

CRS Report for Congress

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Satellite-Delivered Television: Issues Concerning Consumer Access to Broadcast Network Television via Satellite

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Summary

Congress is debating whether to revise the 1988 Satellite Home Viewer Act (SHVA) to enable more consumers to receive broadcast network television via satellite. Consumer access to broadcast network TV signals provided via satellite is restricted by SHVA to households that cannot receive such signals via an over-the-air antenna and have not subscribed to cable within 90 days. Some satellite carriers have transmitted network signals to consumers in violation of the Act. When challenged, the satellite carriers cease transmission of the signals to individual consumers voluntarily or by court order. Numerous complaints from angry constituents over discontinued service have generated congressional interest. Several bills to modify SHVA were considered last year but none cleared Congress. Three bills have been introduced so far in the 106th Congress (H.R. 89, Burr; S. 247, Hatch; S. 303, McCain). CRS Report 98-320, *Television Satellite and Cable Retransmission of Broadcast Video Programming under the Copyright Act's Compulsory Licenses* provides a more extensive discussion of SHVA. This report will be updated as events warrant.

Background

Large satellite dishes in the back yards of suburban and rural homes heralded the era of direct-to-home (DTH) television broadcasting by satellite. DTH now encompasses smaller dishes, too, and the newest type of service is referred to as DBS (Direct Broadcast Satellites). The size of the dish is determined by the frequency at which the satellite transmits and the power level of the signal. The original large back yard dishes, about 7 feet in diameter, receive low power “C-band” (4/6 Gigahertz) signals. Middle-sized (3 foot) dishes receive medium-power “Ku-band” (11/12 Gigahertz) signals, while small 18-inch dishes receive high-power Ku-band signals. The high-power Ku-band satellites are the ones called DBS. In the United States today, there are approximately 1.9 million C-band dish (sometimes called Home Satellite Dish—HSD) owners, and 8.1 million Ku-band dish owners (for both high- and medium-powered satellites). The main service or

programming providers are PrimeTime 24 and Net Link for C-band, and EchoStar's Dish TV and Hughes' DirecTV for DBS. Hughes is the process of buying Primestar, a medium-powered Ku-band provider. PrimeTime 24 also provides or has provided programming, including broadcast network television signals, to DirecTV and EchoStar for transmission to their customers.

Satellites are one method of providing multichannel video programming distribution (MVPD) services that offer a package of video programming, often including television broadcast programming, to subscribers for a fee. Cable television is the best known MVPD provider. Others are Multichannel Multipoint Distribution Service (MMDS) and Satellite Master Antenna Television (SMATV). According to a December 1998 FCC report (*Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming: Fifth Annual Report*), of the 98 million homes that receive television, 76.6 million subscribe to an MVPD. Cable has 85% of the MVPD market, satellites have 12.1%, MMDS (or "wireless cable") has 1.3%, and SMATV has 1.2%, according to the report. Some telephone companies are beginning to enter the MVPD market by building over cable systems ("cable overbuild"), but that segment of the market is very small at this stage. Congress and the Clinton Administration assert they want to facilitate competition with cable because of its large share of the MVPD market and consumer complaints about cable TV rates (see CRS Info Pack 104C, Cable TV).

The Satellite Home Viewer Act (SHVA)

Congress passed the Satellite Home Viewer Act (SHVA, 17 U.S.C. § 119) in 1988, and amended it in 1994 and 1997. Part of the Copyright Act, it establishes, *inter alia*, the copyright regime within which satellite carriers may retransmit network programming for private home viewing. Under SHVA, satellites may retransmit network programming only to customers living in "unserved households" (or "white areas") where local signals cannot be received via an over-the-air antenna and the household has not subscribed to cable for 90 days. SHVA will expire December 31, 1999, unless extended by Congress.

SHVA provides satellite carriers with a compulsory copyright license for network and superstation TV programming, meaning that those who own the copyright on television programming must make that programming available for retransmission. SHVA establishes a mechanism for determining how much satellite carriers must pay to compensate the copyright owners. The fees are paid into a pool that is disbursed by the Copyright Office of the Library of Congress. The cable industry has a compulsory copyright license under the 1992 Cable Act and pays fees into the same pool. The cable license is permanent, while the SHVA provisions will expire at the end of 1999. S. 247 (Hatch) would extend the satellite license by 5 more years. In 1997, the rate satellite carriers must pay was raised in accordance with SHVA, causing some controversy. That issue is discussed in CRS Report 98-140, *Satellite Television License of the Copyright Act (17 U.S.C. Section 119) and the 1997 Rate Adjustment*.

The Unserved Household ("White Area") Issue and Grade B Signals

Under SHVA, satellite carriers may retransmit network programming only to households that cannot receive TV programming via an over-the-air antenna and have not subscribed to cable within 90 days (the "90-day waiting period"). They are called

unserved households in the law, or “white areas” colloquially (apparently a reference to the fact that they receive only “snow” on their TV screens). The law was written to protect local network affiliates that do not want customers receiving distant (or “out-of-market”) network signals that do not carry local advertising, the primary source of revenue for local affiliates, and to preserve “localism” so people watch local news and receive weather advisories.

Under SHVA, the technical standard for determining whether a home is an unserved household is whether it is inside or outside the Grade B contour of the local network affiliate. Grade A and Grade B contours can be visualized as circles around a TV station’s transmitter indicating the strength of a signal received within that area. The Grade A contour is close to the transmitter and reception there is better than in the Grade B contour. However, reception within the Grade B contour is still considered acceptable by the FCC. In paragraph 33 of its February 2, 1999 Report and Order (see below), the FCC explains these contours: “a quality acceptable to the median observer is expected to be available for at least 90 percent of the time at the best 70 percent of receiver locations at the outer limits of [Grade A] service. In the case of Grade B service the figures are 90 percent of the time and 50 percent of the locations.” Complaints about using the Grade B standard to determine who can receive network TV via satellites center on the fact that it does not necessarily mean a “viewable” signal—it may have “snow” or ghosting. The standard is used because it is an objective measurement.

Some satellite carriers have transmitted network programming to customers that are not unserved households despite the law. Customers may receive other TV programming from satellites, but not network programming. The local affiliates have the right to challenge any satellite customer they believe is receiving network signals in violation of the law and have done so with increasing intensity. Upon being challenged, some satellite carriers simply notify the challenged household that network TV service is being discontinued, creating considerable consternation and angry letters to Washington.

Three carriers have been involved in disputes about providing network programming illicitly: NetLink, Primestar, and PrimeTime 24. In 1997, the National Association of Broadcasters (NAB), NetLink, and Primestar reached agreement on how to handle these issues. Under the agreement, the Grade B contour still will be used, customers within the Grade B contour that nonetheless cannot receive a signal from a local affiliate due to building or terrain blockage may receive signals via satellite if the local affiliate agrees and grants a waiver, and customers who currently are illegally receiving network signals will be phased out gradually rather than suddenly having their service discontinued.

PrimeTime 24 chose not to participate in those discussions, preferring to settle the issue through the courts. The networks have taken PrimeTime 24 to court in several jurisdictions. One case that has caused considerable publicity was brought by CBS and Fox in Miami (CBS, Inc. et al. v. PrimeTime 24 Joint Venture). Under a preliminary injunction issued on July 10, 1998 and a permanent injunction issued on December 30, 1998, PrimeTime 24 must discontinue transmitting network TV signals from the plaintiffs as follows: for customers enrolled since March 11, 1997 (the date the lawsuit was filed), service must be discontinued by February 28, 1999 (postponed from October 8, 1998 by agreement among the parties and approval of the court); for customers enrolled before March 11, 1997, service must be discontinued by April 30, 1998. The FCC estimates that the permanent injunction affects as many as 2.2 million customers.

Following the July 1998 preliminary injunction, multitudes of angry constituents contacted their congressional representatives to complain that their network TV programming via satellite would be discontinued. Several Members wrote to the FCC asking for options to deal with the issue. FCC Chairman Kennard agreed to conduct an expedited rulemaking by February 1, 1999 to clarify the Grade B standard. The FCC released a Notice of Proposed Rule Making (NPRM) on November 17, 1998 (FCC 98-302) and a Report and Order (FCC 99-14) on February 2, 1999. The FCC stated in the Report and Order that it had concluded there was no reason to redefine what constitutes a Grade B signal, but offered new methods of either directly measuring the signal strength or using a predictive model to estimate its strength. The FCC set forth methods to determine signal strength for a specific house instead of in a general area, and adopted a variation of the long-used Longley-Rice model (called the Individual Location Longley-Rice) for predicting signal strength. These new methods, however, may not help many of those households whose network signals are to be discontinued due to the court ruling.

Individuals may request a waiver from their local affiliates if they believe they cannot receive a Grade B signal despite being within a station's Grade B contour and hence should be allowed to receive distant network signals via satellite. Waiver advocates have established a Web site [www.getawaiver.com] to assist consumers.

At the end of the 105th Congress, legislation was considered that would have, *inter alia*, delayed until February 28, 1999 the date by which PrimeTime 24 would have to cease providing network signals to unserved households. The legislation did not pass, but the parties to the Miami case reached agreement to extend the date to February 28, 1999, and the court approved.

On January 25, 1999, Senator McCain introduced S. 303 that, *inter alia*, would allow customers within a station's Grade B contour who were receiving distant network signals as of March 1, 1998 to continue to receive them if the FCC determines that the local affiliate will not experience any significant loss of revenue. Customers within the Grade A contour would still be denied access to such signals. The FCC would have 180 days from enactment of the bill to complete a rulemaking on the financial harm issue and whether network exclusivity, syndicated exclusivity, or sports exclusivity rules should apply to carriage of distant network signals. Regulations stemming from that rulemaking would have to be approved by a two-thirds (rather than a majority) vote of the Commission. Satellite providers could continue existing carriage of distant network signals until the effective date of the new regulations. The National Association of Broadcasters (NAB) objects to any change in the way households within the Grade B contour are treated, arguing that it would be rewarding the satellite companies for having illegally provided signals. The NAB has insisted that it will only agree to the proposal for a three-year phase in period for must carry if no changes are made in determining eligibility for households in Grade B contour. A bill (S. 247) introduced by Senator Hatch would not change the Grade B signal criterion, but would eliminate the 90-day waiting period for cable subscribers.

“Local-Into-Local” Satellite TV

The decision to limit satellites to providing network signals only to unserved households arose because satellite providers could not take a local network signal, transmit it to a satellite, and then retransmit it back to consumers only within that station's

local market area—called “local-into-local” service. Instead, they retransmit “distant network signals” from locations such as New York, Atlanta, or Denver. Local network affiliates want to ensure that customers within their market view the local signal.

Today, satellites using newer technology can provide local-into-local service, however, ameliorating the concerns of local broadcasters. One DBS company, EchoStar, has begun providing that service in several major U.S. markets. To comply with SHVA, it is providing the service only to unserved households, but wants to expand the offering. EchoStar is not retransmitting all local stations, but only ABC, CBS, NBC, and Fox, raising the ire of many local broadcasters whose signals are not being retransmitted. They argue that if satellites are allowed to retransmit local programming, they should be subject to the same rules and regulations as the cable industry. Under the 1992 Cable Act, cable systems are subject to “must-carry” regulations in that all local stations must be carried by the cable service. Cable also is subject to other regulations— retransmission consent, sports blackout, network nonduplication, and syndicated exclusivity. Some, including the cable industry, argue that satellites should be subject to those regulations as well.

The issue of must-carry is significant for satellite carriers because a single satellite may cover the entire continental United States and thus would have to carry all 1,600 local stations throughout the country. Cable systems need carry only those in their local service area. Today’s satellites do not have the capacity to carry 1,600 stations plus all the other programming satellite carriers want to offer. Satellite carriers argue that if they are subjected to must-carry, they could not afford to launch enough satellites to carry the required number of channels. This argument led to provisions in the McCain bill (S. 303) that would have the must-carry requirement phased in over three years, by when sufficient satellites or improved technology presumably would rectify that problem.

Proponents of must-carry for satellites buttress their case by pointing to a proposal by a company, Capitol Broadcasting, to launch two satellites that would be devoted entirely to local programming. Capitol Broadcasting would use satellites operating at a higher frequency (Ka-band at 30/20 GHz) than existing commercial satellites and would provide the local programming to all interested DTH companies. Some are cautious about the proposal since commercial Ka-band satellites do not yet exist and face technical challenges such as “rain attenuation” where rain degrades signal quality. Capitol Broadcasting reportedly has recently modified its plans and now proposes to carry local stations only from the top 64 markets (approximately 800 stations).

Legislation addressing the local-into-local issue was debated by the 105th Congress (H.R. 3210, H.R. 4449, H.R. 4675, S. 1720, S. 2494) but did not pass. New legislation has been introduced in the 106th Congress. Representative Burr has introduced H.R. 89 (virtually identical to H.R. 4449 from last year) that would allow local-into-local with must-carry requirements. Senator Hatch and Senator McCain have introduced complementary bills (S. 247 and S. 303) following the approach they adopted last year of dividing the issues between the jurisdictions of their respective committees, Judiciary and Commerce. Last year they said they would merge the bills after they were reported from committee into a single bill for floor consideration. As noted, S. 303 would allow a three-year phase-in of the must-carry requirements.

Pending Legislation

The following legislation has been introduced in the 106th Congress relating to the “white area” and “local-into-local” issues. Additional bills are expected to be introduced in the House. This report does not address the 1997 rate increase for copyright royalties paid by satellite providers (S. 247 contains provisions to reduce that rate increase). CRS Report 98-140 covers that issue.

Table 1. 106th Congress Legislation To Increase Consumer Access to Network TV Via Satellite

H.R. 89 (Burr) Referred to House Committees on Judiciary and Commerce.	Satellite Access to Local Stations Act (SALSA). Permits local-into-local; requires must-carry; and requires satellite carriers to notify Register of Copyright each 6 months of stations whose signals are being retransmitted and to whom. (This bill is virtually identical to H.R. 4449 from the 105 th Congress.)
S. 247 (Hatch) Referred to Senate Judiciary Committee.	Satellite Home Viewers Improvement Act. Amends the Copyright Act. Requires satellite carriers to submit to network stations a list of subscribers to whom the signal is being retransmitted; extends major provisions of SHVA, including the compulsory copyright license, through Dec. 31, 2003; reduces the rate increase for copyright royalty payments satellite companies must pay by 45% for distant network signals and 30% for superstation signals; eliminated the 90-day waiting period for cable subscribers as part of the definition of an unserved household; and defines a Public Broadcast Service (PBS) satellite feed that would be treated as a superstation (rather than a distant network signal) under the Act. Hearing held by full committee January 28, 1999. (This bill a modified version of S. 1720 from the 105 th Congress.)
S. 303 (McCain) Referred to Senate Commerce Committee.	Satellite Television Act. Amends the Communications Act of 1934. Allows for 3-year phase in period for satellites to abide by must-carry rules; and permits customers within a local network affiliate’s Grade B contour (but not the Grade A contour) who currently receive distant network signals via satellite to continue to receive them if the FCC determines it does not cause significant financial harm to the affiliate and directs the FCC to complete a rulemaking within 180 days of enactment of the bill on that matter and whether carriage of distant network signals should be subject to network exclusivity, syndicated exclusivity, and sports exclusivity rules, requiring a two-thirds (rather than a majority) vote of the FCC to adopt regulations stemming from that rulemaking. (This bill is a modified version of S. 2494 from the 105 th Congress).