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Copyright Act and Communications Act Reforms in 2019 Related to Television

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SUMMARY

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January 13, 2020

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Copyright Act and Communications Act Reforms in 2019 Related to Television

On December 20, 2019, President Donald J. Trump signed the Satellite Television Community Protection and Promotion Act of 2019, and the Television Viewer Protection Act of 2019 (Titles XI and X of Division P, respectively, of the Further Consolidated Appropriations Act, 2020, P.L. 116-94). The act permanently extends some legal provisions governing the retransmission of distant network broadcast signals, while repealing others. In addition, the act permanently extends and changes rules for retransmission consent negotiations between television station owners and operators of satellite and cable systems.

Congress enacted the new laws to prevent the expiration at the end of 2019 of provisions of communications and copyright laws related to the retransmission of broadcast television signals by cable operators, telephone companies (telcos), and satellite operators, pursuant to the STELA Reauthorization Act of 2014 (P.L. 113-200). (STELA stands for the Satellite Television Extension and Localism Act.) Congress had repeatedly reenacted several of these temporary provisions over several decades.

Copyright Act Provisions

Generally, copyright owners have exclusive legal rights to license their works. The Copyright Act limits these rights for owners of copyrights to programming carried by retransmitted broadcast television signals. The act provides for statutory licenses that allow cable, telco, and satellite operators to retransmit television broadcast station signals under certain circumstances, even if one or more owners of the copyrights to the programs carried by those signals do not agree. Section 119 of the Copyright Act, which was due to expire at the end of 2019, allows satellite operators to avoid negotiating with copyright holders of programming that they transmit from outside a subscriber's local area and instead pay a royalty fee to the U.S. Copyright Office. The Copyright Office in turn pays the rights holders. The Satellite Television Community Protection and Promotion Act of 2019 permanently extends Section 119 of the Copyright Act, but limits the types of "unserved households" eligible to receive the distant signals. It also requires DIRECTV, a satellite operator, to retransmit local broadcast signals in all 210 U.S. television markets in order to continue using the compulsory copyright license described in this section.

Communications Act Provisions

Generally, commercial broadcast television stations may either require cable, telco, and satellite operators to carry their signals within the stations' local markets for no fee or demand that the operators negotiate for the right to retransmit the stations' signals within those markets in exchange for a fee. The Television Viewer Protection Act of 2019 made permanent three provisions of the Communications Act. One of the newly permanent provisions permits a satellite operator to retransmit broadcast station signals outside of the stations' local markets without the consent of those stations, if the satellite operator is retransmitting the signals pursuant to Section 119 of the Copyright Act. A second prohibits broadcast stations from entering into exclusive contracts with cable, satellite, or telco operators.

The third newly permanent provision of the Communications Act requires all parties to negotiate retransmission consent in "good faith" and assigns the Federal Communications Commission (FCC) a mediation role in the event any party accuses another of failing to negotiate in good faith. However, the act specifies that collective negotiation by smaller cable, telco, and/or satellite operators with large station group owners is not a violation of good faith. On the other hand, the Communications Act specifies that joint retransmission consent negotiations by separately owned (as defined by the FCC) broadcasters within the same market is a violation of good faith. In December 2019, the FCC reinstated rules related to the enforcement of its local ownership limits. If a television company that owns a station in a market sells advertising for another station in the same market under an agreement with that station's owner, the FCC attributes ownership of both stations to that company.

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Introduction

The retransmission of television signals to subscribers of cable, telephone company (telco), and satellite services has been governed in part by the Satellite Television Extension and Localism Act Reauthorization Act of 2014 (STELA Reauthorization Act; P.L. 113-200). Some provisions of this law, which amended the Copyright Act of 1976 and the Communications Act of 1934, were set to expire at the end of 2019.[1] As described in "Legislation," with the enactment of the Satellite Television Community Protection and Promotion Act of 2019, and the Television Viewer Protection Act of 2019 (Titles XI and X of Division P, respectively, of the Further Consolidated Appropriations Act, 2020 P.L. 116-94), Congress permanently extended certain Copyright Act and Communications Act provisions that affect direct broadcast satellite service to viewers in rural areas; limited the ability of separately owned broadcast stations to jointly negotiate with cable and satellite operators over the retransmission of television signals; and affirmed the role of the Federal Communications Commission (FCC) in resolving disputes that could potentially interrupt television service to subscribers of cable, telephone, and satellite services.

In addition, Congress amended the Copyright Act to restrict the number of households eligible to receive non-local broadcast television signals via satellite distributors, and encouraged DIRECTV, a satellite operator, to retransmit local broadcast television signals, where available, in all local television markets. Congress amended the Communications Act to permit small video programming service distributors to negotiate collectively with large broadcast station groups, and increase transparency in bills for new customers of video distribution services.

To provide context for the current debate, this report provides background information about how households receive television programming, how the television industry operates, and how the Copyright and Communications Acts determine what programs viewers receive. After describing the now-repealed provisions of the copyright act, the report summarizes the provisions of the Copyright and Communications Act enacted by Congress in 2019. Finally, it addresses the relationship between the new provisions and FCC media ownership rules, which the FCC amended in December 2019.

Background

A household may receive broadcast television programming through one or more of three methods:

1. by using an individual antenna that receives broadcast signals directly over the air from television stations;
2. by subscribing to a multichannel video programming distributor (MVPD), such as a cable or satellite provider or a telco, which brings the retransmitted signals of broadcast stations to a home through a copper wire, a fiber-optic cable, or a satellite dish installed on the premises; or
3. by using a high-speed internet (broadband) connection. A household may subscribe to a streaming service either that includes broadcast television programming on an on-demand basis, or as a package of prescheduled programming, that is, a "virtual MVPD" (vMVPD).[2]

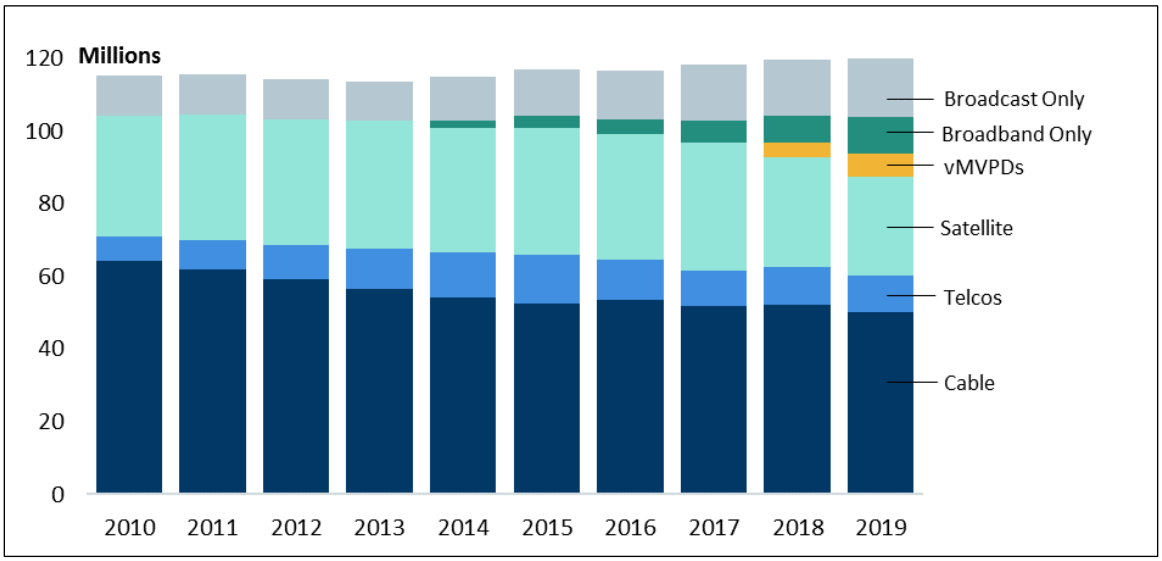
[1] This report refers to these acts as the "Copyright Act" and the "Communications Act," respectively.

[2] The Nielsen Company, *Nielsen Total Audience Report, Q1 2019*, p. 25, https://www.rbr.com/wp-content/uploads/Q1-2019-Nielsen-Total-Audience-Report-FINAL.pdf. YouTube TV includes local broadcast television stations in its

As **Figure 1** indicates, the total number of U.S. households subscribing to an MVPD has declined over the past 10 years. In 2010, about 104.2 million households subscribed to an MVPD, compared with about 87.4 million households in 2019. In place of MVPDs, an increasing number of households rely on video provided over broadband connections (including vMVPDs) or via over-the-air broadcast transmission.

Figure 1. Media Consumptions of Habits over Time

Households with Television



Source: For 2014-2019, CRS estimates based on data from the Nielsen Company, *Total Audience Report*. Estimated relative share of households subscribing to cable, satellite operators, and telcos in 2018 and 2019 based on data from S&P Global. For 2010-2013, data are from the Nielsen Company, *Cross Platform Report*.

Notes: The term "Broadband Only" refers to video received exclusively via a broadband connection instead of by traditional means (over-the-air, cable, telco, or satellite) or via a vMVPD. A television household is a household with at least one operable television set or monitor that receives programming via a broadcast antenna, cable or telco set-top box, satellite receiver, or broadband connection.

Currently, two direct broadcast satellite providers—DIRECTV and DISH—offer video service to most of the land area and population of the United States.[3] As of June 2019, DIRECTV had approximately 17.4 million U.S. subscribers, while DISH had approximately 9.5 million U.S. subscribers.[4] Both have lost subscribers since September 2014, when DIRECTV had

streaming package. Google, YouTube TV, "Channels," https://tv.youtube.com/welcome/. Sling TV, however, generally does not and instead provides subscribers with an antenna for over-the-air reception. Sling TV, LLC, "Watch Free Local Channels," https://www.sling.com/programming/locals#locals.

[3] The name of DISH's parent company is DISH Network Corporation. The name of the division that operates DIRECTV is DirecTV. DirecTV's parent company is AT&T Inc., which acquired the satellite provider in 2015.

[4] S&P Global, "Media Census: Operators by Geography," (website available by subscription). AT&T, which owns DIRECTV, provides a figure for total number of its "premium TV" subscribers but does not specify the number of subscribers to each of its various video services. AT&T Inc., Securities and Exchange Commission (SEC) Form 10-Q for the Quarterly Period ended June 30, 2019, p. 46. AT&T states that it had about 21.6 million total premium TV video subscribers as of June 2019. DISH Network Corporation, SEC Form 10-Q for the Quarterly Period ended June 30, 2019, p. 47.

approximately 20.2 million U.S. subscribers and DISH had approximately 14.0 million U.S. subscribers.[5]

Broadcast Television Markets

Federal Communications Commission Licensing and Localism

The FCC licenses broadcast television station owners for eight-year terms to use the public airwaves, or spectrum, in exchange for operating stations in "the public interest, convenience and necessity," pursuant to Section 310(d) of the Communications Act.[6] In 1952, the FCC formally allocated television broadcast frequencies among local communities.[7] The basic purpose of the allocation plan was to provide as many communities as possible with sufficient spectrum to permit one or more local television stations "to serve as media for local self-expression."[8]

Television Communities vs. Local Television Markets

Until the mid-1960s, the television audience research firm the Nielsen Company restricted its measurement of television station viewership to the major metropolitan areas that were the first to have broadcast television stations.[9] Among other factors, the station considers the estimated number of viewers it attracts with programs when determining the prices that it can charge advertisers. Thus, station viewership plays a significant role in a station's ability to generate revenue. After hearings in the House of Representatives produced accusations that stations licensed to large cities were pressuring the rating services not to measure audiences of stations licensed to smaller cities,[10] Nielsen began to assign each U.S. county to a unique geographic television market in which Nielsen could measure viewing habits.[11] Nielsen's construct, known as Designated Market Areas (DMAs), has been widely used to define local television markets since the late 1960s.[12] The definitions of DMAs are important in determining which television broadcast signals an MVPD subscriber may watch.

Nielsen generally assigns each county to one of 210 DMAs based on the predominance of viewing of broadcast television stations in that county. In addition, Nielsen assigns each broadcast television station to a DMA. Nielsen bases each station's DMA on the home county of its FCC community of license.[13] Stations seek to have their signals reach as many people as possible

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[5] DirecTV Group Holdings, LLC, SEC Form 10-Q for the Quarterly Period ended September 30, 2014, p. 61; DISH Network Corporation, SEC Form 10-Q for the Quarterly Period September 30, 2014, p. 58.

[6] 47 U.S.C. §310(d).

[7] Federal Communications Commission, "Rules Governing Television Broadcast Stations, Sixth Report and Order," 17 *Federal Register* 3905, 3912-3914, May 2, 1952.

[8] U.S. Congress, House Committee on Interstate and Foreign Commerce, *Regulation of Community Antenna Systems*, committee print, 89th Cong., 2nd sess., June 17, 1966, p. 7.

[9] Karen S. Buzzard, *Chains of Gold: Marketing the Ratings and Rating the Markets* (Metuchen, NJ: The Scarecrow Press, Inc., 1990), pp. 121-122 (Buzzard).

[10] U.S. Congress, House Committee on Interstate and Foreign Commerce, Special Subcommittee on Investigations, *The Methodology, Accuracy, and Use of Ratings in Broadcasting*, 106th Cong., 1st sess., March 7, 1963 (Washington: GPO, 1963), pp. 203-228.

[11] Buzzard, pp. 128-133. See also "Slicing the Demographic Pie," *Sponsor*, February 27, 1967, pp. 27, 29.

[12] John S. Armstrong, "Constructing Television Communities: The FCC, Signals, and Cities, 1948-1957," *Journal of Broadcasting & Electronic Media*, March 2007.

[13] The Nielsen Company, *Measurement and Reporting Geographies, Local Reference Supplement 2007-2008*, p. 1.2, https://ecfsapi.fcc.gov/file/6519864809.pdf. (This link is to the most recent version that is publicly available.)

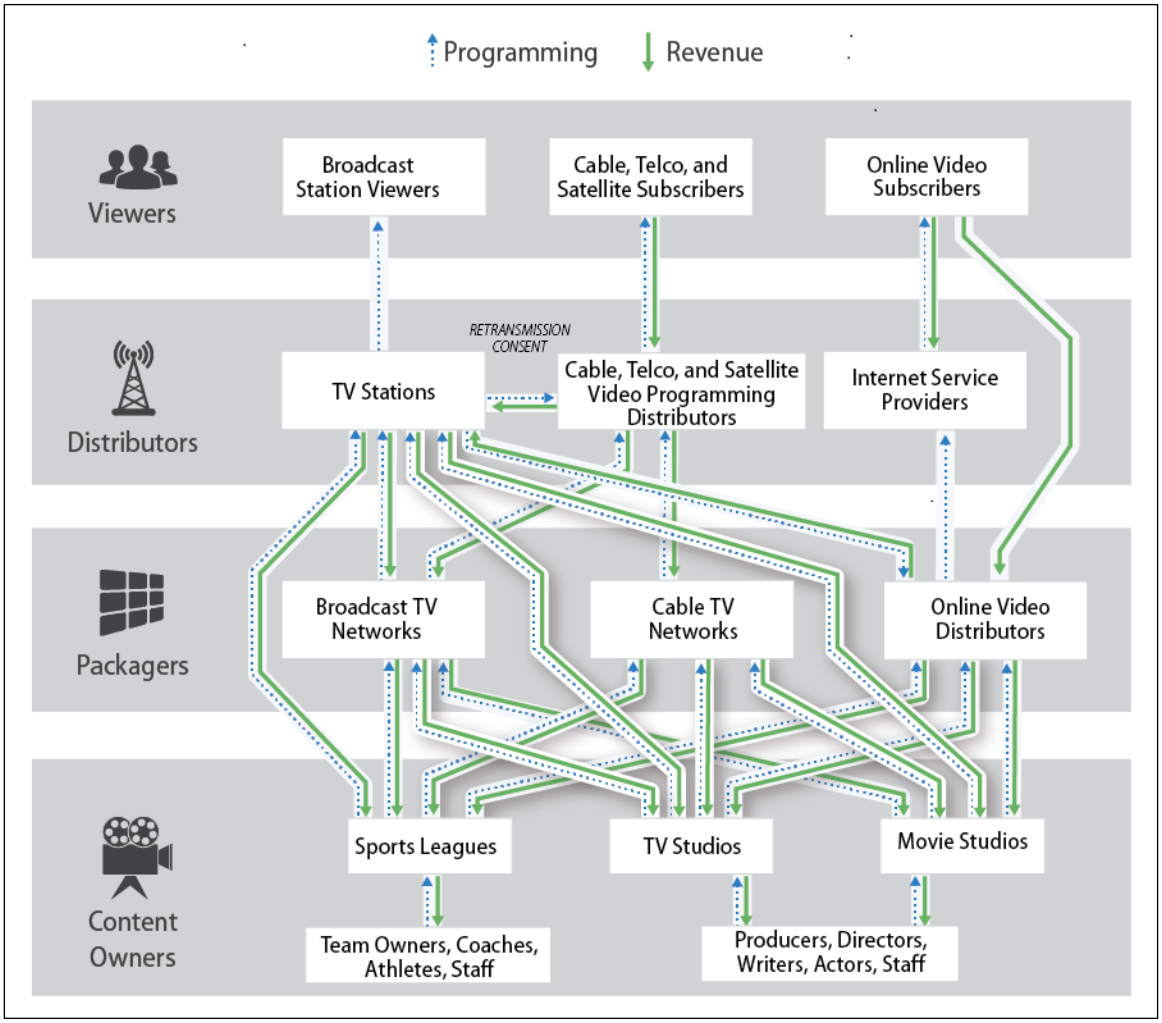
living within their DMAs. They generally have little incentive to reach viewers living outside their DMAs, as they are typically unable to charge advertisers for access to those viewers.

Broadcast stations' contractual agreements with television networks and other suppliers of programming generally give them the exclusive rights to air that programming within their DMAs. Advertisers use DMAs to measure television audiences and to plan and purchase advertising from stations to target viewers within those geographic regions.

Retransmission of Broadcast Signals via MVPDs

Figure 2 illustrates the relationships among viewers; broadcast television stations; cable, telco, and satellite operators; cable and broadcast networks; and owners of television programming content.

Figure 2. TV Industry Snapshot



Source: CRS.

Notes: Many companies/entities fall into multiple categories, or have multiple operations within a category. Other owners of content not included in this diagram are songwriters and recording artists, who in turn have licensing agreements with the content owners pictured here.

Related Communications Laws

Generally, subscribers to cable, telco, and satellite services may receive television stations located within their DMAs as part of their video packages. Whether or not subscribers do so, however, depends in part on the decisions of broadcast stations to require these services to retransmit their signals or to opt instead to negotiate for compensation. In addition, satellite operators may choose not to provide any local broadcast service in a particular DMA. The Communications Act gives broadcast stations and satellite operators the rights to make these choices.

Must Carry; Carry One, Carry All

Every three years, commercial broadcast television stations may choose to require cable, telco, and satellite operators to retransmit their signals.[14] By statute, a cable operator or telco must carry the signals of all television stations seeking "must carry" status and assigned to the DMA in which the cable operator is located. Satellite operators are required to carry the signals of all stations assigned to a DMA that seek must carry status to viewers in that DMA, if they choose to carry the signal of at least one local television station in the market.[15] Policymakers often call this provision "carry one, carry all." The applicability of these provisions to telcos is uncertain.[16]

Due in part to the carry one, carry all provision, DIRECTV has opted not to retransmit any local broadcast television stations in 12 DMAs. They are Alpena, MI; Bowling Green, KY; Caspar-Riverton, WY; Cheyenne, WY/Scottsbluff, NE; Grand Junction, CO; Glendive, MT; Helena, MT; North Platte, NE; Ottumwa, IA; Presque Isle, ME; San Angelo, TX; and Victoria, TX.[17]

Retransmission Consent

In lieu of choosing must carry status, commercial broadcasting stations may opt to seek compensation from cable, telco, and satellite operators for carriage of their signals in exchange for granting retransmission consent.[18] In contrast to the must carry laws, which differ for cable and satellite operators, the retransmission consent laws apply to all MVPDs.

If a broadcast station opts for retransmission consent negotiations, MVPDs must negotiate with it for the right to retransmit its signal within the station's DMA. In addition, cable operators may negotiate with the station for consent to retransmit the station's signals outside of the station's DMA.[19] However, the contracts that broadcast stations have with program suppliers, such as television networks, may limit the stations' ability to consent to the retransmission of their signals outside of their markets.[20] Most television broadcast stations are part of a portfolio owned by

[14] 47 U.S.C. §534.

[15] 47 U.S.C. §338; 17 U.S.C. §122.

[16] AT&T has stated that it does not consider its wired video service to be a "cable service" under the Communications Act. AT&T Inc., SEC Form 10-K for the Quarterly Period ended December 31, 2014, p. 3.

[17] John Eggerton, "Senators Press AT&T/DirecTV for Small Area, Remote TV Market Signals," *Broadcasting & Cable*, March 14, 2019, https://www.broadcastingcable.com/news/senators-press-at-t-directv-for-small-market-remote-area-tv-signals.

[18] 47 U.S.C. §325.

[19] Generally, satellite operators may not retransmit a distant broadcast station carrying programming of a particular broadcast commercial network if a local affiliate is available. They may do so, however, if a local affiliate grants permission. See "Expiring Provisions of Communications Act" and "Expiring Provision of Copyright Act."

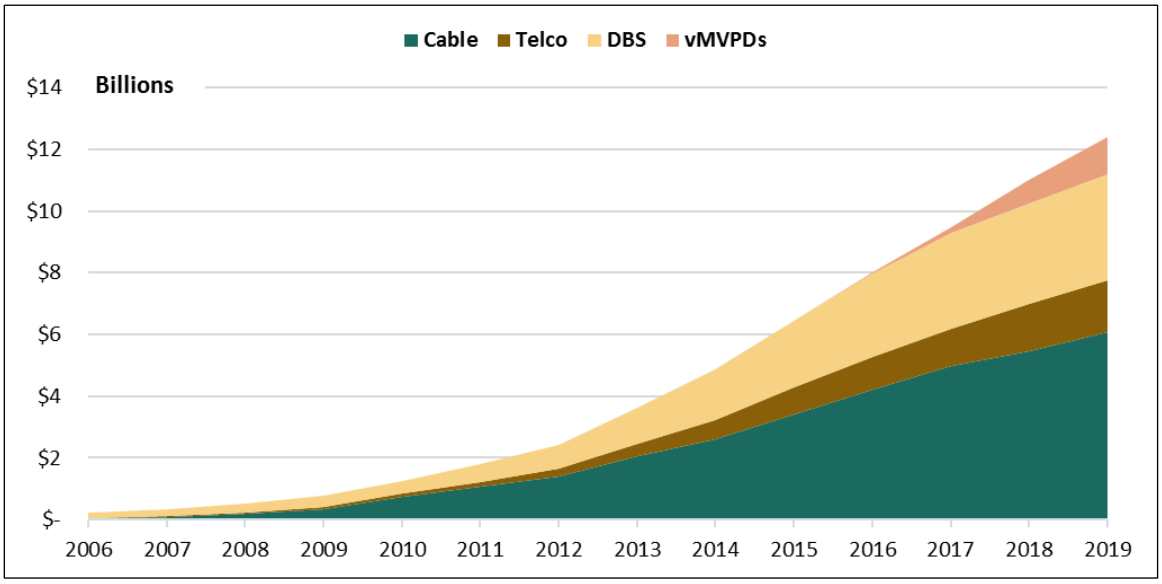
[20] Federal Communications Commission, "Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014, Report," 31 *FCC Record* 5463, 5469, n. 44, June 3, 2016.

broadcast station groups. Most cable systems are part of multiple-system operations owned by corporations. Negotiations over retransmission consent generally occur at the corporate level, rather than between an individual station and a local cable system.

Greater competition among MVPDs has increased the negotiating advantage of broadcast television stations since 1993, when they first had the right to engage in retransmission consent negotiations.[21] At that time, large MVPDs refused to pay broadcast stations directly for retransmission rights.[22] Instead, several broadcast networks negotiated on behalf of their affiliates for alternative forms of compensation. The networks sought carriage of new cable networks owned by their parent companies, and split the proceeds they received from the cable networks with the affiliates.

As satellite operators and telcos entered the market in competition with cable operators, broadcast stations could encourage the cable subscribers to switch, and vice versa. Broadcast stations began to demand cash in exchange for carriage. As **Figure 3** indicates, the total amount of retransmission fees paid by MVPDs has increased from $0.21 billion in 2006 to $12.38 billion in 2019. The 2019 totals include fees paid by vMVPDs, which did not exist in 2006.

Figure 3. Retransmission Consent Fees over Time



Source: CRS analysis of data from S&P Global, "Broadcast Retrans and Virtual Multichannel Sub Carriage Fees Summary: 2011-2024."

Notes: "DBS" refers to direct broadcast satellite services. "Telco" refers to telephone companies that offer video service.

Related Copyright Laws

Generally, copyright owners have the exclusive legal right to "perform"[23] publicly their works, and, as is the case with online distribution of their programs, to license their works to distributors

[21] Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act; P.L. 102-385).

[22] Kate Maddox, "More Deals on Carriage Announced," *Television Week*, August 16, 1993. "Cable Believes CBS Surrender Ends Retransmission Consent War," *Communications Daily*, August 27, 1993.

[23] The Copyright Act defines public performance of a copyrighted work to mean "(1) to perform or display it at a place

in marketplace negotiations.[24] The Copyright Act limits these rights for owners of programming contained in retransmitted broadcast television signals. The Copyright Act guarantees MVPDs the right to perform publicly the copyrighted broadcast television programming, as long as they abide by FCC regulations and pay royalties to content owners at rates set and administered by the government.[25] In some instances, MVPDs need not pay content owners at all, because Congress set a rate of $0.

The Copyright Act contains three statutory copyright licenses governing the retransmission of local and distant television broadcast station signals. *Local signals* are broadcast signals retransmitted by MVPDs within the local market of the subscriber ("local-into-local service"). *Distant signals* are broadcast signals imported by MVPDs from outside a subscriber's local area.

1. The cable statutory license, codified in Section 111, permits cable operators to retransmit both local and distant television station signals.[26] This license relies in part on former and current FCC rules and regulations as the basis upon which a cable operator may transmit distant broadcast signals.
2. The local satellite statutory license, codified in Section 122, permits satellite operators to retransmit local signals on a royalty-free basis. To use this license, satellite operators must comply with the rules, regulations, and authorizations established by the FCC governing the carriage of local television signals.
3. The distant satellite statutory license, codified in Section 119, permits satellite operators to retransmit distant broadcast television signals. Congress has renewed this provision in five-year intervals. In 2004, Congress inserted a "no distant if local" provision, which prohibits satellite operators from importing distant signals into television markets where viewers can receive the signals of broadcast network affiliates over the air.

open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times." See 17 U.S.C. §101.

[24] 17 U.S.C. §106.

[25] The Copyright Act does not have a specific compulsory license for telcos. In 2008, the Register of Copyrights, in a report to Congress, concluded that both Verizon's FiOS service and AT&T wired video service met the definition of a "cable system" within the Copyright Act, and therefore were entitled to use the compulsory license to retransmit broadcast televisions stations. Marybeth Peters, Register of Copyrights, Satellite Home Viewer Extension and Reauthorization Act, Section 109 Report, U.S. Copyright Office, Library of Congress, Washington, DC, June 30, 2008, p. 199, https://www.copyright.gov/docs/section109/. The Register also noted, "[a]t the FCC, AT&T (but not Verizon) has argued that the many obligations found under Title VI of the Communications Act, such as the statute's franchise obligations, do not apply to AT&T's wired video service because of its unique system architecture." Ibid., n. 111. She recommended that if Congress opted to retain the statutory license for cable operators, it amend the Copyright Act to state "that all users of the license must comply with all current Title III and Title VI requirements found in the Communications Act pertaining to the carriage, distribution, and protection of local television broadcast stations." Ibid., p. 200.

[26] As defined by Section 111, distant commercial television signals are generally those located outside the local market area served by a cable system. A noncommercial educational broadcast station is considered "distant" under the cable statutory license if its "noise limited" service contour (the technical over-the-air coverage zone) does not cover the local cable system. See 17 U.S.C. §111(f) (definition of "local service area of a primary transmitter"). For satellite carriers, distant television signals are generally those located outside a particular local market served by a satellite carrier. See 17 U.S.C. §119(d)(11) (local versus distant status is determined by reference to the definition of "local market" in Section 122(j) of the Copyright Act).

Under the statutory license, cable, telco, and satellite operators make royalty payments every six months to the U.S. Copyright Office, an agency of the Library of Congress. The head of this office, the Register of Copyrights, places the money in an escrow account and maintains the "Statement of Account" that each operator files. Congress has charged the Copyright Royalty Board (CRB), which is composed of three administrative judges appointed by the Librarian of Congress,[27] with distributing the royalties to copyright claimants. It also has the task of adjusting the rates at five-year intervals, and annually in response to inflation. For additional information about these licenses, see CRS Report R44473, *What's on Television? The Intersection of Communications and Copyright Policies*, by Dana A. Scherer.

Through a series of laws (**Table 1**) enacted over the last 30 years, Congress created new sections or modified existing sections of the Copyright Act and the Communications Act to regulate the satellite retransmission of broadcast television and to encourage competition between satellite and cable operators. Congress began the process with the enactment of the Satellite Home Viewer Act of 1988 (SHVA; P.L. 100-667), revised it further in several laws leading to the Satellite Television Extension and Localism Act (STELA) of 2010 (P.L. 111-175), and amended the process again with the enactment of the STELA Reauthorization Act of 2014. Most recently, the enactment the Satellite Television Community Protection and Promotion Act of 2019, and the Television Viewer Protection Act of 2019, (Titles XI and X of Division P, respectively, of the Further Consolidated Appropriations Act, 2020, P.L. 116-94) permanently extended some legal provisions governing retransmission of distant network broadcast signals, while repealing others.

[27] In 1976, Congress also created a tribunal (consisting of five commissioners appointed by the President) to adjust the royalty rates after 1978 (P.L. 94-553, §§801-810). After replacing the tribunal with an arbitration panel in 1993, Congress established the Copyright Royalty Board (CRB) in 2004 (Copyright Royalty and Distribution Reform Act of 2004; P.L. 108-419, codified at 17 U.S.C. §§801-805). See also Copyright Royalty Tribunal Reform Act of 1993, P.L. 103-198. Congress placed the tribunal, the arbitration panel, and the CRB in the legislative branch.

Table 1. History of Satellite Television Laws

Statute	Year Enacted	Highlights
Satellite Home Viewer Act of 1988 (SHVA; P.L. 100-667)	1988	Established six-year compulsory copyright license to allow satellite operators to carry broadcast programming from distant network affiliates (of ABC, CBS, and NBC—similar to definition for cable compulsory licensing) and superstations,[a] generally to residents in rural areas using home satellite dishes. Entitled network stations to higher royalty rates than "non-network" stations.
Satellite Home Viewer Act of 1994 (P.L. 103-369)	1994	Renewed compulsory license for an additional five years. Broadened definition of network station to include PBS and FOX affiliates. Limited satellite importation of broadcast television signals to "unserved households" (i.e., those unable to receive over-the-air signals). Placed burden of proof on satellite operators to demonstrate that households are eligible to receive distant broadcast signals. Broadened definition of satellite carriers to include Direct Broadcast Satellite services (DISH and DIRECTV), scheduled to begin operating in 1994.
Satellite Home Viewer Improvement Act of 1999 (SHVIA; P.L. 106-113)	1999	Brought satellite and cable services closer to regulatory parity. Created permanent legal and regulatory framework permitting satellite operators to retransmit local broadcast signals ("local-into-local" service). In contrast to nationwide "must carry" provisions applying to cable operators, applied "must carry" provisions to satellite operators on a market-by-market basis ("carry one, carry all"). Allowed satellite operators same rights as cable operators to deliver local stations to commercial establishments. Imposed five-year good faith retransmission consent obligations on broadcasters, subject to competitive marketplace conditions. Prohibited broadcasters from entering into exclusive retransmission consent agreements with MVPDs. Renewed compulsory license for an additional five years. Expanded definition of "unserved households" to include (1) those who obtain a waiver from a local network affiliate to receive a distant signal; (2) those whose distant signals were terminated after July 11, 1998, and before October 31, 1999, pursuant to a court injunction, or received such service on October 31, 1999; (3) operators of recreational vehicles and trucks; and/or (4) those subscribing to C-Band service prior to October 31, 1999.[b]
Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA; P.L. 108-447)	2004	Renewed compulsory license for an additional five years. Brought satellite and cable services nearer to regulatory parity. Created a "local" copyright license that gave satellite carriers the option to offer subscribers "significantly viewed" signals from an adjacent DMA and granted them retransmission rights for the signals. Restricted satellite operators from offering distant signals to customers in a market where they are also offering the local affiliate of the same network (the "no distant where local" rule). Expanded definition of unserved household to include those who receive network programming in local market via digital multicast stream only.[c] Permitted satellite operators to transmit superstations to commercial establishments, similar to cable operators. Made five-year good faith bargaining requirements (subsequently renewed) for retransmission consent negotiations reciprocal between MVPDs and broadcast stations.

Statute	Year Enacted	Highlights
Satellite Television Extension and Localism Act of 2010 (STELA; P.L. 111-175)	2010	Provided that satellite operators may offer "significantly viewed" stations in high definition format only if they provide local stations in high-definition format as well. Modified criteria for determining satellite subscribers' eligibility to receive distant signals (i.e., "unserved households") to account for broadcast stations' conversion from analog to digital signals. Allowed DISH to continue to use statutory license in exchange for providing local-into-local service in all 210 DMAs, notwithstanding court injunction. Some of the DMAs are "short markets," that is, markets in which a local broadcaster does not offer programming from one for more of the four major broadcast networks (ABC, CBS, FOX, and NBC).
STELA Reauthorization Act of 2014 (P.L. 113-200)	2014	Extended rules for modification of cable operators' "local markets" to satellite operators, and directs the FCC to factor consumers' access to in-state programming when modifying markets. Eliminated FCC rules barring MVPDs from deleting broadcasters' programming or changing channel positions during "sweeps" weeks. Prohibited separately owned broadcast stations from jointly negotiating retransmission consent in same market. Repealed FCC ban on integration of navigation and security functions within cable set-top boxes effective December 4, 2015.
Television Viewer Protection Act of 2019; Satellite Television Community Protection and Promotion Act of 2019 (P.L. 116-94)	2019	Permanently extends copyright portions allowing satellite retransmission of distant signals, but limits definition of unserved households to those living in short markets, as well as owners of recreational vehicles and trucks. Extends requirement to provide local-into-local service in all 210 DMAs as condition for use of statutory copyright license to all satellite operators (i.e., DIRECTV). Permanently extends requirement for MVPDs and broadcasters to negotiate in good faith. Permanently extends prohibition on broadcasters from entering into exclusive retransmission consent agreements with MVPDs. Permits MVPDs with fewer than 500,000 subscribers to negotiate retransmission consent collectively with broadcast station groups that reach more than 20% of U.S. households with television. Requires MVPDs to disclose and itemize costs of video services to consumers within 24 hours of enrolling them to receive services; consumers may cancel without penalty within 24 hours of receiving bill. Prohibits MVPDs and broadband internet service providers from charging consumers for equipment they have not supplied.

Sources: Excerpted by CRS from Testimony of Eloise Gore, Associate Bureau Chief, Enforcement Bureau, FCC, in U.S. Congress, House Subcommittee on Communications and Technology, Committee on Energy and Commerce, *Satellite 101*, hearings, 113th Cong., 1st sess., February 13, 2013, H.Hrg. 113-4 (Washington, DC: GPO, 2013) pp. 11-15, (describing the enactment of SHVA in 1988 and the subsequent reauthorizations through 2010); U.S. Congress, Senate Committee on the Judiciary, *Satellite Compulsory License Extension Act of 1994*, committee print, 103rd Congress, 2nd session, October 7, 1994, 103-407 (Washington: GPO, 1994); U.S. Congress, House Committee on Commerce, *Intellectual Property and Communications Reform Act of 1999*, committee print, 106th Congress, 1st session, November 9, 1999, 106-464 (Washington: GPO, 1999); U.S. Congress, House Committee on the Judiciary, *Satellite Home Viewer Update and Reauthorization Act of 2009*, committee print, 111th Cong., 1st session, October 28, 2009, H.Prt. 111-319 (Washington: GPO, 2009), describing provisions adopted in STELA. Federal Communications Commission, "In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-29," 29 *FCC Record* 3341 March 31, 2014 (describing satellite television laws implemented by the FCC); Further Consolidated Appropriations Act, 2020.

Notes:

a. The Communications Act identifies a class of "nationally distributed superstations" (47 U.S.C. §339(d)(2)). These are independent stations whose broadcast signals are retransmitted by satellite to cable television

and satellite operators for distribution throughout the United States. The MVPDs effectively treat the nationally distributed superstations as cable networks rather than local broadcast television stations. As of 2019, there are five superstations: KWGN (Denver), WPIX (New York), KTLA (Los Angeles), WSBK (Boston), and WWOR (New York/New Jersey).

b. In this context, the term C-band service means a service that is licensed by the FCC and operates in the Fixed Satellite Service under part 25 of Title 47 of the *Code of Federal Regulations*. 17 U.S.C. §119(a)(2)(B)(iii)(II). For more information about this provision, see "Expiring Provision of Copyright Act."

c. This section of the Copyright Act defines a "multicast stream" as "a digital stream containing programming and program-related material affiliated with a television network, other than the primary stream." 17 U.S.C. §119(d)(14). The section defines a "primary" stream as "(A)The single stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the [FCC] in effect on July 1, 2009; or (B) if there is no stream described in subparagraph (A), then either—(i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or (ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time." 17 U.S.C. §119(d)(15).

Expiring Provision of Copyright Act

Certain provisions in the STELA Reauthorization Act were set to expire on December 31, 2019. The copyright provision set to expire was Section 119 of the Copyright Act (17 U.S.C. §119). This section enables satellite operators to obtain rights to copyrighted programming carried by distant broadcast network affiliates, superstations, and other independent stations. Under this regime, the satellite operators submit a statement of account and pay a statutorily determined royalty fee to the U.S. Copyright Office on a semiannual basis, avoiding the transactions costs of negotiating with each individual copyright holder.[28]

A satellite operator is allowed to retransmit the signals of up to two distant stations affiliated with a network (ABC, CBS, FOX, NBC, or PBS) to a subset of subscribing households that are deemed "unserved" with respect to that network. The "unserved household" limitation does not apply to the retransmission of superstations (see **Table 1**, note a). Pursuant to Section 119, satellite operators may retransmit superstations to commercial establishments as well as households.

Section 119 specified five different categories of unserved households:

1. a household located too far from a broadcast station's transmitter to receive signals using an antenna; [Section 119(d)(10)(A)]
2. a household that received written consent from a local network affiliate to receive a distant signal;[29] [Section 119(d)(10)(B)]
3. a household that—even if it could receive a local broadcast signal over the air—nevertheless received a satellite retransmission of a distant signal on October 31, 1999, or whose satellite provider terminated the distant signal retransmission

[28] In 2004, the U.S. Copyright Office, while acknowledging that statutory licensing has ensured "the efficient and cost-effective delivery of television programming," characterized the process as "an artificial construct created in an earlier era." U.S. Congress, House Committee on the Judiciary, *Satellite Home Viewer Extension and Reauthorization Act of 2004*, committee print, 108th Cong., September 7, 2004, H. Prt. 108-660 (Washington: GPO, 2004), pp. 8-10.

[29] According to the conference committee, this provision "confirms ... what has long been understood by the parties and accepted by the courts." U.S. Congress, Conference Committee, Intellectual Property and Communications Omnibus Reform Act of 1999, conference report to accompany H.R. 1554, 106th Cong., 2nd sess., H.Rept. 106-464 (Washington, D.C: GPO, 1999), p. 97. (1999 SHVIA Conference Report).

after July 11, 1998, and before October 31, 1999, pursuant to court injunction;[30] [Section 119(d)(10)(C)]

4. operators of recreational vehicles and commercial trucks who complied with certain documentation requirements;[31] [Section 119(d)(10)(D)]
5. a household that received delivery of distant network signals via C-band before October 31, 1999.[32] [Section 119(d)(10)(E)]

In 2010, Congress provided an incentive for DISH to offer local-into-local service in all 210 markets with the enactment of STELA.[33]

Revenues Collected by Copyright Office

As **Table 2** indicates, between 2014 and 2019 the amount of Section 119 royalties collected by the Copyright Office declined by 89%. According to the Register of Copyrights, the decline is due in part to the drop in the number of distant network stations carried and the conversion of non-network superstations, such as WGN, to cable networks. In addition, as **Figure 1** indicates, the total number of households subscribing to satellite television declined from about 34.4 million in 2014 to 27.3 million in 2019.[34]

[30] In the late 1990s, several broadcast stations and networks brought lawsuits against satellite operators, alleging that the satellite operators were impermissibly retransmitting distant signals to ineligible households. U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Satellite Television Act of 1999*, committee print, 106th Cong., 1st sess., May 20, 1999, S. Prt. 106-51 (Washington: GPO, 1999), pp. 3-4. Courts found in favor of the plaintiffs, and directed the provider, PrimeTime 24, to shut off network programming for millions of households. *CBS, Inc. v. PrimeTime 24 J.V.*, 9 F. Supp. 2d 1333, 1337 (S.D. Fla. 1998) p. 1347. *ABC, Inc. v. PrimeTime 24*, 184 F.3d 348, 350 (4th Cir. 1999). The conference committee, finding that the courts would effectively punish those households for the actions of satellite carriers, added this definition of an "unserved household" in order to grandfather the households whose broadcast network programming service had been, or was scheduled to be, terminated. The conference committee noted that the grandfathered status was not transferable to a different satellite carrier, a different type of dish, or a new address. 1999 SHVIA Conference Report, p. 98.

[31] This provision allows operators of recreational vehicles and commercial trucks to use satellite dishes permanently attached to those vehicles to receive distant networks signals on television sets located inside those vehicles. The provision applies only to reception in that particular vehicle or truck, and does not authorize delivery of distant network signals to a fixed dwelling. 1999 SHVIA Conference Report, p. 98.

[32] In this context, the term C-band service means a service licensed by the FCC and operated in the Fixed Satellite Service under part 25 of Title 47 of the *Code of Federal Regulations*. 17 U.S.C. §119(a)(2)(B)(iii)(II).

[33] P.L. 111-175, Section 105, added Subsection g to Section 119.

[34] Letter from Karyn A. Temple, Register of Copyrights and Director of the U.S. Copyright Office, to Jerrold Nadler, Chairman, and Doug Collins, Ranking Member, House Committee on the Judiciary, June 3, 2019, https://judiciary.house.gov/story-type/letter/copyright-office-s-response-distant-signal-satellite-television-statutory-license.

Table 2. Section 119 Royalty Payments Received by Copyright Office

Satellite Provider	Jan.–Jun. 2014	Jan.–Jun. 2019
DIRECTV	$26,649,170	$2,303,988
DISH	$15,102,510	$2,174,319
DISH Puerto Rico	$299,308	$707
Distant Networks, LLC	$58,936	—
Total	$42,109,924	$4,479,015

Source: CRS analysis of 2014 and 2019 statements of account filed by satellite operators.

Notes: Numbers exclude $725 filing fee for each provider for each six-month period. The parent company of Distant Networks, LLC, which offered C-Band satellite television service, ceased operation in February 2014. Internet Archive, "Who is AllAmericanDirect.com?," https://web.archive.org/web/20101127064020/https://mydistantnetworks.com/aboutus.php. Internet Archive, "My DistantNetworks," https://web.archive.org/web/20140516214600/http://allamericandirect.com/.

Expiring Provisions of Communications Act

Several provisions of the Communications Act were also set to expire at the end of 2019. Some of those provisions cross-reference Section 119 of the Copyright Act.

Cross-References to Section 119 of Copyright Act

Section 325(b)(2)(B) and (C) of the Communications Act [47 U.S.C. §325(b)(2)(B)-(C)] permit a satellite operator to retransmit distant broadcast signals of stations without first seeking retransmission consent from those stations, if the satellite operator is retransmitting the signals pursuant to Section 119 of the Copyright Act.

Section 338(a)(3) of the Communications Act [47 U.S.C. §338(a)(3)] states that a low-power station whose signals are retransmitted by a satellite operator pursuant to Section 119 of the Copyright Act [17 U.S.C. §119(a)(14)] is not entitled to must carry rights.

Section 339(a)(1)(A) of the Communications Act (47 U.S.C. §339) permits satellite operators to retransmit the signals of a maximum of two affiliates of the same network in single day to households located outside of those stations' DMAs, subject to Section 119 of the Copyright Act. Section 339(a)(1)(B) states that satellite operators may retransmit local broadcast signals under 17 U.S.C. §122 in addition to any distant signals they may retransmit under Section 119 of the Copyright Act. Section 339(a)(2)(A) discusses rules for retransmitting broadcast station signals to satellite subscribers meeting the "unserved household" definition under Section 119 of the Copyright Act [17 U.S.C. §119(d)(10)(C)]. Section 339(a)(2)(D) and (c)(4)(A), in describing households eligible to receive distant signals, cross-reference the "unserved household" definition under 17 U.S.C. §119(d)(10)(A). Section 339(a)(2)(G) states that "this paragraph shall not affect the ability to receive secondary transmissions ... as an unserved household under section 119(a)(12) of title 17, United States Code." Section 339(c)(2) describes the process under which a household may seek a local affiliate's permission to receive a distant signal, and therefore qualify as an "unserved household" under Section 119 of the Copyright Act [17 U.S.C. §119(d)(10)(B)].

Section 340(3)(2) of the Communications Act [47 U.S.C. §340] states that a satellite operator that retransmits a distant broadcast signal pursuant to 17 U.S.C. §119 need not comply with FCC

regulations that would otherwise require the satellite operator to black out certain programs of that station.[35]

Section 342 of the Communications Act [47 U.S.C. §342] cross-references Section 119 of the Copyright Act [17 U.S.C. §119(g)(3)(A)(iii)], and describes the process through which DISH may obtain a certification from that FCC demonstrating that it is providing local-into-local service in all 210 DMAs. Under 17 U.S.C. §119(g)(3), upon presenting this certification, among other documents, to the Florida district court that had enjoined DISH from using the Section 119 license, DISH would be eligible to use it. (See "Expiring Provision of Copyright Act.")

Good Faith Requirements for Retransmission Consent Negotiations

Section 325(b)(3)(C) of the Communications Act (47 U.S.C. §325(b)(3)(C)) prohibits broadcast stations from engaging in exclusive contracts for carriage. This section also requires both broadcast stations and MVPDs to negotiate retransmission in "good faith," subject to marketplace conditions. Moreover, according to this section, the coordination of negotiations among separately owned television broadcast stations within the same DMA is a per se violation of the good faith standards.

The FCC implements the good faith negotiation statutory provisions through a two-part framework.[36] First, the FCC has a list of nine good faith negotiation standards. The FCC considers a violation of any of these standards to be a per se breach of the good faith negotiation obligation.[37] Second, the FCC may determine that based on the "totality of circumstances," a party has failed to negotiate retransmission consent in good faith. Under this standard, a party may present facts to the FCC that, given the totality of circumstances, reflect an absence of a

[35] For more information about these FCC rules, known as the "network non-duplication" and "syndicated exclusivity" rules, see CRS Report R44473, *What's on Television? The Intersection of Communications and Copyright Policies*, by Dana A. Scherer.

[36] Federal Communications Commission, "Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, FCC 00-99, First Report and Order," 15 *FCC Record* 5445, March 16, 2000.

[37] 47 C.F.R. §76.65(b)(1). The nine per se "good faith negotiation" standards are

> (i) Refusal by a Negotiating Entity [broadcast station or MVPD] to negotiate retransmission consent; (ii) Refusal by a Negotiating Entity to designate a representative with authority to make binding representations on retransmission consent; (iii) Refusal by a Negotiating Entity to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations; (iv) Refusal by a Negotiating Entity to put forth more than a single, unilateral proposal; (v) Failure of a Negotiating Entity to respond to a retransmission consent proposal of the other party, including the reasons for the rejection of any such proposal; (vi) Execution by a Negotiating Entity of an agreement with any party, a term or condition of which, requires that such Negotiating Entity not enter into a retransmission consent agreement with any other television broadcast station or multichannel video programing distributor; (vii) Refusal by a Negotiating Entity to execute a written agreement that sets forth the full understanding of the television broadcast station and the [MVPD]; and (viii) Coordination of negotiations or negotiation on a joint basis by two or more television broadcast stations in the same local market (as defined in 17 U.S.C. § 122(j)) to grant retransmission consent to a multichannel video programming distributor, unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Commission. (ix) The imposition by a television broadcast station of limitations on the ability of an MVPD to carry into the local market (as defined in 17 U.S.C. 122(j)) of such station a television signal that has been deemed significantly viewed, within the meaning of § 76.54 of this part, or any successor regulation, or any other television broadcast signal such distributor is authorized to carry under 47 U.S.C. §§ 338, 339, 340 or 534, unless such stations are directly or indirectly under common de jure control permitted by the Commission.

sincere desire to reach an agreement that is acceptable to both parties and thus constitute a failure to negotiate in good faith.

Complaints Regarding Good Faith Standard Violations

Over the last 13 years, both broadcast television station owners and MVPDs have filed complaints with the FCC that their counterparty has failed to negotiate in good faith. In some instances, the FCC has found that the complaint lacked validity.[38] In 2016, the FCC reached a consent decree with Sinclair Broadcast Group after completing an investigation.[39] In other instances, the FCC has monitored retransmission consent negotiations even when a party has not filed a complaint.[40] In some cases, stations and/or MVPDs withdraw complaints from the FCC after reaching retransmission consent agreements.[41] In November 2019, the FCC found that seven different station group owners had violated the per se good faith negotiation standards with respect to AT&T, and directed the parties to commence good faith negotiation.[42]

Good Faith Provisions and FCC Media Ownership Rules

Section 325(b)(3)(C)(iv) directs the FCC to adopt rules that prohibit the coordination of negotiations among separately owned television broadcast stations within the same DMA. Unlike

[38] Federal Communications Commission, "Mediacom Communications Corporation v. Sinclair Broadcast Group, Inc., Emergency Retransmission Consent Complaint and Complaint for Enforcement for Failure to Negotiate Retransmission Consent Rights in Good Faith, DA 07-3, Memorandum Opinion and Order," 22 *FCC Record* 35, 37, January 4, 2007; Federal Communications Commission, "ACC Licensee, Inc. v. Shentel Telecomm., Emergency Petition for Finding of Bad Faith Retransmission Consent Negotiations and for Enforcement of Customer Notice Rules, DA 12-1086, Memorandum Opinion and Order," 27 *FCC Record* 7584, 7590, July 6, 2012; and Federal Communications Commission, "Coastal Television Broadcasting Company LLC v. MTA Communications, LLC, Good Faith Negotiation Complaint DA 18-208, Memorandum Opinion and Order," 33 *FCC Record* 11025, 11027, November 2, 2018.

[39] Federal Communications Commission, "Sinclair Broadcast Group, DA 16-856, Order," 31 *FCC Record* 8576, July 29, 2016. The FCC had found that Sinclair had negotiated retransmission consent on behalf of, or coordinated negotiations on behalf of, stations it did not own, concurrently with negotiating on behalf of stations it did own within the same DMA. Sinclair did not admit liability for violating good faith requirements, but agreed to make a settlement payment of $9.495 million to the U.S. Treasury, and to implement and maintain a compliance plan for three years. The FCC did not specify whom, if anyone filed a complaint with the FCC. However, in a blog post, then-chairman Tom Wheeler stated, "[W]e do not need one of the parties to cry foul before acting in the public interest. The Commission can investigate a potential good faith violation on its own and take enforcement action when a party fails to fulfill its statutory obligations." (Source: Tom Wheeler, "An Update of Our Review of the Good Faith Retransmission Consent Negotiation Rules," Federal Communications Commission (blog), July 14, 2016, https://www.fcc.gov/news-events/blog/2016/07/14/update-our-review-good-faith-retransmission-consent-negotiation-rules.)

[40] See, for example, Federal Communications Commission, "FCC Chairman Julius Genachowski Statement on Fox/Time Warner and Sinclair/Mediacom Retransmission Consent Negotiations," press release, January 1, 2010, https://www.fcc.gov/document/fcc-chairman-julius-genachowski-statement-foxtime-warner-and-sinclair. (In this statement, the FCC chairman thanked agency staff for work in encouraging extension of retransmission consent agreements before parties reached new terms.)

[41] DIRECTV, LLC and AT&T Service, Inc. v. Deerfield Media, et al. Reply in Support of DIRECTV, LLC and AT&T Services, Inc.'s Complaint for Defendants' Failure to Negotiate in Good Faith, MB Docket 19-168, August 23, 2018, https://www.fcc.gov/ecfs/search/filings?filers_name=DIRECTV,%20LLC&proceedings_name=19-168&sort=date_disseminated,DESC. In October 2019, after entering a retransmission agreement with GoCom Media of Illinois, AT&T requested that the FCC dismiss its complaint against the company. AT&T Services, Inc. and DIRECTV, LLC v. Max Retrans LLC, Civil Complaint, Case Number 4:19-cv-01925 filed in the U.S. District Court, Eastern District of Missouri, Eastern Division, July 11, 2019, https://www.law360.com/dockets/documents/5d27a9b6017a4201f8d15f8f.

[42] Federal Communications Commission, "AT&T Services Inc. v. Deerfield et al., Good Faith Negotiation Complaint," Memorandum Opinion and Order, November 8, 2019, https://www.fcc.gov/document/media-bureau-grants-att-good-faith-complaint.

the good faith provisions of the Communications Act, the prohibition on coordination is permanent. Additionally, the FCC has adopted a rule declaring such behavior a per se violation of its good faith negotiation standards.[43]

In a related matter, the FCC's rules regarding both the number of stations one entity may own within a DMA and the attribution of that ownership have been in flux. The FCC's ownership rules generally prohibit one company from owning two of the top four ranked stations (usually, stations affiliated with the ABC, CBS, FOX, and NBC networks) within the same DMA.[44] In 2016, the FCC adopted rules specifying that if one television station sells more than 15% of the weekly advertising time on a competing local broadcast television station, it would consider the stations to be under common ownership or control, for the purposes of enforcing its local media ownership rule.[45] In 2017, however, the FCC eliminated this rule as part of a reconsideration of its 2016 decision.[46]

In September 2019, the U.S. Court of Appeals for the Third Circuit vacated and remanded the FCC's 2017 reconsideration.[47] On November 29, 2019, the court vacated, as of that date, the rule changes adopted by the FCC in 2017.[48] The FCC issued an order in December 2019 that amended its rules to reflect the court's mandate and clarify which rules remain in effect.[49] The FCC has not publicly stated whether it will seek review of the Third Circuit's decision by the U.S. Supreme Court.[50] Likewise, the FCC has not publicly stated how it will proceed with media ownership rulemaking it initiated in 2018, in light of the court's ruling.[51]

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[43] 47 C.F.R. §76.65(b)(1)(xiii).

[44] Federal Communications Commission, "Review of the Commission's Rules Governing Television Broadcasting, Report and Order, FCC 99-209," 14 *FCC Record* 12903, 12932-12933 August 6, 1999.

[45] 2014 Quadrennial Review 2nd R&O, pp. 9888-9890. The FCC proposed attributing television joint sales agreements (JSAs) in 2004, and revisited the issue in 2011, but did not make a final decision. Federal Communications Commission, "Attribution of TV JSAs, NPRM, FCC 04-173," 19 *FCC Record* 15238, July 2, 2004; Federal Communications Commission, "2010 Quadrennial Review, NPRM, FCC 11-186," 26 *FCC Record* 17489, 17565-17566, December 22, 2011.

[46] Federal Communications Commission, "Matter of 2014 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Promoting Diversification of Ownership In the Broadcasting Services, Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, FCC 16-107, Order on Reconsideration and Notice of Proposed Rulemaking and Report and Order," 32 *FCC Record* 9802, 9846-9854, November 20, 2017.

[47] *Prometheus Radio Project v. FCC*, 939 F.3rd 567 (3rd Cir. 2019).

[48] Federal Communications Commission, "Matter of 2014 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Promoting Diversification of Ownership In the Broadcasting Services, Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, DA 19-1303, Order," n. 5, December 20, 2019, https://www.fcc.gov/document/media-bureau-reinstates-2016-quadrennial-media-ownership-rules. (2019 FCC Media Ownership Rule Reinstatement)

[49] 2019 FCC Media Ownership Rule Reinstatement.

[50] Monty Tayloe, "Breaking Up 2018 QR Unlikely to Dodge 3rd Circuit, Attorneys Say," *Communications Daily*, December 31, 2019.

[51] Matt Daneman and Monty Tayloe, "FCC Should Look at Removing Huawei Tech from All US Networks, Carr Says," *Communications Daily*, December 31, 2019. For background information about the FCC's media ownership rules, see CRS Report R45338, *Federal Communications Commission (FCC) Media Ownership Rules*, by Dana A. Scherer.

Legislation in 2019

On December 20, 2019, President Donald J. Trump signed the Satellite Television Community Protection and Promotion Act of 2019, and the Television Viewer Protection Act of 2019 (Titles XI and X of Division P, respectively, of the Further Consolidated Appropriations Act, 2020, P.L. 116-94). These laws amended both the Copyright and Communications Acts.

Copyright Act Revisions

Title XI of P.L. 116-94 permanently extends Section 119 of the Copyright Act, but limits the scope of "unserved households" eligible to receive the distant signals to two categories of households. The first category includes operators of recreational vehicles and commercial trucks who have complied with certain documentation requirements. The second category, added by the act, includes households in "short markets" in the definition of "unserved household." The act defines a short market as

> a local market in which programming of one or more of the four most widely viewed television networks nationwide is not offered on either the primary stream or multicast stream transmitted by any network station in that market, or is temporarily or permanently unavailable as a result of an act of god or other force majeure event beyond the control of the carrier.[52]

The act also amends the Copyright Act to condition the eligibility of satellite operators to retransmit distant signals via a compulsory copyright license to unserved households on whether or not they retransmit local television signals in all 210 DMAs. After May 31, 2020, satellite subscribers who fall within the two categories of unserved households described above are no longer eligible to receive distant signals pursuant to the compulsory copyright license unless their satellite operator provides local-into-local service.

Likewise, the other four categories of households described in "Expiring Provision of Copyright Act" are no longer able to receive distant signals pursuant to the compulsory license after May 31, 2020, or until their satellite operator provides local service in all 210 markets, whichever is earlier.

The act also specifies that satellite operators will not lose access to the distant compulsory license if their failure to deliver local signals in all 210 markets is due to a retransmission consent impasse. As described in "Must Carry; Carry One, Carry All," DISH currently does so, but DIRECTV does not.

Communications Act Revisions

Title X of the act permanently extends portions of the Communications Act set to expire at the end of 2019, while amending others.[53] The following provisions that had been set to expire at the end of 2019 are now permanent:

- A satellite operator may retransmit broadcast station signals outside of the station's local markets without retransmission consent from those stations, if the operator is retransmitting the signals pursuant to Section 119 of the Copyright Act.

[52] Title XI, Sec. 1102 (16).

[53] Additional amendments related to charges made to consumers for communications services and equipment are beyond the scope of this report.

- Broadcast stations may not enter into exclusive contracts with MVPDs.
- Broadcast stations and MVPDs must negotiate retransmission consent in "good faith." In the event any party accuses another of failing to negotiate in good faith, the accusing party may petition the FCC to mediate.
- Joint retransmission consent negotiations by separately owned broadcast stations within the same market constitutes failure to negotiate in good faith.

In addition, Title X amended the Communications Act to state that a qualified "MVPD buying group" representing smaller cable, telco, and/or satellite operators may negotiate retransmission consent with large broadcast station group owners without violating the good faith requirement. The buying group may represent only cable, telco, or satellite operators with 500,000 or fewer subscribers nationally. The broadcast station owner with whom the qualified MVPD group negotiates retransmission consent must reach more than 20% of the "national audience." This amendment takes effect no later than March 19, 2020, that is, 90 days after the enactment of P.L. 116-94.

Relationship to FCC Media Ownership Rules

Local Ownership Rules

As described in "Good Faith Provisions and FCC Media Ownership Rules," on December 20, 2019, the FCC reinstated the media and ownership rules it had adopted in 2016.[54]

Under the reinstated rules, a single company may not own more than one station in a DMA unless eight independently owned stations remain (eight voices test). In addition, stations that jointly sell 15% or more of one another's advertising time count as "owned" for the purposes of the FCC's ownership rules. This means that non-top-four stations may not jointly negotiate with a separately owned top-four affiliate that sells its advertising time, if common ownership would violate the FCC's eight voices test. Likewise, two non-top four stations may not jointly negotiate retransmission consent in the same market if common ownership would violate the FCC's eight voices test.

National Ownership Rules

The FCC, in measuring the national reach of a broadcast station owner, discounts the number of television households reached within a DMA by a station operating in the Ultra High Frequency (UHF) band by half.[55] In some instances, a station group may reach 20% or fewer households nationally with the "UHF discount," but more than 20% of U.S. households absent the discount. According to estimates from the research firm BIA Advisory Services, as of May 2019, the two companies falling in this category were NBC Universal and Gray Television.[56] Thus, a qualified MVPD buying group could not negotiate with NBC Universal or Gray Television unless the FCC repeals the UHF discount.

[54] 2019 FCC Media Ownership Rule Reinstatement.

[55] 47 C.F.R. §73.3555(e)(2)(i). In December 2017, the FCC launched a new rulemaking proceeding to examine whether to modify or rescind the UHF discount and national ownership cap. Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Notice of Proposed Rulemaking, FCC 17-169," 32 *FCC Record* 10785, December 18, 2017.

[56] Mark K. Miller, "Nexstar is the Star of TV Station Groups," *TVNewsCheck*, May 29, 2019, https://tvnewscheck.com/article/235386/nexstar-is-the-star-of-tv-station-groups/.

In some markets, a television company may effectively operate stations under joint sales agreements or shared services agreements without having them count toward the national ownership limit. Thus, depending on how the FCC interprets the good faith provisions, an MVPD with fewer than 500,000 subscribers nationwide might not be able to use a qualified buying group to negotiate for retransmission of stations operated by a company that reaches 20% or more of U.S. households nationwide.

It is far less common for a company to operate third-party stations in a market in which it does not own a station than in a market in which it does own a station. There are 93 DMAs in which a third party operates at least one station and owns at least one station. In contrast, there are only five DMAs in which a third party operates at least one station but does not own any stations.[57] Nonetheless, as Congress advises the FCC on the implementation of this good faith provision, the role of third-party owners in retransmission consent negotiations remains an issue for consideration.

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[57] CRS analysis of data from S&P Global. The five DMAs are Fairbanks, AK; Juneau, AK; Johnstown-Altoona-State College, PA; Wilkes Barre-Scranton-Hazleton, PA; and Gainesville, FL.