriage, and

[17] *2011 U.S. Copyright Office STELA Report*, pp. 40-41. For example the Independent Television and Film Alliance (IFTA) stated that broadcast networks and stations, cable operators, and satellite companies have a superior bargaining position over smaller copyright owners, who have difficulty negotiating "fair" license fees. Id., p. 41

[18] Register of the Copyrights, The Cable and Satellite Carrier Compulsory Licenses: An Overview and Analysis, March 1992, http://copyright.gov/reports/cable-sat-licenses1992.pdf; Register of the Copyrights, A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals, August 1, 1997, http://www.copyright.gov/reports/study.pdf; Register of the Copyrights, Satellite Home Viewer Extension and Reauthorization Act Section 109 Report, June 30, 2008, pp. i-xiii, http://www.copyright.gov/reports/section109-final-report.pdf.

c11173008

prohibit broadcasters, cable operators, and satellite operators from refusing to negotiate in good faith.

Communications Act—Additional Provisions

Additional Retransmission Consent Negotiations Provisions

Good Faith Requirements Rulemaking by FCC

Section 103 amends Section 325(b)(3)(C) of the Communications Act (47 U.S.C. §325(b)(3)(C)). It directs the FCC to conduct a rulemaking to consider specific revisions to its rules requiring MVPDs and station licensees to negotiate over retransmission consent in "good faith." In that rulemaking, the FCC must update its "totality of the circumstances test" by encouraging broadcasters and MVPDs to present bona fide proposals and reach retransmission consent agreements in a timely manner. The FCC must commence the rulemaking within nine months after STELA's enactment, i.e., by August 4, 2015.

Joint Negotiations Among Separately Owned Stations in a Market

Section 103 prohibits a television broadcast station from negotiating a retransmission consent contract jointly with another broadcast station in the same market, regardless of its audience size, unless the FCC considers the stations to be directly or indirectly owned, operated, or controlled by the same entity.[19] For example, Univision Communications Inc., a licensee of dozens of Spanish-language broadcast television stations, negotiates retransmission consent on behalf of Entravision Communications Corporation, another licensee of Spanish-language broadcast television stations.[20] Because the two companies each separately own broadcast television stations in Albuquerque, NM; Boston, MA; Denver, CO; Orlando, FL; Tampa, FL; and Washington, DC, Univision will no longer be able to negotiate on behalf of Entravision in these six markets.[21]

The law goes beyond an FCC order issued March 31, 2014, which states that joint negotiations among separately-owned top four stations in a DMA (based on audience share) serving the same market constitute a failure to negotiate in good faith and are therefore prohibited.[22] The FCC

[19] For a more complete summary of and attribution of viewpoints as well as a further examination of the joint negotiation issue see Federal Communications Commission, "Amendment to the Commission's Rules Related to Retransmission Consent (MB Docket No. 10-71)," 29 *FCC Record* 3351, March 31, 2014, at https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-29A1_Rcd.pdf.

[20] Entravision Communications Corp., SEC Form 10-K for the Fiscal Year ended December 31, 2013, p. 6.

[21] *See* Entravision Communications, Corp., *All Television Stations*, at http://www.entravision.com/tv/all-tv-stations/; Univision Communications Inc., *Local TV*, at http://corporate.univision.com/advertise/local/.

[22] *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent,* paragraph 9. For a more complete summary of and attribution of viewpoints as well as a further examination of the joint negotiation issue see Federal Communications Commission, "Amendment to the Commission's Rules Related to Retransmission Consent (MB Docket No. 10-71)," 29 *FCC Record* 3351, 3352, 3354-3355, March 31, 2014, at https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-29A1_Rcd.pdf. Generally, the four top-rated stations with a market are affiliates of the ABC, CBS, FOX, and NBC broadcast television networks.

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order states the FCC rules have no retroactive effect, but only apply to retransmission negotiations going forward as of the rules' effective date.[23]

Deletion or Repositioning of Stations during "Sweeps" Periods

Section 105 strikes the second sentence of Section 614(b)(9) ((47 U.S.C. §534(b)(9)), which prohibited a cable system operator from deleting or repositioning a local commercial television station during periods when the Nielsen Company measures its viewership. These "sweeps" rating periods, which occur four times per year (February, May, July, and November), provide data that many stations use as a basis to set advertising rates.[24] The FCC must revise its regulations to comport with the provision by March 4, 2015.

According to a March 10, 2014, memorandum by the majority staff of the House Committee on Energy and Commerce, this second sentence (which the 2014 STELA Reauthorization Act deleted) ensured that broadcast stations had less revenue at stake during retransmission consent negotiations than their cable operator counterparts. During retransmission consent disputes, local broadcast stations could selectively require cable carriage during the sweeps ratings periods, which in turn impacted the stations' advertising rates. The memorandum stated that this provision was included in part to: 1) remove the government from this aspect of the negotiation for signal carriage; and 2) provide regulatory parity, as cable operators do not have the right to demand access to broadcast programming during retransmission disputes and satellite carriers are not subject to this requirement.[25]

FCC Cable Rates Report: Inclusion of Impact of Retransmission Consent

Section 110 amends Section 623(k)of the Communications Act (47 U.S.C. §543(k)) to direct the FCC to include in its annual cable price surveys information on the overall amounts cable companies pay for retransmission consent, in a manner similar to the way the FCC publishes comparable information in such reports. While the FCC surveys cable operators directly in order to publish the rates they charge, it relies on independent research to gather similar data concerning DBS operators.[26] The FCC has conducted annual price surveys since December 1992, reporting on the average rates that cable operators charge for basic cable service, other cable

[23] If, however, Congress fails to extend 47 U.S.C. §325(b)(3)(C)(ii) and §325(b)(3)(C)(iii), the good faith provisions set to expire on December 31, 2019, then the FCC's restriction becomes moot.

[24] The Nielsen Company measures television viewing more frequently in some markets, particularly large ones, than in others. In the 25 markets in which it relies on computerized "meters" in lieu of paper diaries to estimate the number of people viewing television stations and networks, the Nielsen Company measures viewing during the entire calendar year. Television Advertising Bureau, *Planning and buying: Broadcast Calendar/Nielsen Survey Dates*, http://www.tvb.org/planning_buying/5658.

[25] Memorandum issued March 10, 2014, by the House Committee on Energy and Commerce from the Majority Committee Staff, "Legislative Hearing on Reauthorization of the Satellite Television Extension and Localism Act" at http://docs.house.gov/meetings/IF/IF16/20140312/101835/HHRG-113-IF16-20140312-SD004.pdf.

[26] Federal Communications Commission, " Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 Statistical Report on Average Rates for Basic Service, Cable Programming, and Equipment (DA 14-672)," 29 *FCC Record* 5280, 5288, n. 22, 5307, May 16, 2014, https://apps.fcc.gov/edocs_public/attachmatch/DA-14-672A1.pdf.

c11173008

programming, and cable equipment, and comparing the rates charged between cable services that face "effective competition" with those that do not.[27]

This provision may interact with another section of the Communications Act. Section 325(b)(3)(A) of the Communications Act (47 §U.S.C 325(b)(3)(A)) instructs the FCC to: 1) consider the impact that broadcasters' granting of retransmission consent may have on the rates cable operators charge consumers for the basic service tier and 2) ensure that its regulations governing the retransmission consent process do not conflict with its obligation to ensure that the rates for the basic service tier are reasonable.[28]

Additional Provisions Impacting Cable Operators

Administrative Reforms to Effective Competition Petitions

Section 111 directs the FCC to develop a streamlined process for the filing of "effective competition" petitions by small cable operators within 180 days of the law's enactment.[29] Under Section 623 of the Communications Act (47 U.S.C. §543), if the FCC determines that an operator is subject to "effective competition" in a particular community, that operator is not subject to government regulation of the prices it charges subscribers for its basic service tier of video programming. Such a finding requires the operator to meet one of four statutory tests.[30] Section 111 clarifies that the cable company filing the petition would retain its burden of proof to demonstrate that it faces effective competition for its video services.

Repeal of the Integration Ban for Set-Top Boxes

Provisions in STELA

Section 106 repeals an FCC ban on the integration of the security and navigation ("channel surfing") functions in the set-top boxes cable operators provide their customers. The provisions specify that the ban will no longer be effective after December 4, 2015. Any FCC waivers of the integration ban effective as of the date of STELA's enactment or granted after that date are extended through December 31, 2015.

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[27] Federal Communications Commission, "Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 Statistical Report on Average Rates for Basic Service, Cable Programming, and Equipment (FCC 96-499)," 12 *FCC Record* 3239, 3240, January 2, 1997, http://www.fcc.gov/reports/report-cable-industry-prices-1996.

[28] Section 623(b)(7) of the Communications Act (47 U.S.C. §543(b)(7)) requires operators to offer an entry-level basic service, which must include, at a minimum, all commercial and noncommercial educational local broadcast stations entitled to carriage under the must-carry provisions. Basic service must also offer any other local broadcast station provided to any subscriber, as well as public, educational, and governmental access channels that the local franchise authority may require the operator to carry.

[29] A "small cable operator" has the meaning given in 47 U.S.C. §543(m)(2), serving directly or through affiliates less than 1% of all subscribers in the United States and not being affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.

[30] See 47 U.S.C. §543(l); 47 C.F.R. §76.905(b). The local franchise authority (LFA) may not regulate the operator's rate for basic cable service if the operator is deemed subject to effective competition, unless the LFA seeks and the FCC grants recertification. See 47 U.S.C. §§543(a)(2) and 47 C.F.R. §76.916(a).

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Section 106 also directs the FCC to establish a group of technical experts to recommend uniform, technology- and platform-neutral standards that are not unduly burdensome for downloadable security for set-top boxes. The working group must file a report with the FCC no later than August 4, 2015. FCC Chairman Tom Wheeler has stated that he plans to establish the working group as quickly as possible.[31]

The FCC has an outstanding notice of inquiry, dating from April 2010, that explores the potential for allowing any electronics manufacturer to offer an Internet-enabled device at retail that could connect with all MVPDs' video services (including those of satellite providers) without requiring the device's manufacturer to coordinate or negotiate with the MVPDs.[32]

Broadcast Ownership/Attribution Provisions

Delayed Enforcement of FCC Rule on Joint Sales Agreements

Section 104 delays enforcement of a March 2014 FCC order restricting joint sales agreements (JSAs) until December 19, 2016 (six months after the FCC's initial deadline). Such agreements enable the sales staff of one broadcast station to sell advertising time on a separately owned station within the same local market. The FCC order provided that a JSA that allows for the sale of more than 15% of the weekly advertising time on a competing local broadcast television station creates an attributable ownership interest, potentially violating FCC rules governing media ownership.[33] The FCC order granted stations two years to come into compliance with current ownership limit rules and permitted stations to file requests for waivers.[34] The FCC officially extended the deadline in a public notice 10 days after the enactment of P.L. 113-200.[35]

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[31] John Eggerton, "Wheeler Promises Speedy Resolution of Set-Top Box Fix," *Multichannel News*, November 24, 2014, http://www.multichannel.com/news/technology/wheeler-promises-speedy-resolution-set-top-fix/385833.

[32] Federal Communications Commission, "Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronic Equipment," 25 *FCC Record* 4303, April 21, 2010. According to the FCC, most consumer electronics manufacturers acknowledged that absent some intermediation, establishing navigation device standards that would work with satellite, cable, and telco operators' technologies would be impractical and prohibitively expensive. The FCC also stated that the fact that DBS providers were the second and third largest MVPDs, continue to gain market share, and yet were not subject to the integration ban could be impeding the development of a vibrant retail market by artificially limiting the market for competitive retail devices.

[33] *In the Matter of Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, (MB Docket No. 04-256), released April 15, 2014, para 367, at http://www.fcc.gov/document/2014-quadrennial-regulatory-review. On February 20, 2014, the U.S. Department of Justice (DOJ) submitted *ex parte* comments supporting the FCC's tentative conclusion to attribute television JSAs. DOJ, noting its experience reviewing television JSAs in the context of its antitrust analysis of broadcast television transactions, asserted that television JSAs provide incentives similar to common ownership and should be made attributable under the commission's rules. DOJ, February 20, 2014, *Ex Parte* Comments. These comments were submitted in the 2010 Quadrennial Review proceeding (MB Docket No. 09-182), the Diversity proceeding (MB Docket No. 07-294), and the TV JSA proceeding (MB Docket No. 04-256). 47 U.S.C. §152(b) expressly prohibits the Communications Act from modifying, impairing, or superseding the applicability of any of the antitrust laws.

[34] The FCC rejected arguments that it should automatically grandfather all television JSAs permanently or indefinitely, reasoning that "such grandfathering would allow arbitrary and inconsistent changes to the level of permissible common ownership on a market-by-market basis" and that "parties to television JSAs have long been on notice of the possibility that the Commission's [sic] would attribute certain same-market television JSAs." *In the Matter of Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, (MB Docket No. 04-256), released April 15, 2014, para. 367, at http://www.fcc.gov/document/2014-quadrennial-regulatory-review.

[35] Federal Communications Commission, *Congress Extends Television Joint Sales Agreement Compliance Deadline,* (continued...)

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Additional Provisions Impacting Satellite Operators

Section 108 requires satellite video providers to submit annual reports to the FCC describing

> 1. each local market in which they a) retransmit signals of one or more television broadcast stations that has an FCC license to operate within a community located within that market; b) have begun providing such signals in the preceding one-year period; and c) have stopped providing such signals in the preceding one-year period; and
>
> 2. detailed information regarding the use and potential use of satellite capacity for the retransmission of local signals in each local market.

The satellite providers must submit the reports by August 31, 2015. The satellite providers must submit four additional reports by August 31 of each successive year. This provision renews the reporting requirements of Section 305 of P.L. 111-175 (47 U.S.C. §338 note).

Orphan Counties

Background

Several states have one or more counties that are assigned by Nielsen to a local television market whose principal city (from which all or most of the local television signals originate) is outside the state.[36] Although there is no specific definition for the term "orphan county," it generally refers to a county that cannot receive some or cannot receive any broadcast stations that originate in-state.[37]

Consumers in these orphan counties may not be receiving news, sports, and public affairs programming of interest in their states. The current regulatory frameworks for both satellite and cable distinguish between the retransmission of local and distant signals and require that local markets be defined by the DMAs constructed and published by the Nielsen Company.

To enable consumers to receive in-state signals, Congress may need to further modify the Copyright and Communications Acts to enable satellite operators to retransmit the signals of broadcast stations in in-state, but nonlocal, markets. For example, Congress, in the 2004 SHVERA, and subsequently in the STELA, selectively removed these impediments through four "exceptions" that allow satellite operators to retransmit to their subscribers in particular orphan counties in New Hampshire, Vermont, Oregon, and Mississippi—but not in other locations—the signals of in-state but out-of-market broadcast stations.[38]

(...continued)

DA 14-809, Public Notice, December 11, 2014, http://www.fcc.gov/document/extension-tv-jsa-compliance-deadline.

[36] Federal Communications Commission, "In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010," 26 *FCC Record* 11919, 11932-11933. August 28, 2011.

[37] Ibid., p. 11922.

[38] P.L. 108-447, Section 211, (47 U.S.C. §341) and Section 102 (17 U.S.C. §122(a)(4)(C)).

c11173008

Broadcasters, however, argue that neither congressional nor FCC action is needed to provide consumers with more in-state programming.[39] They state that broadcasters have every incentive to consent to the retransmission of local programming. They cite several examples of DMAs in which cable operators import the local news programming from in-state, out-of-market television stations, pursuant to private marketplace transactions.[40] Viewers who seek in-state, out-of-market professional sports, however, must pay extra to receive access to the programming.[41]

Broadcasters assert that allowing MVPDs to retransmit out-of-market broadcast network programming (e.g., National Football League games) would undermine the local broadcasting system.[42] They state that advertisers on local broadcast stations expect that a station will be the exclusive carrier of a program in a local market and pay for that exclusivity. Having exclusive rights to programming in their local markets also provides stations with leverage in negotiating retransmission consent with MVPDs.[43]

Prior to passage of the 2014 STELA Reauthorization Act, several bills concerning the orphan country issue were introduced in the 113th Congress. H.R. 4635, by Representative Aderholt, sought to allow orphan counties to petition the FCC to be included in the local television market of an adjacent in-state television station. S. 2375, by then-Senator Udall of Colorado and Senator Bennet, sought to facilitate the delivery of in-state but out-of-market television broadcast stations to Montezuma and La Plata counties in Colorado. H.R. 5585, by Representative Duffy, sought to provide greater access to in-state television broadcast programming for cable and satellite subscribers in certain counties within Wisconsin. None of these proposals was incorporated in the enacted legislation.

Provisions in 2014 STELA Reauthorization

Market Modification

Pursuant to the Communications Act, FCC rules permit, upon request from a broadcast station or a cable system, a modification of the local television market to include additional communities or to exclude certain communities.[44] This process, known as market modification, may result in communities being moved from one local television market to another for purposes of broadcast station carriage rights.

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[39] Comments of National Association of Broadcasters, 'The Media Bureau Seeks Comment for Report Required by the Satellite Television Extension and Localism Act on In-State Broadcast Programming," MB 10-238, January 24, 2011, (NAB January 24, 2011, STELA In-State Programming Comments), p. 30. Available at http://apps.fcc.gov/ecfs/document/view?id=7021026644.

[40] NAB states that MVPDs can easily place the local news and public affairs programming from these stations on a public access channel, but does not specify the terms of the examples it cites. Ibid., p. 32, n. 56.

[41] For example, DirecTV has exclusive rights to out-of-market NFL games through its National Football League Sunday Ticket package, which it makes available to its subscribers for $240 per season. See http://www.directv.com/sports/nfl. Comcast offers out-of-market Major League Baseball games for $200. See http://www.comcast.com/Corporate/programming/sports/mlbextrainnings.html.

[42] NAB January 24, 2011, STELA In-State Programming Comments, pp. 27-29.

[43] Harry A. Jessell, "Blackout Rule's Real Value is in Retrans Clout," TV News Check, December 20, 2013. Available at http://www.tvnewscheck.com/article/72865/blackout-rules-real-value-is-in-retrans-clout.

[44] 47 C.F.R. §76.59; see also 47 U.S.C. §614.

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Section 102 of the 2014 STELA Reauthorization Act extends the market modification process to satellite carriers. The language added to Section 338 of the Communications Act (47 U.S.C. §338) mirrors the existing language in Section 614(h)(C) of the Communications Act (47 U.S.C. §534(h)(C)) for cable market modifications.

- As it does for cable, the FCC must consider requests to allow consumers living in one community to receive a local commercial TV station from another market with content most relevant to them (e.g., in-state weather and news). This procedure might provide consumers living in "orphan counties" additional opportunities to receive in-state TV programming via satellite.[45]
- While a market modification would add to the total number of stations available to consumers in portions of a local television market, it could not displace an existing TV station on a satellite system serving those consumers.

Section 102 also directs the FCC to update what it considers to be a "community" in order to modify a market for the purposes of cable and satellite carriage. It directs the FCC to pay particular attention to "the value of localism," by taking into account whether modifying the local market of the television station would promote consumers' access to television broadcast signals originating in their state of residence. This provision might enable the FCC to provide viewers in orphan counties access to more in-state programming. The FCC must promulgate rules under this section by August 4, 2015.

In addition, Section 102 requires to the FCC to make available on its website information that explains its market modification process, including (1) who may petition to include or exclude communities from a local market (as defined in 17 U.S.C. §122(j)) or television market (as determined under section 614(h)(1)(C) of the Communications Act (47 U.S.C. §534(h)(1)(C)), and (2) the factors the FCC takes into account when responding to such a petition.

While providing consumers with information about the market modification process, this provision may not necessarily enable them to directly participate. The new law does not specify who may petition the FCC to modify a market for the purpose receiving satellite service. Pursuant to FCC regulations, only broadcast television stations and cable operators may petition the FCC to modify a market for cable service. It is possible that the FCC, when issuing new rules to carry out the STELA Reauthorization Act, will allow only broadcast stations and satellite operators to petition to modify a market for satellite service.

Section 102 amends section 614(h)(1)(C) of the Communications Act (47 U.S.C. §534(h)(1)(C)), which applies to cable operators, as well as section 338 of the Communications Act (47 U.S.C. §338), which applies to satellite operators, thereby creating near-parity between satellite and cable operators with respect to the FCC's criteria for determining whether a station is eligible to be carried by an MVPD outside of its market.

[45] Although neither this draft provision nor 47 U.S.C. §614 specifies who may make such a request, FCC rules specify that it will only consider modifying a local television market for cable system carriage upon written request of a broadcast televisions station or cable operator. 47 C.F.R. §76.59(a).

c11173008

Sections 102(a)(2) and 102(b) direct the FCC to consider, the following factors when modifying local television markets for the purpose of satellite and cable carriage of broadcast television stations:

> i. whether the station, or other stations located in the same area:
>
> > I. have historically been carried on the cable system or systems within such community; or
> >
> > II. have historically been carried on the satellite carrier or carriers serving such community;
>
> ii. whether the television station provides coverage or other local services to the community;
>
> iii. whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their state of residence;
>
> iv. whether any other television station that is eligible to be carried by a satellite carrier in the community provides news coverage of issues of concern to the community or provides carriage or coverage of sporting and other events of interest to the community; and
>
> v. evidence of viewing patterns that subscribe and do not subscribe to services offered by MVPDs within the areas served by the MVPDs in the community

Satellite and cable operators may not delete the signal of a commercial station from carriage while the FCC's market modification proceeding is pending. The FCC must grant or deny the request to modify a market within 120 days after a written request is filed with the agency.

Moreover, satellite operators are not obligated to carry additional stations under the market modification process if it is not economically or technically feasible for them to do so. A market modification does not have any effect on households' eligibility to receive distant broadcast station signals.

Significantly Viewed Stations

Section 103(b) amends Section 325(b)(3)(C) of the Communications Act (47 U.S.C. §325(b)(3)(C)) to prohibit a broadcast television station from limiting the ability of an MVPD to carry a station that the FCC deems significantly viewed, unless the FCC considers the stations to be directly or indirectly owned, operated, or controlled by the same entity.

FCC Reports to Congress on Designated Market Areas

Section 109 requires the FCC to submit a report to Congress by May 4, 2016, analyzing whether there are technologically and economically feasible alternatives to the use of DMAs to define markets that would provide consumers with more programming options. The FCC is to evaluate the potential impact such alternatives could have on localism and on broadcast television locally, regionally, and nationally, and to make recommendations on how to foster increased localism in counties served by out-of-state designated market areas.

c11173008

In a 2010 report on similar subjects, the FCC Media Bureau found that 99.98% of U.S. households had access to in-state programming and that 98.4% of households had access to at least one in-state television station via DBS.[46]

The FCC noted that any changes to the FCC's existing rules for determining significantly viewed status would be inconsistent with the statute's requirement that it use the same rules for making significantly viewed determinations for DBS as were in effect for cable operators on April 15, 1976.[47] Accordingly, the FCC concluded, Congress would need to make a statutory change in order for the FCC to modify its existing significantly viewed process.[48] The FCC also noted that any changes in the significantly viewed rules would not be covered by Section 122 of the significantly viewed copyright license, thus rendering such waiver or rule changes unusable by DBS unless they can privatize negotiated copyright permission.

The report also suggested that modifying the Communications and Copyright Acts to create regulatory parity by including DBS operators among the entities that can apply for market modification could potentially expand the number of local stations available to consumers via their DBS operator. Section 102 of the 2014 STELA Reauthorization does this.

"Local Choice"

During consideration of the STELA Reauthorization Act, Senator Thune and then-Senator Rockefeller proposed a provision they called "Local Choice."[49] Their proposal would have removed the statutory requirement that cable operators who carry broadcast stations pursuant to retransmission consent agreements carry those stations on the entry-level basic tier of programming. Instead, only noncommercial stations and commercial stations that elect must-carry would automatically be carried by cable operators on the basic tier. A station that elected to be carried pursuant to retransmission consent would set a price for subscribers to receive it on an a la carte basis. This proposal was not enacted, but the 114th Congress may revisit the issue if it pursues a comprehensive revision of communications and copyright laws.[50]

[46] Federal Communications Commission, "In-State Broadcast Programming: Report to Congress, Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010 (DA 11-1454)," 26 *FCC Record* 11919, 11929, August 29, 2011, http://www.fcc.gov/document/stela-report-state-broadcast-programming-congress.

[47] Ibid., 11919, 11953.

[48] Federal Communications Commission, "Implementation of Section 203 of the Satellite TV Extension and Localism Act of 2010 (FCC 10-193)," 25 *FCC Record* 16383, 18409-16410, November 23, 2010.

[49] Senator John Thune and Senator John D. Rockefeller, "Rockefeller, Thune Issue Joint Statement on Committee Passage of the Satellite Television Access and Viewers Rights Act," press release, September 17, 2014, http://www.thune.senate.gov/public/index.cfm/2014/9/rockefeller-thune-issue-joint-statement-on-committee-passage-of-the-satellite-television-access-and-viewer-rights-act.

[50] Representative Fred Upton and Representative Greg Walden, "Upton and Walden Release #CommActUpdate White Paper on Video Policy," press release, December 10, 2014, http://energycommerce.house.gov/press-release/upton-and-walden-release-commactupdate-white-paper-video-policy. Representative Bob Goodlatte, "Chairman Goodlatte Announces Comprehensive Review of Copyright Law," press release, April 23, 2013, http://judiciary.house.gov/index.cfm/2013/4/chairmangoodlatteannouncescomprehensivereviewofcopyrightlaw.

c11173008

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c11173008