



The Register of Copyrights of the United States of America
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

June 21, 2021

The Honorable Patrick Leahy
Chairman
Senate Committee on Appropriations
United States Senate
437 Russell Building
Washington, DC 20510

The Honorable Rosa DeLauro
Chair
House Committee on Appropriations
United States House of Representatives
2413 Rayburn Building
Washington, DC 20515

The Honorable Richard Shelby
Vice-Chairman
Senate Committee on Appropriations
United States Senate
304 Russell Building,
Washington, DC 20510

The Honorable Kay Granger
Ranking Member
House Committee on Appropriations
United States House of Representatives
1026 Longworth Building
Washington, DC 20515

Dear Chairman Leahy, Chair DeLauro, Vice-Chairman Shelby, and Ranking Member Granger:

I am pleased to deliver a letter describing the results of the Copyright Office's study on the market effects of the Satellite Television Community Protection and Promotion Act of 2019 ("STCPPA").

In December of 2019, the House and Senate Appropriations Committees asked the Copyright Office to conduct a study of the effects on the satellite television market of the anticipated expiration of the distant signal compulsory license contained in section 119 of the Copyright Act. Members of Congress were concerned that the section 119 subsidy of the carriage of distant broadcast network signals was undercutting the incentive for satellite companies to provide local broadcast network signals. In the end, the section 119 license did not expire entirely, as scheduled. Instead, Congress enacted the STCPPA, which, allowed certain uses of the section 119 license to sunset, but made others permanent.

Hence, in the present study, the Office sought information on the effects of the STCPPA, which went into full effect on June 1, 2020, as experienced by satellite companies, satellite subscribers, and network broadcasters. As described in more detail in the attached letter, we found that use of the section 119 license has sharply declined, accelerating an existing decrease in use over time. We are not able, however, to disaggregate the impact of STCPPA from other,

non-copyright factors shaping the current satellite television landscape. The decline in the use of the section 119 license reflects, albeit in much greater numbers, the overall decline in the number of satellite subscribers nationwide. This broader decline can be tied to several factors exogenous to section 119, which, combined with STCPA, may play a role in determining whether satellite subscribers have access to distant or local broadcast signals. The primary exogenous factor appears to be the changing nature of the video service industry through “cord cutting” and the existence of various internet television options. Other factors include broadcast channel ownership concentration and changing corporate priorities of the satellite providers in reaction to broader market realities. Finally, there is only limited data available about post-STCPA changes to the marketplace—we received relatively few public comments, and statistical data is only available for approximately six months post-STCPA (the second half of 2020), which coincided with a pandemic. Thus, at present, it is too early to tell how the changes made to the section 119 license by the STCPA will ultimately play out in the marketplace.

Please do not hesitate to contact me if you have any questions about this study.

Respectfully,

A handwritten signature in blue ink that reads "Shira Perlmutter". The signature is fluid and cursive, with the first name "Shira" being larger and more prominent than the last name "Perlmutter".

Shira Perlmutter
Register of Copyrights and Director,
United States Copyright Office

Enclosure

U.S. COPYRIGHT OFFICE STUDY OF THE MARKET EFFECT OF THE SATELLITE TELEVISION COMMUNITY PROTECTION AND PROMOTION ACT OF 2019 (“STCPPA”)

June 21, 2021

I. Background

A. The Section 119 Statutory License Before the Satellite Television Community Protection and Promotion Act of 2019

In 1988, Congress enacted the Satellite Home Viewer Act (“SHVA”),¹ which created a temporary statutory license (codified in section 119 of the Copyright Act) allowing satellite carriers to retransmit distant network and certain non-network broadcasts to subscribers with satellite dishes. Distant network retransmissions were available only to those subscribers living in “unserved households.”² This statutory license (also known as a compulsory license) allowed satellite carriers to retransmit broadcast signals without the network’s permission, as long as they paid a government-determined royalty rate.³ It was intended to encourage satellite carriers to develop and flourish in the absence of a mature marketplace⁴ and was scheduled to expire at the end of 1994.⁵

¹ Satellite Home Viewer Act of 1988, Pub. L. No. 100–667, 102 Stat. 3949 (1988).

² The SHVA defined “unserved households” as households of individuals who live in an area where they cannot receive a “grade B” television signal via a rooftop antenna, and have not, at the time they become subscribers to a satellite service that carries a network signal, subscribed within 90 days to a cable system that provides the signal of a station affiliated with that network. See U.S. COPYRIGHT OFFICE, THE CABLE AND SATELLITE CARRIER COMPULSORY LICENSES: AN OVERVIEW AND ANALYSIS 104–05 (1992), <https://www.copyright.gov/reports/cable-sat-licenses1992.pdf>. The section 119 definition of “unserved households” has evolved as the license was extended over the subsequent 26 years.

³ Since 1989, the Copyright Office has administered the section 119 license, which includes collecting statements of account and royalties from satellite carriers and distributing the royalties to the appropriate rightholders, based on allocations determined by the Copyright Royalty Board. See *Statutory License for Secondary Transmissions for Satellite Carriers—Section 119*, U.S. Copyright Office, https://www.copyright.gov/licensing/sec_119.html.

⁴ H.R. Rep. No. 887, 100th Cong., 2d Sess., pt. 1, at 15 (1988). See also H.R. Rep. No. 116–354, at 5 (2019) (“Congress created the section 119 license during the satellite industry’s nascency to allow satellite television to better compete with cable.”).

⁵ Satellite Home Viewer Act of 1988, Pub. L. No. 100–667 § 207, 102 Stat. 3949, 3960 (1988).

Instead of expiring as scheduled, the section 119 license created by SHVA was extended for successive five year periods in 1994,⁶ 1999,⁷ 2004,⁸ 2010,⁹ and 2014.¹⁰ With each extension, Congress also modified the statutory terms of the license. For example, by the time of the 2014 enactment of the STELA Reauthorization Act, the statute defined multiple types of unserved households—in addition to those originally covered—that were eligible to receive distant broadcast signals, including owners of recreational vehicles, commercial trucks, and households in so-called “short markets” (markets where one of the four most-viewed networks is not available from a local carrier).

In the five years following STELAR’s reauthorization of the section 119 license, use of the license sharply decreased. Royalties paid by one of the two satellite carriers in this market, AT&T’s DIRECTV, decreased by 86.75% between 2014 and 2018.¹¹ Royalties paid by the other satellite carrier, DISH Network, decreased by 85% during the same reporting period.¹² In terms of gross numbers, as of 2019, between 500,000 and 870,000 households received at least one

⁶ Satellite Home Viewer Act of 1994, Pub. L. No. 103–369, 108 Stat. 3477 (1994).

⁷ Satellite Home Viewer Improvement Act of 1999 (“SHVIA”), Pub. L. No. 106–113, § 1002, 113 Stat. 1501A–523, 527 (1999).

⁸ Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”), Pub. L. No. 108–447, § 101, 118 Stat. 3394 (2004).

⁹ Satellite Television Extension and Localism Act of 2010 (“STELA”), Pub. L. No. 111–175, § 102, 124 Stat. 1218, 1221 (2010).

¹⁰ STELA Reauthorization Act of 2014 (“STELAR”), Pub. L. No. 113–200, § 101, 128 Stat. 2059, 2060 (2014).

¹¹ See U.S. COPYRIGHT OFFICE, ANALYSIS AND RECOMMENDATIONS REGARDING THE SECTION 119 COMPULSORY LICENSE 2 (June 3, 2019), <https://www.copyright.gov/laws/hearings/views-concerning-section-119-compulsory-license.pdf>.

¹² See *id.* Since the 2018 reporting periods, satellite receipts have further declined. According to information from the U.S. Copyright Office’s Licensing Division, total satellite receipts in 2019 were down 20.8% from 2018, and total satellite receipts for the first half of 2020 were down 20% from the first half of 2019. For the second half of 2020, receipts were down 83.6% from the second half of 2019 to under \$700,000. As discussed below, this latter decline is due, at least in part, to AT&T’s decision not to use the statutory license after the transition period expired at the end of May 2021. In total, satellite royalty receipts were down more than 50% in 2020 compared to 2019. See LICENSING DIVISION, U.S. COPYRIGHT OFFICE, REPORT OF RECEIPTS 5/31/2021 2, <https://www.copyright.gov/licensing/receipts.pdf>.

distant signal under the section 119 license.¹³ It is believed that most of these subscribers live in rural areas of the United States.¹⁴

This decline in use of the section 119 license has been attributed primarily to the transformation of the television marketplace since 2014, as exemplified by increased consumer uptake of “over-the-top” (“OTT”) television services that offer broadcast network programming over the internet. These include Hulu + Live TV, YouTube TV, and Sling TV, none of which rely upon a statutory license to operate but instead negotiate licenses with broadcast networks in the marketplace.¹⁵

B. The Satellite Television Community Protection and Promotion Act of 2019

With STELAR about to expire at the end of 2019, Congress debated whether to reauthorize the statutory license. The broadcaster community argued that the license was no longer necessary to facilitate satellite coverage and should be allowed to expire.¹⁶ The Copyright Office also urged Congress to allow section 119 to sunset without reauthorization.¹⁷ The satellite industry, supported by public interest groups such as Public Knowledge, argued in favor of reauthorizing the license. In part, they asserted that the statutory license allowed carriers to provide service at a lower cost to subscribers.¹⁸ Several different bills were

¹³ The 500,000 subscribers estimate is from the National Association of Broadcasters. See *Narrow Satellite Legislation Should Expire as Congress Intended*, NAT'L ASS'N OF BROADCASTERS 2 (Sept. 2018), http://www.nab.org/documents/newsRoom/pdfs/NAB_STELAR_expiration.pdf. The 870,000 subscribers estimate is from the Satellite Broadcasting and Communications Association. See *Reauthorize and Revitalize the Satellite Home Viewer Act*, SATELLITE BROAD. & COMM'NS ASS'N 1, http://www.sbca.org/documents/Rural_Sat_Act.pdf (last visited May 18, 2021). The actual number of subscribers who receive distant signals under the current license is not publicly available.

¹⁴ See H.R. Rep. No. 116–354, at 4 (2019); Letter from Timothy P. McKone, Executive Vice President, Federal Relations, AT&T, to Jerrold Nadler, Chairman, and Doug Collins, Ranking Member, H. Comm. on the Judiciary at 1 (Apr. 19, 2019), <https://www.copyright.gov/laws/hearings/views-concerning-section-119-compulsory-license.pdf>.

¹⁵ See H.R. Rep. No. 116–354, at 6 (2019); U.S. COPYRIGHT OFFICE, ANALYSIS AND RECOMMENDATIONS REGARDING THE SECTION 119 COMPULSORY LICENSE 2 (June 3, 2019), <https://www.copyright.gov/laws/hearings/views-concerning-section-119-compulsory-license.pdf>. Sling TV is operated by DISH Network.

¹⁶ See John Eggerton, *Nets Agree to Graham's STELAR Expiration Plan*, NEXTTV (Nov. 8, 2019), <https://www.nexttv.com/news/nets-agree-to-grahams-stelar-expiration-plan>.

¹⁷ See U.S. COPYRIGHT OFFICE, ANALYSIS AND RECOMMENDATIONS REGARDING THE SECTION 119 COMPULSORY LICENSE 5 (June 3, 2019), <https://www.copyright.gov/laws/hearings/views-concerning-section-119-compulsory-license.pdf>.

¹⁸ See, e.g., Jenna Leventoff, *Everything You Need to Know About STELAR* (Dec. 9, 2019), <https://www.publicknowledge.org/blog/everything-you-need-to-know-about-stelar/>; Testimony of Rob Thun, AT&T Senior Vice President for Content and Programming, before the H. Comm. on Energy and Commerce, Subcomm. on Communications and Technology at 2 (June 4, 2019), https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony_Thun.pdf; <https://fmcadventure.com/wp-content/uploads/2019/07/RV-Coalition-letter-STELAR-final-10-22-19.pdf> (letter from RV coalition supporting renewal of the section 119 license).

introduced in Congress relating to the expiring section 119 license.¹⁹ Ultimately, Congress enacted an amended a version of the license in the Satellite Television Community Protection and Promotion Act of 2019 (“STCPPA”).²⁰ STCPPA altered the existing license in several ways. First, it eliminated several categories of “unserved households” from the statutory definition:

- households that cannot receive a local over-the-air signal via an antenna;²¹
- households that receive a waiver from a local network affiliate to receive a distant signal;²²
- “grandfathered” households that received distant signals via a section 119 license on or before October 31, 1999;²³ and
- households eligible for the statutory exemption related to receiving “C-Band” satellite signals.²⁴

Second, it reauthorized, and made permanent, the statutory license for a limited group of “unserved households”:

- households in “short markets”²⁵ and
- recreational vehicles and commercial trucks.²⁶

Use of the new license was made contingent on the carrier providing “local into local” network signals for all 210 designated market areas (“DMAs”),²⁷ although the statute allowed

¹⁹ See Jenna Leventoff, *Everything You Need to Know About STELAR* (Dec. 9, 2019), <https://www.publicknowledge.org/blog/everything-you-need-to-know-about-stelar> (citing the Satellite Television Access Reauthorization Act of 2019, S. 2789, introduced by Sen. Ralph Wicker, the Television Viewer Protection Act of 2019, H.R. 5035, introduced by Rep. Michael F. Doyle, and the Satellite Television Community Protection and Promotion Act of 2019, H.R. 5140, introduced by Rep. Jerry Nadler).

²⁰ Pub. L. No. 16–94, 133 Stat. 2534, 3201 (2019).

²¹ 17 U.S.C. § 119(d)(10)(A) (text repealed and replaced by Public Law 116–94, 133 Stat. 2534, 3202 (2019)).

²² 17 U.S.C. § 119(d)(10)(B) (text repealed and replaced by Public Law 116–94, 133 Stat. 2534, 3202 (2019)).

²³ 17 U.S.C. § 119(d)(10)(C) (repealed 2019).

²⁴ 17 U.S.C. § 119(d)(10)(E) (repealed 2019).

²⁵ 17 U.S.C. § 119(d)(10)(B). According to information supplied to the Copyright Office by the National Association of Broadcasters (“NAB”), there are eight short markets in the United States. Those markets are Alpena, Michigan; Glendive, Montana; Harrisonburg, Virginia; Mankato, Minnesota; Ottumwa, Iowa; Kirksville, Missouri; Parkersburg, West Virginia; Presque Isle, Maine; and Zanesville, Ohio. E-mail from Garrett Levin, Deputy Gen. Counsel for Intellectual Property Law and Policy, NAB, to Regan Smith, General Counsel, U.S. Copyright Office (Feb. 11, 2019, 10:20:01 am). The House Committee Report on STCCPA lists seven short markets. H.R. Rep. No. 116-354 at 5 n.8 (Dec. 17, 2019). The discrepancy appears to be the omission of Ottumwa, Iowa, from the House Report.

²⁶ See 17 U.S.C. § 119(d)(10)(A).

²⁷ See <https://www.fcc.gov/consumers/guides/receiving-television-broadcast-stations-satellite-tv-companies> (describing “local into local” service). DMAs are geographic areas of the United States that represent different media markets. Their size and population determine advertising rates for television stations in a particular DMA.

carriers to provide service to subscribers who were made ineligible for the license by the STCPA until the earlier of May 31, 2020, or the date on which the carrier provided local-into local service to all DMAs.²⁸ By tying the section 119 license to the provision of local-into-local service, Congress believed that it was “account[ing] for the need to prioritize access to local programming and acknowledg[ing] the vulnerabilities that some households might face in a purely market-based system.”²⁹

In amending section 119, Congress was particularly concerned with satellite subscribers’ ability to access local network stations. Congress believed that the section 119 license, operating under government-set royalty rates, risked undermining rural communities’ access to local broadcast stations because it encouraged satellite carriers to carry distant-into-local instead of local-into-local broadcast signals.³⁰ Congress was concerned that subscribers in some communities were being deprived of important information from local broadcasts, particularly local news, weather, and emergency reports.³¹

In its Committee Print accompanying the Further Consolidated Appropriations Act, 2020, the Committee on Appropriations of the U.S. House of Representatives, in agreement with the U.S. Senate, expressed a “concern that the distant signal provision contained in the STELA Reauthorization Act of 2014 [“STELAR”] . . . may provide a below market incentive for a mature satellite industry to restrict local news transmission.”³² The statement went on to recognize that STELAR was due to expire at the end of 2019, and directed the Register of Copyrights to “conduct a study on the impact on the market post expiration,” and deliver the results to the House and Senate Committees on Appropriations by June 20, 2021.³³

AT&T/DIRECTV has negotiated license agreements to provide local-into-local network service in all but 12 of the 210 DMAs.³⁴ Thus, after May 31, 2020, it was not entitled to use the

²⁸ Pub. L. No. 116–94, Title XI, § 1102(b), 133 Stat. 3203 (2019).

²⁹ H.R. Rep. No. 116–354 at 6 (Dec. 17, 2019).

³⁰ *See id.* at 4, 7.

³¹ *See id.* at 4.

³² Staff of H.R. Comm. on Appropriations, 116th Cong., Further Consolidated Appropriations Act, 2020, Legislative Text and Explanatory Statement (Comm. Print 2020).

³³ *Id.*

³⁴ AT&T/DIRECTV, Comments Submitted in Response to U.S. Copyright Office’s Jan. 6, 2021, Notice of Inquiry at 2 (Mar. 8, 2021) (“DIRECTV Comments”).

section 119 license at all.³⁵ Our understanding is that DISH Network provides local-into-local service in all DMAs and is eligible for the statutory license.³⁶

II. Notice of Inquiry

The Copyright Office launched its inquiry into the market effects of the STCPA on January 6, 2021, with a notice of inquiry (“NOI”) published in the Federal Register³⁷ and made available on the Office’s STCPA policy study page.³⁸ The Office additionally prepared a questionnaire to be distributed to unserved households, which was also made available on the policy study page.

In the NOI the Office presented four groups of questions. Generally, all of the questions taken together were intended to determine “(a) whether the STCPA appropriately incentivizes satellite carriers to provide local network signals to their residential subscribers, and (b) the impact of the changes to the section 119 license on RVers and commercial truckers.”³⁹ The first group of questions was directed to all respondents, with each of the other three groups directed to specific segments of the satellite television ecosystem: satellite television subscribers, satellite television providers, and broadcasters.

The first group consisted of five questions regarding the overall effect of the STCPA on the satellite television market. The questions asked about the effect of the STCPA on the receipt of local network broadcast stations via satellite for unserved households that were covered under section 119 both pre- and post-STCPA. They also asked whether the STCPA’s policy goal of improving satellite subscribers’ access to local broadcast stations had been achieved.

The second group of questions was directed to satellite television subscribers. The NOI sought to determine what changes each group of unserved households—again, using the definitions of that term from section 119 both before and after the STCPA amendments—had experienced with regard to satellite transmission of local broadcast stations. Specifically, the Office asked whether subscribers had previously received either local or distant broadcast stations via DISH Network or AT&T/DIRECTV, and if this situation had changed after the

³⁵ Between January 1, 2020, and May 31, 2020, AT&T/DIRECTV was only able to provide service under the section 119 license to subscribers who were made ineligible for the license by STCPA.

³⁶ See *Dish to Offer Locals in all 210 DMAs*, SATELLITEGUYS: FORUMS, <https://www.satelliteguys.us/xen/threads/dish-to-offer-locals-in-all-210-dmas.214783/> (May 27, 2010) (last visited May 28, 2021). According to the records of the Licensing Division, DISH Network filed a section 119 Statement of Account for the last half of 2020.

³⁷ Notice of Inquiry, 86 Fed. Reg. 578 (Jan. 6, 2021).

³⁸ *Study on the Impact of the Satellite Television Community Protection and Promotion Act of 2019*, U.S. COPYRIGHT OFFICE, <https://copyright.gov/policy/119/>.

³⁹ Notice of Inquiry, 86 Fed. Reg. 578, 580 (Jan. 6, 2021).

STCPPA took full effect on June 1, 2020. We also asked if the price of their satellite subscription had changed, if they had switched satellite providers, and if they had switched from satellite to another method of television delivery.

Because a notice of inquiry published in the Federal Register and made available on the Office’s website has limited reach, the Office also prepared a questionnaire directed to satellite television subscribers, which asked substantively the same questions as those in the second group of questions in the NOI. Our intention was to have associations that had previously demonstrated an interest in the section 119 revision issue — such as those representing rural and farming community interests and those representing RVers and commercial truckers — distribute this questionnaire to their members.⁴⁰ Unfortunately, none of the associations that the Office approached expressed an interest in distributing the questionnaire to their members. Hence, this study does not benefit from a survey of the experiences of satellite television subscribers.⁴¹

The third group of questions in the NOI were directed to satellite carriers—specifically DISH Network and AT&T’s DIRECTV, the only two entities who made use of the section 119 license. We asked if the carriers were continuing to rely upon the section 119 license after the STCPPA went into effect, if they were abiding by the STCPPA requirement of providing local broadcast service to all 210 DMAs in order to use the license, and if they took advantage of the STCPPA transition license between January 1 and May 31, 2020.

Finally, the fourth group of questions was directed to broadcasters. We asked whether the STCPPA amendments had affected their ability to provide service to unserved households that were now excluded from section 119.

III. Responses to the Notice of Inquiry

The Office received five responses to the NOI: one from AT&T/DIRECTV, one from the National Association of Broadcasters (“NAB”), and three from interested individuals, one of whom identified herself as a satellite television subscriber.⁴²

⁴⁰ The House Judiciary Committee and AT&T both expressed their belief that satellite subscribers covered by the section 119 license tended to reside in rural communities. *See* H.R. Rep. No. 116–354, at 4 (2019); Letter from Timothy P. McKone, Executive Vice President, Federal Relations, AT&T, to Jerrold Nadler, Chairman, and Doug Collins, Ranking Member, H. Comm. on the Judiciary 1 (Apr. 19, 2019), <https://www.copyright.gov/laws/hearings/views-concerning-section-119-compulsorylicense.pdf>. Both RVers and commercial truckers are explicitly listed in section 119’s definition of unserved households. *See* 17 U.S.C. § 119(a)(8)(A)(i).

⁴¹ The Office did receive two responses from a self-described satellite subscriber, described below, but it appears that this subscriber was responding to the NOI, not the questionnaire.

⁴² All comments to this study are available at https://www.regulations.gov/document/COLC_FRDOC_0001-0152/comment.

The NAB’s response emphasized its view that the STCPA’s amendments to section 119 were both necessary and successful. Consistent with its assertions made while the STCPA was being considered in Congress, the NAB reiterated the belief that the section 119 compulsory license as it stood prior to the STCPA constituted a below-market subsidy for satellite companies that provided an incentive for them to retransmit distant broadcast licenses instead of local ones.⁴³ While it stopped short of declaring that the STCPA has solved this problem, the NAB averred that the revisions to section 119 have “already encouraged a more active market for collaboration with section 119 licensees.”⁴⁴ The NAB went on to say that if unserved households are still not receiving local broadcast stations through their satellite subscription, “it is not because of technological infeasibility on the part of section 119 licensees or a lack of will on the part of broadcasters.”⁴⁵

In contrast to the NAB’s view of the post-STCPA market, AT&T/DIRECTV’s response to the NOI was distinctly less optimistic. AT&T/DIRECTV first pointed out that, due to the fact that they do not provide local broadcast channels to each of the 210 DMAs in the U.S., they are no longer allowed to use the section 119 license to provide distant broadcast channels to the remaining categories of unserved households.⁴⁶ AT&T/DIRECTV chalked up this fact to the expense—which they estimate is in the billions of dollars—of paying to directly license local broadcast channels in the remaining 12 DMAs, an expense that they asserted is “exacerbated by the broken retransmission consent regime and the loopholes in regulations that have allowed broadcasters to own two or three network affiliates in a market.”⁴⁷ Despite the lack of access to the section 119 license, AT&T/DIRECTV reported that it was successful in negotiating private

⁴³ National Association of Broadcasters (“NAB”), Comments Submitted in Response to U.S. Copyright Office’s Jan. 6, 2021, Notice of Inquiry at 2 (Mar. 8, 2021) (“NAB Comments”).

⁴⁴ *Id.* at 4.

⁴⁵ *Id.*

⁴⁶ DIRECTV Comments at 2. Based on the Copyright Office’s review of information made available to potential subscribers, as of June 2021, the DMAs that do not receive local broadcasts from DIRECTV include Cheyenne-Scottsbluff, Wyoming; Grand Junction-Montrose, Colorado; Bowling Green, Kentucky; Presque Isle, Maine; Alpena, Michigan; Glendive, Montana; North Platte, Nebraska; San Angelo, Texas; Victoria, Texas; and Casper-Riverton, Wyoming. *See Local Channels Lookup*, DIRECTV, https://www.directv.com/DTVAPP/packProg/localChannels.jsp?assetId=cms_local_channels&_ga=2.19585208.1617137532.1591539052-1057042063.1591278848. Three of these—Presque Isle, Maine; Alpena, Michigan; and Glendive, Montana—are also short markets. *See supra* note 25.

⁴⁷ Specifically, AT&T/DIRECTV states that “[a]most all of the mostly rural and sparsely populated DMAs where DIRECTV has found it uneconomic to launch local stations have station groups that own two or more of the top four stations. Specifically, a single broadcaster owns three top-rated network affiliates in five of these markets and owns two top-rated network affiliates in six of these markets.” DIRECTV Comments at 3. Of the markets for which AT&T/DIRECTV does not offer local broadcast networks identified by the Copyright Office, Gray Television owns or operates one or more stations in Cheyenne-Scottsbluff (CBS); Grand Junction-Montrose, Colorado (ABC/NBC); Bowling Green, Kentucky (ABC/Fox); Presque Isle, Maine (CBS/Fox); North Platte, Nebraska (CBS/Fox/NBC); and Casper-Riverton, Wyoming (NBC). *See* https://en.wikipedia.org/wiki/Gray_Television.

licenses with the four major networks to continue providing distant broadcast channels to RVers and commercial trucks.⁴⁸ Ultimately, however, AT&T/DIRECTV stated:

[A]s of June 1, 2020, DIRECTV had to remove distant network signals from tens of thousands of customers ranging from certain grandfathered customers, unserved households in the twelve markets, discussed above, and unserved households in five short markets.⁴⁹

On the policy side, AT&T/DIRECTV disagreed with Congress’s premise in commissioning this study that section 119 pre-STCPPA may have provided “a below-market incentive for a mature satellite industry to restrict local news transmission.”⁵⁰ The revisions to section 119 “harmed DIRECTV’s customers,” it stated.⁵¹ Not only, in AT&T/DIRECTV’s opinion, do certain unserved households miss out on local broadcast service via satellite due to the failure of local broadcasters, but the new section 119 rules mean that these customers lose the AT&T/DIRECTV option for distant network signals as well.⁵²

AT&T/DIRECTV’s viewpoint was echoed by the responses of Roberta Vandehey, a DIRECTV subscriber, who submitted two comments. Vandehey stated that in her location (Wheeler County in central Oregon), satellite television is the only reliable mode of receiving information.⁵³ She also identified herself as among the “grandfathered-in” category of unserved households that the STCPPA removed from section 119, and as such, she has been left without access to distant or local broadcast channels—with one temporary exception—since the STCPPA went into full effect on June 1, 2020.⁵⁴ Vandehey urged Congress and the President to reinstate the pre-STCPPA distant broadcast signal license, arguing that “a lapse in the distant

⁴⁸ DIRECTV Comments at 4.

⁴⁹ *Id.* at 6–7. With the exception of the five short markets, under the STCPPA the section 119 license would not be available for most of these customers even if DIRECTV complied with the requirements of the license.

⁵⁰ *Id.* at 5, quoting Staff of H.R. Comm. on Appropriations, 116th Cong., Further Consolidated Appropriations Act, 2020, Legislative Text and Explanatory Statement (Comm. Print 2020).

⁵¹ DIRECTV Comments at 6.

⁵² *Id.* at 5.

⁵³ See Roberta Vandehey, Second Comments Submitted in Response to U.S. Copyright Office’s Jan. 6, 2021, Notice of Inquiry (Mar. 8, 2021) (“Vandehey Second Comments”).

⁵⁴ See Vandehey Second Comments. Specifically, Vandehey indicates that immediately after June 1, 2020, DIRECTV continued to provide her with the FOX network feed from Portland, Oregon, but that in January, 2021, that channel was removed. See *id.* AT&T/DIRECTV, however, advertises that local channels from Portland, Oregon, are available in all three zip codes covering Wheeler County—97750, 97830, and 97874. See *Local Channels Lookup*, DIRECTV, https://www.directv.com/DTVAPP/packProg/localChannels.jsp?assetId=cms_local_channels&_ga=2.19585208.1617137532.1591539052-1057042063.1591278848.

signal license would turn a significant American population into have-nots for vital television programming.”⁵⁵

Finally, a similar consumer-focused comment was received from Bruce Grimm, an individual who did not identify whether he is a satellite television subscriber. Mr. Grimm asked that, as technological options for receiving broadcast channels evolve, Congress and the Copyright Office continue to monitor the situation so that “providers can improve service to otherwise unserved or underserved subscribers and viewers that cannot obtain distant signals.”⁵⁶

The Copyright Office recognizes that the paucity of comments in response to its NOI, and the inability to distribute the related questionnaire to subscribers, creates a lacuna in the record that is difficult to overcome. Ultimately, we do not believe that enough information is available to draw more than limited conclusions as to the impact of the STCPPA on the satellite television market.

IV. Analysis of the Impact of the STCPPA

A. Direct Effects of the Changes Made by the STCPPA

It has been just eighteen months since the passage of the STCPPA, and just slightly over a year since its provisions became fully effective. Thus, any conclusions about the effect of the legislation are necessarily limited in scope.

According to AT&T/DIRECTV, it is still providing service to RVs and commercial truckers (by licensing directly from the networks).⁵⁷ However, there is some anecdotal evidence to the contrary.⁵⁸ In any case, it does appear that AT&T/DIRECTV has decided to forego the section 119 license in favor of entering into licensing contracts directly with the networks for RVs and commercial truckers,⁵⁹ while forgoing any network transmissions for five short

⁵⁵ Roberta Vandehey, First Comments Submitted in Response to U.S. Copyright Office’s Jan. 6, 2021, Notice of Inquiry (Mar. 8, 2021) (“Vandehey First Comments”).

⁵⁶ Bruce Grimm, Comments Submitted in Response to U.S. Copyright Office’s Jan. 6, 2021, Notice of Inquiry (Mar. 8, 2021) (“Grimm Comments”).

⁵⁷ See DIRECTV Comments at 4; John Eggerton, *AT&T Strikes Distant-Signal Deals*, NEXTTV (June 3, 2020), <https://www.nexttv.com/news/atandt-strikes-distant-signal-deals>.

⁵⁸ See *Long Distance Networks Going Away*, SATELLITEGUYS: FORUMS, <https://www.satelliteguys.us/xen/threads/long-distance-networks-going-away.388543/> (Apr. 28, 2020) (indicating that AT&T had terminated service to a person with an RV). See also *Long Distance Networks Going Away*, SATELLITEGUYS: FORUMS, <https://www.satelliteguys.us/xen/threads/long-distance-networks-going-away.388543/page-5> (beginning Jun. 5, 2020) (discussion among former AT&T subscribers).

⁵⁹ It appears that AT&T/DIRECTV only uses distant signals from New York and Los Angeles, and that subscribers will receive one or the other, depending on where they are located. See Chioma Azeh, *The 2021 Guide to Watching DIRECTV in Your RV* (Sept. 10, 2020), <https://cordcutting.com/services/directv/rv/>.

markets. AT&T/DIRECTV is not providing local-into-local service in all DMAs.⁶⁰ DISH Network is still able to use the section 119 license because it provides local-into-local service in all DMAs.

Given reports of DISH Network's dwindling satellite subscriber base,⁶¹ it is likely that local network service for satellite customers in areas formerly serviced by AT&T/DIRECTV has decreased, but the extent to which such service has been successfully replaced by DISH Network's SlingTV or other OTT services is unknown.⁶² (Data about subscribers switching from AT&T/DIRECTV to DISH Network is not publicly available.) According to AT&T/DIRECTV, they were not able to negotiate contracts to provide distant signal network service into the 12 DMAs in which they did not provide local service prior to the STCPPA.⁶³ As a consequence, AT&T/DIRECTV ended service to those subscribers as of June 1, 2020.⁶⁴

Assuming that AT&T/DIRECTV's contracts with the networks are used only to service RVs and commercial truckers, that may mean that satellite subscribers in those 12 DMAs, as well as some households previously designated as unserved that were removed from the section 119 license, have less access to network programming than before—and likely no greater service than before the STCPPA. For these households, the only choice for network service via satellite would be DISH Network. On the other hand, AT&T/DIRECTV's ability to negotiate licenses to continue servicing RVers and commercial truckers after the expiration of the transition period indicate that it may be feasible for satellite carriers to provide distant network service to unserved households even in the absence of the section 119 license. However, this is something about which different segments of the industry disagree.⁶⁵

⁶⁰ DIRECTV's Comments indicate that it has not been able to enter into agreements allowing it to provide distant network service in the twelve DMAs where it did not provide local-into-local service. DIRECTV Comments at 4.

⁶¹ See Mike Farrell, *Dish Gets Back to its Rural Roots* (Nov. 9, 2020), <https://www.nexttv.com/blogs/dish-gets-back-to-its-rural-roots>.

⁶² Rural markets have been one of the few markets to retain significant numbers of satellite TV subscribers, as cable service and the broadband internet service required to support OTT services have historically been unavailable to these communities. Broadband penetration to those communities has been on a steady increase in recent years, however, with 72% of rural U.S. adults saying that they have a broadband connection at home in February 2021, compared to only 50% in July 2015. See *Internet/Broadband Fact Sheet*, PEW RESEARCH CENTER, <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/?menuItem=89fe9877-d6d0-42c5-bca0-8e6034e300aa>.

⁶³ DIRECTV Comments at 4.

⁶⁴ *Id.*

⁶⁵ Compare NAB Comments at 4 ("NAB believes that the distant signal license, as narrowed by STCPPA, has already encouraged a more active market for collaboration with section 119 licensees"), with DIRECTV Comments at 3 ("If a broadcaster owns two, three or even all four of the top four stations, it has the ability to demand even more egregious terms and unreasonable rates than those with a single top four station as that broadcaster can coordinate blackouts on multiple local stations, denying viewers access to several network stations instead of just one.").

Comments from subscribers and former subscribers (both in response to the NOI and seen on internet forums) indicate that they feel left behind by the termination of their distant network service. For example, when AT&T/DIRECTV terminated service to Roberta Vandehey, she believed that she was left without alternatives.⁶⁶ Interestingly, some subscribers appear to have preferred receiving distant signal programming to receiving programming from a local station.⁶⁷

One consequence of the changes wrought by the STCPPA is a dramatic decrease in satellite royalty receipts. The annual royalty receipts from the section 119 license have been declining since their peak in 2010 (over \$96 million). After passage of STELAR, receipts dropped from about \$82 million in 2014 to just over \$60 million in 2015. By 2019, just before passage of STCPPA, receipts were down to about \$8.662 million. In 2020, the year after passage of STCPPA, receipts dropped by over 50% from 2019, to about \$4.268 million. Notably, in the second half of 2020, after the expiration of the STCPPA transition period, royalty receipts dropped to about \$684,000.⁶⁸ Thus, it is clear that the usage of the section 119 license has decreased significantly with each iteration of the license since 2010.⁶⁹

	2018/1	2019/2	2020/1	2020/2
DIRECTV	\$3,524,799	\$2,074,241 ↓ 41.2%	\$1,524,987 ↓ 26.5%	\$72,372 ↓ 95.3%
DISH Network	\$2,337,095	\$2,105,375 ↓ 10%	\$2,057,509 ↓ 2.3%	\$610,679 ↓ 70.3%
DISH Puerto Rico	\$1,484	\$1,394 ↓ 6.1%	\$1,355.90 ↓ 2.76%	\$1,314 ↓ 3.1%

⁶⁶ See Vandehey Second Comments. See also Grimm Comments (“Changes in the Section 119 license made by the Satellite Television Community Protection and Promotion Act seem to benefit and strengthen the structure of satellite operators, broadcast television stations, broadcast networks and owners of television programming content without giving much thought to the changing technological advancements which may or may not be beneficial to consumers.”).

⁶⁷ See *Long Distance Networks Going Away*, SATELLITEGUYS: FORUMS, <https://www.satelliteguys.us/xen/threads/long-distance-networks-going-away.388543/page-5> (beginning Jun. 5, 2020).

⁶⁸ See LICENSING DIVISION, U.S. COPYRIGHT OFFICE, REPORT OF RECEIPTS 4/30/2021 2, <https://www.copyright.gov/licensing/receipts.pdf>.

⁶⁹ Cable royalties have fluctuated during this period, but not to the same extent as satellite royalties. According to the records of the Licensing Division, cable royalties peaked in 2014, at \$239.48 million. Receipts declined 9.65% in 2015, another 5.22% in 2016, and 0.41 % (essentially flat) in 2017. They then increased by 9.85% in 2018, and by 4.52% in 2019, before declining by 3.69% in 2020. See LICENSING DIVISION, U.S. COPYRIGHT OFFICE, REPORT OF RECEIPTS 4/30/2021 1, <https://www.copyright.gov/licensing/receipts.pdf>.

B. Other Factors Influencing the Use of Satellite Service

The changes made by the STCPA are not the only factors influencing the ability of satellite television subscribers to access broadcast networks. Even in the absence of the STCPA, analysts have seen a less-than-rosy future for satellite TV services. As noted above, the linear TV market has changed significantly since 2010, with year-over-year declines in the number of satellite TV subscribers for both DISH Network and DIRECTV.⁷⁰ This reflects not just the broader cord-cutting trend seen throughout the United States, but also an increase in broadband penetration, and, with it, access to competing OTT services.⁷¹ As is the case with all television services, there are now other options for potential video subscribers. Many viewers receive their television channels via the internet, through OTT services such as Hulu, Vudu, Sling TV, YouTube, and others.⁷²

Both AT&T and DISH Network have begun to adjust their corporate focus to reflect these changing realities. Comments by AT&T president John Stankey last year indicated that AT&T viewed satellite service as a non-growth, “legacy” business and intended to place greater focus on OTT streaming services.⁷³ The re-focus away from satellite service seems to have been confirmed by the recent AT&T announcement that it is spinning off DIRECTV (and some other parts of its business) into a separate company.⁷⁴ It is too early to tell what effect this will have on DIRECTV’s subscribers. For the short-term, DISH Network appears to be refocusing its efforts into rural areas.⁷⁵ If so, this may ultimately have a favorable impact on rural customers.

⁷⁰ See George Szalai & Etan Vlessing, *Dish Lost 133,000 Pay TV Subscribers in Fourth Quarter*, HOLLYWOOD REPORTER (Feb. 22, 2021), <https://www.hollywoodreporter.com/business/business-news/dish-loses-pay-tv-subscribers-fourth-quarter-4135356/> (detailing declining DISH subscriptions); Lee Rainie, *Cable and Satellite TV Use has Dropped Dramatically in the U.S. Since 2015*, PEW RESEARCH CENTER, <https://www.pewresearch.org/fact-tank/2021/03/17/cable-and-satellite-tv-use-has-dropped-dramatically-in-the-u-s-since-2015/> (discussing decline in satellite and cable viewing since 2015); Mike Farrell, *Satellite TV: Five Years, That’s All You’ve Got*, NEXTTV, <https://www.nexttv.com/news/satellite-tv-five-years-thats-all-youve-got/>; Jon Brodtkin, *AT&T Loses Another 600,000 TV Customers as it Seeks Buyer for DIRECTV*, ARSTECHNICA (Oct. 22, 2020), <https://arstechnica.com/information-technology/2020/10/att-loses-another-600000-tv-customers-as-it-seeks-buyer-for-directv/>.

⁷¹ See *Internet/Broadband Fact Sheet*, PEW RESEARCH CENTER, <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/?menuItem=89fe9877-d6d0-42c5-bca0-8e6034e300aa> (charting increase in broadband access).

⁷² See Daniel Frankel, *DIRECTV’s Nearly 3 Million Lost Customers in 2020 Accounted for Nearly Half of all Cord-Cutting*, NEXTTV (Mar. 5, 2021), <https://www.nexttv.com/news/directvs-over-3-million-lost-customers-in-2020-accounted-for-nearly-half-of-all-cord-cutting>.

⁷³ See Joe Supan, *AT&T Hints That It Might Stop Selling DIRECTV Outside of Rural Areas*, ALL CONNECT (Apr. 12, 2020), <https://www.allconnect.com/blog/directv-availability-future-in-doubt>.

⁷⁴ Jessica Bursztynsky & Alex Sherman, *AT&T to spin off DIRECTV, AT&T TV Now and U-Verse into new company valued at \$16.25 billion*, CNBC (Feb. 25, 2021), <https://www.cnbc.com/2021/02/25/att-to-spin-off-directv-att-tv-now-and-u-verse-into-new-company.html>.

⁷⁵ See Mike Farrell, *Dish Gets Back to its Rural Roots*, NEXTTV (Nov. 9, 2020), <https://www.nexttv.com/blogs/dish-gets-back-to-its-rural-roots>.

The long-term prospects for rural satellite service appear more questionable, however. DISH Network President Charlie Ergen has indicated that long-term health for the satellite TV business is likely to be dependent upon a merger between DISH Network and DIRECTV.⁷⁶ For now, DISH Network's recent corporate growth has been through increased adoption of its OTT service Sling TV,⁷⁷ and the company is in the process of pivoting to 5G.⁷⁸

If AT&T/DIRECTV ultimately decides to exit the satellite market entirely or exit certain markets, this would leave only a single satellite provider in certain areas of the country. That could raise concerns of monopoly power being exercised by DISH Network and a lack of consumer choice in those areas that may not have access to alternatives, such as cable or broadband. But it is not clear that the pre-SCTPPA status quo would have been a long-term answer to the problem of network availability in underserved markets, given the pre-existing market trends.⁷⁹ These trends are likely to continue, and could be further hastened by proposals to build out broadband in many areas, which would increase the possibility of replacing conventional satellite television with television service via broadband.⁸⁰

⁷⁶ See *DISH Network Corp. (DISH) Q1 2021 Earnings Call Transcript*, THE MOTLEY FOOL (Apr. 29, 2021), <https://www.fool.com/earnings/call-transcripts/2021/04/29/dish-network-corp-dish-q1-2021-earnings-call-trans/> (“So DIRECTV, I’d just say the same thing, I think it’s inevitable those 2 companies to go together. There’s, it’s harder and harder for it would be harder and harder for regulators and people to, to make a case when gosh it is going to be 10 to 20 competitors now 50 million, 100 million subscribers. I think DISH and DIRECTV or price not even the top 10 video companies today and you run the risk that prematurely rural America and other people don’t have a choice.”); Ben Munson, *Deeper Dive – AT&T Sold DIRECTV but Could Still Score on Dish Tie-Up*, FIERCE VIDEO (Feb. 26, 2021), <https://www.fiercevideo.com/video/deeper-dive-at-t-sold-directv-but-could-still-score-dish-tie-up>.

⁷⁷ See Mike Farrell, *Dish Gets Back to its Rural Roots*, NEXTTV (Nov. 9, 2020), <https://www.nexttv.com/blogs/dish-gets-back-to-its-rural-roots>.

⁷⁸ See *id.* In the year since the STCPPA, satellite subscriptions have declined significantly. AT&T/DIRECTV went from 16 million subscribers in the fourth quarter of 2019 to 13 million in the fourth quarter of 2020, a decline of about 19% (They had 19.63 million in the second quarter of 2014.). See *Number of DIRECTV Video Subscribers in the United States from 1st Quarter 2014 to 4th Quarter 2020*, STATISTA, <https://www.statista.com/statistics/497288/directv-number-video-subscribers-usa/>. DISH Network went from 9.39 million in the fourth quarter of 2019 to 8.83 million in the fourth quarter of 2020, a decline of about 6%. See *Number of Dish Network Video Subscribers in the United States from 1st Quarter 2014 to 4th Quarter 2020*, STATISTA, <https://www.statista.com/statistics/497299/dish-network-number-subscribers-usa/>. As described above, section 119 royalty receipts declined far more dramatically, presumably reflecting the smaller subscriber base permitted to receive distant signals under the current section 119 license.

⁷⁹ See *Long Distance Networks Going Away*, SATELLITEGUYS: FORUMS, <https://www.satelliteguys.us/xen/threads/long-distance-networks-going-away.388543/page-4> (posting from June 5, 2020, indicating that DIRECTV had only a small subscriber base in the rural markets prior to STCPPA).

⁸⁰ See Theodore F. Claypoole, *Can U.S. Government Help Improve Broadband?*, NAT’L L. J. (Mar. 24, 2021), <https://www.natlawreview.com/article/can-us-government-help-improve-broadband>; Liam Niemeyer, *The Long Wait: Rural Communities Wonder When Reliable Internet Will Reach Them*, WKYU (Mar. 8, 2021), <https://www.wkyufm.org/post/long-wait-rural-communities-wonder-when-reliable-internet-will-reach-them#stream/0>.

Another non-STCPPA factor impeding customer access to broadcast network programming that has been cited by many commenters is increased concentration of ownership of local broadcast stations. It has been suggested that such concentration has led to increased difficulty in negotiating retransmission licenses⁸¹ and consequent temporary service outages affecting the availability of local stations.⁸² This increased concentration has been cited as contributing to higher costs for all television subscribers, including consumers who get their service through cable or OTT services.⁸³

Overall, the video service industry is undergoing significant changes. As broadband internet service becomes increasingly available in more places, more and more customers are obtaining their video services over the internet. Moreover, within the internet television ecosystem there are many new streaming options available to viewers, allowing them to choose from a variety of service providers. However, one thing is clear: use of the section 119 license has diminished dramatically over time.

The goal of the STCPPA was to reduce the use of the section 119 license to a smaller group of unserved households (in exchange for providing local service in all DMAs), while opening a space for voluntary licensing of broadcast signals by satellite companies. One year after full implementation, use of the section 119 license continues to diminish dramatically, with only one satellite carrier currently eligible to use it. However, stakeholders dispute the degree to which a broadcast signal licensing market has opened up thus far, and there appear to be several factors outside of section 119 impacting the viability of such a market. Thus, the impact of the STCPPA on the satellite television marketplace cannot yet be determined.

⁸¹ See DIRECTV Comments at 2–3.

⁸² See, e.g., David Shepardson, *FCC Orders Station Groups to Negotiate with AT&T in DIRECTV Dispute*, REUTERS (Nov. 8, 2019), <https://www.reuters.com/article/us-fcc-att-broadcasting/fcc-orders-station-groups-to-negotiate-with-att-in-directv-dispute-idUSKBN1XI1YY>; Updated: *Dish Now Missing 236 Channels Due to Fee Fights*, TV ANSWER MAN (Dec. 5, 2020), <https://tvanswerman.com/2020/12/05/dish-now-missing-236-channels-due-to-fee-fights/>.

⁸³ Tim Grant, *Cable, Internet Costs Are Heading Higher—Even Cord-cutters Will Take a Hit at a Time When More Folks Are Homebound*, PITTSBURGH POST-GAZETTE (Jan. 25, 2021), <https://www.post-gazette.com/business/money/2021/01/25/Cable-TV-internet-prices-pandemic-home-streaming-competition-regulation/stories/202101150160>.