Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing the royalty rates for analog television broadcast stations retransmitted by satellite carriers under the section 119 statutory license.

DATES: January 1, 2005.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Associate General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwestern Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”), a part of the Consolidated Appropriations Act of 2005. Pub.L. 108–447, 118 Stat. 3394. SHVERA extends for an additional five years the statutory license for satellite carriers retransmitting over-the-air television broadcast stations to their subscribers, 17 U.S.C. 119, as well as making a number of amendments to the license. One of the amendments to section 119 sets forth a process for adjusting the royalty fees paid by satellite carriers for retransmitting analog television network and superstations, 17 U.S.C. 119(c)(1). The law directs the Librarian of Congress to publish notice in the Federal Register requesting satellite carriers, distributors and copyright owners to submit to the Copyright Office any voluntary agreements they have negotiated as to the adjustment of the rates for analog stations. The Library published such a notice on December 30, 2004, and, pursuant to the statute, requested that any agreements be submitted no later than January 10, 2005. 69 FR 78482 (December 30, 2004). The Office has received one agreement, submitted jointly by the satellite carriers DirecTV, Inc. and EchoStar Satellite L.L.C., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. Section 119(c)(1)(D)(ii)(II) requires the Library to “provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.” 17 U.S.C. 119(c)(1)(D)(ii)(II). The Library published a Notice of Proposed Rulemaking on January 26, 2005, to fulfill that requirement. 70 FR 3656 (January 26, 2005). No objections were received. Consequently, the Library is adopting the voluntary agreement as final.

List of Subjects in 37 CFR Part 258

Copyright, Satellite, Television.

Final Regulation

For the reasons set forth above, the Copyright Office amends 37 CFR chapter II as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

§ 258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.

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(d) Commencing January 1, 2005, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 20 cents per subscriber per month for distant superstations.

(2) For viewing in commercial establishments, 40 cents per subscriber per month for distant superstations.

(e) Commencing January 1, 2006, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 21.5 cents per subscriber per month for distant superstations.

(ii) 17 cents per subscriber per month for distant network stations.

(f) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.

(g) Commencing January 1, 2007, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) 23 cents per subscriber per month for distant superstations.

(ii) 20 cents per subscriber per month for distant network stations.

(h) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.

(i) The 2007 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(ii) The 2007 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(2) For viewing in commercial establishments, the 2007 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount
of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(h) Commencing January 1, 2009, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—
   (i) The 2008 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.
   (ii) The 2008 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

II. What Is the Background for This Action?

We approved the original TXLED rule on November 14, 2001, (66 FR 57196) as part of the Texas SIP and also found that it was relied upon for demonstrating attainment in the Houston-Galveston Attainment Demonstration SIP. On December 15, 2004, the Texas Commission on Environmental Quality (TCEQ) Commissioners proposed to revise the TXLED rule. Among other revisions, the commission proposed to extend the compliance date from April 1, 2005 to October 1, 2005. The commission proposed this extension because of concern about product availability by the current compliance date. On February 16, 2005 the Executive Director of the TCEQ submitted a letter to EPA requesting parallel processing of the compliance date portion of the SIP revision for TXLED.

On February 24, 2005, we proposed approval, through parallel processing, of a revision to the SIP that would change the compliance date for TXLED fuel from April 1, 2005, to October 1, 2005, consistent with a proposed revision to the state rule that the state had noticed for public hearing. In addition, we proposed approval and requested comments on a refinement to the State’s proposed revision that the state had subsequently indicated that it was considering. The refinement would extend the compliance date changes found in the March 9, 2005, TXLED SIP revision submitted by the State of Texas. We are approving the phased schedule for compliance which extends the compliance date from April 1, 2005 to October 1, 2005 for producers and importers, from April 1, 2005 to November 15, 2005 for bulk plant distribution facilities, and from April 1, 2005 to January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

I. What Action Is EPA Taking?

Today we are approving the compliance date changes found in the March 9, 2005, TXLED SIP revision submitted by the State of Texas. We are approving the phased schedule for compliance which extends the compliance date from April 1, 2005 to October 1, 2005 for producers and importers, from April 1, 2005 to November 15, 2005 for bulk plant distribution facilities, and from April 1, 2005 to January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

The commission adopted revisions to the TXLED SIP on March 9, 2005. The revision was submitted to EPA on March 23, 2005. The submitted revision is consistent with our proposal. It