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## Satellite Home Viewer Improvement Act

On November 29, 1999, President Clinton signed into law the Satellite Home Viewer Improvement Act of 1999 (the "SHVIA"). The law, which provides satellite carriers with a regulatory scheme for licensing television broadcast programming similar to that applied to cable service providers, is intended to create parity and to enhance competition between the satellite and cable industries. Most significantly, the SHVIA permits, under certain circumstances, the retransmission of local broadcast signals into local markets by satellite carriers. The legislation calls for the gradual phase-in of a licensing system modeled after the must carry/retransmission consent regulations that currently govern cable system carriage of local television station signals. The SHVIA also amends existing statutory provisions governing the retransmission of distant signals by satellite.

### I. Retransmission of Local Broadcast Signals by Satellite Carriers

#### A. The New Statutory License

The SHVIA amends the Copyright Act of 1976 by creating a new permanent statutory license authorizing the retransmission of local television broadcast stations by satellite carriers (the "local-to-local license"). Under the new license, subject to the must carry/retransmission consent provisions described below, a satellite carrier may retransmit the signal of a local station to all subscribers who reside within the "local market" of that station, without regard to whether the subscriber can or cannot receive an adequate television signal over the air. The local-to-local license, therefore, is distinguished from the existing statutory license under which a satellite carrier is permitted to retransmit distant signals to subscribers residing in unserved households. A local market generally refers to a station's Designated Market Area as determined by Nielsen Media Research.

Because cable and other terrestrial multichannel delivery systems as a general rule do not pay any copyright royalty for local retransmission of broadcast stations, the local-to-local license does not require payment of copyright royalties by satellite carriers. A satellite carrier, however, is liable for copyright infringement to a local television station holding the

copyright if it does either of the following:

alters willfully the programming contained on a local broadcast station; or

retransmits a television broadcast station to a subscriber located outside the local market of the station.<sup>(1)</sup>

Within 90 days of commencing retransmission, a satellite carrier is required to provide local broadcasters with a list of the street addresses of its local subscribers so that broadcasters may verify that the satellite carrier is making proper use of the license. This list must be updated by the satellite carrier on the 15th of each month. The information supplied to broadcasters may be used for subscriber verification purposes only.

For a satellite carrier to be eligible for the local-to-local license, the carrier must be in full compliance with all applicable rules and regulations of the Federal Communications Commission ("FCC" or "Commission"). This includes any requirements that the Commission may adopt concerning carriage of stations or programming exclusivity.

#### B. Rules for Retransmitting Local Television Broadcast Signals

The SHVIA creates a new section of the Communications Act of 1934, as amended (the "Communications Act"), that provides for a "must carry" requirement applicable to satellite carriers retransmitting local broadcast signals. Specifically, a satellite carrier, beginning on January 1, 2002, must carry upon request the signals of all local broadcast stations in local markets in which the satellite carrier carries at least one signal under a local-to-local license.<sup>(2)</sup> Prior to January 1, 2002, a satellite carrier may retransmit broadcast signals on a station-by-station basis.

To make use of the local-to-local license, a satellite carrier is required to retransmit the signals of local stations on contiguous channels and is prohibited from accepting or requesting anything of value in exchange for carriage of local broadcast stations or for channel positioning rights. In addition, within one year after enactment of the SHVIA, the Commission is required to issue new regulations applicable to satellite carriers, which must be comparable to the must carry rules imposed on cable systems. These new regulations will include the requirement to carry a broadcast station's entire signal without additions or deletions and the obligation to retransmit the local signal without material degradation.

#### C. Retransmission Consent

The SHVIA amends the Communications Act to make applicable to satellite carriers the prohibition against the retransmission of a television broadcast station's signal without consent of the station (*e.g.*, retransmission consent or a must-carry request). The SHVIA, however, also provides for exceptions to this general prohibition, including a limited phase-in period during the first six months following enactment of the SHVIA

during which a satellite carrier may retransmit a signal without consent. In addition, a satellite carrier may retransmit without consent:

the signal of a noncommercial broadcast station;

the signal of certain superstations; and

until the end of 2004, the signal of not more than two distant signals to unserved households outside of the local market of the retransmitted stations.

The SHVIA requires the Commission to revise, within one year of enactment of the SHVIA, the regulations governing the right of television broadcast stations to grant retransmission consent. The revised regulations will prohibit, until January 1, 2006, a broadcast station from entering into an exclusive retransmission consent agreement with a multichannel video programming distributor or refusing to negotiate in good faith regarding retransmission consent agreements. However, a broadcast station may generally offer different retransmission consent terms or conditions, including price terms, to different distributors if such different terms or conditions are based on competitive marketplace conditions.

Finally, the SHVIA also creates a new set of expedited enforcement procedures for the alleged retransmission of a broadcast station signal in the station's own market without consent of the station. These new procedures mandate, among other requirements, the 45-day processing by the FCC of retransmission consent complaints.

## II. Retransmission of Distant Broadcast Signals by Satellite Carriers

### A. Extension of Distant Signal Statutory License

The SHVIA extends until December 31, 2004 the statutory license permitting the retransmission of distant signals by satellite carriers to unserved households.<sup>(3)</sup>

### B. Distant Signal Eligibility

The central feature of the existing definition of unserved household is the inability to receive, through the use of a conventional outdoor rooftop antenna, a signal of Grade B intensity from a primary network station. The SHVIA keeps this Grade B standard intact.<sup>(4)</sup> In addition, the SHVIA expands the definition of unserved households to include:

until December 31, 2004, a subscriber who receives, or is predicted to receive by the ILLR methodology, a Grade B signal -- but not a Grade A signal -- from any station of the relevant network, if that subscriber had

the distant service of such network terminated involuntarily after July 11, 1999 and before October 31, 1999, or received such service on October 31, 1999;

operators of recreational vehicles and commercial trucks who have complied with certain documentation requirements;

C-band subscribers who received retransmitted signals of the pertinent network programming before any termination (pursuant to court order or settlement) of such transmission before October 31, 1999; and

subscribers of certain longstanding superstations.

The SHVIA also confirms the long-standing presumption that a subscriber may receive distant network service if all stations affiliated with the relevant network that are predicted to serve that subscriber give their consent. In this regard, a subscriber may obtain such consent by submitting a waiver request to a station through its satellite carrier. **A station has 30 days from receipt of the request to either accept or reject the request. If a relevant station fails to act on the waiver request within 30 days, the subscriber shall be deemed to be unserved.**

#### C. Computation of Royalty Fees

The SHVIA reduced the royalty fees currently paid by satellite carriers for the retransmission of network and superstation distant signals by 45 percent and 30 percent, respectively.

#### D. Public Broadcasting Service ("PBS") Satellite Feed

Under the SHVIA, a satellite carriers is granted a license to retransmit a national satellite feed distributed and designated by PBS. This license will expire on January 1, 2002, the date when the local-to-local must carry obligations become effective.

#### E. Rules for Retransmitting Distant Television Broadcast Signals

The SHVIA creates a new section of the Communications Act that regulates the carriage of distant television signals by satellite carriers. One provision of this new section limits the number of distant signals of stations affiliated with a given network that a satellite carrier may deliver to unserved households. Previously, there was no limit on this number. Under this new provision, a satellite carrier is prohibited from delivering more than two distant signals of network-affiliated stations in a single day to a particular subscriber.<sup>(5)</sup>

The SHVIA also requires the Commission to commence within 45 days of enactment of the new law (and to complete within one year of enactment) a rulemaking to develop regulations to apply network nonduplication,

syndicated exclusivity and sports blackout rules to the retransmission of nationally distributed superstations by satellite carriers. The Commission is also required to promulgate regulations on the same 45 day/1 year timetable with regard to the application of sports blackout rules to network stations.

Finally, the SHVIA addresses the following areas relating to the Grade B standard used to determine unserved household status:

The Commission is required to complete a rulemaking within one year of enactment of the SHVIA to evaluate and, if appropriate, to recommend to Congress possible modifications to the Grade B intensity standard for analog signals, and to make recommendations relating to an appropriate standard for digital signals. Congress retains final authority to implement these modifications.

The Commission is required to implement within 180 days of enactment of the SHVIA new rules to increase the accuracy of its ILLR model by taking into account terrain, building structures and other land cover variations.

Satellite carriers and broadcasters are required to use specified Commission procedures to determine whether a particular household is unserved. Generally, the "losing" party pays for any related testing (e.g., the broadcaster pays if a household is determined to be unserved). If the satellite carrier and broadcaster are unable to agree on a qualified individual to perform a test, the Commission is to designate an independent and neutral entity by rule.

1. A satellite carrier may retransmit programming to non-local subscribers pursuant to the statutory license permitting the retransmission of distant signals. This license requires, among other conditions, payment of copyright royalties.
2. There is a limited exception to the must-carry requirement. A satellite carrier need not carry two local affiliates of the same network that substantially duplicate the programming of each other unless the duplicating stations are licensed to communities in different states. In addition, the Commission is required to issue regulations limiting the carriage requirements of satellite carriers with respect to multiple local noncommercial television broadcast stations.
3. In addition, the SHVIA eliminated the requirement that a customer in an unserved household wait 90 days to be eligible for satellite delivery of distant signals.
4. The SHVIA, however, requires the Commission to examine and, if appropriate, recommend to Congress possible modifications to the definition of "Grade B intensity." See Section II. E. To presumptively determine whether a household is capable of receiving a signal of Grade B intensity, the SHVIA requires courts to rely on the Commission's Individual Location Longley-Rice ("ILLR") signal strength prediction methodology.



5. A satellite carrier may also provide the signal of the local network affiliate pursuant to its local-to-local license.