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

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Summary

Congress is considering reauthorization of certain provisions of the 1999 Satellite Home Viewer Improvement Act (SHVIA) that will expire at the end of 2004. They allow satellite television companies to provide “distant network signals” to subscribers who cannot receive broadcast network television signals via over-the-air television antennas. Other issues related to competition among satellite, cable, and broadcast television also are arising in the context of the reauthorization debate. Five bills related to the SHVIA reauthorization (S. 2013, H.R. 2862, H.R. 4024, H.R. 4501 and H.R. 4518) are pending. A comparison of the three major reauthorization bills (S. 2013, H.R. 4501 and H.R. 4518) will be provided in a forthcoming CRS report. This report provides background and an overview of key issues; it will be updated as warranted.

Background

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

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

Two major companies offer DBS services today: DirecTV (a subsidiary of News Corp.) and EchoStar, which markets its service as Dish TV. Another company, Rainbow DBS (a subsidiary of Cablevision) offers a comparatively small number of satellite channels through a service called Voom.

The Satellite Home Viewer Improvement Act (SHVIA)

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

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

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

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

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

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

1994. It was extended for a further five years in SHVIA, and is now set to expire on December 31, 2004.

In addition to extending the distant network signal compulsory license, SHVIA significantly expanded upon SHVA by allowing satellite companies to retransmit local broadcast network programming back into the same market area where it originated—called “local-into-local” service. The law permits, but does not require, satellite companies to offer local-into-local service. SHVIA created a royalty-free compulsory copyright license for local-into-local satellite signals that is codified in §122 of the Copyright Act, and is permanent, like the cable license. As of June 7, 2004, EchoStar offered local-into-local in 128 of the 210 Designated Market Areas (DMAs, discussed below) in the country.⁵ DirecTV offered it in 77 DMAs, and plans to increase that number to at least 130 by the end of 2004.⁶

Local versus Distant Network Signals

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

Who May Receive Distant Network Signals—“White Areas” and “Grade B” Signals

The issue of which consumers are eligible to receive distant network signals via satellite is complicated and is discussed in more detail in CRS Report RS20425. Generally, only consumers living in unserved households—where broadcast television reception is extremely poor or non-existent—may receive distant network signals via satellite. Unserved households, colloquially known as “white areas,” are defined based on the FCC’s “Grade B” signal intensity standard. Congress mandated in SHVA that the Grade B standard be used for this purpose, and, in SHVIA, directed the FCC to review whether the Grade B standard still should be used. In 2000, the FCC concluded that it should.⁷ Computer models are used to mathematically predict which households can receive at least a Grade B signal; if they cannot, they are unserved for purposes of SHVIA. In 1999, the FCC adopted an improved model, called the Individual Location Longely-Rice (ILLR), to predict signal intensity at specific households, instead of in a general area.

⁵ EchoStar announced when it passed the 100 DMA mark that it offered local-into-local to 90 million TV households, representing 83% of the population. News Release, Dec. 18, 2003: [http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=478973].

⁶ DirecTV Names 18 New Local Channel Markets to Launch in 2004. News Release, January 8, 2004: [http://www.directv.com/DTVAPP/aboutus/headline.dsp?id=01_08_2004B].

⁷ See FCC Report FCC 00-416, ET Docket No. 00-90, November 29, 2000 [http://www.fcc.gov/Bureaus/Engineering_Technology/Orders/2000/fcc00416.doc] for a definition of Grade B signals.

Some satellite companies transmitted distant network signals to consumers who were not eligible to receive them, leading to court challenges by the networks to try to force the satellite companies to obey the law. One landmark case was a 1998 ruling by a Miami judge [CBS Broadcasting v. Primetime 24 Joint Venture, 48 F. Supp.2d 1342 (S.D.Fla. 1998)] under which over 2 million consumers reportedly had, or were scheduled to have, distant network signals terminated by their satellite companies. That action was pending when Congress was considering SHVIA. Congress decided to “grandfather” those consumers who had been receiving distant network signals illegally as long as they could not receive a Grade A signal. For new subscribers, however, the original rules apply. Exceptions were made for recreational vehicles, commercial trucks, and consumers using “C-band” satellite dishes.⁸ In summary, the following consumers may receive distant network signals until December 31, 2004:

- if they do not receive a signal of Grade B intensity from the local affiliate of a particular network;
- if their satellite dish is installed on an RV or commercial truck (but they cannot be a fixed dwelling), or
- if they had been receiving distant network signals illegally and those signals were terminated or scheduled to be terminated under the 1998 Miami court ruling, *and* they do not receive a signal of Grade A intensity from the local affiliate of the network (“grandfathered subscribers”).

Consumers using C-band dishes are not subject to the five year limitation. They may receive distant network signals they were receiving before October 31, 1999 indefinitely. Consumers who believe they cannot receive a signal of Grade B intensity, despite predictive models showing that they can, may request a waiver. For more information about waivers and how consumers can apply for them, see CRS Report RS20425.

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

Key Issues Regarding the Reauthorization of SHVIA

Compulsory Copyright License. The impending expiration of the distant network signal license is the central point of debate. Certain satellite subscribers (see bulleted list above) could have their access to distant network signals discontinued if the date is not extended. Copyright owners, usually represented at congressional hearings by the Motion Picture Association of America (MPAA), object to the compulsory licenses. They argue that the cable and satellite companies should be required to negotiate copyright royalties like everyone else. Prices for the cable and satellite compulsory licenses are set by different methods and on different cycles. Prices for the satellite license were last set

⁸ C-band dishes are the original, large, “backyard” antennas. The number of C-band subscribers has declined from a high of about 2.5 million in 1995 to less than 0.5 million at the end of 2003.

in 1997. As required by law, the Copyright Office attempted to charge what it considered to be “fair market value”: 27 cents per subscriber per year for both distant network and superstation signals. The satellite companies objected because the prices were a significant increase, and much higher than what cable companies pay (see CRS Report 98-140 for more about this historical debate). In SHVIA, Congress rolled the rates back by 45% for distant network signals, and 30% for superstation signals.

The MPAA argues that if the distant network signal license is extended, the royalty rates should be substantially increased and adjusted annually to reflect market prices. The Copyright Office objects to the compulsory licenses in general, but also wants parity between the cable and satellite licenses and therefore recommends that the satellite distant network signal license be renewed for 5 more years during which time both licenses be reexamined. The Satellite Broadcasting and Communications Association (SBCA), representing the DBS companies, wants the distant network signal license made permanent. The National Association of Broadcasters (NAB) wants the distant network signal license extended only for five years, and limited to areas where local-into-local is not available. **H.R. 4518** (L. Smith) and **S. 2013** (Hatch, as reported from the Senate Judiciary Committee) would extend the license for five years and create a new process for adjusting the copyright royalty rate. **H.R. 4518**, **S. 2013**, and **H.R. 4501** (Upton) would require most subscribers eligible for distant network signals to choose between the distant or local-into-local signals if the latter are offered in their area.

“Digital White Areas”. To date, white areas have been defined based on the transmission of analog television signals. The broadcast television industry, however, is transitioning from analog to digital signals (see CRS Report RL31260). In its 2000 proceeding regarding the Grade B standard for analog signals, cited earlier, the FCC concluded it would be premature to adopt a distant network standard for digital TV. Satellite television signals already are digital (they must be converted to analog to be viewed on most television sets). SBCA is suggesting that “digital white areas” be defined where satellite companies would be allowed to provide digital signals to subscribers unable to receive digital TV from local broadcasters. Defining digital white areas would be different from analog white areas. Analog TV signal strength falls off gradually, creating areas of varying signal quality. Also, the signals may reflect off various objects, producing “ghost” images. Digital signals are either received or not. There are no fuzzy pictures or ghosting. SBCA noted that broadcasters are converting to digital more slowly than some had hoped, and suggested that allowing satellite TV to provide digital distant network signals to unserved households would spur the broadcasters to convert more quickly. The NAB calls SBCA’s proposal “a recipe for mischief” and disputes SBCA’s assessment that broadcasters are moving slowly on digital TV. **H.R. 4501** does not create digital white areas, but requires the FCC to initiate an inquiry about setting a standard and creating a predictive model.

Local-into-Local Issues, Including EchoStar’s “Two Dish” Policy. As discussed earlier, local-into-local allows satellite companies to retransmit a local station’s signal back into the Designated Market Area (DMA) from which it originated. The use of DMAs⁹ to define the areas into which a particular signal can be retransmitted is mandated

⁹ DMAs are defined by Nielsen Media Research, which explains that “A DMA consists of all counties whose largest viewing share is given to stations of that same market area.”

by SHVIA. However, DMAs often cross state borders, so a consumer in one state may receive programming from another state when subscribing to local-into-local service. Also, consumers within a state that might have only one network TV station may not be eligible to receive that station's signal because, based on DMA boundaries, it is a distant network signal that the consumer is ineligible to receive (because the consumer can receive a Grade B signal from a station in a neighboring state). **H.R. 2862** (Bradley) would define a commercial TV station's local market to include all communities within the geographic borders of the state in which it is licensed if it is the only commercial network station, of any network, within that state. **H.R. 4518** provides that if a state has only one full powered TV station, it may be retransmitted to any subscriber in a community within that state as long as the community is not within the first 50 major TV markets. **S. 2013** has the same language as H.R. 4518, and adds that if a state has all network stations and superstations in the same local market, and that market does not encompass all counties of the state, those signals can be retransmitted to all subscribers in the state residing in a local market that *is* within the first 50 major TV markets. **H.R. 4501**, **H.R. 4518**, and **S. 2013** also would allow satellite companies to retransmit "significantly viewed" stations (as defined by the FCC), though the specifics in H.R. 4501 are different from H.R. 4518 and S. 2013.

SHVIA *permits*, but does *not require*, DBS companies to provide local-into-local. There is confusion on this point partially because the law also creates a "**must carry**" provision under which *if* a DBS company *chooses* to provide one local broadcast station in a particular market, it must provide any other local broadcast station in that market that requests carriage. **H.R. 4024** (Paul) would, *inter alia*, revoke the must carry requirements for satellite (and cable) companies. Commercial stations alternatively may choose to negotiate a "retransmission consent" contract under which they are carried in exchange for money and/or other conditions. Stations choose between must carry or retransmission consent status on a three-year cycle. Business arrangements for retransmission consent are unrelated to the copyright royalty fees discussed earlier. Retransmission consent has become controversial as satellite (and cable) systems discontinue certain programming when agreements cannot be reached (see CRS Report RL32026).

Questions have arisen about EchoStar's "**two dish**" policy under which, in some areas, consumers must obtain a second satellite dish to receive all their local programs. This is necessary because EchoStar uses satellites in different orbital locations to transmit the programming, so separate antennas are needed to point toward the satellites. The NAB and others complain that EchoStar's practice is discriminatory because the channels for which the second dish is needed are primarily religious or Hispanic or other foreign language stations. EchoStar responds that there is no cost for the second dish, the channels all appear on the TV program guide, and no special steps must be taken by the consumer to access those programs once the second dish is installed. EchoStar insists that its strategy of putting some local channels on a separate satellite is what enables the company to offer local-into-local into many more markets than DirecTV. **H.R. 4501** would require EchoStar to offer all local channels on a single dish within one year of the law's enactment (except that digital TV service signals and non-digital TV service signals may be on separate dishes).

⁹ (...continued)

[http://www.nielsenmedia.com/FAQ/dma_satellite%20service.htm]