

1 ALDERSON COURT REPORTING

2 KEVIN JAMES KISER

3 HJU325000

4 MARKUP OF H.R. 5038, THE FARM WORKFORCE MODERNIZATION ACT OF
5 2019;

6 H.R. 3884, THE MARIJUANA OPPORTUNITY REINVESTMENT AND
7 EXPUNGEMENT ACT OF 2019 OR THE MORE ACT OF 2019;

8 H.R. 5140, THE SATELLITE TELEVISION COMMUNITY PROTECTION AND
9 PROMOTION ACT OF 2019;

10 H.R. 3991, THE AFFORDABLE PRESCRIPTIONS FOR PATIENTS THROUGH
11 IMPROVEMENTS TO PATENT LITIGATION ACT OF 2019; AND

12 H.R. 5133, THE AFFORDABLE PRESCRIPTIONS FOR PATIENTS THROUGH
13 PROMOTING COMPETITION ACT OF 2019

14 Thursday, November 21, 2019

15 House of Representatives

16 Committee on the Judiciary

17 Washington, D.C.

18 The committee met, pursuant to call, at 9:17 a.m., in
19 Room 2141, Rayburn Office Building, Hon. Jerrold Nadler
20 [chairman of the committee] presiding.

21 Present: Representatives Nadler, Lofgren, Jackson Lee,
22 Cohen, Johnson of Georgia, Deutch, Bass, Richmond, Jeffries,
23 Cicilline, Lieu, Raskin, Jayapal, Demings, Correa, Scanlon,
24 Garcia, Neguse, McBath, Stanton, Dean, Murcarsel-Powell,
25 Escobar, Collins, Chabot, Gohmert, Buck, Roby, Gaetz, Johnson
26 of Louisiana, Biggs, McClintock, Lesko, Reschenthaler, Cline,
27 Armstrong, and Steube.

28 Staff present: David Greengrass, Senior Counsel; John
29 Doty, Senior Advisor; Madeline Strasser, Chief Clerk; Moh
30 Sharma, Member Services and Outreach Advisor; Julian Gerson,
31 Professional Staff Member; Amanda Lewis, Counsel, Antitrust,
32 Commercial, and Administrative Law Subcommittee; Slade Bond,
33 Chief Counsel, Antitrust, Commercial, and Administrative Law
34 Subcommittee; Jamie Simpson, Chief Counsel, Courts,
35 Intellectual Property, and the Internet Subcommittee;
36 Danielle Johnson, Counsel, Courts, Intellectual Property, and
37 the Internet Subcommittee; Rosalind Jackson, Professional
38 Staff Member, Courts, Intellectual Property, and the Internet
39 Subcommittee; Ben Hernandez, Counsel, Crime, Terrorism, and
40 Homeland Security Subcommittee; Joe Graupensperger, Chief
41 Counsel, Crime, Terrorism, and Homeland Security
42 Subcommittee; Milagros Cisneros, Detailee, Crime, Terrorism,
43 and Homeland Security Subcommittee; Veronica Eligan,
44 Professional Staff Member, Crime, Terrorism, and Homeland
45 Security Subcommittee; Betsy Lawrence, Counsel, Immigration

46 and Citizenship Subcommittee; David Shahoulian, Chief
47 Counsel, Immigration and Citizenship Subcommittee; Joshua
48 Breisblatt, Counsel, Immigration and Citizenship
49 Subcommittee; Rachel Calanni, Profession Staff Member,
50 Immigration and Citizenship Subcommittee; Ami Shah, Counsel,
51 Immigration and Citizenship Subcommittee; Brendan Belair,
52 Minority Staff Director; Bobby Parmiter, Minority Deputy
53 Staff Director/Chief Counsel; Jon Ferro, Minority
54 Parliamentarian/General Counsel; Jason Cervenak, Minority
55 Chief Counsel, Crime, Terrorism, and Homeland Security
56 Subcommittee; Andrea Loving, Chief Counsel, Immigration and
57 Citizenship Subcommittee; Ryan Breitenbach, Minority Chief
58 Counsel, National Security; Tom Stoll, Minority Chief
59 Counsel, Courts, Intellectual Property, and the Internet
60 Subcommittee; Daniel Flores, Minority Chief Counsel,
61 Antitrust, Commercial, and Administrative Law Subcommittee;
62 Erica Barker, Minority Chief Legislative Clerk; Andrea
63 Woodard, Minority Professional Staff Member; and James Rust,
64 Minority Counsel.

65 Chairman Nadler. [Presiding.] The committee will come to
66 order.

67 The committee yesterday postponed further proceedings on
68 the recorded vote to favorably report the bill, H.R. 5038,
69 the Farm Workforce Modernization Act of 2019, and we will now
70 resume those proceedings. Before we recessed last night, the
71 committee approved the bill by a voice vote. A roll call was
72 asked for.

73 The clerk will call the roll.

74 Ms. Strasser. Mr. Nadler?

75 Chairman Nadler. Aye.

76 Ms. Strasser. Mr. Nadler votes aye.

77 Ms. Lofgren?

78 Ms. Lofgren. Aye.

79 Ms. Strasser. Ms. Lofgren votes aye.

80 Ms. Jackson Lee?

81 Mr. Cohen?

82 Mr. Johnson of Georgia?

83 Mr. Johnson of Georgia. Aye.

84 Ms. Strasser. Mr. Johnson of Georgia votes aye.

85 Mr. Deutch?

86 Ms. Bass?

87 Ms. Bass. Aye.

88 Ms. Strasser. Ms. Bass votes aye.

89 Mr. Richmond?

90 Mr. Jeffries?
91 Mr. Cicilline?
92 Mr. Cicilline. Aye.
93 Ms. Strasser. Mr. Cicilline votes aye.
94 Mr. Swalwell?
95 Mr. Lieu?
96 Mr. Lieu. Aye.
97 Ms. Strasser. Mr. Lieu votes aye.
98 Mr. Raskin?
99 Mr. Raskin. Aye.
100 Ms. Strasser. Mr. Raskin votes aye.
101 Ms. Jayapal?
102 Ms. Jayapal. Aye.
103 Ms. Strasser. Ms. Jayapal votes aye.
104 Mrs. Demings?
105 Mrs. Demings. Aye.
106 Ms. Strasser. Mrs. Demings votes aye.
107 Mr. Correa?
108 Mr. Correa. Aye.
109 Ms. Strasser. Mr. Correa votes aye.
110 Ms. Scanlon?
111 Ms. Garcia?
112 Ms. Garcia. Aye.
113 Ms. Strasser. Ms. Garcia votes aye.
114 Mr. Neguse?

115 Mr. Neguse. Aye.

116 Ms. Strasser. Mr. Neguse votes aye.

117 Mrs. McBath?

118 Mrs. McBath. Aye.

119 Ms. Strasser. Mrs. McBath votes aye.

120 Mr. Stanton?

121 Mr. Stanton. Aye.

122 Ms. Strasser. Mr. Stanton votes aye.

123 Ms. Dean?

124 Ms. Dean. Aye.

125 Ms. Strasser. Ms. Dean votes aye.

126 Ms. Mucarsel-Powell?

127 Ms. Mucarsel-Powell. Aye.

128 Ms. Strasser. Ms. Mucarsel-Powell votes aye.

129 Ms. Escobar?

130 Ms. Escobar. Aye.

131 Ms. Strasser. Ms. Escobar votes aye.

132 Mr. Collins?

133 Mr. Collins. No.

134 Ms. Strasser. Mr. Collins votes no.

135 Mr. Sensenbrenner?

136 Mr. Chabot?

137 Mr. Chabot. No.

138 Ms. Strasser. Mr. Chabot votes no.

139 Mr. Gohmert?

140 Mr. Gohmert. No.

141 Ms. Strasser. Mr. Gohmert votes no.

142 Mr. Jordan?

143 Mr. Buck?

144 Mr. Buck. No.

145 Ms. Strasser. Mr. Buck votes no.

146 Mr. Ratcliffe?

147 Mrs. Roby?

148 Mrs. Roby. No.

149 Ms. Strasser. Mrs. Roby votes no.

150 Mr. Gaetz?

151 Mr. Johnson of Louisiana?

152 Mr. Johnson of Louisiana. No.

153 Ms. Strasser. Mr. Johnson of Louisiana votes no.

154 Mr. Biggs?

155 Mr. Biggs. No.

156 Ms. Strasser. Mr. Biggs votes no.

157 Mr. McClintock?

158 Mr. McClintock. No.

159 Ms. Strasser. Mr. McClintock votes no.

160 Mrs. Lesko?

161 Mrs. Lesko. No.

162 Ms. Strasser. Mrs. Lesko votes no.

163 Mr. Reschenthaler?

164 Mr. Cline?

165 Mr. Cline. No.

166 Ms. Strasser. Mr. Cline votes no.

167 Mr. Armstrong?

168 Mr. Armstrong. No.

169 Ms. Strasser. Mr. Armstrong votes no.

170 Mr. Steube?

171 Mr. Steube. No.

172 Ms. Strasser. Mr. Steube votes no.

173 Chairman Nadler. The gentleman from Florida?

174 Mr. Deutch. Mr. Deutch votes aye.

175 Chairman Nadler. Has every member who wishes to vote

176 voted?

177 [No response.]

178 Chairman Nadler. The clerk will report.

179 Ms. Strasser. Mr. Chairman, there are 18 ayes and 12

180 noes.

181 Chairman Nadler. The ayes have it. The bill, as

182 amended, is ordered reported favorably to the House.

183 Members will have 2 days to submit views.

184 [The information follows:]

185 Chairman Nadler. The bill will be reported as a single
186 amendment in the nature of a substitute incorporating all
187 adopted amendments.

188 Without objection, staff is authorized to make technical
189 and conforming changes.

190 Pursuant to notice, I now call up H.R. 5140, the
191 Satellite Television Community Protection and Promotion Act
192 of 2019, for purposes of markup, and move that the committee
193 report the bill favorably to the House.

194 The clerk will report the bill.

195 Ms. Strasser. H.R. 5140, to amend Title 17, United
196 States Code, to narrow the category of households eligible to
197 receive signals --

198 Chairman Nadler. Without objection, the bill is
199 considered as read and open for amendment at any point.

200 [The bill follows:]

201 Chairman Nadler. I will begin by recognizing myself for
202 an opening statement.

203 H.R. 5140, the Satellite Television Community Protection
204 and Promotion Act, amends the satellite television distant
205 signal license contained in Section 119 of the Copyright Act.
206 The license is currently set to expire at the end of this
207 year. Under Section 119, satellite carriers can import an
208 out-of-state broadcast network's programming to subscribers
209 in certain types of households. These include households
210 that do not receive sufficiently strong over-the-air signals,
211 recreational vehicles and commercial trucks, households that
212 receive a waiver from a local network affiliate to receive a
213 distant signal, households that are in a market where local
214 service is available, but who have been grandfathered into
215 eligibility, and households in short markets where one or
216 more of the local networks is not available at all.

217 When satellite carriers use this license, they pay
218 government-set royalty rates for the distant out-of-State
219 programming and need not negotiate with individual copyright
220 owners. Households that receive programming under the
221 license do not get to see their local news, local weather, or
222 local emergency alerts. Instead, they get news, weather, and
223 emergency alerts from distant markets, like New York or Los
224 Angeles. Congress originally created this Section 119
225 license in 1988 when the satellite industry was in its

226 infancy. The license was enacted as a temporary measure with
227 the goal of ensuring that the newer satellite industry could
228 effectively compete with cable. The Congress of 1988 would
229 consider this mission accomplished.

230 More than 30 years have passed the section's enactment,
231 during which the satellite industry has matured into two
232 major players with nationwide subscribership. Technology has
233 likewise advanced, making it feasible for satellite carriers
234 to re-transmit local stations into these households of
235 distant out-of-state signals. One satellite carrier provides
236 its local service in all 210 medium markets. Another
237 provides local service in 198 of those markets. The separate
238 license's Section 122 of the Copyright Act governs this type
239 of service. Indeed, many of the households receiving distant
240 programming under the license have local broadcast stations
241 that serve their area and that carry news and other
242 information relevant and important to them.

243 H.R. 5140 accounts for this changing landscape and
244 prioritizes the provision of local programming by letting
245 most of the license expire and conditioning the use of the
246 remaining part of the license on the satellite carrier's
247 provision of local service in all 210 media markets. This
248 legislation also acknowledges that some households might run
249 the risk of losing access to these stations in a purely
250 market-based system. These include households in short

251 markets where at least one of the four networks is missing,
252 and RVs and commercial trucks which are not in fixed
253 locations. The license is made permanent for these two
254 groups.

255 Under H.R. 5140, most of the license expires as Congress
256 intended 30 years ago, while the statute is made permanent
257 for some of the most vulnerable subscribers. And in that
258 process, H.R. 5140 helps bring local television into these
259 communities.

260 I want to thank a few of my colleagues for working with
261 me to address concerns that this bill might be disruptive for
262 certain subscribers. We will consider an amendment
263 momentarily from the gentlelady from California which seeks
264 both to provide additional safeguards to ensure that
265 subscribers do not lose access during the bill's transition
266 period, and that the timing of the transition period is
267 structured so that a satellite carrier who is not in
268 compliance has adequate flexibility in meeting the bill's
269 requirements. I thank the gentlelady for working in good
270 faith with me and my staff to arrive at a transition
271 provision that should work to the benefit of everyone. I
272 also thank the gentleman from Georgia, Mr. Johnson, the
273 ranking member of the Committee on Courts, Intellectual
274 Property, and the Internet -- the chairman I should say --
275 the Subcommittee on Courts, Intellectual Property, and the

276 Internet, who has been a strong advocate for consumers
277 throughout this process, and who, likewise, has been
278 instrumental in shaping this legislation. I urge my
279 colleagues to support H.R. 5140.

280 I now recognize the ranking member, the gentleman from
281 Georgia, Mr. Collins, for his opening statement.

282 Mr. Collins. Thank you, Mr. Chairman. And as someone
283 on this panel and as a few of us on here, if there are any
284 issues that come up in the intellectual property sphere, and
285 especially when it deals with whether from music, to the CASE
286 Act, to the CLOUD Act, to trade secrets and others, it comes
287 through. And we have been very active in this for 7 years.
288 This is the very thing that this year has bothered me the
289 most.

290 This bill had to come up because of the expiration, but
291 we have waited now until just weeks before it is supposed to
292 expire to draft a bill that we didn't even have a bill on
293 before Monday. And now it comes up, and we have another
294 amendment. And at a certain point in time, it is not that it
295 is not going to get solved. It is not that it is not going
296 to have something happen. It is not that stakeholders have
297 been freaking out and calling our phones and blowing up our
298 offices for the last 48 hours over this bill. It is also
299 very interesting that some on this bill have one very
300 different opinion of consent decrees on one hand, and a very

301 different opinion on this bill on the other hand. I
302 recognize that.

303 But the interesting part here is why didn't we have a
304 markup on this in the sense of having a hearing on it? An
305 overgeneralized copyright hearing was not what was needed
306 here. You know, we said that we are giving a space to let
307 this wind down. Twenty years is long enough to wind down and
308 somebody get to the negotiating table. Now we are just going
309 to add 60 more days or so on to this process, and we are
310 going to pass this along, and hopefully finally come to a
311 determination point on much of the stuff that should have
312 terminated a long time ago.

313 I wish, I plead, I ask, let's get back to taking up
314 bills and having hearings so that we don't have to wait a
315 crammed-in week of markup in which we get a bill which
316 everybody who wants to have an opinion on gives their
317 opinion, and we end up writing an amendment the night before
318 to come back to the committee to say this is how we are going
319 to solve it. The industry sitting in the audience and not in
320 the audience watching on their computers right now, hear me
321 clearly. You know me well. I know you well. This is not
322 the way we need to do this. Fix it. Quit arguing. We have
323 done this before.

324 And for my friends across the aisle, all I will say is a
325 markup of this category should have had a hearing with it.

326 It should have had something discussed about it and had the
327 players in front of us to answer the questions of why they
328 hadn't fixed it, why they hadn't negotiated it. But instead,
329 we simply have a markup; thus, the entire portrait of the
330 Judiciary Committee for 2019. We only do it when we have to
331 do it, and even then it is rushed. With that, I yield back.

332 Chairman Nadler. Without objection, all other opening
333 statements will be included in the record.

334 [The information follows:]

335 Chairman Nadler. Are there any amendments to H.R. 5140?
336 For what purpose does the gentlelady from California seek
337 recognition?

338 Ms. Lofgren. I have an amendment at the desk.

339 Chairman Nadler. The clerk will report the amendment.

340 Ms. Strasser. Amendment to H.R. 5140, offered by Ms.
341 Lofgren, page 2, line 9, strike "and" --

342 Ms. Lofgren. I ask unanimous consent that the amendment
343 be considered as read.

344 Chairman Nadler. Without objection, the amendment will
345 be considered as read.

346 [The amendment of Ms. Lofgren follows:]

347 Chairman Nadler. The gentlelady is recognized.

348 Ms. Lofgren. This amendment does two things. First, it
349 clarifies that a contract dispute or blackout won't prevent
350 satellite TV providers from using this Section 119 license.
351 As the bill is drafted, there is an ambiguity on the
352 requirement for being able to use Section 119. As written,
353 it could be interpreted as a requirement that a satellite
354 company be currently providing local channels in all 210
355 markets to use the 119 license. And if it is not, regardless
356 of the reason, including a contract dispute, then it can't
357 use the license. This ambiguity could be used to extort
358 satellite TV providers during retransmission negotiations.
359 To clear up this ambiguity, my amendment makes it clear that
360 failure to reach a retransmission agreement does not prevent
361 the use of 119 license.

362 The second part of this amendment deals with how long
363 satellite TV providers have to comply with this new regime.
364 Currently, the bill requires compliance no later than 120
365 days. However, I do not feel that we have a strong enough
366 committee record or sufficient evidence to support this
367 timeline. So instead of 120 days, my amendment proposes
368 giving satellite TV companies an initial window of six months
369 to comply.

370 Additionally, after the first six months, a satellite TV
371 provider can avail itself of an essentially unlimited number

372 of 90-day extensions, but only so long as it files a notice
373 with the Copyright Office that it has acted reasonably and in
374 good faith to provide local channels in all 210 markets, and
375 will continue to make good faith efforts to accomplish it;
376 intends to use the license despite not providing local
377 channels in all markets and provided a list of markets where
378 it does not provide local channels; and provided a summary of
379 actions taken to provide local channels to all market.

380 Now, I want to note that the Copyright Office doesn't
381 actually make any determinations here, but instead makes the
382 filing available for auditing and verification by interested
383 parties. So the extension is essentially automatic, but
384 there is actual accountability because instead of
385 verification of the satellite provider's filings, by giving
386 the broadcasters in currently unserved markets a civil right
387 of action in district court to challenge the satellite
388 company's assertions that it is making reasonable efforts to
389 provide services to all markets.

390 Given the limited evidence we have as to how long it
391 will actually take to comply with this new law, I am inclined
392 to be cautious so as not to cause unintended consequences. I
393 actually think, and I am glad to say this, I think this is
394 the last time we will have this issue before the committee.
395 I think that with this amendment, all parties will comply.
396 And I remember in the 1990s, Rick Boucher, then a member of

397 the committee, opining, "When we will no longer have this
398 before us? I didn't think it would take this long." But I
399 think with the adoption of this amendment and this bill, we
400 will have resolved this issue happily for the country and
401 never see it again in the committee.

402 And with that, I yield back, Mr. Chairman.

403 Chairman Nadler. I recognize myself to speak on the
404 amendment. I thank the gentlelady from California for
405 offering her amendment. We all share the goal that
406 subscribers to satellite television should not have their
407 service disrupted, and also the goal of ensuring that all
408 subscribers receive their local network broadcasts where such
409 broadcasts are available. That is why I was pleased to work
410 with Ms. Lofgren to build in additional safeguards to ensure
411 that the transition period that H.R. 5140 creates is flexible
412 enough to allow enough time for satellite carriers to meet
413 the bill's requirement of providing local broadcast service
414 in all markets if they do not do so already.

415 With this amendment, after an initial grace period of
416 180 days instead of 120 days, satellite carriers will also
417 have a mechanism for seeking an extension of time, provided
418 they can demonstrate they are seeking to comply with this new
419 requirement in good faith. There are also checks to ensure
420 that the satellite carrier cannot rely on this extension
421 process forever. There is an ability to challenge the

422 sufficiency of the carrier's good faith efforts if and when a
423 carrier seeks an extension. This creates a good balance
424 between providing some flexibility and the time to comply
425 with incentives to comply quickly in order to avoid any such
426 challenges.

427 Most importantly, this should ensure a smooth transition
428 period so that no subscribers lose access to their satellite
429 service, while also ensuring that subscribers also get their
430 local broadcast stations as soon as possible in the cases
431 where they currently do not. The amendment also makes a
432 technical change in how to construe a statutory definition in
433 order to ensure that minor interruptions in service because
434 of payment disputes between broadcast and satellite carriers
435 do not imperil a carrier's ability to provide service more
436 broadly. I urge my colleagues to vote for this amendment.

437 Does anyone else seek recognition on the amendment?

438 Mr. Collins. I do.

439 Chairman Nadler. The gentleman from Georgia?

440 Mr. Collins. I move to strike the last word, Mr.

441 Chairman.

442 Chairman Nadler. Without objection.

443 Mr. Collins. Thank you.

444 Chairman Nadler. The gentleman is recognized.

445 Mr. Collins. Thank you. Again, I understand, and,

446 Chairwoman Lofgren, as I said, we have discussed many things.

447 But she actually laid it out completely very well in her
448 statement and said we don't have a committee record to
449 actually make recommendations. This is the problem we have
450 here because we have nobody sitting in front of this
451 committee who sat there from these satellite companies, from
452 the other components from broadcasters, and everybody else to
453 sit here and talk about how this has lasted so long, why it
454 has lasted so long.

455 Others who actually follow this know why it has lasted
456 so long, but let's put out in the record. We don't have a
457 committee record of in this Congress. And I think this is
458 the concern, you know, for many of us that we just finally
459 just get to where you just throw up your hands and know that
460 long-term legislation. I wish I shared the gentlelady's
461 optimism that we would never see this again. I don't because
462 there is a lot of still left-out issues here that will
463 continue on that could have been discussed in a hearing that
464 we didn't have, and now we are having to do it in markup.

465 I am still concerned about the extension of time. I am
466 still concerned about what could happen in the rubberstamp
467 from the Copyright Office, the broadcasters being able to
468 sue. I mean, there are a lot of extra issues out here when
469 it comes to satellite transmission, broadcast transmission
470 for those of us who have dealt with it from, you know, not
471 just this issue, from orphan county issues, and to everywhere

472 else, which I wish that some would stop challenging orphan
473 county issues as they have.

474 But this is the kind of thing that needed to have been
475 discussed. So if this is the best we can do, this is the
476 best we can do. I think at a certain point in time, I will
477 go back to the gentleman from, you know, almost 20 years ago.
478 Let it end. Let it end. Just like consent decrees on the
479 other side. The only reason that I am supporting this at
480 this second is at times after we have messed it up for so
481 long in Congress, you don't need to just sometimes have a
482 hard break. So the only reason I am saying this, because I
483 say it about consent decrees. I am consistent. Consent
484 decrees don't just need to go away. There needs to be a
485 pathway out of, and this probably needs a short pathway out,
486 although the pathway for this should have been solved a long
487 time ago, and there have been sides that just simply did not
488 want to negotiate.

489 We never had the chance to sit them, again, down here
490 and say let's fix this or you are not going to get a chance.
491 I am tired of my staff's time having to deal with an issue
492 which we didn't even know what was actually going to happen
493 until last minute. I want to see this done. This is the
494 only reason I am supporting this. I think this could have
495 been handled many different ways, but we have Republicans and
496 Democrats, majorities and minorities. But this one is an

497 area that is sad because this committee is the most
498 bipartisan committee when it comes to intellectual property
499 when we put our minds to it. The problem on this one, we
500 just didn't put our minds to it. So with that, I yield back.

501 Chairman Nadler. The gentleman yields back. For what
502 purpose does the gentleman from Georgia seek recognition?

503 Mr. Johnson of Georgia. I move to strike the last word.

504 Chairman Nadler. The gentleman is recognized.

505 Mr. Johnson of Georgia. Mr. Chairman, I rise in support
506 of this amendment, and I would like to thank you and also
507 Representative Lofgren for your hard work on this
508 legislation. And I appreciate your willingness to engage in
509 dialogue with me throughout this process. This has been a
510 process of elephants fighting, and when elephants fight, the
511 grass takes a beating. And in this situation, the grass are
512 the consumers.

513 At all times, I have been concerned about the 870,000
514 Americans who will receive their signal through distant
515 signal licensing. This compromise amendment ensures that
516 satellite TV providers have time to change to a Section 122
517 license by giving an initial 6 months, and then an unlimited
518 number of 90-day good faith extensions. This ensures that
519 those hundreds of thousands of Americans, including as many
520 as 27,000 Georgians, who, by the way, don't live in my
521 district, which is in Metropolitan Atlanta. They live in

522 rural Georgia, those 27,000 Georgians. And we are ensuring
523 with this amendment that they won't ever have a moment where
524 they turn on their television set, only to see a blank
525 screen.

526 This amendment is a responsible way to phase out the
527 Section 119 license. One hundred and twenty days is too
528 brief to ensure that no consumers are left in the dark, the
529 victims of ideological battles in Washington. I intend to
530 vote in favor of this amendment, and I encourage my
531 colleagues to do so. And with that, I will yield back.

532 Chairman Nadler. The gentleman from Texas?

533 Mr. Gohmert. Thank you, Mr. Chairman, and I appreciate
534 the work that has been done on this. We have gotten so much
535 conflicting in the way of views from different people,
536 different entities, and, of course, I guess sometimes
537 personal life bleeds over. I have grown suspicious of
538 DirecTV and AT&T and some of the things they have said. We
539 don't have DirecTV. We dropped it this year.

540 But, you know, it is not the opening statements that can
541 sometimes be monotone, but it is the fact that when we have a
542 legislative hearing, people come in, but it gives a reason
543 for us to do more research and to look into all these things
544 before the hearing ever starts. And, you know, for everybody
545 on both sides of the aisle that I am aware of, I mean, our
546 lives are so jammed up. There are so many issues we deal

547 with day in and day out. By having a legislative hearing, it
548 brings it into focus, a particular issue, particular
549 legislation that may need work. And it is so much easier to
550 get language right if we get widespread input before we
551 actually draft the language instead of, here it is. It is
552 not great, but, you know, it is better than it could have
553 been. That is really no way to do legislation.

554 But my local folks are in favor, reluctantly, of this,
555 so I will be voting for it.

556 Mr. Collins. Will the gentleman yield?

557 Mr. Gohmert. Yes, I certainly will.

558 Mr. Collins. I thank you. I thank the gentleman for
559 that. I need to make a clarification on something. I am for
560 the underlying bill. I am not in favor of this amendment.
561 There is no way I can go along with 90-day continuous
562 extensions, continuous extensions, continuous extensions, and
563 then force an organization to have to go to district court to
564 stop it. So I am in favor of the underlying bill. I am not
565 in favor of this amendment. I need to make that
566 clarification.

567 Mr. Gohmert. Certainly. I appreciate that
568 clarification. So I hope this will be the end of this type
569 of approach, just running in because the issue has been
570 around for 20 years. We are just going to pass something and
571 hope we never deal with it again. But when you don't have

572 more time in the full committee on such an issue, then it
573 pretty well assures it is coming back. It will be back. And
574 I would be willing to bet that is exactly what is going to
575 happen, and there will be more issues come back we are going
576 to have to deal with.

577 And when that happens, I hope if we are still in the
578 minority, the current majority will give us a full hearing
579 with lots of witnesses so that we can get the best input from
580 different sources. And with that, I yield back.

581 Chairman Nadler. The gentleman yields back.

582 The question occurs on the amendment.

583 Those in favor, say aye.

584 Opposed, nay.

585 In the opinion of the chair, the ayes have it. The
586 amendment is agreed to.

587 Are there any further amendments to H.R. 5140?

588 Mr. Deutch. Mr. Chairman?

589 Chairman Nadler. For what purpose does the gentleman
590 seek recognition?

591 Mr. Deutch. Mr. Chairman, I have an amendment at the
592 desk.

593 Chairman Nadler. The clerk will report the amendment.

594 Ms. Strasser. Amendment to H.R. 5140, offered by Mr.
595 Deutch of Florida. Add at the end of the bill the following.

596 Mr. Deutch. Mr. Chairman, I ask unanimous consent to

597 waive the reading.

598 Chairman Nadler. Without objection, the amendment will

599 be considered as read.

600 [The amendment of Mr. Deutch follows:]

601 Chairman Nadler. The gentleman is recognized.

602 Mr. Deutch. Mr. Chairman, the bill before us today,
603 H.R. 5140, is focused on whether satellite TV carriers should
604 have to negotiate market rates for broadcast TV content when
605 they want to retransmit on their platforms. Many of the
606 members of this committee believe that TV broadcasters
607 deserve the right to negotiate rates for the use of their
608 content. My amendment applies that same basic belief that
609 American creators deserve the right to control and get fair
610 market value for the use of their work, work that they own.

611 TV broadcasters have told Congress that, and I quote,
612 "The time has come to stop subsidizing billion-dollar
613 satellite TV companies," with the Section 119 compulsory
614 license. I believe the time has also come to stop
615 subsidizing AM/FM radio broadcasters as well. For too long,
616 AM/FM radio has retained the right to play songs without
617 paying the performers, though they do pay the songwriters.
618 In contrast, other platforms have evolved into the 21st
619 century. Both satellite radio and digital musical services
620 are required to pay both performers and songwriters.

621 Mr. Chairman, FM radio is the largest music service in
622 the world hands down, 200-plus million listeners, \$17 billion
623 in annual revenue, most of which is generated by advertising
624 sold against an audience drawn to those stations by music.

625 For the last decade, we have learned that denying

626 performers their rights on AM/FM radio discourages small- and
627 medium-sized radio stations from leaping to digital
628 platforms, and it leads to further consolidation in radio.
629 This consolidation leads to consolidated playlists and less
630 diverse music market on radio. Last year when we passed the
631 Music Modernization Act, we equalized the rate standards used
632 to set royalties for digital music platforms. Because of the
633 MMA, the standard across the board is fair market value.

634 Mr. Chairman, fixing this issue of AM/FM radio
635 performance is the unfinished business of the MMA. America
636 stands almost alone in the entire world in not giving
637 recording artists a performance right for broadcast radio air
638 play. Nearly every country in the world collects royalties
639 from radio broadcasters for the use of sound recordings. In
640 fact, every industrialized country, except the United States,
641 has a performance right. American artists and copyright
642 owners lose close to \$200 million every year in royalties
643 that they have rightly earned for their work. They can't
644 collect these royalties because we don't have a reciprocal
645 performance right here in the United States. That is taxable
646 income that would be coming into the United States if
647 American radio broadcasters were held simply to the same
648 standard as every other music service in America, and
649 actually paid for the product that is the lifeblood of their
650 business.

651 Music creators deserve the same right to retransmission
652 consent as TV content creators. And while I understand that
653 the performance right is a different statutory license than
654 the statutory license being amended by H.R. 5140, the time to
655 fix this has come. Now, I know, Mr. Chairman, that you and
656 the ranking member are both champions for music, and I hope
657 that you can commit to moving a performance rights bill
658 through this committee this Congress, and that is why I will
659 withdraw this amendment today. But I hope that this
660 committee can come together in a bipartisan way to correct
661 this injustice for music creators that has continued for far
662 too long. And I yield.

663 Mr. Collins. Will the gentleman yield?

664 Mr. Deutch. I will yield.

665 Mr. Collins. Thank you. You and I see this very
666 similarly, and I think last year, one of the great things
667 that came out of the multiyear discussions on MMA was the
668 discussion of getting both players in the room. And I see
669 some of the players in the room to discuss this. My hope is,
670 I am not sure where, because we have had massively other
671 things going on in this committee. I would hope those
672 discussions are still going on. I would hope that we would
673 actually take this, for the gentleman from Florida, we bring
674 this to the committee, get an update on where this is at,
675 because at the end of the day, you and I both know that this

676 was that large piece that needs to be addressed, but also has
677 probably one of the more dramatic stories to be told or
678 horror stories, if you would, to be told on the dramatic
679 effect of this.

680 So it needs to be actually discussed, but I think there
681 is a solution. I agree with you on this, and I appreciate
682 you at least bringing it up. This is definitely not the
683 place to do it here, but I do appreciate it coming up,
684 because I think it does highlight a contradiction today as we
685 go forward. I appreciate it. I yield back.

686 Mr. Deutch. And I yield back the balance of my time.

687 Chairman Nadler. I will recognize myself. It is the
688 place to bring it up here, but not on this bill.

689 Mr. Collins. Non-germane.

690 The Chairman: Yes.

691 Mr. Collins. Thank you.

692 Chairman Nadler. But not on this bill. I thank the
693 gentleman from Florida for offering his amendment. As most
694 people know, I have long believed that all services and
695 platforms that play music should be subject to the same
696 rules. There is no reason that broadcast radio shouldn't pay
697 royalties to artists just like satellite radio and internet
698 radio. The artist whose music is played should be paid
699 fairly by broadcast radio just as they are by all the other
700 platforms.

701 The change is long overdue. I am hopeful that I can
702 work together with the gentleman from Florida, with the
703 ranking member, and with others on the committee to fix this
704 longstanding problem in this Congress. In fact, I plan to
705 reintroduce a bill on this issue in the near future. I thank
706 the gentleman again for offering and withdrawing the
707 amendment.

708 A reporting quorum being present, the question is on the
709 motion to report the bill, H.R. 5140, as amended, favorably
710 to the House.

711 Those in favor, say aye.

712 Opposed, no.

713 The ayes have it, and the bill is reported favorably to
714 the House.

715 Members will have 2 days to submit views.

716 [The information follows:]

717 Chairman Nadler. This concludes our business for today.
718 Thanks to all of our members for attending and for attending
719 the follow-up to our meeting yesterday.
720 Without objection, the markup is adjourned.
721 [Whereupon, at 9:49 a.m., the committee was adjourned.]