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Reauthorization of the Satellite Television Extension and Localism Act (STELA)

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Summary

There are three primary ways for a household to receive broadcast television signals: by using an individual antenna that receives broadcast signals directly over-the-air from a television station; by subscribing to a cable television service that brings a wire into the house that carries the retransmitted signals of broadcast stations; or by subscribing to a satellite television service that puts a dish on the roof that receives the retransmitted signals of broadcast stations. With the rise of cable and satellite television in the 1980s and 1990s, Congress and the Federal Communications Commission (FCC) constructed a regulatory framework for the retransmission of broadcast television signals by both cable and satellite television operators.

Through a series of laws, beginning with the 1988 Satellite Home Viewer Act (SHVA) and most recently amended by the Satellite Television Extension and Localism Act (STELA), Congress has constructed a regulatory framework for the satellite retransmission of broadcast television. There are specific provisions in STELA that will expire on December 31, 2014. These provisions allow satellite television operators to provide distant network broadcast signals to some of their subscribers who may not be able to receive one or more of their local broadcast network affiliates either over-the-air or via their satellite television systems. Given that approximately 1.5 million satellite television households would likely lose distant network broadcast signals if STELA were to expire, the 113th Congress has begun the process of considering reauthorization legislation. In the House, jurisdiction over STELA is held by the Committee on Energy and Commerce and the Committee on the Judiciary. In the Senate, jurisdiction over STELA resides with the Committee on Commerce, Science, and Transportation and the Committee on the Judiciary.

On May 8, 2014, the House Energy and Commerce Committee approved H.R. 4572, the STELA Reauthorization Act of 2014. H.R. 4572 would provide a five-year extension of the expiring provisions, limit joint retransmission consent negotiations in conjunction with limitations on FCC action on broadcaster sharing agreements, eliminate the "sweeps" week prohibition on signal changes, and repeal the FCC's integration ban on cable set-top boxes.

Meanwhile, a STELA-related issue of continuing interest to Congress is "orphan counties" in which satellite subscribers may not be receiving signals from in-state broadcast stations and may not be receiving news, sports, and public affairs programming of interest in their state. H.R. 4572 would require the FCC to prepare a report on designated market areas.

With the possibility of approximately 1.5 million satellite TV households losing their distant network signals on December 31, 2014, the 113th Congress may address the reauthorization of STELA and whether expiring provisions of the Copyright Act and the Communications Act should be extended. An issue for Congress is whether these provisions should be extended (and if so, for how long), whether other changes to STELA are necessary, and to what extent the STELA reauthorization should serve as a vehicle to address broader video policy issues such as retransmission consent and carriage rules. Ultimately, Congress will likely determine whether to address these broader video issues as part of the STELA reauthorization, or alternatively, as part of a comprehensive update of the Communications Act of 1934 that may be considered by the 114th Congress.

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Background

There are three primary ways for a household to receive broadcast television signals: by using an individual antenna that receives broadcast signals directly over-the-air from a television station; by subscribing to a cable television service (from either a cable or telephone company) that brings a wire into the house that carries the retransmitted signals of broadcast stations; or by subscribing to a satellite television service that puts a dish on the roof that receives the retransmitted signals of broadcast stations. In 2013, there were an estimated 118 million television households and 101 million multichannel video programming distributor (MPVD) subscribers[1] in the United States.[2] **Table 1** shows the percentages of households receiving television signals by the various available technologies.

Table 1. How Consumers Receive Their Television Signals

	Percentage of Television Households[a]	Percentage of MVPD Subscribers
Cable (Comcast, Time Warner Cable, Cox, others)	46.5%	55%
Direct broadcast satellite (DIRECTV and DISH Network)	29%	34%
Telco television (primarily Verizon FIOS and AT&T U-verse)	9.6%	11%
Broadcast only (over-the-air)	9.6%[b]	N/A

Source: Percentages derived from SNL Kagan data, *U.S. Multichannel Industry Benchmarks.*

a. Does not include what Nielsen refers to as "zero-TV" households, which include those who view video content on a computer, Internet-enabled TV, smartphone, or tablet.

b. Percentage derived from Nielsen Company, *Free to Move Between Screens: The Cross-Platform Report*, March 2013, p. 16.

Currently there are two direct broadcast satellite (DBS) companies—DIRECTV and DISH Network—offering video service to most of the land area and population of the United States. According to the Federal Communications Commission (FCC), as of June 2012, DIRECTV had approximately 19.9 million subscribers, while DISH Network had approximately 14.1 million subscribers. With respect to the number of subscribers, DIRECTV is the second-largest MVPD in the United States, while DISH Network is the third largest.[3]

With the rise of cable and satellite television in the 1980s and 1990s, Congress and the FCC constructed a regulatory framework for the retransmission of broadcast television signals by both cable and satellite television operators. The satellite and cable regulatory frameworks attempt to balance a number of long-standing, but potentially conflicting, public policy goals—most

[1] MVPD subscribers are those households paying for either cable or satellite television service.

[2] Nielsen Company, *Free To Move Between Screens: The Cross-Platform Report*, March 2013, p. 16.

[3] FCC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, released July 22, 2013, p. 51, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-99A1.pdf.

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notably, localism,[4] competitive provision of video services, support for the creative process, and preservation of free over-the-air broadcast television. They also attempt to balance the interests of the satellite, cable, broadcast, and program content industries.

MVPD operators typically offer their customers broadcast channels (such as WJLA or WRC in Washington, DC) as well as cable channels (such as ESPN or MTV). In order to provide their customers with the entertainment, news, sports, and other programming on broadcast channels, the MVPD must retransmit local and (in some cases) distant broadcast stations. Retransmission of broadcast signals by satellite and cable operators is subject to two different legal requirements:

- The Communications Act of 1934 as amended, which specifies procedures and rules for *retransmission consent,* the process of how MVPDs may or may not be required to obtain the consent of the broadcaster to retransmit their signals. The provisions addressing retransmission consent are administered by the FCC.
- The Copyright Act of 1976 as amended, which specifies procedures for licensing the public performance of copyrighted materials on those signals. Cable and satellite operators can take advantage of special no-royalty or low-royalty copyright licenses created by Sections 111, 119, and 122 of the Copyright Act if they meet certain requirements set out in those sections. These statutory licenses allow cable and satellite operators to avoid negotiating with every copyright holder of a broadcast program. The statutory provisions in the Copyright Act are administered by the Copyright Office in the Library of Congress.

Satellite Retransmission of Broadcast Signals

Through a series of laws, beginning with the 1988 Satellite Home Viewer Act (SHVA) and most recently amended by the Satellite Television Extension and Localism Act (STELA),[5] Congress has constructed a regulatory framework for the satellite retransmission of broadcast television. **Table 2** shows the progression of satellite television laws that govern satellite retransmission of broadcast signals. The various provisions in these satellite acts created new sections or modified existing sections in the Copyright Act and the Communications Act. Under current law, in order to retransmit a broadcaster's signals to its subscribers, a satellite operator, with certain exceptions, must obtain a license from the copyright holders of the content contained in the broadcast for use of that content, and also must obtain the consent of the broadcaster for retransmission of the broadcast signal. The law specifies copyright license and retransmission requirements for each of the various categories of broadcast television stations including network affiliated stations, independent non-network distant stations, nationally distributed superstations,[6] significantly

[4] According to the FCC, "Broadcast radio and television are distinctly local media. They are licensed to local communities, and the Federal Communications Commission (FCC) has long required broadcasters to serve the needs and interests of the communities to which they are licensed. Congress has also required that the FCC assign broadcast stations to communities around the country to assure widespread service, and the Commission has given priority to affording local service as part of this requirement. Broadcast 'localism' encompasses these requirements." Federal Communications Commission, *FCC Consumer Facts*, "Broadcasting and Localism," available at http://transition.fcc.gov/localism/Localism_Fact_Sheet.pdf.

[5] For an in-depth discussion of STELA, see CRS Report R41274, *How the Satellite Television Extension and Localism Act (STELA) Updated Copyright and Carriage Rules for the Retransmission of Broadcast Television Signals*, by Charles B. Goldfarb.

[6] The Communications Act identifies a class of "nationally distributed superstations" (47 U.S.C. §339(d)(2)) that is (continued...)

viewed stations, and noncommercial broadcast television stations. As such, the Copyright Act and the Communications Act govern whether and how satellite television companies may provide both local and distant signals to their subscribers.

Table 2. History of Satellite Television Law

Satellite TV Law	Year Enacted	Highlights
Satellite Home Viewer Act (SHVA, P.L. 100-667); and Satellite Home Viewer Act of 1994 (P.L. 103-369)	1988 1994	Established a statutory copyright license to allow satellite carriers to provide broadcast programming. Limited network broadcast programming to subscribers unserved by over-the-air signals. Also permitted carriers to offer distant "superstations" to subscribers.
Satellite Home Viewer Improvement Act (SHVIA, P.L. 106-113)	1999	Created a legal and regulatory framework permitting satellite carriers to retransmit local broadcast signals to subscribers ("local-into-local" service).
Satellite Home Viewer Extension and Reauthorization Act (SHVERA, P.L. 108-447)	2004	Created framework for satellite carriage of "significantly viewed" broadcast stations. Restricted satellite carriers from offering distant signals to customers in a market where they are also offering the local affiliate of the same network (the "no distant where local" rule). Also modified statute to account for various digital television transition issues, imposed good faith bargaining requirements for retransmission consent negotiations, and provided for some exceptions to the distant copyright license for certain areas of the country.
Satellite Television Extension and Localism Act (P.L. 111-175)	2010	Provided changes to the significantly viewed provisions, modified digital television transition provisions, addressed how multicast signals would be treated, addressed "short" markets, and required the FCC to provide a report on the availability of in-state programming for orphan counties.

Source: Excerpted by CRS from Testimony of Eloise Gore, Associate Bureau Chief, Enforcement Bureau, Federal Communications Commission, before the House Subcommittee on Communications and Technology, Committee on Energy and Commerce, *Satellite Video 101 Hearing*, February 13, 2013.

Local signals are the signals that local broadcasters provide over the air to households within the local market of the subscriber ("local-into-local service"). The local market is defined by using the Nielsen Media Research designated market areas (DMAs). Nielsen has constructed 210 DMAs by assigning each county in the United States to a specific DMA, based on the historical

(...continued)

limited to seven stations that were in operation prior to May 1, 1991. These are independent broadcast television stations whose broadcast signals are picked up and redistributed by satellite to local cable television operators and to satellite television operators all across the United States. These nationally distributed superstations in effect function like a cable network rather than a local broadcast television station or a broadcast television network. The nationally distributed superstations are WTBS, Atlanta; WOR and WPIX, New York; WSBK, Boston; WGN, Chicago; KTLA, Los Angeles; and KTVT, Dallas. All of these nationally distributed superstations carry the games of professional sports teams as well as other programming.

(pre-cable and satellite) viewing patterns of the households in the DMA. Many of the households that subscribe to satellite television service are in rural or remote areas that may not be able to receive over-the-air local broadcast signals, thus relying on their satellite television service to watch local broadcast channels that provide local news, weather, and sports. Under current law, DBS operators are allowed, but not required, to provide local-into-local service. If they choose to provide any local signal they must also carry the signals of all other full-power television broadcast stations located within the local area that request carriage. However, if the local broadcast station and satellite operator fail to reach a retransmission consent agreement, the satellite operator may not include that station's signal in its local-into-local offering.

Distant signals are broadcast signals imported by the DBS operator from outside a subscriber's local area. A satellite operator is allowed, but not required, to retransmit:

- the signals of up to two distant stations affiliated with a network, to that subset of subscribing households that are deemed "unserved" with respect to that network;
- the signals of significantly viewed[7] stations to subscribers located in the markets for which those stations qualify as significantly viewed; and
- the signals of distant non-network stations to all of its subscribers.

A household is considered "unserved" if it cannot receive the signals of a local network-affiliated station because either:

- the satellite operator does not offer local-into-local service in the local market and the household is located too far from the transmitter to receive signals of a certain quality over-the-air (using a rooftop antenna);
- the network does not have a local network-affiliated station in the household's local market (referred to as a "short" market); or
- the subscriber falls under a small number of grandfathered situations in which subscribers who do have access to local-into-local service continue to be eligible to receive distant signals from their satellite operator.

To retransmit the signals of a distant network station to unserved subscribers, a satellite operator does not need to obtain the consent of that distant network station nor comply with the FCC's network non-duplication and syndicated exclusivity rules.[8]

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[7] "Significantly viewed" stations are located outside the local market in which the subscriber is located but have been determined by the FCC to be viewed by a "significant" portion of those households in the local market that do not subscribe to any multichannel video programming distributor (MVPD).

[8] Broadcasters typically carry network and syndicated programming on their local television stations but must purchase distribution rights from broadcast networks and syndicators who own or hold the rights to that programming. These network/affiliate or syndication agreements generally include provisions which grant the local station exclusive rights to the programming within the station's local service area. Network non-duplication refers to the local commercial or non-commercial broadcast television station's contractual rights to be the exclusive distributor of network programming within a specific geographic area. Syndicated exclusivity applies to exclusive contracts for syndicated programming, rather than network programming, and applies only to commercial television stations. In general a local broadcast station that has obtained such rights may request that an MVPD delete duplicative network or syndicated programming that is brought in to the station's geographic area where it holds such exclusivity rights.

Expiration of STELA: What Would Be the Consequences?

There are provisions in STELA that will expire on December 31, 2014. These provisions allow DBS operators (DIRECTV and DISH Network) to provide distant network broadcast signals to some of their subscribers. Unless reauthorized by Congress, various provisions in the Communications Act and the Copyright Act will expire, including:

- Section 325(b)(2)(C) of the Communications Act, which allows a satellite operator to retransmit the signals of distant network stations, without first obtaining the retransmission consent of those distant stations, to those subscribing households that cannot receive the signals of local broadcast television network affiliates. If this provision expires, a satellite operator will have to negotiate compensation terms with those distant network stations whose signals it retransmits to those "unserved" subscribers.
- Section 325(b)(3)(C)(ii) of the Communications Act, which prohibits a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith. Section 325(b)(3)(C)(iii) also prohibits an MVPD from failing to negotiate in good faith for retransmission consent. If these provisions expire, a broadcaster or an MVPD could choose to employ a "take it or leave it" strategy rather than to negotiate retransmission consent terms in good faith, increasing the risk of an impasse that results in subscribers losing access to the broadcast station's programming.
- Section 119 of the Copyright Act, which provides satellite operators that retransmit certain "distant" (non-local) broadcast television signals to their subscribers with an efficient, relatively low cost way to license the copyrighted works contained in those broadcast signals (a statutory per subscriber, per signal, per month royalty fee). If the law expires, it will be very difficult (and perhaps impossible) for satellite operators to offer the programming of broadcast networks to that subset of subscribers who currently cannot receive that programming from local broadcast stations that are affiliated with those networks. It will also be difficult for satellite operators to offer their subscribers the signals of distant stations that are not affiliated with broadcast networks, including both "superstations" and other non-network stations.
- The Copyright Act also grandfathers certain distant signal subscribers who retain their eligibility to receive distant signals through December 31, 2014.[9]

According to the DBS industry, approximately 1.5 million households would lose their satellite-provided distant broadcast signals if STELA were to expire.[10] The following are the various

[9] Testimony of Eloise Gore, Associate Bureau Chief, Enforcement Bureau, Federal Communications Commission, before the House Subcommittee on Communications and Technology, Committee on Energy and Commerce, *Satellite Video 101 Hearing*, February 13, 2013, p. 4, available at http://docs.house.gov/meetings/IF/IF16/20130213/100256/HHRG-113-IF16-Wstate-GoreE-20130213.pdf.

[10] DIRECTV and DISH Network, "DIRECTV and DISH Applaud DRAFT Satellite Bill," March 7, 2014, available at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/Hearings/CT/20140312/20140307DIRECTV-DISH.pdf.

situations where households are currently receiving distant broadcast network-affiliated signals on their satellite television systems, and could thus lose access to those distant signals, if STELA were to expire:

- *Households that receive neither over-the-air local broadcast signals nor DBS local-into-local service.* In the early days of satellite television, distant signals of network affiliates in New York, Chicago, Denver, and Los Angeles provided the only access to broadcast network programming for many subscribers. However, since the inception of local-into-local service, the two satellite providers have markedly increased their local market offerings. Specifically, DISH Network offers local-into-local service into all 210 DMAs, while DIRECTV offers local-into-local service in approximately 197 DMAs.[11] Therefore, those DIRECTV customers in DMAs without local-into-local service,[12] and who are underserved by over-the-air broadcast signals, are eligible to receive distant broadcast signals, and would lose those signals if STELA is not reauthorized.
- *Households outside satellite spot beams.* Spot beams are satellite signals that cover a limited geographic area. In some local areas (DMAs), the satellite signal delivering local-into-local service may not reach every household in that local area. Those households outside the spot beam (and who are also unable to receive over-the-air signals) are eligible to receive distant broadcast signals from their satellite provider.
- *Commercial trucks and recreational vehicles*. In situations where a satellite dish is permanently affixed to a recreational vehicle or commercial truck, that subscriber is deemed to be "unserved" and eligible to receive distant signals.
- *Grandfathered households*. Previous Satellite Home Viewer Act reauthorizations grandfathered some long-time satellite TV subscribers, who remain eligible to receive distant signals.
- *Households in "short markets."* There remain some DMAs—referred to as "short markets"—where not all broadcast networks are being carried by local broadcasters. In this instance, satellite providers are allowed to import the distant signal of broadcast stations affiliated with the missing network.

STELA Reauthorization Legislation in the 113th Congress

As discussed above, certain key provisions in STELA will expire on December 31, 2014. Given that approximately 1.5 million satellite television households would likely lose distant network broadcast signals if STELA were to expire, the 113th Congress has begun the process of considering reauthorization legislation. Legislative approaches could range from enacting a

[11] Testimony of William Lake, Bureau Chief, Media Bureau, FCC, before the Senate Committee on Commerce, Science, and Transportation, April 1, 2014, p. 5, available at http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=c3acb52a-736c-4b2d-803d-129c08b28b17.

[12] Markets without local-into-local service from DIRECTV include Presque Isle ME; Alpena MI; Charlottesville VA; Victoria TX; Ottumwa IA-Kirksville MO; San Angelo TX; Bowling Green KY; North Platte NE; Cheyenne WY-Scottsbluff NE; Helena MT; Casper-Riverton WY; Grand Junction-Montrose CO; and Glendive MT. (Source: Ibid.)

"clean" reauthorization (simply extending the expiring provisions in the Communications Act and the Copyright Act), to amending and revising other provisions in the Communications Act and the Copyright Act that govern retransmission consent and other video policy issues.

House

In the House, jurisdiction over STELA is held by the Committee on Energy and Commerce and the Committee on the Judiciary. In the 113th Congress, the House Energy and Commerce Committee held hearings on STELA on February 13, 2013,[13] June 12, 2013,[14] and March 12, 2014.[15] The House Judiciary Committee held hearings on STELA on September 10, 2013[16] and May 8, 2014.[17]

House Energy and Commerce Committee Bill, H.R. 4572

On March 6, 2014, the House Subcommittee on Communications and Technology released a discussion draft of a STELA reauthorization bill.[18] The draft would extend for five years the expiring STELA provisions in the Communications Act. The draft bill also includes limitations on joint retransmission consent negotiations in conjunction with limitations on FCC action on broadcaster sharing agreements, elimination of the "sweeps" week prohibition on signal changes, and elimination of the set-top box integration ban. The committee held a hearing on March 12, 2014, where witnesses from stakeholder groups discussed their views on the discussion draft legislation.[19] On March 24, 2014, the Subcommittee on Communications and Technology approved the draft bill with amendments.

On May 8, 2014, the House Energy and Commerce Committee approved H.R. 4572, the STELA Reauthorization Act of 2014. At the bill markup, the Committee approved an amendment (offered by Representative Luján and Representative Gardner) which requires the FCC to prepare a report on designated market areas.

[13] "Satellite Video 101," available at http://energycommerce.house.gov/hearing/satellite-video-101.

[14] "The Satellite Television Law: Repeal, Reauthorize, or Revise?" available at http://energycommerce.house.gov/hearing/satellite-television-law-repeal-reauthorize-or-revise.

[15] "Reauthorization of the Satellite Television Extension and Localism Act," available at http://energycommerce.house.gov/hearing/reauthorization-satellite-television-extension-and-localism-act.

[16] "Satellite Television Laws in Title 17," available at http://judiciary.house.gov/index.cfm/hearings?ID=9128B0A5-BD72-4A25-9BEA-CF5A1ECCE1A4.

[17] "Compulsory Video Licenses of Title 17," available at http://judiciary.house.gov/index.cfm/hearings?ID=D2DB400C-4318-4CC7-A8D0-1188E98FA85F.

[18] Available at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/BILLS-113hr-PIH-STELA-Reauthorization.pdf.

[19] Testimony and background documents are available at http://energycommerce.house.gov/hearing/reauthorization-satellite-television-extension-and-localism-act.

Extension of Authority

Section 2 of H.R. 4572 would extend until December 31, 2019, the provision in the Communications Act (Section 325(b)) that exempts retransmission consent requirements for distant network signals delivered by satellite operators to unserved households. H.R. 4572 also extends for five years the prohibition for broadcasters to engage in exclusive contracts for carriage, and for broadcasters and MVPDs to fail to negotiate in good faith.

Retransmission Consent Negotiations

Sections 325(b)(1)(A) and 325 (b)(3)(A) of the Communications Act prohibit MVPDs from retransmitting a broadcast television station's signal without the station's consent and direct the FCC to establish the framework for these negotiations. Furthermore, Section 325(b)(3)(C) of the Communications Act instructs the FCC to enact regulations to ensure that broadcast television stations and MVPDs negotiate retransmission consent agreements "in good faith." Since the establishment of these regulations, as required in the 1992 Cable Television Consumer Protection and Competition Act (P.L. 102-385), the marketplace has continued to evolve, leading to a reexamination of these rules. One of the growing trends noted in the marketplace is the move on behalf of television broadcasters to negotiate retransmission consent jointly with another television broadcast station in the same market. While some see this as a disturbing trend that is ultimately harmful to consumers, others see it as beneficial.

Parties that support a rule against "joint negotiation" (typically MVPDs and consumer groups) state that they are not in the public interest as they give broadcasters unfair market power during the retransmission consent negotiations process. They claim, among other things, that they result in higher retransmission consent fees which are ultimately passed on to MVPD consumers in the form of higher rates, and increase the frequency of retransmission consent negotiation impasses which can lead to blackouts of programming for MVPD subscribers. Those that oppose barring joint negotiations (typically broadcasters) claim that, among other points, joint negotiations are in the public interest as they enhance efficiency and reduce transaction costs, resulting in lower retransmission consent rates to the ultimate benefit of MVPDs and consumers. They also question the assumption that rising MVPD rates are a major contributor to rising consumer rates and note that short of requiring a pass-through of any potential savings, there is no guarantee that any potential savings will be passed on to consumers. Furthermore, they question the legal basis for prohibiting joint negotiation, stating that among other issues, joint negotiation does not equate to collusive or anticompetitive conduct and if necessary antitrust law is better to address any such concerns.[20]

H.R. 4572 addresses the issue of joint negotiations among unrelated television broadcast stations. Section 3 prohibits a television broadcast station from negotiating a retransmission consent contract, on a joint basis, with another broadcast station in the same market unless they are considered to be directly or indirectly owned, operated, or controlled by the same entity.

[20] For a more complete summary of and attribution of viewpoints as well as a further examination of the joint negotiation issue see *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, (MB Docket No. 10-71), released March 31, 2014. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0331/FCC-14-29A1.pdf.

In a separate but related action the FCC, on March 31, 2014, adopted an order that limits joint negotiations by certain large television broadcast stations.[21] The order prohibits a television broadcast station ranked among the Top Four stations in a local market (based on audience share) from negotiating retransmission consent jointly with another Top Four station that serves the same geographic market (i.e., DMA), unless they are commonly owned.[22] This action was taken, according to the FCC, to "help curtail a practice that has put upward pressure on cable and Direct Broadcast Satellite programming costs as well as prices to consumers."[23] The FCC stated that joint negotiations among large, separately owned, same market broadcasters constitute a failure to negotiate in good faith and are therefore prohibited.[24] These joint negotiations, which will now be in violation of the FCC rules, include the following activities: one station may not delegate its authority to negotiate or approve a retransmission agreement to another station in the same market; two or more stations may not delegate such authority to a common third party; and "any informal, formal, tacit or other agreement and/or conduct that signals or is designed to facilitate collusion regarding retransmission terms or agreements.... "[25] The FCC rules have no retroactive effect, but only apply to retransmission negotiations going forward.

Delayed Application of JSA Attribution Rule in Case of Waiver Petition

Some broadcast stations enter into various forms of sharing agreements to share resources and costs associated with the management of otherwise independent stations in the same market. One such type of agreement, known as a joint sales agreement, or JSA, is established between two stations in the same market and authorizes one station to sell advertising time on the other station. Other shared service agreements, or SSAs, allow two stations in the same market to share resources such as employees and administrative services as well as assets such as a news helicopter. The use of sharing agreements and the potential impact they have on FCC broadcast ownership rules and policy goals has come under FCC scrutiny.[26]

In a March 31, 2014, decision the FCC adopted a report and order that require that JSAs, where one television broadcast station sells advertising for another, should be attributable for media ownership purposes. Under these newly adopted rules a JSA that allows for the sale of more than 15% of the weekly advertising time on a competing local broadcast television station creates an ownership interest for media ownership purposes. The FCC has granted stations two years to come into compliance with current ownership limit rules and has also permitted stations to file on a case-by-case basis for waivers.

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[21] This order also initiated a further notice of proposed rulemaking to solicit comment on whether the FCC should eliminate or modify its network non-duplication and syndicated exclusivity rules.

[22] *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, (MB Docket No. 10-71), released March 31, 2014. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0331/FCC-14-29A1.pdf.

[23] *FCC Takes Action To Improve Retransmission Consent Process*, FCC News Release, released March 31, 2014. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0331/DOC-326347A1.pdf

[24] *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent,* paragraph 9.

[25] *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent,* paragraph 27.

[26] For example, see *Processing Of Broadcast Television Applications Proposing Sharing Arrangements And Contingent Interests*, Federal Communications Commission, released March 12, 2014, available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0312/DA-14-330A1.pdf.

Section 4 of H.R. 4572 changes the unwinding deadline to provide some stability to broadcasters and is intended to encourage prompt FCC action on petition for waiver of the new rules. All broadcasters involved in such non-compliant JSAs will have until the end of 2016 or 18 months after the FCC's denial of the respective waiver applications to unwind the JSAs, whichever is later. All waiver applications for existing non-compliant JSAs must be filed within 90 days of the bill's enactment.

Meanwhile, the FCC also adopted a further notice of proposed rulemaking (FNPR) to initiate its 2014 Media Ownership Quadrennial Review and incorporate the record for the pending 2010 Quadrennial Review.[27] Included in the FNPR is a request for comment on how to define a category of sharing agreements designated as SSAs, whether commercial television stations should be required to disclose, and how to best achieve disclosure of, SSAs. Current ownership rules remain in place while the FCC review is pending.

Deletion or Repositioning of Stations During Certain Periods

Section 614(b)(9) of the Communications Act prohibits a cable system operator from deleting or repositioning a local commercial television station during a period where major television ratings services measure audience size of local television stations. This provision prevents a cable operator from deleting, or blacking out, local broadcast television programming during a disputed retransmission negotiation process if it coincides with the periods that Nielsen Media Research conducts its audience measurements. These periods, which occur four times a year (November, February, May, and July), are known as the "sweeps" rating periods.[28] The information gained from this process is used to provide a basis for local advertising rates. In general a larger audience share translates into higher advertising rates for the broadcast station. This prohibition in effect guarantees that a local commercial broadcast station will capture both its cable and over-the-air subscriber base during the sweeps period, enabling the local broadcast station to more accurately determine its audience share to the benefit of its advertising rates. Similarly, the prohibition against channel repositioning by cable operators during this time period protects viewership (audience share) by ensuring that viewers can easily locate the local commercial broadcast station on its customary channel.

Section 5 of H.R. 4572 requires the FCC, within 90 days of the bill's enactment, to remove Section 614(b)(9) of the Communications Act, which contains this prohibition. As a result there will no longer be any "safe harbor" periods where a local commercial broadcast station will be guaranteed cable system carriage during retransmission consent disputes. Cable television operators will also be free to remove, or reposition the channel lineup of a local commercial broadcast television station at any time during a retransmission consent negotiation impasse.

According to the March 10, 2014, memorandum issued by the majority staff of the House Committee on Energy and Commerce, written to accompany the Communications and

[27] Further Notice of Proposed Rulemaking and Report and Order, In the Matter of: 2014 Quadrennial Regulatory Review, MB Docket No. 14-50; 2010 Quadrennial Regulatory Review, MB docket no. 09-182; Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294; Rules and Policies Concerning Attribution of Joint Sales Agreements in Local television Markets, MB Docket No. 04-256, adopted March 31, 2014, released April 15, 2014. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0415/FCC-14-28A1.pdf.

[28] For further information about television audience measurement by Nielsen see *TV Measurement*; available at http://www.nielsen.com/us/en/nielsen-solutions/nielsen-measurement/nielsen-tv-measurement.html.

Technology Subcommittee hearing on reauthorization of STELA, Section 5 was included for the following reasons: the current prohibition permits local broadcast stations who have opted to forgo mandatory carriage in exchange for retransmission consent fees to selectively gain carriage during carriage disputes that occur during ratings periods; elimination will remove the government from this aspect of the negotiation for signal carriage; and removal provides regulatory parity since cable operators do not have the right to demand access to broadcast programming during retransmission disputes and satellite carriers are not subject to this requirement.[29]

Repeal of the Integration Ban for Set-Top Boxes

In order to watch programming provided by a satellite or cable operator, customers must connect their television to a set-top box which provides two functions: navigation (selecting channels or on-demand services) and security (decrypting the encoded signal, thereby ensuring against unauthorized use of that signal). Section 629 of the Communications Act—which was included in the Telecommunications Act of 1996—required the FCC to assure the commercial availability of set-top boxes that could be purchased in retail stores and would function with any cable system. These set-top boxes would offer consumers an alternative to leasing the set-top boxes supplied by the cable companies.

In 2003, the FCC adopted rules requiring the cable companies to make a security device known as a "CableCARD" available to consumers. CableCARDs can be inserted into any set-top box in order to decrypt the cable signal, thereby making that signal viewable by the cable subscriber. The FCC became concerned that CableCARDs would not be appropriately supported by the cable industry (and the retail set-top box market would not flourish) unless the devices were also required in the leased set-top boxes supplied by the cable operators to their customers. Therefore, in 2007, the FCC adopted further rules which banned the integration of the security and navigation functions in the set-top boxes provided by the cable companies to their customers. This required the cable companies to use CableCARDs in their own set-top boxes.

Section 6 of H.R. 4572 would repeal the FCC's integration ban, thereby removing the requirement that cable companies use CableCARDs in their own set-top boxes. The FCC would maintain its authority to impose new regulations regarding set-top box controls in the future.[30]

Supporters of repealing the integration ban—primarily the cable industry—argue that the integration ban has not led to a thriving market for third-party set-top boxes: 45 million CableCARD-enabled set-top boxes have been deployed by the cable industry, while 600,000 CableCARDs have been requested by consumers for third-party devices. According to the cable industry, CableCARD technology adds $56 to the cost of each box, resulting in a total cost to the industry of over $1 billion. The cable industry also points out that satellite and telco video providers are not required to use CableCARDs, thereby creating an uneven playing field; that if the integration ban is repealed, cable operators will still be required to supply CableCARDs for

[29] Memorandum issued March 10, 2014, by the Committee on Energy and Commerce from the Majority Committee Staff, "Legislative Hearing on Reauthorization of the Satellite Television Extension and Localism Act" available at http://docs.house.gov/meetings/IF/IF16/20140312/101835/HHRG-113-IF16-20140312-SD004.pdf.

[30] Section 6 is based on H.R. 3196, introduced in September 2013, by Rep. Latta and Rep. Green, which seeks to repeal the set-top box integration ban and prohibit the FCC from adopting any new rules that prohibit companies from using set-top boxes with integrated security functions.

third-party set-top boxes; and that the navigation device goals of the 1996 act are being achieved through smartphones, tablets, and other video devices that do not require CableCARDs.[31]

Opponents of repealing the integration ban—primarily the consumer electronics industry, TiVo, and consumer groups—argue that repealing the integration ban would result in the cable industry not providing appropriate support for CableCARDs, which in turn would destroy the commercial viability of third-party set-top boxes. According to opponents, repealing the integration ban would undermine consumer choice and innovation, and "lock consumers into accessing their cable content only from a box or app supplied by their multichannel video provider. This would be a step backwards for consumer choice in the multichannel video sector."[32]

Reporting Requirements

Sections 7, 8, and 9 of H.R. 4572 contain reporting requirements. Section 7 requires the Government Accountability Office (GAO) to conduct a study to assess the changes required to the U.S. Code of Federal Regulations and the impact on consumers if Congress implemented a phase-out of the statutory compulsory copyright requirements that govern broadcast content (i.e., Sections 111, 119, and 122 of Title 17, U.S.C.). The study is directed to include the impact that such a phase-out and subsequent changes to carriage requirements would have on consumer prices and access to programming. A report on the results of this study is to be submitted, to the appropriate congressional committees, no later than 18 months after the enactment of the bill and is required to include any recommendations for legislative or administrative actions and discuss any differences between these results and the results of a study conducted under provisions contained in STELA.

Section 8 requires satellite video providers (e.g., DIRECTV and DISH Network) to submit a report, annually, to the FCC that details which local markets it retransmits broadcast television signals from and the use and potential use of satellite capacity for the retransmission of local signals in each local market; this reporting requirement sunsets after five years.

Section 9 requires the FCC to submit a report analyzing the extent to which consumers in each local market have access to broadcast programming from stations located outside their local markets, including significantly viewed broadcast stations carried by cable and satellite providers. The report will also explore whether there are technologically and economically feasible alternatives to the use of designated market areas to define markets that would provide consumers with more programming options, and the potential impact such alternatives could have on localism and on broadcast television locally, regionally, and nationally.

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[31] Testimony of Michael K. Powell, President and CEO, National Cable & Telecommunications Association, before the Subcommittee on Communications and Technology, House Committee on Energy and Commerce, March 12, 2014, available at http://docs.house.gov/meetings/IF/IF16/20140312/101835/HHRG-113-IF16-Wstate-PowellM-20140312.pdf.

[32] Testimony of Matthew Zinn, Senior Vice President, TiVo Inc., before the Subcommittee on Communications and Technology, House Committee on Energy and Commerce, March 12, 2014, available at http://docs.house.gov/meetings/IF/IF16/20140312/101835/HHRG-113-IF16-Wstate-ZinnM-20140312.pdf.

Senate

In the Senate, jurisdiction over STELA resides with the Committee on Commerce, Science, and Transportation and the Committee on the Judiciary. In the 113th Congress, the Senate Judiciary Committee held a STELA hearing on March 26, 2014.[33] The Senate Commerce, Science, and Transportation Committee held a hearing on April 1, 2014.[34]

Orphan Counties

Under current statutes and rules, 43 states have one or more counties that are assigned to local markets for which the principal city (from which all or most of the local television signals originate) is outside their state. Satellite subscribers in these "orphan counties"[35] may not be receiving signals from in-state broadcast stations and may not be receiving news, sports, and public affairs programming of interest in their state. The current regulatory frameworks for both satellite and cable distinguish between the retransmission of local and distant signals and require that local markets be defined by the DMAs constructed and published by Nielsen Media Research.[36] DMAs do not take into account state boundaries. The viewing patterns that underlie these Nielsen markets are primarily the result of the physical locations of the various broadcast television stations and the reach of their signals. They also reflect the boundaries of the exclusive broadcast territories that each of the three original television broadcast networks—ABC, CBS, and NBC—had incorporated into their contracts with their local affiliate stations decades ago.

Many residents of orphan counties have proposed that the statutory framework be modified to remove prohibitions or impediments on satellite operators retransmitting to their subscribers in these counties the signals of broadcast stations in in-state, but non-local, markets. (SHVERA, and subsequently STELA, selectively removed these impediments through four "exceptions" that allow satellite operators to retransmit to their subscribers in particular orphan counties in New Hampshire, Vermont, Oregon, and Mississippi—but not in other locations—the signals of in-state but out-of-market broadcast stations.)[37] Broadcasters, however, have voiced concern that allowing such retransmission could undermine their financial viability by reducing their audience share and thus reducing their advertising revenues. They also assert such retransmission would weaken the local broadcasters' negotiating position with the satellite and cable operators, who could turn to

[33] "Reauthorization of the Satellite Television Extension and Localism Act," available at http://www.judiciary.senate.gov/meetings/reauthorization-of-the-satellite-television-extension-and-localism-act.

[34] "Reauthorization of the Satellite Television Extension and Localism Act," available at http://www.commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=23352a01-e1a7-47b0-9a56-27e88e76e378&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&YearDisplay=2014.

[35] For a complete state-by-state list of these counties, their populations, and the full power television stations located in the counties, see the Appendix to CRS Report R40624, *Reauthorizing the Satellite Home Viewing Provisions in the Communications Act and the Copyright Act: Issues for Congress*, by Charles B. Goldfarb.

[36] The statutory provisions for satellite explicitly require the use of Nielsen's DMAs. (17 U.S.C. §122(j)(2)(A) and (C).) The statutory provisions for cable instructed the FCC to make market determinations "using, where available, commercial publications which delineate television markets based on viewing patterns." (47 U.S.C. §534(h)(1)(C).) Nielsen had already delineated such television markets, assigning geographic areas to markets based on predominant viewing patterns in order to construct ratings data for advertisers, and the FCC therefore adopted Nielsen's market delineations.

[37] 17 U.S.C. §§122(a)(4) and 47 U.S.C. §341.

the programming of an in-state but out-of-market affiliate of a particular network if they failed to reach retransmission consent with the local affiliate of that network. Broadcasters claim this would harm their ability to provide quality local programming, which is expensive to produce.

Orphan County Legislation During STELA Consideration in the 111th Congress

During congressional consideration of STELA (P.L. 111-175) in the 111th Congress, a number of bills were introduced that directly addressed the orphan county issue (either generically or for specific states or geographic areas) by allowing satellite operators to retransmit to subscribers in orphan counties the signals of certain in-state, but non-local broadcast stations.[38] However, STELA (reflecting each of the four bills that were reported out of the House Energy and Commerce; House Judiciary; Senate Commerce, Science, and Transportation; and Senate Judiciary committees, leading to STELA) did not include any provisions that would address this issue directly. During the markup of the Senate Judiciary Committee bill, reportedly several Senators prepared amendments that would have narrowly addressed the orphan county issue in their states, but then agreed to withdraw their amendments when other Senators voiced concern that the provisions would delay passage of the legislation because of unresolved issues among broadcasters and satellite operators. At the markup, reportedly there was discussion of imposing a deadline on the industry to reach a negotiated solution, such as a proposal by Senator Coburn that, if there were no industry agreement by the time the legislation reaches the Senate floor, a trigger provision would be inserted in the bill that would impose a statutory solution for the orphan counties issue if no negotiated compromise was reached after two years. Ultimately, STELA did not include a trigger provision.

As enacted, STELA did include a provision instructing the FCC to prepare within one year a report containing analysis of (1) the number of households in each state that receive local broadcast signals from stations of license located in a different state; (2) the extent to which consumers have access to in-state broadcast programming; and (3) whether there are alternatives to the use of DMAs to define local markets that would provide more consumers with in-state broadcast programming. The FCC submitted its report to Congress on August 29, 2011.[39] The report provided data, summarized the comment of interested parties, and identified several alternatives to the use of DMAs to define local television markets, but did not provide any conclusions or recommendations.

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[38] Representative Ross introduced the Local Television Freedom Act of 2009, which would have allowed multichannel video programming distributors (MVPDs)—satellite operators and cable operators (including telephone companies)—serving an orphan county to retransmit to their subscribers in that county the signals of television broadcast stations located in an adjacent in-state market. In addition, the Four Corners Television Access Act of 2009 was introduced in both the House (by Representatives Salazar and Coffman) and the Senate (by Senators Bennet and Udall) to allow satellite operators to retransmit the signals of certain in-state broadcast stations to subscribers located in two Colorado counties that are assigned to the Albuquerque, NM, local market and to allow cable operators located in those counties to retransmit the signals of certain in-state stations without having to obtain retransmission consent from the stations. Also, Representative Boren introduced a bill which would have allowed satellite operators to retransmit to any subscriber in the state of Oklahoma—not just those in orphan counties—the signals of any broadcast station located in that state. None of those bills were enacted.

[39] In the Matter of In-State Broadcast Programming Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010, MB Docket No. 10-238, Report, adopted August 26, 2011, and released August 29, 2011. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1454A1.pdf.

Orphan County Legislation in the 113th Congress

Legislative options to address orphan counties could range from a narrowly focused provision that would permit distant network signal importation for particular unserved counties, to a national approach that would allow all orphan or unserved counties to receive out-of-market but in-state distant broadcast network signals on their satellite TV systems. Another approach could be expanding the FCC's "market modification" process to satellite operators, in which the FCC could be petitioned to add and/or subtract local communities or counties from DMAs for the purpose of redefining them as part of an adjacent in-state local market.[40]

H.R. 4572, as approved by the House Energy and Commerce Committee, contains a provision (Section 9, "Report on Designated Market Areas") that would require the FCC to submit a report to Congress analyzing the extent to which consumers in each local market have access to broadcast programming from stations located outside their local markets, including significantly viewed broadcast stations carried by cable and satellite providers. The report would also explore whether there are technologically and economically feasible alternatives to the use of designated market areas to define markets that would provide consumers with more programming options, and the potential impact such alternatives could have on localism and on broadcast television locally, regionally, and nationally.

During the May 8, 2014, House Energy and Committee markup of H.R. 4572, Section 9 was offered as an amendment by Representative Luján and Representative Gardner, and agreed to unanimously by voice vote. Previously during the March 24 subcommittee markup, Representative Luján introduced and then withdrew the amendment requiring the FCC report on designated market areas. Also during the subcommittee markup, Representative Luján offered and subsequently withdrew an amendment which would have modified FCC retransmission and carriage rules and restrictions to make it more feasible for MVPDs to deliver in-state but out-of-market network broadcast signals to adjacent underserved counties.[41]

Concluding Observations

With the possibility of approximately 1.5 million satellite TV households losing distant network signals on December 31, 2014, the 113th Congress may address the reauthorization of STELA and whether expiring provisions of the Copyright Act and the Communications Act should be extended. An issue for Congress is whether these provisions should be extended (and if so, for how long), whether other changes to STELA are necessary, and to what extent the STELA reauthorization should serve as a vehicle to address broader video policy issues such as retransmission consent and carriage rules governing the relationship between broadcasters and MVPDs. Ultimately, Congress will likely determine whether to address these broader video issues as part of the STELA reauthorization, or alternatively, as part of a comprehensive update of the Communications Act of 1934 that may be considered by the 114th Congress.

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[40] A discussion of the market modification option and DMAs is provided in the FCC's *In-State Broadcasting Programming Report,* p. 31.

[41] Available at http://docs.house.gov/meetings/IF/IF16/20140324/101989/BILLS-113-DiscussionDraft-L000570-Amdt-3.pdf.

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