

CRS Report for Congress

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Satellite Television: Provisions of SHVIA and LOCAL, and Continuing Issues

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Summary

Congress passed two laws to provide consumers greater access to local network television stations, particularly via satellite. First, the Satellite Home Viewer Improvement Act (SHVIA, part of P.L. 106-113) was enacted in 1999. SHVIA allows (not *requires*) satellite companies, for the first time, to retransmit a local broadcast network signal back into the same local market area (“local-into-local”). Concerned that satellite TV companies do not plan to offer local-into-local in all parts of the country, Congress passed the Launching Our Communities Access to Local Television Act (LOCAL, part of P.L. 106-553) in 2000. That Act creates a loan guarantee program that its supporters hope will ensure that consumers in small and rural markets receive local network TV stations via satellite or other technologies. This report summarizes the provisions of SHVIA and LOCAL, and provides an overview of continuing issues, including “must carry,” as the Acts are implemented. It will be updated if warranted.

The Satellite Home Viewer Improvement Act (SHVIA)

The 1999 Satellite Home Viewer Improvement Act ¹ (included by cross reference in the FY2000 Consolidated Appropriations Act, P.L. 106-113) expands on and extends some provisions of the 1988 Satellite Home Viewer Act (SHVA), as amended. Historical information on SHVA and the issues Congress faced in revising it are available in CRS Report 98-942.

The new law, SHVIA, provides consumers greater access to broadcast network television programming via their satellite dishes. The original law permitted rebroadcast of *distant* network signals to consumers who lived outside the “Grade B contour” of

¹ SHVIA is Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999. The final version of the bill, S. 1948, was introduced in the closing days of the 106th Congress, 1st session to reflect changes the Senate wanted to make to the conference version of H.R. 1554 (H.Rept. 106-464) that had already passed the House. S. 1948 was not reported from any committee and hence there is no report language to accompany it. The report on H.R. 1554, excluding the sections on the loan guarantee program and whether the compulsory license should extend to Internet companies, is indicative of congressional views, however.

broadcast network affiliate stations. The new law continues to permit that activity, but also allows satellite companies to rebroadcast *local* network signals back into the same local market area. They are not required to do so, however.

Local versus Distant Network Signals. The distinction between local and distant network signals is important to understanding SHVIA. A local signal is received within a network television affiliate's local area. A distant signal is from elsewhere in the country. If a consumer lives in Denver and is receiving a signal from a Denver network affiliate, that is a local signal. If a consumer lives in West Virginia and is receiving a signal from that Denver network affiliate via satellite, it is a distant network signal.

Who May Receive Distant Network Signals. The original SHVA established the "Grade B"² contour as the determining factor as to whether a particular household was eligible to receive distant network signals via satellite. Consumers living inside the Grade B contour were not allowed to receive such signals while those outside the contour (in so-called "white areas") were allowed to receive them. Some satellite companies transmitted distant network signals to consumers inside Grade B contours, however, leading to court challenges by the networks to try to force the satellite companies to obey the law. Based on decisions by a Miami judge in 1998, over 2 million consumers reportedly had, or were scheduled to have, distant network signals terminated by their satellite companies. EchoStar appealed the decision to the Supreme Court in 2002, which declined to hear the case.

In the new law, Congress "grandfathered" consumers who had been receiving distant network signals illegally as long as they could not receive a signal of "Grade A"² intensity. For new subscribers, however, the original rules apply. To receive distant network signals, new subscribers must not be able to receive a signal of Grade B intensity as determined using the Individual Location Longely-Rice (ILLR) method for predicting signal strength established by the Federal Communications Commission (FCC) in February 1999. SHVIA directed the FCC to review whether the Grade B standard should still be used for the purposes of SHVIA. The FCC concluded it should (FCC-016, ET Docket No. 00-90).

Consumers who believe they are not receiving a Grade A or Grade B signal despite predictive models showing that they are may seek a waiver to receive distant network signals via satellite. **Consumers must apply to their satellite company for the waiver.** The satellite company forwards the request to the local network affiliate. There is no time limit for the satellite company to take that action. Once the request is received, the local affiliate has 30 days to decide whether or not to grant the waiver. If the waiver is granted, or if no action is taken by the affiliate, the consumer may then receive distant network signals from the satellite company. If a waiver is denied, consumers may then request a

² Grade A and Grade B contours can be visualized as circles around a TV station's transmitter indicating the strength of a signal received within that area. The Grade A contour is close to the transmitter and reception there is better than in the Grade B contour, but reception within the Grade B contour is deemed acceptable. The FCC describes these contours as follows: "a quality acceptable to the median observer is expected to be available for at least 90 percent of the time at the best 70 percent of receiver locations at the outer limits of [Grade A] service. In the case of Grade B service the figures are 90 percent of the time and 50 percent of the locations." (FCC Cable Services Bureau, report FCC 99-14, CS Docket 98-201, paragraph 33.)

signal intensity test from their satellite company. The satellite company and the local affiliate are required jointly to choose someone to conduct the test. The consumer does not bear the cost of the test. Instead, the “loser” pays (either the satellite company or the affiliate), or the satellite company and the affiliate may choose some other method of paying the costs as long as the consumer does not pay. Exceptions were made for recreational vehicles (as defined by Department of Housing and Urban Development regulations), commercial trucks (as defined by Department of Transportation regulations), and for consumers using large “C-band” satellite dishes. The RV or commercial truck cannot be a fixed dwelling.

In summary, the following consumers may receive distant network signals until December 31, 2004, the period for which the compulsory license (see below) was extended:

- ! if they do not receive a signal of Grade B intensity from the local affiliate of a particular network;
- ! if their satellite dish is installed on an RV or commercial truck, or
- ! if they had been receiving distant network signals illegally and those signals were terminated or scheduled to be terminated under the 1998 Miami court rulings, *and* they do not receive a signal of Grade A intensity from the local affiliate of the network.

During markup of S. 2329, the Ship, Seafarer, and Container Security Act, on May 17, 2002, the Senate Commerce Committee adopted an amendment adding recreational vessels (pleasure boats) to the exception provided for RVs and commercial trucks. The bill was ordered reported that day.

Consumers using “C-band” dishes are not subject to the 5 year limitation. They may receive distant network signals they were receiving before October 31, 1999 indefinitely.

Who May Receive Local Signals. SHVIA *permits* Direct Broadcast Satellite (DBS) companies to provide “local-into-local” service, where a local broadcast TV signal is transmitted up to the satellite and back down to consumers in that same market area. *The law does not require the DBS companies to provide this service.* There is considerable confusion on this point, stemming, in part, from the fact the law also created a “**must carry**” provision. Under must carry, each DBS company must provide *all* local broadcast stations in a particular market if it provides *any* local station in that market. *This does not mean that DBS companies must carry local broadcast programming throughout the country.* Instead, *if* a company *chooses* to provide local broadcast programming in a market, it must carry all local TV stations in that market that wish to be carried (with exceptions for duplicative programming and educational stations). The DBS companies still may choose not to provide local-into-local service in any particular market.

Cable companies already were subject to must carry rules (depending on the size of the cable system). The new law went into effect for DBS on January 1, 2002.³ The DBS

³ Each TV station chooses whether or not it wants to be carried by the satellite company. If it does, it then chooses between “retransmission consent” or “must carry” status. If it chooses retransmission consent, the station negotiates with the satellite company the terms under which
(continued...)

companies oppose must carry requirement and unsuccessfully attempted to overturn it in court.

According to their respective Web sites, as of June 2002, EchoStar offered local-into-local in 38 markets and DirecTV in 41 markets. EchoStar plans to launch additional satellites that will raise that figure to about 60 markets. DirecTV plans to add several more markets in 2002. There are 210 “designated market areas” (DMAs) in the United States as identified by Nielsen Media Research, meaning that many communities do not receive local signals via satellite. Congress passed the LOCAL Act (see below) in 2000 to help ensure that small and rural areas receive local television via satellite or other technologies. EchoStar and DirecTV announced merger plans in October 2001 (see CRS Report RL31226) and say the new merged company would be able to provide local-into-local in all 210 markets.

Compulsory Copyright License. Another issue regarding satellite retransmission of television programming concerns compensation to those who own the copyright on the programming. Under both the original and new laws, satellite carriers were given a compulsory copyright license for retransmitting distant network and superstation signals. That means that the copyright owners must make that programming available to the satellite companies at a government-set price.⁴ Without such a license, the satellite companies would have to negotiate with each copyright owner individually. The new law extends that compulsory license for 5 more years, until December 31, 2004. For retransmitting local signals, however, Congress gave the satellite companies a permanent compulsory license, and no copyright compensation is required. (Copyright compensation is separate from business arrangements negotiated to obtain retransmission consent.) Cable has a permanent compulsory copyright license.

Table 1: Summary of SHVIA Provisions

- ! permits (but does not require) satellite companies to offer local-into-local television service;
- ! makes must-carry requirements effective for satellites on January 1, 2002;
- ! makes syndicated exclusivity, sports blackout, and network nonduplication applicable to satellite retransmission of nationally distributed superstations, but for network stations, only sports blackout applies and only if technically feasible and not economically prohibitive;

³ (...continued)

the station will be carried (usually involving payment of a fee by the satellite company, and sometimes requiring the satellite company to carry other programming as well). Stations that do not believe they can negotiate a favorable retransmission consent deal may choose “must carry” status where there are no payments by either party. SHVIA also made four other cable regulations—syndicated exclusivity, sports blackout, network nonduplication, and retransmission consent—applicable to satellite companies. The first three apply to retransmission of signals of nationally distributed superstations. Of those three, only sports blackout applies to network stations and only if technically feasible and not economically prohibitive.

⁴The rate set in 1997, 27 cents per subscriber per month for both distant superstations and distant network stations, was controversial (see CRS Report 98-140A). The rates are set periodically under procedures of the Copyright Office of the Library of Congress. SHVIA reduces the rate for distant network signals by 45% and for superstation signals by 30%.

- ! allows subscribers who do not receive a Grade A intensity signal and whose distant network signals were terminated or were going to be terminated because of 1998 Miami court rulings to have those signals restored or continued until December 31, 2004 (“grandfathering” many of the subscribers affected by the 1998 court decision);
- ! retains the Grade B signal intensity standard as the criterion for who may receive distant network signals;
- ! allows subscribers unable to receive a Grade B signal, as well as recreational vehicles and commercial trucks that are not fixed dwellings, to receive no more than two distant network signals of each television network on a single day;
- ! establishes a process for consumers to seek waivers from local affiliates to receive distant network signals if signal strength is in doubt, at no cost to the consumer;
- ! allows C-band satellite customers to continue receiving distant network signals they were receiving as of October 31, 1999 indefinitely;
- ! extends the existing satellite compulsory license for distant network and superstation signals until December 31, 2004 and creates a new compulsory license for local network signals with no sunset date;
- ! reduces the rate set in 1997 for copyright royalty payments satellite companies must pay by 45% for distant network signals and 30% for superstation signals (no copyright fees may be charged for local signals);
- ! eliminates the 90-day waiting period for cable subscribers; and
- ! allows satellite companies to offer a national Public Broadcasting Service (PBS) feed through January 1, 2002; after that, local PBS stations would have to be carried in markets where local-into-local service is provided.

The LOCAL Act: Loan Guarantees

In 1999, the conference version of H.R. 1554 would have created a loan guarantee program to help ensure that subscribers in small and rural markets benefit from the local-into-local provisions even though EchoStar and DirecTV do not plan to offer such service in all areas. The provision was deleted before final passage because of objections by Senator Gramm that the proposal had not been sufficiently debated. Congress subsequently passed the “Launching Our Communities Access to Local Television Act” (LOCAL) as Title X of the FY2001 Commerce-Justice-State Appropriations Act as enacted by the FY2001 District of Columbia Appropriations Act (P.L. 106-553). See CRS Report RL30481 for more information on LOCAL.

LOCAL creates a four-person board, consisting of the Secretaries of Treasury, Agriculture, and Commerce, and the Chairman of the Federal Reserve, or their designees, to select recipients of loan guarantees for up to \$1.25 billion in loans (generally, 80% of the loan may be guaranteed). The loans may be used to build systems to ensure that consumers throughout the country can receive local television signals. The Board is to take into account whether a project would provide service to “nonserved” or “underserved” areas and whether it would provide high-speed Internet access. The Act is technology neutral in that it does not specify whether local TV stations would be provided by satellite, cable, or other transmission media, but places some limits on which cable companies are eligible. It also encourages the delivery of other telecommunications services such as Internet access. The loan guarantee program is administered by the Rural Utilities Service in the Department of Agriculture, which received \$280 million in the FY2002 Agriculture appropriations act (P.L. 107-76) for the program. Section 6404 of

the Farm Security and Rural Investment Act (P.L.107-171, H.R. 2646) allocates \$80 million for the program from the Commodity Credit Corporation through Dec. 31, 2006.

Continuing Issues

Must Carry Requirements Under SHVIA. EchoStar and DirecTV oppose the must carry requirement described earlier. In large markets such as New York or Los Angeles, a DBS company must carry more than 20 local stations, instead of the 4 or 5 (typically ABC, CBS, NBC, Fox, and PBS) it provided prior to when the must carry requirements went into effect. Since satellites have a finite capacity, DirecTV and EchoStar argue that the must carry requirement limits the number of markets in which they can offer local-into-local service. The two companies and the Satellite Broadcasting and Communications Association (SBCA) filed suit in U.S. District Court in Alexandria, VA to overturn must carry on First and Fifth Amendment grounds. On June 22, 2001, that court upheld the must carry requirement. An appeal was filed with the 4th U.S. Appeals Court in Richmond. On December 7, 2001, that court also upheld the must carry requirement. SBCA appealed to the Supreme Court, which declined to hear the case. Therefore, must carry remains in effect for the DBS companies, and they reportedly are complying. Some EchoStar customers, however, must obtain a second dish to receive all the local signals because not all of the local programming is transmitted from the same satellite. EchoStar provides the second dish at no charge. The National Association of Broadcasters (NAB) and the Association of Local TV Stations (ALTV) filed a petition with the FCC arguing that the two-dish requirement discriminates against the local channels carried on the alternate satellite. The FCC ruled in April 2002 in favor of NAB and ALTV and directed EchoStar to take remedial steps. Two dishes are not proscribed as long as consumers can receive all their local channels through the same dish.

Northpoint and DBS. LOCAL required the FCC to select an independent entity to conduct tests to determine whether terrestrial systems operating in the same frequency band as DBS satellites (12.2-12.7 Gigahertz) would cause unacceptable interference to DBS systems. This is often called “the Northpoint provision” because a company called Northpoint Technologies, through its Broadwave subsidiary, wants to operate a terrestrial wireless system offering programming similar to that provided by DBS. It is seeking a license from the FCC to use the 12.2-12.7 GHz band for that terrestrial service, designated MVDDS (Multichannel Video Distribution and Data Service). Until now, the 12.2-12.7 GHz band has been assigned only to satellites. The MITRE Corporation conducted the interference tests. Its April 2001 report concluded that the two systems could not co-exist unless the MVDDS systems use a number of mitigating techniques. DBS operators hailed the MITRE report because it concluded that MVDDS would cause interference to their operations. Northpoint hailed the report because it said there were mitigating steps that could be taken. The FCC then decided that MVDDS and DBS could co-exist, but dismissed without prejudice applications by Northpoint and two other companies to provide MVDDS. (FCC 02-116. ET Docket 98-206.) Instead, the FCC decided to auction the frequencies. Northpoint is appealing the decision to use auctions, and S. 2922 (Landrieu) would prohibit the use of auctions for MVDDS. Instead, the bill would require FCC to award MVDDS licenses on the basis of an applicant’s ability to deploy the new service within 5 years, and meet other criteria, including causing no harmful interference to DBS. Northpoint also has proposed building its own DBS satellite system to operate in conjunction with its proposed terrestrial system.