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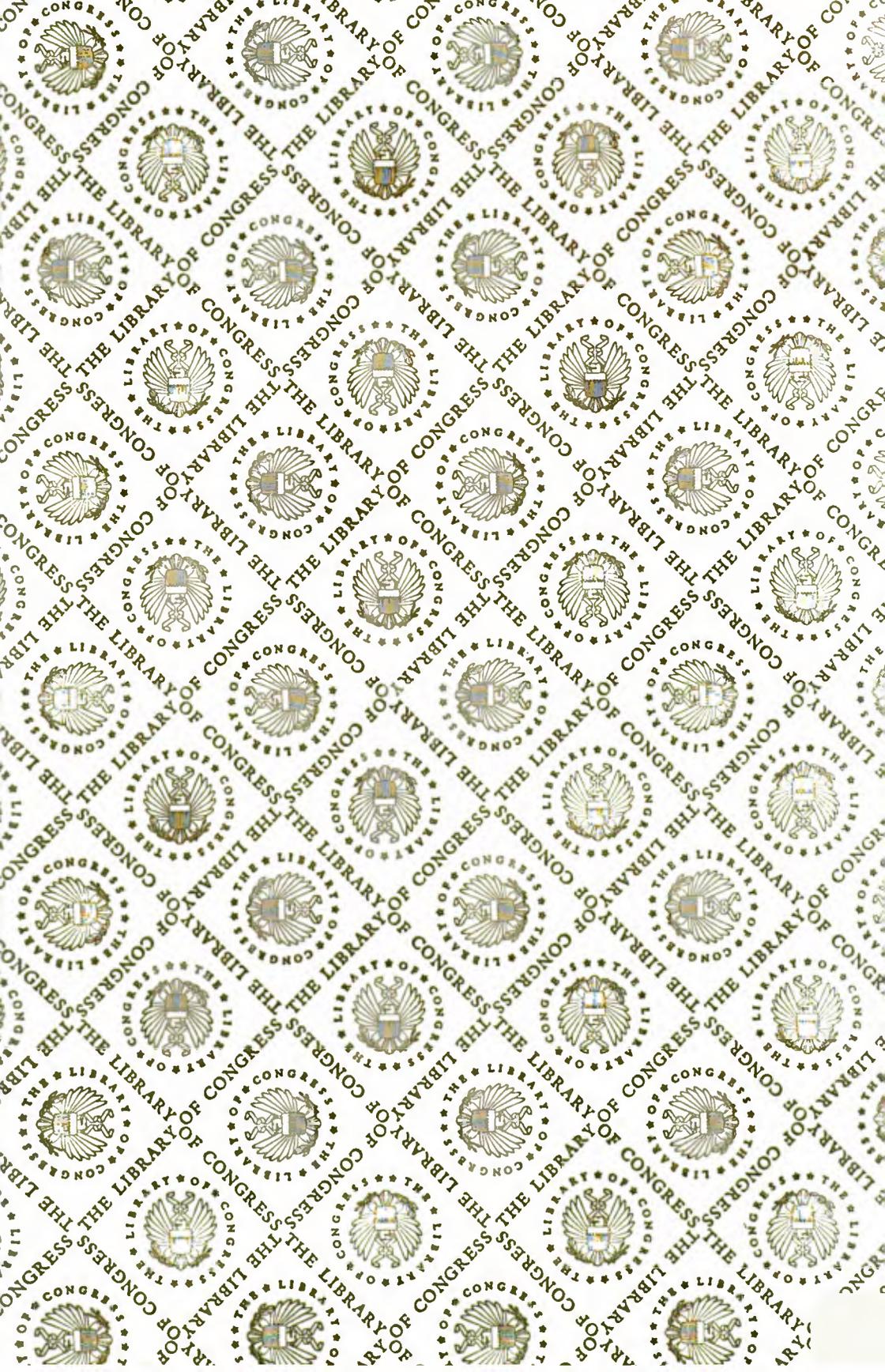
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UNITED STATES. CONGRESS. HOUSE. COMMITTEE ON THE JUDICIARY.  
" SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY.

# COPYRIGHT COMPULSORY LICENSE IMPROVEMENT ACT

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON COURTS AND INTELLECTUAL  
PROPERTY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

**H.R. 768**

FEBRUARY 25, 1999

**Serial No. 23**



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# **COPYRIGHT COMPULSORY LICENSE IMPROVEMENT ACT**

**THURSDAY, FEBRUARY 25, 1999**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COURTS AND  
INTELLECTUAL PROPERTY,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The subcommittee met, pursuant to call, at 10 a.m., in Room 2237, Rayburn House Office Building, Hon. Howard Coble [chairman of the subcommittee] presiding.

Present: Representatives Howard Coble, William L. Jenkins, Mary Bono, Howard L. Berman, John Conyers, Jr., Rick Boucher, Zoe Lofgren, William D. Delahunt, and Robert Wexler.

Staff Present: Mitch Glazier, Chief Counsel; Blaine Merritt, Counsel; Vince Garlock, Counsel; Eunice Goldring, Staff Assistant.

## **OPENING STATEMENT OF CHAIRMAN COBLE**

Mr. COBLE. Good morning, ladies and gentlemen and members of the subcommittee. Welcome to our initial subcommittee hearing for this session of the Congress. It appears that there will be a Journal vote, but why don't we get underway here until the whistle sounds and let me make an opening statement and then I will recognize Mr. Berman.

To paraphrase from Ronald Reagan, "Here we go again."

Today we are continuing in our efforts to update the copyright licensing regimes covering the retransmission of broadcast signals. Since it was first adopted in 1988 the Satellite Home Viewers Act has provided a framework for the dramatic growth of the satellite television industry. Now customers throughout the country can receive a tremendous array of programming of the highest technical quality. The satellite industry has grown from the thousands of large C-band dish customers serving mostly rural areas to large and small dishes, or KU-band, serving millions of subscribers in rural and urban America.

The provisions of the Satellite Home Viewers Act allow satellite carriers access to copyrighted programming, without obtaining permission from copyright owners, and to retransmit that programming for a set fee to customers. This government imposed regime obviates the need for satellite companies to negotiate with every individual copyright owner over the rate charged for their programming.

With this compulsory license comes a host of contentious issues and legislative provisions. We spent a good deal of time and energy

last session attempting to address the challenges facing the satellite industry. Almost all of us agree that it is important to look at this statute with a goal towards making the satellite industry more competitive with cable television. With competition comes better service, hopefully at lower prices, which makes our constituents the real winners.

With this competition in mind, the legislation that we have introduced makes the following changes to the Satellite Home Viewers Act:

It reauthorizes the satellite copyright compulsory license for 5 years.

It allows new satellite customers who have received a network signal from a cable system within the past 3 months to sign up immediately for satellite service for those signals. This, as you know, is not allowed today.

It provides a discount for the copyright fees paid by the satellite carriers.

It allows satellite carriers to retransmit a local television station to households within that station's local market, just like cable does.

It allows satellite carriers to rebroadcast a national signal of the public broadcasting service.

The key to this legislation is the authorization of local-to-local, which will be the focus of much of the discussion today. I think one thing most all of us can agree on is that local-to-local will go a long way to solving the problem of distant network signals.

I don't want anybody to take what I am about to say personally but I would be remiss if I didn't say it. Although it is not the primary focus of today's hearing, let me say a word about the "white area" problem. I have displeasure with the current situation. It is apparent, and at least two courts have found that some in the satellite industry have purposely and deliberately violated the Copyright Act in selling these distant network signal packages to customers who are obviously unqualified. It is not lost on us that there is obviously a profit issue at hand. I understand you don't like the "Grade B" standard and that some of you think the law needs to be changed. I do not understand, however, how this entitles those of you who are doing so to disregard the law. This current crisis was caused by some in the industry, not the Congress. Now, we as Members of Congress are asked to fix it, and we will do our best to fashion a fair resolution. We hear from constituents who without any warning are being disconnected from these distant signals. I do not blame them for their anger and frustration.

I think it is crucial, folks, that the Copyright Act, title 17, remains strong, viable, and enforceable; otherwise we have no weapon against piracy.

The subcommittee must also consider at the appropriate time legislation that addresses other important issues such as must-carry obligations for local-to-local transmissions, white area, retransmission consent, syndicated exclusivity, sports blackout and network nonduplication. I want to recognize the contribution of Senator Orrin Hatch has made in addressing the issue as one of his highest priorities during this Congress. His leadership and co-

operation are sincerely appreciated. As you all know, we have worked very closely with him and Senator Leahy.

These are very difficult and complicated issues and I look forward to the testimony of all of our witnesses in informing the members of this subcommittee of their various perspectives.

As you all know—Howard, you probably know this, too—I take pride in brevity with my opening statements. This is longer than usual, but I feel like this issue demanded some detailed opening statement. I am now pleased to recognize the gentleman from California, the Ranking Member, Mr. Berman.

Mr. BERMAN. Thank you, very much Mr. Chairman. I am aware that we are now hearing the 10-minute bells for the vote that is pending. I don't have a prepared opening statement. This is my first opportunity to serve as Ranking Member with you. As chairman of the subcommittee, I just want to say how much I look forward to working with you. I think we will be able to do a great amount of work on a bipartisan and nonpartisan basis. I think the issues before the subcommittee lend themselves to those kinds of resolutions, and I agree with what you have said in your opening statement.

We have a number of issues involved here: the issue of appropriate fees for the importing of distant signals, I think the compelling argument for providing local-to-local compulsory license; and then the question of how to deal with the people who are now hooked up to satellite, importing a distant network signal, not for purposes of better reception but for purposes of time-shifting, much to the detriment of many local broadcasters who thought they had an exclusive right to deliver that network signal to the people in their area.

I look forward to a hearing which it looks to me will cover the whole ballpark in terms of the issues that we want to investigate. Thank you, Mr. Chairman.

Mr. COBLE. Good to have you aboard, Mr. Berman.

Mr. Delahunt, do you have an opening statement?

Mr. DELAHUNT. No, I don't, Mr. Chairman. It is good to be back and it is good to hear your dulcet tones once more.

Mr. COBLE. He is a charmer.

You all stand easy. We will go vote and return imminently.

[Recess.]

Mr. COBLE. Folks, I think we are ready to go. It appears that there will not be another vote for at least a couple of hours. Our first witness this morning is Bill Roberts who is the senior attorney for compulsory licenses at the Copyright Office. Mr. Roberts has held the position since the establishment of the Copyright Arbitration Royalty Panel System in 1994.

Previously he was an attorney adviser in the Office of General Counsel at the Copyright Office, and Mr. Roberts is also an adjunct faculty member at the Columbus School of Law at Catholic University of America where he teaches copyright law. He is a graduate of the University of Virginia School of Law and was previously associated with the law firm of Arter & Hadden before coming to the Copyright Office in 1987.

Let me remind all of the witness, as you know, we try to comply with the 5-minute rule. No one will be assaulted if you violate that

rule. When your red light appears, if you can wrap it up we would be appreciative.

**STATEMENT OF WILLIAM J. ROBERTS JR., SENIOR ATTORNEY,  
OFFICE OF THE GENERAL COUNSEL, COPYRIGHT OFFICE OF  
THE UNITED STATES, THE LIBRARY OF CONGRESS**

Mr. ROBERTS. Thank you, Mr. Chairman and members of the subcommittee. Before I begin my testimony, I would like to bring the regrets of the Register of Copyrights, Mary Beth Peters, and the General Counsel, David Carson, who were not able to appear before you today. However, I am pleased to offer the Copyright Office's testimony on H.R. 768, the Copyright Compulsory License Improvement Act.

Mr. Chairman, we at the Copyright Office feel this is very important legislation. As you may recall, in 1997 Senator Hatch asked the Copyright Office for its recommendations and suggested legislative amendments to both the cable and satellite compulsory licenses. At that time we made a number of recommendations regarding both licenses, and in particular with respect to the satellite license, we looked at the issues of the continued need for a satellite compulsory license, as well as the issues surrounding the delivery of network signals by satellite carriers, what is often referred to as the "unserved household restriction." Or probably it is more commonly known as the "white area restriction."

Mr. Chairman, I am pleased to report that your bill, H.R. 768, implements a number of the recommendations that we made in our 1997 report. First, the bill extends the current satellite carrier compulsory license found in section 119 of the Copyright Act for an additional period of 5 years. This will allow the satellite industry to continue to have guaranteed access to over-the-air television broadcast signals just as their competitors, the cable industry, continue to have access to these same signals through their compulsory license, the cable compulsory license.

In addition to this 5-year extension, your bill eliminates the restriction placed on satellite subscribers who have to wait a period of 90 days from termination of their network service from their cable operator before they are eligible to receive service from a satellite provider of those network signals. We feel at the Copyright Office that this has always been something of an anticompetitive provision and it is good to see that subscribers will no longer have to be without their network signals for a period of 3 months, provided they reside in an unserved household.

Second, Mr. Chairman, your bill creates a new compulsory license for local retransmission of satellite signals, both network and superstation signals. As I think you and the members of the subcommittee are well aware, the white area restriction of the current 119 license has caused a considerable amount of difficulties and problems, because local broadcasters justifiably wish to protect the integrity and the exclusivity of their signals to the viewers that reside in the market in which they broadcast their particular signal. By granting the satellite industry a local-to-local license, as it is often referred to, this will allow the carriers to provide these subscribers with the signals that they really want and that is their

local network television stations. We feel that this is probably the best and the most important solution to this white area difficulty.

The other thing the bill does of significance, Mr. Coble, is that it requires those carriers who continue to use the section 119 license to retransmit distant signals to inform their subscribers at the point of sale—at the time the subscriber intends to sign up—that he or she may or may not be eligible to receive over-the-air network service of distant network stations.

A lot of the consumer confusion and anger that we have experienced through our conversations with subscribers at the Copyright Office, and I am sure that you have experienced through phone calls and letters to your offices, surrounds the fact that an expectation is created that when somebody signs up for satellite service, they must reasonably expect to receive all of the programs that the particular satellite carrier offers. They don't have any expectation that they may or may not be eligible to receive their network service or that they may be able to get network service for a limited period of time, and then subsequently it might be turned off.

Your bill requires disclosure of the unserved household limitation to the subscriber ahead of time so they can make informed decisions.

Mr. Chairman, we believe your legislation is very important. I welcome—I see that my time has expired, and I welcome any questions from any of the members of the subcommittee. Thank you.

[The statement of the Copyright Office follows:]

#### PREPARED STATEMENT OF THE REGISTER OF COPYRIGHTS

The Copyright Office is pleased to present its views on H.R. 768, the "Copyright Compulsory License Improvement Act." This is important legislation designed to address important issues that have arisen relating to the Satellite Home Viewer Act in recent years and to provide the satellite industry with the necessary copyright clearances to allow it to compete equally in the multichannel video marketplace.

In 1997, Senator Hatch, Chairman of the Senate Judiciary Committee, requested that the Copyright Office present him with recommendations and suggested revisions to the cable and satellite compulsory licenses. After seeking the comments of the affected industries through written submissions and public hearings, the Office submitted a report recommending a comprehensive revision of the Satellite Home Viewer Act. H.R. 768 incorporates the most important recommendations that we made in our 1997 report.

#### BACKGROUND

The Satellite Home Viewer Act was enacted in 1988 as a means of allowing Americans access to broadcast television programming that they were not receiving through other conventional means. The Act created a copyright compulsory license for the then-fledgling satellite industry modeled after the compulsory license for the cable television industry enacted in 1976. Satellite carriers could retransmit the signals of broadcast television stations to their subscribers upon semi-annual submission of royalty fees to the Copyright Office for later distribution to copyright owners of the programs contained on those signals. Although similar to the cable license in many respects, there were two significant differences between the new satellite license and the prior cable license.

First, rather than pay royalties based upon a complex calculation method contingent upon outdated Federal Communications Commission cable rules, as is the case with the cable license, the new satellite license instituted a flat, per-subscriber-per-month royalty fee for carriage of each broadcast station. The statute initially prescribed a 12-cent per-subscriber-per-month fee for independent television stations (known as superstations), and a 3-cent per-subscriber-per-month fee for network signals. The rates are currently 27 cents per subscriber per month for both superstations and network stations, respectively.

Second, satellite carriers can make use of the satellite license for retransmission of network stations only to subscribers who reside in unserved households. An "unserved household" is one that cannot receive a signal of Grade B intensity (as defined by the FCC) from a local network station using a conventional outdoor rooftop antenna, and has not subscribed to cable within the previous 90 days. If a satellite carrier provides a network signal to a subscriber who is not an unserved household, then the carrier is liable for copyright infringement and must terminate the service of that signal.

The reason that the unserved household limitation on network signals is in the Copyright Act is largely historical. Unlike the cable industry, which was heavily regulated by the FCC at the time of passage of the cable license in 1976, the satellite industry was virtually unregulated by the Commission in 1988. Cable was long subjected to regulations—known as the network nonduplication rules—which prevented a cable operator from importing distant network stations to its subscribers when the subscribers were already receiving their local network signals. The reason for network nonduplication protection was to allow both network broadcasters and copyright owners to enjoy the benefits of exclusive licensing. Copyright owners/licensors could grant exclusive licenses to local broadcasters to perform their programs in the broadcasters' local markets without concern that a cable operator could negatively affect the value of these licenses by importing the same programming shown on a distant network station.

The satellite industry in 1988 did not possess the technology to provide local signals to subscribers, and consequently in virtually all markets all of the retransmitted network signals were distant signals. Copyright owners could not license their programs to local network broadcasters on a truly exclusive basis if satellite carriers were allowed to import distant network signals into those markets. Because the FCC's network nonduplication rules did not apply to satellite (and still do not), Congress included the unserved household limitation in the satellite license as a means of protecting the exclusivity rights of copyright owners/licensors and broadcasters. Only those households that cannot receive an over-the-air signal from their local network station, and are not subscribing to cable, can receive a network station from a satellite carrier.

In the first years after its enactment, the Satellite Home Viewer Act worked well. However, as the expiration of the license approached in 1994, it became apparent to some that large numbers of subscribers who did not reside in unserved households were nevertheless receiving network signals from their satellite carrier. In order to preserve the integrity of the unserved household limitation, Congress reauthorized the Satellite Home Viewer Act in 1994 for an additional five years, but implemented a two-year testing regime designed to weed out ineligible subscribers of network signals. Under this testing regime, a local network broadcaster could issue written challenges to subscribers in its local market that it suspected were not unserved households. Upon receipt of the written challenge, the satellite carrier had two options: either terminate service of the network station immediately, or conduct a test at the subscriber's household to determine whether the subscriber was receiving an over-the-air signal of Grade B intensity from the local network broadcaster. If the test revealed that the subscriber was unserved, satellite service could continue and the broadcaster was required to pay the cost of the test. If the subscriber was not unserved, satellite service was required to be terminated and the carrier absorbed the cost of the test. Though it was not written into law, satellite and broadcaster representatives offered assurances in 1994 that the standards and parameters of a correct household test would be worked out by the industries.

Unfortunately, the two-year signal testing regime was a complete failure. The satellite carriers and broadcasters could never agree to a test, and the practical result for most subscribers was termination of their service upon written challenge whether or not they were an unserved household. Both the Copyright Office and the FCC were flooded with angry calls from subscribers who had no means to prove that they were not receiving one or more local network signals and had no recourse for the loss of the challenged signals from their satellite service.

The expiration of the signal testing regime at the end of 1996 led to the filing of lawsuits by broadcasters against a single satellite carrier, PrimeTime 24, alleging massive violations of the unserved household limitation. To date, two federal district courts, in Florida and North Carolina, have issued injunctions against carriage of network signals by PrimeTime 24; and large numbers of subscribers will lose their network service at the end of this month and again at the end of April. A third lawsuit in federal district court in Texas is still pending.

H.R. 768 attacks the heart of the problems surrounding the satellite compulsory copyright license. Specifically, by creating a new, permanent license for the retransmission of local network signals by satellite to subscribers who reside in the local markets of those signals, the bill protects the integrity of the exclusivity rights of copyright owners/licensors and local broadcasters while affording satellite carriers a means of providing network service to all their subscribers. The Copyright Office submits the following comments regarding the new section 122 license for local-into-local retransmissions, as well as other key elements of the legislation.

1. *Local-into-local retransmissions.* When the Copyright Office considered revisions of the satellite license in 1997, it considered a number of possible solutions to the problems associated with the unserved household limitation. The Office's conclusion was

[T]he best solution to the issue of subscriber eligibility for satellite service of network signals is a technological one. If satellite carriers were to provide subscribers who reside within the local market of a network affiliate the signal of that affiliate, the need for the unserved household restriction with respect to that affiliate would be eliminated. The subscriber would be served with the local network affiliate, and the satellite carrier would no longer be required to import a distant network affiliate in order to provide network service to the subscriber. The Copyright Office, therefore, recommends that retransmission of any broadcast station, network or independent, within that station's local market be permissible. . . .

*A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals*, Report of the Register of Copyrights at 119-120 (August 1, 1997) (footnote omitted).

H.R. 768 sets into law that recommendation by creating a new and separate compulsory license for the retransmission by satellite of television broadcast stations to subscribers who reside within the local markets of those stations. There are several advantages to this provision. First, it provides satellite carriers with a license that allows them to compete directly with the cable industry. Under current law, it is unclear whether satellite carriers have a compulsory license to retransmit local signals. Cable has enjoyed such a license since 1976.

Second, by retransmitting local signals, satellite carriers will no longer have the need to import distant signals to these subscribers; and the local broadcasters will enjoy the benefits of having their local viewers watch their signals on digital quality satellite.

Third, the new license is royalty free. This should provide a strong incentive to satellite carriers considering implementation of local service, and places the satellite industry on par with the cable industry which likewise does not pay royalties for retransmission of local signals.

Fourth, the new license will allow satellite carriers to provide their subscribers with the programming they want most: their local broadcast stations.

Finally, the new license presents the opportunity to eliminate most of the consumer acrimony surrounding the unserved household limitation. When a subscriber signs up with a satellite carrier that provides local service, there is no testing associated with the subscriber's eligibility for network service and no angst about the possibility that such service may be terminated at a future date. In short, the section 122 license is a win/win situation for consumers and the satellite and broadcaster industries.

2. *Extension of the section 119 license.* H.R. 768 extends the current section 119 license for a period of five years. In principle, the Copyright Office believes that the licensing of secondary transmissions of broadcast signals should be left to the marketplace. However, the Office took the position in its 1997 report to Senator Hatch that the section 119 satellite license should remain in effect for as long as the cable compulsory license does (the cable license is currently permanent). The Office recognizes and supports Congress's desire to maintain oversight of the satellite license, and agrees that a five-year extension would permit assessment of the continuing function of the license and allow for legislative amendment, if necessary, at the expiration of the period.

3. *Notice requirements.* Section 7 of the bill amends section 119(a)(2) by requiring satellite carriers who make use of the section 119 license for retransmission of distant network stations to disclose to their potential subscribers prior to the point of sale that they may not be able to receive network service from the carrier. For those subscribers currently receiving network service, carriers are given 60 days from the

date of enactment to provide such notification. The Copyright Office believes this is an important amendment.

Much of the consumer confusion and anger directed at the unserved household limitation comes from subscribers' lack of information. Many subscribers sign up without being informed that they may be ineligible to receive network signals, and are only made aware of the law at the time their service is terminated. If satellite carriers are required to disclose to potential subscribers the provisions of the unserved household limitation, then these potential subscribers can make more informed choices about their purchase of satellite service and will not be suddenly surprised that their network service is being terminated due to enforcement of the unserved household limitation.

4. *Royalty rate reduction.* As described above, Congress initially set the royalty rates in the Satellite Home Viewer Act of 1988 at 12 cents per subscriber per month for superstations, and 3 cents per subscriber per month for network stations. These figures were based upon a rough approximation of what cable paid at that time under its compulsory license for retransmission of the same signals. The satellite rates were adjusted by an independent arbitration panel in 1991 to either 14 cents or 17.5 cents for superstations (depending upon syndicated exclusivity protection) and 6 cents for network signals. These rates were subsequently approved by the Copyright Royalty Tribunal.

When Congress extended the Satellite Home Viewer Act in 1994, it provided for another rate adjustment and changed the standard for adjusting rates. Rather than hinge the adjustment on the fee that cable paid under its license, the new standard required an adjustment of the rates to reflect the fair market value of the programming retransmitted on network and superstations. The Librarian of Congress empaneled a Copyright Arbitration Royalty Panel (CARP) to adjust the rates in 1997, and the CARP determined that a fee of 27 cents per subscriber per month represented the fair market value of a network and superstation signal, respectively. The Librarian approved the CARP's determination because it was neither arbitrary nor contrary to the Copyright Act.

Neither the Librarian nor the Copyright Office have a stake in the royalty fee charged under the section 119 license for the retransmission of broadcast stations. The Court of Appeals for the District of Columbia Circuit has recently affirmed the Librarian's decision accepting the 27-cent fee, confirming that the Librarian correctly performed his duties under the section 119 license. H.R. 768 reduces the 27-cent fee by 30 percent for superstations, and 45 percent for network stations. The reduction is in the interest of bringing the fee for the section 119 license more in line with the fee for the section 111 cable license. Because this is more a matter of competition in the video retransmission marketplace than copyright policy, the Office expresses no opinion as to the advisability of the reduction.

The Copyright Office looks forward to working with the Subcommittee on this important legislation.

Mr. COBLE. As I said at the outset, nobody is going to be cut off in the middle of a sentence, but I appreciate you recognizing the red light. Thank you for your testimony.

Mr. Roberts, the legislation reduces the royalty fee for network stations by 45 percent and superstations by 30 percent. This rate reduction, as you know, was in reaction to the Librarian of Congress 1997 rate adjustment decision that raised the fee from 14 or 17 cents for superstations and 6 cents for networks to 27 cents each. That is per subscriber, per signal, per month, which I think is correct.

How much in the amount of royalties has the Copyright Office collected under the 27-cent fee relative to the prior rates?

Mr. ROBERTS. Mr. Chairman, we collect royalty fees twice a year. There are two accounting periods for each year. The new 27-cent rate went into effect on January 1 of last year, 1998. For the first 6 months of the year, the first accounting period, we collected \$55 million from the satellite carriers.

For the second accounting period of 1998 we collected approximately \$46 million, so there has been something of a drop. We attribute that drop to the likelihood of the effectiveness of the recent

lawsuits brought by broadcasters and the turnoffs of a number of subscribers of network service.

Mr. COBLE. Mr. Roberts, although not addressed by the legislation before us, some have suggested that in lieu of a Grade B signal intensity test, that the law be amended to substitute a picture quality test. Is this appropriate, A, and, B, how would it work logistically?

Mr. ROBERTS. Mr. Chairman, we are not opposed in concept to a picture quality test, but we have serious reservations about how a picture quality test might be implemented in practice.

First off, in order to measure picture quality, there has to be a standardization of the equipment that is present in a subscriber's household, so there needs to be someone to advise as to whether the television set is of a certain quality that can receive a clear over-the-air signal. The wiring in the house, the location of the antenna, the position of the antenna and also external factors such as the atmospheric conditions and the topography surrounding the household, all of these factors must be taken into consideration before you can attempt to really do a serious signal quality measurement. And we have experience with the transitional measurement provisions of the 1994 Satellite Home Viewer Act where tests were supposed to be conducted at individual households. Virtually no tests were conducted because the tests were too expensive. The costs were too high vis-a-vis what the satellite carriers received in revenues for the sale of network signals. By having to send somebody out and advise as to changes that a consumer has to make in their particular equipment, we see that the costs to that will be significant.

We also question as to whom is going to conduct the test even once the equipment is standardized and the conditions are set for a picture quality test. If it is somebody from the satellite carriers, obviously there is an inclination to say it is not a good picture. That is just the way that it is.

If it is somebody from the broadcasters, there is certainly potential for conflict between a representative coming into a subscriber's home or a potential subscriber's home and then expressing an opinion about what the quality of the particular picture is, since it is essentially a subjective test. I can envision there being a lot of anger and confusion amongst subscribers for that.

So again while we think that it is good idea in principle, we don't know exactly how you could carry it out in practice, but we are open to suggestions.

Mr. COBLE. Let me try one more question before my red light illuminates in my face. You touched on this somewhat, Mr. Roberts, but do you want to say anything additionally regarding the FCC rulemaking concerning the white area issue? Is there anything that you want to add to that?

Mr. ROBERTS. Well, the Commission did a very good job with what they were given. I think that the Commission perhaps might have liked to have gone a bit further to refine perhaps in some respects the Grade B signal intensity, but they were constrained by the current provisions of the law as well as how Grade B relates to other provisions that the Commission has to administer where Grade B is the standard.

The Commission made a determination and I think this is accurate that Grade B is Grade B. There are not two different sets of Grade B, at least as currently provided in the law. So I appreciate that they were constrained in what they could do. However, they have come up with some useful items, particularly the household test. At long last we have at least the basic parameters of how you conduct a household test, plus they made improvements to what a predictive model would be so you can look at a map and make a determination as to where a signal of a particular station is likely to go and where it is not likely to go.

Mr. COBLE. Thank you, Mr. Roberts.

The gentleman from California.

Mr. BERMAN. Thank you very much, Mr. Chairman.

You spoke about the compulsory license, you talked about a compulsory license to import distant license signals and a compulsory license to import superstation signals. In reality is this all one compulsory license and two different types of fee structures? What is included in the existing satellite compulsory license?

Mr. ROBERTS. The existing satellite compulsory license allows a carrier to take a superstation, an independent station, retransmit it anywhere in the United States, and pay a royalty fee for it.

For network signals, they can retransmit them to just the subscribers in the unserved households. The license does not currently make clear as to whether local signals can be carried by satellite carriers, which is what the new legislation would do.

Mr. BERMAN. So there are two separate compulsory licenses; there is the superstation compulsory license and the network compulsory license?

Mr. ROBERTS. Yes. We view it as a single compulsory license for retransmitting those two types of signals.

Mr. BERMAN. One on an unlimited basis and one on a conditional limited basis?

Mr. ROBERTS. Yes.

Mr. BERMAN. When you say "network," you mean ABC, NBC, CBS, Fox.

Mr. ROBERTS. It would also include PBS. It would include Warner Brothers, the WB network; Paramount as well, I suppose.

Mr. BERMAN. So seven different network signals. And when you say "superstation," what do you mean?

Mr. ROBERTS. Well, interestingly enough, when the legislation was passed, there were several superstations. WTBS was a superstation. WGN in Chicago was a superstation. Now WTBS is a pay cable service so it is no longer considered a superstation. WGN belongs to the WB network so they are no longer a superstation.

To my immediate knowledge, there are no longer any superstations retransmitted by satellite carriers; they are now all networks.

Mr. BERMAN. If I were to buy a dish and subscribe to one of the services, would I be able to get some of the stations that now one gets through cable, the Discovery Channel, the Lifetime Channel, some of these other programmings? How is that done?

Mr. ROBERTS. Yes. That is done through private licensing. Any of what are referred to as cable networks like A&E, ESPN, that is direct licensing; and if you sign up for satellite, you can get that

from satellite and you can also get it from cable, assuming that your cable operator offers that station.

Mr. BERMAN. We neither mandate those programmers to provide that license nor mandate the fee that is to be charged?

Mr. ROBERTS. No.

Mr. BERMAN. Okay, that is totally private.

There was talk yesterday in the Commerce Committee of a moratorium. I assume that is not a moratorium on fees because people who were talking about it would not want a moratorium on fees. They may want a moratorium on fees, but they want a moratorium on fee changes.

Mr. ROBERTS. Yes, on turning off the subscribers who have been receiving network signals, satellite subscribers receiving satellite signals in violation of the recent court decisions.

Mr. BERMAN. I haven't seen and I don't know if any legislation to do that has been introduced, but is that not in effect legislation to suspend the conditions for the distant network compulsory license?

Mr. ROBERTS. Yes.

Mr. BERMAN. And that is a copyright issue, is that not right?

Mr. ROBERTS. It is indeed.

Mr. BERMAN. So one would assume that such legislation would come to the Judiciary Committee?

Mr. ROBERTS. Well, I don't feel exactly qualified to comment on that, Mr. Berman.

Mr. DELAHUNT. But you are right, Mr. Berman.

Mr. BERMAN. There has been some talk that once local-to-local license is provided—let me step back. Why wasn't a local-to-local license provided with the original compulsory license legislation?

Mr. ROBERTS. Because at that time, Mr. Berman, nobody envisioned that the satellite industry was going to have the technological capability to provide local signals.

Mr. BERMAN. What is their capability now, if I may pursue this for just one more minute?

Mr. ROBERTS. One particular DSS operator, EchoStar, has begun to provide local signals. They have done this through additional space, spectrum space that they have obtained from the FCC. They have also done it through digital compression of their signals and they are able to offer the local signals to a limited number of markets at this point in time. There are others who have announced plans to provide extensive local-to-local service.

Mr. BERMAN. Is there any reason to have a distant network compulsory license once legislation has passed to grant local-to-local compulsory license in markets that are served by satellite?

Mr. ROBERTS. I believe there will always be a need for a distant license for subscribers who reside in rural areas of the country or in markets where they can't get a full complement of their network signals. However, if your question is do you believe that once a particular satellite carrier begins to offer local service, if they should be able to continue to offer distant service in that market—is that your question?

Mr. BERMAN. Well, that is a good one.

Mr. ROBERTS. I think we would take the position that if that particular carrier is offering local service, it should not provide addi-

tional distant network service as well. This would follow the cable model where a cable system, if you sign up for cable, cable gives you your local network stations. They are prohibited by FCC regulation from giving you distant network stations, Los Angeles, Denver, et cetera. I think that would be an applicable model for the satellite industry.

Mr. BERMAN. Thank you very much, Mr. Chairman.

Mr. COBLE. Mr. Delahunt, the gentleman from Massachusetts.

Mr. DELAHUNT. Just to follow the line of questioning by Mr. Berman, I concur with your conclusion. I think what we are attempting to do is create parity here in terms of a level playing field between satellite and the cable market. But what would be the demand for distant network signals? I would think that it would be minimal.

I am from a part of the country that is urban, the Boston area, and with all due respect to Los Angeles and Mr. Berman, I have a very, very minimal desire—although I might want to watch the Lakers.

Mr. BERMAN. If the gentleman would yield.

Mr. DELAHUNT. I yield.

Mr. BERMAN. After a night of carousing, now you can come home at 1 a.m. and get the Los Angeles local signal and watch them.

Mr. DELAHUNT. That is true. I don't think that I will pursue that any further.

I have trouble making this distinction and I am not really conversant with the technology and the language, but a Grade B test versus a picture quality test, are they both really subjective determinations and decisions?

Mr. ROBERTS. Well, the picture quality test has more subjectivity than the Grade B test does. The broadcasters—

Mr. DELAHUNT. But if I am a consumer and I am watching a particular program, maybe my conclusion is that it is a Grade C or a Grade A or whatever, and I would think that—and correct me if I'm wrong because I simply don't know the process—but I would think that the costs attendant to making those determinations are significant in terms of the industry. Is that a fair statement?

Mr. ROBERTS. They would be, yes. Particularly with picture quality, it is different things to different people.

Mr. DELAHUNT. Am I right when I say the legislation and the authorization of a local-to-local license would eliminate the Grade B test?

Mr. ROBERTS. It would for the most part, yes.

Mr. DELAHUNT. It would for the most part.

Mr. ROBERTS. Provided that the carriers are actually offering the local signals.

Mr. DELAHUNT. Once a carrier subscribes or is authorized to this local-to-local license, then that eliminates this requirement or this unserved consumer test; am I correct?

Mr. ROBERTS. The way that the legislation is currently drafted—I reside in Fairfax. If I am an unserved household in Fairfax because maybe there is a big building that blocks my television signals, I can sign up for a satellite carrier who offers local-to-local service and I can get my local stations. I can also subscribe and get the distant network stations that are offered from that same car-

rier or from a different carrier. However, if I can get my signals off the air under the legislation, I sign up for satellite, I could only get from satellite my local television signals. I could not get the distant signals.

Mr. DELAHUNT. But you can still get the array, the large numbers of options that satellite provides?

Mr. ROBERTS. Right. And I can watch them on a digital quality satellite picture as opposed to having to watch it over the air.

Mr. DELAHUNT. I would just like to comment on the moratorium issue that Mr. Berman has raised a moratorium, as I understand it, pending congressional action—is that right—to resolve these issues?

Mr. ROBERTS. I only heard about the proposed moratorium at yesterday's Commerce Committee hearing. I am not familiar with the details of it.

My understanding is that its intention is to stop the turnoffs that are going to occur this Sunday and perhaps those that are going to occur on April 30 as a result of the court-ordered injunctions.

Mr. DELAHUNT. I just want to indicate that I do concur and share the annoyance expressed by the Chair regarding the disregard for the copyright statute. Are you aware whether the Department of Justice has initiated any action, any investigation into this matter?

Mr. ROBERTS. Not that I am aware of, no.

Mr. DELAHUNT. Because I wonder, Mr. Chairman, if at some point in time we should communicate with the Justice Department to determine whether they have the resources to take a very hard look at what has occurred here to determine whether there have been any Federal criminal statutes violated, because I think you are right. If we don't protect the Copyright Act, we are opening the door to piracy, whether it concerns domestic corporations or whether it be at the international level.

I think it is time—this might be the appropriate time for this subcommittee to make that request and make a very loud statement and send a message to the industry.

Mr. COBLE. That may well be in order, Mr. Delahunt. This subcommittee has been very vocal and adamant in taking a stand against piracy, and I think if we turn a blind eye to what appears to be an obvious violation of the law—

Mr. DELAHUNT. We can rail about piracy in China, but if we don't deal with it domestically, I think we are sending a mixed signal.

Thank you, Mr. Chairman.

Mr. COBLE. You are welcome.

Mr. Berman has one more question, but let me ask first, to be sure that I have it right, Mr. Roberts, the proposed shutoff, that applies only to CBS and Fox; is that correct?

Mr. ROBERTS. That is correct.

Mr. COBLE. Thank you, Mr. Berman.

Mr. BERMAN. I am told that a very substantial number of satellite television subscribers in the Grade A area, not the Grade B area, the Grade A area, are now importing distant network signals. I am wondering, first of all, whether you have any information on that; and, secondly, whether you are aware of the way that it is priced?

When someone gets the dish and hooks up to a satellite television, do they have a package of options to buy the distant network signal separately or is it you subscribe and this is what you get?

Mr. ROBERTS. For most satellite carriers and most distributors, you do have a package of signals that you can subscribe to. Some of them are grouped together and some are broken out individually. Typically you can sign up for network service and that will give you a full complement of your signals in ABC, CBS, NBC and Fox.

Because we are not an enforcement agency, we are not aware that subscribers located in the Grade A area are in fact receiving signals, satellite network signals. I am sure that the broadcasters would be glad to provide you with that information.

Mr. BERMAN. Well, that is for sure. They are glad to. I was wondering if someone else had independent verification of this.

Mr. ROBERTS. Mr. Berman, I only have anecdotal evidence, and just based on my own personal experience, and so I would be loath to offer it to you because it certainly is not concrete evidence.

Mr. BERMAN. Thank you.

Mr. COBLE. Thank you, Mr. Berman. Mr. Delahunt, any further questions?

Mr. DELAHUNT. No.

Mr. COBLE. Thank you, Mr. Roberts. We will be in touch.

Mr. ROBERTS. Thank you. I look forward to continue working with you and your excellent staff.

Mr. COBLE. We are sorry Ms. Peters couldn't be here, but it was a pleasure to have you.

If the second panel will come forward, I will introduce them as they make their way to the table.

Prior to doing that, let me explain to you the absence of one of our witnesses. Carolyn Herr Watts was scheduled to testify this morning on behalf of the North Carolina Association of Electric Cooperatives. Unfortunately some health issues arose which called for prompt attention, and I know that she is disappointed in not being able to be here, but we will make her written testimony part of the record and wish for her a speedy recovery. And we appreciate Michael Mountford pinch-hitting at the last moment at the request of the Satellite Broadcast and Communications Association.

Our first witness on our second panel will be Cullie Tarleton who is Vice President of Television for Bahakel Communications which owns numerous television and radio stations in various States throughout the country. In addition to his responsibilities at Bahakel, he is General Manager of WCCB in Charlotte, North Carolina. Mr. Tarleton is past Chairman of the National Association of Broadcasters, past President of the North Carolina Association of Broadcasters, and served as a member of the Television Board of the National Association of Broadcasters. He is a member of the Fox Affiliate Board of Governors and served as Vice Chairman of that board.

Our second witness will be Mr. David Moskowitz who is the Senior Vice President and General Counsel at EchoStar. He joined EchoStar in 1990 and David is responsible for legal and business affairs for EchoStar and its subsidiaries. From 1986 to 1990 he was corporate counsel for MDC Holdings, Inc., a national home building

and mortgage banking company. Previously he practiced in the general corporate and security law areas with a prominent Denver law firm.

Mr. Moskowitz received his J.D. With honors from the National Law Center at George Washington University in 1983 and his B.A., summa cum laude, from Western Maryland College in 1980. He is a member of the American Corporate Counsel Association, the Denver and Colorado Bar Associations and a variety of civic organizations.

Our third witness is Michael Mountford who is Vice President of the National Programming Service, the second largest C-band satellite packager in the country. Michael is also an owner of and served on the board of directors of DSI Systems, Inc., a leading satellite hardware distributor in North America.

Michael is a 1977 graduate of Notre Dame University. After working for an electronics supply firm in Chicago for several years after graduating, he started his own satellite electronics hardware company, Earth Terminal TV, in Bow, New Hampshire in 1983. Then in 1986 with the advent of C-band satellite scrambling, he started American Programming Service, APS, offering C-band programming to a nationwide customer.

Our next witness is John Hutchinson who is the Executive Vice President and Chief Operating Officer at Local TV on Satellite. He was a broadcaster for almost 30 years and has served in almost that many different roles, relating from creative production and business and management. Immediately prior to joining Local TV on Satellite for Capital Broadcasting this past summer, Mr. Hutchinson served as television group for Jefferson pilot stations in the Southeast. During his first 6 months at Local TV on Satellite, Mr. Hutchinson has recruited an experienced team of veterans from both the satellite and broadcasting industries.

Our next witness is Fritz Attaway, who is the Senior Vice President for Congressional Affairs and General Counsel at the Motion Picture Association of America. Before joining MPAA, Mr. Attaway served as attorney adviser in the Cable Television Bureau of the Federal Communications Commission where he was involved in numerous rulemaking proceedings concerning cable television and pay TV. He was also responsible for the training of new Cable Bureau attorneys. Fritz received his primary and secondary degrees in Caldwell, Idaho and attended the College of Idaho where he received a B.A. with honors in 1968.

Our final witness is Thomas Ostertag who is General Counsel in the Office of the Commissioner of Baseball. He was named General Counsel in 1990 and was placed in charge of the Commissioner's Office 4 years later in the absence of a New York-based commissioner.

We have written statements from each of the witnesses on this panel, and I ask unanimous consent to submit them in the record in their entirety. Without objection, Congressman Charles Taylor has requested that his statement be made a part of the record as well.

[The statement of Mr. Taylor follows:]

PREPARED STATEMENT OF HON. CHARLES H. TAYLOR, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, thank you for the opportunity to come before you today on behalf of thousands of my constituents in Western North Carolina. They, and I fully support a consumer friendly revision of the Satellite Home Viewers Act, specifically a reevaluation of the definition of "Grade B intensity" developed by the FCC. Thousands of satellite customers in the 11th District of North Carolina have written me requesting my help in maintaining the right of satellite television viewers to receive network affiliate station service in our mountains. It seems as though the bureaucrats at the Federal Communications Commission do not understand that interference due to the mountains in Western North Carolina, prevent thousands of "Grade B intensity" customers from receiving locally broadcast network television signals. These "unserved households" are the result of an arbitrary evaluation process of "Grade B intensity" areas upheld by federal courts in Georgia and Florida. Time is running out for thousands of my constituents, and millions nationwide who will lose network service in the next few weeks if the Congress does not act, and act now. This crisis, created by the Congress and the courts, is not natural and only harms the consumers. Technology now allows satellite transmission of literally scores of network affiliates. Congress should not allow petty bureaucrats or the courts to stand in the way of access to network signals. Thank you.

Mr. COBLE. Gentleman, I will again remind you, if you will, to be ever diligent about the red light and we will begin. Let's start with you, Mr. Hutchinson.

**STATEMENT OF JOHN H. HUTCHINSON, EXECUTIVE VICE  
PRESIDENT, CEO, LOCAL TV ON SATELLITE**

Mr. HUTCHINSON. Thank you, because I am excited to bring you good news this morning of a solution to the dilemma that we find ourselves in.

I represent Local Television on Satellite, LTVS, and our mission is to address the number one obstacle that limits direct broadcast, a truly competitive alternative to cable, the lack of local TV stations. LTVS has innovated a means of using the new KA-band satellites with spot beams focused on individual U.S. cities, which makes our system at least 20 times more efficient for the carriage of local television signals. That means for the first time, most U.S. satellite homes can get all of their own local stations on the dish.

We have integrated this new technology with a business plan to deliver the entire signal of all full service local stations in each market that we can serve upon initial launch. That should address initially 75 percent of all U.S. households as soon as possible, alleviating most of today's SHVA problems.

By entire signal we mean the full new digital bandwidth that delivers the highest definition television standard that is the future of America. As you know, all commercial TV stations are to be digital by mid-2002, and we must be ready to retransmit their services.

Two bidding satellite builders have our designs ready to begin construction this July 1. However, we cannot begin practically moving forward on this 30-month project until Congress passes the enabling legislation.

Therefore, my primary purpose today is to seek passage of legislation to make local-to-local TV by satellite a reality. In order to move the LTVS plan, or for that matter a similar solution by any other entity, we first need a compulsory copyright license. Cable presently has a compulsory license like satellite needs to compete.

The legislation we seek would match cable being subject to retransmission consent and must-carry. Such parity provisions mean

broadcasters maintain control of their signals and no qualifying stations are denied access to their viewers. The broadcast economics that support over-the-air television and localism are preserved.

Thanks to you, 2 days ago, chairman Coble introduced a bill that will work: H.R. 768. I want you to know that LTVS appreciates that initiative and certainly supports the Coble bill. Thank you.

As to the must-carry issue, any legislation that will permit transitional must-carry until the year 2002, as some have suggested, must explicitly provide that the "all stations in a market" requirement be mandatory at the end of the transition period; and to ensure timely compliance, DBS providers who choose to carry local stations must file a report with the Federal Communications Commission on January 2, 2001, a year ahead, demonstrating that they will be in compliance by 2002, a date certain for must-carry.

Our business plan is aggressive but realistic; if passage occurs now or early in this second quarter, that timetable will allow local service to be available by January 2002.

Turning briefly now to the technical plan, two high-powered satellites are to be launched in the fall of 2001. They will be collated in the same orbital arc as where the direct broadcast satellites operate today, DirecTV and EchoStar. What that means is that a single dish at the subscriber's home would see both all of the national DBS channels and all of that markets's own local channels, including their broadcast networks. LTVS is the most cost-effective wholesaler of two DBS providers because it provides a uniform platform for all of them to use.

Now, we do have a higher digital standard, and it does require more transponder capacity than analog television that we have known in the past, but our high definition full design will be required or this 15-year system would very quickly become obsolete, and we can't get up there and change the satellites.

Hence, the evolution of our plan to stretch to 75 percent of America and a standard that will survive the useful life of two of the largest satellites ever launched. Now, while we do have a technical phase 2 plan for the remaining 25 percent and more satellites, we invite your ideas for a viable business plan to support this very different economics. But without timely passage of this enabling legislation, neither LTVS nor any other company can begin to develop any local-to-local satellite solutions. This is a giant first step, and we need the critical lead time.

Finally, from a public policy perspective, I believe LTVS is good for consumers, good for the DBS industry, good for broadcasters. The plan furthers the goal of making DBS more competitive with cable.

So with your enactment of the legislation, LTVS can level the playing field by in effect becoming basic "cable in the sky" with a simple one dish, one box, one bill, long-term quality solution for subscribers who just want change.

Thank you for this opportunity to talk about it, and I would be happy to answer any questions.

[The statement of Mr. Hutchinson follows:]

PREPARED STATEMENT OF JOHN H. HUTCHINSON, EXECUTIVE VICE PRESIDENT, CEO,  
LOCAL TV ON SATELLITE

Good morning, and thank you for inviting me to appear at today's hearing. I am John Hutchinson, Executive Vice President and Chief Operating Officer of Local TV on Satellite, LLC ("LTVS"). I have been a broadcaster for almost thirty years and have served in almost that number of different roles, ranging from creative production to business management. Immediately prior to joining LTVS this past summer, I served as television group head for Jefferson-Pilot's stations in the Southeast. In addition to myself, the full-time officers of LTVS include Jeff McIntyre, Vice President of Broadcasting, Jerry Parker, Vice President of DBS Distribution, and Teresa Artis, General Counsel and Vice President of Business Affairs. LTVS is a Delaware limited liability company founded in 1997 by Capitol Broadcasting Co., Inc., its subsidiary, Microspace Communications Corporation ("Microspace"), and certain shareholders. Microspace is the largest provider of transponder capacity for broadcast data and audio satellite services in the world.

LTVS was founded to develop a basic local television station satellite delivery service, like basic cable, that will deliver via Direct Broadcast Satellite ("DBS") all local television stations in a given market. I am pleased to inform you that LTVS has developed a local-to-local solution for DBS. LTVS has developed a business plan and the technology to distribute via satellite all over-the-air, full power, commercial and noncommercial television stations within a given station's television market, known as Nielsen's Designated Market Areas ("DMA"). LTVS will provide service to all stations in approximately the top 70 markets in the United States and reach approximately 75% of the U.S. television households. Our intent is to deliver individual local station packages to all DBS providers, who will then retail these packages to their subscribers. We are very excited about our *ALL STATIONS IN A MARKET* plan that will enable consumers to receive their local broadcast programming through their DBS provider. This assumes satellite parity with existing cable must carry.

*MY PRIMARY PURPOSE TODAY, HOWEVER, IS TO SEEK PASSAGE OF THE LEGISLATION NECESSARY TO MAKE LOCAL-TO-LOCAL A REALITY. IN ORDER TO MOVE THE LTVS PLAN OR A SIMILAR PLAN BY ANY OTHER ENTITY FORWARD, WE NEED A COMPULSORY COPYRIGHT LICENSE FOR LOCAL-TO-LOCAL.*

That is, in order for LTVS to become a reality we need legislation that would grant a compulsory copyright license to satellite carriers for the retransmission of local television signals in their DMAs subject to retransmission consent. Satellite carriers whose retransmissions are subject to the compulsory license would have to offer to carry all full-service television stations in any local market served. Satellite carriers would have to obtain retransmission consent from local stations prior to retransmitting their signals. In addition, LTVS supports legislation to require satellite carriers to comply with limitations on sports broadcasts, network nonduplication, and syndicated exclusivity, similar to cable's rules.

Two days ago, Chairman Howard Coble (R-NC) introduced the Copyright Compulsory License Improvement Act (H.R. 768). The Coble bill would amend the Copyright Act of 1976 to provide a statutory license, not subject to any royalty fees, since the stations' signals are not extended beyond their present coverage area, for the retransmission of television stations into a given station's local market by satellite carriers. The bill would grant satellite carriers a compulsory copyright license for local-to-local as provided to cable under Section 111 of the Copyright Act and to satellite carriers for unserved households under Section 119 of the Copyright Act. The legislation would enable consumers to receive via satellite all over-the-air, commercial and noncommercial television stations within a given station's local market. LTVS supports the passage of the Coble bill either as part of a comprehensive satellite bill or as a stand-alone bill.

As to the must carry issue, any legislation that would permit interim or transitional must carry until the year 2002 must explicitly provide that the full must carry requirement will be mandatory at the end of the transition period. To assure such compliance, a satellite carrier must file a report with the Federal Communications Commission ("FCC") on January 2, 2001 demonstrating that it will be in compliance in 2002.

In addition to the passage of the necessary legislation, LTVS also needs changes at the FCC. Earlier, I mentioned that LTVS would cover approximately 70 markets. LTVS is seeking several changes in proposed FCC rules that may increase the number of markets we can serve. Briefly, the FCC's proposed rules limit the number of transponders to 420 with a corresponding limitation on the number of markets covered. Under the FCC's proposed rules, LTVS will be able to provide a maximum of

420 transponders, which limits the number of markets served. The FCC's proposed rules regarding the possible sharing of 250 MHz in the 18 GHz band and maximum operating power impose coverage limitations.

Now, I would like to turn to the specifics of our business plan. Under our *ALL STATIONS IN A MARKET* plan, LTVS will deliver individual local station packages to all DBS providers, who will then retail a local station package to their subscribers. The DBS industry has long recognized that the lack of local stations in their program offerings is a primary reason that consumers who consider DBS do not buy. LTVS's local station product will overcome that competitive barrier.

LTVS's goal is to become the unified platform that allows DBS as an industry to compete more effectively with cable television and other competitors in the multi-channel video programming market. Further, viewing of local stations in satellite homes is lower than in cable homes and the LTVS plan will assist in protecting local stations' economics and, in turn, service. Our business plan is aggressive in that, with the passage of the necessary legislation by the second quarter of this year, we intend to have the receivers in the stores by December 2001 and begin LTVS service in 2002. To date, in addition to having developed the technical plan for our project, which I will describe in greater detail momentarily, we have (1) shared our plan with the DBS and broadcast industries in order to confirm the need for our project and to assess their interest, (2) retained Babcock & Brown, an international investment firm with particular financing expertise in the satellite and DBS industries, (3) obtained a design for the satellites from two satellite manufacturers, and (4) fostered the introduction of the necessary legislation.

Our priority now is to obtain passage of the necessary legislation. It will take approximately 30 months to build and launch the satellites needed for the LTVS service. Therefore, if LTVS is to begin service in 2002, the necessary legislation must be passed now so that the order for the satellites can be placed. Once this is accomplished, we will enter into formal negotiations with DBS providers for the delivery of the local station packages and with local television stations for retransmission consent. I will turn now to the technology behind our plan.

In the past, one of the obstacles to DBS providing local television signals was the lack of an efficient technology. That technology is now available with spot beams. We plan to operate two satellites in the Ka-band at an orbital slot between 101 and 119, which would provide coverage to the continental United States. Consumers will be able to receive the current high power DBS signals and the local television signals from one dish and with one receiver box containing the encoders for both DBS and the local signal service. Also, consumers will receive only one bill for both the DBS service and the local television service.

Last year, LTVS reported that it intended to carry all stations in all markets. That plan was based on the satellites' carriage of analog signals at 4 megabits (Mbps) per station. Our intention now is to carry the entire signal of a station. In other words, every station can be carried in full HDTV at 19.4 Mbps. Because these digital signals require much more bandwidth than analog signals, the two LTVS satellites will be unable to carry all stations in all markets. Nevertheless, we think this is a better plan. As mentioned earlier, the satellites will take more than two years to build and will last approximately 15 years. Thus, they must be designed for the future digital environment. LTVS will be able to accommodate the DTV/HDTV rollout as well as multiplexing which is the future of television. Also, it would be impractical to build satellites to carry analog signals now and then be unable to efficiently modify the satellites to carry HDTV signals in the future. Further, the ability to carry digital signals will enable DBS to be competitive with cable in the future. Currently, cable operators are equipping their systems to carry digital signals. In fact, it has been reported that CBS and Time Warner have reached an agreement for Time Warner to carry all of the CBS-owned stations' full digital signals on their respective systems in those markets served by Time Warner.

As I mentioned earlier, our two Ka-band spot beam satellites will have the capacity to carry the entire signal (full HDTV) of all stations in approximately the top 70 markets. The satellites have been designed and LTVS is in a position to move forward with the satellite manufacturers to begin building the satellites as soon as the necessary legislation is passed. While LTVS has also developed a technical plan that would require another orbital location and two additional satellites for carriage of stations in smaller markets, LTVS has been unable to develop a viable economic plan. However, without timely passage of enabling legislation, neither LTVS nor any other company can provide this service.

The stations carried will be uplinked from regional uplink sites. In early April 1998, we invited vendors to respond to a Request for Proposal ("RFP") for the equipment and services needed for the uplinks, as well as receivers, dishes and master control center. These vendors were selected from those responding to our original

Request for Quotations ("RFQs") issued in mid-1997. Worldwide Satellite Broadcasting, Doctor Design and several other manufacturers are assisting in the continued development of our receiver design.

Finally, from a public policy standpoint, LTVS is good for consumers, DBS providers, and broadcasters, and our plan furthers Congress' and the FCC's common goal of making DBS more competitive with cable on a nationwide basis. However, to be competitive, legislation such as the Coble bill needs to be enacted.

LTVS provides consumers with a one stop shopping alternative to higher priced cable television. LTVS responds directly to consumers who want more choice in the multichannel video programming market, but also want their local television stations delivered in the same medium and quality in which they receive other channels. Our plan provides consumers with the convenience of receiving their DBS signals and local television signals with *ONE-DISH-ONE BOX-ONE-BILL*.

For DBS providers, LTVS is the long-awaited and much needed solution to their prior inability to deliver local television signals to their subscribers. LTVS will make a significant contribution to leveling the playing field by enabling DBS to offer a basic satellite service like basic cable. Our *ALL STATIONS IN A MARKET* plan should spur the development of the DBS industry and increase DBS competition with cable. For DBS providers, LTVS provides a convenient and seamless local solution for 75% of the U.S. television households. That's 3 out of 4 Americans served from day one. DBS providers will be able to attract new subscribers by offering a one stop shopping entertainment package including all local broadcast stations in a given market.

Broadcasters too will benefit from our plan because LTVS will enable distribution of local television stations within their DMAs. Under our plan, every full power station in the covered markets will have the opportunity to be carried because we propose to carry all local stations that consent to be carried. Local stations will continue to control the distribution of their signals. The LTVS plan should help stop the television ratings erosion in DBS homes. Finally, LTVS should help facilitate and accelerate the HDTV rollout.

The time has come for the DBS industry to take a giant leap forward in its development. The DBS industry served its first customer in 1994. Since that time, DBS has provided some competition for cable, but the lack of local television signals within the DBS programming package has placed DBS at a competitive disadvantage and stifled its growth rate. Today, more than 67.4% of U.S. television households subscribe to cable compared to only 7.9% for DBS. Indeed, market research shows that the primary obstacle for DBS in competition with cable is the lack of local television signals. LTVS solves this problem by providing DBS with the local station packages in the full 19.4 Mbps that they need to compete long term with cable. Furthermore, our plan will enable DBS subscribers to receive local originated programming such as local weather, local news, local sporting and charity events, and public affairs programming, all of which serve the public interest.

I thank you for having given me the opportunity to tell you about Local TV on Satellite and I would be pleased to answer any questions.

Mr. COBLE. Thank you, Mr. Hutchinson. Mr. Tarleton.

**STATEMENT OF CULLIE M. TARLETON, GENERAL MANAGER, WCCB-TV, ON BEHALF OF THE NATIONAL ASSOCIATION OF BROADCASTERS**

Mr. TARLETON. Thank you, Mr. Chairman. Before I speak specifically about your bill, let me say that broadcasters are deeply concerned about the impact of the enforcement of the recent court order scheduled to begin this weekend.

It is clear that the satellite industry willfully and repeatedly broke the law. I was grateful to hear that many members of this subcommittee are seriously concerned about these violations of the copyright laws, but it is also clear that hundreds of thousands of consumers were duped by that illegal activity.

The issue is who has the responsibility for solving the problem. I can tell you that broadcasters are doing all we can to provide waivers for all viewers who qualify. We also have embraced the fine-tuning done by the FCC to make predicting who qualifies for distant network service under the Satellite Home Viewer Act more

consumer friendly, but there also needs to be a role played by the lawbreakers. We have suggested that they use part of the half billion dollars that they have collected in illegal revenues to provide antennas to help reconnect viewers with their local stations. Given all of the problems their behavior has caused, it is the least that industry can do to try to rectify the situation.

As for your bill, Mr. Chairman, let me congratulate you on sponsoring H.R. 768, the legislation before us this morning. Along with similar legislation offered in the Senate, your bill will provide the changes needed to give the satellite industry the copyright to carry local signals into local markets.

As local broadcasters, our job is to serve as many of the local viewers in our area as possible with local news, weather and emergency information, public affairs and local advertising. Your legislation will grant the satellite industry the copyright to carry our signals to all of their customers in our local market, strengthening both our ability to serve that market and their ability to market themselves as a viable option to cable service. Only when satellites provide local channels will they truly be competitive with cable. That is a goal you and I both share and we endorse your legislation.

Local-to-local legislation will also address a serious problem that exists in the current marketplace; that is, the illegal sale of distant network signals to subscribers who have access to local affiliates over the air. From the very beginning, the Satellite Home Viewer Act was designed to allow for the retransmission of network signals from distant markets only for those viewers who are unable to get a strong signal from their local stations. The other intent of the law was to preserve the network affiliate relationship and ensure that local service was maintained for all viewers.

However, as you and your committee are aware, PrimeTime 24 and its distributors, including DirecTV and EchoStar have been systematically violating the Satellite Home Viewer Act ever since this committee passed it in 1988.

As I said earlier, literally hundreds of thousands of viewers have been sold distant network signals in clear violation of the law. As the evidence shows, the vast majority of viewers was clearly in areas where they could get the local stations and therefore should never have been sold the distant signals to begin with.

For purposes of the February 28 cutoff date, 78 percent of the CBS subscribers and 83 percent of the Fox subscribers live in the Grade A coverage of their local station. High percentages.

Two Federal courts, including one in our home State, Mr. Chairman—

Mr. COBLE. Give me those percentages again, Mr. Tarleton.

Mr. TARLETON. Seventy-eight percent of the CBS and 83 percent of the Fox.

Mr. COBLE. Thank you.

Mr. TARLETON. Two Federal courts, including one in our home State, have now issued injunctions against PrimeTime 24 and its distributors for that activity.

Further, the FCC undertook a review of the Grade B standard that you established in the act and came to two conclusions. First,

the basic definition of Grade B is sound and provides wonderful picture quality.

Second, today's technology provides ways to improve upon how we predict such things as terrain and interference as well as provides better ways to test for those factors. We as an industry have endorsed those changes.

In the end, local-to-local will be the ultimate answer to all of these concerns. By providing local signals as part of the satellite package, viewers will be able to get what they truly want, both the national network programming as well as the local programs that they depend on from their local network affiliates.

Given that reality, we would ask that you modify your legislation so when local signals are available in the market, the importation of distant signals ends. There is no reason for these competing signals, providing nearly identical programming, to continue to come into distant markets. Their continued presence will simply undermine the negotiated program contracts and exclusive rights that local stations own in their markets.

We also would ask you to change your legislation to have lists of subscribers sent to local stations and not to those stations being carried as distant signals. The local marketplace is the best way to make sure that there is compliance with the law. Localism, Mr. Chairman, has been the watch word of the broadcast industry since its very inception. The FCC has always licensed stations to serve in the local public interest and those licenses were predicated on our ability to reach the local audience.

By adopting H.R. 768, you will be creating a framework so those signals can be added to the national programming channels already offered by satellite and thus create a competitive marketplace for consumers. With the other minor changes that I have outlined, broadcasters endorse your legislation and we look forward to making it a reality early this year. Again, I thank for your leadership on this important issue.

[The statement of Mr. Tarleton follows:]

PREPARED STATEMENT OF CULLIE M. TARLETON, GENERAL MANAGER, WCCB-TV, ON BEHALF OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Mr. Chairman and distinguished members of this subcommittee, thank you for the opportunity to speak to you today. I am Cullie Tarleton, Vice President of Television for Bahakel Communications. We own 8 TV stations, including one in Charlotte and one in Raleigh, North Carolina, appearing on behalf of the National Association of Broadcasters.

In the months since two courts acted decisively to enforce the Satellite Home Viewer Act (the "Act"), much attention has been focused on the question of whether satellite carriers should be permitted to continue delivering distant network signals in violation of the Act to subscribers who can receive the signal of a local station over the air. Some have also suggested that the Act should be substantially revised. I am here to emphasize our belief that the Act works and that the modifications proposed in your bill will ensure that satellite carriers can take advantage of technological advances while preserving the network/affiliate system that has successfully provided network programming via local outlets to nearly all American households.

It was of course this subcommittee, in connection with the enactment of the Act in 1988 and the 1994 amendments, that carefully examined the impact of the importation by satellite of duplicative network programming on the local broadcast ing system and the programming marketplace. In this subcommittee's sound judgment, legislation was needed to ensure that all consumers have access to network programming. At the same time, this subcommittee recognized that copyright protection for local broadcasters was necessary to preserve their role in serving their com-

munities with local programming. To balance these concerns, this subcommittee created a limited exception to exclusive programming copyrights assigned to television networks and their local affiliates. Based on objective signal intensity measurements, consumers who cannot receive local broadcast signals over the air are eligible to receive network programming from a satellite television company.

Satellite carriers, however, repeatedly and willfully violated the copyright law by selling network signals from distant cities to subscribers who could receive their local network station's signal free over the air. In the face of this flagrant violation of copyright law, two courts have vigorously enforced the law. Judge Lenore Nesbitt of the U.S. District Court in Miami issued injunctions ordering PrimeTime 24 not to deliver CBS or Fox television network programming to any customer who does not live in an unserved household. The permanent injunction will take effect with respect to certain subscribers on February 28, 1999, and with respect to the remainder on April 30, 1999.

Satellite carriers have ignored the objective signal standard of the SHVA and have ignored broadcasters' copyright protection. Judge Nesbitt wrote:

PrimeTime made a conscious decision to flout the law when it was well aware of what the law required. PrimeTime does not restrict its sale of network programming to locations that local stations have stated are unserved. In fact, PrimeTime places no geographical limits on its sale of CBS or Fox programming.

Judge Nesbitt also concluded that "a company cannot build a business on infringement and then argue that enforcing the law will cripple that business."

Judge Bullock of the U.S. District Court in North Carolina, in requiring PrimeTime 24 to terminate distant network service to Raleigh, NC area subscribers, found that, "PrimeTime has ignored or turned a blind eye to the necessity of objective signal strength testing and thus willfully or repeatedly provides network programming to subscribers that are ineligible under SHVA." As a result of these court orders, satellite carriers will once and for all be stopped from delivering network programming from distant cities to subscribers who can receive local network programming over the air.

At the request of members, the Federal Communications Commission has also examined whether the Act permits consumers who are truly unserved by local television stations to receive distant network signals from a satellite service. In its recent Report and Order, the Commission concluded that the Grade B signal intensity standard, upon which the Act relies to determine whether a household is served, accurately indicates when picture quality is acceptable. The FCC in addition recommended possible improvements to the methodology used to predict a Grade B signal and adopted new on-site measurement procedures.

Regrettably, on the eve of the effective date of the Miami injunction, satellite industry players have devised further schemes to avoid compliance with the SHVA and even the judge's order. Earlier this week, DirecTV announced its intent to continue delivery of distant network signals after February 28 notwithstanding Judge Nesbitt's order.

Today, the four major networks and their affiliate organizations are filing a request for a temporary restraining order and preliminary injunction against DirecTV's willful attempt to evade the injunction. The Judge is expected to hear argument on these motions today. The same organizations have also brought an action against EchoStar's attempts to evade the Act.

Mr. Chairman, we have reviewed your bill and believe that it reflects the correct approach to further tailoring the SHVA to fulfill its purposes. We would suggest two areas in which this otherwise excellent legislative package would benefit from modest improvement. First the bill would require satellite carriers to provide subscriber lists to network stations that are being retransmitted. This notice requirement would be more effective to ensure satellite carrier's compliance, however, if the local network station into whose market a signal is being transmitted were notified. The local network affiliate will have much greater incentive to seek enforcement of the Act.

Second, the Act should provide that once a carrier avails itself of the new compulsory license provided by your bill, it should no longer deliver distant network signals to any subscriber in the same local market where it delivers a local signal.

Let me conclude by saying that broadcasters applaud this subcommittee's fairness and judgment in supporting the Act and in considering changes that will protect the system of local programming and ensure access to network television for all Americans. Broadcasters will continue to cooperate in this process and work toward fair resolution of these difficult issues.

Thank you for the opportunity to express our views on this issue to this subcommittee.

Mr. COBLE. Thank you, Mr. Tarleton. As I said before when we mentioned the 5-minute rule, be advised that your written testimony has been examined and will be reexamined so you are not getting shorted. Mr. Ostertag.

**STATEMENT OF THOMAS J. OSTERTAG, GENERAL COUNSEL,  
OFFICE OF THE COMMISSIONER OF BASEBALL**

Mr. OSTERTAG. I will be brief. I am grateful for the chance to present baseball's views on H.R. 768 and the satellite compulsory license. We appreciate your efforts in dealing with the difficult issues raised by compulsory licensing.

As you know, Mr. Chairman, this is an area of substantial concern to baseball. The compulsory license permits satellite carriers to take our programming, without our consent, and to sell it to their paying subscribers across the country. Our only recourse is to receive a government-prescribed royalty.

Baseball's position is simple. One, the satellite compulsory license should not be extended beyond its current expiration date of December 31, 1999; and, two, as long as compulsory licensing remains in effect, satellite carriers should continue paying a fair market royalty. The royalty currently in effect should not be reduced.

My prepared testimony discusses the reasons for our position, I will not repeat those reasons here. Let me just emphasize that the marketplace and not the government should set the terms and conditions for licensing all copyrighted telecasts. Congress is increasingly besieged with controversial issues that surround compulsory licensing, such as those involving royalty rates, white area restrictions and local-to-local service. If there is no compulsory license, the market and not the government will resolve these issues. We strongly believe that that is the preferable approach.

Thank you again, Mr. Chairman, for the chance to appear before you and your subcommittee. I will be happy to answer any questions.

[The statement of Mr. Ostertag follows:]

**PREPARED STATEMENT OF THOMAS J. OSTERTAG, GENERAL COUNSEL, OFFICE OF THE  
COMMISSIONER OF BASEBALL**

Mr. Chairman and members of the Subcommittee, I am Thomas J. Ostertag, General Counsel, Office of the Commissioner of Baseball. I appreciate the opportunity to testify before you, on behalf of the thirty clubs engaged in the sport of Major League Baseball, concerning the satellite carrier compulsory license in Section 119 of the Copyright Act.

**SUMMARY**

A fundamental principle of copyright is that commercial enterprises should not exploit copyrighted works without the consent of the copyright owners. Section 119 represents a significant exception to that principle. It permits satellite carriers to retransmit, to paying subscribers, countless hours of copyrighted programming on broadcast television stations—without obtaining the consent, indeed over the objection, of the copyright owner. That programming includes thousands of Baseball and other live sports telecasts each year. Baseball's only recourse under Section 119 is to receive a royalty, the amount of which is determined in costly and time-consuming governmental proceedings.

Baseball's position is simple: (1) The satellite compulsory license should not be extended beyond its current expiration date of December 31, 1999. There is no justification for continued government involvement in the licensing of programming to

satellite carriers; nor is there any legitimate basis for exempting the satellite industry from marketplace transactions and normal copyright liability. The marketplace, and not Congress or government agencies, should set the terms and conditions for licensing of all copyrighted telecasts, including telecasts of Major League Baseball games. (2) Until the marketplace is allowed to function, satellite carriers should pay, and copyright owners should receive, fair market value for copyrighted telecasts, as currently required by Section 119. The fair market value rate set by a panel of independent arbitrators in August 1997 (and affirmed by the Register of Copyrights, Librarian of Congress and United States Court of Appeals for the District of Columbia Circuit) should not be reduced.

#### DISCUSSION

As a former Register of Copyrights testified before this Subcommittee, "A compulsory license mechanism is in derogation of the rights of authors and copyright owners. It should be utilized only if compelling reasons support its existence." *Hearings On H.R. 1805 et al. Before the Subcomm. On Courts, Civil Liberties and the Admin. Of Justice, Pt. 1, 97th Cong., 1st and 2d Sess. 959-60 (1981)* (statement of David Ladd, Register of Copyrights). There are no compelling reasons that support the continuation of the Section 119 compulsory license. To the contrary, there are compelling reasons not to do so.

- When the Congress enacted Section 119 over a decade ago, the satellite industry consisted of relatively small and struggling entrepreneurs. Today, that industry is dominated by corporate giants—such as Hughes Electronics (a subsidiary of General Motors), TCI (soon to be acquired by AT&T) and EchoStar (in which News Corp. and MCI Worldcom will hold significant interests). These billion dollar conglomerates, which account for the vast bulk of Section 119 royalties, are fully capable of negotiating with copyright owners over program rights. They certainly do not warrant any type of subsidy from copyright owners.
- The Section 119 compulsory license has served its purpose. The DBS industry, which now takes primary advantage of Section 119, is enormously successful. From its inception in the mid-1990s, DBS has grown to nearly 9 million subscribers—making DBS the fastest growing consumer electronics product ever. Last year alone (after fair market rates went into effect for the first time) DBS operators enjoyed perhaps their most successful year to date; they increased their customer base by nearly 2.5 million households. That success underscores the point that DBS carriers do not need any exemption from the marketplace or the obligation to pay fair market compensation.
- When the compulsory license was originally enacted, there was very little programming available to satellite carriers other than broadcast programming. Today, the satellite industry has access to a wide variety of programming from more than 100 cable networks, such as TBS, TNT, ESPN, CNN and USA, as well as to a number of program packages provided by Baseball and the other sports interests. Satellite carriers are able to negotiate in the marketplace, and pay fair market rates, to obtain all that programming. There is no reason they cannot do the same to obtain broadcast programming. Indeed, the experience of TBS—which in 1998 successfully converted from a superstation (subject to compulsory licensing) to a cable network (subject to market negotiations)—demonstrates that the marketplace works perfectly well without compulsory licensing.
- Compulsory licensing was intended to reduce transaction costs but it has, in fact, significantly increased those costs for copyright owners. To receive their share of royalties, copyright owners must engage annually in negotiations with one another as well as in the development of expensive factual evidence necessary to help determine royalty shares. If negotiations do not produce agreement, copyright owners are then required to engage in time-consuming litigation before arbitration panels, the Copyright Office and the U.S. Court of Appeals (the extraordinary costs of which are borne entirely by copyright owners). We have been required to repeat that process in connection with rate adjustments, which we have been forced to defend, at a great deal of additional expense, before the Congress as well.
- The recent explosion of controversies over compulsory licensing provides added justification for not extending Section 119. The Congress and the parties have devoted enormous resources to numerous issues surrounding the satellite compulsory license—including controversies over "white areas," "local-into-local,;" rate adjustments and extension of the compulsory license.

These issues have come before Congress only because of the existence of the compulsory license. Absent compulsory licensing, these issues would be resolved—as they should be—in the market.

#### CONCLUSION

Thank you again, Mr. Chairman, for the opportunity to provide Baseball's views on the Section 119 satellite carrier compulsory license. For the reasons set forth above, we believe the time has come to let that compulsory license expire. Until it does, satellite carriers should continue to pay the fair market rate that went into effect on January 1, 1998.

Mr. COBLE. Mr. Ostertag, you have just established a world record. I don't think that you even used 3 minutes. Mr. Attaway.

#### **STATEMENT OF FRITZ E. ATTAWAY, SENIOR VICE PRESIDENT FOR CONGRESSIONAL AFFAIRS AND GENERAL COUNSEL, MOTION PICTURE ASSOCIATION OF AMERICA**

Mr. ATTAWAY. Thank you, Mr. Chairman.

MPAA and its member companies enthusiastically support competition among deliverers of multichannel video programming. The competition not only increases viewing options for consumers, it also increases demands for programming, which is good for the companies that I represent.

MPAA supports the extension of the satellite compulsory license to December 31, 2004. This is not to say that we like the compulsory license. In principle, I have to agree with everything Mr. Ostertag said. In a perfect world there would neither be a cable nor a satellite compulsory license. Such abrogations on the rights of copyright owners are not necessary in today's marketplace. In the real world there is a cable compulsory license and it is right and appropriate for the satellite license to be extended for a limited period, during which I hope that Congress will provide for a phasing out of all retransmission compulsory licenses so the marketplace rather than government can determine the proper price to be paid for entertainment programming.

MPAA also in principle supports the carriage of local signals. Although we would prefer it be done through a marketplace mechanism rather than a compulsory license, we support at least a short-term measure that will provide a compulsory license for carriage of local stations.

MPAA is deeply disappointed that H.R. 768 would discount the market royalty rate determined by an independent arbitration panel made up of three judges. Their decision was confirmed by the Librarian of Congress and the United States Court of Appeals. We have presented evidence, unrebutted by the satellite industry that; this rate is not unfair to the satellite carriers, that in some cases the rate is less than cable operators would pay under similar circumstances; and it is a tiny fraction of what the satellite carriers charge their subscribers for our programming. In assessing the royalty, other factors that give satellite carriers a competitive advantage over cable should be taken into account, like the lack of subscriber rate regulation, the lack of syndicated exclusivity restrictions, the lack of must-carry requirements, and the lack of a local franchise fee.

Nonetheless, Mr. Chairman, you and other reasonable and fair-minded Members of Congress, including Senator Hatch in what I

believe you call the other body, believe that a compromise of this issue is appropriate.

If the satellite industry is willing to accept this compromise, MPAA would do so as well. I would like to make some suggestions, however. I believe that it needs to be made more clear that the rate that would go into effect on July 1 would continue in effect until the extended sunset of the compulsory license on December 31, 2004. I believe that is your intent. I am not sure that it is absolutely clear that that will be the case in the statute as presently drafted.

I would also like you to consider an inflation adjustment which is provided for in other compulsory licenses in the Copyright Act.

Finally, I would urge that the effective date of the royalty discount be the first day of the next accounting period following enactment of the legislation. In that way, should this legislation not be enacted until after July 1, the new law would not take away royalties already accrued for the benefit of copyright owners. Such a taking would be subject to a constitutional challenge under the fifth amendment.

Thank you for providing me this opportunity and I will be glad to answer any questions.

[The statement of Mr. Attaway follows:]

PREPARED STATEMENT OF FRITZ E. ATTAWAY, SENIOR VICE PRESIDENT FOR CONGRESSIONAL AFFAIRS AND GENERAL COUNSEL, MOTION PICTURE ASSOCIATION OF AMERICA

Mr. Chairman, members of the Committee, thank you for giving me this opportunity to express the views of program producers and distributors on H.R. 768.

My name is Fritz Attaway. I am Senior Vice President for Government Relations and Washington General Counsel for the Motion Picture Association of America. MPAA represents seven of the largest American producers and distributors of theatrical feature films, TV programs and home video material.

MPAA and its member companies enthusiastically support competition among deliverers of multichannel video programming. The existence of multiple competitors not only increases viewing opportunities for consumers, it increases demand for programming, which is good for the companies I represent.

H.R.768 is intended to increase competition between satellite services and cable services by providing a more level playing field. MPAA supports that objective. This is not to say that H.R.768, if enacted, will provide a perfectly level playing field for satellite and cable services. I think virtually everyone would agree that this will not be the case. But, to the extent that it moves the playing field toward a state of balance, it is a good thing.

Adjustments may be needed, particularly with respect to the impact of H.R.768 on broadcasters. Speaking for program suppliers, I think H.R.768 gets it about right.

MPAA supports the extension of the satellite compulsory license to December 31, 2004. This is not to say that we like the compulsory license. In a perfect world, there would be neither a cable nor a satellite compulsory license. Such abrogations of the rights of copyright owners are not necessary in today's marketplace. But, in the real world, there is a cable compulsory license, and it is right and appropriate for the satellite license to be extended for a limited period, during which I hope Congress will provide for the phasing out of all retransmission compulsory licenses so the marketplace rather than government can determine the proper price to be paid for entertainment programming.

MPAA also supports the provisions of H.R.768 that provide for the carriage of local signals. Carriage of local signals is probably the most effective way to stimulate competition between satellite and cable services. Although we would prefer it be done through a marketplace mechanism rather than a compulsory license, we support at least as a short term measure Section 2 of H.R.768.

MPAA is deeply disappointed that H.R.768 would discount the market royalty rate determined by an independent arbitration panel made up of three judges; a decision confirmed by the Librarian of Congress and a United States Court of Appeals.

We have presented evidence, unrebutted by the satellite industry, that this rate is not unfair to satellite carriers; that in some cases it is less than cable operators would pay under similar circumstances; that it is a tiny fraction of what the satellite carriers charge their subscribers for our programming; and that in assessing the royalty rate other factors that give satellite carriers a competitive advantage over cable should be taken into account, like the lack of subscriber rate regulation, the lack of syndicated exclusivity restrictions, the lack of must-carry requirements and the lack of local franchise fee requirements.

Nonetheless, Mr. Chairman, you and other reasonable and fair-minded members of Congress, including Senator Hatch in the Other Body, believe that a compromise of this issue is appropriate. If the satellite industry is willing to accept this compromise, MPAA will do so as well.

I would like to make some suggestions, however. I believe that it needs to be made more clear that the discounted rates that would go into effect on July 1 would continue in effect until the extended sunset of the compulsory license on December 31, 2004.

I would also like to suggest that you consider an inflation adjustment. The cable compulsory license as well as the public broadcasting compulsory license include inflation adjustments, and it is fair and reasonable that the satellite compulsory license include one as well.

Finally, I would urge that the effective date of the royalty discount be changed to the first day of the next accounting period following enactment of this legislation. In that way, should this legislation not be enacted until after July 1, the new law would not take away royalties already accrued for the benefit of copyright owners. Such a "taking" would be subject to Constitutional challenge under the Fifth Amendment.

Thank you again for this opportunity to testify before you today. I look forward to answering any questions.

Mr. COBLE. Thank you, Mr. Attaway. Mr. Moskowitz.

**STATEMENT OF DAVID MOSKOWITZ, SENIOR VICE PRESIDENT  
AND GENERAL COUNSEL, ECHOSTAR COMMUNICATIONS  
CORPORATION**

Mr. MOSKOWITZ. Mr. Chairman and distinguished members of the subcommittee, thank you for inviting me to discuss your proposed legislation. First I want to thank you and your staff for introducing this legislation. Ever since EchoStar launched its DBS business 3 years ago, we have had a single focus: to compete aggressively against cable's poor customer service and constantly increasing rates. But DBS faces many obstacles. Most importantly, DBS needs the full statutory right to provide local channels by satellite. Consumers cite the lack of local channels as the number one reason why they don't switch from cable to DBS. Your legislation is an important step towards creating choice for the consumer.

EchoStar is the only DBS company that offers local channels by satellite today. With FCC approval of our recently announced deal to acquire an additional DBS slot, EchoStar will launch two more satellites this year. With this additional capacity, we will be able to provide local channels to nearly 50 percent of the U.S. population this year, a crucial time to create fully effective competition to cable. We urge that consumer choice be permitted to begin this year, upon enactment of the legislation rather than in January 2000 as is currently contemplated by the bill.

For 3 years, existing law has handcuffed our ability to vigorously compete. We applaud your efforts to eliminate the 3-month waiting period before cable subscribers can get network channels by satellite. We are also pleased that your bill reduces the disparity between cable and DBS copyright fees and provides a royalty-free license for local-to-local broadcasts.

Current law also specifically entitles cable to deliver network channels to restaurants and apartments, while satellite typically cannot. This should also change if we are to compete with cable and keep residential rates low.

In addition, we would ask that you include in the bill a definition allowing local-to-local to serve its entire DMA. Use of the DMA definition of local markets, which was developed and adopted by the broadcasters, will help remove uncertainty that would otherwise delay swift implementation of local-to-local.

We are concerned that one provision of your legislation would require EchoStar to give stations the names of all of our local consumers. Providing perhaps millions of names to hundreds of stations nationwide would be an administrative nightmare and would create a paperwork pile with no resulting benefit, but the costs would inevitably be passed to consumers.

Additionally, the draft would require a letter to the consumer before local service could be provided. When consumers call to start service, they expect all service instantaneously. With the recent clear direction from the FCC on qualifications for distant signals, it is not necessary to add time and expense for consumer inconvenience to this legislation which should be aimed at simplifying distant network signal compliance.

I would also like to discuss for a minute those aspects of local-to-local legislation being discussed at the Commerce Committee. If must-carry is imposed on satellite today, the number of consumers to whom we will be able to offer true choice will be significantly diminished. Satellite cannot bear the cost of full must-carry compliance until we have a chance to get off the ground as an industry. Cable had 20 years to develop before must-carry was imposed. When satellite realizes the significant market share, then we could economically launch additional satellites with the capacity necessary to comply with a must-carry.

Broadcasters have made billions from the use of spectrum, and given without charge by the government, and will make billions more from free digital spectrum. EchoStar's failure to carry a local station would do no harm today because we lack market power. We urge Congress not to impose must-carry in a DMA until our market penetration reaches at least 15 percent in that DMA. This lack of market power and our fruitless efforts to date to engage the three largest networks in meaningful retransmission discussions also have us concerned that broadcasters will have no incentive to grant retrans on reasonable terms or perhaps at all.

We are asking that legislation allow local-to-local with a grace period to obtain retransmission consent and include language that would prevent discrimination. Lower prices and better quality for consumers will result where EchoStar provides local channels by satellite. Other consumers will still need to rely on a combination of off-air antennas and distant satellite signals for the network programming so crucial for the creation of competition.

When EchoStar began providing distant network signals directly a year ago, we implemented a red light/green light predicted model in line with recent FCC recommendations, but the law on that model denied network channels to tens of millions of consumers who receive a poor off-air signal as a result of ghosting and other

impediments. This is especially incongruous given the push for HDTV.

We would ask Congress to direct the FCC to eliminate the antiquated Grade B standard and establish guidelines that take into account expectations of viewers today.

Thank you for allowing me to testify before you today and for introducing this important legislation. I look forward to answering your questions.

[The statement of Mr. Moskowitz follows:]

PREPARED STATEMENT OF DAVID MOSKOWITZ, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, ECHOSTAR COMMUNICATIONS CORPORATION

#### SUMMARY

Mr. Chairman and distinguished members of this Committee, thank you for inviting me to testify before you today on the HR 768, the legislation you have introduced that would reform the Satellite Home Viewer Act. My name is David K. Moskowitz, I am the Senior Vice President and General Counsel, Secretary and Director of EchoStar Communications, a Direct Broadcast Satellite ("DBS") company based in Littleton, Colorado. EchoStar Corporation was started in 1980 as a manufacturer and distributor of C-Band dishes and grew, by the mid-1980's into the largest supplier of C-Band dishes worldwide. EchoStar's founder and CEO Charlie Ergen had a vision of a dish in every home, school and business in the United States and of providing true, effective competition to cable. That vision could not be realized with large dishes. Consequently, in 1987 EchoStar filed an application for a DBS permit with the Federal Communications Commission (the "FCC"). EchoStar has launched four DBS satellites since December 1995 and has invested approximately \$2 billion into this technology, working to give consumers a choice to cable.

In trying to compete against cable television, EchoStar soon realized that the single most important handicap hampering satellite service was the lack of local television signals. EchoStar has started providing limited local-into-local service, but is hindered by current law, at least as read by some parties.

The reforms you have proposed to the Satellite Home Viewer Act (SHVA) are needed to relieve many of the restrictions that are placed upon DBS today. These restrictions include the lack of an unambiguous copyright license allowing local-into-local retransmission in the most efficient and comprehensive manner, a 90-day waiting period for receiving a network signal for those customers who have disconnected cable, restrictions on satellite feeds in commercial establishments, and outrageous copyright fees for distant network signals. The Act as it stands now is clearly anti-competitive.

EchoStar respectfully suggests changes to your proposed legislation including, first, deletion of Section 122, requiring satellite companies to relinquish the identities of their subscribers whose signals are transmitted locally. This is administratively burdensome as well as not necessary due to the fact that satellite carriers do not owe any royalties for local-into-local retransmission and are already required to report subscribers who receive distant network signals, allowing effective policing of Section 122's territorial restrictions. Secondly, the bill does not need to delegate the definition of a "local market" to the FCC; rather Congress should define "local market" as the station's "Designated Market Area". Thirdly, local-into-local retransmission need not be subject to any further authorizations of the FCC. The FCC has already urged congressional action to allow local-into-local retransmission.

With the SHVA reform, coupled with additional spectrum, we believe we can give consumers what they really want, their local news, weather and sports on a single dish. We already offer local channels in the larger metropolitan areas and we will expand to more markets in the coming year.

We look forward to working with you and your colleagues from the House Commerce Committee, as well as the Senate Commerce Committee, on these legislative reforms in order to make DBS a stronger competitor to Cable.

#### STATEMENT

Mr. Chairman and distinguished members of this Committee, thank you for inviting me to testify before you today on the H.R. 768, the legislation you have introduced that would reform the Satellite Home Viewer Act. My name is David K. Moskowitz, I am the Senior Vice President and General Counsel, Secretary and Di-

rector of EchoStar Communications Corporation, a Direct Broadcast Satellite (DBS) company based in Littleton, Colorado. EchoStar was started in 1980 as a manufacturer and distributor of C-band dishes that grew by the mid-1980's into the largest supplier of C-band dishes worldwide. EchoStar's founder and Chief Executive Officer Charlie Ergen had a vision of a dish in every home, school and business in the United States and of providing true, effective competition to cable. That vision could not be realized with large dishes. Consequently, in 1987 EchoStar applied for a DBS permit with the Federal Communications Commission (FCC). The FCC granted EchoStar its first DBS spectrum assignments in 1992. Since then, EchoStar has launched four DBS satellites and has invested over \$2 billion in satellite television technology, working to give consumers a true alternative to cable.

EchoStar was the first company to drop the price of a dish to below \$200 when the competition was charging \$800 for its product. EchoStar was the first to allow subscribers to pay a low monthly fee as they do with cable. EchoStar was the first to allow consumers to choose the 10 channels they watch the most, then pay for those "a la carte" without having to buy an entire package of programming they do not want. EchoStar was also the first company to say that it guarantees it will not raise prices until the next millennium. These are just some of the measures our company has taken to compete vigorously in the marketplace and make satellite technology affordable and accessible for all Americans.

In trying to compete against cable television, EchoStar soon realized that the most significant handicap hampering satellite service is the lack of local signals. Most of the consumers walking out of the store without a satellite dish cite the unavailability of local signals (which they can receive from cable) as the reason. As I will detail below, EchoStar has started providing limited "local-into-local" service in an effort to alleviate that handicap. That effort, however, is hindered by (a) spectrum constraints and (b) the Satellite Home Viewer Act, at least as read by some parties. EchoStar is working to overcome the first of these impediments, principally with the MCI/News Corp. transaction that I will briefly describe. The legislation that you are considering is a great first stride to help us overcome the second.

EchoStar recently announced its intentions to acquire from MCI/Worldcom and News Corp. an FCC authorization to use 28 DBS frequencies at the 110 W.L. orbital location, from which a satellite system can serve the entire continental United States, or "full-CONUS." EchoStar also intends to acquire two satellites to be launched in 1999, and an uplink center located in Gilbert, Arizona, which will act as back-up to our existing uplink facility in Cheyenne, Wyoming. For the MCI/News Corp. assets, EchoStar will give the two companies non-controlling equity stakes.

The spectrum at the 110 W.L. slot, combined with EchoStar's existing full-CONUS spectrum at 119 W.L. (21 frequencies) as well as the half-CONUS locations at 61.5 W.L. (11 frequencies) and at 148 W.L. (24 frequencies) will alleviate the capacity handicap that currently hampers EchoStar, helping us to compete more vigorously against cable. While the transaction is necessary to introduce more competition into the subscription video marketplace, it is not enough. Action by this Committee and others in Congress is key to our ability to compete against cable on a more equal footing and introduce the additional competition necessary to rein in the ever increasing prices and poor customer service of cable companies.

#### SATELLITE HOME VIEWER ACT REFORM IS KEY

We need reform of the Satellite Home Viewer Act to give DBS the unambiguous copyright license to retransmit local signals back into their local area in an efficient and comprehensive manner. In areas where local network service is not available, or where spectrum capacity constraints inhibit DBS from re-transmitting local signals, we need to know realistically who can and cannot receive distant network signals from the DBS provider. The law, at least as read by some parties, is not satisfactory on either of these fronts and, in fact, provisions of the SHVA as it exists today are clearly *anti-competitive*.

DBS cannot fully compete as an industry when the law says customers must wait until 90 days after disconnecting from cable before our service can give them a network signal. DBS cannot effectively compete as an industry when the law says our signals may only be received in a private home and not in commercial establishments. DBS cannot compete as an industry when it must pay many times more in copyright fees for the distant network signal. And DBS certainly cannot compete when it must conduct a prohibitively expensive test to determine whether a viewer can receive a local broadcast signal before providing a distant signal.

The legislation you have introduced would remedy many of the anti-competitive provisions of the law. It is a terrific first step in the effort to reform the Act, and we applaud the work you and your staff have done to help our industry. Of course,

this work must go hand-in-hand with the parallel endeavors of the House Commerce Committee on competition-related issues.

Regarding local-into-local service, the highlights of the proposed legislation from our perspective include: the unequivocal affirmation that satellite carriers may retransmit a station's signal in that station's local market, without a limitation to private home viewing and, of course, without a 90-day waiting period after subscribers discontinue their cable subscriptions. At the same time, we respectfully recommend certain necessary and easy-to-implement revisions to the bill's local-into-local provisions.

*First*, we recommend deletion of the reporting requirements from Section 122, whereby satellite companies must relinquish the most sensitive and proprietary information (identities of their subscribers) to the stations whose signals are locally retransmitted. Providing perhaps millions of names to hundreds of stations nationwide would impose a huge administrative burden on satellite companies. In addition, as the broadcasters themselves begin to use the new digital spectrum they have received from the government to "multi-plex" channels and sell subscription services to their viewers, we fear that our viewers could become marketing targets for those stations, as the prohibition on such uses of the data is extremely difficult to enforce. Such an intrusive requirement is unnecessary. Satellite carriers owe stations no royalties for local-into-local retransmissions and thus there is no question of ascertaining any amounts due. Furthermore, if the satellite carrier retransmits the station's signal beyond the station's local market, it is already under an obligation to report to the subscribers receiving distant signals under the reporting requirement of Section 119, and this obligation is adequate to police the terrestrial restrictions of Section 122. Thus, a separate reporting requirement under Section 122 would fulfill no useful purpose.

*Second*, the bill need not delegate the definition of "local market" to an FCC rule-making; rather, Congress should define "local market" as the station's "Designated Market Area." DMAs, used today for several purposes, provide a widely accepted, non-overlapping and practicable local market definition. There is therefore no need to allow any uncertainty over the implementation of the local-into-local provision by leaving this definition for future determination.

*Third*, for the same reason, local-into-local retransmission need not be subject to any further authorizations of the FCC. The FCC has already urged congressional action to allow local-into-local retransmission, and there is no outstanding issue for the agency to resolve.

With respect to distant signal retransmission, EchoStar commends the bill's rollback of the retransmission rate to levels more comparable to those paid by cable operators, and, again, the elimination of the 90-day waiting period. Of course, EchoStar respectfully believes that there is still a lot to be accomplished in this area, primarily by your colleagues on the Commerce Committee, to ensure that all consumers without access to local broadcast service can obtain distant signals by satellite. While the FCC's recently adopted Grade B prediction and measurement methodologies are well-intentioned, they also highlight the need for congressional action to achieve that goal. In testimony before the Commerce Committee, other representatives of the satellite industry, as well as I, have expanded further on these issues. I will only note that several aspects of the FCC's measurement method, including the need to reorient the test antennas to each and every station and make several measurements at different locations after each reorientation, make it cumbersome and expensive, and thus a non-viable solution for testing at millions of households. Furthermore, the FCC's predictive methodology, while an improvement over the one used by the broadcasters in copyright infringement litigation, still penalizes consumers who can only receive an adequate signal with 50% confidence.

#### ECHOSTAR'S LOCAL-INTO-LOCAL PLAN

Our company is well positioned to finally break down what, in the consumer's mind, has been the single greatest obstacle to choosing DBS over cable or switching from cable to DBS. We plan to offer local-into-local service, on a single dish, to nearly 50% of the U.S. population, while at the same time overcoming the challenges in offering interactive television, Internet solutions, and High Definition Television (HDTV).

Currently, EchoStar offers limited local-into-local service in thirteen markets. The local service we offer, even if we could make it available to all subscribers, is not perfect. It is a tough sell because it requires customers to put a second dish on their roof. With the new orbital location, consumers in the 20 major metropolitan centers would receive local programming on one dish while consumers in many smaller markets (now unserved with local signals) will be offered a two-dish solution.

Independent studies and our experience as a company match the conclusions of the FCC: most of the people who walk into a satellite dealer's showroom turn around and walk out because they can't get their local TV channels through DBS.<sup>1</sup> Surveys show viewers watch their local channels 70 percent of the time.

In 1998, EchoStar began offering satellite-delivered local network stations to qualified consumers in the Washington, D.C., New York, Atlanta, Dallas, Boston and Chicago, Los Angeles, San Francisco, Phoenix, Salt Lake City, Denver, Miami, and Pittsburgh markets. With the additional spectrum and the two new satellites to be launched in 1999, we will expand to Sacramento, Portland, Seattle, Las Vegas, St. Louis, Minneapolis, and San Diego. In each of these markets we offer the four network stations, and in some cities offer independent stations as well. While we would love to offer even more local signals, we strongly believe our plan will serve the public interest by offering for the first time to many consumers in those markets a true choice between our service and cable.

There have been some, outside the Direct Broadcast Satellite industry, who have proposed "solutions" purporting to give DBS the ability to carry local signals into the local market. These proposals, however, are inadequate on their face.

For instance, Northpoint Technology (Northpoint) seeks to use the 12.2–12.7 GHz band for a point-to-multipoint terrestrial system that would, among other things, deliver local signals to DBS customers and compete in the MVPD market. EchoStar does not believe, however, that Northpoint would offer an attractive local-into-local complement to satellite services, for the same reason that consumers today find cumbersome the combination of a satellite dish and a terrestrial off-air antenna, and are turned off by such an offering. Furthermore, all the DBS operators have serious concerns that use of the same band for another service could cause harmful interference into the DBS services enjoyed by millions of subscribers. When the Commission allocated this band to DBS service, it relocated terrestrial services because of the high-power, ubiquitous nature of DBS. While EchoStar welcomes competition from all sources, the first and fundamental rule that should be observed to promote effective competition to cable is "first, do no harm." The Commission should not consider allocating the DBS spectrum to another terrestrial service if to do so would risk compromising the reliability and quality that makes DBS so competitive.

Furthermore, EchoStar disagrees strongly that it would be wise for the Commission to allocate the DBS spectrum for a terrestrial wireless provider in an attempt to create competition against cable. The Commission has already set aside spectrum for ubiquitous or high-density terrestrial services such as Northpoint's. The Commission has licensed Multichannel Multipoint Distribution Service providers. Only last year the Commission also auctioned broadband terrestrial spectrum for Local Multipoint Distribution Services, which could be used to compete in the MVPD market if such use proves viable. But where wireless cable in other bands has not proven a viable alternative to cable so far, it would be inappropriate for the Commission to allocate the DBS spectrum for yet another wireless cable solution and endanger the integrity of the only service that *has* proven a viable alternative to cable.

Capital Broadcasting—a coalition of broadcasters—has proposed a plan that would make its service available to DBS providers in about 67 markets nationwide. Unfortunately, that plan is four to five years away and is technologically speculative. Capital has not even begun construction of its satellite system. The system is to use very high frequencies—the Ka-band—which experience signal attenuation and rain fade problems. The technology for using these frequencies has yet to be commercially implemented—let alone for the purpose of direct-to-home video. The FCC requires satellites using that spectrum to be very close to one another, necessitating larger dishes. In fact, the permissible size of the dish is still an unknown. The integration of such an offering with the current DBS services, which use different spectrum, conditional access and digital transport standards may also be problematic.

At the same time, while the additional spectrum we propose to acquire will allow us to serve many more markets, this will not be possible if DBS distributors were to become subject to unreasonable, and probably unconstitutional, must-carry obligations.

<sup>1</sup> See *Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming*, FCC 98–355 (rel. Dec. 23, 1998) at ¶63 n.274. See also *Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming*, 13 FCC Red. 1034, 1072 n.201 (1998).

MUST-CARRY IS INAPPROPRIATE AT THIS POINT BECAUSE SATELLITE CARRIERS LACK MARKET POWER

While these issues are being considered by your colleagues on the Commerce Committee, I should briefly alert you to a potential "poison pill" for EchoStar's local-into-local plans. These plans would not be feasible if DBS distributors were to become subject to unreasonable, and probably unconstitutional, must-carry obligations. EchoStar believes it would be inappropriate for Congress to impose a must-carry requirement on satellite carriers at this point. The main reason why Congress imposed must-carry provisions on cable operators, and why the courts found it constitutional, was due to the bottleneck characteristics inherent in cable systems. Satellite carriers in general, and EchoStar in particular, lack that characteristic. Indeed, it was only when cable operators indisputably gained real bottleneck power in the early 1990s that Congress imposed must-carry rules and the Supreme Court, after careful review, upheld them.

EchoStar notes that the history of cable television can easily be characterized as one of special favors from the Federal Government, allowing cable to compete against the monopolies of earlier eras. Back when broadcast television and telephone companies occupied the monopoly positions that the cable industry occupies today, cable regularly went to the government looking for help that would enable it to compete.

EchoStar is not asking for government favors like those that cable operators secured so many times. At the same time, it is simply inappropriate to saddle EchoStar with must-carry obligations that were imposed on cable operators only after (and because) they had amassed so much monopoly power. We believe any reform of SHVA you consider in conjunction with the Commerce Committee should allow DBS to offer local stations without having to carry all of the stations in a given market until the DBS industry has some level of market penetration.

FAIR RETRANSMISSION CONSENT AGREEMENTS ARE ESSENTIAL

Our hope is that when we unequivocally win the full-fledged right to provide local stations to the local market, the stations we seek to carry in each of these markets will give us retransmission consent agreements to the extent required. We have been seeking those agreements with broadcasters nationwide, but, with the notable exception of FOX, our lack of market power as an industry and a company means broadcasters have no incentive to give us fair terms. Conversely, the cable industry's market power translates into great leverage over whether the broadcasters deal with us enthusiastically or not. In seeking agreements with the broadcasters, we have had numerous executives tell us that they would like to give us agreements, but they have declined because they fear angering the cable companies they deal with. We are urging the House Commerce Committee, in its work on companion legislation, to enact provisions, in any final law passed, that will mandate that DBS get retransmission agreements on terms that are comparable to those enjoyed by cable operators; terms that are fair and equitable.

SUMMARY

Once again, thank you for inviting me to testify. We appreciate all of the hard work you and your staff have undertaken to help our industry become more competitive. I look forward to answering your questions.

Mr. COBLE. Thank you, Mr. Moskowitz. Mr. Mountford.

STATEMENT OF MICHAEL R. MOUNTFORD, EXECUTIVE VICE PRESIDENT, DSI SYSTEMS, INC.

Mr. MOUNTFORD. Hello, Mr. Chairman, and members of the subcommittee. My name is Michael Mountford. I have to admit that I am a little nervous. This is my first time ever testifying; I don't know if that makes me a testimonial virgin or not.

I am the Executive Vice President of DSI Systems, Inc. We sell C-band programming and hardware. We also are the exclusive RCA distributor for the DirecTV satellite system for the entire nation. My responsibility lies in the C-band programming area.

I started in the satellite business in 1983, worked with my hands, and I gave demonstrations at more malls and retail estab-

lishments than I ever want to remember. I have worked with installers and trained them, and trained and worked with retail salespeople, and I have worked a lot with the direct consumer.

On behalf of my customers, I want to thank you for introducing this bill and for the opportunity to testify today. I am pleased that the legislation extends the copyright license 5 more years. Superstations and networks are a very important part of our business. I am pleased that the fee is reduced. We sell packages mainly on an annual basis, and right now the copyright fees for just networks on an annual basis to us are \$3.24. For the cable company—

Mr. BERMAN. Say that one more time.

Mr. MOUNTFORD. The copyright fees for just networks on an annual basis to us are \$3.24 cents, our fee for copyrights on an annual basis. For cable they are 30 cents, and we have a very small base of about 100,000 network subscribers, but that translates into our cost being \$300,000 more for essentially the same product as the cable companies. And that is only us, a small subscriber base. With DirecTV and EchoStar having millions of customers, that is more significant. This bill does not get us equal to cable, but it helps a lot and we certainly are willing to compromise, and I appreciate the MPAA's position on compromise.

I want to thank you for eliminating the 90-day waiting period. That one not many people ever understood.

I think the local-to-local provisions are good. They primarily help my good friend Charlie Ergan. Although we have competed for many years, we have remained good friends, and it may help us in the C-band industry in the future if LTVS is successful.

I want to share a quick story about my father. He recently built a house in Avon Park, Florida, rural Florida; and when he was asking me to get a satellite system and programming, we talked about the possibility of the networks, either distant signal, importing the PrimeTime signals or going local, and it was his feeling that first of all he would like to get his local channels if at all possible for the local news and weather; and, secondly, why would he ever pay for a network signal that he can get for free? That was his stance and we put up an antenna. We did get the signal and it is not a great signal. I don't know if it is an acceptable signal; in my opinion I wouldn't say that it is, but it is acceptable to somebody who grew up listening to radio and not having TV.

There are a couple of provisions in the bill that I would like you to consider a little more thoroughly. Under the local-to-local provision, as Mr. Moskowitz just said, it requires a turning over of the subscriber list to the networks. The networks are not direct competitors currently but they could be in the future, and they have lots of employees and employees do lots of things to lists. And frankly I don't give my list of subscribers out to anybody, and I don't want to be mandated by anybody to give it out. That is very much our property and an asset of our business that we don't want to give up.

I have suggested in my written testimony that we employ a third-party audit to do that. I think that can be done. It is done all of the time in the programming business and I don't see why it wouldn't work.

The other thing that Mr. Moskowitz hit on and I would like to touch on is the notification. When a customer calls us to buy signal service, they want to see the picture right then and there. In fact, we coach our sales representatives that they do not leave the phone call, they don't hang up the phone until they verify that the signal is on to the consumer. How can we do that and give the consumer a 90-day written notice? It is very similar to the 90-day waiting period. If somebody called me today or Sunday and said, I want CBS authorized and they can qualify, we will authorize them and they will see that signal go on. Now they are probably waiting for something like "Touched By An Angel." If I have to send them a written notification, they are going to miss that episode and next week's episode and probably 2 or 3 or 4 weeks of episodes. So it just doesn't seem very workable on our part.

In closing, I definitely want to thank you on behalf of my customers. Your bill goes a long ways to helping us continue to service those customers and service them fairly, and I would be happy to try to answer any questions you may have. Thank you.

[The statement of Mr. Mountford follows:]

PREPARED STATEMENT OF MICHAEL R. MOUNTFORD, EXECUTIVE VICE PRESIDENT,  
DSI SYSTEMS, INC.

Mr. Chairman and members of the Subcommittee, I appreciate appearing before you today in order to present my views on H.R. 768, the Copyright Compulsory License Improvement Act. I am the Executive Vice President of DSI Systems Inc., a distributor of both Direct Broadcast Satellite and C-Band home satellite receiving equipment, as well as a packager of programming for sale to C-Band satellite subscribers. I have been an entrepreneur in the home satellite industry since the 1980's as both a retailer and distributor so I welcome this opportunity to give you my perspective as to how H.R. 768 can benefit the marketplace.

- *Extension of the Copyright License.* I am pleased that your legislation extends the license for five more years, through December 31, 2004. The license enables our industry to market superstation and distant network signals as part of our subscription program packages that we market to consumers. Superstations are important to our subscribers, so we offer them for programming value, as well as to compete with cable operators who also carry them. Many of our subscribers are also located in rural areas. I don't have to tell you how important it is to them that they have access to network programming because so many of them can't get local television signals with a regular antenna. The cable industry's copyright license is permanent. Naturally we think it would be proper for the satellite industry to have the same benefit because broadcast programming covered by the license is as important to us as it is to cable which is our principal competitor. However the five-year extension continues existing marketplace framework, and the stability will allow us to continue serving our subscribers as we have in the past. So you are performing a valuable consumer service by extending the copyright license and, by so doing, keeping the broadcast programming which the license covers available to satellite consumers.

- *Reduction of the Copyright Rates.* The section in H.R. 768 that reduces copyright rates for these broadcast signals below the 27 cents which was ordered by the Copyright Arbitration Royalty Panel also has competitive importance. Our cable competitors pay about 10 cents a subscriber per month for superstation signals, and 2.5 cents for network signals. It was a real blow when the CARP announced that the new fee would be 27 cents, and we have been trying to obtain some relief from that decision since January 1st of last year when the CARP rate went into effect. Program subscription packages are priced very competitively, so increases on the magnitude that the CARP ordered an have a big impact on our monthly charges. Obviously we would have liked to see satellite rates reduced to cable's level. However, the reductions in H.R. 768 are a step in the right direction, and to the extent that they offer some relief in this area, we are very pleased that you have seen fit to include it in your bill.

- *The 90-Day Waiting Requirement For Former Cable Subscribers.* The requirement that our satellite customers, if they have previously been cable subscribers,

90 days to subscribe to distant network signal service was a very anti-competitive feature of the original Satellite Home Viewer Act. You can imagine the frustration of retailers who had to tell new customers that they had to wait to get networks via satellite because they used to get them on cable, as well as their unhappiness over being forced to allow the competition's service (cable) to remain on the premises of that new satellite customer. Your bill takes care of that situation, and I know I speak on behalf of all retailers and distributors when I say that we greatly appreciate the abolition of this requirement.

• *Establishment of a Local-Into-Local License.* We have customers in practically every type of demographic area in the U.S.—urban, suburban and rural. As I already stated, network programming is an important component of their viewing pattern. Whether or not consumers can get network programming is also an important part of their decision to buy a home satellite system, and I can personally attest to the fact that a lot of sales have been lost when a prospective customer finds out how complicated the law is concerning network service. Many dealers offer over-the-air antennas with their satellite packages. Cable operators, on the other hand, carry network stations integrated into their service without the same viewer eligibility complications that we face. So it is critical that we find as many ways as possible to offer network programming to consumers in order to keep up with the local cable competition. Over-the-air antennas are an important part of that equation, and local-into-local satellite distribution will also be an excellent means by which to offer local networks. When that service becomes available, I hope it will represent a great step forward in our ability to go head to head with local cable operators.

I am bothered, however, by the provision in the local-into-local section of the bill that requires satellite carriers to turn over subscriber lists, by name and address, to broadcast stations being retransmitted locally on satellite. As we arrive at the digital era, many of these stations will be carrying packages of programming in addition to their local broadcasts and, in effect, will be competing with us for consumers. I don't think it is a good policy that they have the benefit of knowing precisely who our customers are. That is valuable competitive information and should be treated in a proprietary manner. A good solution would be to allow a third-party audit of subscriber lists which should serve the same purpose rather than have as satellite carriers turning over their lists to potential competitors.

Across the board, I believe that the legislation you have introduced will provide my industry with benefits, the results of which we will be able to see in the marketplace. That is important because the success of our business is due to our ability to be sensitive to the needs of consumers, and delivering to them the service they want at the right price. To the extent that H.R. 768 does that, I am pleased that you will be moving this bill forward in the legislative process. Thank you again for the opportunity to be here, and I will be pleased to answer your questions.

[The statement of Carolyn Herr Watts follows:]

PREPARED STATEMENT OF CAROLYN HERR WATTS, VICE PRESIDENT OF CORPORATE RELATIONS, NORTH CAROLINA ASSOCIATION OF ELECTRIC COOPERATIVES, INC.

#### INTRODUCTION

1. My name is Carolyn Herr Watts, and I am Vice President of Corporate Relations of the North Carolina Association of Electric Cooperatives. North Carolina Association of Electric Cooperatives is a member of the National Rural Telecommunications Cooperative ("NRTC") which distributes C-Band and DBS satellite programming through its members and affiliates to more than 1,000,000 subscribers across the country—many of whom are located in rural areas.

2. The twenty-eight rural electric cooperatives in North Carolina serve one in three homes in the state. The North Carolina State Association of Electric Cooperatives is also a member of the National Rural Telecommunications Cooperative which we and a thousand other electric cooperatives in America organized ten years ago to buy not-for-profit satellite television service to rural America. Along with our partners in the satellite industry, we have done a pretty good job in providing telecommunications to your rural constituents. In North Carolina there are 550,000 homes with satellite TV or nearly one out of five television households. Incidentally, Mr. Chairman, that figure ranks North Carolina sixth in the nation in per-capita viewership.

#### I. SUMMARY

3. I appreciate this opportunity to voice our support for the Copyright Compulsory License Act and to discuss some serious concerns regarding several key copyright

issues facing rural consumers. To continue receiving state-of-the-art video programming services in areas like rural North Carolina, which are often not served by the cable industry, we need fairer satellite copyright rates and laws. Under the current copyright and communications laws, rural consumers using satellite technology are not provided with a fair alternative to cable. We pay much higher copyright fees than cable pays for the same distant signals; we often may not receive distant signals even though we cannot receive an acceptable local signal over-the air; and we cannot receive local signals via satellite at all. Further, unlike cable, the copyright compulsory satellite license is temporary, not permanent. Plus, as if to add salt to the wound, satellite subscribers may not even receive distant network signals under the current copyright law if they have subscribed to cable within the past 90 days.

4. I am pleased to note that the Copyright Compulsory License Improvement Act tackles some of these inequities at least those under the jurisdiction of this Committee. We believe such laws are unfair to consumers. We believe all consumers should be free to select the programming and video distribution technologies of their choice, and that competition to cable via satellite should be promoted, not discouraged.

5. Mr. Chairman, as you know, to be a part of the modern Information Age rural America needs fair access to programming—especially popular network and superstation programming. And “fair access to programming” means access at fair rates and on fair terms and conditions. When satellite carriers serving rural America have to pay 8 or 10 times as much as urban cable operators are required to pay in copyright royalties for the same network and superstation programming, I think most people would agree that is a denial of fair access to programming. When some rural Americans may not even legally receive distant network signals by satellite because they live within some theoretical “Grade B” contour of the local network affiliate, I submit that too is a denial of fair access to programming. These types of copyright problems are clearly running afoul of the nation’s pro-competitive telecommunications policies, and rural America is paying the price. To better serve rural America, Mr. Chairman, we need fairer copyright laws and better access to video programming.

6. The rural electric cooperative community has long supported NRTC’s efforts to broaden consumers’ choice of video programming delivery technology. NRTC is a not-for-profit cooperative made up of nearly 800 rural electric and telephone utilities, and affiliated organizations located throughout 48 states. Its primary mission is to ensure that the benefits of modern telecommunications technology are extended to rural Americans. NRTC’s first major effort toward fulfilling this goal was the creation in 1987 of Rural TV®, a package of 85 channels of television programming provided to homes equipped with C-band satellite receiving dishes. Nearly 200 of NRTC’s members deliver Rural TV® services to more than 61,000 homes.

7. In 1993, NRTC entered into an agreement with Hughes Communications Galaxy, the predecessor-in-interest to DIRECTV, Inc. to launch high-powered Direct Broadcast Satellite (DBS) service. NRTC members and affiliates invested more than \$ 100 million to capitalize the launch of the first DBS service in America and in return received distribution rights for DIRECTV programming in certain rural areas of the country. A little more than four years after satellite launch, these NRTC members and affiliates already provide local service to more than 1,000,000 subscribers in rural America, representing nearly 25% of DIRECTV’s total subscribership nationwide.

8. NRTC and its members and affiliates have a keen interest in ensuring that the copyright laws facilitate the wide distribution of programming services *via* satellite throughout rural America. We are committed to our local communities and dedicated to ensuring that rural consumers are not disenfranchised as second class video programming citizens or forced to receive a second-class or Grade B picture.

9. Mr. Chairman, we applaud the work that you and many other Members of Congress have done over the years to ensure that rural America remains a strong part of the modern age of telecommunications. We are especially appreciative of recent Congressional efforts regarding the competitive posture of the satellite industry relative to cable in the copyright arena.

10. Congress has repeatedly called for competition in the provision of video services to consumers: first, by enacting the Satellite Home Viewer Act of 1988 (renewed and amended in 1994), second, by enacting the Cable Television Consumer Protection and Competition Act of 1992, and most recently, by enacting the Telecommunications Act of 1996. However, the fully competitive multichannel video programming distribution (“MVPD”) market envisioned by Congress has not yet materialized. Interpretation of the copyright laws by the Copyright Arbitration Royalty Panel (“CARP”) and two U.S. District Courts threaten to discriminate against subscribers who choose to receive video programming by satellite. In addition, the FCC has re-

cently concluded that its hands were tied by the current law and that it was largely powerless to fix the problem.

11. To address this situation, my comments today will focus on how satellite copyright laws can be made more "consumer friendly," consistent with telecommunications policy and competitively neutral with cable. I will make the following recommendations:

- We should find a way to assure that the compulsory copyright rates apply equally to satellite viewers and cable viewers.
  - The CARP recommendation, approved by the Librarian of Congress, to increase the satellite fees from \$0.14 or \$0.175 (superstations) and \$0.06 (network) to \$0.27 per subscriber per month (1000% more than the average cable system pays for distant network signals) is anticompetitive and unfair to satellite subscribers.
  - The Copyright Compulsory License Improvement Act will reduce this disparity.
- The cable compulsory license granted by the U.S. Congress is permanent. By extending the license 5 more years, your bill is a much-appreciated step in gaining parity with cable.
- Local-into-local retransmission of network and superstation signals by satellite should be allowed under the satellite compulsory copyright license. Your bill would allow local-to-local signal retransmissions by satellite.
- The "white area" problem must be fixed.
  - Current "Grade B signal strength" standards are outdated and unworkable. The FCC says it is powerless to define what is an acceptable signal for purposes of the satellite copyright compulsory license. A better predictive model and more realistic measurement techniques should be established. We realize that the Commerce Committee must address this issue and are aware you are bringing the process toward resolution.
  - The "90 day waiting period" before cable subscribers may receive programming by satellite is grossly anti-competitive and should be eliminated. We appreciate that your legislation would do away with this offensive provision.

## II. SATELLITE CARRIERS SHOULD NOT BE REQUIRED TO PAY HIGHER ROYALTY RATES THAN CABLE OPERATORS FOR THE SAME PROGRAMMING.

12. Mr. Chairman, the nation's copyright laws should be in sync with our telecommunications policies. Satellite carriers should not be required to pay higher royalty rates than cable operators for the same programming. The compulsory copyright rate should apply equally to all viewers, whether satellite or cable.

13. In August 1997, the Copyright Arbitration Royalty Panel recommended outrageous increases in the satellite royalty fees—far beyond what cable pays. CARP recommended that the compulsory license fee for superstations (\$0.14 and \$0.175) and network signals (\$0.06) be raised to *27 cents per-subscriber per-month*. According to the Satellite Broadcasting Communications Association ("SBCA"), cable operators on average pay only \$0.098 per subscriber per month for retransmission of superstation signals and \$0.0245 for network signals. Therefore, under the CARP recommendation, satellite is paying 10 times more than cable for network signals.

14. CARP also recommended that the new fees be applied retroactively: back to July 1, 1997. In reviewing CARP's recommendations, the Librarian of Congress adopted CARP's recommendation to increase the satellite compulsory copyright rate but it only delayed imposing the new rates until January 1, 1998. The delay was appreciated, Mr. Chairman, but the rate itself is the main problem. Although the satellite industry, led by the SBCA, challenged the Librarian of Congress' decision to adopt the CARP royalty rate increase for satellite carriers, the U.S. Court of appeals denied SBCA's appeal. Satellite carriers will continue to pay more than 10 times the rate cable pays for the same programming.

15. CARP was charged by Congress with establishing "fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions." 17 U.S.C. § 119(c)(3)(D). In accomplishing that task, Congress directed CARP to base its decision of the fair market value on "economic, competitive, and programming information presented by the parties, including . . . any special features and conditions of the retransmission marketplace . . . the economic impact of such fees on . . . satellite carriers . . . and the impact on the continued availability of secondary transmissions to the public." 17 U.S.C. § 119(c)(3)(D)(i), (ii), (iii). CARP failed miserably to meet its Congressional mandate,

because it did not consider the competitive impact of such a drastic price increase, especially a retroactive price increase, on consumers and the MVPD marketplace. Your bill takes a bold step in putting competitive parity back into the equation.

16. The North Carolina Association of Electric Cooperatives and the NRTC serve consumers primarily located in rural areas. Many of these consumers typically have chosen DBS service because no cable operator serves the area and they cannot receive over-the-air television signals of acceptable quality. Unlike other Americans, these consumers have no choice but to receive programming through satellite delivery technology. CARP's increase in the satellite compulsory copyright fee has forced NRTC to pass on the new fees to all of our satellite consumers, including those that cannot receive off-air television from local stations. We believe it is fundamentally unfair to punish these rural satellite consumers in North Carolina and elsewhere by charging them more to receive video programming than their urban counterparts who subscribe to cable.

17. Competition in the MVPD industry is widely recognized as benefiting consumers, but competition cannot be achieved if DBS providers are burdened with disproportionately higher copyright fees than cable. As an emerging competitor in the MVPD market, NRTC and its distributors clearly will be unjustifiably handicapped in its efforts to offer consumers a better choice in video programming delivery if faced with copyright fees *ten times* higher than cable compulsory copyright fees for the same programming. The Copyright Compulsory License Improvement Act will ameliorate that disparity. Your efforts to that end are very much appreciated in rural America.

### III. THE SATELLITE HOME VIEWER SHOULD BE EXTENDED.

18. In a like vein, Mr. Chairman, it is inappropriate in the extreme that the cable industry has a permanent compulsory copyright license, while the satellite industry license is scheduled to expire at the end of 1999. We appreciate that the Copyright Compulsory License Improvement Act will extend the satellite license for 5 years. This is an important step as it provides us the ability to develop a competitive business plan without the uncertainties and vagaries of obtaining annual extensions of the satellite copyright license.

### IV. LOCAL-TO-LOCAL WILL IMPROVE BUT NOT FIX THE PROBLEMS OF SATELLITE DELIVERED PROGRAMMING.

19. Mr. Chairman, we also appreciate and support the bill's attempt to create a more competitive video marketplace by authorizing the retransmission of local signals by satellite. In our view, however, local-to-local by itself will not in the short term create the proverbial level playing field with cable.

20. Currently, no DBS operator has enough capacity to provide local signals to all television markets nationwide. In fact, it is reasonable to assume—as is too often the case—that rural stations will be the last to be carried. Apparently, only one DBS provider (EchoStar) is planning to provide local signals via satellite, and even EchoStar plans only to offer signals to 50% of the population. The other 50% of the population (most likely rural), if unserved, will have to continue to rely on distant signals. Clearly we need local-to-local, but rural America will need continued access to distant network signals to assure all Americans have access to service.

### V. THE "WHITE AREA" PROBLEM MUST BE FIXED.

21. Even though DBS is a robust and growing industry, it comes nowhere near reaching true competition with cable. According to the FCC's 1998 Annual Report on the status of competition and video programming markets, (the most recent Report available), cable subscribership was 85% or 65.4 million of all MVPD subscribers in mid-1998. In contrast, the entire DBS industry had only 7.2 million subscribers. Clearly, DBS is in its infancy as a competitive force to cable.

22. According to the FCC, consumers continued to report in 1998 that the biggest drawback of DBS services is the difficulty of obtaining local broadcast signals. Under the current copyright rules, network signals may be provided *via* satellite only to "white areas" (homes that do not receive an over-the-air local signal of Grade B strength). These rules have caused a tremendous uproar among DBS consumers and have stifled DBS as a competitive force. They are impossible to administer and incomprehensible to consumers. They stand in the way of true consumer choice and contravene the stated Congressional goal of competition in the provision of video programming services. We are pleased that the white area problem is being simultaneously addressed in a companion measure.

23. On July 8, 1998, NRTC filed with the FCC an Emergency Petition for Rulemaking to Define an Over-the-Air Signal of Grade B Intensity for Purposes of the

Satellite Home Viewer Act ("Emergency Petition"). The Emergency Petition was intended to prevent the then imminent, massive disenfranchisement of over two million households resulting from a Florida District Court's interpretation of the "unserved household" provisions of the SHVA.<sup>1</sup> In its Emergency Petition, NRTC urged the Commission to address this crisis facing viewers across the country by establishing a consumer-friendly, understandable and fair definition of "an over-the-air signal of Grade B intensity" for purposes of applying the "unserved household" restriction of the SHVA, 17 U.S.C. § 119.<sup>2</sup> The current white area rules are particularly burdensome in rural areas where consumers reside at the very edge of the Longley-Rice Grade B propagation models. This creates artificial barriers for rural consumers who should be allowed to purchase the signals.

24. Two days after NRTC filed its Emergency Petition, the Florida District Court issued its Preliminary Injunction.<sup>3</sup> Effective October 8, 1998, the court prohibited PrimeTime 24, the satellite carrier, from providing CBS and Fox network programming to any customer within an area shown on Longley-Rice propagation maps as receiving a signal of at least Grade B intensity from a CBS or Fox primary network station.<sup>4</sup> By definition, under Longley-Rice, huge numbers of households will be banned from receiving distant network signals by satellite, even though they cannot in fact receive an over-the-air signal of Grade B intensity from the local affiliates. It is this mass of consumers, those who are truly unserved under the law, but who will soon be disconnected under the Court Order, whom we seek to protect.

25. The projected impact of the Florida District Court's Preliminary Injunction was a concern not only to consumers, NRTC and the direct-to-home satellite industry,<sup>5</sup> but also to a wide range of public figures. As recognized by several members of Congress and the FCC Chairman, the termination of distant network signals to these households will be devastating to the growth of competition in the MVPD market.

26. The broadcasting and satellite industries on September 18, 1998 reached an agreement on a set of principles designed to ensure that the implementation of the Preliminary Injunction would be delayed until February 28, 1999. On September 30, 1998, the Court approved the parties' agreement to delay the effective date of the Preliminary Injunction to February 28, 1999.<sup>6</sup> That date, of course, is now right around the corner.

27. On November 17, 1998, the Commission released a Notice of Proposed Rulemaking in response to the NRTC and EchoStar Petitions. The Notice sought comments on four issues raised in connection to the Petitions for Rulemaking and the court decisions, (1) the extent of the Commission's authority to proceed, (2) Grade B signal strength definitions, (3) Grade B prediction models and methodologies, and (4) individual household measurements.

28. Comments and Reply Comments were filed in this proceeding mostly by the satellite industry, broadcasters and consumers. In its Comments and Reply Comments in this proceeding, NRTC supported the SBCA's proposal to define the Grade B signal strength value for purposes of SHVA as no less than 70.75 dBu for low-band VHF, 76.5 dBu for high-band VHF, and 92.75 dBu for UHF; establish a predictive model based on TIREM or an equal or better methodology to determine eligibility to receive distant network service; and establish an individual household measurement process to determine eligibility when eligibility is disputed by the subscriber, broadcaster or satellite carrier. The individual household measurement

<sup>1</sup> *CBS Inc., et al. v. PrimeTime24 Joint Venture*, Order Affirming in Part and Reversing in Part Magistrate Judge Johnson's Report and Recommendation, 9 F.Supp.2d 1333 (S.D. FL. May 13, 1998).

<sup>2</sup> (10) Unserved Household. The term "unserved household", with respect to a particular television network, means a household that, among other things:

(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

17 U.S.C. § 119(d)(10)(emphasis added).

<sup>3</sup> *CBS Inc., et al.*, Supplemental Order Granting Plaintiff's Motion for Preliminary Injunction (S.D. FL. July 10, 1998) (Civil Action No. 96-3650-NESBITT).

<sup>4</sup> *Id.* at pp. 2-3.

<sup>5</sup> On August 18, 1998, EchoStar Communications Corporation filed a Petition for Declaratory Ruling and/or Rulemaking With Respect to Defining, Predicting and Measuring "Grade B Intensity" For Purposes of the Satellite Home Viewer Act ("EchoStar Petition"), which was placed on Public Notice August 26, 1998, RM No. 9345. The EchoStar Petition is similar in many respects to NRTC's Emergency Petition—it urged the Commission to adopt a Grade B predictive model which predicts the outermost boundary at which 99% of households receive a Grade B signal 99% of the time with 99% confidence.

<sup>6</sup> *CBS Inc., et al.*, Order Concerning Implementation of Preliminary Injunction (September 30, 1998) (CIV-Nesbitt No. 96-3650).

process was based on the following principles: (1) measurements shall be taken in an accessible location, as close as possible to the residence, at actual roof height; (2) signal strength readings shall be taken approximately every thirty seconds for a period of five minutes; and (3) adjustment of those readings for signal strength loss due to the actual length of the antenna line and the actual number of splitters per household; and (4) if more than one of the ten signal strength values is less than 70.75 dBu for low-band VHF, 76.5 dBu for high-band VHF, and 92.75 dBu for UHF, or such other dBu limit as is established by the FCC, then the subscriber will be deemed an "unserved household" under the SHVA.

29. Last month, the Miami District Court filed its Findings of Fact and Conclusions of Law and its Final Judgment and Permanent Injunction. The District Court's Final Judgment and Permanent Injunction would require not only the termination of satellite network service by February 28, 1999 to subscribers signed up after March 11, 1997 and that are shown to receive a Grade B signal according to the Longley-Rice Propagation model, it requires the termination of satellite network service by April 30, 1999 to subscribers signed up prior to March 11, 1997 and that are shown to receive a Grade B signal according to the Longley-Rice Propagation model. More than two million consumers will be affected.

30. Earlier this month, the FCC finally ruled on NRTC's Petition. The Commission's Order, however, provides little relief to satellite network subscribers. The FCC declined to redefine Grade B signal strength for purposes of the SHVA, concluding that it lacked the statutory authority to do so. While recognizing that consumer expectations have heightened since the 1950s, when the Commission first decided that a "Grade B" signal provided an "acceptable" picture, the FCC decided to leave the Grade B standard intact. The Commission concluded that only Congress has the power to adopt legislative changes that are necessary to allow satellite companies to deliver network signals to all of their consumers.

31. Earlier this month, the FCC finally ruled on NRTC's Petition. The Commission's Order, however, provides little relief to satellite network subscribers. The FCC declined to redefine Grade B signal strength for purposes of the SHVA, concluding that it lacked the statutory authority to do so. While recognizing that consumer expectations have heightened since the 1950s, when the Commission first decided that a "Grade B" signal provided an "acceptable" picture, the FCC decided to leave the Grade B standard intact. The Commission concluded that only Congress has the power to adopt legislative changes that are necessary to allow satellite companies to deliver network signals to all of their consumers.

32. We believe consumers should be given as much freedom as possible to make their own choices in selecting sources for video programming, without adversely impacting the rights of local broadcasters. Where copyright law intersects with the provision of programming to consumers, we believe the law should balance the rights and responsibilities of local broadcasters and satellite carriers—with the consumers' best interests ultimately in mind. Further, we believe in the honesty and forthrightness of the American consumer to make good decisions. If a family verifies that it receives a bad signal or no signal at all, it should be eligible to receive distant signals by satellite.

33. "Grade B signal intensity" has no meaning to most consumers. They cannot easily and cheaply measure it, and it often has little or no bearing on whether the signal received is acceptable to them. Indeed, broadcasters and satellite distributors have disagreed even on how to test a signal and what constitutes an "acceptable" Grade B intensity.

34. Broadcasters currently have an absolute right to challenge the provision of distant network signals by satellite carriers. Consumers, however, have little or no recourse if broadcaster challenges are not made in a spirit of cooperation and good faith. While some broadcasters work with consumers (granting waivers, working on local solutions regarding antennas, etc.), broadcasters have no statutory obligation to accommodate consumers whose only interest is to receive an acceptable network signal.

35. We know that many consumers would prefer to receive local network signals. In many cases, however, DBS offers a more cost-effective, convenient solution with a higher quality signal than is available over-the-air. We support Congressional efforts to clarify the white area rules and to make them meaningful for consumers, broadcasters and the satellite industry alike.

#### CONCLUSION

Mr. Chairman, we support the Copyright Compulsory License Improvement Act. It addresses many of the problems facing rural consumers who rely on satellite technology to be a part of the modern era of telecommunications. It reduces the disparity

in copyright rates between satellite and cable. It eliminates the unfair "90 day waiting period" before cable subscribers may receive distant network signals. And, it extends for five years the satellite compulsory license. All of these are much needed improvements, and they will benefit rural America.

CAROLYN HERR WATTS  
 SENIOR VICE PRESIDENT OF CORPORATE RELATIONS,  
 NORTH CAROLINA ASSOCIATION OF ELECTRIC COOPERATIVES  
 NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION  
 TARHEEL ELECTRIC MEMBERSHIP ASSOCIATION

In 1996, Carolyn Herr Watts, a veteran of the national electric cooperative scene, joined the North Carolina electric cooperative organizations as Senior Vice President of Corporate Relations. In this position, Watts directs a 26 person Corporate Relations division encompassing government relations, public and media relations, state-wide publications (including *Carolina Country* magazine), safety training, and management and director training and conferences for the 27 North Carolina electric cooperatives.

Of special note, in 1997, the N.C. cooperatives created an Electric Lineman Technology Associate degree program offered through the North Carolina Community Colleges, utilizing cooperative technical training courses. In 1998, the N.C. Association of Electric Cooperatives received a national award for its highly successful political and grassroots advocacy program.

In 1994, Watts served as the Acting Assistant Secretary of Congressional, Intergovernmental and Public Affairs for the U.S. Department of Energy. Prior to government service, Watts was the Legislative Director of the National Rural Electric Cooperative Association (NRECA), the national organization of the 1,000 consumer-owned electric utilities. A lobbyist for NRECA since 1978, Watts directed the six-member lobbying staff from 1990. Prior to her management position, she specialized in tax, telecommunications and transportation legislation.

Watts serves on the Board of Directors of the North Carolina 4H Development Fund, which solicits financial support for 4H activities. As a recent double organ transplant recipient, she volunteers with organ donation organizations in the state. Watts is a featured speaker in areas of energy and electric policy, lobbying, grassroots political advocacy, and public policy issues. She served as President and Distinguished Member of Women in Government Relations, an 800-member professional association. She is a certified management trainer and in 1986, was nominated to be a Washington Woman of the Year (*Washington Woman* magazine) and Woman of the Year (Women in Energy).

A native Pennsylvania Dutch, Watts graduated with honors in political science from Pennsylvania State University, where she also pursued graduate studies in political science and taught Federal labor law.

Watts is married to Carroll E. Watts, an information management consultant, is the mother of one son (her absolute pride and joy), and lives in Raleigh.

Mr. COBLE. Gentlemen, thank you. We will stand in a brief recess while we vote, and we will return imminently.

[Recess.]

Mr. COBLE. I did not get to recognize the Ranking Member of the full committee, the gentleman from Michigan. John, it is good to have you with us, and Mr. Jenkins from Tennessee was with us. I don't know if he will be coming back or not.

Gentlemen, thank you for your testimony.

Mr. Tarleton, how do viewers lost to distant signals from your same network impact your bottom line, A; and B, how many viewers do you estimate have been lost to your market?

Mr. TARLETON. It costs me advertiser revenue. Television stations have a single revenue stream, and in the Charlotte market satellite penetration is approximately 15 percent; roughly 810,000 television homes in that market, and so 15 percent. There are 120,000 television homes that used to be in a position to watch my television station, and the other local stations in the market now get their network service via a distant signal from the satellite company. That directly impacts on my bottom line because tele-

vision stations sell eyeballs, and we base our advertising rates on the number of people watching at any given time. And when my base of viewers is reduced by 15 percent, then one could perhaps argue that 15 percent revenue is reduced.

Mr. COBLE. Mr. Moskowitz, in the Florida injunction case Judge Nesbitt found that PrimeTime 24 had willfully violated the Copyright Act. How does your current service and the one announced this week by DirecTV differ from the one offered by PrimeTime 24, and is it in compliance with the Copyright Act?

Mr. MOSKOWITZ. Yes, Mr. Chairman. EchoStar when it switched from PrimeTime 24 signals to its own signals in July of last year immediately implemented a red light/green light plan. PrimeTime 24 asked questions of the customer on the phone to qualify them as to whether they got a Grade B signal, and that is all they did. And until the Miami judge made a ruling, there was no reason to believe that was not an appropriate way to comply. There was never any direction from the FCC until February of this year as to how to comply with the act.

Notwithstanding that, as soon as EchoStar started providing its own signals in July of last year, we commenced a red light/green light program. We asked for the address of every single customer we started service to, and only provided service to those customers if they fell outside of what our predicted model showed should be a Grade B area. So we have complied. In fact we proactively complied even before the FCC rules were put into place. I can't speak for DirecTV, but my understanding is that they intend to implement a similar system effective with their carriage of distant signals rather than through PrimeTime 24.

Mr. COBLE. Mr. Hutchinson, when a representative from your company appeared before us last session, you indicated you would be able to bring local-to-local service to the entire country. Now you indicate that your business plan calls for something less than 70 markets. Is my concern well justified in my fear that local-to-local may never reach some smaller markets? What do you say in response to that?

Mr. HUTCHINSON. We have a phase 2 plan that involves two other satellites and an orbital slot, but we are seeking investor funding because it costs just as much as serving the initial 75 percent to serve the final 25 percent.

It has been suggested to us that there are creative solutions, perhaps working with the rural coops for other sources of funding to make this happen.

You know, in technology the world changes pretty fast and at this time last year we didn't have all of the new digital television standards. We thought we could compress more. We now know that these stations are going to be on the air requiring 5 times the transponder capacity, and we now know that cable is going to be carrying the full high-definition signal.

Now, if the goal is to be truly competitive with cable, the satellite, we have to be able to pass the whole signal. And once we did that, we couldn't stretch as far, but we do have hopes of stretching to that final 25 percent. I just don't want to overpromise.

Mr. COBLE. Thank you, sir.

Let me say that I empathize with the concerns expressed by Mr. Attaway and Mr. Ostertag. I guess generally, gentlemen, if I had my way there probably would be no compulsory licenses allowing the government to step out of the way and let the parties make that determination. Some of you have done battle to achieve what you believe to be the right resolution, first at the Copyright Office, then with the Librarian and finally at the Federal court. Now some of you are being asked to swallow something less.

Legislation, as you all know, is oftentimes about compromise, and I think that is probably what is encompassed in this bill, a compromise with which neither side is entirely happy but perhaps can live with and hopefully will go a long way to resolving this matter once and for all.

Let me recognize the gentleman from California.

Mr. BERMAN. Thank you, Mr. Chairman. I would like to cover a few issues. First the fee issue.

Mr. Ostertag, you talked in the alternative. You said I don't think you should extend the satellite compulsory license, but then you decided to say when it is extended, have a market rate, at least a simulated market rate as determined by the arbitration process that was set forth in the earlier law. That is in the fees now in effect, I assume that is what you mean; is that correct?

Mr. OSTERTAG. Not quite. I think what I said was, while the compulsory license is in effect this year, in 1999, until it expires at the end of this year, we should have a fair market rate, which is the 27 cent rate.

Mr. BERMAN. I share the chairman's feelings about the compulsory license generally; and having been here for 16 years, I know that is an academic debate. There is going to be an extension of the satellite compulsory license. Now what do you have to say?

Mr. OSTERTAG. Well, we are not in favor of that extension, and we at the very least believe very strongly we should receive a fair market rate for any telecasts that are taken pursuant to the compulsory license.

Mr. BERMAN. So you are not at this point saying I don't like the compulsory license, there should be a market rate, but nonetheless in the spirit of compromise in order to avoid a total rollback, you are prepared to accept the kinds of fees proposed in the chairman's bill?

Mr. OSTERTAG. No, I have not testified to that. We believe that the market rate—

Mr. BERMAN. I am asking you that. I am asking you whether you are prepared to go to the next step? What is your position on the fees contained in the chairman's bill?

Mr. OSTERTAG. We think that they should not be reduced from the 27-cent rate.

Mr. BERMAN. You oppose that provision?

Mr. OSTERTAG. Correct.

Mr. BERMAN. Let's take EchoStar, another question on fees. When a potential customer asks about the rates, is he given one price or is he given a price plus a price for importing distant network signals?

Mr. MOSKOWITZ. In other words, do we break out the fee for our distant signal into an amount that goes to us and an amount that goes to the Copyright Office separately?

Mr. BERMAN. No. I assume that there are some people who subscribe to EchoStar who do not import a distant network signal?

Mr. MOSKOWITZ. Of course.

Mr. BERMAN. How much do they pay a month?

Mr. MOSKOWITZ. We try to offer our programming with as much choice for the consumer as possible. We start with a package of any 10 of our channels for \$15, for example.

Mr. BERMAN. How much do you charge to import the distant network signals?

Mr. MOSKOWITZ. It is \$5 a month for either the East or West Coast feeds, and \$7 for both the East and the West Coast feeds.

Mr. BERMAN. \$7 for both?

Mr. MOSKOWITZ. \$8 for both.

Mr. BERMAN. So that would get you the networks that the Copyright Office spoke to earlier, CBS, NBC, ABC and Fox?

Mr. MOSKOWITZ. And PBS if you qualify for the signal.

Mr. BERMAN. What is the fee level that you are seeking to roll back?

Mr. MOSKOWITZ. Obviously we ideally would like to see a rate identical to cable so we could be on equal footing.

Mr. BERMAN. What is the present fee?

Mr. MOSKOWITZ. That is 27 cents per channel per month so times 5, in essence. For an \$8 package, it is times 9.

Mr. BERMAN. So the cost of your programming is, the cost of this programming to you is about 20 to 25 percent of the fees you are charging for the importing of the distant network signals?

Mr. MOSKOWITZ. And obviously in addition to that we have the cost of uplinking the signals and all of those other expenses—we are putting \$2 billion worth of satellites in the air.

Mr. BERMAN. You are providing some programming in addition to that. That is not all cost for the importing of the distant network?

Mr. MOSKOWITZ. No, of course not.

Mr. BERMAN. My time is up, so I will wait until the next round.

Mr. COBLE. We are on schedule, so we will have a second round of questions. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you. There are key matters on which we need to focus, gentlemen, and I just wanted to elicit a response from you on several of them.

The promotion of competition by lifting the act's restrictions on retransmission of local signals, especially with the emerging capabilities of spot beaming?

How do we harmonize section 111 wired cable and section 119 satellite cable royalty rates in a way that will respect the rights of copyright holders but promote a level playing field between satellite and cable carriers?

Thirdly, whether satellite carriers should have to bear the same burdens as cable with respect to the must-carry requirements and retransmission consent program access and educational broadcasting?

Fourth—well, let's stop at those three. Does anyone feel a desire to comment on any one of these three matters that I am particularly interested in?

Mr. Moskowitz?

Mr. MOSKOWITZ. Thank you, Congressman. I would like to comment on the issue of a local set-aside as would be comparable to cable and a must-carry as it is imposed on cable.

When Congress imposed a must-carry on cable and when, more particularly, the Supreme Court upheld the must-carry as it applied to cable, it did so on a single ground; that is, the monopoly power of cable and the fact that with that monopoly power the failure of a cable system to carry a small local station could well result in a threat to the financial viability of that station.

While I certainly wish that EchoStar had that kind of market power, the fact is that today we do not. So we don't believe that a must-carry would be appropriate for satellite today. And once more, if it was imposed it would significantly reduce the number of cities that we could provide fully effective competition to cable.

If we were required to provide a full must-carry for the Los Angeles market, just that must-carry would necessitate us carrying one less market in total. We might have to take Salt Lake off the air or Phoenix off the air and they would have to wait however many years before someone else had adequate capacity to fulfill must-carry before they would see fully effective competition to cable.

We think that is the wrong answer given the imminent deregulation of cable rates.

With respect to the set-aside, I would just note that EchoStar has a very aggressive program of providing educational programming. As you know, satellite has a 4 percent set-aside for nonprofit programming, and EchoStar already exceeds that on its satellite capacity and intends to do significantly more. We have Head Start on all of our satellites today and provide programming to over 3,000 Head Start locations around the country and do a significant amount with distant learning.

Mr. CONYERS. Any other volunteers? Mr. Hutchinson.

Mr. HUTCHINSON. We take a different position in that we have made our lives very difficult by volunteering for full must-carry and digital must-carry, and the reason for it is sort of the situation we are in today, and that is broadcasters didn't pay a lot of attention to satellite in the early days, and we got into this SHVA problem, which has sort of gotten out of hand now.

We expect that the satellite industry is going to grow exponentially. By the time we launch our satellites, there will be 12.5 million subscribers out there, and many analysts are saying within 5 years there will be 30 or 40 million, and that is a significant market share.

Satellite could effectively, like cable, become the bottleneck which disenfranchises stations. I am not going to pass a value judgment on any one particular shopping station versus a CBS station, but we have seen some of these small UHF stations that were insignificant initially become important Fox affiliates. There are that many more voices in the market.

And if there is a bottleneck in any one of these major, multidistribution carriage media, those stations are effectively off the air to those viewers. And so we volunteer; whether must-carry is passed or not, we are going to do it.

Mr. CONYERS. Can I just announce that I am concerned about the deregulation of what is effectively a structural monopoly, and that the competition factor is going to be really a major problem here. It is badly needed and I will be looking for ways that we can make sure that this consideration and others that I have touched upon are fully explored in this kind of legislation.

Mr. HUTCHINSON. Sir, we recognize that the current technology that is up there now does have a capacity problem until we get there, and that is one of the reasons that we are willing to accept transitional must-carry until the technological capacity is available by all of us.

Mr. CONYERS. Thank you all very much.

Mr. COBLE. Go ahead, the gentleman from Virginia.

Mr. BOUCHER. Thank you, very much, Mr. Chairman. I want to commend you for introducing legislation which I think serves as an important starting point for addressing some of the concerns associated with the section 119 license.

Let me begin by congratulating the Motion Picture Association and also the satellite industry for an agreement on the copyright royalty fees for satellite transmission of copyrighted work.

I would only note that this agreement, while I think very positive for present purposes, still does not establish parity in fee payments between the cable industry and the satellite industry, and that is a goal towards which I think this subcommittee should work. I don't know that we can do it this year but at the proper time that is a balance that I think is very much needed and which I hope that we can achieve.

Mr. Hutchinson, let me inquire of you this morning, as I did yesterday afternoon before the Commerce Committee, about your business plan in terms of the number of markets that you intend to serve because that business plan does strike at the heart of a basic problem that I have got, and that is that in my mountainous region there are tens of thousands of constituents who cannot get network signals by means of a local broadcast station. We have one county that really barely has an acre of flat land. It is all mountains and valleys, and it is even hard to find a place to build a supermarket there. And most of the people in that county cannot get local broadcast signals, and so unless they have access to signals over the satellite under the current 119 license or unless they have access to signals delivered by satellite by a service such as your local-to-local, they basically have to do without network signals.

Now, I understand that differing from your business plan of a year ago in which you announced an intention to serve every market in the United States, of which there are 211, your current plan is to serve only 67 markets, and while that accounts for a majority of the population of the United States, it leaves out the very places where this local-to-local service is the most needed because you are not going to get into the markets that serve my congressional district. You might get one of them, but you are not going to get the others.

I just wonder what it is that has changed so dramatically from the time Mr. Goodman was here last year testifying before this very subcommittee and saying that he intended to uplink 2,000 local stations around the United States and serve every single market. The technology for this is pretty well known. We have understood how this works for a long time. I really don't understand what has changed within a year that leads you to this other plan.

Now, I know what you are going to say. You are going to say there are new digital standards and you want to offer a better picture now than you were thinking about offering last year, but let me ask you why that is necessary? Most of my constituents would be real happy if you didn't give them HDTV on these network signals. All they are looking for is a good picture. If you could provide even an analog signal to them, I think they would be perfectly happy to get that in comparison to what they can get today.

Why are you changing your plan? Why not stick with the original plan because many of us who became your early supporters in this local-to-local service very much treasured and are now very disappointed you are not going to offer.

Mr. HUTCHINSON. I understand that, and we would not have had the goal of all markets if we did not think it was important, and we are still trying to do that with phase 2. I would say two major wakeup calls came.

The first was the announcement of the CBS owned and operated stations who to our surprise struck an agreement of full digital must-carry with Time Warner Cable, and we heard that other major cable systems are following.

What that means is if our goal was to make DBS competitive with cable, we need to recognize that digital cable right around the corner, perhaps by the time we launch, is going to have high definition television. And one of the major reasons that we hear consumers buy satellite is to have that higher quality picture. And so if we went back to the standard definition plan where we could stretch it out further, we risk being obsolete in 3 to 5 years, yet the life of this satellite is 15 years. And as much money as Mr. Goodman and Capital Broadcasting have, we are also going to have to go to outside investors and answer to them, and they are not interested in a business that can't last but 4 years.

Mr. BOUCHER. Okay, let me just register my disappointment.

Mr. HUTCHINSON. So noted. I wish you could help us find a solution.

Mr. BOUCHER. The solution I would recommend is that you go back to your plan of last year and that you offer an analog signal. If you did that, I bet you would find yourself close to that 2,000 number of stations that you were talking about last year.

And I can tell you this, my constituents who can't get network signals would be delighted if they could get an analog service over your satellite, and that would be an answer.

I understand your business plan and we will have further discussions about it. My time has expired. I will wait until the next round.

Mr. COBLE. The gentlelady from California.

Mrs. BONO. Thank you, Mr. Chairman. I understand when I was out of the room that Mr. Berman's questions were much along the

line of mine, so I just want to thank the panel for their time and yield to Mr. Berman.

Mr. BERMAN. I thank the gentlelady very much.

Let me ask Mr. Tarleton, let's take Mr. Boucher's problem. Perhaps one of his markets gets served once there is local to local, but realistically no one is talking about a plan which will serve much of his area so that is able to get over the air local affiliates of network shows. Do you have a solution for Mr. Boucher's problem?

Mr. TARLETON. I have a temporary solution until such time as John's company gets to the point where they can provide 100 percent of the markets; and that is if Mr. Boucher's county that he described was in my market, every satellite customer in that county would receive a waiver. No one would be denied network coverage. They would receive a waiver from me so that they could continue to receive the distant signals.

We have a similar county in my DMA that the chairman knows well up in Boone, North Carolina, Watauga County, every satellite customer in Watauga County, although it is an important part of the Charlotte DMA, receives a waiver from me. They are entitled to it.

Mr. BERMAN. Mr. Moskowitz, what is wrong with that as the answer to this problem?

Mr. MOSKOWITZ. What is wrong with waivers as an answer to the problem?

Mr. BERMAN. Yes. In other words—I take it Grade A and Grade B—there is a grade lower than Grade B, is that correct?

Mr. MOSKOWITZ. Unserved. Anything outside of Grade B is simply unserved.

Mr. BERMAN. So there is no issue about importing distant signals to unserved areas?

Mr. MOSKOWITZ. That is correct.

Mr. BERMAN. Now Grade B areas—let me first ask you, are the statements that a very large percentage of satellite subscribers importing distant network signals located in Grade A, do you contest that?

Mr. MOSKOWITZ. I would contest it for the following reason. I think that what people don't want to talk about is the little ghost in the closet, so to speak, which is ghosting, and broadcasters have made billions of dollars but they have never bothered to solve the problem of ghosting, and the technology exists to solve it today if they wanted to.

So even if you live in close proximity to a transmitter and even if you get a signal in excess of the technical 47 db, a Channel 2, for example, you may get and are likely to get in an urban or suburban area a terrible picture because of ghosting. That may have been acceptable back in the 1950s when they made this standard, which was based on a subjective viewing of experts, but it is not acceptable for consumers today.

Mr. BERMAN. Is it your contention those are the only people in Grade A who are now importing the distant network signal?

Mr. MOSKOWITZ. I don't know. I can tell you that EchoStar does not sign up customers in Grade A unless we actually go out and do a test and find that the consumer does not get a Grade B signal. And even if we find that they get a Grade B but it has bad ghost-

ing, we still will not sign them up because that is the law, but the law should change.

Mr. BERMAN. I had dinner last week in Los Angeles. They are in Grade A. They have a dish. They get imported distant network signals. Their television over the air reception is fine, but they would rather watch Saturday Night Live at 8:30 instead of 11:30, and they are subscribers. I don't know if they subscribe to EchoStar or the DirecTV program. Is this the only one in the country like this?

Mr. MOSKOWITZ. No, I am sure it is not.

Mr. BERMAN. By the way, when they were sold it, they asked this question. The guy said just come on board, you will get it, no problem.

Mr. MOSKOWITZ. If you called EchoStar, 800 number today and your friend lived in Los Angeles and it was Grade A, they would not be able to get it. And what we want to do this year is provide them with the local Los Angeles signal.

Mr. BERMAN. There is a huge number of people in Los Angeles with dishes now. They must be going to your competitor because they are hooked up and they are getting distant signals and it has nothing to do with reception.

Mr. MOSKOWITZ. To the extent that they are EchoStar subscribers, we certainly intend to scrub our database and make sure that they are not there.

Mr. COBLE. Last but not least, the gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. I will be brief.

I want to be clear in my own mind. It is my understanding, Mr. Tarleton, that the waiver is discretionary by the local broadcaster?

Mr. TARLETON. I suppose it is——

Mr. DELAHUNT. I am concerned about Mr. Boucher's problem here. I think he makes a very valid point, and I just want to be clear about it.

Mr. TARLETON. I don't know how a broadcaster could defend not giving that waiver. Broadcasters that I know are trying very, very hard to be fair because these are also our viewers. And if we have a viewer who is legitimately entitled to a waiver, they get it. We have been burning the midnight oil trying to deal with every letter, every e-mail, every phone call, the waiver TV Website, so we can make sure that when February 28 comes, that those people entitled to a waiver have received one.

Mr. DELAHUNT. I appreciate that and I respect it and I think your forthrightness in responding to Mr. Boucher's problem is laudatory. What I don't know is: Is it feasible to have an arrangement with local broadcasters in the kind of district with the topography and the other physical characteristics that have been described, whereby a fee that could be negotiated between local broadcast to secure the waiver? Does that make any sense?

Mr. TARLETON. With all due respect, it does not make any sense.

Mr. DELAHUNT. Okay.

Mr. BOUCHER. Would the gentleman yield?

Mr. DELAHUNT. I yield.

Mr. BOUCHER. I thank the gentleman for yielding.

Mr. Tarleton, let me say about the waiver practice, I respect the good faith effort of broadcasters to try to deal with this problem on a case-by-case basis, but there are two real underlying concerns with that.

First of all, it is enormously inefficient. It is taking time and resources on your television station staff. It is taking time and resources on my congressional staff. I have one person whose job it is to deal with waivers. We are getting 30 or 40 letters every day from around my district with these cutoffs coming, and I am having to devote one staff person's time almost exclusively to dealing with waivers.

Now, I am finding the stations in my district accommodating in this regard, but they are having to devote a couple of person's staff time to it also, and so it is enormously inefficient.

The other problem is that stations have differing standards for determining whether or not a waiver ought to be provided. One station in my area, for example, requires that a test actually be performed at every house before the waiver be provided, and they have a form that they send to that person and it says give us the dBu strength measurement at your house. And if it is 47 or greater they don't get the waiver and if it is 46 or less they do. That is \$100.00 test, and so some stations around the country I know from personal experience are actually requiring that the person spend \$100.00 dollars just to have a test before they will even consider granting a waiver. So this is not a perfect solution.

When my time to ask additional questions comes, I am going to propose what I think is a far better solution. I do respect the good faith efforts of stations to deal with this, but it is inefficient and far from perfect.

Mr. DELAHUNT. Reclaiming my time, I was leaving but I want to hear Mr. Boucher's solution because I have great respect for the gentleman from Virginia. He is right about the cost to the broadcasters, and I know that this is not a problem of your creation, it is a problem created by the satellite industry, and I expressed my own sentiments earlier on that.

In seeking to meet the needs of the consumer that lives in Mr. Boucher's district and at the same time acknowledging the additional cost to the broadcaster, is there some sort of a mechanism for you to be compensated through negotiations for the additional cost that you are bearing and receive some sort of compensation—for an interim period—where your signal is somehow being degraded in the marketplace?

Mr. TARLETON. Well, I agree that the process is very time-consuming. I am not sure that I would characterize it, and I can only speak regarding our Charlotte station, because I personally did it, as inefficient. It is terribly time-consuming, but we work very hard to be fair and to make sure that at the end of the day that every decision we made was fair for both the viewer and for the television station.

I really don't want to get into a situation where satellite companies are having to share revenue with me because they illegally came into what is primarily my Grade A area. As I stated earlier, roughly 80 percent of the subscribers, and we are talking about people if they stepped outside my house could see my tower.

We get on the average 50 letters per day, telephone calls, a half dozen e-mails. On the waiver TV Website there were 12,134 requests. We have cleared every one of those requests. We clear them every day.

We didn't create this problem. If the satellite companies had not illegally hooked up viewers within our Grade A, you wouldn't be getting 50 letters per day and I wouldn't be getting 50 letters per day.

Mr. COBLE. I thank the gentleman. Let's start a second round.

Mr. Mountford, is it your opinion that the removal of these restrictions such as the 90-day delay or the discount will enable local distributors to increase their business?

Mr. MOUNTFORD. Yes, these things would help us tremendously.

Mr. COBLE. Mr. Moskowitz, I have been advised that the satellite industry as a whole has agreed to the rate provisions in this legislation and in the Senate bill agreeing not to seek further legislative changes. Have I been advised correctly?

Mr. MOSKOWITZ. Yes. Our desires of engaging in a bipartisan effort with the MPAA and baseball and anyone else who participates, and if we can get agreement, we are willing to accept the disparity in rate with cable in order to reach a compromise.

Mr. COBLE. Let me put this question to the panel at large. The Congress created a compulsory license for satellite delivery of distant signals to provide network programming to households that could not otherwise receive local network signals through a rooftop antenna. I think we all agree that probably the best scenario is to provide a means for consumers to get their local signal, not some distant signal. Once satellite providers are providing the signals of local broadcasters in a market, do you all believe it would be reasonable to sunset section 119, the compulsory license for distant signals in that entire market since viewers would then be able to obtain local broadcast from satellite at that point?

Anybody who wants to weigh in on that do so.

Mr. TARLETON. Mr. Chairman, I will weigh in on it. As I stated in my testimony, we believe that once local-to-local is provided within a given market that satellite companies should not be allowed to continue to import distant signals because you are simply duplicating coverage.

Mr. COBLE. Mr. Moskowitz? Mr. Mountford?

Mr. MOSKOWITZ. Well, an unserved household is an unserved household. If a local broadcaster wants to make sure that no one can provide an alternative signal, then they ought by right probably to increase their power or their translators or get digital in place or do whatever it takes to make sure that that household can receive an off-air signal.

EchoStar has offered the local broadcasters in exchange for retransmission consent, it would agree not to import a distant signal to any place in the market. We have met with no success in that offer. So I would challenge the broadcasters to accept our offer and help to solve this problem.

Now, it wouldn't solve the problem for the whole industry, in fairness, and to the extent that one of our competitors were able to continue to import a distant signal into a market, we don't want

to be penalized for taking the initiative to try to solve the problem. But with those caveats, yes.

Mr. TARLETON. Mr. Chairman, I don't believe that was the question. I agree an unserved household is an unserved household, but you were saying if they have available local-to-local, should satellite companies be able to continue to import distant signals.

Mr. COBLE. Assuming that the household was in fact a served household.

Mr. MOUNTFORD. Mr. Chairman, if what you are saying is local-to-local is appropriate and working at that time, people who subscribe to the DirecTV service if they chose not to offer local-to-local, which they do not do now and I don't believe that is part of their business plan, those consumers would have to go buy new systems, either to switch to the dish network product or to switch to LTVS or some other system. So I think what you would be requiring the consumers to do is spend a whole lot more money to buy new systems.

Mr. COBLE. Anybody else?

Mr. HUTCHINSON. We plan to be a wholesaler, a unified platform that will be available on an equal basis to all DBS providers. That the signal reliability in each of our markets served will be in parallel to that of the existing DBS service so with the possible exception of an extremely heavy rain that knocks out all service, it is available.

Mr. COBLE. The gentleman from California.

Mr. BERMAN. I just want to follow up on that. The problem of some people with over-the-air reception with antennas in canyons and mountains and with that children's story with the little cottage and the two 25-story buildings right next to it, why is that a problem when a local-to-local license is passed when someone is serving the market when you have a dish that is facing what little bit of sky that you have out there in the right position? Is there a reception problem then?

Mr. HUTCHINSON. No. That is the beauty of it.

Mr. BERMAN. Right. So once a market is served and if one of the satellite people doesn't feel like uplinking local signals, whatever the phrase is, in providing that service, I mean, that is their business decision and life is tough.

But once the local-to-local license is provided, why should anybody in a market that is being served be able to get an imported distant signal?

Mr. MOUNTFORD. Well, you are going to disenfranchise a lot of customers that way.

Mr. BERMAN. Why?

Mr. MOUNTFORD. Say DirecTV decides not to provide local service.

Mr. BERMAN. A company makes a decision not to serve a consumer need—and people who want that need served have other choices. They make those decisions. That is called the marketplace. I have heard of compulsory license, but now compulsory clients?

Mr. MOUNTFORD. No, I agree with you that is the consumer's decision, but right now they are already unserved households and you are going to disconnect them.

Mr. BERMAN. Why are they unserved if they are able to get a local-to-local signal?

Mr. MOUNTFORD. They have to spend more money to get it because it won't work on the same platform.

Mr. BERMAN. You think that we should have a vested right once you have imported a distant signal forever, sort of that is what you are saying?

Mr. MOUNTFORD. No, I am saying that your phone will ring off the hook and Mr. Boucher will have to have four staffers handling that one because everyone who gets a distant signal from DirecTV if they chose not to offer local-to-local, if you say to Mr. Berman, you can't get network signals anymore, you have to buy another dish to do it, your phones are going to ring off the hook. You are going to make customers—you are going to burden the customers again.

Mr. BERMAN. I can't begin to count the number of issues that made my phone ring off the hook, and the way that I solve that problem is to just limit the number of phones.

Mr. MOUNTFORD. But we need to take orders.

Mr. BERMAN. Let me throw out the idea of what if you added to this bill the idea of very explicitly in Grade B you grandfather in—just in Grade B, not in Grade A, the people who import distant signals until such time as Mr. Hutchinson or EchoStar or a new company that comes up provides local-to-local service? What is the reaction to that kind of an idea?

Mr. TARLETON. I can tell you my reaction, Mr. Berman, and I would disagree with it because the Grade B model has served this industry for years. It works. For those people who live on the fringes of the Grade B or who live in a valley of the Grade B and who simply cannot receive their local station via a rooftop antenna they can request a waiver and they get it.

Mr. BERMAN. Because you think that there are people in Grade B who can get a fine local signal through traditional mechanisms and now all of a sudden you have through this importation of a signal that was never intended for that purpose people watching your shows without your advertisers getting a chance to—

Mr. TARLETON. And without local news and local weather alerts and local PSAs, and the list goes on and on.

I don't think that people ought to be grandfathered or rewarded for breaking the law.

Mr. BERMAN. Mr. Boucher mentioned earlier, he and I sort of come to this from opposite directions but we see in the chairman's bill a proposal for a partial rollback of the fees. I think letting the market decide is the best way. He is focused on parity with cable and satellites to ensure competition. There are two different ways to get parity. One is to roll back the satellite fees. The other one is to change the cable fees, and my assumption is it doesn't always have to fall on the backs of the programmers to ensure parity that everything is looked at as a total rollback. That is more a comment than a question. Mr. Attaway.

Mr. ATTAWAY. Thank you, Mr. Berman. If I may consume a minute of your time, the issue of parity is just terribly misunderstood.

Mr. Mountford earlier testified that he paid, I forget the exact numbers, but some tremendous amount in royalties more than the local cable system. Well, based on his numbers I calculated that he must provide somewhere around 12 distant signals. The average cable operator provides less than 2. So if he is providing his customers with 10 times the number of distant signals, I don't think it is shocking that he should pay 10 times as much.

Now, we have done some real world calculations and a 4 signal package in Boston at the 27-cent rate would be \$1.08. The local cable system if it carried 4 distant signals would pay 88 cents.

In New Orleans a 5 signal package would cost at 27 cents \$1.35. In the very same place the cable operator if it carried 5 distant stations would pay \$1.64 more.

So there are differences in what cable and satellite pay, but there is not the disparity that some people may believe.

Mr. MOUNTFORD. May I comment on my numbers. I was talking on a per subscriber basis, so I don't think it had a number of different signals. We are talking per network which we pay 27 cents copyright fee for. I simply multiplied that by 12 to analyze it to \$3.24. Cable pays I think it is 6 cents.

Mr. BERMAN. But they import fewer signals.

Mr. MOUNTFORD. But they import fewer signals? I am talking one network. I am talking one network. We pay 27 cents for one network per month and they pay 2½ cents.

Mr. BERMAN. And this rolls back—the chairman's bill rolls back this fee to?

Mr. MOUNTFORD. To 14.8 cents.

Mr. MOSKOWITZ. You can play with the numbers however you like, but satellite pays 27 cents for an ABC station and cable pays 2½ cents.

Mr. BERMAN. My only point was there are other ways to deal with it. Whatever equity you perceive to be unfair doesn't have to fall on—become a gift from the programmers.

Mr. MOSKOWITZ. A very fair point.

Mr. MOUNTFORD. Absolutely.

Mr. ATTAWAY. If I may, Mr. Chairman, Mr. Moskowitz is correct with regard to that one signal. But if you look at the fifth signal, because the cable rate structure is ramped up the more signals you carry, for the fifth signal the cable operator might be paying 3 times 27 cents. If you consider all of the signal carriage, the rates are not that much different.

Mr. MOSKOWITZ. With all deference to my colleague, that is simply not accurate. In a typical cable system if you get ABC, NBC, CBS, Fox and PBS, you pay 10 cents. If you are a satellite subscriber and you get ABC, NBC, CBS, Fox and PBS, you pay \$1.25 and that is what it is in 90 percent of the country.

Mr. COBLE. Well, obviously, folks, we have a lot of work ahead of us. It is an understatement when I say that.

Let me recognize the gentlelady from California.

Mrs. BONO. Thank you, Mr. Chairman. I would like to hear what Mr. Ostertag and Mr. Attaway have to say on this issue. If you would like to use my 5 minutes to continue on the process for determining the fees. If you want to continue until the red light shines, you have my 5 minutes.

Mr. OSTERTAG. Thank you. We also believe that the disparity described between the rates paid by cable and satellite is exaggerated. We have actually made a filing with the FCC on this subject that goes into this in quite a bit of detail, and we would be happy to make that part of this record.

Mr. ATTAWAY. Mrs. Bono, I think what this discussion demonstrates is that when government steps in to start determining what is paid for programming or anything else rather than letting the marketplace determine what prices should be paid, they get into a terrible mess. And I don't deny that section 119, the satellite license, and section 111, the cable license, are terrible messes. We would like to see them go away and let the marketplace decide.

But until it does, we think that programmers should receive a fair marketplace rate. That is what the current law provides and that is what this arbitration panel determined. That is what the court of appeals upheld. However, having said all of that, in a way this whole conversation is irrelevant because I think at least most of us on this panel have agreed that in the spirit of compromise we should support the chairman's bill. We do support the chairman's bill and so I will end it with saying that.

Mrs. BONO. Thank you. My next question would be to the satellite providers to ask whether it is true whether satellite is situated not to have many of the expenses of its competitors, for example, local taxation?

Mr. COBLE. I didn't hear your question. I didn't hear. It, would the gentelady mind repeating it?

Mrs. BONO. Sure. It sounds like I am booming, but I guess I am not.

My question is if it is true or not that satellite providers are exempt from some of the expenses that other providers pay, for example local taxation?

Mr. MOUNTFORD. Currently there are several states that we pay state sale tax in. Local franchise fees are not required of satellite operators and we don't pay those.

Mr. MOSKOWITZ. We pay state sales tax in virtually every state in which we operate. We do not have a local tax. There is an exemption by Federal law. One of the reasons for that is because it is a national service, not a locally based service. Another reason is that cable operators obviously get rights of way and exclusive rights to operate in particular localities. Satellite does not enjoy those kinds of franchises which have been granted to the local cable operator. If we were to try to comply with the local sale tax, for example, in every city, town, and municipality around the country, the paperwork burden would be stifling.

Mrs. BONO. Thank you. I yield back.

Mr. COBLE. I thank the gentelady. The gentleman from Michigan.

Mr. CONYERS. I wanted to find out where the most resistance to this agreement is here on the panel. Who is less enthusiastic? Mr. Ostertag. Aha. But you are not alone, are you?

Mr. OSTERTAG. Well, I wish I had somewhat stronger support from my friend to my left. He certainly agrees with my position in theory.

Mr. CONYERS. But not in principle.

Mr. ATTAWAY. Mr. Conyers, don't interpret my position as being one of enthusiasm. It is one of reality.

Mr. CONYERS. Well, I have got a number of questions, but I don't think that they have any particularly burning necessity to continue, so I will return my time or yield to Rich Boucher.

Mr. COBLE. The gentleman from Virginia.

Mr. BOUCHER. Thank you, Mr. Chairman and Mr. Conyers.

First of all on the question of parity, my friend Mr. Berman and I decided that we had better quit talking about this before we destroy your compromise. I think over the long term we should try to achieve it and the formula from which it is achieved could in my opinion very well take into account not just the per subscriber charge, but also the number of signals being transmitted by cable on the one hand and satellite systems on the other so that we address any remaining concerns of Mr. Attaway and those with his position might have with regard to whether parity is in fact being achieved. And over the long term I think we definitely ought to look at this.

Secondly, Mr. Tarleton, let me say that I acknowledge the tawdry practice of some of the carriers who clearly have signed up people for distant network signals who are not eligible to get those signals under section 119. It is very clear that has happened in some cases.

In my congressional district, the vast majority of people who subscribe to that service over the satellite are in fact eligible, and if it had not been for the unfortunate practice of some carriers in disregarding the law, we would still be getting 35 or 50 letters every day. So I just want to correct the statement that you made, we would not be having this burden had it not been disregarding the law by some carriers, we would still be having this problem, and that brings me to my next point and that is that the court order in Florida applied a standard that is overly broad. Perhaps not overly broad for the district in which that case was decided, the Southern District of Florida and the City of Miami in particular, but the judge did not limit her injunction just to that market. She made it of nationwide implication and as a result of that we are now seeing signals for CBS and Fox and because some carriers don't distinguish just those 2 networks and sell everything as a package and in some markets all of the network signals now are being disconnected. And it is happening in my congressional district based upon a standard that is unrealistic as applied in our mountainous area, and that leads me to the recommendation that I would like to make and I would like to get your response to what I think is a logical approach to solving this problem.

Today we are having thousands of people in my district terminated from this service who really are eligible to get the signal, and we are forced to this process of having to go through waivers. For the reasons that I described to you earlier, it is inefficient and television companies are applying different standards for whether they will grant it or not. Some are wholly unrealistic standards. And I think we need to do one of two things in order to protect the people who really ought to be getting the signal off the satellite from the over reach of this court's injunction.

One of those alternatives would be to simply follow the approach recommended by Senator McCain and Senator Burns, which I un-

derstand will be marked up in the Senate Commerce Committee shortly if not today, and that approach, depending on some findings by the FCC, could lead to a grandfathering of those subscribers to the distant network signals who reside beyond the Grade A contour of the local broadcast station. That would protect the people that I am concerned about. If they are inside the Grade A, I would be willing to see a rough cut made. Some of them still would be eligible, but in the interest of practicality and trying to get the problem solved I would be willing to see a solution that said let's just grandfather the people in the Grade B and beyond. That would solve most of my problem.

Now I heard you answer in response to a question earlier that you are not very enthusiastic about that particular approach. Frankly, this is the one that I prefer also and I think it is the one that the National Association of Broadcasters should endorse because it is in everyone's interest in maintaining the balance between localism, which the section 119 license requires, and also making sure people who can't get a local broadcast station by means of an outdoor antenna are able to get it over the satellite and that approach is this. Let us have a moratorium for some reasonable period of time on enforcing the order of the court in Miami. Mr. Dingell sent a letter to the NAB this morning suggesting that period ought to be 180 days. I don't know if that is the right length of time, but whatever it takes the FCC to act would be the right length of time.

Step number 2, that same legislation that imposes the moratorium would direct the Federal Communications Commission to devise a model with a high degree of reliability for predicting on a point-to-point basis those houses that can receive a signal of Grade B intensity from the local station and those that cannot. Now several models are available. You have got just the rough model which the court in Florida applied, which is the Grade B contour. That is not an exact model. That is not a point-to-point model and it really doesn't work. So you move to the next, which is Longley-Rice. Longley-Rice also is not really a point-to-point determination. It is better than Grade B in terms of reliability and predictability, but it predicts with regard to large areas, not with regard to a signal house.

So the FCC recently just undertook a rulemaking in which they devised another model, still perfect but better than Longley-Rice, and they called it individually located Longley-Rice. Better than Longley-Rice but still not particularly good in terms of determining whether an individual house is going to be able to get a signal of Grade B intensity.

So we have yet another model, and this is one that I frankly hope we can employ over the long term, and it is called TIREM, and don't ask me how to spell it. It was devised by the DOD and NTIA. It has been in effect now for more than 15 years, and it is constantly evolving and improving in reliability, and it can in fact determine with a very high degree of reliability whether an individual house will be able to get a signal of Grade B intensity from the local television station.

I think that the right approach would be to direct the commission to find the model that has the highest degree of reliability,

give the commission clear statutory authority to implement that model once it has been devised, and then direct that that model will become henceforth the standard for determining eligibility under the section 119 license.

That standard should then be given presumptive effect so that anyone who wants to challenge it would have the burden of showing that the standard does not accurately predict with regard to that particular house, and then a loser pays principle would follow any such challenge.

And if we had a standard like that in place, I would be very comfortable then in having that standard applied to the entire existing subscriber base so we could avoid grandfathering in that case and we could have a standard that the commission believes achieves the highest level of reliability and apply it to everybody.

Now, Mr. Dingell did in fact recommend precisely that in a letter directed to Eddie Fritts and Mr. Hewitt this morning and he has a few other wrinkles in his that I won't burden you with, but I think that approach makes a tremendous amount of sense.

Now my recommendation to this subcommittee is that we use Chairman Coble's bill as the foundation, a few amendments are going to be necessary in order to implement this approach and I would hope that until you and Mr. Hewitt and Mr. Fritts have had an opportunity to consider a response to this proposal that neither this committee nor the Commerce Committee would do anything, and we would give you a reasonable amount of time measured in days to come to a decision about whether this is the right approach or not.

I can tell you that there is a movement underway in some places to have Congress pass a moratorium. It may not be as complete as what is recommended here, but that movement is underway, and that is to protect people who really are eligible for this signal who are going to get cut off under the court's order. I think this approach is fair.

It does achieve the balance that we seek and that is people who can get the signal from the local station be required to do that; but if you can't, you would have an opportunity to get it over the satellite and there would be a model in place that predicts with a high degree of reliability who can and who can't get the signal from the local station.

So I would just ask that you consider it. I don't expect that you have a response to it this morning but counsel with your colleagues in the broadcast industry. I hope that your response is favorable. Thank you, Mr. Chairman.

Mr. COBLE. You are welcome. The gentleman from Massachusetts.

Mr. DELAHUNT. Thank you, Mr. Chairman. I found the proposal put forth by Mr. Boucher very interesting, and I would suggest that the parties sit down and have the discussions which might be fruitful.

I have a lot of questions about parity, but maybe I can ask these questions later.

I make one final comment to Mr. Attaway. Maybe we are getting to the place where the marketplace can make those determinations, but at the same time I wonder if there would be a satellite industry

but for the protections that the government provided and perhaps has nurtured to the point where government can start to recede. That is just a final observation and comment, Mr. Attaway.

Mr. COBLE. I thank the gentlemen. The dinner bell has long since rung, but we are blessed with an expert panel and I have one more question. I want to revisit a previous question.

Mr. Moskowitz, let me put this question to you. Assume that EchoStar has been bringing in the local broadcast signal into a market say for a year, and during that year your satellite competitors have not begun to also deliver the local broadcast signals, but continue to bring in distant signals. Assume furthermore that the Congress passes a law that says the compulsory license for those distant signals expires upon ratification, upon passage, would you be willing to then provide your competitors' customers with a free receiver in order to get local signals if the distant ones could no longer be provided?

And while you answer, the reason that I ask that, the purpose for this legislation, ladies and gentlemen, is to encourage competition and lower rates not just between the satellite and the cable communities but within local-to-local as well. So what do you say to that, Mr. Moskowitz? Or you may not want to answer it today.

Mr. MOSKOWITZ. Well, we would certainly love to get the additional customers. If your question was will we provide an additional receiver such that the consumer would switch all of their services, obviously that would be in our best interests and we would love to do that.

I think that there are limitations on the amount of bandwidth, and so as long as I think the signal could be made reasonably available to all consumers, the idea makes sense. If it couldn't be, I am not sure that it does.

Mr. COBLE. That you would make a free receiver available?

Mr. MOSKOWITZ. If we were going to get—obviously it is a significant investment to give a free receiver away so we would have to be sure that the business was going to be ours entirely. You could never make your money back just providing a local broadcast channel to a consumer.

Mr. COBLE. Any other members have additional questions?

Mr. BERMAN. Mr. Chairman, one question.

I listened to the idea proposed by Mr. Boucher, and the question comes to mind that if it is true that huge numbers of people in the Grade A area have hooked up for time-shifting purposes, not for reception purposes, and as Mr. Boucher said he is prepared to make the hard cut, why would we want a moratorium on the cutoffs in those areas?

Mr. BOUCHER. Would the gentleman yield. I would say to the gentleman that his question is very appropriate, and as far as I am concerned the moratorium could apply beyond the Grade A. In other words, within the Grade A, you could continue your waiver process and the court's order could have full effect. And if according to that order people ought to be terminated they would be, and if they wanted to apply for waivers you could go through your process in deciding whether or not to grant them.

Beyond the Grade A, in the B and beyond there would be a moratorium on any terminations under this court order, until we have

an opportunity to decide what process we have going forward. That would suit me.

Now there are others involved in the issue who may have a little harder view of this than I have. Some of my friends on the Commerce Committee in particular might. But as far as I am concerned, any moratorium that applies could apply beyond the Grade A and I think that would be satisfactory.

I thank the gentleman.

Mr. COBLE. I think the moratorium, Rich, would probably be our issue rather than Commerce. Commerce I am sure would have disagreement about that probably.

Gentlemen, we thank you for your testimony and your contribution. This concludes the legislative hearing on the Copyright Compulsory License Improvement Act. The record will remain open for one week. Thank you again, and the subcommittee stands adjourned.

[Whereupon, at 1:10 p.m., the subcommittee was adjourned.]





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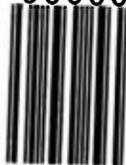


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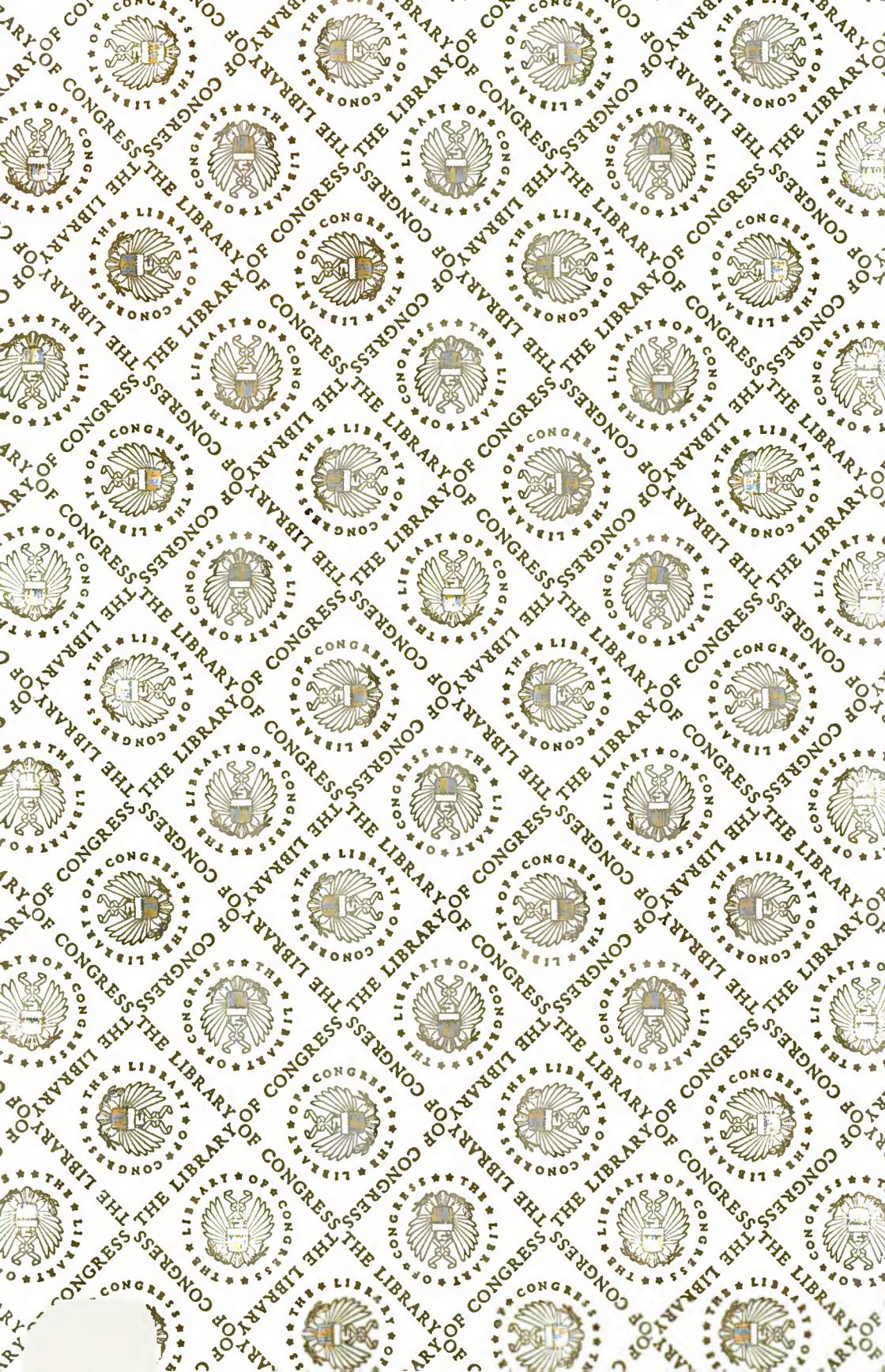


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