

Reauthorizing the Satellite Home Viewing Provisions in the Communications Act and the Copyright Act: Issues for Congress

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Summary

Key copyright and retransmission provisions in the 2004 Satellite Home Viewer Extension and Reauthorization Act (SHVERA) face reauthorization this year; they expire on December 31, 2009 and satellite operators would no longer be allowed to provide their subscribers the signals of any broadcast stations located outside their subscribers' local markets.

Congress has constructed a regulatory framework for the retransmission of broadcast television signals by satellite television operators with the goal of fostering satellite as a competitor to cable service. Today, the regulatory framework for satellite exists alongside an analogous, but in some significant ways different, regulatory framework for cable. These frameworks attempt to balance a number of longstanding, but potentially conflicting, public policy goals – most notably, localism, competitive provision of video services, support for the creative process, and preservation of free over-the-air broadcast television. They also attempt to balance the interests of the satellite, cable, and broadcast industries. The statutory provisions distinguish between the retransmission of *local* signals – the broadcast signals of stations located in the same local market as the subscriber – and of *distant* signals. Provisions block or restrict the retransmission of distant broadcast signals in order to protect the local broadcasters from competition from distant signals and to provide them with a stronger negotiating position vis-à-vis the satellite and cable operators, with the intention of fostering local programming.

In addition to the specific provisions subject to sunset, there are several policy issues currently under debate. These include:

- In many situations, counties in one state are assigned to a local market for which the primary city (and the local broadcast stations) are in another state. Under current rules, satellite and cable companies are prohibited or restricted from providing to subscribers in these "orphan counties" the signals of in-state stations. There have been a number of proposals to modify existing statutes to allow or encourage the provision of in-state signals.
- Currently, satellite operators are allowed, but not required, to offer subscribers the signals of all the broadcast stations in their local market. DirecTV and DishTV have chosen not to offer such "local-into-local" service in small markets representing about 3% of U.S. television households. They argue that it would cost more to provide such service than they could recover in revenues and that their limited capacity could be better used providing high definition and other service in more densely populated areas. Representative Stupak has introduced H.R. 927, which would require satellite operators to offer local-into-local service in all markets.
- A number of statutory provisions, and many Federal Communications Commission and Copyright Office rules adopted to implement statutory provisions, are based on the transmission of analog broadcast signals, but during 2009 the required transition to digital broadcast signals will largely be achieved. As a result, some of the existing statutes and rules may no longer be effective in attaining the objectives for which they were enacted, unless they are modified.

This report will be updated as warranted.

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Overview

Introduction

Congress has constructed a regulatory framework for the retransmission of broadcast television signals by satellite television operators through a series of laws – the 1988 Satellite Home Viewer Act (SHVA),[1] the Satellite Home Viewer Act of 1994,[2] the 1999 Satellite Home Viewer Improvement Act (SHVIA),[3] and the 2004 Satellite Home Viewer Extension and Reauthorization Act (SHVERA).[4] These laws have fostered satellite provision of multichannel video programming distribution (MVPD) service and, as satellite has become a viable competitor to cable television, attempted to make the regulatory regimes for satellite and cable more similar. Today, the regulatory framework for satellite exists alongside an analogous, but in some significant ways different, regulatory framework for cable.

The various provisions in these satellite acts created or modified sections in the Communications Act of 1934[5] and the Copyright Act.[6] The relevant sections in the Communications Act are administered by the Federal Communications Commission (FCC) and those in the Copyright Act are administered by the Copyright Office in the Library of Congress

SHVERA includes several provisions that will expire on December 31, 2009, unless they are reauthorized. Most significantly,

- Section 119 of the Copyright Act[7] allows satellite operators to retransmit certain "distant" (non-local) broadcast television signals to their subscribers and provides those operators with an efficient, relatively low cost way to license copyrighted works contained in those broadcast signals – a per subscriber, per signal, per month royalty fee. If the law expired, satellite operators would no longer be allowed to offer their subscribers the signals of "superstations"[8] or to offer broadcast network programming to that subset of subscribers who currently cannot receive the signals of local broadcast television network affiliates (that is, local ABC, CBS, NBC, and Fox affiliates).[9] In addition, Section 119 allows

[1] P.L. 100-667.

[2] P.L. 103-369.

[3] P.L. 106-113.

[4] P.L. 108-447, passed as Division J of Title IX of the FY2005 Consolidated Appropriations Act.

[5] 47 U.S.C. §§ 325, 335, 338, 339, 340, and 341.

[6] 17 U.S.C. §§ 111, 119, and 122.

[7] 17 U.S.C. §119.

[8] Superstations are independent broadcast television stations whose broadcast signals are picked up and redistributed by satellite to local cable television operators and to satellite television operators all across the United States. These superstations in effect function like a cable network rather than a local broadcast television station or a broadcast television network. There are six superstations: WTBS, Atlanta; WOR and WPIX, New York; WSBK, Boston; WGN, Chicago; KTLA, Los Angeles; and KTVT, Dallas. All of these superstations carry the games of professional sports teams.

[9] The specific household eligibility requirements for receiving distant signals are very complex, and include certain grandfathered exceptions, but as a general rule households that can receive the signals of local broadcast television stations either over-the-air or as part of local-into-local satellite service are not eligible to receive distant network signals.

satellite providers to retransmit to their subscribers, under a royalty-free copyright license, the signals of stations that are located outside the local market in which the subscriber is located but that are "significantly viewed" by those households in the local market that do not subscribe to any MVPD provider.[10] If section 119 expired, satellite operators would no longer be allowed to offer their subscribers the signals of significantly viewed stations.

- Section 325(b)(2)(C) of the Communications Act[11] 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 who cannot receive the signals of local broadcast television network affiliates.[12] If it expired, a satellite operator would have to negotiate compensation terms with those distant network stations whose signals it retransmitted to those "unserved" subscribers.

The satellite and cable regulatory frameworks attempt to balance a number of longstanding, but potentially conflicting, public policy goals – most notably, localism, competitive provision of video services, support for the creative process, and preservation of free over-the-air broadcast television. They also attempt to balance the interests of the satellite, cable, and broadcast industries. Congress incorporated the sunset provisions in SHVERA because of its concern that market changes could affect these balances.

The statutory provisions distinguish between the retransmission of *local* signals – the broadcast signals of stations located in the same local market as the subscriber – and of *distant* signals. Provisions block or restrict the retransmission of distant broadcast signals in order to protect the local broadcasters from competition from distant signals and to provide them with a stronger negotiating position vis-à-vis the satellite and cable operators, with the intention of fostering local programming.

The regulatory framework for satellite sets the parameters within which industry players must conduct business. It provides answers to three fundamental business questions:

- may – or must – the satellite operator retransmit certain categories of local or distant broadcast signals?[13] If so,
- is retransmission of those signals contingent on the satellite operator receiving the prior retransmission consent of – and providing compensation to – the broadcaster? and

[10] The specific threshold viewing level for a "significantly viewed" station are, for a network affiliate station, a market share of at least 3% of total weekly viewing hours in the market and a net weekly circulation of 25%; for independent stations, 2% of total weekly viewing hours and a net weekly circulation of 5%. The share of viewing hours refers to the total hours that households that do not receive television signals from MVPDs viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the week. Net weekly circulation refers to the number of households that do not receive television signals from MVPDs that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total households that do not receive television signals from MVPDs in the survey area. A satellite operator can retransmit the signals of these significantly viewed stations only with the retransmission permission of the station.

[11] 47 U.S.C. § 325(b)(2)(C).

[12] See footnote 9.

[13] This is formally referred to in the statute as "secondary transmission" of the broadcast signals. The initial transmission of the signals by the broadcast station is the "primary transmission."

- is retransmission of those signals subject to specific copyright license terms?

Industry players also must conduct business within the context of the long-standing industry practice of broadcast program suppliers – both broadcast networks and owners of non-network, syndicated programming – contractually granting individual broadcast television stations the exclusive broadcast rights to that programming in a geographic area and restricting those broadcast stations from allowing other parties to retransmit the station signals carrying that programming beyond the area of exclusivity. Thus, in some situations where the regulatory framework allows satellite (or cable) operators to retransmit the signals of a distant (non-local) broadcast station, subject to obtaining the permission of the broadcast station, that station may be – and, in practice, often is – contractually prohibited from granting the MVPD retransmission rights.

Issues in the Current Public Policy Debate

The current policy debate is motivated by, but not limited to, the potential need to address the statutory copyright and retransmission consent provisions that will expire on December 31, 2009. To date, two policy issues are receiving the most attention.

- **Carriage of Adjacent In-State, But Non-Local, Broadcast Signals:** Under current statutes and rules, a number of counties are assigned to local markets for which the principal city (from which all or most of the local television signals originate) is outside their state. As a result, satellite subscribers (and many cable subscribers) in these "orphan counties" are not receiving signals from in-state broadcast stations and may not be receiving news, sports, and public affairs programming of interest in their state. Some observers therefore have proposed that satellite operators be allowed to retransmit (and cable operators encouraged to retransmit) to their subscribers in these counties the signals of broadcast stations in in-state, but non-local, markets. Broadcasters, however, have voiced concern that allowing such retransmission could undermine their financial viability by reducing their audience share and thus reducing their advertising revenues. They also assert such retransmission would weaken the local broadcasters' negotiating position with the satellite and cable operators, who could turn to the programming of an in-state but out-of-market affiliate of a particular network if they failed to reach retransmission consent with the local affiliate of that network. Broadcasters claim this would harm their ability to provide quality local programming, which is expensive to produce.[14] Representative Ross has announced his intention to introduce a bill that would allow multi-channel video programming distributors (MVPDs) – satellite operators and cable operators (including telephone companies) – located in an orphan county to retransmit the signals of television broadcast stations located in an adjacent in-state market.[15] In addition, the Four Corners Television Access Act

[14] See, for example, John Eggerton, "Affiliate Associations Warn Legislators Against Allowing Imported Signals from In-State, Distant Markets," *Broadcasting & Cable,* March 30, 2009. The issues relating to MVPD retransmission of non-local in-state broadcast signals to orphan counties are discussed in greater detail in a later section of this report.

[15] Opening statement of Rep. Ross, Hearing on Reauthorization of Satellite Home Viewer Extension and Reauthorization Act, Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, February 24, 2009. See, also, Anne Veigle, "Ross Seeks Co-Sponsors for Distant TV Signals Bill," *Communications Daily*, May 22, 2009.

of 2009 has been introduced in both the House (H.R. 1860, by Representatives Salazar and Coffman) and the Senate (S. 771, by Senators Bennet and Udall) to allow satellite operators to retransmit the signals of certain in-state broadcast stations to subscribers located in two Colorado counties that are assigned to the Albuquerque, NM local market and to allow cable operators located in those counties to retransmit the signals of certain in-state stations without having to obtain retransmission consent from the stations.[16]

- **Discretionary vs. Mandatory Local Carriage:** Currently, satellite operators are allowed, but not required, to offer subscribers the signals of all the broadcast stations in their local market. If a satellite operator chooses to retransmit the signal of a local broadcast station, it must retransmit the primary signals of all the stations in that local market, subject to obtaining local station permission. The satellite operators have chosen not to offer this "local-into-local" service in many small markets, preferring to use their satellite capacity to provide additional high definition and other programming to larger, more lucrative markets than to use the capacity to serve very small numbers of customers. In some cases, those small markets may not generate enough revenues to cover the costs of providing local-into-local service.[17] As a result approximately 3% of all U.S. households do not have access to local broadcast signals if they subscribe to satellite video service.[18] Representative Stupak has introduced H.R. 927, which would require satellite operators to offer local-into-local service in all markets.

In the debate about reauthorization of the sunsetting provisions in SHVERA, a number of other policy issues are likely to be raised and may be addressed in legislation.

- **Revising Existing Rules That Are Based on Analog Technology:** A number of statutory provisions, and many FCC and Copyright Office rules adopted to implement statutory provisions, are based on the transmission of analog broadcast signals, but during 2009 the transition to digital broadcast signals will largely be achieved. As a result, statutes and rules that explicitly refer to analog technology may no longer be effective in attaining the objectives for which they were initially enacted, unless they are modified. A number of parties have stated that it is timely to make such modifications. Marybeth Peters, Register of Copyrights, has proposed five modifications to Section 111 of the Copyright Law

[16] Also, Rep. Boren has introduced H.R. 505, which would allow satellite operators to retransmit to any subscriber in the state of Oklahoma – not just those in adjacent counties—the signals of any broadcast station located in that state.

[17] Paul Gallant, an analyst with Stanford Washington Research Group, reportedly stated that mandatory provision of local-into-local service in all markets "would impose significant new costs on Dish Network and DirecTV and generate virtually no new revenue" because the markets in question are so small. See Todd Shields, "DirecTV, Dish May Face Requirement for More Local TV (Update1)," Bloomberg.com, February 23, 2009, available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=ayQ_vo3nJImo, viewed on April 27, 2009.

[18] According to the written testimony of Charles W. Ergen, chairman, president, and chief executive officer of DISH Network Corporation, submitted for the hearing on "Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act," before the Subcommittee on Communications, Technology, and the Internet, Committee on Energy and Commerce, U.S. House of Representative, February 24, 2009, at p. 2, "DISH provides local service in 178 markets today, reaching 97 percent of households nationwide." According to the written testimony of Bob Gabrielli, senior vice president, broadcasting operations and distribution, DIRECTV, Inc., before the House Judiciary Committee, February 25, 2009, at p. 10, "DIRECTV today offers local television stations by satellite in 150 of the 210 local market in the United States, serving 95 percent of American households. (Along with DISH Network, we offer local service to 98 percent of American households.)"

and four modifications to Section 119 of the Copyright Act "to accommodate the conversion from analog to digital broadcasting."[19] For example, under current law, satellite subscribers who are not able to receive a grade B quality analog television signal[20] (and are thus considered "unserved") are allowed to receive distant signals if their satellite operator is not offering local-into-local service, and some unserved subscribers are allowed to receive distant signals even if their operator does offer local-into-local service. Although the definition of unserved is based on analog technology, those households also are considered unserved for digital service and thus may in some circumstances be allowed to receive distant digital signals by satellite.

- **Carriage of Adjacent Network Affiliate Signals in Those Markets That Lack a Network Affiliate:** Currently, in local markets that are not served by affiliates of each of the four major broadcast television networks, satellite operators may retransmit the distant signals of distant network affiliate stations.[21] Some observers have proposed that, rather than allowing satellite operators to import the signals of any distant network affiliates, such importation of distant network affiliate signals into a so-called "short market" be limited to the signals of affiliates in an adjacent, in-state market, to maximize the likelihood that the programming provided would contribute to localism.[22]
- **Re-Defining Local Markets in the Relevant Satellite and Cable Statutes:** 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 Designated Market Areas (DMAs) constructed and published by Nielsen Media Research.[23] The viewing patterns that underlie these Nielsen

[19] Marybeth Peters, Register of Copyrights, written statement before the House Judiciary Committee, hearing on Copyright Licensing in a Digital Age: Competition, Compensation and the Need to Update the Cable and Satellite TV Licenses," at Appendix 1, February 25, 2009. The proposed modifications to section 111 include revising section 111, and its terms and conditions, to expressly address the retransmission of digital broadcast signals; amending the definition of "local service area of a primary transmitter" to include references to digital station "noise limited service contours" for purposes of defining the local/distant status of noncommercial educational stations (and certain UHF stations) for statutory royalty purposes; amending the statutory definition of "distant signal equivalent" (DSE) to clarify that the royalty payment is for the retransmission of the copyrighted content without regard to the transmission format; amending the definitions of "primary transmission" and "secondary transmission", as well as the "station" definitions in section 111(f) so they comport to the amended definition of DSE; and clarifying that each multicast stream of a digital television station shall be treated as a separate DSE for section 111 royalty purposes. The proposed modifications to section 119 include replacing the existing Grade B analog standard with the new noise-limited digital signal intensity standard; adopting the Individual Location Longley Rice (ILLR) predictive digital methodology for predicting whether a household can receive an acceptable digital signal from a local digital network station; mandating that the FCC adopt digital signal testing procedures for purposes of determining whether a household is actually unserved by a local digital signal; and deleting various references in section 119 to "analog" unless that reference is to low power television stations that have not yet converted to digital broadcasting.

[20] The Grade B contour around a station's transmitter identifies the geographic area in which the quality of picture is expected to be satisfactory to the median observer at least 90% of the time for at least 50% of the receiving locations within the contour, in the absence of interfering co-channel and adjacent channel signals. (See Warren Communications News, *Television & Cable Factbook 2009,* at p. A-16.

[21] 47 U.S.C. § 339.

[22] See, for example, Cheryl Bolen, "Boucher Advises Broadcasters to Negotiate Performance Royalty," *BNA Daily Report for Executives,* April 1, 2009.

[23] 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 instructed 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).) (continued...)

markets are primarily the result of the physical locations of the various broadcast television stations and the reach of their signals. (They also reflect the boundaries of the exclusive broadcast territories that each of the three original television broadcast networks – ABC, CBS, and NBC – had incorporated into their contracts with their local affiliate stations decades ago.) DMAs do not take into account state boundaries. Some parties argue that U.S. statutes and rules would more effectively foster the dissemination of state and local news and public affairs information if they incorporated local market definitions that more closely conformed with state borders.

- **Mandatory Carriage of All the Programming Streams of Local Noncommercial Educational Television Stations:** By statute, providers of direct broadcast satellite service (DirecTV and DishTV) must reserve between 4 and 7 percent of their channel capacity exclusively for noncommercial programming of an educational or informational nature.[24] But they are not specifically required to retransmit the signals of local broadcast television stations; they are allowed to do so on condition of carrying the primary signals of all local stations that give permission. With the digital transition, broadcasters now are able to broadcast multiple digital programming streams over their licensed spectrum. Representative Eshoo has introduced H.R. 1155, which would require that satellite operators retransmit to each subscriber the digital signals (including all free, over-the-air digital programming streams) of each qualified noncommercial educational television station located in the subscriber's local market.
- **Regulatory Parity for Satellite and Cable Operators:** As will be discussed in the next section, although satellite and cable operators compete directly with one another in most markets, there are significant differences in the regulatory frameworks under which they operate. Some observers have proposed that the retransmission, copyright, and other rules under which these competing multichannel video programming distributors operate should be rationalized to eliminate artificial competitive advantages or disadvantages. For example, the Copyright Office, in a report to Congress required by SHVERA,[25] has proposed that the gross receipts royalty system for cable retransmission of distant broadcast signals in section 111 of the Copyright Act be replaced by a flat fee per subscriber system of the sort for satellite retransmission of distant broadcast signals in section 119 of the Copyright Act. The Copyright Office also has proposed[26] that the provisions defining satellite subscriber eligibility for receiving distant signals in section 119 (the "unserved household" provisions) be replaced by the imposition on satellite operators of the FCC's network non-

(...continued)

Nielsen had already delineated such television markets, assigning geographic areas to markets based on predominant viewing patterns in order to construct ratings data for advertisers, and the FCC therefore adopted Nielsen's market delineations.

[24] 47 U.S.C. § 335(b)(1).

[25] *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report*, A Report of the Register of Copyrights, June 2008, at pp. ix-xi and 94-180.

[26] *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report*, A Report of the Register of Copyrights, June 2008, at pp. 167-168.

duplication[27] and syndicated exclusivity rules[28] (but not its sports blackout[29] rules), which currently are used to limit the retransmission of distant broadcast signals by cable operators.

- **Proposals to Modify Current Retransmission Consent Rules:** Under the "retransmission consent/must carry" election adopted by Congress in 1992, every three years each local commercial television broadcast station licensee must choose between (1) negotiating retransmission consent agreement with the cable systems operating in its service area, and thus receiving compensation from the cable operators for such carriage, or (2) requiring each cable system operating in the service area to carry its signal, but receiving no compensation for such carriage.[30] Broadcast stations with popular programming tend to choose the first option; those with less popular programming, the latter. These rules apply to telephone companies, such as Verizon and AT&T, that offer MVPD services that

[27] 47 C.F.R. §§ 76.92, 76.93, 76.106, 76.120, and 76.122. Commercial television station licensees that have contracted with a broadcast network for the exclusive distribution rights to that network's programming within a specified geographic area are entitled to block a local cable system from carrying any programming of a more distant television broadcast station that duplicates that network programming. Commercial broadcast stations may assert these non-duplication rights regardless of whether or not the network programming is actually being retransmitted by the local cable system and regardless of when, or if, the network programming is scheduled to be broadcast. This rule applies to cable systems with more than 1,000 subscribers. Generally, the zone of protection for such programming cannot exceed 35 miles for broadcast stations licensed to a community in the FCC's list of top 100 television markets or 55 miles for broadcast stations licensed to communities in smaller television markets. The non-duplication rule does not apply when the cable system community falls, in whole or in part, within the distant station's Grade B signal contour. In addition, a cable operator does not have to delete the network programming of any station that the FCC has previously recognized as "significantly viewed" in the cable community. With respect to satellite operators, the network non-duplication rule applies only to network signals transmitted by superstations, not to network signals transmitted by other distant network affiliates.

[28] 47 C.F.R. §§ 76.101, 76.103, 76.106, 76.120, and 76.123. Cable systems that serve at least 1,000 subscribers may be required, upon proper notification, to provide syndicated protection to broadcasters who have contracted with program suppliers for exclusive exhibition rights to certain programs within specific geographic areas, whether or not the cable system affected is carrying the station requesting this protection. However, no cable system is required to delete a program broadcast by a station that either is significantly viewed in the cable community or places a Grade B or better contour over the community of the cable system. With respect to satellite operators, the syndicated exclusivity rule applies only to syndicated programming transmitted by superstations, not to syndicated programming transmitted by other distant broadcast stations.

[29] 47 C.F.R. §§ 76.111, 76.120, 76.127, and 76.128. A cable system located within 35 miles of the city of license of a broadcast station where a sporting event is taking place may not carry the live television broadcast of the sporting event on its system if the event is not available live on a local television broadcast station, if the holder of the broadcast rights to the event, or its agent, requests such a blackout. The holder of the rights is responsible for notifying the cable operator of its request for program deletion at least the Monday preceding the calendar week during which the deletion is desired. If no television broadcast station is licensed to the community in which the sports event is taking place, the 35-mile blackout zone extends from the broadcast station's licensed community with which the sports event or team is identified. If the event or local team is not identified with any particular community, (for instance, the New England Patriots), the 35-mile blackout zone extends from the community nearest the sports event which has a licensed broadcast station. The sports blackout rule does not apply to cable television systems serving fewer than 1,000 subscribers, nor does it require deletion of a sports event on a broadcast station's signal that was carried by a cable system prior to March 31, 1972. The rule does not apply to sports programming carried on non-broadcast program distribution networks such as ESPN. These networks, however, may be subject to private contractual blackout restrictions. Similarly, the sports blackout rule applies to satellite operators only if a local television broadcast station is not carrying the local sports event. If a local broadcast station does not have permission to carry the local game, then no other broadcaster's signal displaying the game can be shown in the protected local blackout zone. The sports blackout rule applies to a satellite operator's retransmission of nationally distributed superstations and network affiliated stations. The rule exempts satellite operators with fewer than 1,000 subscribers in the protected area.

[30] 47 U.S.C. §§ 325, 338, and 534.

meet the definition of cable service. The rules are somewhat different for satellite providers of MVPD service. If a satellite operator offers local-into-local service in a market, it must retransmit the primary signals of every broadcast station in the local market that gives retransmission permission. Thus all MVPDs must obtain the permission of a local station in order to retransmit that station's signals. In 1992, cable operators were the only MVPDs in a broadcaster's service area and they could refuse to pay compensation for retransmitting the broadcaster's signal because the broadcaster would lose advertising revenues if its signal were not carried by the cable operator. Now that there are competing MVPDs, broadcasters with popular, "must have" programming are in a stronger negotiating position, because if an MVPD fails to reach a retransmission agreement with a broadcaster it could risk losing many subscribers to a competing MVPD that has such an agreement. Local broadcasters today often receive per subscriber fees from MVPDs for the retransmission of their programming, just as cable networks do. Small cable operators represented by the American Cable Association have argued that they are placed in an especially disadvantageous position with broadcasters in retransmission consent negotiations, because they must compete against large satellite and telephone companies that can negotiate better terms with local broadcasters. They therefore have proposed that retransmission consent rules be modified to prohibit broadcasters from charging discriminatory rates for retransmission consent[31] and that the terms of all retransmission consent agreements, which currently are kept confidential, be made public to allow parties and the FCC to detect any discrimination.

- **Proposals to Eliminate the Statutory Copyright Licensing System for Cable and Satellite Retransmission of Distant Broadcast Signals:** The United States Copyright Office has proposed that Congress abolish sections 111 and 119 of the Copyright Law, arguing that the statutory licensing systems created by these provisions result in lower payments to copyright holders than would be made if compensation were left to market negotiations.[32] According to the Copyright Office, the cable and satellite industries no longer are nascent entities in need of government subsidies, have substantial market power, and are able to negotiate private agreements with copyright owners for programming carried on distant broadcast signals. Other parties argue that the current licensing systems are efficient and the that purpose of copyright law is to balance the potentially conflicting goals of fostering the dissemination of copyrighted material and allowing the copyright holder to be compensated by giving the copyright holder a *limited* monopoly over its material; they oppose a rule that allows the copyright holder to fully exploit its monopoly power to receive whatever the market would bear.[33]

[31] See, for example, the Statement of Matthew M. Polka, president and CEO, American Cable Association, before the Federal Communications Commission En Banc Hearing on Broadband and the Digital Future, Pittsburgh, PA, July 21, 2008.

[32] *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report*, A Report of the Register of Copyrights, June 2008, at p. xiv.

[33] See, for example, the website of Public Knowledge at http://www.publicknowledge.org/issues/copyright.

Differences in the Current Retransmission and Copyright Rules for Satellite and Cable

The four statutes that created and modified the regulatory framework for satellite sought to foster satellite provision of MVPD service as a competitive alternative to cable service and, as satellite became a viable competitor, to make the satellite and cable regulatory regimes more similar. But many differences remain. For example,

- Cable operators must abide by the retransmission consent/must carry elections of the broadcast stations located in their DMAs and therefore must retransmit to their subscribers the primary signals of the local stations unless a station does not grant retransmission permission. While satellite operators must retransmit the signals of all eligible local broadcast stations if they choose to retransmit any, and such retransmission is subject to obtaining the retransmission permission of the station, an operator can choose not to offer any local signals by not offering local-into-local service in a DMA.
- Both satellite and cable operators are subject to restrictions on the distant signals that they can offer their subscribers. The primary regulatory mechanisms for restricting cable retransmission of distant signals are the FCC's network non-duplication and syndicated exclusivity rules that require the cable operator to black out distant programming that duplicates local programming. The primary mechanisms for restricting satellite retransmission are a complex array of rules that confine the retransmission of distant network signals to those subscribers deemed "unserved."
- Although both satellite and cable operators are subject to copyright licensing for the retransmission of distant superstation and network signals, the license fees for satellite operators are set on a flat per subscriber, per distant station carried basis, while the license fees for cable operators are based on the cable operator's gross revenues.
- Cable operators are required to retransmit to their subscribers the signals of stations that are located outside the DMA in which the cable system is located but that are "significantly viewed" by those households in the cable service area that do not subscribe to any MVPD provider, if the significantly viewed station gives retransmission permission. In contrast, satellite operators are permitted, but not required, to retransmit to their subscribers the signals of significantly viewed stations.

Table 1 compares some key retransmission and copyright provisions for satellite and cable to identify similarities and differences.[34]

[34] The table does not present an exhaustive list of retransmission and copyright rules. Nor does it present the detailed eligibility requirements for a subscriber to be considered "unserved;" the eligibility rules are replete with exceptions and many pages long.

Table 1. Current Retransmission and Copyright Rules for Satellite and Cable Operators

Issue	Satellite Operators	Cable Operators
Local Signals: Retransmission	A satellite operator is allowed, but not required, to retransmit to its subscribers the signals of broadcast television stations in their local market (the DMA in which the subscriber is located); if a satellite operator chooses to offer such "local-into-local" service, it must provide the primary signals of all the full-power stations in that local market, subject to obtaining local station permission. (47 U.S.C. 338(a)(1)) If the signals of two commercial stations in the DMA are substantially duplicative, the satellite operator need not carry both signals, unless they originate in different states. (47 U.S.C. 338(c)) The satellite operator may include in its local-into-local service the signals of local low power stations. (47 U.S.C. 338(a)(3))	A cable operator is required to retransmit to its subscribers the primary signals of all the full-power commercial broadcast television stations, qualified noncommercial educational television stations, and qualified low-power television stations located in the DMA in which the cable operator is located, up to a certain percentage of its capacity, and subject to obtaining local station permission; a cable operator may retransmit the signals of other (non-qualified noncommercial and low power stations) local stations, subject to obtaining the permission of those stations. (47 U.S.C. 534(a) and (b) and 535(a) and (b) and 325(b))
Local Signals: Copyright	Secondary transmission of a local broadcast signal by a satellite operator is subject to statutory copyright licensing with no royalty fee. (17 U.S.C. 122(c))	Secondary transmission of a local broadcast signal by a cable operator is not considered an infringement of copyright. (17 U.S.C. 111(b) and 47 U.S.C. 534(a) and (b) and 535(a) and (b))

Issue	Satellite Operators	Cable Operators
Distant Signals: Retransmission	A satellite operator is allowed to retransmit (1) the signals of distant "superstations" to all of its subscribers, (2) the signals of distant "significantly viewed" stations to subscribers located in the markets for which those stations qualify as significantly viewed, and (3) the signals of distant network affiliated stations to "unserved" subscribers—subscribers who cannot receive local network affiliated stations either because the satellite operator does not offer local-into-local service in their local market and they are located too far from the transmitter to receive signals of a certain quality over-the-air or because not all four of the major national networks have affiliates in their market; a satellite operator may not retransmit other distant signals to its subscribers except for 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. (47 U.S.C. 339(a) and (c) and 340(b)(3)) An MVPD does not need to obtain consent to retransmit the signal of a noncommercial television broadcast station. (47 U.S.C. 325(b)(2)(A)) A satellite operator does not need to obtain consent to retransmit the signal of a superstation if it complies with the FCC's network non-duplication, syndicated exclusivity, and sports blackout rules. (47 U.S.C. 325(b)(2)(B)) It does not need to obtain consent to retransmit distant network station signals to "unserved" subscribers. (47 U.S.C. 325(b)((2)(C)) It must obtain consent to retransmit the signals of a significantly viewed station, but does not have to comply with the FCC's network non-duplication, syndicated exclusivity, and sports blackout rules. (47 U.S.C. 340(d)(2) and 340(e)) Where a satellite operator offers local-into-local service, it can retransmit the signals of significantly viewed stations only to those subscribers who take local-into-local service. (47 U.S.C. 340(b)(1) and (2))	A cable operator is allowed to retransmit the signals of all distant broadcast television station signals subject to complying with the FCC's network non-duplication, syndicated exclusivity, and sports blackout rules and subject to obtaining the permission of those distant stations other than superstations. (47 U.S.C. 325(b)(1) and 325(b)(2)(D) and 47 CFR 76.92-76.111) An MVPD does not need to obtain consent to retransmit the signal of a noncommercial television broadcast station. (47 U.S.C. 325(b)(2)(A))
Distant Signals: Copyright	A satellite operator must pay a copyright license fee for the public performance of superstation and distant network television signals, but there is a royalty-free license for the public performance of the signals of significantly viewed stations; royalty fees are calculated on a flat per subscriber, per distant station carried basis; there are separate royalty fee rates for superstations and for network stations, and for analog and digital signals. (17 U.S.C. 119(a)(1), (2), and (3))	A cable operator must pay a copyright license fee for the public performance of all distant signals carried except those of significantly viewed stations. Royalty fees are based on a percentage of the cable operator's gross revenues. (17 U.S.C. 111(d))

Issue	Satellite Operators	Cable Operators
Exceptions	Satellite operators are allowed to retransmit, to subscribers located in certain counties or states (in Vermont, New Hampshire, Oregon, and Mississippi) that are assigned to DMAs whose local broadcast stations are in another state, certain in-state but non-local market signals; retransmission of these distant signals is subject to obtaining the permission of the stations, meeting the requirements of the network non-duplication and syndicated exclusivity rules, and making royalty payments under the compulsory copyright license for the secondary transmission of distant broadcast signals. (17 U.S.C. 119(a)(2)(C)(i)-(iv) and 47 U.S.C. 341) The geographic areas in Alaska that are not in any Nielsen DMA are assigned by satellite carriers to one of the DMAs in that state in order to allow the carriers to offer subscribers in those areas the local-into-local service for the DMA to which they are assigned. (17 U.S.C. 19(a)(16)) Satellite carriers with more than 5,000,000 subscribers who offer service in Alaska/Hawaii must retransmit to subscribers in those states all of the analog broadcast signals originating in Alaska/ Hawaii; these signals must be made available to substantially all of the subscribers in their DMAs and the signals from at least one of the local markets in the state must be made available to substantially all of the subscribers in the state not located in a DMA; the cost to subscribers of such transmissions shall not exceed the cost of retransmission of local television stations in other states. (47 U.S.C. 338(a)(4))	A cable operator may elect to retransmit to subscribers in Umatilla, Grant, Malheur, and Wallowa counties in Oregon the broadcast signals of any television broadcast station in Oregon that any cable operator was retransmitting to subscribers in those four counties on January 1, 2004. (47 U.S.C. 341)

Source: Statutory and regulatory citations are provided within the table.

Providing the Signals of Non-Local but In-State Stations to Orphan Counties

Under current statutes and rules, 43 states have one or more counties that are assigned to local markets for which the principal city (from which all or most of the local television signals originate) is outside their state.[35] As a result, satellite (and, in many situations, cable) subscribers in these "orphan counties" may not be receiving signals from in-state broadcast stations and may not be receiving news, sports, and public affairs programming of interest in their state. Many households and local and state elected officials in these counties have contacted their Members of Congress to request that satellite operators be allowed (and cable operators, who currently are allowed, be encouraged) to retransmit to subscribers in the counties the signals of broadcast stations in in-state, but non-local, markets.

[35] See CRS Report RL32641, *"Localism": Statutes and Rules Affecting Local Programming on Broadcast, Cable, and Satellite Television*, by Charles B. Goldfarb, Table 1, for a state-by-state listing of these counties as of 2003.

Proponents of the retransmission of non-local but in-state broadcast signals to MVPD subscribers located in orphan counties cite the following programming benefits:

- **Sports programming** – Many subscribers have a strong allegiance to the sports teams of their home state universities, whose games are more likely to be broadcast by in-state broadcast stations than by stations located in another state. Similarly, many subscribers have a strong allegiance to professional sports teams located in the state, whose games are more likely to be broadcast by in-state broadcast stations than by stations located in another state.[36] Stations located in bordering states are especially unlikely to broadcast these sporting events of interest to the subscribers in orphan counties if the state universities in those bordering states belong to different sports conferences or if those bordering states have their own professional sports teams. There is ample market evidence, in the form of cable sports networks being able to command by far the highest per subscriber fees, that many MVPD subscribers highly value sports programming and therefore allowing MVPDs to offer non-local but in-state sports programming would increase the well-being of those subscribers.
- **Weather and related public safety programming** – There tend to be prevailing weather patterns in terms of the general direction that storms, tornadoes, and other inclement weather take, for example from west to east or from south to north. Public safety is fostered if MVPD subscribers are able to receive the broadcast signals of stations that experience and report on the same weather patterns the subscribers experience. Subscribers located in orphan counties that do not experience the same weather patterns as the local stations would benefit from receiving weather information provided by non-local but in-state stations that do experience and report on the same weather patterns.
- **State news programming** – Typically, broadcast television stations provide more local news than state news. Frequently, however, orphan counties are located quite far away from both the local stations in their DMAs and from the closest non-local, but in-state stations. As a result, neither the local nor the in-state stations are likely to provide much coverage of local news in those orphan counties. Television stations, however, typically do provide some news coverage of state-wide elections and other state-wide issues. Proponents of the retransmission of in-state broadcast signals to orphan counties claim that the public interest, as well as the private interest of subscribers, would benefit from the retransmission of such state news programming to households in orphan counties.
- **State and local political advertising** – Candidates for elective office at both the state and local level often try to communicate with voters through broadcast television advertising. To the extent that candidates, to reach households located in orphan counties, must purchase advertising time on television stations originating in other states and that primarily reach viewers who live in those other states, the efficiency of political advertising is reduced and the cost increased. If MVPDs could retransmit to subscribers located in orphan counties

[36] Some professional sports leagues divide the country into geographic zones for which particular teams are given the rights to be the exclusive team to have their games broadcast. In these situations, broadcasters located in neighboring states might be contractually prohibited from broadcasting the games of a team located in a neighboring state.

> the signals of in-state broadcast stations, political candidates might be able to save in advertising purchases made to out-of-state stations and still reach households located in those counties.

Broadcasters respond that the potential public interest gains from allowing the retransmission of distant in-state programming would be outweighed by decreases in the quality and quantity of local programming local stations could offer because they would be financially harmed by the importation of the distant signals.[37] Broadcast network affiliates claim that, in addition to broadcast advertising revenues falling, MVPDs could play hardball in their retransmission negotiations with the local stations, fail to reach a retransmission consent agreement, and then simply carry the signals of a distant in-state network affiliate at a lower price. With lower (or totally lost) retransmission consent revenues, broadcasters argue, they would have to cut back on local news programming, which is expensive to produce.

The actual impact – both on public policy objectives such as localism and on local broadcast station revenues – of allowing MVPDs to retransmit in-state signals to their subscribers in orphan counties is likely to be sensitive to the specific new retransmission and copyright rules that are adopted. Moreover, whatever those rules may be, the actual impact is likely to vary significantly from market to market.

There is no single model orphan county. Allowing MVPDs to retransmit distant in-state signals to a sparsely populated rural county that is geographically distant from both its local broadcast stations and from the distant in-state stations (for example, to Montezuma and La Plata counties in southwestern Colorado, which are assigned to the Albuquerque, NM DMA) will likely have a different market impact than allowing MVPDs to retransmit distant in-state signals to a highly urbanized county that is geographically close to its local stations, but across the state line (for example, to Dona Ana county in southern New Mexico, which includes the city of Las Cruces and is just across the state line from, but assigned to the DMA of, El Paso, TX). It is unlikely that the Albuquerque broadcast stations, which have 677,740 television households in their DMA, provide much programming (or advertising) that addresses the local needs and interests of the 27,540 television households in Montezuma and La Plata counties.[38] It also is unlikely that the distant in-state stations in Denver would provide programming or advertising that addresses the local needs and interests (including weather information) of households in Montezuma and La Plata counties, though those stations are likely to provide some Colorado sports, news, and political programming of state-wide interest. In contrast, the El Paso broadcast stations, which have 302,470 television households in their DMA, may well provide programming and advertising that addresses the local needs and interests of the 68,330 television households in Dona Ana county. The in-state stations in Albuquerque are unlikely to provide local programming (including weather reports or local advertising) of interest to the households in Dona Ana county, but they are likely to provide some New Mexico sports, news, and political programming of state-wide interest.

It is difficult to project what the impact on the retransmission consent revenues of local broadcasters would be from the importation of in-state signals into orphan counties, or if that

[37] See, for example, the written statement of David K. Rehr, president and CEO, the National Association of Broadcasters, submitted to the United States House of Representatives Committee on the Judiciary, "Hearing on Copyright Licensing in a Digital Age: Competition, Compensation and the Need to Update the Cable and Satellite TV Licenses," February 25, 2009.

[38] Statistics in this paragraph are from *Nielsen DMA Market Atlas*, Nielsen Media Research, 2008.

impact would be greater in rural or urban orphan counties. There are potentially conflicting market forces at work. For example, on one hand, since the populations of Montezuma and La Plata counties are small, and the local programming of the Albuquerque stations is not likely to be responsive to the needs or interests of, or highly demanded by, the residents of those counties, it is unlikely that the retransmission consent revenues that Albuquerque stations receive from MVPDs serving Montezuma and La Plata counties represent a significant portion of those stations' revenue streams. In contrast, because the local programming of the El Paso stations is likely to be responsive to the needs and interests of the residents of Dona Ana county, which has a substantial population, it is possible that the retransmission consent revenues that El Paso stations receive from MVPDs serving Don Ana county do represent a significant portion of those stations' revenue streams. On the other hand, given that small cable companies serving rural communities (such as those serving Montezuma and La Plata counties) tend to be in less favorable retransmission consent negotiating positions than larger cable companies serving more populous areas (such as Comcast, which serves Las Cruces, the major city in Dona Ana county), on a per subscriber basis more retransmission consent revenues may be generated in more rural counties.

Currently, cable operators may retransmit to their subscribers in orphan counties the signals of any non-local station located in the state, subject to meeting the FCC's network non-duplication, syndicated exclusivity, and sports blackout rules, obtaining the permission of those distant stations, and paying a copyright royalty fee. In many cases, the in-state stations are prohibited from granting retransmission consent by provisions in their network-affiliate contracts – though data are not available to shed light on how common such contractual prohibitions are or how often (if at all) cable companies have sought such retransmission consent. Currently, satellite operators may only retransmit the in-state signals of stations that the FCC has determined are "significantly viewed" and of stations affiliated with networks for which subscribers in the orphan county cannot receive the over-the-air signal of a local network-affiliated station; they must pay a copyright fee for retransmitting the signals of network-affiliated stations, but not significantly viewed stations.

If Congress decides to foster MVPD retransmission of programming of state-wide interest to subscribers in orphan counties, it would have a number of regulatory parameters available in considering modification of current retransmission and copyright rules. These include:

- **which in-state stations' signals the MVPDs may retransmit:** The more non-local, but in-state stations that an MVPD may negotiate with to retransmit their signals to subscribers in orphan counties, the greater the potential availability of programming of state-wide interest to those subscribers (though many of these stations might not be airing programming of local interest in the orphan counties). At the same time, the greater the number of potential broadcast signals available to the MVPD, the greater the opportunity for the MVPD to take a hard line when negotiating retransmission consent with local broadcasters. The broadest option would allow MVPDs to retransmit to their subscribers in orphan counties the signals of *any* station located in the state; this would maximize both the potential availability of programming of state-wide interest and the potential negative impact on local broadcasters. A second option would allow MVPDs to retransmit to their subscribers in orphan counties the signals of any station located in the state capital. This option appears to implicitly assume that the broadcast stations in state capitals are most likely to carry news and public affairs programming of state-wide interest. Critics have indicated that state capitals may be located very far from orphan counties, and thus be unlikely to provide

programming of local interest, such as weather forecasts, to households in the counties. They have proposed that if the retransmission of non-local in-state signals is allowed at all, it should be limited to the signals of stations that are in markets adjacent to the orphan counties. One such proposal, which has been floated but not formally introduced in legislation, would limit retransmission to the signals of stations in markets adjacent to (or, if there were no such markets, the market closest to) orphan counties; a broadcast station's signals could be retransmitted within an adjacent DMA, but (1) only if that adjacent DMA covers more than one state, (2) only to counties in the DMA that are within the same state as the broadcast station, and (3) only if those counties have no home-state affiliate of the same network.[39]

- **whether to limit the programming on those stations that can be retransmitted by applying the FCC's network non-duplication, syndicated exclusivity, and sports blackout rules to such retransmission**: Whichever in-state stations' signals may be retransmitted, MVPDs will find it less attractive to retransmit these signals if such retransmission is subject to the FCC's network non-duplication and syndicated exclusivity rules, which allow the local station to require the MVPD to black out all network and syndicated programming on the retransmitted signal even if the local station was not being carried by the MVPD.[40] Although these rules only apply within a 35 to 55 mile radius of the broadcast station, and many orphan counties are farther away from the local broadcast stations than that, many counties, or parts thereof, do lie within those mileage limits.
- **whether there should be any modifications to the retransmission consent requirements in Section 325 of the Communications Act to explicitly address the retransmission of signals into orphan counties**: Since most broadcasters oppose the retransmission of distant signals into their markets, they may not be willing to grant MVPDs permission to retransmit their signals to other markets. Under current rules, MVPD retransmission of non-local signals is usually, but not always, subject to obtaining the retransmission consent of the broadcast station. Thus, even if an MVPD wants to retransmit a non-local, in-state signal to its subscribers in an orphan county it may not be able to do so. One of the provisions in the Four Corners Television Access Act of 2009 would exempt MVPDs from the requirement to obtain retransmission consent from in-state broadcasters in order to retransmit their signals to the two orphan counties. By contrast, under the adjacent underserved county proposal, MVPDs would be required to obtain retransmission consent from in-state broadcast stations in order to retransmit their

[39] Under this proposal (hereinafter referred to as the "adjacent underserved county proposal"), an "adjacent market" would be defined as any local market adjacent to, and partially but not entirely in the same state as, the local market in which a station's community of license is located; an "adjacent underserved county" would be defined as a county within the station's adjacent market that is both (a) located in the same state as the station's community of license, and (b) not within the local market of any other station that is both affiliated with the same network and located in the same state as such other station's community of license. In addition, a county that is in a local market containing no in-state network stations, but which is not located in the adjacent market of any in-state network station, would be considered to be in the adjacent market of the nearest local market located in whole or in part within the state in which the county is located.

[40] The adjacent underserved county proposal explicitly would not make the retransmission of in-state signals into adjacent underserved counties subject to the FCC's network non-duplication and syndicated exclusivity requirements.

signals to orphan counties.[41] At the same time, under the adjacent underserved county proposal a local broadcast station could not block MVPDs from retransmitting non-local, in-state station signals into orphan counties by conditioning MVPD retransmission of its own signal on the MVPD not retransmitting non-local, in-state signals.

- **whether existing provisions in network-affiliate contracts that prohibit affiliates from granting retransmission rights to their signals outside their local markets should be pre-empted to ensure that in-state programming is available to subscribers in orphan counties**: Although systematic data are not available, it appears that many current network-affiliate contracts include provisions that prohibit the affiliates from granting MVPDs permission to retransmit their signals beyond the local market. These contractual provisions could render ineffective rules allowing MVPDs to retransmit in-state signals, if such retransmission were contingent on obtaining the retransmission consent of the broadcast station, as for example would be required under the adjacent underserved county proposal. If it is the intention of Congress to maximize the likelihood that residents of orphan counties who subscribe to MVPD service receive non-local, in-state broadcast signals, it may be necessary to pre-empt the restrictive provisions in the network-affiliate contracts. Such action would, however, represent intrusive government intervention into the contractual relationship between private parties. One possible approach would be to exempt MVPDs that want to retransmit in-state signals to their orphan county subscribers from the requirement that they obtain the retransmission consent of the broadcaster. This might or might not be effective, depending on the exact wording of the relevant provisions in the network-affiliate contracts. If the provisions only prohibit stations from granting retransmission consent, but do not restrict the stations from allowing the signals to be retransmitted, then it might be sufficient to add a provision to section 325(b)(2)(C), which lists the exceptions to the retransmission consent requirements. If the provisions include broader restrictions, then it might be necessary to prohibit certain contractual relationships. There is not sufficient publicly available information on those contractual provisions to be certain what statutory language would be needed to pre-empt current restrictive provisions.
- **whether MVPDs should be required to retransmit the signals of all local broadcast stations in an orphan county as a precondition for the right to retransmit non-local, in-state signals to subscribers in the orphan county**: One way to constrain the negotiating leverage that an MVPD could gain if it were allowed to retransmit the signals of non-local, in-state stations to its orphan county subscribers might be to condition such retransmission on the MVPD reaching retransmission consent with, and carrying the signals of, all the local stations in the county. The adjacent underserved county proposal includes this condition.
- **what the copyright treatment should be for the retransmission of distant in-state signals to subscribers in orphan counties**: The greater the copyright

[41] Unless, as discussed below, the station is prohibited, under provisions of its network-affiliate contract, from granting retransmission consent to MVPDs to retransmit their signals beyond their local markets.

license fee that an MVPD must pay to retransmit non-local, in-state signals to orphan county subscribers, the less the incentive to retransmit those signals. Currently, satellite and cable providers must pay royalty fees for the retransmission of superstation and distant network signals, but no fee for the retransmission of the signals of significantly viewed stations. The adjacent underserved county proposal would allow both satellite and cable operators to retransmit non-local, in-state signals to orphan county subscribers on a royalty-free basis. The Four Corners Television Access Act of 2009 would deem each television broadcast station broadcasting in the DMA of a state capital as a "significantly viewed" station. Because under current rules the signals of significantly viewed stations can be retransmitted on a royalty free basis, MVPDs would be allowed to retransmit the Denver stations to the two orphan counties in Colorado without making copyright payments.

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