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Satellite Television: Reauthorization of the Satellite Home Viewer Improvement Act (SHVIA) — Background and Key Issues

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Summary

In November 2004, Congress passed the Satellite Home Viewer Extension and Reauthorization Act (SHVERA) as part of the FY2005 Consolidated Appropriations Act (H.R. 4818, P.L. 108-447). SHVERA extends and expands upon provisions in the 1999 Satellite Home Viewer Improvement Act (SHVIA) that regulate the satellite television (TV) industry. Among the more controversial provisions were extension of a copyright law provision that allows TV companies to provide “distant network signals” to subscribers who cannot receive broadcast network television signals via over-the-air television antennas, the creation of analogous “digital white areas” as the TV industry transitions to digital signals, and whether to require satellite companies to offer all local network TV stations on a single dish. CRS Report RS21990 explains SHVERA’s digital white area provisions in more detail. This is the final edition of this report.

Introduction

The three most common methods by which consumers receive television signals are broadcast, cable, and direct broadcast satellite (DBS). Broadcast television is free to consumers, who receive the signals via over-the-air (rooftop or “rabbit ear”) antennas. Cable and DBS compete in the Multichannel Video Programming Distribution (MVPD) marketplace, where providers offer packages of video (and sometimes audio) programming for a monthly fee. According to the Federal Communications Commission (FCC), there are 107 million television households in the United States.¹ Of those, 88% subscribe to an MVPD service. Cable TV serves 75% of MVPD subscribers, while DBS serves 22%. The remainder use other MVPD services that are described in the FCC report. Cable and satellite offer greater programming choices, and sometimes better signal quality, than broadcast television, but can be costly. Congress has fostered

¹ The FCC prepares an annual survey of the MVPD market. The current edition was released in January 2004: [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-5A1.pdf].

competition in the MVPD marketplace, partially in an attempt to keep cable TV rates in check. Two major companies offer DBS services today: DirecTV (a subsidiary of News Corp.) and EchoStar, which markets its service as Dish TV. Another company, Rainbow DBS (a subsidiary of Cablevision) offers a comparatively small number of satellite channels through a service called Voom.

Background

The Satellite Home Viewer Improvement Act. The 1999 Satellite Home Viewer Improvement Act (SHVIA)² extended and expanded upon provisions of the 1988 Satellite Home Viewer Act (SHVA), as amended in 1994. In passing SHVA and SHVIA (as well as the 1984 and 1992 Cable Acts³), Congress has attempted to balance the interests of the broadcast, satellite, and cable industries, with the goal of ensuring that as many households as possible have access to free local television programming, while expanding consumer choices in programming and service providers.

SHVA, enacted in the early days of satellite television, allowed satellite companies to retransmit broadcast network and superstation programming only to households that could not receive “viewable” signals via over-the-air antennas because they are too distant from the transmitters, or in areas where TV signals are blocked by buildings or terrain (formally called “unserved households”). The limitation was designed to protect the nationwide system of broadcast network affiliates, which depend on advertising revenue based on their number of viewers. The goal is to preserve “localism,” where consumers can watch local news, weather, and community-oriented programs. The availability of local programming is largely dependent on network affiliates, which in turn are dependent on viewers. Under SHVA, satellite companies could retransmit broadcast network programming only to unserved households, so the majority of viewers would watch their local affiliate. But the small percentage of consumers in unserved households could also receive network programs, even though they came from an “out-of-market” affiliate. These out-of market signals are called “distant network signals.”

SHVA created a five-year “compulsory copyright license”⁴ whereby satellite companies may retransmit distant network signals to unserved households without permission from the copyright owners, and the government sets the price the satellite companies pay as copyright royalties. The satellite companies pay the royalties to the Copyright Office of the Library of Congress, which passes them on to the copyright owners. A similar compulsory copyright license was given to cable companies in 1976, although the cable license is permanent. The satellite distant network signal license is codified in §119 of the Copyright Act (Title 17 U.S.C.), and was renewed for another five

² SHVIA is Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, included in the FY2000 Consolidated Appropriations Act, P.L. 106-113. Historical information on SHVA is available in CRS Report 98-942. The FCC has a website that provides information on the legal and regulatory regime for satellite TV: [<http://www.fcc.gov/mb/shva/>].

³ An FCC fact sheet on cable television summarizes the legal and regulatory regime for cable television, including the 1984 and 1992 Cable Acts: [<http://www.fcc.gov/mb/facts/csgen.html>].

⁴ This compulsory copyright license is for both broadcast network and superstation signals, but is usually referred to as “the distant network signal” license. That terminology is used hereafter in this report. Superstations are independent broadcast stations.

years in 1994. It was extended for a further five years in SHVIA, and is now set to expire on December 31, 2004. SHVIA also exempts satellite companies from the requirement to obtain retransmission consent from broadcasters to rebroadcast distant network signals, and that provision expires on the same date.

SHVIA significantly expanded upon SHVA by allowing satellite companies to retransmit local broadcast network programming back into the same market area where it originated — called “local-into-local” service. The law permits, but does not require, satellite companies to offer local-into-local service. SHVIA created a royalty-free compulsory copyright license for local-into-local satellite signals that is codified in §122 of the Copyright Act, and is permanent, like the cable license. According to their websites, on November 30, 2004, EchoStar offered local-into-local in 160 of the 210 Designated Market Areas (DMAs)⁵ in the country, and DirecTV offered it in 130 DMAs. Under SHVIA, unserved households could receive distant network signals even if local-into-local service is offered in their area.

Local versus Distant Network Signals. The distinction between local and distant network signals is important for understanding SHVIA. A local signal is received within a broadcast network television affiliate’s local market area. A distant network signal is from elsewhere in the country. For example, if a consumer lives in Denver and receives a signal from a Denver network affiliate, that is a local signal. If a consumer lives in West Virginia and receives a signal from that Denver network affiliate via satellite, it is a distant network signal.

Eligibility for Distant Network Signals — “White Areas,” and “Grade B” Signals. Determining which consumers are eligible to receive distant network signals via satellite is complicated and is discussed in more detail in CRS Report RS20425. Generally, only consumers living in unserved households — where broadcast television reception is extremely poor or non-existent — may receive distant network signals via satellite. **Unserved households, colloquially known as “white areas,”** are defined based on the FCC’s “Grade B” signal intensity standard. Congress mandated in SHVA that the Grade B standard be used for this purpose, and, in SHVIA, directed the FCC to review whether the Grade B standard still should be used. In 2000, the FCC concluded that it should.⁶ Computer models are used to mathematically predict which households can receive at least a Grade B signal; if they cannot, they are unserved for purposes of SHVIA. In 1999, the FCC adopted an improved model, called the Individual Location Longely-Rice (ILLR), to predict signal intensity at specific households, instead of in a general area.

Some satellite companies transmitted distant network signals to consumers who were not eligible to receive them, leading to court challenges by the networks to try to force the satellite companies to obey the law. One landmark case was a 1998 ruling by a Miami

⁵ DMAs are defined by Nielsen Media Research, which explains that “A DMA consists of all counties whose largest viewing share is given to stations of that same market area.” [http://www.nielsenmedia.com/FAQ/dma_satellite%20service.htm].

⁶ See FCC Report FCC 00-416, ET Docket No. 00-90, November 29, 2000, [http://www.fcc.gov/Bureaus/Engineering_Technology/Orders/2000/fcc00416.doc], for a definition of Grade B signals.

judge [*CBS Broadcasting v. Primetime 24 Joint Venture*, 48 F. Supp.2d 1342 (S.D.Fla. 1998)] under which over 2 million consumers reportedly had, or were scheduled to have, distant network signals terminated by their satellite companies. That action was pending when Congress debated SHVIA. Congress “grandfathered” those consumers who were receiving distant network signals illegally if they could not receive a Grade A signal. For new subscribers, the original rules apply. Exceptions were made for recreational vehicles, commercial trucks, and consumers using “C-band” satellite dishes.⁷ In summary, under SHVIA, the following consumers could receive distant network signals until December 31, 2004:

- 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 ruling, *and* they do not receive a signal of Grade A intensity from the local affiliate of the network (“grandfathered subscribers”).

Consumers using C-band dishes are not subject to the five-year limitation. They may receive distant network signals they were receiving before October 31, 1999 indefinitely. Consumers who believe they cannot receive a Grade B signal, despite predictive models showing that they can, may request a waiver (see CRS Report RS20425 for more information on the waiver process).

The issue of who may receive distant network signals via satellite remains controversial even with the advent of local-into-local service. First, distant network signals primarily serve consumers in the most rural parts of the country who also are likely to be in the DMAs that do not yet receive local-into-local service from the DBS providers. Second, some consumers want distant network signals not because of reception problems with their own local signals, but because they want greater programming choices, or to watch network programming airing at different times in the various U.S. time zones.

Key Provisions of the 2004 Satellite Home Viewer Extension and Reauthorization Act (SHVERA)

On November 20, 2004, Congress passed the Satellite Home Viewer Extension and Reauthorization Act (SHVERA), also known as the William J. “Billy” Tauzin Satellite Television Act, as Title IX, Division J, of the FY2005 Consolidated Appropriations Act (H.R. 4818, P.L. 108-447). That final version was a compromise between H.R. 4518, which passed the House on October 6, 2004, and legislation that was pending in the Senate. H.R. 4518 (L. Smith) had been reported from the House Judiciary Committee (H.Rept. 108-660) on September 7, 2004. As passed, it incorporated many of the provisions of H.R. 4501 (Upton), which was reported from the House Energy and Commerce Committee on July 22 (H.Rept. 108-634). In the Senate, S. 2013 (Hatch) was reported, amended, from Senate Judiciary (no written report) on June 17, and S. 2644

⁷ C-band dishes are the original, large, “backyard” antennas. The number of C-band subscribers has declined from a high of about 2.5 million in 1995 to less than 0.5 million at the end of 2003.

(Ensign/McCain) was reported, amended, from the Senate Commerce Committee (S.Rept. 108-427) on December 7. Neither bill reached the Senate floor.

Extension of Compulsory Copyright License. The compulsory copyright license was the chief impetus behind consideration of SHVERA because it was due to expire on December 31, 2004.⁸ Certain satellite subscribers (see bulleted list above) would lose access to distant network signals if the license was not extended. Copyright owners, often represented by the Motion Picture Association of America (MPAA), object to the compulsory licenses. They argue that the cable and satellite companies should be required to negotiate copyright royalties like everyone else. Prices for the cable and satellite compulsory licenses are set by different methods and on different cycles. Prices for the satellite license had last been set in 1997. As required by law, the Copyright Office, through a Copyright Arbitration Royalty Panel (CARP), set a price based on “fair market value”: 27 cents per subscriber per year for both distant network and superstation signals. The satellite companies objected because the prices were a significant increase, and much higher than what cable companies pay (see CRS Report 98-140). In SHVIA, Congress rolled the rates back by 45% for distant network signals, and 30% for superstation signals.

The MPAA argued that if the distant network signal license was extended, the royalty rates should be substantially increased and adjusted annually. The Copyright Office wanted parity between the cable and satellite licenses and recommended that the satellite distant network signal license be renewed for five more years while both licenses were reexamined. The Satellite Broadcasting and Communications Association (SBCA), representing the DBS companies, wanted the distant network signal license made permanent. The National Association of Broadcasters (NAB) wanted the distant network signal license extended only for five years, and limited to areas where local-into-local is not available. The final version of SHVERA extended the license for another five years, and allowed the parties to reach a voluntary agreement on the royalty rate. If they cannot reach agreement, the rate is to be set by a CARP process. SHVERA also requires most subscribers to choose between local-into-local service or distant network signals if local-into-local is available in their area. Generally, existing subscribers who are currently receiving distant network signals because they live in white areas (not those who were grandfathered in SHVIA) may continue to receive both distant and local-into-local signals. Other existing subscribers must choose one or the other. New subscribers may not receive distant network signals once local-into-local is available in their area.

“Digital White Areas”. To date, white areas (or unserved households) have been defined based on the transmission of analog television signals. The broadcast television industry, however, is transitioning from analog to digital signals, and eventually will cease transmitting analog signals (see CRS Report RL31260). SBCA and the Digital Transition Coalition (DTC) want “digital white areas” to be defined, similar to the existing analog white areas, where satellite companies would be allowed to provide distant digital network signals to subscribers unable to receive local network digital signals terrestrially. SBCA and the DTC argue that allowing satellite TV companies to provide digital distant network signals to unserved households would spur the broadcasters to convert to digital

⁸ The retransmission consent exemption for distant network signals also was due to expire, but extending it was not contentious.

more quickly. The NAB called SBCA's proposal "a recipe for mischief," disputing the assessment that broadcasters are moving slowly on digital TV. The final version of SHVERA contains complex wording about digital white areas, and both sides declared victory. The details are explained in CRS Report RS21990. Essentially, subscribers who are unserved for purposes of analog TV signals, and meet certain conditions regarding the availability of analog or digital local-into-local service, will also be considered unserved for purposes of digital TV signals and receive distant digital signals. Other satellite TV subscribers may receive distant digital signals only under very narrow circumstances that appear to minimize the number of eligible households.

Local-into-Local Issues: More Consumer Choices (Including "Significantly Viewed" Stations), and EchoStar's "Two-Dish" Policy. As discussed earlier, local-into-local allows satellite companies to retransmit a local station's signal back into the DMA from which it originated. The use of DMAs to define the areas into which a particular signal can be retransmitted is mandated by SHVIA. However, DMAs often cross state borders, so a consumer in one state may receive programming from another state when subscribing to local-into-local service. Also, consumers within a state that might have only one network TV station may not be eligible to receive that station's signal because, based on DMA boundaries, it is a distant network signal that the consumer is ineligible to receive (because the consumer can receive a Grade B signal from a station in a neighboring state). SHVERA permits additional stations to be retransmitted to subscribers in certain states because of such factors. Subscribers in New Hampshire are allowed to receive via satellite signals from the one network station licensed in that state. Subscribers in Vermont are allowed to receive the signals of any network station licensed in that state. Subscribers in four Oregon counties (Umatilla, Grant, Malheur, and Wallowa) that are in DMAs principally composed of counties in a neighboring state are allowed to receive a signal from any network station licensed in Oregon. Subscribers in two adjacent Mississippi counties (Wilkinson and Amite) that are in a DMA composed primarily of counties in another state are allowed to receive any network station from the state capital (Jackson). SHVERA also allows satellite companies to retransmit out-of-market "**significantly viewed**" stations. As explained in CRS Report RL32641 (p. 11), to be "significantly viewed," stations must meet threshold viewership levels based on the number of over-the-air viewers. For network stations, a market share of at least 3% of total weekly viewing hours and a net weekly circulation of 25%; for independent stations, 2% of total weekly viewing hours and a net weekly circulation of 5%.

Another issue was EchoStar's policy that, in some areas, consumers must obtain a second satellite dish to receive all their local programs. That is because EchoStar uses satellites in different orbital locations to transmit the programming and separate antennas are needed to point toward the different satellites. The NAB and others complained that the practice is discriminatory because the channels for which the second dish is needed are primarily religious or foreign language stations. EchoStar responded that there is no cost for the second dish, the channels all appear on the TV program guide, and no special steps must be taken by the consumer to access those programs once the second dish is installed. Nonetheless, SHVERA requires satellite companies to offer all local channels on a single dish within 18 months of the law's enactment (except that digital TV service signals and non-digital TV service signals may be on separate dishes).

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