



The Committee on Energy and Commerce

Memorandum

May 7, 2014

To: Members, Subcommittee on Communications and Technology

From: Majority Committee Staff

Subject: Addendum to the Majority Memorandum for May 7-8, 2014, Energy and Commerce Committee Markup

The Committee on Energy and Commerce will meet in open markup session on Wednesday, May 7, 2014 at 4:00 p.m. in 2123 Rayburn House Office Building for opening statements, and will reconvene on Thursday, May 8, 2014, at 10:00 a.m. in 2123 Rayburn House Office Building.

Chairman Walden, Chairman Upton, Ranking Member Waxman, and Ranking Member Eshoo introduced H.R. 4572, a bill to amend the Communications Act of 1934 to extend expiring provisions relating to the retransmission of signals of television broadcast stations, and for other purposes, a summary of which is below. The Committee will consider H.R. 4572 during the markup in lieu of the discussion draft that was previously circulated, and amendments should be drafted to H.R. 4572.

I. Section-by-Section

Section 1: Short Title

Section 1 provides the short title of “STELA Reauthorization Act of 2014.”

Section 2: Extension of Authority

Section 2 extends the exemption from retransmission consent for distant signals where a satellite subscriber is outside the area served by the broadcast signal. The section also extends the prohibition on exclusive retransmission consent deals and requirement that broadcasters negotiate in good faith with multichannel video programming distributors (“MVPDs”).

Section 3: Retransmission Consent Negotiations

Section 3 prohibits multiple broadcast stations from negotiating retransmission consent jointly unless the stations are directly or indirectly under common de jure control approved by the Federal Communications Commission (“FCC” or “Commission”). The discussion draft contained a provision permitting the joint negotiations if the satellite or cable operators agreed to such joint negotiations to reduce transaction costs.

However, cable and satellite operators have claimed that no distributor would choose to negotiate jointly with the two television broadcasters in the market; moreover, smaller operators have argued that such choice could undermine the benefit of separate negotiations in all other instances. The final bill does not contain this provision.

Section 4: Delayed Application of JSA Attribution Rule in Case of Waiver Petition

Section 4 modifies the FCC's rules on attribution of television joint sales agreements ("JSAs") adopted on March 31, 2014. The FCC required broadcasters to unwind JSAs, whose attribution would result in a violation of the local television ownership rule, within two years of the effective date of the Order adopting the new attribution rules, unless such broadcasters are able to obtain a waiver. Under this section of the bill, the two-year period for unwinding such non-compliant JSAs would not begin until the FCC had disposed of the relevant waiver application.

Section 4 in the discussion draft originally prohibited the Commission from modifying its attribution rules with regard to JSAs without first completing its long overdue quadrennial review of the media ownership rules required by Section 202 of the Telecommunications Act of 1996. On March 31, the FCC proceeded to modify its rules; as such, the language of the earlier version was modified to address the changed circumstances and to provide broadcasters with more stability for business planning by ensuring that they have at least 18 months to arrange for unwinding an agreement, should the FCC deny an applicant's waiver, or until December 31, 2016, whichever is later. The bill is constructed to encourage the FCC to act on waiver requests in a timely manner and to encourage broadcasters to file petitions for waiver as soon as they recognize the need for such waivers.

Section 5: Deletion or Repositioning of Stations During Certain Periods

Section 5 eliminates the "sweeps week" provision that prohibits cable operators from dropping broadcast signals during the weeks when Nielsen Media Research does its major audience measurements (so called "sweeps" weeks). Since cable providers do not have a corresponding right to demand access to programming during a retransmission dispute, and satellite providers are not subject to the rule, the change will provide regulatory parity and remove the government from this aspect of the negotiation for signal carriage.

Section 6: Repeal of Integration Ban

Section 6 eliminates the regulatory requirement that cable set-top boxes leased from cable system operators contain a separate security element (the so called "integration ban").

Section 629 of the Communications Act, added as part of the Telecommunications Act of 1996, requires the FCC to foster a market for third-party set-top boxes – set-top boxes that could be sold at retail and used on any MVPD's network. In adopting rules to comply with Section 629, the Commission required that the portion of the cable box that decrypts the cable signal be physically separated from the other functions of the box ("the separable security requirement"). The consumer electronics ("CE") and cable industries developed the CableCARD, a module that could be deployed in third-party electronics (televisions or retail set-top boxes) to decrypt the cable signal for viewing via a third-party set-top box.

Later, the Commission adopted additional rules to extend the CableCARD regulations to those boxes leased from a cable provider. This ban on integrating the security into the cable-owned boxes was intended to motivate cable systems to work with the CE industry by forcing reliance on a common technology. Today, of the more than 42 million CableCARDS deployed in set-top boxes, the vast majority of them are in leased boxes. TiVo, the most widely deployed retail set-top box accounts for only 600,000 CableCARDS.

Section 7: Report on Communications Implications of Statutory Licensing Modifications

Section 7 requires the Government Accountability Office to conduct a study and issue a report on necessary changes to the Code of Federal Regulations and the impact on consumers should Congress repeal the statutory compulsory copyright regime that governs broadcast content.

Section 8: Local Network Channel Broadcast Reports

Section 8 requires each satellite direct broadcast service provider to report the local signals that it provides for each market in which it broadcasts such services and also report on the potential use of its technology for the retransmission of local signals in each market.

Section 9: Definitions

Section 9 defines the terms “appropriate congressional committees” and “Commission.”

If you need more information, please call David Redl or Grace Koh at 5-2927.