SATELLITE HOME VIEWER ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
TELECOMMUNICATIONS AND FINANCE

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H.R. 2848

A BILL TO PROVIDE FOR THE INTERIM STATUTORY LICENSING OF THE SECONDARY TRANSMISSION BY SATELLITE CARRIERS OF SUPERSTATIONS FOR PRIVATE VIEWING BY EARTH STATION OWNERS

SEPTEMBER 23, 1988

Serial No. 100-226

Printed for the use of the Committee on Energy and Commerce

F/W PL 100-667

U S GOVERNMENT PRINTING OFFICE

95-150=: WASHINGTON 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U S Government Printing Office Washington DC 20402

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SATELLITE HOME VIEWER ACT

FRIDAY, SEPTEMBER 23, 1988

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE,
Washington, DC

The subcommittee met, pursuant to notice, at 10 05 a m , in room 2322, Rayburn House Office Building, Hon Edward J Markey (chairman) presiding

Mr MARKEY We will now call up witnesses for our hearing, which is on the Satellite Home Viewer Copyright Act of 1988 The witness list is Mr Boggs, vice president of publications for Warner Communications, Inc , Mr Steven Effros, president of Community Antenna Television Association, Mr Preston Padden, president of the Association of Independent Television Stations, Inc , and Mark C Ellison, vice president for government affairs and general counsel of the Satellite Broadcasting and Communications Association

Today the subcommittee will consider H R 2848, the Satellite Home Viewer Act, as reported by the Judiciary Committee, legislation referred to the Energy And Commerce Committee and the Subcommittee on Telecommunications and Finance

H R 2848 would create an interim statutory license under the Copyright Act of 1976 for the secondary transmission of superstations and television networks for private home viewing The subcommittee has had a longstanding and sincere interest in the provision of satellite delivered video programming to rural and other underserved areas of this nation

Over the past 2 years the subcommittee has held several hearings in which we have considered various legislative and policy options to effectuate universal provision of broadcast programming and to insure a competitive electronic media marketplace Increasingly it is apparent that passage of H R 2848 is necessary if we are to clarify the legal status of satellite carriers that provide broadcast television signals to so-called white areas—areas that cannot receive over the air broadcast signals

For several years various distributors have marketed the signals of superstations or network stations through principally rural areas Recently, however, an Atlanta Federal district court judge ruled that the cable compulsory copyright license does not cover satellite broadcast networks, satellite retransmission of broadcast signals to backyard dish owners

In making the ruling, the judge stated that "the clear statutory definition of cable system contained in the Copyright Act indicates that SBN is not a cable system entitled to a compulsory license to

retransmit broadcast signals free from copyright liability" Clearly, if the Congress does not enact H R 2848, the SBN decision could affect the ability of other satellite carriers to sell or deliver programming, network or independent, to home dish owners

Proponents of the legislation assert that clarification of copyright liability of satellite carriers will ensure home dish owners access to network and superstation programming Supporters of H R 2848 also note that the legislation is limited in duration, and assert that it strikes a balance between the interests of all affected parties

Immediately following this hearing the subcommittee will mark up H R 2848 I am pleased that before we begin the markup we will have the opportunity to inquire from representatives of affected industries about the effect of this legislation on consumers and on the electronic marketplace, and to discuss revisions in the legislation as referred to this committee

I want to thank the witnesses for their willingness to testify on relatively short notice and I look forward to their testimony

The time for the opening statement by the Chair has expired The Chair will now recognize the ranking minority member, the gentleman from New Jersey, Mr Rinaldo

[Testimony resumes on p 31]

[The text of H R 2848 follows]

100TH CONGRESS
2D SESSION

H. R. 2848

[Report No 100–887, Part I]

To amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners

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IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1987

Mr KASTENMEIER (for himself, Mr SYNAR, Mr BOUCHER, Mr MOORHEAD, Mr HUGHES, and Mr GARCIA) introduced the following bill, which was referred to the Committee on the Judiciary

MAY 4, 1988

Additional sponsors Mr ECKART, Mr WISE, Mr OLIN, Mr PENNY, Mr WILSON, Mr STAGGERS, Mr TAUKE, Mr PRICE of Illinois, Mr SKELTON, Mr GUNDERSON, Mr HYDE, Mr SUNDQUIST, Mr BARNARD, Mr FAUNTROY, Mr CAMPBELL, Mr SMITH of New Hampshire, Mr HAMMERSCHMIDT, and Mrs VUCANOVICH

AUGUST 18, 1988

Additional sponsors Mrs SMITH of Nebraska, Mr HATCHER, and Mr HOUGHTON

AUGUST 18, 1988

Reported with amendments and referred to the Committee on Energy and Commerce for a period ending not later than September 29, 1988, for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(h), rule X

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill see copy of bill as introduced on June 30 1987]

A BILL

To amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1 SHORT TITLE

This Act may be cited as the "Satellite Home Viewer Copyright Act of 1988"

SEC 2 AMENDMENTS TO TITLE 17, UNITED STATES CODE

Title 17, United States Code, is amended as follows

(1) Section 111 is amended—

(A) in subsection (a)—

(i) in paragraph (3) by striking "or" at the end,

(ii) by redesignating paragraph (4) as paragraph (5), and

(iii) by inserting the following after paragraph (3)

"(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119, or", and

(B) in subsection (d)(1)(A) by inserting before "Such statement" the following

"In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119"

(2) Chapter 1 of title 17, United States Code, is amended by adding at the end the following new section

"§ 119 Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

"(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS —

"(1) SUPERSTATIONS —Subject to the provisions of paragraphs (3), (4), and (6), secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving

the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing

"(2) NETWORK STATIONS —

"(A) IN GENERAL —Subject to the provisions of subparagraphs (B) and (C) and paragraphs (3), (4), (5), and (6), secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service to each subscriber receiving the secondary transmission

"(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS —The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households

"(C) NOTIFICATION TO NETWORKS —A satellite carrier that makes secondary transmissions of a primary transmission by a network sta-

tion pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Copyright Act of 1988, or 90 days after commencing such secondary transmissions, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph Such subscriber information submitted by a satellite carrier may only be used for purposes of monitoring compliance by the satellite carrier with this subsection The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Copyright Act of 1988, a document identifying the name and address of the

person to whom such submissions are to be made The Register shall maintain for public inspection a file of all such documents

"(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS —Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C)

"(4) WILLFUL ALTERATIONS —Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which

the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal

"(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS —

"(A) INDIVIDUAL VIOLATIONS —The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

"(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

"(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred

"(B) PATTERN OF VIOLATIONS —If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

"(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out, and

"(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction bar-

ring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out

"(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before July 4, 1988

"(6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier discriminates against a distributor in a manner which

violates the Communications Act of 1934 or rules issued by the Federal Communications Commission with respect to discrimination

"(7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States, or any of its territories, trust territories, or possessions

"(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

"(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

"(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that re-

ceived such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation, and

"(B) a royalty fee for that 6-month period, computed by—

"(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents,

"(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents, and

"(iii) adding together the totals from clauses (i) and (ii)

"(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United

States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title

"(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4)

"(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures

"(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among

them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf

"(B) DETERMINATION OF CONTROVERSY, DISTRIBUTIONS —After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees

"(C) WITHHOLDING OF FEES DURING CONTROVERSY —During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have

discretion to proceed to distribute any amounts that are not in controversy

"(c) DETERMINATION OF ROYALTY FEES —

"(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES —The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4)

"(2) FEE SET BY VOLUNTARY NEGOTIATION —

"(A) NOTICE OF INITIATION OF PROCEEDINGS —On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B)

"(B) NEGOTIATIONS —Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement

or voluntary agreements for the payment of royalty fees Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding The parties to each negotiation proceeding shall bear the entire cost thereof

"(C) AGREEMENTS BINDING ON PARTIES, FILING OF AGREEMENTS —Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto Copies of such agreements shall be filed with the Copyright Office within thirty days after execution in accordance with regulations that the Register of Copyrights shall prescribe

"(D) PERIOD AGREEMENT IS IN EFFECT —The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effec-

tive on the date specified in the agreement, and shall remain in effect until December 31, 1994

"(3) FEE SET BY COMPULSORY ARBITRATION —

"(A) NOTICE OF INITIATION OF PROCEEDINGS —On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2) Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select

"(B) SELECTION OF ARBITRATION PANEL —Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by

copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement The two arbitrators so selected shall, within ten days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators If either group fails to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fails to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively The arbitrators selected under this paragraph shall constitute an Arbitration Panel

"(C) ARBITRATION PROCEEDING —The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt The Panel shall act on the basis of a fully documented written record Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and

any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct

"(D) FACTORS FOR DETERMINING ROYALTY FEES —In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing The fee shall also be calculated to achieve the following objectives

"(i) To maximize the availability of creative works to the public

"(ii) To afford the copyright owner a fair return for his or her creative work and

the copyright user a fair income under existing economic conditions

"(ii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication

"(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices

"(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

"(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D). If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying

"(G) PERIOD DURING WHICH DECISION OF PANEL OR ORDER OF TRIBUNAL EFFECTIVE —The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994

"(H) PERSONS SUBJECT TO ROYALTY FEE —The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2)

"(4) JUDICIAL REVIEW —Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit,

within thirty days after the publication of the decision in the Federal Register The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3)

"(d) DEFINITIONS —As used in this section—

"(1) DISTRIBUTOR —The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other pro-

gramming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities

"(2) NETWORK STATION.—The term 'network station' has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station

"(3) PRIMARY NETWORK STATION.—The term 'primary network station' means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network

"(4) PRIMARY TRANSMISSION.—The term 'primary transmission' has the meaning given that term in section 111(f) of this title

"(5) PRIVATE HOME VIEWING.—The term 'private home viewing' means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission

"(6) SATELLITE CARRIER.—The term 'satellite carrier' means an entity that uses the facilities of a domestic satellite service licensed by the Federal Communications Commission to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing

"(7) SECONDARY TRANSMISSION.—The term 'secondary transmission' has the meaning given that term in section 111(f) of this title

"(8) SUBSCRIBER.—The term 'subscriber' means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor

"(9) SUPERSTATION.—The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier

"(10) UNSERVED HOUSEHOLD.—The term 'unserved household', with respect to a particular television network, means a household that—

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

"(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network

"(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmis-

sion made by a superstation or a network station may be made without obtaining the consent of the copyright owner "

(3) Section 501 of title 17, United States Code, is amended by adding at the end the following

"(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station "

(4) Section 801(b)(3) of title 17, United States Code, is amended by striking "and 116" and inserting ", 116, and 119(b)"

(5) Section 804(d) of title 17, United States Code, is amended by striking "sections 111 or 116" and inserting "section 111, 116, or 119"

(6) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following new item

"119 Limitations on exclusive rights Secondary transmissions of superstations and network stations for private home viewing "

SEC 3 SYNDICATED EXCLUSIVITY

The Federal Communications Commission shall, within 120 days after the effective date of this Act, initiate a combined inquiry and rulemaking proceeding for the purpose of—

(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming, as defined by the Commission, for private viewing similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television, and

(2) adopting such rules if the Commission considers the imposition of such rules to be feasible

SEC 4 REPORT ON DISCRIMINATION

The Federal Communications Commission shall, within 1 year after the effective date of this Act, prepare and submit to the Congress a report on whether, and the extent to which, there exists discrimination referred to in section 119(a)(6) of title 17, United States Code, as added by section 2 of this Act

SEC 5 EFFECTIVE DATE

This Act and the amendments made by this Act take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by

section 2 of this Act, takes effect on the date of the enactment of this Act

SEC 6 TERMINATION

This Act and the amendments made by this Act cease to be effective on December 31, 1994

Amend the title so as to read "A bill to amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations and network stations for private home viewing"

O

Mr RINALDO Once again, in the interest of time, I won't read the full statement, but request unanimous consent to insert it in the record and make a few comments at this point

Mr MARKEY Fine

Mr RINALDO Obviously in the late seventies many rural residents did not have access to broadcast TV stations or cable systems, so they began to take advantage of the programming available on satellite

Preserving the ability of home dish owners to view broadcast and cable programming while insuring that programmers receive compensation for it, is probably one of the biggest communications problems faced by Congress in the past decade I think everyone on this subcommittee knows the problems that home dish owners have experienced in gaining access to broadcast and cable programming

We considered the issues in the 1984 Cable Act and in a variety of bills to expand the marketing of cable channels to home dish owners We have labored long and hard to balance the interests of programmers and viewers with one goal in mind—to expand the array of information and entertainment programs available to all Americans

In the bill before us, the Judiciary Committee actually tackled the complex problem of determining how broadcast TV signals could be distributed to home dish owners The issue boils down to how copyright holders could be compensated for the use of broadcast programming and if cable's compulsory licenses could be used

In the past the answer was unclear, but last month a Federal court ruled that the cable compulsory license could not be used to distribute broadcast television stations to dish owners, and hence this bill

I would like to mention that some members of this committee who also serve on the Judiciary Committee, were instrumental in developing H R 2848 and I want to particularly congratulate my good friend, the gentleman from California, Mr Moorhead, who is an original cosponsor of the bill, as well as the ranking minority member of the Judiciary Committee with jurisdiction He was essential in guiding the bill to this point I know that he and the other gentleman who served on both committees, will be valuable resources to the subcommittee today as we listen to our expert testimony

I want to thank you again, Mr Chairman, and yield back the balance of my time

Mr MOORHEAD Would the gentleman yield?

Mr RINALDO Be pleased to yield

Mr MOORHEAD I want to specifically thank Mike Synar and Rick Boucher for the work they have done on this legislation, because they have worked so hard on it in developing it, and on the subcommittee They deserve a great deal of credit for the legislation coming this far

The subcommittee began this debate on this legislation the last Congress in an attempt to correct the problem that the common carriers and dish owners were having with scrambled signals

Mr MARKEY The gentleman's time has expired

Does the gentleman from California want to be recognized?

Mr MOORHEAD Yes I thought I would save a little time by going forward

The Copyright Act of 1976 did not address the status for common carrier but the court later ruled that since they did nothing more than transmit a signal, they were passive, and did not have to pay a copyright fee However, if a common carrier was to retain this copyright compensation, it would not be able to scramble or unscramble signals nor negotiate package deals with dish owners H R 2848 changes all of this and solves a very real problem for 2 million dish owners

The legislation has a broad base of support I don't believe the amendments that are being considered for today would diminish the support and I urge the committee to pass the legislation out

Mr RICHARDSON Mr Chairman

Mr MARKEY The gentleman's time has expired

The Chair recognized the gentleman from New Mexico, Mr Richardson, for an opening statement

Mr RICHARDSON Thank you, Mr Chairman

I may not be able to stay for the entire hearing This legislation, on the face of it, seems like a good piece of legislation However, it has sparked a number of constituent inquiries and requests, and while I will support the bill today, I hope that as we more to full committee—and I know we are acting in haste—that the chairman will consult with me in terms of any changes in this bill

I just want to alert the chairman of my interest, which has been sparked by quite a few phone calls

Mr MARKEY As usual, the gentleman's rights will be fully protected at the full committee level, and we will be consulting with him along the way to the extent to which he wishes to suggest further modifications

The gentleman's time has expired

Any other member seeking recognition at this time?

The Chair would like to echo the sentiments of both the gentleman from New Jersey and the gentleman from California in praising the gentleman from Virginia, Mr Boucher, and the gentleman from Oklahoma, Mr Synar, for their leadership in bringing this bill through the process and bring it to this point, which could well signal the likelihood that it does become a law

Also to the gentleman from California, Mr Moorhead, for his work on it, and to also note the work on our committee of Mr Tauzin, who has worked long and hard to bring this bill along a parallel track in our committee And to note also the work of Mr Swift in helping to shape a consensus which brings us to this point

[The analysis of H R 2848 follows]

SECTIONAL ANALYSIS OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H R 2848

H R 2848 amends the Copyright Act of 1976, Title 17, United States code, as follows

Section 1 Short Title

The short title of the proposed legislation is the "Satellite Home Viewer Copyright Act of 1988"

Section 2. Amendments To Title 17, United States Code

Section 2 of the proposed legislation contains amendments to the Copyright Act of 1976 a new section 119 is added to the Act, creating an interim statutory license for the secondary transmission by satellite carriers of superstations and network stations for private home viewing, only necessary technical and cross-referencing amendments are made to section 111 of the Act, regarding the cable television compulsory license

Amendments to section 111(a) Cross-references to the cable television compulsory license

The bill amends section 111(a) by inserting a new clause (4) to clarify that, notwithstanding the carrier exemption to the cable compulsory licensing provisions in section 111(a)(3), a satellite carrier that retransmits superstations and network stations for private home viewing by earth station owners is exempted from copyright liability for such retransmission only if it secures a statutory license under section 119 Section 111(a)(3) remains in effect to exempt from copyright liability passive common-carriers that retransmit broadcast signals to cable systems

Amendment to section 111(d)(2)(A) Relationship between the cable compulsory license and the statutory license for satellite carriers

The bill amends section 111(d)(2)(A) to clarify the obligations of both the satellite carrier and the cable system in instances in which a cable system engages in such distributorship activities on behalf of a satellite carrier In such cases, the satellite carrier has the responsibility for filing statements of account and paying royalties for publicly performing copyrighted programming under the new section 119 statutory license Under this scheme, a cable system/distributor would segregate the subscription fees collected on behalf of the satellite carrier from those collected from cable subscribers pursuant to the section 111 cable compulsory license The cable system would only report in its section 111 statements of account the number of cable subscribers served and the amount of gross receipts collected pursuant to section 111, and would pay royalties

pursuant to section 111

New section 119 The interim statutory license for satellite carriers Section 119(a)) The scope of the license

Sections 119(a)(1) and (2) establish a statutory license for satellite carriers generally A license is available where a secondary transmission of the signal of a superstation or a network station is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct charge for such retransmission service from each subscriber receiving the secondary transmission, or from a distributor (such as a cable system) that has contracted with the carrier to deliver the retransmission directly or indirectly to the viewing public

The bill contains special provisions in sections 119(a) (2) and (5) relating to network stations in recognition of the fact that a small percentage of television households cannot now receive clear signals embodying the programming of the three national television networks The bill confines the license to the so-called "white areas," that is, households not capable of receiving a particular network by conventional rooftop antennas, and which have not subscribed, within 90 days before the date on which they subscribe to the satellite carrier's service, to a cable system that provides the signal of a primary network station affiliated with that network The satellite carrier must notify the network of the retransmission by submitting to the network a list indentifying the names and addresses of all subscribers to that service In addition, on the 15th of identifying the names and addresses of the subscribers added or dropped since the last report These notifications are only required if the network has filed information with the Copyright Office concerning the name and address of the person who shall receive the notification Special penalties are provided for violations by service outside the "white areas " Willful or repeated individual violations of the "white area" restrictions are subject to ordinary remedies for copyright infringement, except that no damages may be awarded if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscribers, and statutory damages are limited to a maximum of $5 00 per month for each subscriber

If the satellite carrier engages in a willful or repeated pattern, or practice of violations, the court shall issue a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmission of any network station affiliated with the same network The injunction would be applicable within the geographical area within which the violation took place--whether local, regional, or national If the satellite carrier engages in a pattern of violations, the statutory damages maximum is $250,000 for each six month period, but only with regard to persons who subscribed on or after June 7, 1988

By amendment of section 501 of title 17, United States Code, a network station holding a license to perform a particular version of a work is treated as a legal or beneficial owner of the work if the secondary transmission by satellite carrier occurs within the local service area of the station, for purposes of infringement under section 119(a)(5)

Noncompliance with Reporting and Payment Requirements-Section 119(a)(3) provides that a satellite carrier is also subject to full copyright liability if the carrier does not deposit the statement of account or pay the royalty required by Subsection (b)

Discrimination by a satellite carrier --Section 119(a)(6) provides a right of action for copyright holders for a satellite carrier's "willful or repeated" retransmission of the signals of superstations and network stations to the public for private home viewing (under sections 502 through 506 and section 509 of the Copyright Act) if the satellite discriminates against any distributor

Geographic limitation --Section 119(a)(7) provides that the statutory license created in section 119 applies only to secondary transmissions to households located in the United States, or any of its territories, trust possessions, or possessions This section parallels section 111(f) or title 17, United States Code, which applies to cable television

Section 119(b)--Operation of the statutory license for satellite carriers

Requirements for a license --The statutory license provided for in section 119(a) is contingent upon fulfillment of the administrative requirements set forth in section 119(b)(1) That provision directs satellite carriers whose retransmissions are subject to licensing under section 119(a) to deposit with the Register of Copyrights a semi-annual statement of account and royalty fee payment The dates for filing such statements of account and royalty fee payments and the six-month period which they are to cover are to be determined by the Register of Copyrights

The statutory royalty fees set forth in section 119(b)(1)(B) are twelve cents per subscriber per superstation signal retransmitted and three cents for each subscriber for each network station retransmitted These fees approximate the same royalty fees paid by cable households for receipt of similar copyrighted signals These statutory fees apply only in the limited circumstances described in section 119(c)

Collection and distribution of royalty fees --Section 119(b)(2) provides that royalty fees paid by satellite carriers under the statutory license shall be received by the Register of Copyrights and, after the Register deducts the reasonable cost

incurred by the Copyright Office in administering the license, deposited in the Treasury of the United States The fees are distributed subsequently, pursuant to the determination of the Copyright Royalty Tribunal under chapter 8 of the Copyright Act of 1976

Persons to whom fees are distributed --The copyright owners entitled to participate in the distribution of the royalty fees paid by satellite carriers under the license are specified in section 119(b)(3)

Procedures for distribution --Section 119(b)(4) sets forth the procedure for the distribution of the royalty fees paid by satellite carriers, which parallels the distribution procedure under the section 111 cable compulsory license During the month of July of each year, every person claiming to be entitled to license fees must file a claim with the Copyright Royal Tribunal, in accordance with such provisions as the Tribunal shall establish The claimants may agree among themselves as to the division and distribution of such fees

After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether a controversy exists concerning the distribution of royalty fees If no controversy exists, the Tribune--after deducting reasonable administrative costs--shall distribute the fees to the copyright owners entitled or their agents If the Tribunal finds the existence of a controversy, it shall, pursuant to the provisions of chapter 8, conduct a proceeding to determine the distribution of royalty fees

The bill does not include specific provisions to guide the Copyright Royalty Tribunal in determining the appropriate division among competing copyright owners of the royalty fees collected from satellite carriers under section 119

Section 119(c)--Alternative methods for determining royalty fees applicable during two phases of the statutory license for satellite carriers

The bill establishes a four-year phase and a two-year phase for the statutory license for satellite carriers, in each phase the royalty fee is determined in a different manner In the first (four year) phase, pursuant to section 119(c)(1), the statutory fees established in section 119(b)(1)(B) (twelve cents per subscriber per superstation signal retransmitted and three cents per subscriber per network signal retransmitted) shall apply The first phase shall be in effect from January 1, 1989, until December 31, 1992 In the second phase, the fee shall be set by the voluntary negotiation or compulsory arbitration procedures established in sections 119(c)(2) and 119(c)(3)

Section 119(c)(2) requires the Copyright Royalty Tribunal to initiate voluntary negotiation proceedings between satellite

carriers, distributors, and copyright owners, eighteen months before the bill's first phase runs out, to encourage the parties to negotiate a fee for the second phase before the statutory fee expires The parties may designate common agents to negotiate, agree to, or pay the relevant fees, if the parties fail to do so, the copyright Royalty Tribunal shall do so, after requesting recommendations from the parties The negotiation proceeding costs must be paid by the parties If the parties reach a voluntary agreement, copies of the agreement must be filed in a timely manner with the Copyright Office, and the negotiated fee will remain in effect from the date specified in the agreement until December 31, 1994

If some or all of the parties have not voluntarily negotiated a fee for the second phase by December 31, 1991, twelve months before the expiration of the first phase, section 119(c)(3 provides that the Copyright Royalty Tribunal shall initiate a compulsory arbitration proceeding for the purpose of determining a reasonable royalty fee to be paid under section 119 for the second phase The Tribunal shall publish notice of the initiation of the proceeding as well as a list of potential arbitrators Within ten days of the publication of this notice, one arbitrator must be chosen by the copyright owners and one by the satellite carriers and their distributors The two arbitrators must choose a third arbitrator from the same list within ten days

The three arbitrators shall have sixty days from the publication of the initial notice to conduct an arbitration proceeding and to determine a royalty fee, using guidelines specified in the bill All costs involved in this proceeding must be paid for by the parties The Arbitration Panel shall submit its determination in the form of a report, along with the written record, to the Copyright Royalty Tribunal The Tribunal shall have sixty days to review the report and either accept or reject the Panel's determination and publish the action in the Federal Register If the Tribunal rejects the determination, the Tribunal shall, within the same sixty day period, issue an order setting the royalty fee Thus, within 120 days of the publication of the initial notice, a new royalty fee shall be determined through a compulsory arbitration procedure, to be effective from January 1, 1993, until December 31, 1994, or until modified by the United States Court of Appeals for the District of Columbia Circuit pursuant to section 199(c)(4) The fee shall apply to all copyright owners, satellite carriers, and distributors not party to a voluntary agreement

Section 119(c)(3)(D) provides guidelines by which the Arbitration Panel shall determine royalty fees In particular, the Panel must consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station

Section 119(c)(4) provides that the rate adopted or determined by the Copyright Royalty Tribunal pursuant to the

compulsory arbitration proceeding may be appealed to the District of Columbia Circuit Court of Appeals within thirty days of publication However, while appeal of the rate is pending, satellite carriers would still be required to deposit statements of account and royalties and to pay royalty fees calculated under the rate that is at issue on appeal The bill gives the court jurisdiction to enter its own determination with respect to the royalty rate, to order the repayment of any excess fees deposited under section 119(b)(1)(B), and to order the payment of any underpaid fees with interest, in accordance with its final judgement The court may also vacate the Tribunal's decision and remand the case for further arbitration proceedings

Section 119(d)--Definitions

A "distributor" is defined as any entity which contracts with a carrier to distribute secondary transmissions received from the carrier either as a single channel, or in a package with other programming, to individual subscribers for a private home viewing, either directly or indirectly through other program distribution entities

The terms "primary transmission" and "secondary transmission" are defined so as to have the same meaning under section 119 as they have under section 111

The term "private viewing" is defined as viewing, for private use in an individual's household by means of equipment which is operated by such individual and which serves only such individual's household, of a secondary transmission delivered by satellite of a primary transmission of a television broadcast station licensed by the FCC

A "satellite carrier" is broadly defined as an entity that uses the facilities of a domestic satellite service licensed by the FCC and the owns or leases a capacity or service on a satellite in order to provide the point-to-multipoint relay of television station signals to numerous receive-only earth stations, except to the extent the entity provides such distribution to pursuant tariff that is not restricted to private home viewing

The term "network station" has the same meaning as that term in section 111(f) and includes a translator station or terrestrial satellite station that rebroadcasts the network station

A "primary network station" is a network station that broadcasts the basic programming service of one particular national network

The term "subscriber" is defined as an individual who receives a secondary transmission service for private home viewing by means of a satellite transmission under section 119, and pays a fee for the service, directly or indirectly, to the satellite

carrier or to a distributor

A "superstation" is defined as a television broadcast station, other than a network station, that is licensed by the Federal Communications Commission and that was retransmitted by a satellite carrier

The term "unserved household" means a household that with respect to a particular television network, (A) cannot receive, through use of a conventional outdoor antenna, a signal of Grade B intensity (as defined by the FCC, currently in 47 C F R section 73 683(a)) of a primary network station affiliated with that network, and (B) has not, within 90 days before the date or which the household subscribes (initially or non renewal) to receive by satellite a network station affiliated with that network subscribed to a cable system that provides the signal of a primary network station affiliated with that network

Because the household must be able to receive the signal of a "primary" network station to fall outside the definition of unserved household, it would not be sufficient if a household is able to receive only the signal of a secondary network station that is, a station affiliated with two or more networks that does not broadcast or rebroadcast the basic programming service of any single national network

Section 119(e)--Exclusivity of the statutory license

The bill explicitly provides that neither the cable compulsory license, nor the exemptions of section 111 (such as the passive carrier exemption) can be construed during the six-year statutory license period to apply to secondary transmissions by satellite carrier for private home viewing of programming contained in a superstation or network station transmission Unless the statutory license of section 119 is obtained, during the six-year interim period the secondary transmission by satellite carrier for private home viewing can take place only with consent of the copyright owner

SECTION 3 SYNDICATED EXCLUSIVITY, REPORT ON DISCRIMINATION

Section 712(1) Syndicated Exclusivity

The bill directs the Federal Communications Commission (FCC), within 120 days after the date of enactment, to undertake a combined inquiry and rulemaking proceeding regarding the feasibility of imposing syndicated exclusivity rules for private home viewing

Section 712(2)

In the event the Commission adopts rules imposing syndicated exclusivity for private home viewing, the bill provides that violations of such rules shall be subject to the remedies,

sanctions and penalties under Title V and Section 705 of the Communications Act

Section 713 Discrimination

The bill directs the FCC to, within a year of the enactment of this Act, prepare and submit a report to the Senate Committee on Commerce, Science and Transportation and the House Committee on Energy and Commerce on the extent to which there exists discrimination against distributors of secondary transmissions from satellite carriers

SECTION 4 INQUIRY ON ENCRYPTION STANDARD

Under the bill the FCC would be required to initiate an inquiry concerning the need for a universal encryption standard which permits decryption by a home satellite antenna user In conducting the inquiry the Commission would be required to take into account consumer costs and benefits, the incorporation of technological enhancements, including advanced television formats, the effectiveness of such standard in preventing present and future unauthorized decryption of satellite programming, the costs and benefits of such standard on other authorized users of encrypted satellite cable programming, including cable and SMATV systems, the impact of time delay necessary for the establishment of such standard by the Commission, and the effect of such standard on competition in the manufacture of decryption equipment

The bill also prohibits the manufacture, assembly, possession or sale of any device which is used primarily to surreptitiously intercept encrypted satellite cable programming Any person aggrieved by such a violation may bring a civil action for a temporary or final injunction to restrain such practice The bill also substantially would increase penalties for violations of Section 705 of the Communications Act

Mr MARKEY Now we will turn to our panel We will turn to you, Mr Ellison, vice president of government affairs and general counsel for the Satellite Broadcasting and Communications Association Welcome

STATEMENT OF MARK C ELLISON, VICE PRESIDENT, SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION, PRESTON R PADDEN, PRESIDENT, ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC, STEVEN EFFROS, PRESIDENT, COMMUNITY ANTENNA TELEVISION ASSOCIATION, AND TIMOTHY A BOGGS, VICE PRESIDENT, WARNER COMMUNICATIONS, INC

Mr ELLISON I can tell from your opening statement you read my testimony, and I appreciate that I will add what I can

I am pleased to once again have the opportunity to testify on behalf of the SBCA in support of H R 2848 This enjoys broad support from virtually every element of the communications industry, is vital to our industry, and for reasons which I will discuss today, is a matter of great urgency

Today there are more than 2 million households served by satellite television systems Nearly 500,000 of those subscribe to network and/or superstations Each month that number grows by approximately 10,000 to 15,000 In the majority of these cases, these consumers reside in rural areas and are dependent upon their satellite systems for the delivery of this programming

As you have discussed, a court in Atlanta in August made a decision the delivery of network signals, the retransmission of network signals is not covered by the compulsory license and this has caused a great deal of concern in our industry All of the networks have announced plans to scramble their network fees and backhauls, using scrambling technology which is compatible with that in use by home satellite viewers

For many of the 2 million households with satellite antennas, the only way that they can receive network programming is through those antennas The decision of the Atlanta court, combined with the scrambling of the network feeds, clearly threatens the ability of these homeowners to continue receiving the signals The Atlanta decision does not directly impact the satellite delivery of independent superstations

However, similar legal issues have been raised with respect to such delivery, and while no independent or network superstations have gone off the air to date as a result of the Atlanta case, the threat of lost access to superstations is very real If nothing else, the Atlanta decision has had the immediacy of inhibiting the inclusion of superstations and programming packages for the consumer

Program packagers are concerned about their copyright liability and they have contacted the SBCA and said they are reluctant to include superstations in their packages So passage of this bill would allay the concerns of these packagers and prompt the formation of even more comprehensive consumer packages

Our industry is just beginning to stage a comeback The uncertainty about the availability of network and independent programming will, unless resolved by this Congress, have a severe impact

on that recovery H R 2848, if it became law, would lift a great cloud

This is a fair and equitable bill It has gone through a long evolutionary process and, through reasonable compromise the copyright owners, the networks and independent broadcasters are reasonably protected from excessive intrusion by this license, while consumers are assured network and independent programming will remain available

I would like to echo what has already been said here in thanking Mr Moorhead, Mr Synar and particularly Mr Boucher, for his efforts in formulating provisions which satisfied the concern of the networks and their affiliates

I would also like to state that we strongly support the amendment, which I believe will be offered by Mr Tauzin, including increased penalties for signal theft As you all know, this is a very severe problem in our industry and we greatly appreciate those new provisions

A compulsory copyright license for home satellite viewers has been before two sessions of Congress It is time to assure that those Americans who rely on their dishes for entertainment, news and educational programming, that they will not be deprived of that programming It is time to pass the Satellite Home Viewer Copyright Act

Thank you

[The prepared statement and attachment of Mr Ellison follow]

PREPARED TESTIMONY OF MARK C ELLISON

Mr. Chairman and Members of the Subcommittee, my name is Mark C. Ellison and I am the Vice President of Government Affairs and General Counsel for the Satellite Broadcasting and Communications Association (SBCA) I am very pleased to once again have the opportunity to testify before this Congress in support of H.R 2848, the Satellite Home Viewer Copyright Act of 1988 This bill, which enjoys very broad support from virtually every element of the communications industry, is vital to our industry and, for reasons which I will discuss today, is a matter of great urgency

In November of last year, I appeared on behalf of the SBCA before the Subcommittee on Courts, Civil Liberties and the Administration of Justice At that time, I advised of the importance of this legislation to our industry and of our support for the bill

Today, there are more than 2,000,000 American households with satellite television systems Nearly 500,000 of those households subscribe to satellite delivered network or independent superstations or both. Each month, the number of satellite superstation subscribers grows by approximately 10,000 to 15,000 In the majority of cases, these consumers reside in rural areas and are dependent upon their satellite systems for the delivery of programming (Attached to this testimony is a state-by-state breakdown of home satellite system owners and subscribers to superstations.)

In August of this year, in a suit brought by NBC and its affiliates against the Satellite Broadcast Network (SBN), Judge Robert H Hall of the United States District Court in Atlanta, Georgia, ruled that the delivery of distant network affiliate signals directly to home satellite viewers is not covered by the existing compulsory license and, therefore, such retransmission constitutes copyright infringement. This decision, along with the fact that the networks have either commenced or announced plans to commence the encryption of their satellite feeds (using scrambling technology which is incompatible with the system used by home viewers) clearly threatens the ability of home satellite viewers to receive network programming via satellite In many cases, satellite delivery is the only way these households can receive that programming.

Although the Atlanta decision does not directly impact the satellite delivery of independent superstations, it accentuates the legal issues which may exist with respect to such delivery. As a result of that decision and the persistence of questions pertaining to the independent superstations, passage of the bill now before this Subcommittee has become a matter of great urgency.

While, to date, no independent or network superstations have gone off the air as a result of the NBC vs SBN decision, the threat of losing access to superstations is a matter of

extreme concern for our industry and our customers If nothing else, the Atlanta decision has had the immediate effect of inhibiting the formation of programming packages which would include those superstations Program packagers, concerned about copyright liability, are reluctant to include the superstations in their offerings to consumers. Further, the decision adds to the confusion and uncertainty in our market and will, if unresolved by this Congress, have a negative impact on the recovery of the home satellite industry

Clearly, the home satellite viewer who relies upon his or her satellite system for the reception of superstations is in jeopardy By becoming law, H R 2848 would lift the cloud hanging over the satellite television industry and those consumers.

H.R 2848 is a fair and equitable bill. It has gone through a long and difficult evolutionary process and, as a result, it carefully balances the needs of consumers and the concerns of copyright holders. Through reasonable compromise, the copyright owners, the networks, and the independent broadcasters are protected from excessive intrusion by the license, and consumers are assured that network and independent superstations will remain available on satellite

Virtually everyone affected by this bill has given a little and taken a little While the satellite television industry would have liked a compulsory license with rates identical to cable's and with an unlimited duration, we recognized that to advocate such legislation would only assure that no legislation was enacted I would warn Congress, however, that certain elements within our industry, representing a small but vocal minority, have been unwilling to join in the spirit of compromise; they have failed to appreciate the fact that guaranteed access to the sixteen existing superstations is of primary importance and that without compromise, this bill would not exist.

We have agreed to a six-year license, as we believe that that time is sufficient to allow our industry to grow and become strong enough to bargain for programming without need of a compulsory license We have agreed that network affiliates are entitled to reasonable protection from the importation of duplicating distant signals into their broadcast areas. And, under the auspices of Congressman Boucher, the networks and the satellite carriers of network signals have developed and included in this bill a workable system to protect the local affiliates Likewise, we have recognized the concerns of independent broadcasters about distant signal importation and, with the cooperation of those independent broadcasters, have devised language in the bill which calls upon the Federal Communications Commission to study the feasibility of

syndicated exclusivity in the home satellite market We have agreed to a rate structure which is fair and equitable for all concerned I would also note that so long as all of the existing superstations are covered by the bill, we are not particularly concerned about whether or not a grandfather clause or cap on superstations is included

A compulsory copyright license for home satellite viewers has now been before two sessions of Congress It is time to assure that those Americans who rely upon their "dishes" for entertainment, news, and educational programming will not be deprived of that programming. It is time to pass the Satellite Home Viewer Copyright Act

Thank you.

STATE	TOTAL HOUSEHOLDS WITH SATELLITE RECEIVE SYSTEMS AS OF JANUARY 1, 1988	TOTAL SATELLITE NETWORK AND INDEPENDENT SUBSCRIPTIONS
AK	4,000	1,663
AL	57,500	9,093
AR	42,500	4,297
AZ	34,000	8,180
CA	130,000	32,485
CO	35,000	8,377
CT	6,500	1,427
DC	500	210
DE	4,000	1,388
FL	84,000	20,147
GA	77,500	13,225
HI	2,000	297
IA	31,000	8,164
ID	15,000	3,257
IL	68,000	12,198
IN	60,000	11,364
KS	44,500	7,196
KY	66,000	7,790
LA	59,000	7,144
MA	9,000	2,118
MD	16,500	4,258
ME	9,000	2,700
MI	80,000	16,372
MN	31,500	7,136
MO	60,000	10,238
MS	50,500	6,683
MT	19,000	4,535
NC	76,000	17,728
ND	10,500	2,754
NE	21,500	7,309
NH	21,500	2,879
NJ	16,000	2,665
NM	20,500	3,790
NV	13,500	4,330
NY	89,000	21,688
OH	101,000	12,284
OK	46,500	5,869
OR	26,000	7,287
PA	51,000	12,725
RI	19,000	527
SC	27,500	9,863
SD	9,000	1,708
TN	79,000	12,599
TX	186,500	24,988
UT	16,000	10,619
VA	51,000	13,253
VT	9,000	3,857
WA	29,000	6,944
WI	45,000	11,188
WV	44,000	5,889
WY	13,500	2,947

Mr MARKEY Thank you

Our next witness, Mr Preston Padden, is the president of the Association of Independent Television Stations

Mr PADDEN Thank you, Mr Chairman

STATEMENT OF PRESTON R PADDEN

Mr PADDEN H R 2848 grants so-called satellite carriers a governmentally conferred copyright license to pluck television programs out of the air in one market, scramble them and sell them to consumers in other markets The carriers are not required to seek the consent of the originating television stations, the owners of the programs or any other party

As originally introduced, the bill contained no provision to enable local broadcasters, who purchase exclusive exhibition rights to particular programs, to enforce those rights against invading satellite exhibitions Accordingly, INTV vigorously opposed this legislation at a hearing on January 27, 1988

As a result of extended discussions between the affected industries, the sponsors of H R 2848 and other Members of Congress, the bill was amended to include both a so-called "white area" provision for network programs and a syndicated exclusivity provision These provisions hold out the prospect that exclusive program rights purchased by local broadcast stations will be honored and respected by our copyright laws and will not be destroyed by this new government license Because of the inclusion of the syndicated exclusivity provision, our association is able to withdraw its earlier opposition to this legislation

I would like to take this opportunity to make three brief points regarding the evolution of policy in this area

First, program exclusivity is crucial to the future viability and competitiveness of local broadcast stations In the future our stations will face increasing competition from a variety of technologies, including cable and direct broadcast satellites

I have brought with me today an example of the new generation of flat panel satellite antennas that are likely to dramatically increase the market penetration of the broadcasting satellite service that is the subject of this bill

This flat panel is on the floor right in front of the witness table It is about a year old and I am told actually the current generation of dishes in use and on sale in Japan are approximately half this size, but I think everybody can see that the deployment of dishes of this size could dramatically improve the penetration and use of this technology

The ability to contract for exclusive program rights is the only competitive tool that will be available to our stations in the future Cable and satellite program services can and do secure and promote exclusive program rights

If our copyright laws and communication policies preclude local broadcasters from likewise distinguishing our service by securing exclusive program rights, then our stations will not likely survive the competitive challenges that lie ahead That is why it is absolutely crucial to retain the syndicated exclusivity provision in H R 2848

The second point I want to emphasize is that the continuing selective conferral of compulsory copyright licensing privileges appears to be in conflict with communications policy objectives Broadcasters render a free service to the American people By contract, cable operators, satellite carriers and other new technologies seek to charge American consumers for video services

To create compulsory licensing privileges for media that charge American consumers, while denying the same privileges to broadcasters who seek to provide a free service, stands public policy and common sense on their heads and sets the incentives exactly backward

One way to improve this bill would be to extend compulsory sensing to independent stations to carry presidential debates without having to pay excess network fees

Finally, it is important to note the three major commercial networks, ABC, CBS and NBC, sought and received special treatment under this legislation Instead of standing on the broad common ground that all local broadcast stations should have their program contracts honored and respected by our copyright laws, the networks chose to secure a "white area" provision premised on the "special" role that the networks play in our communications industry As a result, network affiliate stations enjoy a special preferred status under this bill as compared to independent stations

We would urge the members of this committee to keep in mind the networks' continuing pursuit of special privileges as they simultaneously pursue the elimination of special restrictions such as the financial interest and syndication rules

In sum, Mr Chairman, we have substantial concerns regarding the evolution of policy in this area, but we can live with H R 2848 so long as the syndicated exclusivity provision remains intact

Thank you

[Testimony resumes on p 67]

[The prepared statement and attachments of Mr Padden follow]

PREPARED TESTIMONY OF PRESTON R PADDEN

Thank you Mr Chairman My name is Preston Padden and I am President of the Association of Independent Television Stations, Inc , commonly known as INTV We appreciate this opportunity to present our views on H R 2848

INTV represents more than 170 Independent television stations across the country My testimony today proceeds from the perspective of local television stations Some of the stations whose signals are distributed nationwide by so-called "satellite carriers" may have a different perspective on certain aspects of the issues we discuss today

Mr Chairman, we have the greatest respect for you and for the co-sponsors of H R 2848 However, INTV respectfully must oppose this bill, in its current form, for four separate reasons First, since broadcasters must purchase all of their programming in the open marketplace, it is fundamentally unfair for the government to confer statutory licensing preferences upon our various media competitors Second, the imminent prospect of dramatic technological innovations, including in particular small flat panel satellite antennas, makes this a particularly inappropriate time to confer sweeping new copyright preferences upon the satellite industry Third, assuming, arguendo, that a new compulsory license is necessary to bring television service to rural dish owners, that license should be limited to so-called white areas, carefully defined, and/or should provide some mechanism for recognizing and honoring exclusive program contracts negotiated in the free marketplace by parties who have

not been favored with a statutory license Finally, in light of the recent court decision invalidating the cable television must-carry rules the Congress should revisit the cable compulsory license, and the manifest inequities in that marketplace, before adopting new statutory licenses for other media

I It Is Inappropriate Copyright Policy To Require Broadcasters To Pay Marketplace Prices For Programming While Granting Compulsory Licenses At Statutory Or Arbitrated Rates To Cable And Satellite Competitors

Broadcasters must purchase all of their programming without the benefit of any compulsory copyright license from the government Independent stations, operating without network program feeds, must purchase or produce each and every individual program they broadcast from sign-on in the morning to sign-off at night

Program license fees, set by the forces of the marketplace, represent the single largest cost category in the operation of an Independent television station Currently, these fees constitute approximately one half of the total expenses of the average Independent station. In fact, high program costs have been a major contributing factor to the financial difficulties of the 23 Independent stations forced into bankruptcy proceedings in the last year

A few examples of individual programs will give the Subcommittee some feel for the real cost of programming in the free market According to Variety (June 24, 1987 at p 60), market forces required Independent station KCOP-TV to pay $225,000 per week for an exclusive license to exhibit the re-runs of The Cosby Show in the Los Angeles market Over the 3½ year license term, KCOP-TV will pay a cash fee of almost Forty One Million dollars for this one, single half-hour

program The total cost is even higher since the program distributor also receives two extremely valuable thirty second "barter" spot announcements in each telecast to sell on his own account By contrast, H R 2848 grants "satellite carriers" a statutory license to exhibit another station's entire program schedule, including The Cosby Show, anywhere in the United States, including the Los Angeles market, for a government prescribed fee of 12 cents per month per subscriber

In another example from the same Variety story, Independent station KHJ-TV will pay $240,000 per week, or almost One Million Dollars per month, for an exclusive license to exhibit the re-runs of Who's The Boss? in the Los Angeles market Again, this figure contrasts sharply with the 12 cents per month figure in H R 2848

All of the expensive programming purchased by broadcasters is presented free of charge to the American people By contrast, cable and satellite exhibitors charge the American people for their services If Congress wants to subsidize the program expenses of any of these competitors by granting a statutory licensing preference, the most obvious candidate for this largess would be the free over-the-air broadcasters However, if H R 2848 is enacted, free broadcasters will be the only one of these media competitors to remain mired in the copyright marketplace From our perspective, the public interest priorities appear to be inverted

If the Congress does not want to encourage free local broadcasting by granting our stations a compulsory license, at the very least, the copyright laws should honor and respect the program contract that we must negotiate and pay for in the free marketplace Appended to this testimony are sample exclusivity provisions from Independent

station program license agreements If H R 2848 is enacted, these program contracts will be rendered meaningless Satellite exhibitors will be free to commercially exploit in our markets the very same programs for which we have purchased exclusive licenses In our judgment this represents inappropriate copyright policy

H R 2848 also represents a sharp departure from historical communications policy In crafting the Communications Act of 1934, as amended, Congress could have prescribed a broadcast system comprised of a few national superstations Instead, Congress opted for a system of local broadcast outlets -- each selecting and purchasing programs for its individual market By establishing a copyright preference for nationwide satellite carriers, H R 2848 would undermine the foundation of this system of free local broadcasting

In one sense, the mere pendency of H R 2848 has helped to expose the legal charade that has been perpetrated by the so-called "satellite carriers" One glance at the trade ads placed by these entities demonstrates that they are selling programming -- not transmission services They are not common carriers and should never have been permitted to engage in program distribution and exhibition under the Act's exemption for true passive carriers The fact that these so-called "satellite carriers" have now sought a compulsory license for their performances of copyrighted works strips away their false veneer of mere common carriage. Exposed as satellite broadcasters, these entities should be obliged to play by the same copyright rules as terrestrial broadcasters and should be subject to the retransmission consent requirements of Section 325 of the Commumnications Act

The Motion Picture Association of America has offered limited

and qualified support for H R 2848 based on a communications policy objective MPAA argues that "satellite carriers" represent a fragile infant industry that can be nurtured into a competitive alternative to cable television systems However, the two largest "satellite carriers" are not infants They are enterprises that have been in business longer and have significantly greater cash flow than a substantial number of INTV's Independent station members Moreover, one of these "carriers" has been acquired by the nation's largest cable company, thereby casting doubt on the likelihood of achieving MPAA's communications policy objective

If MPAA really believes that struggling infant competitive forces should be nurtured through compulsory licensing, then it should support a compulsory license for Independent television stations At the very least, MPAA should not be supporting legislation that undermines the exclusive program rights for which our stations have paid Billions of Dollars -- to MPAA's members

INTV's opposition to compulsory licensing is not motivated by a desire to thwart competition Independent television operators understand the fact that they must accept increasing competition for the attention of television viewers from cable, from satellite broadcasters, from VCR's and from other new technologies What is patently unfair, and what we should not be expected to accept and endure, is competition utilizing the very <u>same</u> programming for which our stations have <u>purchased</u> <u>exclusive</u> exhibition rights in their communities

We are not asking for protection or subsidies Nor do we seek a guarantee that our stations will be successful in their efforts

to negotiate exclusive exhibition agreements That is a challenge that must be resolved by the marketplace However, if and when broadcasters do agree to pay the market clearing price for exclusive rights, then those rights should be honored by our copyright laws

II Imminent Technological Advances Make This A Particularly Inappropriate Time To Be Considering A Compulsory License For The Satellite Industry

Congress does not amend our nation's copyright laws frequently or with great ease Accordingly, it would be a grave mistake to consider H R 2848 solely in the context of current technological and market conditions Rather, the prospect of a compulsory license for the satellite industry should be considered in the context of likely technological developments I have brought with me today, a flat panel satellite antenna which was purchased off-the-shelf in the Japanese equivalent of a Radio Shack store just a few months ago It cost only one thousand devalued dollars This small antenna can be mounted indoors and receives an outstanding quality picture from high powered Ku band satellites already in operation in Japan

High power Ku band satellites are not yet serving our country However, the words "Flat Antenna" and "Broadcasting Satellite" printed in American English on the face of this antenna provide some clue as to the market which the Japanese have targetted for this technological development High definition television, broadcast by satellite, can be expected to provide many consumers, including those in urban areas, with an incentive to purchase these small antennas and other satellite receiving equipment As with other recent technological developments, mass marketing will dramatically lower the already

surprisingly low price of these antennas

In considering H R 2848, it is imperative that the Subcommittee not proceed from a mental image of a rancher in Wyoming with a 12 meter dish Technological developments in the satellite industry are moving very rapidly The clear trend is toward smaller and less expensive receiving equipment which is likely to increase dramatically the market penetration of satellite transmissions Compulsory license preferences which might look like a good idea today, could appear very differently after a few years of rapid technological development Moreover, sunset provisions which appear politically viable today, may become unmanageable political liabilities in the face of an expanded public constituency

III H R 2848 Should Be Amended To Apply Only To So-Called "White Areas" And/Or To Provide For The Recognition Of Exclusive Program License Agreements Negotiated In The Free Market

A major objective of this legislation is to provide the benefits of free over-the-air broadcasting to those who live beyond the reach of terrestrial broadcast signals However, as presently drafted, the bill provides a statutory license for the performance of copyrighted works to both rural residents living outside the service area of broadcast stations and to urban residents living well within the service area of local terrestrial broadcasters This approach seems overly broad and unnecessarily destructive of the program license agreements negotiated in the free market by local broadcasters

In INTV's judgment, the goal of bringing television service to rural residents in "white areas" can be accomplished without compulsory licensing However, accepting arguendo the notion that

compulsory licensing is necessary to provide service to rural residents, there is no apparent need or justification for extending the scope of that compulsory license to include urban residents who are already adequately served by local terrestrial broadcasters

Any statutory license represents an exception to normal copyright market forces In the event of a conflict between the government conferred compulsory license and negotiated license agreements, the compulsory license should yield to the negotiated license Stated another way, compulsory licenses should not be permitted to supersede and override copyright license agreements entered into by parties operating within the free market This basic precept was followed when the Congress adopted the cable compulsory license in 1976 That license was expressly limited to television signals permissable for cable carriage under the rules and regulations of the Federal Communications Commission The report language on that Bill specifically referred to the Network Non-duplication and Syndicated Exclusivity Rules of the FCC as regulations which would ameliorate the market disrupting potential of a compulsory license

As presently drafted H R 2848 employs more of a blunderbuss approach Absolutely no provision is made for those instances where the government conferred license will come into conflict with individually negotiated exclusive license agreements Unless amended to include syndicated exclusivity and network non-duplication provisions, this new government conferred program license will supersede and abrogate license agreements paid for by local stations at marketplace rates Plainly, this is a grossly unfair result, which could not be intended by the sponsors of this bill

Any amendments to refine the scope of H R 2848 should afford equal recognition to the network and syndicated program license agreements of affiliated and Independent stations Significantly, MPAA has formally expressed its support for the principle that H R 2848 must apply "even handedly to network affiliates, commercial independents and public television stations " (MPAA testimony at p 13) There is no valid copyright purpose for distinguishing between a network program and a syndicated program Invidious distinctions between Independent and network affiliated stations would be completely inequitable and would raise fundamental issues of communications policy While the precise program schedules of individual Independent stations vary, the same leading syndicated programs are sold to local stations in virtually every television market For example, according to an A C Nielsen Co analysis, the 16 most popular syndicated programs during the week ending January 3, 1988 enjoyed an audience "reach" into between 89 and 98% of the nation's television homes

H R 2848 should be refined to apply only to "white areas" and/or to provide some mechanism for recognizing and honoring program licenses negotiated in the free market However, these amendments must accord equal treatment to Independent and network affiliated stations

IV The Loss Of The FCC's Cable Television Must-Carry Rules Cries Out For Compulsory License Reform

Numerous proponents of H R 2848 have sought to draw a parallel between this legislation and the cable compulsory copyright license adopted in 1976 In fact some proponents described H R 2848 as necessary to create a "level playing field" between cable and the

satellite dish industry In light of these arguments it is critical to observe that the cable compulsory license was adopted in the context of a "Consensus Agreement", which included numerous regulatory provisions designed to ameliorate the impact of, and prevent abuse of, the compulsory license Principal among those regulatory provisions, were the FCC's must-carry rules and syndicated exclusivity rules At the moment, broadcasters face an intolerable situation in which the must-carry rule has been voided and syndicated exclusivity rules have been repealed Yet the cable compulsory license lives on Contrary to the clear intentions of the Congress, the cable compulsory license is now available for unfettered use as a weapon to discriminate among local broadcast stations, to abrogate negotiated program license agreements and to engage in legalized extortion Already, cable systems have begun to drop local stations and to play roulette with their channel positions By contrast, no cable system can ever be denied the use of any broadcast signal that the operator needs to sell his service

The crux of this dilemma is that cable's compulsory license is imbedded in the Copyright Act while the companion regulatory provisions were left to the vagaries of an administrative agency The obvious answer is for the Congress to revisit the cable compulsory license Cable has become a multi-Billion dollar monolith no longer in need of federal largess According to expert analysts the asset value of the cable industry now exceeds that of the broadcasting industry (Broadcasting, August 31, 1987) And yet, the cable industry continues to enjoy the privilege of building its business on the base of the program service paid for by local broadcast stations

without any obligation to deal fairly with those stations

At a minimum, the continued availability of a compulsory license to retransmit local broadcast stations should be conditioned upon the cable operator's willingness to comply with a reasonable must-carry obligation In our judgment, equitable and appropriate amendments to the cable compulsory license should have a higher priority on the Subcommittee's agenda than extensions of compulsory licensing to additional media categories

V Conclusion

Mr Chairman, we have stated our objections to H R 2848 forthrightly, but without any intention to offend In the last Congress, INTV found itself in a position of flat opposition to a similar piece of legislation We would much prefer to work with you, and the other members of the Subcommittee, in an effort to fashion amendments that would make it possible for us to be supportive of your efforts We can only hope that we will have that opportunity Thank you

N. EXCLUSIVITY LICENSE - PROGRAMS COVERED

1. The Program or Programs listed on Schedule 'A' attached hereto are the Programs covered by the Agreement and this Addendum.

2. The duration of this exclusivity license to exhibit the television Program or Programs covered by the Agreement and this Addendum shall be that set forth in Schedule 'A,' attached hereto and by this reference incorporated herein.

3. In consideration for Licensee's entering into the Agreement which this Addendum supplements, Licensor hereby agrees that for the duration of the Agreement and this Addendum, as defined in the above paragraph hereof, Licensor shall not license or authorize the programs covered by the Agreement and by this Addendum to be exhibited, transmitted, disseminated, broadcast, delivered, or carried (whether by means of a television broadcast signal transmission path, or by means of a microwave transmission path, or by means of cable origination and transmission, i.e., "cablecasting," on a Class II or Class III cable television channel as defined in Section 76.5(aa) and (bb) of the Rules and Regulations of the Federal Communications Commission (hereinafter referred to as the "FCC"), 47 C.F.R. Sections 76.5(aa) and (bb), or otherwise by:

   (a) Any other conventional television broadcast station, television broadcast translator station, low-power television broadcast station, or multipoint distribution service station authorized by the FCC to serve as its community of license any community whose geographical reference point, as defined in Sections 73.658(m) and 76.53 of the FCC's Rules and Regulations, 47 C.F.R. Sections 73.658(m) and 76.53, is 35 miles or less from the geographical reference point for Visalia, California as defined in Sections 73.658(m) and 76.53 of the FCC's Rules and Regulations, 47 C.F.R. Sections 73.658(m) and 76.53, or by any other conventional television broadcast station, television broadcast translator station, low-power television broadcast station, multipoint distribution service station or their functional equivalents, however denominated, authorized by the FCC to serve as its community of license Fresno, Hanford, Clovis, California or any other community which may be added to the Visalia, Fresno, Hanford, Clovis, California major television market, as defined in Sections 73.658(m) and 76.51(a) of the FCC's Rules and Regulations, 47 C.F.R. Sections 73.658(m) and 76.51(a); or

   (b) Any cable television system or satellite master antenna television system providing "cablecasting" or other program origination service by means of a Class II or Class III cable television channel as defined in Sections 76.5(aa) and (bb) of the FCC's Rules and Regulations, 47 C.F.R. Sections 76.5(aa) and (bb), to any subscriber terminal which is located within 35 miles of the television broadcast station or any television broadcast station authorized by the FCC to serve as its community of license any community whose geographical reference point, as defined in Sections 73.658(m) and 76.53 of the FCC's Rules and Regulations, 47 C.F.R. Sections 73.658(m) and 76.53, is within 35 miles of the geographical reference point for Visalia, California, as

defined in Sections 73 658(m) and 76 53 of the FCC's Rules and Regulations, 47 C F.R Sections 73 658(m) and 76 53, or which subscriber terminal is located within 35 miles of the television broadcast station or any television broadcast station authorized by the FCC to serve as its community of license Fresno, Hanford, Clovis, California or any other community which may be added to the Visalia, Fresno, Hanford Clovis, California major television market, as defined in Section 76 51(a) of the FCC's Rules and Regulations, 47 C F.R. Section 76 51(a)

(c) Any direct-to-home broadcast satellite company providing service to any household within the Visalia, Fresno, Hanford, Clovis, California major television market.

(d) No transmission of the programs made pursuant to the provisions of 17 U S C Section 111 shall be deemed to be an infringement of the exclusivity granted to Licensee hereunder

4 In the event that the terms of the Agreement and this Addendum shall be violated by a third party, Licensee shall promptly so notify Licensor and Licensee may, at its sole expense, institute such actions and proceedings before appropriate courts and/or administrative agencies, Federal, state and/or local, as Licensee shall deem proper in order to enforce the terms of the Agreement and this Addendum, and to recover damages for such violation Licensor may join in such actions and proceedings, at its own cost

5 Notwithstanding anything contained herein, Licensor shall have the right to license the Program or Programs anywhere for (i) non-theatrical exploitation including closed circuit television and direct projection of the Programs in planes, trains, buses, ships, oil rigs, prisons, convents, orphanages and other shut-in institutions and for study purposes in schools, colleges, and other educational, military or cultural institutions, and (ii) for television exhibition in hotels and hospitals on a pay-per-view basis, and (iii) for exploitation on video cassette and disc devices

O GENERAL

Notwithstanding anything to the contrary contained in the Agreement, Licensee shall have the right to have each of the telecasts transmitted simultaneously with the telecast exhibited by Licensee's station, and at no other time whatsoever, over the facilities of any translator stations now existing or to be constructed by Licensee or by any other party, which translator stations engage in the rebroadcast of the signal of Licensee's station, to serve any portion of the television market within which Licensee's station now operates Each such telecast shall be transmitted in its entirety without deletion of commercials or program content from the station hereinabove specified.

The attached Agreement and all matters or issues collateral thereto shall be governed by the laws of the State of California.

A waiver by either party of any of the terms or conditions of the attached Agreement (and this Addendum) in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations and agreements contained in the Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party.

Cont ct No. 20122

Salesman D Campbell (101)

COLUMBIA PICTURES TELEVISION
A DIVISION OF COLUMBIA PICTURES INDUSTRIES, INC.

Dated as of March 6, 1986

The following SCHEDULE A and all of the written and printed parts thereof are a part of this License Agreement.

SCHEDULE A

SEP 29 1986

Licensee Pappas Telecasting Incorporated Stations KMPH ANN STEWART

5111 East McKinley Avenue

Fresno, CA 93727

License Fee $ 75,000 00 payable as follows XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX in 36 consecutive monthly installmen

commencing September 1, 1986 or on the first day of the month after the sta t of the te m whichever first occurs

follows A first installment at $ _ _ followed by thirty-five (35) installments

such picture or pictures and th t the licensing hereunder of more than one pictu e s for the con enience of both Licensor and Licensee

Ship Att Program Director Bill Att Licensee

Additional P ovisions

"SEE ADDEN... HERETO AND MA... ...EREOF"

Executed by Licensee on this ____ day of ____ 19__ Upon execution in writing by Distributor at its Home Office in Burbank CA shall constitute a license agreement for the telecast of the pictures herein in accordance with the terms and conditions hereof.

Dated the ____ day of ____ 19__

Accepted at BURBANK CA 91505
COLUMBIA PICTURES TELEVISION
A Division of Columbia Pictures Industries, Inc.

By ____

End of Contract

PAPPAS TELECASTING INCORPORATED
Licensee

By ____
Harry J. Pappas
President

Salesman M Strasser (605) COLUMBIA PICTURES TELEVISION Dated as of July 29, 1987

A DIVISION OF CPT HOLDINGS, INC.

The following SCHEDULE A and all of the written and printed parts thereof are a part of this License Agreement.

SCHEDULE A

Licensee West Virginia Telecasting Stations WVAH

23 Broadcast Plaza

Hurricane, WV 25526

License Fee $ Barter payable as follows: A down payment of $ due and payable on execution of this agreement, but in any event no later than the balance in consecutive monthly installments commencing or on the first day of the month after the start of the term whichever first occurs as follows

Term of license commences October 19 19 87 and terminates See Schedule B years/months thereafter

Product and Code No "6 Movies of the Week" (See Riders A, E, H and VT and Schedule B annexed hereto and made part hereof)

Number of Pictures 6 Number of Telecasts 36* Runs per title 6

Licensee acknowledges that the foregoing are the number of pictures Licensee has determined to license hereunder from Licensor that the licensing of each such picture has been separately negotiated and severally agreed upon that the prices set forth herein represent fair value for said pictures that Licensor did not directly or indirectly condition the granting of the license of any one or more of such pictures upon Licensee agreeing to license any other such picture or pictures and that the licensing hereunder of more than one picture is for the convenience of both Licensor and Licensee

Ship Att. Program Director Bill Att. Licensee

Additional Provisions

All references to COLUMBIA PICTURES TELEVISION, a Division of CPT Holdings, Inc in this Television License Agreement are hereby replaced by reference to COCA-COLA TELECOMMUNICATIONS, INC

* MAXIMUM AMOUNT ALLOWED

Executed by Licensee on this day of 19 Upon execution in writing by Distributor at its Home Office in Burbank CA shall constitute a license agreement for the telecast of the pictures herein in accordance with the terms and conditions hereof

* PLUS ATTACHED AMENDMENTS 1-4

West Virginia Telecasting, Inc

Licensee

By President

Dated the day of 19

Accepted at BURBANK CA 91505

COLUMBIA PICTURES TELEVISION

A Division of CPT Holdings Inc.

By

End of Contract

License Agreement No 11798

RIDER M

EXCLUSIVITY CONTRACT

This exclusivity contract supplements and is made a part of a certain License Agreement dated JULY 29, 1987 (the "Agreement") between Columbia Pictures Television, a Division of CPT Holdings, Inc (the "Distributor") and WEST VIRGINIA TELECASTING (the "Licensee") for the television exhibition of certain motion picture films

1 The film or films listed on Schedule B attached hereto (the "Pictures") are the Pictures covered by the Agreement and by this exclusivity contract.

2 The term of this exclusivity contract (the "Term"), except as otherwise expressly provided in Schedule B, shall commence on OCTOBER 19, 1987 and shall end on SEE SCHEDULE B, or on the day following the date of the last of 36 telecasts of the Pictures which Licensee is entitled to make pursuant to the Agreement, whichever date is earlier

3 Distributor shall not license for exhibition for free home television reception, during the term, the English language version of the Pictures to the entities listed below

(a) another television station which is licensed by the Federal Communications Commission (FCC) to a community located thirty-five (35) miles or less from the community which the Licensee's station is licensed to serve (distances to be calculated in accordance with Section 73 658 (m) of the FCC's Rules and Regulations), or

(b) a cable television system whose signal originates within a thirty-five (35) mile radius of the Licensee's reference point or the geographic coordinates of the main post office, as specified in Section 76 53 of the FCC Rules and Regulations

COLUMBIA PICTURES TELEVISION,
a Division of CPT Holdings, Inc

By_____
Distributor

WEST VIRGINIA TELECASTING, INC

By_____
Licensee

President

Mr TAUZIN Mr Chairman, we have just been joined by our colleague, Mr Mike Synar, who is really, if you read this morning's paper, is a hero Frankly, I think we ought to give Mike a hand If anybody is for law and order in this town, it is Mike Synar

Mr Number One Good job, Mike

Mr MARKEY Burglars yesterday and pirates today

The Chair now recognizes Mr Steven Effros, president of the Community Antenna Television Association

Mr EFFROS Mr Chairman, members of the committee, thank you Good morning I do not have a prepared statement this morning

STATEMENT OF STEVEN EFFROS

Mr EFFROS The cable television industry has been supportive of the basic premise of H R 2848 since its inception, and that is that the satellite market should have access to the broadcast signals that are sent via satellite We have supported the efforts on this bill and continue to do so

I, like everybody else, think that congratulations are definitely in order for Mr Moorhead, Mr Synar, Mr Boucher, Mr Tauzin and also Mr Kastenmeier, for their leadership in getting this bill as far as it has gotten We hope to see it passed

I think the bill——

Mr MARKEY If I can just interrupt you, I would like to note that, as well Mr Kastenmeier's work on this is just impossible to praise enough, and we could not pass this legislation if our subcommittee and his subcommittee did not have a close working relationship, which we do His leadership has been noted here because it is a part of a large process

Thank you

Mr EFFROS Mr Chairman, of course you are well aware of the difficulties in crafting any telecommunications legislation When you combine that with the difficulties of copyright, it is a near impossibility But this has become, I think, a unique bill, that is, there have been two major identifiable problems in the home earth terminal market of late One has been highlighted by the Atlanta court and that is the lack of access to specific types of programming, which this bill aims at directly and solves The other problem is piracy, which the home earth terminal industry has been plagued with, and of course the cable industry and programming industry have been very concerned with since the inception of home earth terminal reception

With the addition, as we understand it, of the language that Mr Tauzin will be adding this afternoon, this bill becomes an incredibly powerful tool to resolve the piracy problem It is probably the most powerful tool that I have seen written and I think it could have one of the most major impacts on the home earth terminal market in the shortest period of time of any legislation we have seen

Of course, we have all been working on lots of different language for a long time, but you could possibly wipe out the piracy problem in a matter of months with this type of legislation The cable industry totally supports it

Thank you, Mr Chairman

Mr MARKEY And our final witness, Mr Timothy Boggs, the vice president for public affairs, Warner Communications

Mr BOGGS Thank you, Mr Chairman I, too, will be brief

STATEMENT OF TIMOTHY A BOGGS

Mr BOGGS In addition to representing Warner Brothers today, I am representing the Motion Picture Association of America, whose members include all their leading producers and distributors of film and television products For both Warner Brothers and MPA, I thank you for the opportunity to appear and to express our views, as well, in general support of this legislation

When Chairman Kastenmeier asked us almost 3 years ago to help with this project, we frankly were somewhat skeptical As you know, copyright owners are leery of compulsory licenses and no one likes to have placed in law a federally mandated price on one's products We entered this process with a good deal of skepticism

I am pleased to note, however, that with Bob Kastenmeier's leadership and the open door and open ears of Mr Moorhead and Mr Synar and Mr Boucher, we have crafted a bill that we can indeed live with I understand the new amendments to be offered by Mr Tauzin will dramatically increase our enthusiasm for this bill

We do have a couple of suggestions for improvements in the bill that are in the prepared statement I won't go through each of them I think you and your staff are prepared to discuss them during your markup period

There are two comments I would like to make from the testimony We think it is reasonable to try to resolve a marketplace that we understand and that we know exists today We think it is very difficult to try to solve or anticipate a marketplace that we don't know what it will look like The reach of this bill we had hoped would be somewhat more limited than it is We would like to limit the bill to the C-band satellites that exist at the moment All the superstations that exist at the moment are carried on the C-band We believe that would solve that problem We had hoped that the legislation could be limited to that existing marketplace problem of today

Similarly we had hoped there would be a cap placed on the number of superstations that could take advantage of this bill When the copyright law was enacted in 1976, I don't believe anyone envisioned that the device of the compulsory license would be used to create an entire marketplace for distribution of inexpensive product this way That has happened

We all, particularly Mr Padden and the motion picture industry, have to live with that We are trying to make some progress in that area and this bill serves us well in suggesting that we need not have a statutory compulsory license but that eventually we can go to a negotiated rate on these services, the public will be well served, the broadcasters' interest and the copyright owners' interest would be protected

We thank you for the opportunity to work with you on this bill It is one that we expect will become public law and we hope to stay involved with you, moving along throughout the process in the Senate and on to the White House

[The prepared statement of Mr Boggs follows]

PREPARED TESTIMONY OF TIMOTHY A BOGGS

Mr Chairman, and Members of the Subcommittee

My name is Timothy Boggs, and I am Vice President, Public Affairs of Warner Communications Inc. (WCI) WCI is the parent company of Warner Bros. Inc., a producer and distributor of motion pictures and television programs, on whose behalf I appear here today

I am also here representing the Motion Picture Association of America, Inc (MPAA), whose members include Warner Bros Inc and other leading producers and distributors of films and TV programming For both Warner Bros and MPAA, I thank you for the opportunity to share our views on H R 2848

Throughout the 99th and 100th Congresses, MPAA has worked with the relevant House and Senate committees to fashion legislation to ensure that satellite-delivered broadcast television signals -- so-called "superstations" -- would be made available to TVRO owners under reasonable terms and conditions

Time and time again, MPAA has articulated its opposition to government-imposed use licenses which deprive copyright owners of control over distribution of their works But in this case, we have been willing to work toward a legislative compromise for one important reason we share the belief of many members of Congress that a temporary, transitional measure will assist the growth and development of a healthy, competitive TVRO marketplace To this end, we favor a statute limited in time, scope

and effect, one that helps pave the way quickly to a free marketplace in program delivery to TVRO owners We are pleased that this market has already shown significant growth, and we look forward to its continued progress as a viable medium

The temporary statutory license created by H R 2848 addresses ambiguities in the copyright law concerning the distribution of satellite-delivered TV signals to TVRO owners In view of the recent holding by a Federal court in Atlanta that the existing cable compulsory license is inapplicable to satellite carriers who wish to serve TVRO owners, this bill provides a useful interim solution while the marketplace sorts itself out

House "Copyright" Subcommittee Chairman Kastenmeier has attempted to strike a balance among the interests of all parties affected by this bill We have worked cooperatively for over two years with the Chairman and his subcommittee toward an acceptable compromise MPAA generally supports the bill before you today

We do, however, seek certain additional modifications and improvements in H R 2848 These are important concerns that we have previously expressed during the bill's consideration by the Judiciary Committee The changes we advocate would help to clarify the intent of the bill and eliminate certain undesirable consequences

First, MPAA believes that H R 2848 should be expressly limited to the distribution of C-band satellite retransmissions That is the frequency range in which all superstations are carried today This bill should be limited to addressing today's problem, and should not presuppose a government regulatory role in meeting the future needs of other media, including direct broadcast satellites The system of negotiated ratemaking for distant signal carriage set up by this bill may provide a useful model to be replicated in the private sector, so that DBS and other media may bargain for superstation retransmission rights in the future

Second, MPAA believes that a fair cap on the number of "superstations" qualifying for carriage under this bill should be restored. Before amendment by the House Judiciary Committee, the bill applied only to those superstations "secondarily transmitted for nationwide distribution" prior to April 1, 1988, and to those subsequently put on satellite if they are retransmitted to not less than 10 percent of all cable subscribers This was an attempt to achieve some "parity" between the availability of distant signals to TVRO owners and their availability to cable subscribers We are already seeing a proliferation of superstations aimed at the TVRO market, as satellite carriers rush to take advantage of this cheap source of programming That is entirely inconsistent with the purpose of the bill to achieve a transition to a free marketplace in satellite-delivered programming We therefore support reinstatement of the "station cap" language deleted by the House Judiciary Committee

Mr Chairman, MPAA has consistently and vigorously championed these two important principles [1/] They are essential to ensure that the statutory license for superstation retransmissions to TVRO owners does not become so entrenched as to burden copyright owners with a permanent government giveaway of our property They are necessary to reiterate the limited, temporary nature of the bill and the Congressional desire to encourage marketplace resolution of copyright issues

We have a number of other suggested improvements to H R 2848, several of which are in the nature of technical amendments

1 We believe that the bill should continue to accord even-handed treatment to network-affiliated stations and to independent TV stations H R 2848 permits network-affiliated stations to object to the reception of duplicative network programming from any satellite-delivered network station, and it also directs the FCC to apply its syndicated exclusivity rules (if "feasible") so as to permit all local stations (independents and affiliates alike) to object to the reception of duplicative syndicated programming from any satellite-delivered station The integrity of local broadcast stations' programming, whether they are network affiliates or independents, should be treated equally Therefore, we favor any reasonable measures this subcommittee might take to preserve the rights of broadcasters in this matter

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[1/] I refer the Subcommittee to the statement of Jack Valenti, President of MPAA, before the House "Copyright" Subcommittee on August 7, 1986, and my statement before that same subcommittee on November 19, 1987 In both statements, these two points and other important considerations are highlighted

If the Subcommittee chooses to retain the current syndicated exclusivity provision -- which we encourage you to do -- we would seek a clarification Legislative history should state that, in assessing the "feasibility" of imposing syndex rules to the TVRO marketplace, the FCC is to consider only "technological feasibility" -- i e , once the Commission has determined that the technology exists to implement syndex, it must adopt rules to do so This directive would be most appropriate coming from this Subcommittee, and we encourage you to adopt this clarification in mark-up today

In addition, we support the amendment sought by the Association of Independent Television Stations (INTV) and the Satellite Broadcasting and Communications Association (SBCA) pertaining to satellite carriers' liability for violations of syndex rules

2 We believe that there should be an exemption from the antitrust laws to permit claimants seeking royalty distributions from the fund administered by the Copyright Royalty Tribunal to agree among themselves how to divide such funds, to lump their claims together, or to designate a common agent to receive payment on their behalf An identical exemption currently appears in Section 111 of the Copyright Act (the cable compulsory license) The exemption has greatly facilitated royalty distributions while preserving the rights of all claimants, and reduced the administrative burden on the CRT We believe there should be a similar exemption for the purpose of negotiating copyright

royalty rates to take effect when the term of the statutory license fee expires, and for future distributions of those royalties

3 We believe that "distributors" of satellite-delivered superstations do not have a role in the negotiation of royalty rates for the 1992-94 period The true stakeholders in such negotiations are copyright owners and satellite carriers Distributors have no direct stake in the setting of royalty rates, nor can they be held liable under the bill for failure to remit royalties Moreover, the class of "distributors" is potentially so large as to render negotiations unworkable To make the bill more simple and more fair, "distributors" should not be included as a party to the negotiated or arbitrated ratemaking processes

4 We believe that the potential loophole created by the definition of "satellite carrier" should be closed As drafted, the bill may be read to exempt from copyright liability those who distribute superstation signals using a geostationary satellite licensed by Canada or any other foreign government, and casting a footprint over all or part of the U S This definition should be amended to cover carriers using satellite licensed by any government entity, domestic or foreign We have submitted appropriate statutory language on this point to the Subcommittee

5 We believe the Copyright Office should be given express authority to audit satellite carriers filing for statutory licenses Absent such authority, it will be extremely difficult to verify or challenge the subscriber counts and other relevant data

submitted by satellite carriers The bill should be amended to require the Copyright Office to establish reasonable standards for auditing satellite carriers where good cause is shown

Mr Chairman, H.R 2848 exacts a significant price from copyright owners Our ability to control the distribution of our copyrighted works -- the essence of our business -- suffers a little more erosion under the terms of this bill Recognizing the unique circumstances of the TVRO industry, we have been willing to pay this price, but we seek the reasonable assurances I have just described in order to protect our long-term interests

Our support for H R 2848 should eliminate any question concerning our attitude toward home satellite earth stations We are pleased to have the support of the Satellite Broadcasting and Communications Association (SBCA), the leading advocates for the TVRO industry, on several of our proposals, including reinstatement of a cap on superstations, the elimination of distributors from the ratemaking process, and amendments pertaining to the use of foreign satellites, Copyright Office audits, and even-handed treatment of network and non-network broadcasters

We urge this Subcommittee to adopt our suggested changes, and we reiterate our commitment to support a fair and balanced bill to help the TVRO industry to establish itself as a full-fledged competitor in the electronic media marketplace

As always, we look forward to working with this Subcommittee toward framing satisfactory legislation Thank you again for the opportunity to bring our concerns to your attention

Mr MARKEY Now I will turn to questions from our subcommittee

The Chair recognizes the gentleman from New Jersey, Mr Rinaldo

Mr RINALDO Thank you, Mr Chairman

As I understand this legislation, the compulsory license created by the bill expires at the end of 6 years

I would like any of the witnesses, or all of you, to speculate on what you think will happen in the marketplace after that license expires

Mr ELLISON We had originally sought 8 years under this bill It went to 6 years as a compromise in hopes that it would allay the concerns that Mr Boggs expressed about the move to new technology

We feel that 6 years is adequate for us to grow as an industry and move into a position where we can negotiate and obtain copyright paid services In fact, the bill creates a structure whereby we move to that after 4 years and move into a negotiated phase So we feel that after 6 years we would be in a position where we can do that

Mr PADDEN You have put your finger on one of the parts of the bill that scares us the most, Mr Rinaldo, and that is the notion that it is a temporary transitional bill

Our fear is that once you get service being provided to millions of American people under what was supposed to be a temporary, transitional, statutory license, it is going to be very, very difficult for the Congress to let that license actually sunset in 6 years We are very concerned that we may be stuck with this for a very long time

Mr RINALDO Mr Effros?

Mr EFFROS Having worked in the field of trying to write legislation or effect legislation on cable television for about 15 years now, I can tell you that the answer is nobody knows There is just no way of knowing what is going to happen technologically within the next 6 years that will affect this bill or the concepts behind it

The cable industry doesn't know from month to month what its own industry is going to look like 6 years from now, let alone what this new one is going to look like

Mr BOGGS I guess I would echo those views

The motion picture industry had been trying to limit the duration of the bill because of our uncertainty as to what the future marketplace is going to look like in the satellite-delivered programming area We are satisfied that 6 years will give the consumers a chance to begin receiving this programming legally and give us a chance to work with and study this new marketplace

Certainly in the interim you are going to hear from us and my colleagues on how this marketplace is working, as well as certainly from your constituents Hopefully after that evidence is in, we and you will know what to do for the future

Mr RINALDO Thank you

I have no further questions

Mr MARKEY The gentleman's time has expired

The Chair recognizes the gentleman from Oklahoma, Mr Synar

Mr SYNAR I have no questions, Mr Chairman I just want to take this opportunity to thank all four of the gentlemen here and a lot of people in this room We are 2 years behind schedule I wish we could not have had to press very hard, but I want to thank all of them for their cooperation, and everyone in the room

I think if we will just cross our fingers and hope, we can get this through this year and we can all start something else on a full employment act for this area next time on some other issue

Thank you

Mr MARKEY The Chair recognizes the gentleman from Utah, Mr Nielson

Mr NIELSON Mr Padden, you indicated that independent TV opposed the bill in January but you now can live with it

First of all, are you familiar with the Tauzin amendment?

Mr PADDEN No, I really am not

Mr NIELSON I was going to ask if that amendment would increase or decrease your enthusiasm for the bill I guess I will have to defer that

Mr PADDEN If I understand it, the issue dealing with piracy is certainly nothing we would have a problem with It doesn't particularly affect our enthusiasm for the bill one way or the other

Mr NIELSON You say the broadcasters have an unfair advantage and are shown preference

Is there anything you can do in this bill or any other place to correct that?

Mr PADDEN I said the networks have a preference We originally sought to get the same white area protection that the networks sought and received in this bill We were unsuccessful We have had to settle for conditional extension of syndicated exclusivity protection to our stations It was the best we were able to work out

We are very grateful, as a number of people have said, particularly to Mr Boucher, Mr Synar, Mr Kastenmeier and Mr Moorhead, who worked very hard on trying to find some way to at least partially satisfy our concerns

Mr NIELSON Going back to the question Mr Rinaldo asked you about the 6-year license, it is in two phases The first 4-year phased licensed operation is a fixed compensation phase and the last 2 years you must bargain for compensation

Do you think that is a good principle?

Mr PADDEN We are not in favor of compulsory sending period We have this notion that if anybody wants to take "I Love Lucy" and scramble it and beam it 22,000 miles into space, bounce it back and sell it to people, they ought to start by buying the rights from the people that own it and not coming to the government and asking for a handout

I am afraid that 6 years from now you are going to have a large constituency of people out there used to getting service from this, and I would be very surprised if the political will will exist to take that service away and really push them out into the marketplace

Mr NIELSON Would anyone else like to comment on that question about the breakdown between the 4-year with the fixed compensation and the 2 years for bargaining?

Mr BOGGS We certainly do not like compulsory licenses either The expectation under this bill is that we will be able to move

away from the statutorily mandated rate into something reflecting more closely the marketplace rate that "I Love Lucy" or Warner Brothers film or any product might be worth

The technological and legal difficulty of getting this programming to these consumers we believe requires the use of a compulsory license in a temporary and transitional way We share the broadcasters' reluctance to accept compulsory licenses We don't like them I don't know that there is anybody in the room who really prefers compulsory licenses, but the hope is that this bill will set a principle of moving toward a marketplace rate

Mr NIELSON I have no further questions I want to thank the witnesses

Mr MARKEY The Chair recognizes the gentlelady from Illinois, Mrs Collins

Mrs COLLINS Mr Chairman, I thank you for recognizing me at this point

I think the legislation before us is basically good legislation However, I have one concern that I think needs to be brought up, and that is the fact that we don't have anything like a national telecommunications policy in our country

I was prepared to offer an amendment, but there is no way that I would want to logjam the piece of legislation we are working on right now, because, as I understand it, it would require sequential referral So I am not going to do that

However, I would like to point out that we are perhaps the only country in the world that has no national telecommunications policy When we stop to think of all the new technologies that are developing, and all the people who need to be served, and all the gaps that there are in a distinct approach to embracing and benefiting from this everemerging world of technological usage, that perhaps you would be willing to work with me in the first session of the next Congress to create a national office to establish a national telecommunications policy, perhaps within the executive branch

Mr MARKEY I agree 100 percent with the gentlelady that right now there is not a comprehensive telecommunications policy, but I will work with the gentlelady, I promise you

Mrs COLLINS Thank you very much, Mr Chairman

Mr MARKEY The gentlelady's time has expired

The Chair recognizes the gentleman from California, Mr Moorhead

Mr MOORHEAD Thank you, Mr Chairman

The problem that we had here has been a very difficult one for many people, especially those folks that have not been able to get television out in their homes apart from the big cities

You four have done a tremendous job in bringing together conflicting points of view to the point where we have a very fine bill today

I know some of you have problems with it still, there are things you would like to correct about it I know, Mr Padden, you had the biggest problem of all with this legislation

I think most of the problems have been worked out and you have done a very excellent job in compromising your positions and in getting something out of the bill that wasn't there before So I

want to congratulate each one of you I think you have done a good job in taking care of your own industry but also in working out a problem that we really hadn't worked out for the people who did not have the kind of television reception that others of us have enjoyed for so long So thank you very much

Mr MARKEY The gentleman's time has expired

The Chair recognizes the gentleman from Virginia, Mr Boucher

Mr BOUCHER I have no questions, Mr Chairman

Mr MARKEY The Chair recognizes the gentleman from Louisiana, Mr Tauzin

Mr TAUZIN Let me first thank you all for the comments you made this morning in support of this legislation and particularly thank my colleagues, Mr Boucher and Mr Synar in particular, for the assistance they have given all of us in reaching compromise and I think a solution to some of the vexing problems that face us in this area

I have a couple of quick points

One, when the whole issue of scrambling and descrambling began to occur, one of the most serious concerns we had was what would happen when network signals became scrambled The superstations issue with distant signals became complicated What would happen to all of that in this world? One of the collateral concerns was, if we fix it, are we going to create a worse world, are we going to somehow damage the affiliate station relationships that are so important in our television system in America?

I want to compliment my colleagues for the work they have done in the Judiciary Committee with the copyright side of this issue and the way they have dealt with it in a way of fairness and I think compromise that protects the networks and their affiliate station relationships and discourages people, for example, from not in fact taking the network signal from the affiliate station in the areas where it can be dropped in their home with an ordinary antenna or where they are receiving it through the cable, where they are encouraged to keep it that way so that people around the country can continue to have that association with the affiliate station

The 90-day provision you have worked out in the bill is designed to do that and I think it is a feature that I endorse and support

Finally, I want to compliment all of you for agreeing, at least informally and here in public, to the notion that this bill can even be improved with additional language to deal with the horrible problem of piracy that complicates and puts the good dealers and the good sellers and marketers of this product at risk because they have to compete with people who are selling on the black market the same product at cheaper and sometimes better conditions than they can sell

So I want to thank all of you for the kind of cooperative spirit you have shown and particularly thank my colleagues for the work they have done

Finally, to the National Cable Association, we have been battling and dueling over this thing in a friendly spirit for a long time The contract that was signed with the National Rural Telecommunications Association as a third party distributor of the product does not completely solve the problem of discrimination but it goes a

long way toward establishing a beachhead and I think more choice for customers out there in packaging

I think the satellite dealers of the country, I think the folks who enjoy the dish products in America, as well as those who provide the products and the services through the networks and the superstations and the independent and affiliate stations of America are all beneficiaries of the products of this compromise Again I want to thank you all for being a part of it and particularly again for the members of this committee who have worked so hard to bring us to this point

I have got no questions of you I only want to thank you for the kind of support you have given us

Mr MARKEY The gentleman's time has expired

Does any other member seek recognition at this time?

Mr NIELSON Mr Chairman

Mr MARKEY The Chair recognizes the gentleman from Utah

Mr NIELSON Mr Chairman, I neglected to say something about the Tauzin amendment

I think Mr Tauzin deserves a lot of credit for his leadership in the satellite dish program of working with those of us who were reluctant to go as far as he wanted to go in the previous bill, but nevertheless recognized the problem

I think he deserves a lot of credit for the work he has done, not only on this bill but other bills we have passed

Mr MARKEY The gentleman's time has expired

Is there any other member seeking recognition at this time?

The Chair sees none

We will then thank the witnesses very much for their help, not only here this morning but over the last several months, in helping to frame our legislation We thank you very, very much for your help

[Whereupon, at 10 40 a m , the subcommittee adjourned]

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