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In the Matter of	)	
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SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT OF 2004	)	Docket No. RM 2005-7

COMMENTS OF ECHOSTAR SATELLITE L.L.C.

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September 1, 2005

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EchoStar Satellite L.L.C. ("EchoStar") hereby submits its comments on the Notice of Inquiry released by the Copyright Office on July 7, 2005 ("NOI") seeking comment on (1) the extent to which copyright holders are harmed by the statutory license for retransmission of distant broadcast signals in Section 119 of the Copyright Act, 17 U.S.C. § 119, and (2) whether the "unserved household" limitation on Direct Broadcast Satellite ("DBS") carriers' ability to retransmit distant broadcast signals under that license has operated effectively and efficiently to protect the copyright owners of over-the-air television programming.[1]

I. INTRODUCTION AND SUMMARY

The Section 119 license can be a triple win for copyright holders, satellite carriers and the public alike. The digital television ("DTV") transition, which allows a simple determination of whether a household is eligible for distant network stations under

[1] *Satellite Home Viewer Extension and Reauthorization Act of 2004,* Notice of Inquiry, Docket No. RM 2005-7 (rel. July 7, 2005), published 70 Fed. Reg. 39,343 (2005) ("NOI").

this license, will increase the benefits of the license for all these categories of stakeholders.

Section 110 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA") directed the Register of Copyrights to report to the House and Senate Judiciary Committees on the "extent to which the unserved household limitations for network stations contained in section 119 of Title 17, United States Code, . . . has forwarded the goal . . . to protect copyright owners of over-the-air television programming."[2] Section 110 further directed the Register to report on "[t]he extent to which secondary transmissions of primary transmission of network stations and superstations under section 119 . . . harm copyright owners of broadcast programming throughout the United States and the effect, if any, of the statutory license under section 122 [the local-into-local license] . . . in reducing such harm."[3] The Copyright Office seeks comment on the impact, if any, of the retransmission consent exemption on harm to copyright owners under the Section 119 license. The Copyright Office's report to Congress is to contain both the results of its inquiry and its recommendations for changes, if any, to the statutes and regulations in question.[4]

In sum, EchoStar responds to these questions as follows. *First*, the Section 119 statutory license does *not* harm copyright holders. In fact, as EchoStar's economic experts demonstrate, the license *helps* copyright holders by lowering the costs of providing distant broadcast signals, which in turn facilitates broader distribution of

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[2] Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447, § 110, 118 Stat. 3394, 3408 (2004) ("SHVERA").

[3] SHVERA § 110.

[4] NOI at 39,343.

such signals by DBS operators to more viewers. Thus, copyright holders benefit not only from increased royalty payments under the statutory license but also from additional advertising revenue generated by additional viewers and the benefits of additional cross-promotion of programming on cable networks affiliated with the broadcaster. In addition, consumers that would otherwise not be able to receive network programming over-the-air from their local network station benefit from having the option of receiving the same programming via a distant station affiliated with the same network. Without the statutory license, there is a significant risk that DBS operators would not offer distant broadcast signals at all, especially given the substantial transaction costs involved in negotiating with a myriad of individual copyright holders behind every program in a broadcast station's line-up. If that were to happen, both copyright holders and consumers would lose -- the former would lose the increase in royalties and advertising revenues that would result from wider distribution and the latter would lose access to programming.

Second, it is a mistake to presume that copyright holders receive anything less than fair market value under the statutory license for their rights. In fact, as shown in the attached statement by Jonathan M. Orszag and Jay Ezrielev of Competition Policy Associates ("COMPASS"), the reverse is probably true. In that respect, it is important to point out that the rates for the Section 119 license that were set by a copyright arbitration royalty panel in 1997 were excessive. Even the discounted rates set by Congress in 1999 may have been too high, and the excessive rates have, if anything, created economic inefficiencies. In particular, the methodology used by the panel in 1997 to calculate royalty rates for retransmission of distant broadcast stations was fundamentally flawed from an economic perspective -- the price that multichannel video programming

distributors ("MVPD"s) pay for cable networks is not a sound proxy for the fair market value of distant broadcast signal retransmission given the very different business models involved. As a result, rather than being harmed by the current royalty rate, copyright holders have been subsidized.

Copyright holders' complaints about implementation of the Section 119 license are also misguided. The litigation initiated by broadcasters in the Florida federal district court is nothing other than a normal dispute among copyright owners and users under the existing rules. EchoStar's position in that litigation has been far from frivolous. In fact, while the district court has entered an injunction against EchoStar, the Court of Appeals for the Eleventh Circuit has stayed that injunction pending its disposition of EchoStar's appeal. In staying the injunction, the Eleventh Circuit implicitly found that EchoStar was likely to succeed on the merits of its appeal and that copyright holders would not be harmed by the stay. In any event, any alleged harm has been rectified by the royalties that EchoStar has paid with respect to the subscribers alleged to be improperly receiving a distant signal. Besides, EchoStar already has reached mutually satisfactory settlements of the litigation with three of the four major networks and many independent stations and station groups.

Even more important, the copyright holders' implementation concerns are mooted by the advent of DTV and the general "either-you-get-it-or-you-don't" nature of DTV reception. The transition from analog to digital service will allow a more precise and error-free determination of whether a household is served or not.

For the same reason, *third*, while the "unserved household" limitation has not operated efficiently and effectively, the advent of DTV can moot the problems

experienced by consumers to date. Fewer consumers than Congress intended benefit from the Section 119 license because of problems with the digital signal strength standard and Individual Location Longley-Rice ("ILLR") predictive model used to determine when a household is not receiving an adequate over-the-air television signal. Among other things, the existing testing procedures make assumptions about consumers' receiving equipment that are not matched by the realities on the ground. This inevitably leads to many incorrect determinations of when an adequate over-the-air signal can be received. The DTV transition allows a simpler and more accurate determination in the field: either you get a DTV picture or you do not. Similarly, the ILLR model has also not permitted effective identification of unserved households because, among other things, it (1) ignores signal strength loss due to building penetration and (2) sets almost all clutter-loss values for the VHF channels at zero land use/land cover in the model. This means that signal loss from land use and land cover will be the same in the urban canyons of New York City as in the plains of Kansas. An improvement of that model would in turn improve both the accuracy of the prediction and the benefits of the license to copyright holders, satellite carriers and the public.

Fourth, Congress's question as to the extent to which the harm to copyright holders under the Section 119 license is reduced by the Section 122 statutory license is based on a false premise -- namely, that copyright holders are harmed by the Section 119 license. As the above discussion shows, copyright holders in fact benefit from the Section 119 license and have been more than adequately compensated for the retransmission of their works under that license. The Section 122 license, if anything, has limited the benefits that copyright holders enjoy under the Section 119 license.

Fifth, the Copyright Office's question regarding the impact, if any, of the retransmission consent exemption on the harm to copyright holders from retransmissions under Section 119 is similarly based on the same false premise -- there is in fact no harm to copyright holders from such retransmissions. If anything, requiring retransmission consent likely would eviscerate the Section 119 license, at least for the carriage of distant network stations. Network affiliation agreements commonly include a clause prohibiting the grant of retransmission consent for the carriage of network stations beyond their local market. Contractual restrictions of this kind benefit local broadcast stations by ensuring that they retain a territorial monopoly over the display of the copyrighted programming in their market, but they do not necessarily benefit the holders of the copyright to that programming, who would lose out on the benefits of broader distribution. If the retransmission consent exemption were to be lifted, EchoStar expects that such contractual restrictions would restrict significantly satellite carriers' ability to provide distant network stations.

II. THE CURRENT STATUTORY LICENSE BENEFITS COPYRIGHT HOLDERS

EchoStar commissioned a report by two economists -- Jonathan M. Orszag and Jay Ezrielev of Competition Policy Associates ("COMPASS") -- to examine and evaluate the effects of the Section 119 license on copyright holders.[5] Their conclusion is clear: "The current statutory license process does not harm copyright holders."[6] In fact, their analysis of the available evidence shows that the statutory license helps copyright holders by lowering the costs of providing distant network signals, which facilitates the

[5] *See* Declaration of Jonathan M. Orszag and Jay Ezrielev ("COMPASS Report") (Exhibit A).

[6] *Id.* at ¶ 3.

ability of DBS carriers to provide such copyrighted signals to more viewers, and by thus allowing them to sell additional audiences to advertisers -- the broadcasters' predominant source of revenue.[7]

Copyright holders benefit directly when a DBS carrier retransmits a broadcast signal to viewers beyond the station's local market. Because the Section 119 license allows for a copyright fee that is based on the number of subscribers a carrier has, more viewers means more royalties for the copyright holders. More viewers also mean an increase in the value of the station's programming to advertisers and thus allows a broadcast station to demand higher advertising fees. In turn, program copyright owners can demand higher fees from the broadcasters. Therefore, not only do copyright holders benefit from the extant royalty payments from DBS carriers, but they also benefit from the additional advertising revenue generated by additional television viewers and the benefit of additional cross-promotion of programming on cable networks affiliated with the broadcaster.

In contrast, without the Section 119 license, there is a significant risk that DBS operators would not offer distant broadcast signals at all. Without the statutory license, EchoStar and other DBS operators would face substantial transaction costs that would limit their ability to carry distant signals. Broadcast stations generally do not own the copyrights to all of their programming and their licensing agreements with third-party copyright holders typically do not include the right to sub-license copyrighted programming for further distribution.[8] This means that, without a statutory license, a

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[7] *Id.*

[8] *See In the Matter of Rate Adjustment for the Satellite Carrier Compulsory License*, Report of the Panel, Docket No. 96-3 CARP-SRA, at 41-42 (Aug. 28, 1997)

DBS operator would have to negotiate and obtain copyright licenses from a mosaic of different copyright holders to carry a distant broadcast signal, including the broadcast network, the local broadcast station, major studios, sports leagues and sports teams, independent production companies and many others.

This is not a simple matter. In considering the cable statutory license in Section 111 of the Copyright Act, the House Judiciary Committee expressly recognized "that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system."[9] Similarly, when the same Committee considered the Satellite Home Viewer Act in 1988, it recognized that: "Negotiations of individual copyright royalty agreements is neither feasible nor economic. It would be costly and inefficient for copyright holders to attempt to negotiate and enforce agreements with distributors and individual households when the revenues produced by a single earth station are so small."[10]

Indeed, DBS operators would have to ascertain a broadcast station's programming (which can change with little or no notice) far enough ahead of time to enable the copyright holders to be identified and for licensing agreements to be negotiated -- a practical difficulty that Congress previously has recognized.[11] In addition,

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(recognizing that broadcasters do not have the right to sublicense the programs they carry) ("CARP Report").

[9] H.R. Rep. No. 94-146, at 89 (1976).

[10] H.R. Rep. No. 100-887, at 24 (1988).

[11] *See Copyright Law Revision: Hearing on S. 1361 Before the Subcomm. on Patents, Trademarks, and Copyrights of the S. Comm. on the Judiciary*, 94th Cong. 291 (1973) ("Senator McClellan. The point is the CATV station picks up some think [sic] that is being broadcast somewhere else. He has no way of knowing what is going to be broadcast ahead of time. How can he make an agreement with each copyright proprietor

DBS operators would have to identify the copyright holders behind each program and reach agreement with each of them before retransmitting the program. A broadcast station broadcasts thousands of programs a year,[12] with each program potentially having many copyright holders. For example, the COMPASS report examined the programming schedule of the New York network stations for the week of August 21, 2005 and, even for the minority of shows for which the copyright holders were identifiable, there were "dozens of different copyright owners"[13] from which a license agreement would have to be obtained. Thus, the COMPASS report concludes, "[a]n important benefit of statutory licensing" is that it minimizes the transaction costs associated with the carriage of the multitude of copyrighted material included in a broadcast signal.[14]

Importantly, the statutory license also eliminates the "hold-up" problem inherent in having to obtain rights from so many parties -- a phenomenon that is well-documented in the economics literature. As the COMPASS report explains:

> Imagine a scenario where a DBS carrier enters into sequential negotiations with copyright holders, and it is able to reach agreements with every copyright holder with which it has negotiated. The last copyright holder it must negotiate with can "hold up" the DBS carrier by demanding excessive license fees for

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with respect to each particular show? I do not see how from a practical standpoint it can be done.").

[12] *See Copyright Law Revision: Hearing on S. 1361 Before the Subcomm. On Patents, Trademarks, and Copyrights of the Comm. On the Judiciary*, 94th Cong. 401 (1973) (Statement of David Foster, President, National Cable Television Association) ("I would like to answer the question that you asked about why we should have a compulsory license with one flat fee across the board for the industry. The average television station carries approximately 5,000 programs per year. Let's say that the average cable television system carries five television stations. That would mean that the individual cable system operator would have to negotiate a copyright fee for about 25,000 individual programs.").

[13] COMPASS Report at ¶ 10.

[14] *Id.* at ¶ 11.

> the right to retransmit its programming. The reason that the last copyright holder would be in a position to demand excessive fees is that there is a negative externality associated with not being able to retransmit that last copyright holder's programming: the entire distant station product offered by the DBS carrier would be weakened if the DBS carrier were required to show a black screen during the time that that copyright holder's programming was being broadcast. That is, there are some subscribers who would likely disconnect distant service from a DBS carrier if that DBS carrier were not able to offer the full complement of programs on a broadcast station. The last copyright holder would be in a position to take advantage of this fact – and thus, to take advantage of the DBS carrier. Of course, every copyright holder would want to be the last one to agree in the hopes of extracting higher fees, which would likely further delay the negotiating process.
>
> In the presence of the potential for being held up, the DBS carrier may even be unwilling to enter into individual negotiations with copyright holders and instead forgo distant signal service completely. This would harm consumers (who would be denied distant station signals) and copyright holders as a group (who would lose the ability to reach a certain group of viewers and the attendant copyright fees). A statutory license helps to ensure that negotiations for the licenses would not break down as a result of "hold up" by individual copyright holders.[15]

In sum, these substantial transaction costs mean that, absent the statutory license, DBS operators would likely not offer distant broadcast stations at all. If this were to happen, both copyright holders and consumers would lose -- the former would lose the increase in royalties and advertising revenues that would result from wider distribution and the latter would lose access to programming. Thus, far from harming copyright holders, the Section 119 benefits copyright holders by ensuring that they are compensated for retransmission of their works.

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[15] *Id.* at ¶¶ 12-13.

III. COPYRIGHT OWNERS ARE MORE THAN COMPENSATED FOR THE RETRANSMISSION OF THEIR WORKS

Various statements in the NOI suggest that the Copyright Office has already concluded that copyright holders are harmed by the Section 119 license. For example, the Copyright Office states that "copyright owners of all programming categories are harmed equally" by the distant signal statutory license, and considers "harm" to mean the "difference in the price that copyright owners would have been able to charge satellite carriers for their programming and the price they actually receive under the fees established under section 119."[16] These statements are based on a false premise: namely, that the statutory royalty fees historically have been below fair market value.

In fact, the Section 119 license has more than adequately compensated copyright holders for the retransmission of their works. Under the Section 119 license, satellite carriers must pay royalty fees to the Copyright Office in return for the right to retransmit distant broadcast signals. Historically, these rates were set administratively based on the "fair market value of secondary transmissions."[17] As the COMPASS report explains, however, the rates have historically been set too high.[18]

In 1997, the Copyright Arbitration Royalty Panel ("CARP") set royalty rates of 27 cents per subscriber per month for the retransmission of distant network stations and superstations based on a study by an expert for the Public Broadcasting Service "PBS"), Linda McLaughlin.[19] The McLaughlin study came up with the 27 cents per subscriber per month figure by averaging the license fees paid by all MVPDs to

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[16] NOI at 39,345.

[17] 17 U.S.C. § 119(c)(1)(F)(ii).

[18] COMPASS Report at ¶¶ 20-30.

[19] CARP Report at 29-47.

twelve popular basic cable networks. However, as the COMPASS report found, this methodology is "fundamentally flawed from an economic perspective" -- "the license fees paid . . . for cable networks are not a sound proxy for the fair market value of distant signals."[20]

As the COMPASS report discusses in detail, the considerations that go into setting the price for cable network carriage are substantially different from those that go into setting the price for broadcast station carriage: "Whereas cable networks rely primarily on license fees paid by MVPDs for their source revenue, broadcast networks derive almost all of their revenue from advertising."[21] While the CARP acknowledged that this fundamental difference in business models would warrant a downward adjustment of the royalty fee, it could not quantify that adjustment and so did not reduce the fee.[22] Thus, the 1997 royalty rates set by CARP were too high.

Indeed, Congress recognized as much when it passed the Satellite Home Viewer Improvement Act of 1999 ("SHVIA") which discounted the royalty rates set by CARP by 30% for distant superstations and 45% for distant network stations.[23] However, even these discounted rates in 1999 may have been too high. The excessive royalty rates have, if anything, created economic inefficiencies, as explained in the COMPASS report.[24] As a result, rather than being harmed by the current royalty rate, copyright holders have been subsidized under the Section 119 license.

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[20] COMPASS Report at ¶ 3.

[21] COMPASS Report at ¶ 23.

[22] CARP Report at 37.

[23] Satellite Home Viewer Improvement Act of 1999, Pub. L. 106-113, § 1004, 113 Stat. 1501 (1999).

[24] *See* COMPASS Report at ¶ 29.

Copyright holders' complaints about implementation of the Section 119 license are misguided. The litigation initiated by broadcasters in the Florida federal district court is nothing other than a normal dispute among copyright owners and users under the existing rules. EchoStar's position in that litigation has been far from frivolous. In fact, while the district court has entered an injunction against EchoStar, the Court of Appeals for the Eleventh Circuit has stayed that injunction pending its disposition of EchoStar's appeal. In staying the injunction, the Eleventh Circuit implicitly found that EchoStar was likely to succeed on the merits of its appeal and that copyright holders would not be harmed by the stay. In any event, any alleged harm to the local broadcasters as copyright holders under the Section 119 license[25] has been rectified by the claims that such broadcasters have made to the over $40 million in royalties that EchoStar has paid to the Copyright Office with respect to the subscribers that are alleged to be improperly receiving distant signals. Besides, EchoStar already has reached mutually satisfactory settlements of the litigation with three of the four major networks and many independent stations and station groups.

Even more important, the copyright holders' concerns about implementation are mooted by the advent of DTV, and the general "either-you-get-it-or-you-don't," nature of DTV reception. Because signal strength and interference problems in the DTV context are more likely to result in the complete loss of the digital picture, the transition to DTV will allow a more precise and error-free determination of whether a household is served or not -- if the consumer cannot actually view a DTV picture on

[25] Under 17 U.S.C. § 501(e), a local network station holding a copyright or other license to transmit a particular work is deemed to be the legal or beneficial copyright owner if the same work is retransmitted into its local service area by a satellite carrier in violation of the Section 119 license.

his/her television set under realistic testing conditions (discussed further below), then he or she should be considered "unserved" for the purposes of the Section 119 license. Otherwise, such consumers are likely to be deprived of programming from that network altogether.

IV. FEWER CONSUMERS THAN CONGRESS INTENDED QUALIFY TO RECEIVE DISTANT NETWORK SIGNALS BECAUSE OF PROBLEMS WITH THE SIGNAL STRENGTH STANDARD AND THE PREDICTIVE MODEL

Under the Section 119 license, eligibility to receive a distant analog network signal depends, in the first place, on whether a household is predicted to receive a Grade B intensity signal pursuant to the FCC's Individual Location Longley-Rice ("ILLR") model. Eligibility to receive a distant digital network station currently depends on whether a person is predicted to be served by the analog signal of a broadcast station under the ILLR and, beginning in April 2006, actual tests to determine whether a household can receive a signal strength in excess of the FCC's digital signal strength standards.[26] Going forward, the statutory license for the retransmission of distant digital signals is likely to assume greater importance as the transition from analog to digital television progresses.

As engineering studies commissioned by EchoStar have demonstrated, there are significant problems with both the digital signal strength standard and the ILLR model.[27] Because of these problems, the "unserved household" limitation has not

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[26] SHVERA § 204(a)(2)(D)(vii).

[27] *See* Comments of EchoStar Satellite L.L.C., *filed in* ET Docket No. 05-182, Attachment A (June 17, 2005) (*see* Exhibit B); Reply Comments of EchoStar Satellite L.L.C., *filed in* ET Docket No. 05-182, Attachment A, (July 5, 2005) (*see* Exhibit C); Ex Parte Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite L.L.C. to

operated efficiently or effectively, as fewer consumers than Congress intended benefit from the Section 119 license. However, because of the general "either-you-get-it-or-you-don't" nature of DTV reception, the advent of DTV may moot these problems, provided that appropriate adjustments are made to the digital strength standards and testing procedures.

Among other things, the existing signal strength testing procedures make assumptions about consumers' receiving equipment that are not matched by marketplace realities. In particular, the signal sensitivities in the current generation of consumer DTV receivers are significantly worse than the ones assumed in the FCC's DTV planning factors from which digital signal strength standards for VHF and UHF DTV channels were derived. In addition, the FCC's digital signal strength testing procedures require an antenna to be mounted outdoors and oriented in the direction of maximum signal strength.[28] Effectively, this method assumes that the consumer is equipped with a sophisticated rotating antenna. However, a survey conducted at EchoStar's request found that, even in rural counties, only 26% of consumers who rely on over-the-air reception had an outdoor rotatable antenna.[29] In addition, the survey found that a full 43% of consumers that relied on over-the-air reception did not even have an outdoor antenna of any kind -- they had indoor antennas on or near their television.[30] These problems with

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Marlene H. Dortch, Secretary, FCC, *filed in* ET Docket No. 05-182, Attachment (Aug. 25, 2005) (*see* Exhibit D).

[28] 47 C.F.R. § 73.686(d)(2)(iv).

[29] *See* Ex Parte Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite L.L.C. to Marlene H. Dortch, Secretary, FCC, *filed in* ET Docket No. 05-182, at 3 (Aug. 25, 2005).

[30] *Id.*

the testing procedures will inevitably lead to many inaccurate determinations of whether a household can actually receive an adequate DTV picture over the air.

Similarly, the ILLR predictive model also has not permitted effective identification of unserved households because, among other things, it (1) ignores signal strength loss due to building penetration,[31] and (2) sets almost all clutter-loss values for the VHF channels at zero for land use/land cover.[32] This means that signal loss from land use and land cover will be the same in the urban canyons of New York City as in the plains of Kansas. An improvement of that model would in turn improve both the accuracy of the prediction and the benefits of the license to copyright holders, satellite carriers and the public.

These problems with the digital signal strength standards and the ILLR predictive model have led inevitably to many inaccurate determinations of when a household can receive an adequate DTV picture over-the-air. As a result, fewer consumers than Congress intended have been able to qualify to receive distant broadcast signals under the Section 119 license.

V. THE SECTION 122 LICENSE IS MOSTLY IRRELEVANT TO THE QUESTION OF HARM UNDER THE SECTION 119 LICENSE

The Copyright Office's question as to the extent to which the harm to copyright holders under the Section 119 license is reduced by the Section 122 statutory license is based on a false premise -- namely, that copyright holders are harmed by the Section 119 license. As discussed above, copyright holders in fact benefit from the

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[31] *See* Exhibit B, Attachment A at 13-14.

[32] *See* Exhibit C, Attachment A at 1-2.

Section 119 license and have been more than adequately compensated for the retransmission of their works under that license.

In any event, as the Copyright Office is aware, SHVERA introduced a new "no distant if local" rule, that means that a satellite carrier will no longer be able to offer a distant network station to subscribers in any market in which it offers local-into-local service.[33] Consequently, the future significance of the Section 119 license is likely to be limited to those markets in which local-into-local service under the Section 122 license is not offered.

VI. THE RETRANSMISSION CONSENT EXEMPTION FOR SATELLITE DELIVERY OF DISTANT BROADCAST SIGNALS DOES NOT HARM COPYRIGHT HOLDERS

The Copyright Office's question regarding the impact, if any, of the retransmission consent exemption on the harm to copyright holders from retransmissions under Section 119 is similarly based on the same false premise -- there is in fact no harm to copyright holders from such retransmissions.

If anything, changing the law to require retransmission consent would likely eviscerate the Section 119 license, at least for the carriage of distant network stations. The agreements that networks have with their affiliate stations commonly include a clause prohibiting the grant of retransmission consent for the carriage of network stations programming beyond their local market.[34] Contractual restrictions of this kind benefit the local broadcast stations by ensuring that they retain a territorial

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[33] SHVERA § 204.

[34] *See Monroe, Georgia Water Light and Gas Commission v. Morris Network, Inc.*, DA 04-2297, Memorandum Opinion and Order, 19 FCC Rcd 13977, at ¶4 n.4 (Media Bur. 2004); *In the Matter of Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Reciprocal Bargaining Obligation*, MB 05-89, Report and Order, 20 FCC Rcd 10339, at ¶¶ 33-36 (rel. June 7, 2005).

monopoly over the display of the copyrighted programming in their market, but they do not necessarily benefit the copyright holders of that programming, who would lose the benefits of distributing their programming to households that would not otherwise be able to receive such programming over-the-air. If the retransmission consent exemption were to be lifted, EchoStar expects that such contractual restrictions would significantly restrict satellite carriers' ability to provide distant network stations.

VII. CONCLUSION

EchoStar urges the Commission to take the foregoing comments into account in its report to Congress under section 110 of SHVERA.

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September 1, 2005