Materials on the Home Satellite Viewer Act of 1994

Satellite Home Viewer Act of 1994 (Public Law 103-369)

SEC.2 STATUTORY LICENSE FOR SATELLITE CARRIERS

Section 119 of title 17, United States Code, is amended as follows:

(1) Subsection (a)(2)(C) is amended--

(A) by striking "90 days after the effective date of the Satellite Home Viewer Act of 1988, or";

(B) by striking "whichever is later,";

(C) by inserting "name and" after "identifying (by" each place it appears; and

(D) by striking ", on or after the effective date of the Satellite Home Viewer Act of 1988,".

(2) Subsection (a)(5) is amended by adding at the end the following:

"(D) Burden of proof.--In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household.".

(3) Subsection (b)(1)(B) is amended--

(A) in clause (i) by striking "12 cents" and inserting "17.5 cents per subscriber in the case of superstations not subject to syndicated exclusivity under the regulations of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations subject to such syndicated exclusivity"; and

(B) in clause (ii) by striking "3" and inserting "6".

(4) Subsection (c) is amended--

(A) in paragraph (1) by striking "December 31, 1992,";

(B) in paragraph (2)--

(i) in subparagraph (A) by striking "July 1, 1991" and inserting "July 1, 1996"; and

(ii) in subparagraph (D) by striking "December 31, 1994" and inserting"December 31, 1999, or in accordance with the terms of the agreement, whichever is later"; and

(C) in paragraph (3)--

(i) in subparagraph (A) by striking "December 31, 1991" and inserting"January 1, 1997";

(ii) by amending subparagraph (D) to read as follows:

"(D) Establishment of royalty fees.--In determining royalty fees under this paragraph, the Copyright Arbitration Panel shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair

market value of secondary transmissions. In determining the fair market value, the Panel shall base its decision on economic, competitive, and programming information presented by the parties, including--

"(i) the competitive environment in which such programming is distributed, the cost for similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

"(ii) the economic impact of such fees on copyright owners and satellite carriers; and

"(iii) the impact on the continued availability of secondary transmissions to the public.";

(iii) in subparagraph (E) by striking "60" and inserting "180"; and

(iv) in subparagraph (C)--

(I) by striking ", or until December 31, 1994"; and

(II) by inserting "or July 1, 1997, whichever is later" after"section 802(g)".

(5) Subsection (a) is amended--

(A) in paragraph (5)(C) by striking "the Satellite Home Viewer Act of 1988" and inserting "this section"; and

(B) by adding at the end the following:

"(8) Transitional signal intensity measurement procedures.--

"(A) In general.--Subject to subparagraph (C), upon a challenge by a network station regarding whether a subscriber is an unserved household within the predicted Grade B Contour of the station, the satellite carrier shall, within 60 days after the receipt of the challenge--

"(i) terminate service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

"(ii) conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the network station of the satellite carrier's intent to conduct the measurement.

"(B) Effect of measurement.--If the satellite carrier conducts a signal intensity measurement under subparagraph (A) and the measurement indicates that--

"(i) the household is not an unserved household, the satellite carrier shall, within 60 days after the measurement is conducted, terminate the service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

"(ii) the household is an unserved household, the station challenging the service shall reimburse the satellite carrier for the costs of the signal measurement within 60 days after receipt of the measurement results and a statement of the costs of the measurement.

"(C) Limitation on measurements.--(i) Notwithstanding subparagraph (A),a satellite carrier may not be required to conduct signal intensity measurements during any calendar year in excess of 5 percent of the number of subscribers within the network station's local market that have subscribed to the service as of the effective date of the Satellite Home Viewer Act of 1994.

"(ii) If a network station challenges whether a subscriber is an unserved household in excess of 5 percent of the subscribers within the network's station local market within a calendar year, subparagraph (A) shall not apply to challenges in excess of such 5 percent, but the station may conduct its own signal intensity measurement of the

subscriber's household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement. If such measurement indicates that the household is not an unserved household, the carrier shall, within 60 days after receipt of the measurement, terminate service to the household of the signal that is the subject of the challenge and within 30 days thereafter notify the network station that made the challenge that service has been terminated. The carrier shall also, within 60 days after receipt of the measurement and a statement of the costs of the measurement, reimburse the network station for the cost it incurred in conducting the measurement.

"(D) Outside the predicted grade b contour.--(i) If a network station challenges whether a subscriber is an unserved household outside the predicted Grade B Contour of the station, the station may conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement.

"(ii) If the network station conducts a signal intensity measurement under clause (i) and the measurement indicates that--

"(I) the household is not an unserved household, the station shall forward the results to the satellite carrier who shall, within 60 days after receipt of the measurement, terminate the service to the household of the signal that is the subject of the challenge, and shall reimburse the station for the costs of the measurement within 60 days after receipt of the measurement results and a statement of such costs; or

"(II) the household is an unserved household, the station shall pay the costs of the measurement.

"(9) Loser pays for signal intensity measurement; recovery of measurement costs in a civil action.--In any civil action filed relating to the eligibility of subscribing households as unserved households--

"(A) a network station challenging such eligibility shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the satellite carrier for any signal intensity measurement that is conducted by that carrier in response to a challenge by the network station and that establishes the household is an unserved household; and

"(B) a satellite carrier shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the network station challenging such eligibility for any signal intensity measurement that is conducted by that station and that establishes the household is not an unserved household.

"(10) Inability to conduct measurement.--If a network station makes a reasonable attempt to conduct a site measurement of its signal at a subscriber's household and is denied access for the purpose of conducting the measurement, and is otherwise unable to conduct a measurement, the satellite carrier shall within 60 days notice thereof, terminate service of the station's network to that household.".

(6) Subsection (d) is amended--

(A) by amending paragraph (2) to read as follows:

"(2) Network station.--The term 'network station' means--

"(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

"(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934).";

(B) in paragraph (6) by inserting "and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations" after "Commission"; and

(C) by adding at the end the following:

"(11) Local market.--The term 'local market' means the area encompassed within a network station's predicted Grade B contour as that contour is defined by the Federal Communications Commission.".

SEC. 3. DEFINITIONS.

(a) Cable System.--Section 111(f) of title 17, United States Code, is amended in the paragraph relating to the definition of "cable system" by inserting "microwave," after "wires, cables,".

(b) Local Service Area.--Section 111(f) of title 17, United States Code, is amended in the paragraph relating to the definition of "local service area of a primary transmitter" by inserting after "April 15, 1976," the following: "or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations,".

SEC. 4. TERMINATION.

(a) Expiration of Amendments.--Section 119 of title 17, United States Code, as amended by section 2 of this Act, ceases to be effective on December 31, 1999.

(b) Conforming Amendment.--Section 207 of the Satellite Home Viewer Act of 1988 *(17 U.S.C. 119* note) is repealed.

SEC. 5. LIMITATION.

The amendments made by this section apply only to section 119 of title 17, United States Code.

SEC. 6. EFFECTIVE DATE.

(a) In General.--Except as provided in subsections (b) and (d), this Act and the amendments made by this Act take effect on the date of the enactment of this Act.

(b) Burden of Proof Provisions.--The provisions of section 119(a)(5)(D) of title 17, United States Code (as added by section 2(2) of this Act) relating to the burden of proof of satellite carriers, shall take effect on January 1, 1997, with respect to civil actions relating to the eligibility of subscribers who subscribed to service as an unserved household before the date of the enactment of this Act.

(c) Transitional Signal Intensity Measurement Procedures.--The provisions of section 119(a)(8) of title 17, United States Code (as added by section 2(5) of this Act), relating to transitional signal intensity measurements, shall cease to be effective on December 31, 1996.

(d) Local Service Area of a Primary Transmitter.--The amendment made by section 3(b), relating to the definition of the local service area of a primary transmitter, shall take effect on July 1, 1994.

Speaker of the House of Representatives.
Vice President of the United States and President of the Senate.