

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

May 28, 2019

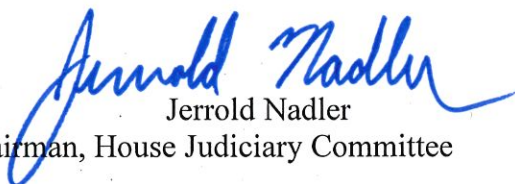
Ms. Karyn A. Temple  
Register of Copyrights and  
Director of the United States Copyright Office  
Library of Congress  
101 Independence Avenue, SE  
Washington, D.C. 20540


Dear Ms. Temple,

We write to you regarding the upcoming expiration of the compulsory license for retransmission of distant television programming by satellite under 17 U.S.C. § 119, and the consequent need of Congress to consider its reauthorization. As Chairman and Ranking Member of the Committee with jurisdiction over the copyright laws, we request the Copyright Office's views about the current status of the usage of this compulsory statutory license and whether it should be reauthorized. To aid your analysis, we are enclosing letters we received in response to information requests we sent to parties that we understand to be using this license.

We look forward to hearing from you and continuing to work with your office on these and other important matters. In light of the upcoming reauthorization deadline and hearings that are being held on this issue, we request a response by June 3, 2019, or as soon thereafter as possible, so that Congress can have the benefit of your views as we consider all the equities involved. Should you have any questions, please do not hesitate to contact us.

Sincerely,

  
Jerrold Nadler  
Chairman, House Judiciary Committee

  
Doug Collins  
Ranking Member, House Judiciary Committee

Enclosures

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216  
One Hundred Sixteenth Congress

March 22, 2019

W. Erik Carlson  
President and Chief Executive Officer  
DISH Network Corporation  
9601 South Meridian Boulevard  
Englewood, Colorado 80112

Dear Mr. Carlson:

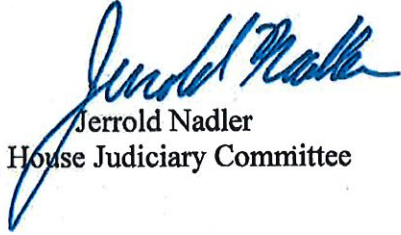
Several provisions of the STELA Reauthorization Act of 2014 (P.L. 113-200, "STELAR") will expire at the end of 2019. This includes the distant signal satellite license, codified at 17 U.S.C. § 119(h), which is set to terminate on December 31, 2019. As this expiration nears, this Committee must evaluate whether the Section 119 license should be allowed to sunset. To that end, we seek the following information on your continued use of the Section 119 license:

- 1) What is the total number of your subscribers that currently receive one or more stations through a distant signal license pursuant to 17 U.S.C. § 119?
- 2) For the subscribers currently receiving stations through the Section 119 license, please identify how many qualify for the license under each of the statutory provisions defining an "unserved household":
  - a. 17 U.S.C. § 119(d)(10)(A);
  - b. 17 U.S.C. § 119(d)(10)(B);
  - c. 17 U.S.C. § 119(d)(10)(C);
  - d. 17 U.S.C. § 119(d)(10)(D);
  - e. 17 U.S.C. § 119(d)(10)(E).
- 3) Do any of your subscribers receive stations through a Section 119 license under a statutory authority not listed in question 2? If so, please identify any such authority and for each such authority, if any, provide the number of subscribers served.
- 4) How many of your subscribers receive stations through a Section 119 license in markets where you do not provide any local stations through your satellite service?
- 5) How many of your subscribers receive stations through a Section 119 license in a "short market" (as defined in 17 U.S.C. § 119 (g)(2)(E))? How many of these subscribers, if any, are included in the subscribers identified in your answer to question 4?

For your responses to questions 2-5, please provide information detailing the total number of subscribers by the designated market area where they reside, the call letters of each station being imported to that market, and the number of subscribers receiving each such station in each such market.

We ask that you give our request for information your full and fair consideration, consistent with applicable statutes and regulations, and that you send a written response by April 19, 2019. Thank you in advance for working with the committee as we review the Section 119 license.

Sincerely,



Jerrold Nadler  
Chairman, House Judiciary Committee



Doug Collins  
Ranking Member, House Judiciary Committee



# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

March 22, 2019

Randall L. Stephenson  
Chairman and Chief Executive Officer  
AT&T Inc.  
208 S. Akard St.  
Dallas, Texas, 75202

Dear Mr. Stephenson:

Several provisions of the STELA Reauthorization Act of 2014 (P.L. 113-200, "STELAR") will expire at the end of 2019. This includes the distant signal satellite license, codified at 17 U.S.C. § 119(h), which is set to terminate on December 31, 2019. As this expiration nears, this Committee must evaluate whether the Section 119 license should be allowed to sunset. To that end, we seek the following information on your continued use of the Section 119 license:

- 1) What is the total number of your subscribers that currently receive one or more stations through a distant signal license pursuant to 17 U.S.C. § 119?
- 2) For the subscribers currently receiving stations through the Section 119 license, please identify how many qualify for the license under each of the statutory provisions defining an "unserved household":
  - a. 17 U.S.C. § 119(d)(10)(A);
  - b. 17 U.S.C. § 119(d)(10)(B);
  - c. 17 U.S.C. § 119(d)(10)(C);
  - d. 17 U.S.C. § 119(d)(10)(D);
  - e. 17 U.S.C. § 119(d)(10)(E).
- 3) Do any of your subscribers receive stations through a Section 119 license under a statutory authority not listed in question 2? If so, please identify any such authority and for each such authority, if any, provide the number of subscribers served.
- 4) How many of your subscribers receive stations through a Section 119 license in markets where you do not provide any local stations through your satellite service?
- 5) How many of your subscribers receive stations through a Section 119 license in a "short market" (as defined in 17 U.S.C. § 119 (g)(2)(E))? How many of these subscribers, if any, are included in the subscribers identified in your answer to question 4?

For your responses to questions 2-5, please provide information detailing the total number of subscribers by the designated market area where they reside, the call letters of each station being imported to that market, and the number of subscribers receiving each such station in each such market.

We ask that you give our request for information your full and fair consideration, consistent with applicable statutes and regulations, and that you send a written response by April 19, 2019. Thank you in advance for working with the committee as we review the Section 119 license.

Sincerely,



Jerrold Nadler  
Chairman, House Judiciary Committee



Doug Collins

Ranking Member, House Judiciary Committee



Timothy P. McKone  
Executive Vice President  
Federal Relations

AT&T Services, Inc.  
1120 20th Street, NW  
Suite 800  
Washington, DC 20036

T 202.463.4144  
tm3703@att.com  
att.com

April 19, 2019

The Honorable Jerrold Nadler  
Chairman  
Judiciary Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Doug Collins  
Ranking Member  
Judiciary Committee  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Collins:

I am responding to your March 22 letter to Randall Stephenson, AT&T Chairman and Chief Executive Officer, regarding the distant signal satellite license in the STELA Reauthorization Act of 2014 (P.L. 113-200 ("STELAR")), which will expire at the end of 2019.<sup>1</sup>

DIRECTV and DISH rely on the distant signal license to provide high-quality satellite network TV service to more than 870,000 satellite subscribers. These subscribers include hundreds of thousands of rural homes that were left behind by cable and broadcast providers. In addition, the distant signal license allows RV enthusiasts, campers, and tailgating sports fans to enjoy network broadcasting while traveling across the country.

Preservation of these customers' TV services is why it is so important for Congress to permanently reauthorize the distant signal license. Otherwise, these largely rural subscribers will lose access to network TV programming that most Americans take for granted. Moreover, permanent reauthorization would also establish competitive parity between cable and satellite providers. That is because the cable TV statutory license does not have an expiration date.<sup>2</sup> There is simply no reason why satellite subscribers should be threatened with losing their TV service every five years while cable subscribers are not.

Your letter asks for the number of customers we are serving through a section 119 license, broken down by the six separate statutory provisions allowing importation of a distant signal.<sup>3</sup> AT&T treats this information as competitively sensitive and we do not share it publicly.

That said, DIRECTV serves subscribers through all of these statutory provisions, except for the C-band exemption.<sup>4</sup> Congress carefully crafted these provisions to ensure that: (1) otherwise unserved subscribers could obtain distant signals, and (2) those satellite subscribers that had distant signals on or before October 31, 1999 could keep their current service. For example:

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<sup>1</sup> 17 U.S.C. § 119.

<sup>2</sup> 17 U.S.C. § 111.

<sup>3</sup> See 17 U.S.C. §§ 119(d)(10)(A)-(E), 119(g)(2)(E).

<sup>4</sup> 17 U.S.C. § 119(d)(10)(E).

**AT&T**



The Honorable Jerrold Nadler  
The Honorable Doug Collins  
April 19, 2019, Page 2

- Sections 119 (d)(10)(A) and (B) allow DIRECTV to provide service to otherwise unserved subscribers that cannot receive a local over-the-air signal via an antenna.<sup>5</sup> These customers could not obtain network TV without the distant signal license.
- Section 119(d)(10)(D) allows us to provide distant signals to mobile/recreational vehicles or commercial trucks, thereby allowing long-haul trucks, RV and camping enthusiasts, and tailgating sports fans access to satellite network TV service.
- Section 119(d)(10)(C) allows DIRECTV to provide service to “grandfathered” subscribers who were provided service by satellite providers under the distant signal compulsory license on or before October 31, 1999.
- Finally, DIRECTV relies on section 119(g)(2)(E) to provide subscribers distant signals in “short markets,” in which programming of one of the four national broadcast networks is not offered by any local broadcaster.

AT&T looks forward to working with you and your staffs to renew and update STELAR, including making permanent the distant signal license that brings network service to hundreds of thousands of customers. We would be happy to further discuss the distant signal regime with you or your staff.

Sincerely,



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<sup>5</sup> Section 119(10)(B) provides that a subscriber who obtains a waiver from a local network affiliate to receive a distant station is included within the definition of “unserved subscriber.”



*Jeffrey H. Blum  
Senior Vice President,  
Public Policy & Government Affairs  
Jeffrey.Blum@dish.com  
(202) 463-3703*

April 19, 2019

Rep. Jerry Nadler and Rep. Doug Collins  
U.S. House of Representatives  
Committee on the Judiciary  
Washington, DC 20515-6216

Dear Chairman Nadler and Ranking Member Collins:

Thank you for your letter regarding STELAR. We look forward to working with the Committee on the reauthorization of this important legislation. Below, please find DISH's response.

*Answer to Question #1* – The total number of DISH and DIRECTV subscribers that currently receive one or more stations through a distant signal license, pursuant to 17 U.S.C. Section 119, are approximately 870,000. Because it is competitively sensitive information, DISH is not able to provide the total number of DISH subscribers that currently receive one or more stations through a distant signal license pursuant to 17 U.S.C. Section 119.

*Answer to Question #2* – Because of the concerns about disclosing competitively sensitive information, DISH is not able to provide the breakdown by each statutory provision of subscribers receiving distant signals. However, DISH currently provides distant signals in “short markets” pursuant to 17 U.S.C. § 119(g)(2)(E) and to eligible RV and commercial trucks pursuant to 17 U.S.C. § 119(d)(10)(D). The attached document shows the call signs of broadcast stations being used to serve short markets. For eligible RV and commercial trucks, DISH provides the top-4 broadcast stations from the New York market (WABC, WCBS, WNYW and WNBC) and Los Angeles (KABC, KBCS, KTTV, and KNBC).

*Answer to Question #3* – None, apart from service to “short markets” noted in response to Question #2.

*Answer to Question #4* – DISH provides local stations in all 210 DMAs, so Question #4 is not applicable to us.

*Answer to Question #5* – Because it is competitively sensitive information, DISH is not able to provide the total number of DISH subscribers that currently receive one or more distant stations in short markets.

Sincerely,



Jeff Blum  
SVP, Public Policy and Government Affairs  
DISH/Sling TV



**DISH NETWORK DISTANT SIGNALS TO SHORT MARKETS BY DMA**

As of: April 19, 2019

**ABC IMPORTS**

SHORT MARKET DMA NUMBER	SHORT MARKET DMA NAME	IMPORT CALL SIGN	IMPORT MARKET
798	GLENDIVE MT	KOTA	RAPID CITY SD
737	MANKATO MN	KSTP	MINNEAPOLIS MN
597	PARKERSBURG WV	WCHS	CHARLESTON WV
552	PRESQUE ISLE ME	WVII	BANGOR ME
596	ZANESVILLE OH	WSYX	COLUMBUS OH

**CBS IMPORTS**

SHORT MARKET DMA NUMBER	SHORT MARKET DMA NAME	IMPORT CALL SIGN	IMPORT MARKET
596	ZANESVILLE OH	WBNS	COLUMBUS OH

**FOX IMPORTS**

SHORT MARKET DMA NUMBER	SHORT MARKET DMA NAME	IMPORT CALL SIGN	IMPORT MARKET
798	GLENDIVE MT	KEVN	RAPID CITY SD
596	ZANESVILLE OH	WTTE	COLUMBUS OH

**NBC IMPORTS**

SHORT MARKET DMA NUMBER	SHORT MARKET DMA NAME	IMPORT CALL SIGN	IMPORT MARKET
583	ALPENA MI	WEYI	FLINT MI
569	HARRISONBURG VA	WRC	WASHINGTON DC
737	MANKATO MN	KARE	MINNEAPOLIS MN
552	PRESQUE ISLE ME	WLBZ	BANGOR ME



The Register of Copyrights of the United States of America

United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000 · (202) 707-8350

The Honorable Jerrold Nadler  
Chairman  
House Judiciary Committee  
United States House of Representatives  
2132 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Doug Collins  
Ranking Member  
House Judiciary Committee  
United States House of Representatives  
1504 Longworth House Office Building  
Washington, D.C. 20515

June 3, 2019

Dear Chairman Nadler and Ranking Member Collins:

I am pleased to deliver this response to your letter of May 28, 2019, regarding the compulsory license for secondary transmissions of distant broadcast programming by satellite under section 119 of the U.S. Copyright Act. The Copyright Office has administered the section 119 compulsory license since it was added as a temporary license in 1988, and we appreciate the opportunity to provide you with detailed information in response to your request for the Office's views about the current usage of this compulsory license and whether it should be reauthorized.

As detailed in the attached response, after considering the general ecosystem for licensing video content and the limited current usage of the section 119 license, the Office again recommends letting the license sunset without renewal. This recommendation is consistent with the Office's long-standing position on the section 119 compulsory license, reflected in the Office's previous comprehensive reports to Congress in 2011 and 2008, recommending that the license be allowed to sunset. We appreciate, however, that Congress is considering fully the many equities involved as it deliberates whether to reauthorize this license, set to expire on December 31, 2019. We would be pleased to provide further information on this subject and look forward to working with you on this issue.

Respectfully,

A handwritten signature in black ink that reads "Karyn Temple".

Karyn A. Temple  
Register of Copyrights and  
Director, United States Copyright Office

Enclosure

# U.S. COPYRIGHT OFFICE ANALYSIS AND RECOMMENDATIONS REGARDING THE SECTION 119 COMPULSORY LICENSE

June 3, 2019

## I. Background on the Section 119 License

Copyright law’s compulsory license for secondary transmissions of distant broadcast programming by satellite under 17 U.S.C. § 119 is set to expire on December 31, 2019. Originally enacted in 1988, this provision must be reauthorized every five years and was most recently extended by the Satellite Television Extension and Localism Act Reauthorization Act (“STELAR”) in 2014. The provision establishes a compulsory licensing regime for satellite transmissions of distant signal programming to “unserved households” by network stations and by non-network superstations “to the public for private home viewing . . . and [where] the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission,” as well as by non-network superstations to the public “for viewing in a commercial establishment.”<sup>1</sup>

The section 119 compulsory license also interacts with the Communications Act of 1934 and federal communications policy, making the issue before Congress one involving multiple areas of the law. The House Judiciary Committee and the House Committee on Energy and Commerce, along with the Senate Committee on the Judiciary and the Senate Committee on Commerce, Science, and Transportation, have jurisdiction over STELAR and issues related to section 119’s expiration.

The section 119 compulsory license itself, however, is a copyright license. Section 119 modifies a copyright owner’s exclusive right to publicly perform and display their work (*e.g.*, via television programming) and replaces it with a right to be remunerated when others use the work within the scope of the compulsory license. Under 17 U.S.C. § 119, satellite operators do not need permission for certain carriage of distant broadcast programming, although they must pay the copyright owner a set royalty rate. The Copyright Office has administered the section 119 compulsory license for three decades: collecting statements of account and royalties from satellite operators, and distributing them to the appropriate rightsholders following determinations by the Copyright Royalty Judges.<sup>2</sup>

Section 119 applies only to satellite carriage of distant broadcast signals. In practice, this license permits the importation of network stations (*e.g.*, ABC) into underserved communities, as

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<sup>1</sup> 17 U.S.C. § 119(a)(2)(A)–(B); (a)(1). The model type of unserved household is “a household that cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that network of Grade B intensity.” *Id.* § 119(d)(10)(A). There are four other types of unserved households, including recreational vehicles and commercial trucks. *See Id.* § 119(d)(10)(B)–(E). As discussed below, the current distribution of distant signals provided to subscribers for each type of unserved household has not been shared by the satellite operators. Carriage is limited to up to two stations from the same network each day (*e.g.*, two different NBC stations).

<sup>2</sup> *See Licensing Division*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/licensing/>; *Form SC – Statement of Account for Secondary Transmissions by Satellite Carriers*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/forms/formSC.pdf>.






well as the carriage of non-network superstations (a category that included WGN until its transformation into a destination cable network in late 2014, but today includes fewer stations with substantially fewer subscribers). Section 119 does not provide a compulsory license for the vast majority of television programming offered by satellite carriers to subscribers, whether through “base packages” (e.g., ESPN, C-SPAN), or as premium programming (e.g., HBO, STARZ).<sup>3</sup> Nor does section 119 apply to satellite carriage of local broadcast signals (i.e., a local network affiliate such as WJLA), which falls under section 122, or carriage of local or distant broadcasts by cable systems, which falls under section 111. Both section 111 and section 122 are permanent compulsory licenses without expiration dates. Section 119 applies only to satellite carriers—not over-the-top (“OTT”) services that deliver television via the internet, which have flourished in recent years and are discussed further below. And unlike the other compulsory license for satellite carriers (section 122), section 119 does not require retransmission consent.<sup>4</sup>

## II. Section 119 Usage has Plummeted Since 2014

Not only has the satellite industry long since matured from the fledgling industry that Congress sought to assist, but the use of the section 119 compulsory license has dropped dramatically following the last reauthorization. Satellite industry reports indicate that about 30 million U.S. households subscribe to satellite programming service, but relatively few receive a “distant signal” as defined by the copyright law.<sup>5</sup> Royalties paid under section 119 have plummeted over the past five years. As seen in the table below, royalties reported by satellite carriers to the Copyright Office fell between about 85 percent and 99.5 percent between the first reporting period of 2014 and the first reporting period of 2018:

Table: Royalties Paid under Section 119 (2014/1 vs. 2018/1)<sup>6</sup>

	2014/1	2018/1	Change
<b>DirecTV</b>	\$26,649,895	\$3,524,799	 86.75%
<b>DISH</b>	\$15,103,235	\$2,337,095	 85%
<b>DISH Puerto Rico</b>	\$300,033	\$1,484	 99.5%

<sup>3</sup> See, e.g., *DirecTV Select Package*, AT&T, <https://www.att.com/directv/select-package.html> (last visited June 2, 2019); *DISH Channel Lineup*, DISH, <https://www.dish.com/programming/channels/> (last visited June 2, 2019).

<sup>4</sup> See 47 U.S.C. § 325(b)(2)(B).

<sup>5</sup> The exact number of subscribers who receive distant signals is not known. The Satellite Broadcasting & Communications Association, which represents DirecTV and DISH and supports making section 119 permanent, estimates 870,000 households get at least one distant signal; the National Association of Broadcasters, which supports letting section 119 expire, estimates 500,000. See *Reauthorize and Revitalize the Satellite Home Viewer Act*, SATELLITE BROAD. & COMM’NS ASS’N, [http://www.sbca.org/documents/Rural\\_Sat\\_Act.pdf](http://www.sbca.org/documents/Rural_Sat_Act.pdf); *Narrow Satellite Legislation Should Expire as Congress Intended*, NAT’L ASS’N OF BROADCASTERS (Sept. 2018), [http://www.nab.org/documents/newsRoom/pdfs/NAB\\_STELAR\\_expiration.pdf](http://www.nab.org/documents/newsRoom/pdfs/NAB_STELAR_expiration.pdf).

<sup>6</sup> In addition to paying royalties, parties using the section 119 license must file semi-annual statements of account with the Copyright Office covering the periods of January 1 through June 30, and July 1 through December 31 (i.e., January 1 through June 30, 2018 is considered period “2018/1”). See 37 C.F.R. § 201.11.

The fall in royalties paid is due to a dramatic decline in total subscribers receiving one or more stations under the section 119 license, which in turn is affected by (1) a drop in the overall number of distant network stations carried, and (2) the disappearance of non-network superstations, such as WGN.

For example, in the 2014/1 accounting period, DirecTV reported a monthly average of 4,031,442 private home viewing subscribers for network stations. (Subscription reporting figures treat each individual subscriber as a unique subscriber for each network station they receive.<sup>7</sup>) By 2018/1, that number had fallen to a monthly average of 2,097,663. Across those reporting periods, the number of distant network stations that DirecTV carried fell from 58 to 40. And, due to WGN's conversion from superstation to destination network, DirecTV subscribers to non-network superstations were eliminated—from a monthly average of about 12 million to zero.<sup>8</sup> Each of these factors translated to a significant drop in the use of the section 119 license and, thereby, the royalties paid under the license. Taken together, these developments are responsible for the plummeting figures reported in the statements of account of the three satellite companies (DirecTV, DISH, and DISH Puerto Rico) that utilized the section 119 license, and filed with the Copyright Office as required, over the past five years.

Meanwhile, other new technologies and programming-delivery models have emerged and flourished without the assistance of a compulsory license. Particularly relevant to section 119 is the growth of OTT services that deliver television and video via the internet. OTT media, which includes services like Netflix, Hulu, and Amazon Video, now has subscribers in almost two-thirds of U.S. households.<sup>9</sup> A subset of OTT media is the OTT television services, such as Hulu with Live TV, YouTube TV, and Sling TV (a subsidiary of DISH Network), that offer broadcast network programming to subscribers—and without the advantage of a compulsory license. Instead, OTT television services have negotiated licenses with programming rightsholders. And doing so has not appeared to curb their ability to establish themselves in the programming delivery marketplace. In fact, these services continue to cut into cable and satellite subscriptions as more consumers look for additional program-viewing options.<sup>10</sup> Though OTT television accounts for a fraction of overall OTT media subscribers, the number of U.S. households

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<sup>7</sup> In other words, one home subscriber receiving distant network signals for ABC, CBS, and FOX would be counted as three private home viewing subscribers for network stations.

<sup>8</sup> Similarly, DISH, which transmitted six superstations before WGN's conversion, saw superstation subscribers fall from about 9 million per month to about 1.3 million.

<sup>9</sup> See Press Release, PR Newswire, Parks Associates Announces 2018 Top 10 U.S. Subscription OTT Video Services (Nov. 7, 2018, 10:00 AM), <https://www.prnewswire.com/news-releases/parks-associates-announces-2018-top-10-us-subscription-ott-video-services-300745430.html>.

<sup>10</sup> See, e.g., VIDEO ADVERTISING BUREAU, YOU DOWN WITH OTT? AN OVERVIEW OF THE COMPETITIVE VIDEO ECOSYSTEM 8 (2018) (reporting that the number of U.S. households that relied on OTT services for television and video programming, rather than a traditional cable or satellite subscription, nearly tripled between 2013 and 2018, though not all of these households received broadcast network programming via OTT services), <https://www.thevab.com/wp-content/uploads/2018/03/OTT-Ecosystem-Overview-Final.pdf>; Jared Newman, *Pay TV Is Now Losing 12,000 Cord-cutters Every Day*, FAST COMPANY (May 3, 2019), <https://www.fastcompany.com/90343905/cord-cutting-speeds-up-cable-satellite-losing-12k-pay-tv-customers-a-day>.

subscribed to OTT delivery of broadcast network programming rose to 4.1 million in the first quarter of 2018.<sup>11</sup>

In letters sent to the chairman and CEO of AT&T (parent company of DirecTV) and to the president and CEO of DISH Network, this Committee sought critical information about the continued use of section 119.<sup>12</sup> Specifically, the Committee asked about:

1. The total number of subscribers that currently receive one or more stations through a distant signal license under section 119.
2. The number of these subscribers that qualify under each of the five “unserved household” provisions found in 17 U.S.C. § 119(d)(10)(A)–(E).
3. The number of subscribers, if any, that receive a station under the section 119 license under a statutory authority not found in 17 U.S.C. § 119(d)(10)(A)–(E).
4. The number of subscribers that receive stations through a section 119 license in markets where the satellite operator provides no local stations.
5. The number of subscribers that receive stations through a section 119 license in a “short market” (per 17 U.S.C. § 119(g)(2)(E)) and whether any of those subscribers were included in the response to Question 4.

Both satellite operators responded that they use the section 119 license to provide one or more local broadcast stations to about 870,000 subscribers, but they declined to answer the Committee’s request for details about the numbers for each type of qualifying unserved household or for short markets, guarding this information as “competitively sensitive.”<sup>13</sup> It is unclear from DirecTV and DISH how many of the approximately 870,000 subscribers are rural households and how many are, as DirecTV suggested, “long-haul trucks, RV and camping enthusiasts, and tailgating sports fans.”<sup>14</sup> Neither response provided any information that would counter their statements of account filed with the Copyright Office that indicate usage of the section 119 license is in dramatic decline.

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<sup>11</sup> See CONGRESSIONAL RESEARCH SERVICE, CABLE AND SATELLITE TELEVISION ISSUES IN THE 116TH CONGRESS 2 (2018), <https://fas.org/sgp/crs/misc/IF11053.pdf>.

<sup>12</sup> Letter from Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives, to Randall L. Stephenson, Chairman and Chief Executive Officer, AT&T Inc. (Mar. 22, 2019); Letter from Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives, to W. Erik Carlson, President and Chief Executive Officer, DISH Network Corp. (Mar. 22, 2019).

<sup>13</sup> Letter from Tim McKone, Executive Vice President Federal Relations, AT&T, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019); Letter from Jeff Blum, Senior Vice President Public Policy and Government Affairs, DISH/Sling TV, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019).

<sup>14</sup> Letter from Tim McKone, Executive Vice President Federal Relations, AT&T, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019).



### III. The Section 119 License Should Sunset Without Reauthorization

From a copyright policy perspective, the U.S. Copyright Office recommends that Congress let the satellite distant signal license in section 119 expire at the end of 2019.

Although the Copyright Office has long supported permitting copyright owners to develop marketplace licensing options to replace the compulsory licenses in sections 111, 119, and 122, the case for removing the section 119 compulsory license in favor of less-regulated alternatives has never been stronger than today. Originally established to encourage the development of a nascent market, the section 119 compulsory license has been made unnecessary by the substantial growth of the satellite industry, now a strong incumbent, and the changed realities of the programming delivery market—in particular plummeting carriage of distant signals by satellite, as reflected by Copyright Office data.

Congress recognized the dangers of a long-term exemption and, accordingly, created the section 119 compulsory license as a temporary one.<sup>15</sup> Congress enacted section 119 to provide households with distant network station service where local broadcast service from network affiliates was unavailable. It was concerned that the satellite industry, in most markets unable to carry local programming, would need to import distant signals to give subscribers access to network programming. But the rationale for renewing the expiring license has waned, and markedly so in the past five years. The satellite industry today has established itself firmly within the programming delivery market—with some 30 million subscribers, compared to about 47 million cable subscribers and 4 million OTT network programming subscribers.<sup>16</sup> Yet the section 119 license continues to advantage the satellite industry with discounted license rates over new competitors (such as OTT television services) who must negotiate all carriage licenses.

A statutory license creates an artificial, government-regulated market that operates as an exception to the general rule that copyright owners hold exclusive rights and can negotiate whether and how and at what cost to distribute their copyrighted works; statutory licenses tend to be below the fair market value. The section 119 compulsory license also imposes a secondary cost on rightsholders: administrative fees related to the Copyright Office collecting royalties from satellite providers and distributing them to rightsholders.

The distant signal license may also negatively impact subscribers: several Members of Congress recently expressed concern that the section 119 compulsory license provides satellite operators with a financial incentive to deny subscribers local broadcast stations—including the news, weather, and emergency information carried by those local broadcast stations—and instead import distant broadcasts at below-market rates.<sup>17</sup> Moreover, the technological

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<sup>15</sup> See H.R. REP. NO. 100-887, pt. 1, at 15 (1988) (stating that the new section 119 would have a sunset provision because “[t]he bill rests on the assumption that Congress should impose a compulsory license only when the marketplace cannot suffice”).

<sup>16</sup> See *US Pay-TV Providers Lost 975,000 Subs in 3Q 2018*, BROADBAND TV NEWS (Nov. 14, 2018), <https://www.broadbandtvnews.com/2018/11/14/us-pay-tv-providers-lost-975000-subs-in-3q-2018/>.

<sup>17</sup> See Letter from Susan M. Collins, U.S. Senator, & Angus S. King, Jr., U.S. Senator, to Lindsey Graham, Chairman, Comm. on the Judiciary, U.S. Senate, Roger F. Wicker, Chairman, Comm. on Commerce, Sci., & Transp., U.S. Senate, Dianne Feinstein, Ranking Member, Comm. on the Judiciary, U.S. Senate, & Maria Cantwell, Ranking Member, Comm. on Commerce, Sci., & Transp., U.S. Senate (Mar. 27, 2019) (expressing concern that

limitations that once made it burdensome or impossible to provide local programming to certain markets have been overcome. In short, the considered rationales for enacting—and renewing—section 119 no longer exist.

Unlike thirty years ago, today the market could respond to service underserved communities in the absence of the section 119 compulsory license. Satellite providers are no longer stymied by technological limitations. DISH already provides some local programming in all 210 U.S. media markets;<sup>18</sup> DirecTV provides it in 198 markets.<sup>19</sup> Eight years ago, the Copyright Office concluded that a variety of licensing options could ease the transition that would follow an expiration of the section 119 license;<sup>20</sup> the Report also predicted that “additional innovative solutions may develop over time.”<sup>21</sup> The development of new business models since then further supports this view. And, as evidenced by DISH’s ability to carry at least one local broadcast station in all 210 U.S. media markets, satellite operators and broadcasters can successfully negotiate in good faith.

At Congress’ request, the U.S. Copyright Office has evaluated the section 119 compulsory license numerous times since its addition to copyright law in 1988. Repeatedly, the Copyright Office has recommended that Congress phaseout the section 119 compulsory license for secondary transmissions of distant television programming by satellite.

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“this license has not only outlived its usefulness, but now provides a below-market incentive for AT&T/DIRECTV to deny viewers in Northern Maine the in-state coverage they desire and deserve”); Letter from Jared Golden, U.S. Representative, to Frank Pallone, Jr., Chairman, Comm. on Energy & Commerce, U.S. House of Representatives, Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, Greg Walden, Ranking Member, Comm. on Energy & Commerce, U.S. House of Representatives, & Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (May 10, 2019) (“It is clear that the distant signal license has outlived its usefulness and now disincentivizes AT&T/DIRECTV from offering local programming to viewers in Northern Maine.”); John Eggerton, *Texas Rep. to Hill: Sunset STELAR Act*, MULTICHANNEL NEWS (May 3, 2019) (reporting on a letter from Michael Cloud, U.S. Representative, to Frank Pallone, Jr., Chairman, Comm. on Energy & Commerce, U.S. House of Representatives, Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, Greg Walden, Ranking Member, Comm. on Energy & Commerce, U.S. House of Representatives, & Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives); *see also* Letter from Jon Tester, U.S. Senate, Michael B Enzi, U.S. Senate, Michael F. Bennet, U.S. Senate, & John Barrasso, U.S. Senate, to John Donovan, Chief Executive Officer, AT&T Communications, LLC (Mar. 14, 2019) (stating that DirecTV’s failure to provide any local broadcasts in twelve markets, despite technological advances, and to import distant signals from Los Angeles and New York causes “subscribers in these situations to miss vital information on public safety, weather, elections, and opportunities for community engagement”).

<sup>18</sup> *See* Letter from Jeff Blum, Senior Vice President Public Policy and Government Affairs, DISH/Sling TV, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019). Seven of these 210 markets are “short markets,” meaning that they lack one or more local broadcast stations.

<sup>19</sup> In its response to this Committee, DirecTV did not detail the media markets to which it provides local broadcast signals; however, it is reflected in statements of account filed with the Copyright Office.

<sup>20</sup> *See* U.S. COPYRIGHT OFFICE, *SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT 66–67* (2011) (introducing sublicensing, collective licensing, and direct licensing as but three marketplace alternatives to the video compulsory licenses); *see also id.* at 67–128 (discussing each of those licensing alternatives, and suggesting that a hybrid licensing model permitting licensors and licensees to choose among licensing alternatives would work best).

<sup>21</sup> *Id.* at 66.

The Copyright Office has conducted five extensive studies of copyright law’s compulsory licenses for broadcast programming (sections 111, 119, and 122).<sup>22</sup> (Links to these reports are provided in the Appendix.) These reports reflect the Copyright Office’s long-held view that a compulsory license “should be utilized only if compelling reasons support its existence,”<sup>23</sup> and that the video compulsory licenses have outlived their purposes. In particular, as the Office concluded in 2008, section 119 is “undergirded by outdated rationales set forth in 1988, [and] is no longer necessary nor appropriate.”<sup>24</sup>

The Copyright Office’s most recent Report on compulsory licenses for broadcast programming was the result of a 2010 mandate from Congress to provide a blueprint for phasing-out all three licenses.<sup>25</sup> The Copyright Office recommended that Congress begin by setting a firm date to end the distant signal licenses, leaving repeal of the local signal licenses to an unspecified future date. The Office concluded that business models based on sublicensing, collective licensing, and direct licensing, as well as business models that may yet emerge, provided “feasible alternatives” for licensing the rights to retransmit television programming.<sup>26</sup> In 2016, the Copyright Office also consulted on a U.S. Government Accountability Office report to Congress that concluded “that a phaseout of the statutory licenses may be feasible for most market participants.”<sup>27</sup>

Since the Copyright Office’s 2011 Report, congressional testimony from Copyright Office leadership has reiterated that the video compulsory licenses are an area of copyright law ripe for reform. For example, in the March 2013 hearing that launched Congress’ multi-year review of copyright law, the Register of Copyrights identified “updating the framework for cable and satellite transmissions” as among a long list of issues requiring congressional attention.<sup>28</sup> The following year, Copyright Office leadership testified that consumers could benefit from

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<sup>22</sup> The studies were published in 2011, 2008, 2006, 1997, and 1992. See U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT (2011); U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT SECTION 109 REPORT (2008); U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT § 110 REPORT (2006); U.S. COPYRIGHT OFFICE, A REVIEW OF THE COPYRIGHT LICENSING REGIMES COVERING RETRANSMISSION OF BROADCAST SIGNALS (1997); U.S. COPYRIGHT OFFICE, THE CABLE AND SATELLITE CARRIER COMPULSORY LICENSES: AN OVERVIEW AND ANALYSIS (1992). Links to each of these publications are provided in the Appendix.

<sup>23</sup> U.S. COPYRIGHT OFFICE, A REVIEW OF THE COPYRIGHT LICENSING REGIMES COVERING RETRANSMISSION OF BROADCAST SIGNALS 13 (1997) (quoting *Copyright/Cable Television: Hearings on H.R. 1805, H.R. 2007, H.R. 2108, H.R. 3528, H.R. 3530, H.R. 3560, H.R. 3940, H.R. 5870, and H.R. 5949 Before the Subcomm. on Courts, Civil Liberties, and the Admin. of Justice*, Pt. 1, 97th Cong. 959–60 (1981) (statement of David Ladd, Register of Copyrights, U.S. Copyright Office)).

<sup>24</sup> U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT SECTION 109 REPORT at 85 (2008).

<sup>25</sup> See Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, § 302, 124 Stat. 1218 (2010).

<sup>26</sup> U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT at iii (2011).

<sup>27</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, STATUTORY COPYRIGHT LICENSES: STAKEHOLDERS’ VIEWS ON A PHASEOUT OF LICENSES FOR BROADCAST PROGRAMMING 38 (2016).

<sup>28</sup> *The Register’s Call for Updates to U.S. Copyright Law: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 2 (2013) (written statement of Maria A. Pallante, Register of Copyrights).



phasing-out the compulsory licenses and encouraging negotiations between copyright owners, broadcasters, and cable and satellite providers.<sup>29</sup>

Today, section 119 is more ripe for expiration than ever.

As requested, the Copyright Office's recommendation is focused on the section 119 compulsory license for secondary transmissions of distant television programming by satellite that was renewed in 2014 for the five-year period ending in 2019. Although the Copyright Office has also recommended a phase-out of the section 111 compulsory license for secondary transmissions of broadcast programming by cable and the section 122 compulsory license for secondary transmissions of local television programming by satellite,<sup>30</sup> we recognize that repealing those licenses could be a less straightforward process because of issues related to retransmission consent.

Discussion of section 119 often gets lumped with the other compulsory licenses for broadcast programming in sections 111 and 122, but when evaluating section 119 by itself, it is apparent that the circumstances around the 119 license do not justify its renewal. The Copyright Office believes that the time is ripe to let the 119 exemption sunset, as Congress envisioned would become necessary when establishing this license thirty years ago. Congress would be justified in allowing section 119 to expire even if the other video compulsory licenses are left untouched for an indefinite period.

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<sup>29</sup> See *Compulsory Video Licenses of Title 17: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 17 (2014) (written statement of William J. Roberts, Jr., Acting Associate Register of Copyrights) (discussing the Copyright Office's 2011 Report that provided a blueprint for phasing out the compulsory licenses for cable and satellite carriers).

<sup>30</sup> See generally U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT (2011).

## APPENDIX: COPYRIGHT OFFICE REPORTS AND TESTIMONY ON SECTION 119

### U.S. Copyright Office Reports:

- 2011 – Satellite Television Extension and Localism Act Section 302 Report, <https://www.copyright.gov/reports/section302-report.pdf>
- 2008 – Satellite Home Viewer Extension and Reauthorization Act Section 109 Report, <http://www.copyright.gov/reports/section109-final-report.pdf>
- 2006 – Satellite Home Viewer Extension and Reauthorization Act Section 110 Report, <https://www.copyright.gov/reports/satellite-report.pdf>
- 1997 – A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals, <http://www.copyright.gov/reports/study.pdf>
- 1992 – The Cable and Satellite Carrier Compulsory Licenses: An Overview and Analysis, <http://copyright.gov/reports/cable-sat-licenses1992.pdf>

### U.S. Government Accountability Office (in consultation with the U.S. Copyright Office):

- 2016 – Statutory Copyright Licenses: Stakeholders’ Views on a Phaseout of Licenses for Broadcast Programming, <https://www.gao.gov/assets/680/676935.pdf>

### U.S. Copyright Office Testimony and Speeches (2009–Present):

- **The Register’s Perspective on Copyright Review** – April 29, 2015 (written statement of Register of Copyrights Maria A. Pallante), <https://docs.house.gov/meetings/JU/JU00/20150429/103385/HHRG-114-JU00-Wstate-PallanteM-20150429.pdf>
- **Compulsory Video Licenses of Title 17** – May 8, 2014 (written statement of Acting Associate Register of Copyrights William J. Roberts, Jr.), <https://www.copyright.gov/regstat/2014/wjrstat05082014.html>
- **The Register’s Call for Updates to U.S. Copyright Law** – March 20, 2013 (written statement of Register of Copyrights Maria A. Pallante), <https://docs.house.gov/meetings/JU/JU03/20130320/100539/HHRG-113-JU03-Wstate-PallanteM-20130320.pdf>
- **The Next Great Copyright Act** – March 4, 2013 (Manges Lecture delivered by Register of Copyrights Maria A. Pallante), <https://docs.house.gov/meetings/JU/JU03/20130320/100539/HHRG-113-JU03-Wstate-PallanteM-20130320-SD001.pdf>
- **Copyright Licensing in a Digital Age: Competition, Compensation and the Need to Update the Cable and Satellite TV Licenses** – Feb. 25, 2009 (statement of Register of Copyrights Marybeth Peters, testifying on findings of the Copyright Office’s 2008 report), <https://www.copyright.gov/docs/regstat022509.html>