



Narrow Satellite Legislation Should Expire as Congress Intended

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Issue Summary

The growth of the satellite TV business, advancements in technology and private business agreements that exist in the media marketplace have rendered the Satellite Television Extension and Localism Act Reauthorization Act (STELAR) unnecessary. The law is currently set to expire at the end of 2019. Broadcasters support its expiration.

The Details

The provisions set to expire are incredibly narrow:

1. The discounted compulsory copyright license for satellite retransmission of distant – or imported – broadcast signals to “unserved households”;
2. A corresponding exemption from retransmission consent requirements for the carriage of these out-of-market network signals by satellite TV providers; and
3. The requirement that broadcast TV stations and pay-TV (satellite and cable TV) companies both negotiate carriage of local broadcast signals in good faith.

Background

Three decades ago, the nascent satellite TV companies were given a significantly discounted compulsory copyright license that allowed them to better compete with big cable monopolies. Under the license as originally conceived, a satellite company could import an out-of-market network TV station signal, typically from a major city, into a local television market where a viewer could not receive the local broadcast station over-the-air. At the time the license was created, the technology simply did not exist to enable satellite carriage of local broadcast channels in most markets and importing an out-of-market station provided viewers with their favorite network programming.

Today, the landscape is much different. AT&T-DIRECTV is a \$235 billion company, and DISH is a \$17 billion company. No technological impediment exists to providing satellite viewers with their local broadcast station rather than an out-of-market substitute. In fact, DISH is not only providing this service in all 210 DMAs today but has been for nearly a decade.

In an earlier reauthorization of the compulsory copyright license, Congress also added a requirement that broadcasters and pay-TV providers negotiate in good faith for carriage of local TV stations. Congress gave the Federal Communications Commission (FCC) the unique authority to investigate and adjudicate alleged violations of the good faith requirement. In the nearly 20 years since Congress passed this provision, the FCC had decided only seven good faith complaints – and has found a violation of the requirement on only one occasion. Though the same cannot be said of pay-TV, no broadcaster has ever been found to be in violation of these rules. The good faith standard does not apply to carriage negotiations for cable networks or programming on over-the-top platforms. The provision provides no demonstrated benefit and is not necessary.

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The Impact

Today, AT&T-DIRECTV and DISH provide local broadcast channels to the vast majority of their subscribers across the country (only AT&T-DIRECTV does not serve all 210 television markets). The number of households being denied their local network channels is shrinking. Although only AT&T-DIRECTV and DISH have access to the precise numbers, it is estimated that only around 500,000 households that subscribed to satellite TV service in 2017 were denied their local ABC, CBS, Fox or NBC broadcast channels and instead received an imported signal from another market, primarily from New York City or Los Angeles, under the expiring STELAR distant signal license.

The STELAR distant signal license allows the billion-dollar satellite companies to import out-of-market TV channels for those 500,000 households instead of providing viewers their local broadcast station. Royalties under this outdated license are discounted substantially below the carriage fees for these stations negotiated in the market by other pay-TV providers. This below-market subsidy incentivizes the satellite companies to deny viewers local news, weather and life-saving emergency information, while still charging their subscribers hefty fees each month for an out-of-market station.

The 500,000 households receiving an out-of-market station comprise three types of viewers, listed below. Only the satellite providers know which category justifies delivering a distant station to a given household and some households may fall into more than one of these categories:

- Those in “neglected markets,” where the satellite provider imports a signal from a major city instead of providing the local network channel even though the local channels are available. This is because it is less expensive for the satellite provider to deny local viewers their local channels. There are approximately 12 neglected markets.
- Those in “short markets,” where there is at least one local network affiliate available, but not all of ABC, CBS, Fox and NBC have a local station. There are approximately eight short markets. In these markets, broadcasters are willing to find marketplace solutions to ensure that if a local broadcast channel is not available, the satellite companies will still be able to offer a channel from a different market after the STELAR license expires.
- “Grandfathered” and “recreational vehicle” subscribers. These subscribers would otherwise be eligible to receive their local channels, but AT&T-DIRECTV and DISH are incentivized to provide imported signals from major cities because it is less expensive for them.

Viewers will benefit from eliminating this outdated law, ensuring they receive the local content most relevant to them. In rare instances where a local broadcast channel is not available, private business arrangements between satellite TV providers and broadcasters can resolve these issues.

Additionally, the good faith requirements set for expiration have provided no quantifiable benefit to either broadcasters or pay-TV providers. This is in large part because both parties have every incentive to reach a deal and serve consumers. However, the ability of either party to appeal to the government for regulatory intervention creates the potential unintended consequence of diverting time and attention from resolving the negotiation in a timely fashion. The countless other program carriage agreements successfully completed outside this broadcast-only framework reveals that there is simply not a clear need to continue reauthorizing these requirements every five years.

The Bottom Line

As noted by many lawmakers, it has always been Congress’ intent to sunset this narrow law once it is no longer necessary. That is why the original legislation and all its progeny included expiration dates. There is no policy justification or technological reason for STELAR to be reauthorized. The time has come to stop subsidizing billion-dollar satellite TV companies and to instead provide viewers with the local news, weather and emergency information they want and need. Congress should let STELAR expire.