Broadcast Television Carriage Issues in the STELA Reauthorization Act

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Specialist in Telecommunications Policy

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SUMMARY

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Several provisions of communications and copyright laws related to the retransmission of broadcast television signals by cable operators, telephone companies (telcos), and satellite operators are set to expire at the end of 2019, pursuant to the STELA Reauthorization Act of 2014 (P.L. 113-200). (STELA stands for the Satellite Television Extension and Localism Act.) If these provisions expire, about 870,000 households subscribing to satellite services might lose access to some broadcast television programming. In addition, about 87.4 million households subscribing to cable, telco, and satellite services may be more likely to see their viewing disrupted by disputes between these operators and television broadcasters, than they would absent these expiring provisions. In November 2019, Senate Commerce, Science, and Transportation Committee Chairman Roger Wicker introduced a bill (Satellite Television Access Reauthorization Act of 2019; S. 2789) that would reauthorize the expiring provisions of both the Copyright Act of 1976, as amended, and Communications Act of 1934, as amended, for five years. Senate Judiciary Committee Chairman Lindsey Graham, however, has explored letting the copyright provisions expire with a one-year transition period. Also in November 2019, the House Committee on Energy and Commerce ordered to be reported H.R. 5035, the Television Viewer Protection Act of 2019, which would reauthorize the expiring some provisions of the Communications Act permanently, while tying others to the expiration date of the Copyright Act provisions. The House Committee on the Judiciary ordered to be reported H.R. 5140, the Satellite Television Community Protection and Promotion Act of 2019. H.R. 5140 would permanently extend Section 119 of the Copyright Act, but limit the scope of "unserved households" eligible to receive the distant signals. It would also require DIRECTV to retransmit local broadcast signals in all 210 television markets in order to continue using the compulsory copyright license described in this section.

Copyright Act Provisions

Generally, copyright owners have exclusive legal rights to license their works. The Copyright Act limits these rights for owners of copyrights to programming carried by retransmitted broadcast television signals. The act provides for statutory licenses that allow cable, telco, and satellite operators to retransmit television broadcast station signals under certain circumstances, even if one or more owners of the copyrights to the programs carried by those signals do not agree. Section 119 of the Copyright Act, which is due to expire at the end of 2019, allows satellite operators to avoid negotiating with copyright holders of programming that they transmit from outside a subscriber's local area and instead pay a royalty fee to the U.S. Copyright Office. The Copyright Office in turn pays the rights holders. If Congress does not renew Section 119, households subscribing to satellite services might be unable to watch certain broadcast programs.

Communications Act Provisions

Generally, commercial broadcast television stations may either require cable, telco, and satellite operators to carry their signals within the stations' local markets for no fee or demand that the operators negotiate for the right to retransmit the stations' signals within those markets in exchange for a fee. Typically, such negotiations occur at the corporate level, between a station owner and a cable or satellite company. An expiring provision of the Communications Act requires all parties to negotiate retransmission consent in "good faith" and assigns the Federal Communications Commission (FCC) a mediation role in the event any party accuses another of failing to negotiate in good faith. In addition, broadcast stations may not enter into exclusive contracts with cable, satellite, or telco operators. A third expiring provision permits a satellite operator to retransmit broadcast station signals outside of the station's local markets without retransmission consent from those stations, if the operator is retransmitting the signals pursuant to Section 119 of the Copyright Act. H.R. 5035 would amend the Communications Act to allow smaller cable, telco, and/or satellite operators to negotiate collectively with large station group owners until January 1, 2025.

If both the Copyright and Communications Act provisions of the STELA Reauthorization Act expire, broadcast station owners would likely have greater advantage in negotiating with cable, telco and satellite operators than they do currently. When broadcast station owners and cable, telco and/or satellite operators do not reach retransmission consent agreements, the station owners may "black out" their signals. If Congress does not renew the FCC's mediation role and retransmission consent disputes were to become more frequent, cable, telco, and satellite subscribers could experience more interruptions of broadcast television programming.

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Introduction

The retransmission of television signals to subscribers of cable, telephone company (telco), and satellite services is governed in part by the Satellite Television Extension and Localism Act Reauthorization Act of 2014 (STELA Reauthorization Act; P.L. 113-200). Some provisions of this law, which amended the Copyright Act of 1976 and the Communications Act of 1934, are set to expire at the end of 2019.[1] If these provisions expire, about 870,000 households subscribing to satellite services might lose access to broadcast television programming. Moreover, about 87.4 million households subscribing to cable, telco, and/or satellite services might be more likely to see their viewing disrupted by disputes between the operators and television broadcasters than they would absent the expiring provisions.[2]

The television industry and consumer viewing habits have changed substantially since 2014. To provide context for the current debate, this report provides background information about how households receive television programming, how the television industry operates, and how the Copyright and Communications Acts determine what programs viewers receive. Finally, the report describes the impact of the expiring provisions on both consumers and industry participants, as well as the potential ramifications if Congress allows them to expire.

Background

A household may receive broadcast television programming through one or more of three methods:

1. by using an individual antenna that receives broadcast signals directly over the air from television stations;
2. by subscribing to a multichannel video programming distributor (MVPD), such as a cable or satellite provider or a telco, which brings the retransmitted signals of broadcast stations to a home through a copper wire, a fiber-optic cable, or a satellite dish installed on the premises; or
3. by using a high-speed internet (broadband) connection. A household may subscribe to a streaming service that includes broadcast television programming on an on-demand basis, or a "virtual MVPD" (vMVPD). A vMVPD aggregates prescheduled programming and packages it in a format that is accessible on devices with broadband connections.[3]

As **Figure 1** indicates, the total number of U.S. households subscribing to an MVPD has declined over the past 10 years. In 2010, about 104.2 million households subscribed to an MVPD (cable,

[1] This report refers to these acts as the "Copyright Act" and the "Communications Act," respectively.

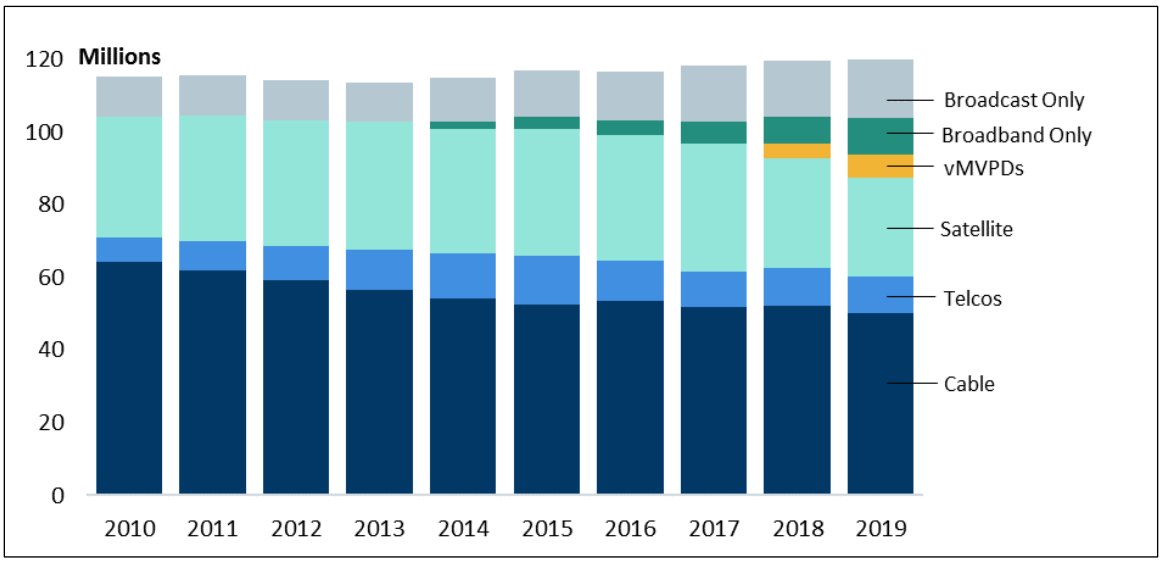
[2] The American Television Alliance, which represents cable, telco, and satellite distributors, reports that between 2010 and 2019, subscribers throughout the United States have experienced disruptions to viewing broadcast television programming due to contract disputes. American Television Alliance, "In Your Area," https://www.americantelevisionalliance.org/in-your-area/. The National Association Broadcasters, a trade association representing broadcast stations, counters that broadcast station groups and MVPDs complete negotiations with no service interruptions a majority of the time. The National Association of Broadcasters, "Issues: Allow Broadcasters to Continue Negotiating in the Free Market," https://www.nab.org/advocacy/issue.asp?id=1891&issueid=1008.

[3] The Nielsen Company, *Nielsen Total Audience Report, Q1 2019*, p. 25, https://www.rbr.com/wp-content/uploads/Q1-2019-Nielsen-Total-Audience-Report-FINAL.pdf. YouTube TV includes local broadcast television stations in its streaming package. Google, YouTube TV, "Channels," https://tv.youtube.com/welcome/. Sling TV, however, generally does not and instead provides subscribers with an antenna for over-the-air reception. Sling TV, LLC, "Watch Free Local Channels," https://www.sling.com/programming/locals#locals.

telco, or satellite provider), compared with about 87.4 million households in 2019. In place of MVPDs, an increasing number of households rely on video provided over broadband connections (including vMVPDs) or via over-the-air broadcast transmission.

Figure 1. Media Consumptions of Habits over Time

Households with Television



Source: For 2014-2019, CRS estimates based on data from the Nielsen Company, *Total Audience Report*. Estimated relative share of households subscribing to cable, satellite operators, and telcos in 2018 and 2019 based on data from S&P Global. For 2010-2013, data are from the Nielsen Company, *Cross Platform Report*.

Notes: The term "Broadband Only" refers to video received exclusively via a broadband connection instead of by traditional means (over-the-air, cable, telco, or satellite) or via a vMVPD. A television household is a household with at least one operable television set or monitor that receives programming via a broadcast antenna, cable or telco set-top box, satellite receiver, or broadband connection.

Currently, two direct broadcast satellite providers—DIRECTV and DISH—offer video service to most of the land area and population of the United States.[4] As of June 2019, DIRECTV had approximately 17.4 million U.S. subscribers, while DISH had approximately 9.5 million U.S. subscribers.[5] Both have lost subscribers since September 2014, when DIRECTV had approximately 20.2 million U.S. subscribers and DISH had approximately 14.0 million U.S. subscribers.[6]

[4] The name of DISH's parent company is DISH Network Corporation. The name of the division that operates DIRECTV is DirecTV. DirecTV's parent company is AT&T Inc., which acquired the satellite provider in 2015.

[5] S&P Global, "Media Census: Operators by Geography," (website available by subscription). AT&T does not break out its U-Verse and DIRECTV subscribers, instead calling them "premium TV" video connections. AT&T Inc., Securities and Exchange Commission (SEC) Form 10-Q for the Quarterly Period ended June 30, 2019, p. 46. AT&T states that it had about 21.6 million total premium TV video subscribers as of June 2019. DISH Network Corporation, SEC Form 10-Q for the Quarterly Period ended June 30, 2019, p. 47.

[6] DirecTV Group Holdings, LLC, SEC Form 10-Q for the Quarterly Period ended September 30, 2014, p. 61; DISH Network Corporation, SEC Form 10-Q for the Quarterly Period September 30, 2014, p. 58.

Broadcast Television Markets

Federal Communications Commission Licensing and Localism

The Federal Communications Commission (FCC) licenses broadcast television station owners for eight-year terms to use the public airwaves, or spectrum, in exchange for operating stations in "the public interest, convenience and necessity," pursuant to Section 310(d) of the Communications Act.[7] In 1952, the FCC formally allocated television broadcast frequencies among local communities.[8] The basic purpose of the allocation plan was to provide as many communities as possible with sufficient spectrum to permit one or more local television stations "to serve as media for local self-expression."[9]

Television Communities vs. Local Television Markets

Until the mid-1960s, the television audience research firm the Nielsen Company restricted its measurement of television station viewership to the major metropolitan areas that were the first to have broadcast television stations.[10] Among other factors, the station considers the estimated number of viewers it attracts with programs when determining the prices that it can charge advertisers. Thus, station viewership plays a significant role in a station's ability to generate revenue. After hearings in the House of Representatives produced accusations that stations licensed to large cities were pressuring the rating services not to measure audiences of stations licensed to smaller cities,[11] Nielsen began to assign each U.S. county to a unique geographic television market in which Nielsen could measure viewing habits.[12] Nielsen's construct, known as Designated Market Areas (DMAs), has been widely used to define local television markets since the late 1960s.[13] The definitions of DMAs are important in determining which television broadcast signals an MVPD subscriber may watch.

Nielsen generally assigns each county to one of 210 DMAs based on the predominance of viewing of broadcast television stations in that county. In addition, Nielsen assigns each broadcast television station to a DMA. Nielsen bases each station's DMA on the home county of its FCC community of license.[14] Stations seek to have their signals reach as many people as possible living within their DMAs. They generally have little incentive to reach viewers living outside their DMAs, as they are typically unable to charge advertisers for access to those viewers.

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[7] 47 U.S.C. §310(d).

[8] Federal Communications Commission, "Rules Governing Television Broadcast Stations, Sixth Report and Order," 17 *Federal Register* 3905, 3912-3914, May 2, 1952.

[9] U.S. Congress, House Committee on Interstate and Foreign Commerce, *Regulation of Community Antenna Systems*, committee print, 89th Cong., 2nd sess., June 17, 1966, p. 7.

[10] Karen S. Buzzard, *Chains of Gold: Marketing the Ratings and Rating the Markets* (Metuchen, NJ: The Scarecrow Press, Inc., 1990), pp. 121-122 (Buzzard).

[11] U.S. Congress, House Committee on Interstate and Foreign Commerce, Special Subcommittee on Investigations, *The Methodology, Accuracy, and Use of Ratings in Broadcasting*, 106th Cong., 1st sess., March 7, 1963 (Washington: GPO, 1963), pp. 203-228.

[12] Buzzard, pp. 128-133. See also "Slicing the Demographic Pie," *Sponsor*, February 27, 1967, pp. 27, 29.

[13] John S. Armstrong, "Constructing Television Communities: The FCC, Signals, and Cities, 1948-1957," *Journal of Broadcasting & Electronic Media*, March 2007.

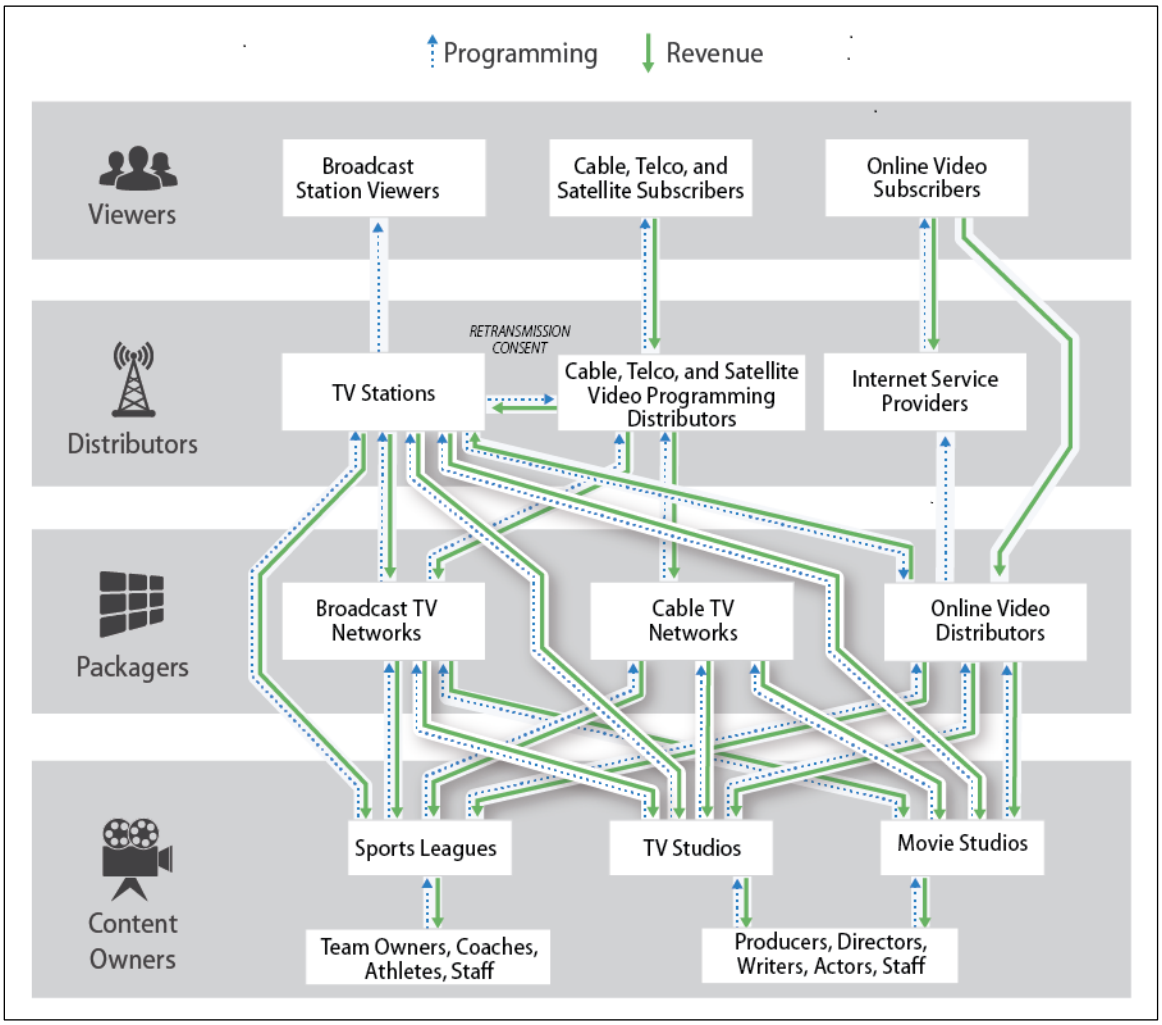
[14] The Nielsen Company, *Measurement and Reporting Geographies, Local Reference Supplement 2007-2008*, p. 1.2, https://ecfsapi.fcc.gov/file/6519864809.pdf. (This link is to the most recent version that is publicly available.)

Broadcast stations' contractual agreements with television networks and other suppliers of programming generally give them the exclusive rights to air that programming within their DMAs. Advertisers use DMAs to measure television audiences and to plan and purchase advertising from stations to target viewers within those geographic regions.

Retransmission of Broadcast Signals via MVPDs

Figure 2 illustrates the relationships among viewers; broadcast television stations; and cable, telco, and satellite operators; cable and broadcast networks; and owners of television programming content.

Figure 2.TV Industry Snapshot



Source: CRS.

Notes: Many companies/entities fall into multiple categories, or have multiple operations within a category. Other owners of content not included in this diagram are songwriters and recording artists, who in turn have licensing agreements with the content owners pictured here.

Related Communications Laws

Generally, subscribers to cable, telco, and satellite services may receive television stations located within their DMAs as part of their video packages. Whether or not subscribers do so, however, depends in part on the decisions of broadcast stations to require these services to retransmit their signals or to opt instead to negotiate for compensation. In addition, satellite operators may choose not to provide any local broadcast service in a particular DMA. The Communications Act gives broadcast stations and satellite operators the rights to make these choices.

Must Carry; Carry One, Carry All

Every three years, commercial broadcast television stations may choose to require cable, telco, and satellite operators to retransmit their signals.[15] By statute, a cable operator or telco must carry the signals of all television stations seeking "must carry" status and assigned to the DMA in which the cable operator is located. Satellite operators are required to carry the signals of all stations assigned to a DMA that seek must carry status to viewers in that DMA, if they choose to carry the signal of at least one local television station in the market.[16] Policymakers often call this provision "carry one, carry all." The applicability of these provisions to telcos is uncertain.[17]

Due in part to the carry one, carry all provision, DIRECTV has opted not to retransmit any local broadcast television stations in 12 DMAs. They are Alpena, MI; Bowling Green, KY; Caspar-Riverton, WY; Cheyenne, WY/Scottsbluff, NE; Grand Junction, CO; Glendive, MT; Helena, MT; North Platte, NE; Ottumwa, IA; Presque Isle, ME; San Angelo, TX; and Victoria, TX.[18]

Retransmission Consent

In lieu of choosing must carry status, commercial broadcasting stations may opt to seek compensation from cable, telco, and satellite operators for carriage of their signals in exchange for granting retransmission consent.[19] In contrast to the must carry laws, which differ for cable and satellite operators, the retransmission consent laws apply to all MVPDs.

If a broadcast station opts for retransmission consent negotiations, MVPDs must negotiate with it for the right to retransmit its signal within the station's DMA. In addition, cable operators may negotiate with the station for consent to retransmit the station's signals outside of the station's DMA.[20] However, the contracts that broadcast stations have with program suppliers, such as television networks, may limit the stations' ability to consent to the retransmission of their signals

[15] 47 U.S.C. §534.

[16] 47 U.S.C. §338; 17 U.S.C. §122.

[17] While, as described in "Related Copyright Laws," AT&T does not classify its U-Verse service as a "cable operator" for the purpose of the Communications Act, it abides by sections of the Communications Act governing the retransmission broadcast television programming for its U-Verse service. (See "Complaints Regarding Good Faith Standard Violations.") AT&T has stated that it considers U-Verse to be a "video service" under the Communications Act, rather than a "cable service." AT&T Inc., SEC Form 10-K for the Quarterly Period ended December 31, 2014, p. 3.

[18] John Eggerton, "Senators Press AT&T/DirecTV for Small Area, Remote TV Market Signals," *Broadcasting & Cable*, March 14, 2019, https://www.broadcastingcable.com/news/senators-press-at-t-directv-for-small-market-remote-area-tv-signals.

[19] 47 U.S.C. §325.

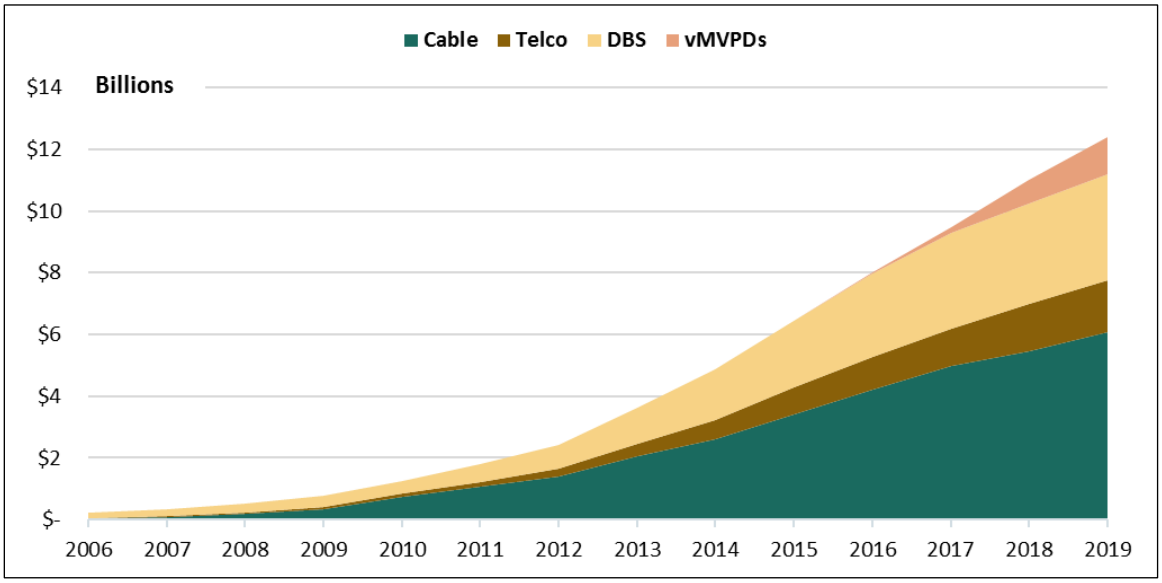
[20] Generally, satellite operators may not retransmit a distant broadcast station carrying programming of a particular broadcast commercial network if a local affiliate is available. They may do so, however, if a local affiliate grants permission. See "Expiring Provisions of STELAR" and "Expiring Provision of Copyright Act."

outside of their markets.[21] Most television broadcast stations are part of a portfolio owned by broadcast station groups. Most cable systems are part of multiple-system operations owned by corporations. Negotiations over retransmission consent generally occur at the corporate level, rather than between an individual station and a local cable system.

Greater competition among MVPDs has increased the negotiating advantage of broadcast television stations since 1993, when they first had the right to engage in retransmission consent negotiations.[22] At that time, large MVPDs refused to pay broadcast stations directly for retransmission rights.[23] Instead, several broadcast networks negotiated on behalf of their affiliates for alternative forms of compensation. The networks sought carriage of new cable networks owned by their parent companies, and split the proceeds they received from the cable networks with the affiliates.

As satellite operators and telcos entered the market in competition with cable operators, broadcast stations could encourage the cable subscribers to switch, and vice versa. Broadcast stations began to demand cash in exchange for carriage. As **Figure 3** indicates, the total amount of retransmission fees paid by MVPDs has increased from $0.21 billion in 2006 to $12.38 billion in 2019. The 2019 totals included fees paid by vMVPDs, which did not exist in 2006.

Figure 3. Retransmission Consent Fees over Time



Source: CRS analysis of data from S&P Global, "Broadcast Retrans and Virtual Multichannel Sub Carriage Fees Summary: 2011-2024."

Notes: "DBS" refers to direct broadcast satellite services. "Telco" refers to telephone companies that offer video service.

[21] Federal Communications Commission, "Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014, Report," 31 *FCC Record* 5463, 5469, n. 44, June 3, 2016.

[22] Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act; P.L. 102-385).

[23] Kate Maddox, "More Deals on Carriage Announced," *Television Week*, August 16, 1993. "Cable Believes CBS Surrender Ends Retransmission Consent War," *Communications Daily*, August 27, 1993.

Related Copyright Laws

Generally, copyright owners have the exclusive legal right to "perform"[24] publicly their works, and, as is the case with online distribution of their programs, to license their works to distributors in marketplace negotiations.[25] The Copyright Act limits these rights for owners of programming contained in retransmitted broadcast television signals. The Copyright Act guarantees MVPDs the right to perform publicly the copyrighted broadcast television programming, as long as they abide by FCC regulations and pay royalties to content owners at rates set and administered by the government.[26] In some instances, MVPDs need not pay content owners at all, because Congress set a rate of $0.

The Copyright Act contains three statutory copyright licenses governing the retransmission of local and distant television broadcast station signals. *Local signals* are broadcast signals retransmitted by MVPDs within the local market of the subscriber ("local-into-local service"). *Distant signals* are broadcast signals imported by MVPDs from outside a subscriber's local area.

1. The cable statutory license, codified in Section 111, permits cable operators to retransmit both local and distant television station signals.[27] This license relies in part on former and current FCC rules and regulations as the basis upon which a cable operator may transmit distant broadcast signals.
2. The local satellite statutory license, codified in Section 122, permits satellite operators to retransmit local signals on a royalty-free basis. To use this license, satellite operators must comply with the rules, regulations, and authorizations established by the FCC governing the carriage of local television signals.
3. The distant satellite statutory license, codified in Section 119, permits satellite operators to retransmit distant broadcast television signals. Congress has renewed

[24] The Copyright Act defines public performance of a copyrighted work to mean "(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times." See 17 U.S.C. §101.

[25] 17 U.S.C. §106.

[26] The Copyright Act does not have a specific compulsory license for telcos. In 2008, the Register of Copyrights, in a report to Congress, concluded that both Verizon's FiOS service and AT&T U-Verse service met the definition of a "cable system" within the Copyright Act, and therefore were entitled to use the compulsory license to retransmit broadcast televisions stations. Marybeth Peters, Register of Copyrights, Satellite Home Viewer Extension and Reauthorization Act, Section 109 Report, U.S. Copyright Office, Library of Congress, Washington, DC, June 30, 2008, p. 199, https://www.copyright.gov/docs/section109/. The Register also noted that "[a]t the FCC, AT&T (but not Verizon) has argued that the many obligations found under Title VI of the Communications Act, such as the statute's franchise obligations, do not apply to U-Verse TV because of its unique system architecture." Ibid., n. 111. She recommended that if Congress opted to retain the statutory license for cable operators, it amend the Copyright Act to state that "that all users of the license must comply with all current Title III and Title VI requirements found in the Communications Act pertaining to the carriage, distribution, and protection of local television broadcast stations." Ibid., p. 200.

[27] As defined by Section 111, distant commercial television signals are generally those located outside the local market area served by a cable system. A noncommercial educational broadcast station is considered "distant" under the cable statutory license if its "noise limited" service contour (the technical over-the-air coverage zone) does not cover the local cable system. See 17 U.S.C. §111(f) (definition of "local service area of a primary transmitter"). For satellite carriers, distant television signals are generally those located outside a particular local market served by a satellite carrier. See 17 U.S.C. §119(d)(11) (local versus distant status is determined by reference to the definition of "local market" in Section 122(j) of the Copyright Act).

this provision in five-year intervals. In 2004, Congress inserted a "no distant if local" provision, which prohibits satellite operators from importing distant signals into television markets where viewers can receive the signals of broadcast network affiliates over the air. Section 119 sunsets on December 31, 2019.

Under the statutory license, cable, telco, and satellite operators make royalty payments every six months to the U.S. Copyright Office, an agency of the Library of Congress. The head of this office, the Register of Copyrights, places the money in an escrow account and maintains the "Statement of Account" that each operator files. Congress has charged the Copyright Royalty Board (CRB), which is composed of three administrative judges appointed by the Librarian of Congress,[28] with distributing the royalties to copyright claimants. It also has the task of adjusting the rates at five-year intervals, and annually in response to inflation. For additional information about these licenses, see CRS Report R44473, *What's on Television? The Intersection of Communications and Copyright Policies*, by Dana A. Scherer.

Expiring Provisions of STELAR

Through a series of laws enacted over the last 30 years, Congress created new sections or modified existing sections of the Copyright Act and the Communications Act to regulate the satellite retransmission of broadcast television and to encourage competition between satellite and cable operators. Congress began the process with the enactment of the Satellite Home Viewer Act of 1988 (SHVA; P.L. 100-667), and most recently amended the process with the enactment of the STELA Reauthorization Act of 2014.

[28] In 1976, Congress also created a tribunal (consisting of five commissioners appointed by the President) to adjust the royalty rates after 1978 (P.L. 94-553, §§801-810). After replacing the tribunal with an arbitration panel in 1993, Congress established the Copyright Royalty Board (CRB) in 2004 (Copyright Royalty and Distribution Reform Act of 2004; P.L. 108-419, codified at 17 U.S.C. §§801-805). See also Copyright Royalty Tribunal Reform Act of 1993, P.L. 103-198. Congress placed the tribunal, the arbitration panel, and the CRB in the legislative branch.

Table 1. History of Satellite Television Laws

Statute	Year Enacted	Highlights
Satellite Home Viewer Act of 1988 (SHVA; P.L. 100-667)	1988	Established six-year compulsory copyright license to allow satellite operators to carry broadcast programming from distant network affiliates (of ABC, CBS, and NBC—similar to definition for cable compulsory licensing) and superstations,[a] generally to residents in rural areas using home satellite dishes. Entitled network stations to higher royalty rates than "non-network" stations.
Satellite Home Viewer Act of 1994 (P.L. 103-369)	1994	Renewed compulsory license for an additional five years. Broadened definition of network station to include PBS and FOX affiliates. Limited satellite importation of broadcast television signals to "unserved households" (i.e., those unable to receive over-the-air signals). Placed burden of proof on satellite operators to demonstrate that households are eligible to receive distant broadcast signals. Broadened definition of satellite carriers to include Direct Broadcast Satellite services (DISH and DIRECTV), scheduled to begin operating in 1994.
Satellite Home Viewer Improvement Act of 1999 (SHVIA; P.L. 106-113)	1999	Brought satellite and cable services closer to regulatory parity. Created permanent legal and regulatory framework permitting satellite operators to retransmit local broadcast signals ("local-into-local" service). In contrast to nationwide "must carry" provisions applying to cable operators, applied "must carry" provisions to satellite operators on a market-by-market basis ("carry one, carry all"). Allowed satellite operators same rights as cable operators to deliver local stations to commercial establishments. Imposed five-year good faith retransmission consent obligations on broadcasters, subject to competitive marketplace conditions. Renewed compulsory license for an additional five years. Expanded definition of "unserved households" to include (1) those who obtain a waiver from a local network affiliate to receive a distant signal; (2) those whose distant signals were terminated after Jul. 11, 1998, and before Oct. 31, 1999, pursuant to a court injunction, or received such service on Oct. 31, 1999; (3) operators of recreational vehicles and trucks; and/or (4) those subscribing to C-Band service prior to Oct. 31, 1999.[b]
Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA; P.L. 108-447)	2004	Renewed compulsory license for an additional five years. Brought satellite and cable services nearer to regulatory parity. Created a "local" copyright license that gave satellite carriers the option to offer subscribers "significantly viewed" signals from an adjacent DMA and granted them retransmission rights for the signals. Restricted satellite operators from offering distant signals to customers in a market where they are also offering the local affiliate of the same network (the "no distant where local" rule). Expanded definition of unserved household to include those who receive network programing in local market via digital multicast signal only. Permitted satellite operators to transmit superstations to commercial establishments, similar to cable operators. Made five-year good faith bargaining requirements (subsequently renewed) for retransmission consent negotiations reciprocal between MVPDs and broadcast stations.

Statute	Year Enacted	Highlights
Satellite Television Extension and Localism Act of 2010 (STELA; P.L. 111-175)	2010	Provided that satellite operators may offer "significantly viewed" stations in high definition format only if they provide local stations in high-definition format as well. Modified criteria for determining satellite subscribers' eligibility to receive distant signals (i.e., "unserved households") to account for broadcast stations' conversion from analog to digital signals. Allowed DISH to continue to use statutory license in exchange for providing local-into-local service in all 210 DMAs, notwithstanding court injunction. Some of the DMAs are "short markets," that is, markets in which a local broadcaster does not offer programming from one for more of the four major broadcast networks (ABC, CBS, FOX, and NBC).
STELA Reauthorization Act of 2014 (P.L. 113-200)	2014	Extended rules for modification of cable operators' "local markets" to satellite operators, and directs the FCC to factor consumers' access to in-state programming when modifying markets. Eliminated FCC rules barring MVPDs from deleting broadcasters' programming or changing channel positions during "sweeps" weeks. Prohibited separately owned broadcast stations from jointly negotiating retransmission consent in same market. Repealed FCC ban on integration of navigation and security functions within cable set-top boxes effective December 4, 2015.

Sources: Excerpted by CRS from Testimony of Eloise Gore, Associate Bureau Chief, Enforcement Bureau, FCC, in U.S. Congress, House Subcommittee on Communications and Technology, Committee on Energy and Commerce, *Satellite 101*, hearings, 113th Cong., 1st sess., February 13, 2013, H.Hrg. 113-4 (Washington, DC: GPO, 2013) pp. 11-15, (describing the enactment of SHVA in 1988 and the subsequent reauthorizations through 2010); U.S. Congress, Senate Committee on the Judiciary, *Satellite Compulsory License Extension Act of 1994*, committee print, 103rd Congress, 2nd session, October 7, 1994, 103-407 (Washington: GPO, 1994); U.S. Congress, House Committee on Commerce, *Intellectual Property and Communications Reform Act of 1999*, committee print, 106th Congress, 1st session, November 9, 1999, 106-464 (Washington: GPO, 1999); U.S. Congress, House Committee on the Judiciary, *Satellite Home Viewer Update and Reauthorization Act of 2009*, committee print, 111th Cong., 1st session, October 28, 2009, H.Prt. 111-319 (Washington: GPO, 2009), describing provisions adopted in STELA. Federal Communications Commission, "In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-29," 29 *FCC Record* 3341 March 31, 2014 (describing satellite television laws implemented by the FCC).

Notes:

a. The Communications Act identifies a class of "nationally distributed superstations" (47 U.S.C. §339(d)(2)). These are independent stations whose broadcast signals are retransmitted by satellite to cable television and satellite operators for distribution throughout the United States. The MVPDs effectively treat the nationally distributed superstations as cable networks rather than local broadcast television stations. As of 2019, there are five superstations: KWGN (Denver), WPIX (New York), KTLA (Los Angeles), WSBK (Boston), and WWOR (New York/New Jersey).

b. In this context, the term C-band service means a service that is licensed by the FCC and operates in the Fixed Satellite Service under part 25 of Title 47 of the *Code of Federal Regulations*. 17 U.S.C. §119(a)(2)(B)(iii)(II). For more information about this provision, see "Expiring Provision of Copyright Act."

Expiring Provision of Copyright Act

Certain provisions in STELA are set to expire on December 31, 2019. The expiring copyright provision is Section 119 of the Copyright Act (17 U.S.C. §119). This section enables satellite operators to obtain rights to copyrighted programming carried by distant broadcast network affiliates, superstations, and other independent stations. Under this regime, the satellite operators submit a statement of account and pay a statutorily determined royalty fee to the U.S. Copyright

Office on a semiannual basis, avoiding the transactions costs of negotiating with each individual copyright holder.[29]

A satellite operator is allowed to retransmit the signals of up to two distant stations affiliated with a network (ABC, CBS, FOX, NBC, or PBS) to a subset of subscribing households that are deemed "unserved" with respect to that network. The "unserved household" limitation does not apply to the retransmission of superstations. Pursuant to Section 119, satellite operators may retransmit superstations to commercial establishments as well as households.

Section 119 specifies five different categories of unserved households:

1. a household located too far from a broadcast station's transmitter to receive signals using an antenna; [Section 119(d)(10)(A)]
2. a household that has received written consent from a local network affiliate to receive a distant signal;[30] [Section 119(d)(10)(B)]
3. a household that—even if it could receive a local broadcast signal over the air—nevertheless received a satellite retransmission of a distant signal on October 31, 1999, or whose satellite provider terminated the distant signal retransmission after July 11, 1998, and before October 31, 1999, pursuant to court injunction;[31] [Section 119(d)(10)(C)]
4. operators of recreational vehicles and commercial trucks who have complied with certain documentation requirements;[32] [Section 119(d)(10)(D)]
5. a household that has received delivery of distant network signals via C-band before October 31, 1999.[33] [Section 119(d)(10)(E)]

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

[30] According to the conference committee, this provision "confirms ... what has long been understood by the parties and accepted by the courts." U.S. Congress, Conference Committee, Intellectual Property and Communications Omnibus Reform Act of 1999, conference report to accompany H.R. 1554, 106th Cong., 2nd sess., H.Rept. 106-464 (Washington, D.C: GPO, 1999), p. 97. (1999 SHVIA Conference Report).

[31] In the late 1990s, several broadcast stations and networks brought lawsuits against satellite operators, alleging that the satellite operators were impermissibly retransmitting distant signals to ineligible households. U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Satellite Television Act of 1999*, committee print, 106th Cong., 1st sess., May 20, 1999, S. Prt. 106-51 (Washington: GPO, 1999), pp. 3-4. Courts found in favor of the plaintiffs, and directed the provider, PrimeTime 24, to shut off network programming for millions of households. *CBS, Inc.. v. PrimeTime 24 J.V.*, 9 F. Supp. 2d 1333, 1337 (S.D. Fla. 1998) p. 1347. *ABC, Inc. v. PrimeTime 24*, 184 F.3d 348, 350 (4th Cir. 1999). The conference committee, finding that the courts would effectively punish those households for the actions of satellite carriers, added this definition of an "unserved household" in order to grandfather the households whose broadcast network programming service had been, or was scheduled to be, terminated. The conference committee noted that the grandfathered status was not transferable to a different satellite carrier, a different type of dish, or a new address. 1999 SHVIA Conference Report, p. 98.

[32] This provision allows operators of recreational vehicles and commercial trucks to use satellite dishes permanently attached to those vehicles to receive distant networks signals on television sets located inside those vehicles. The provision applies only to reception in that particular vehicle or truck, and does not authorize delivery of distant network signals to a fixed dwelling. 1999 SHVIA Conference Report, p. 98.

[33] In this context, the term C-band service means a service licensed by the FCC and operates in the Fixed Satellite Service under part 25 of Title 47 of the *Code of Federal Regulations*. 17 U.S.C. §119(a)(2)(B)(iii)(II). The conference committee noted that when Congress enacted the Satellite Home Viewer Act of 1988, the Americans who received satellite programming generally did so via a large, backyard C-band satellite dish. Conference Report, p. 91. DISH and DIRECTV use different bands of spectrum—Ku-band and Ka-band—to transmit programming to their subscribers. Satellite Broadcasting and Communications Association, "Consumer Satellite Product Overview,"

In 2010, Congress provided an incentive for DISH to offer local-into-local service in all 210 markets with the enactment of STELA.[34]

In 2006, a Florida district court had found that DISH, then known as EchoStar Communications, had a national pattern of significant violations of the Section 119 license. The U.S. Court of Appeals directed the district court to enjoin DISH from using the Section 119 license.[35] In response, Congress restored DISH's ability to provide subscribers distant signals if, and only if, it provided local-into-local service in all 210 DMAs in the country.[36] According to the House Judiciary Committee, this change was intended to prompt DISH to provide local-into-local service via an incentive-based system. It added that the inducement would benefit rural consumers who "live in markets that are often not served by cable television and not deemed sufficiently lucrative by satellite companies to justify the expense of launching local into local service."[37] Several members of the committee, however, questioned this approach in a section of the report entitled "Additional Views." They stated that

> While we share the goal of enabling all Americans to view local television programming via satellite, we question the proposition that the best available means to provide such an incentive is to relieve DISH Network of the foreseeable results of its persistent, determined, unlawful conduct. Rather than crafting a proposal designed to benefit one satellite carrier, a better approach would be to provide an incentive to both national satellite carriers to enter the remaining markets. Such an approach would [respect] the judiciary's independence in administering, without prejudice, the laws Congress enacts....[38]

Section 119(g)(2)(A) directs a court issuing an injunction against a satellite carrier to lift such an injunction, upon request by the satellite carrier, to the extent necessary to allow the carrier to retransmit distant signals in "short markets." Section 119(g)(2)(E) defines a "short market" as a "local market in which programming of one of the four most widely viewed television networks nationwide as measured on the date of the enactment of this subjection is not offered on the primary stream transmitted by any local television broadcast station."

Use of Section 119 License

In March 2019, the chairman and ranking member of the House Judiciary Committee, Representatives Jerrold Nadler and Doug Collins, respectively, asked DIRECTV's parent company, AT&T, and DISH for data regarding the number of subscribers who receive distant network signals under each of the statutory provisions defining an "unserved household."[39] Both

http://www.sbca.com/receiver-network/satellite-overview.htm. The company Rainer Satellite offers subscribers satellite television programming via C-band. Rainier Satellite, "C-band Satellite Programming Packages," http://www.shop.rainiersatellite.net/webstore/packages.htm.

[34] P.L. 111-175 Section 105 added Section g to 119.

[35] CBS Inc.. v. EchoStar Communs. Corp., 450 F.3d 505, 527 (11th Cir. 2006), cert. denied, EchoStar Communs. Corp. v. Fox Broad. Co., 549 U.S. 1113, 127 S. Ct. 945 (2007).

[36] U.S. Congress, House Committee on the Judiciary, *Satellite Home Viewer Update and Reauthorization Act of 2009*, committee print, 111th Cong., 1st sess., October 28, 2009, H.Prt. 111-319 (Washington: GPO, 2009), p. 11. (STELA House Judiciary Committee Report).

[37] Ibid. The committee also stated, "[b]ecause there are constitutional obstacles to requiring a satellite carrier to provide local-into-local service in all 210 markets, an incentive based system is the most effective method available to guarantee that all television markets receive local-into-local service."

[38] Ibid., p. 72.

[39] Letter from Jerrold Nadler, Chairman, House Committee on the Judiciary, and Doug Collins, Ranking Member, House Committee on the Judiciary, to Randall L. Stephenson, Chairman and Chief Executive Officer, AT&T Inc., March 22, 2019, https://judiciary.house.gov/story-type/letter/letter-att. Letter from Jerrold Nadler, Chairman, House

AT&T and DISH declined to answer, stating that the answers were competitively sensitive.[40] The companies stated that combined, they use the distant signal license to provide network television programming to more than 870,000 households. AT&T stated that it serves subscribers through all of the unserved household categories, except for the C-Band exemption.

AT&T also stated that DIRECTV uses the statutory license to provide network programming in some short markets. As described in "Must Carry; Carry One, Carry All" however, DIRECTV does not provide local-into-local service in 12 DMAs. DISH stated that it provides local service in all 210 markets, and listed the stations it imports into each short market.[41] DISH generally imports signals from stations located in the same states as its subscribers in short markets. In Glendive, MT, it imports signals of ABC and FOX stations assigned to the Rapid City, SD, DMA. Other short markets include counties from multiple states. The Parkersburg, WV, DMA contains one Ohio county, and the Harrisonburg, VA, DMA contains one West Virginia county.[42] In Parkersburg, DISH imports the signal of an ABC station assigned to the Charleston, WV, DMA. In Harrisonburg, DISH imports the signal of an NBC station assigned to the Washington, DC, DMA.

Revenues Collected by Copyright Office

In May 2019, Representatives Nadler and Collins requested that the U.S. Copyright Office provide its views about the status and usage of the Section 119 license. They also asked for the Copyright Office's views on reauthorization of the license.[43] In June 2019, the Register of Copyrights and Director of the U.S. Copyright Office, Karyn A. Temple, responded by recommending that Congress allow Section 119 to expire at the end of 2019. She stated that, "[r]oyalties paid under Section 119 have plummeted over the last five years," [that is, since Congress reauthorized this provision in 2014] and usage of this compulsory license over the last five years has "dropped dramatically." As **Table 2** indicates, over the last five years, the total number of Section 119 royalties collected by the Copyright Office declined by 89%. Among the reasons she cited for the decline are a drop in the number of distant network stations carried and the conversion of non-network superstations, such as WGN, to cable networks. In addition, as

Committee on the Judiciary, and Doug Collins, Ranking Member, House Committee on the Judiciary, to W. Erik Carlson, President and Chief Executive Officer, DISH Network Corporation, March 22, 2019, https://judiciary.house.gov/story-type/letter/letter-dish.

[40] Letter from Timothy P. McKone, Executive Vice President, Federal Relations, AT&T Inc., to Jerrold Nadler, Chairman, House Committee on the Judiciary, and Doug Collins, Ranking Member, House Committee on the Judiciary, April 19, 2019, and Letter from Jeff Blum, Senior Vice President, Public Policy and Government Affairs, DISH/Sling TV, to Jerrold Nadler, Chairman, House Committee on the Judiciary, and Doug Collins, Ranking Member, House Committee on the Judiciary, April 19, 2019, https://judiciary.house.gov/story-type/letter/letter-copyright-register-regarding-distant-signal-satellite-television-statutory.

[41] The seven short markets DISH lists are Presque Isle, ME; Alpena, MI; Mankato, MN; Glendive, MT; Zanesville, OH; Harrisonburg, VA; and Parkersburg, WV.

[42] Video Advertising Bureau, "Nielsen DMA – Designated Market Area Regions 2017 – 2018," https://www.thevab.com/wp-content/uploads/2018/05/2017-2018-TV-DMA-Map.pdf. This is the most recent DMA map that is publicly available.

[43] Letter from Jerrold Nadler, Chairman, House Committee on the Judiciary, and Doug Collins, Ranking Member, House Committee on the Judiciary, to Karyn A. Temple, Register of Copyrights and Director of the U.S. Copyright Office, May 28, 2019, https://judiciary.house.gov/story-type/letter/letter-copyright-register-regarding-distant-signal-satellite-television-statutory. (May 2019 Copyright Office Letter.)

Figure 1 indicates, the total number of households subscribing to satellite television has declined, from about 34.4 million in 2014 to 27.3 million in 2019.[44]

Table 2. Section 119 Royalty Payments Received by Copyright Office

Satellite Provider	Jan.–Jun. 2014	Jan.–Jun. 2019
DIRECTV	$26,649,170	$2,303,988
DISH	$15,102,510	$2,174,319
DISH Puerto Rico	$299,308	$707
Distant Networks, LLC	$58,936	—
Total	$42,109,924	$4,479,015

Source: CRS analysis of 2014 and 2019 statements of account filed by satellite operators.

Notes: Numbers exclude $725 filing fee for each provider for each six-month period. The parent company of Distant Networks, LLC, which offered C-Band satellite television service, ceased operation in February 2014. Internet Archive, "Who is AllAmericanDirect.com?," https://web.archive.org/web/20101127064020/https://mydistantnetworks.com/aboutus.php. Internet Archive, "My DistantNetworks," https://web.archive.org/web/20140516214600/http://allamericandirect.com/.

Potential Transition Period for Marketplace Negotiations

In November 2019, Senator Lindsey O. Graham, chairman of the Senate Judiciary Committee, sent letters to all four major commercial broadcast networks to inquire about how the networks would enable satellite subscribers to continue to receive their programming during 2020, should Congress allow the Section 119 license to expire in 2019.[45] Senator Graham sought answers to the following questions:

1. Will their respective networks provide a one-year license to satellite providers for the shows they own in exchange for a "market-by-market" usage fee from each provider, including for use by long-distance truckers and RV owners, who also rely on the license?
2. Will the network agree, for that transition period, to charge a rate comparable to the compulsory license rate charged by the Copyright Royalty Board for 2018?
3. Will the network work with its affiliates to negotiate during this transition year, on a carriage agreement for full local-into-local carriage on both DISH and DIRECTV beginning in January 1, 2021?
4. For areas without local affiliates, will the network commit to negotiating with DISH and DIRECTV on a carriage agreement beginning no later than January 1, 2021?
5. Will the network keep the committee informed of its progress toward such agreements?

[44] Letter from Karyn A. Temple, Register of Copyrights and Director of the U.S. Copyright Office, to Jerrold Nadler, Chairman, House Committee on the Judiciary, and Doug Collins, Ranking Member, House Committee on the Judiciary, June 3, 2019, https://judiciary.house.gov/story-type/letter/copyright-office-s-response-distant-signal-satellite-television-statutory-license.

[45] See, for example, Letter from Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to Richard Bates, Senior Vice President, Government Relations, ABC, the Walt Disney Company, November 1, 2019, available at https://www.nab.org/documents/newsRoom/pressRelease.asp?id=5189.

News reports indicate the networks have agreed to these commitments.[46]

Expiring Provisions of Communications Act

Several provisions of the Communications Act are also set to expire at the end of 2019. Some of those provisions cross-reference Section 119 of the Copyright Act. In some instances, the cross-references relate to definitions. In other instances, they relate to communications policies and FCC regulations. Other provisions relate to retransmission consent negotiations between broadcast television stations and all MVPDs—including cable operators as well as satellite operators.

Cross-References to Section 119 of Copyright Act

Definitions

Sections 338(k)(7), 339(c)(5), and 339(d)(4) of the Communications Act [47 U.S.C. §§338(k)(7), 339(c)(5), 339(d)(4)] cross-reference Section 119 of the Copyright Act [17 U.S.C. §119(d)] in their definitions of a "satellite carrier." Likewise, Section 628(i)(4) of the Communications Act [47 U.S.C. §548(i)(4)] refers to Section 119 of the Copyright Act in its definition of a "satellite broadcast programming vendor."

Section 338(k)(8) cross-references 47 U.S.C. §119(d) in its definition of a "secondary transmission." Sections 339(d)(2) cross-references Section 119 of the Copyright Act [17 U.S.C. §119] to define a superstation, and 339(d)(3) cross-references Section 119 of the Copyright Act [17 U.S.C. §119(d)] to define a "network station."

Communications Policies and FCC Rules

Section 325(b)(2)(B) and (C) of the Communications Act [47 U.S.C. §325(b)(2)(B)-(C)] permit a satellite operator to retransmit distant broadcast signals of stations without first seeking retransmission consent from those stations, if the satellite operator is retransmitting the signals pursuant to Section 119 of the Copyright Act. Section 325(b)(2)(C) is scheduled to expire on December 31, 2019.

Section 338(a)(3) of the Communications Act [47 U.S.C. §338(a)(3)] states that a low-power station whose signals are retransmitted by a satellite operator pursuant to Section 119 of the Copyright Act [17 U.S.C. §119(a)(14)] is not entitled to must carry rights.

Section 339(a)(1)(A) of the Communications Act (47 U.S.C. §339) permits satellite operators to retransmit the signals of a maximum of two affiliates of the same network in single day to households located outside of those stations' DMAs, subject to Section 119 of the Copyright Act. Section 339(a)(1)(B) states that satellite operators may retransmit local broadcast signals under 17 U.S.C. §122 in addition to any distant signals they may retransmit under Section 119 of the Copyright Act. Section 339(a)(2)(A) discusses rules for retransmitting broadcast station signals to satellite subscribers meeting the "unserved household" definition under Section 119 of the Copyright Act [17 U.S.C. §119(d)(10)(C)]. Section 339(a)(2)(D) and (c)(4)(A), in describing households eligible to receive distant signals, cross-reference the "unserved household" definition under 17 U.S.C. §119(d)(10)(A). Section 339(a)(2)(G) states that "this paragraph shall not affect the ability to receive secondary transmissions ... as an unserved household under section

[46] John Eggerton, "Nets Agree to Graham's STELAR Expiration Plan," *B&C*, November 8, 2019, https://www.broadcastingcable.com/news/nets-agree-to-grahams-stelar-expiration-plan.

119(a)(12) of title 17, United States Code." Section 339(c)(2) describes the process under which a household may seek a local affiliate's permission to receive a distant signal, and therefore qualify as an "unserved household" under Section 119 of the Copyright Act [17 U.S.C. §119(d)(10)(B)].

Section 340(3)(2) of the Communications Act [47 U.S.C. §340] states that a satellite operator that retransmits a distant broadcast signal pursuant to 17 U.S.C. §119 need not comply with FCC regulations that would otherwise require the satellite operator to black out certain programs of that station.[47]

Section 342 of the Communications Act [47 U.S.C. §342] cross-references Section 119 of the Copyright Act [17 U.S.C. §119(g)(3)(A)(iii)], and describes the process through which DISH may obtain a certification from that FCC demonstrating that it is providing local-into-local service in all 210 DMAs. Under 17 U.S.C. §119(g)(3), upon presenting this certification, among other documents, to the Florida district court that had enjoined DISH from using the Section 119 license, DISH would be eligible to use it. (See "Expiring Provision of Copyright Act.")

Good Faith Requirements for Retransmission Consent Negotiations

Section 325(b)(3)(C) of the Communications Act (47 U.S.C. §325(b)(3)(C)) prohibits broadcast stations from engaging in exclusive contracts for carriage. This section also requires both broadcast stations and MVPDs to negotiate retransmission in "good faith," subject to marketplace conditions. Moreover, according to this section, the coordination of negotiations among separately owned television broadcast stations within the same DMA is a per se violation of the good faith standards. The good faith provisions is scheduled to expire on January 1, 2020.

The FCC implements the good faith negotiation statutory provisions through a two-part framework.[48] First, the FCC has a list of nine good faith negotiation standards. The FCC considers a violation of any of these standards to be a per se breach of the good faith negotiation obligation.[49] Second, the FCC may determine that based on the "totality of circumstances," a

[47] For more information about these FCC rules, known as the "network non-duplication" and "syndicated exclusivity" rules, see CRS Report R44473, *What's on Television? The Intersection of Communications and Copyright Policies*, by Dana A. Scherer.

[48] Federal Communications Commission, "Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, FCC 00-99, First Report and Order," 15 *FCC Record* 5445, March 16, 2000.

[49] 47 C.F.R. §76.65(b)(1). The nine per se "good faith negotiation" standards are

> (i) Refusal by a Negotiating Entity [broadcast station or MVPD] to negotiate retransmission consent; (ii) Refusal by a Negotiating Entity to designate a representative with authority to make binding representations on retransmission consent; (iii) Refusal by a Negotiating Entity to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations; (iv) Refusal by a Negotiating Entity to put forth more than a single, unilateral proposal; (v) Failure of a Negotiating Entity to respond to a retransmission consent proposal of the other party, including the reasons for the rejection of any such proposal; (vi) Execution by a Negotiating Entity of an agreement with any party, a term or condition of which, requires that such Negotiating Entity not enter into a retransmission consent agreement with any other television broadcast station or multichannel video programing distributor; (vii) Refusal by a Negotiating Entity to execute a written agreement that sets forth the full understanding of the television broadcast station and the [MVPD]; and (viii) Coordination of negotiations or negotiation on a joint basis by two or more television broadcast stations in the same local market (as defined in 17 U.S.C. 122(j)) to grant retransmission consent to a multichannel video programming distributor, unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Commission. (ix) The imposition by a television broadcast station of limitations on the ability of an MVPD to carry into the local market (as defined in 17 U.S.C. 122(j)) of such station a television signal that has been deemed significantly viewed, within the meaning of § 76.54 of this

party has failed to negotiate retransmission consent in good faith. Under this standard, a party may present facts to the FCC that, given the totality of circumstances, reflect an absence of a sincere desire to reach an agreement that is acceptable to both parties and thus constitute a failure to negotiate in good faith.

Complaints Regarding Good Faith Standard Violations

Over the last 13 years, both broadcast television station owners and MVPDs have filed complaints with the FCC that their counterparty has failed to negotiate in good faith. In some instances, the FCC has found that the complaint lacked validity.[50] In 2016, the FCC reached a consent decree with Sinclair after completing an investigation.[51] In other instances, the FCC has monitored retransmission consent negotiations even when a party has not filed a complaint.[52] In some cases, stations and/or MVPDs withdraw complaints from the FCC after reaching retransmission consent agreements.[53] In November 2019, the FCC found that seven different station group owners had violated the per se good faith negotiation standards with respect to AT&T, and directed the parties to commence good faith negotiation.[54] The subscribers to AT&T's

part, or any successor regulation, or any other television broadcast signal such distributor is authorized to carry under 47 U.S.C. 338, 339, 340 or 534, unless such stations are directly or indirectly under common de jure control permitted by the Commission.

[50] Federal Communications Commission, "Mediacom Communications Corporation v. Sinclair Broadcast Group, Inc., Emergency Retransmission Consent Complaint and Complaint for Enforcement for Failure to Negotiate Retransmission Consent Rights in Good Faith, DA 07-3, Memorandum Opinion and Order," 22 *FCC Record* 35, 37, January 4, 2007; Federal Communications Commission, "ACC Licensee, Inc. v. Shentel Telecomm., Emergency Petition for Finding of Bad Faith Retransmission Consent Negotiations and for Enforcement of Customer Notice Rules, DA 12-1086, Memorandum Opinion and Order," 27 *FCC Record* 7584, 7590, July 6, 2012; and Federal Communications Commission, "Coastal Television Broadcasting Company LLC. v. MTA Communications, LLC, Good Faith Negotiation Complaint DA 18-208, Memorandum Opinion and Order," 33 *FCC Record* 11025, 11027, November 2, 2018.

[51] Federal Communications Commission, "Sinclair Broadcast Group, DA 16-856, Order," 31 *FCC Record* 8576, July 29, 2016. The FCC had found that Sinclair had negotiated retransmission consent on behalf of, or coordinated negotiations on behalf of, stations it did not own, concurrently with negotiating on behalf of stations it did own within the same DMA. Sinclair did not admit liability for violating good faith requirements, but agreed to make a settlement payment of $9.495 million to the U.S. Treasury, and to implement and maintain a compliance plan for three years. The FCC did not specify whom, if anyone filed a complaint with the FCC. However, in a blog post, then-chairman Tom Wheeler stated, "[W]e do not need one of the parties to cry foul before acting in the public interest. The Commission can investigate a potential good faith violation on its own and take enforcement action when a party fails to fulfill its statutory obligations." (Source: Tom Wheeler, "An Update of Our Review of the Good Faith Retransmission Consent Negotiation Rules," Federal Communications Commission (blog), July 14, 2016, https://www.fcc.gov/news-events/blog/2016/07/14/update-our-review-good-faith-retransmission-consent-negotiation-rules.)

[52] See, for example, Federal Communications Commission, "FCC Chairman Julius Genachowski Statement on Fox/Time Warner and Sinclair/Mediacom Retransmission Consent Negotiations," press release, January 1, 2010, https://www.fcc.gov/document/fcc-chairman-julius-genachowski-statement-foxtime-warner-and-sinclair. (In this statement, the FCC chairman thanked agency staff for work in encouraging extension of retransmission consent agreements before parties reached new terms.)

[53] DIRECTV, LLC and AT&T Service, Inc. v. Deerfield Media, et. al. Reply in Support of DIRECTV, LLC and AT&T Services, Inc.'s Complaint for Defendants' Failure to Negotiate in Good Faith, MB Docket 19-168, August 23, 2018, https://www.fcc.gov/ecfs/search/filings?filers_name=DIRECTV,%20LLC&proceedings_name=19-168&sort=date_disseminated,DESC. In October 2019, after entering a retransmission agreement with GoCom Media of Illinois, AT&T requested that the FCC dismiss its complaint against the company. AT&T Services, Inc. and DIRECTV, LLC v. Max Retrans LLC, Civil Complaint, Case Number 4:19-cv-01925 filed in the U.S. District Court, Eastern District of Missouri, Eastern Division, July 11, 2019, https://www.law360.com/dockets/documents/5d27a9b6017a4201f8d15f8f.

[54] Federal Communications Commission, "AT&T Services Inc. v. Deerfield et al., Good Faith Negotiation Complaint," Memorandum Opinion and Order, November 8, 2019, https://www.fcc.gov/document/media-bureau-grants-att-good-faith-complaint.

video subscription services—U-Verse and DIRECTV—have lacked access to those station groups' broadcast signals since June 2019 due to the retransmission consent impasse.

Good Faith Provisions and FCC Media Ownership Rules

Section 325(b)(3)(C)(iv) directs the FCC to adopt rules that prohibit the coordination of negotiations among separately owned television broadcast stations within the same DMA. Unlike the good faith provisions of the Communications Act, the prohibition on coordination is permanent. The FCC, however, has adopted a rule declaring such behavior a per se violation of its good faith negotiation standards.[55] Thus, if Congress does not renew the good faith provisions, the FCC may need to adopt a separate rule to comply with Section 325(b)(3)(C)(iv).

In a related matter, the FCC's rules regarding both the number of stations one entity may own within a DMA and the attribution of that ownership have been in flux. Currently, the FCC's ownership rules generally prohibit one company from owning two of the top four ranked stations (usually, stations affiliated with the ABC, CBS, FOX, and NBC networks) within the same DMA.[56] In 2016, the FCC adopted rules specifying that it would consider one television station that sells more than 15% of the weekly advertising time on a competing local broadcast television station to be under common ownership or control, for the purposes of enforcing its media ownership rule.[57] In 2017, however, the FCC eliminated this rule as part of a reconsideration of its 2016 decision.[58] In September 2019, the U.S. Court of Appeals for the Third Circuit vacated and remanded the FCC's 2017 reconsideration.[59] In November 2019, the FCC petitioned the full court to rehear the case.[60]

The Third Circuit did not specify whether the FCC's attribution rules adopted in 2016 remain in effect while it considers whether to rehear the case. If the 2016 rules are in effect, then stations that jointly engage in the selling of advertising time may not jointly engage in retransmission consent negotiations, if common ownership would violate the FCC's media ownership rules.[61]

[55] 47 C.F.R. §76.65(b)(1)(xiii).

[56] Federal Communications Commission, "Review of the Commission's Rules Governing Television Broadcasting, Report and Order, FCC 99-209," 14 *FCC Record* 12903, 12932-12933 August 6, 1999.

[57] 2014 Quadrennial Review 2nd R&O, pp. 9888-9890. The FCC proposed attributing television joint sales agreements (JSAs) in 2004, and revisited the issue in 2011, but did not make a final decision. Federal Communications Commission, "Attribution of TV JSAs, NPRM, FCC 04-173," 19 *FCC Record* 15238, July 2, 2004; Federal Communications Commission, "2010 Quadrennial Review, NPRM, FCC 11-186," 26 *FCC Record* 17489, 17565-17566, December 22, 2011.

[58] Federal Communications Commission, "Matter of 2014 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Promoting Diversification of Ownership In the Broadcasting Services, Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, FCC 16-107, Order on Reconsideration and Notice of Proposed Rulemaking and Report and Order," 32 *FCC Record* 9802, 9846-9854, November 20, 2017.

[59] *Prometheus Radio Project v. FCC*, 939 F.3rd 567 (3rd Cir. 2019).

[60] *Prometheus Radio Project v. FCC*, Petition by the FCC for Rehearing En Banc, November 7, 2019, https://www.fcc.gov/proceedings-actions/fcc-and-courts#filings.

[61] For additional background information about the FCC's media ownership rules, see CRS Report R45338, *Federal Communications Commission (FCC) Media Ownership Rules*, by Dana A. Scherer.

Legislation

In November 2019, Senate Commerce, Science, and Transportation Committee Chairman Roger Wicker introduced the Satellite Television Access Reauthorization Act of 2019 (STAR Act of 2019; S. 2789). This bill would reauthorize the expiring provisions of both the Copyright and Communications Acts for five years.

Also in November 2019, the House Energy and Commerce Committee ordered H.R. 5035, the Television Viewer Protection Act of 2019, as amended by the committee, to be reported to the House. The bill would reauthorize the good faith provisions of the Communications Act permanently.

In addition, the bill would permit smaller cable, telco, and/or satellite operators with fewer than 500,000 subscribers to negotiate collectively with large broadcast station groups reaching 20% or more of U.S. households until January 1, 2025. This provision would not take effect until January 1 of the calendar year after the calendar year in which Congress enacts the bill.

H.R. 5035 would also tie the expiration of Section 325(b)(2)(B) and (C) of the Communications Act [47 U.S.C. §325(b)(2)(B)-(C)], which permits a satellite operator to retransmit distant broadcast signals of stations without first seeking retransmission consent from those stations, to the expiration date of Section 119 of the Copyright Act.

Additional provisions in the bill relating to transparency in billing for video and internet services are beyond the scope of this report.

In November 2019, the House Judiciary Committee ordered H.R. 5140, the Satellite Television Community Protection and Promotion Act of 2019, as amended by the committee, to be reported to the House. This bill would permanently extend Section 119 of the Copyright Act, but limit the scope of "unserved households" eligible to receive the distant signals. The bill would continue to allow operators of recreational vehicles and commercial trucks who have complied with certain documentation requirements to receive distant the distant signals. It would also allow households in short markets to receive distant network signals when local signals are unavailable, that is, in short markets. For the households currently receiving distant signals pursuant to Section 119 of the Copyright Act, the bill would provide satellite operators with a limited extension of the license for 120 days.

The bill would require all satellite providers, including DIRECTV, to offer local service in all 210 DMAs, in order to use the distant signal compulsory license. DIRECTV would have 180 days from the bill's enactment to deliver those signals. If the company files a notice to the Copyright Office that it is making a good faith effort to deliver those signals, it may have unlimited automatic 90-day extensions. If broadcast stations assert DIRECTV is not making a good faith effort, the bill would give them a private right of action in civil court. The bill also specifies that satellite operators would not lose access to the distant compulsory license if their failure to deliver local signals in all 210 markets is due to a retransmission consent impasse.

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