



LIBRARY OF CONGRESS

## U.S. Copyright Office

[Docket No. 2020-13]

### Satellite Television Community Protection and Promotion Act of 2019 Study: Notice and Request for Public Comment

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of Inquiry.

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**SUMMARY:** The U.S. Copyright Office is initiating a study to evaluate the impact on the satellite television market of the Satellite Television Community Protection and Promotion Act of 2019's adoption of new statutory requirements for certain uses of the section 119 compulsory license for distant-into-local satellite transmission, and sunseting of other uses from the license. The Office seeks public comment on this topic to assist in preparing a report to Congress.

**DATES:** Written comments are due on or before [INSERT 60 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** The Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions are available on the Copyright Office website at <http://www.copyright.gov/policy/119>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office, using the contact information below, for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Kimberley Isbell, Deputy Director of Policy and International Affairs, [kisbell@copyright.gov](mailto:kisbell@copyright.gov), or Chris Weston, Senior Counsel for Policy and International Affairs, [cwes@copyright.gov](mailto:cwes@copyright.gov). They can be reached by telephone at 202-707-3000.

**SUPPLEMENTARY INFORMATION:** On December 20, 2019, the President signed the Satellite Television Community Protection and Promotion Act of 2019 (“STCPPA”), which makes permanent the satellite carrier distant broadcast signal license found in section 119 of the Copyright Act (17 U.S.C. 119) for non-network stations as well as for network stations transmitted both to recreational vehicles (“RVs”) and commercial trucks and to “short markets” that lack one or more of the four most widely available network stations.<sup>1</sup> The STCPPA removes other previously permitted uses of the license and requires that a satellite carrier provide local service in all 210 designated market areas (“DMAs”) if it wishes to utilize the section 119 license.<sup>2</sup> The STCPPA also amends several provisions of the Communications Act.<sup>3</sup>

Simultaneously with the enactment of the STCPPA, the Appropriations Committee of the U.S. House of Representatives directed the Register of Copyrights to conduct a study on the impact of the expiration of the STCPPA’s predecessor—the STELA Reauthorization Act of 2014 (“STELAR”)<sup>4</sup>—on the satellite television market.<sup>5</sup> The Committee expressed concern that the distant signal provisions of section 119 “may provide a below-market incentive for a mature satellite industry to restrict local news transmission.”<sup>6</sup>

## **I. Background**

### **A. The Section 119 Distant Broadcast Signal License**

In 1988, Congress enacted the Satellite Home Viewer Act (“SHVA”),<sup>7</sup> which created a temporary statutory license (section 119 of the Copyright Act) for satellite carriers to retransmit distant network and certain non-network broadcasts to subscribers with satellite dishes. Distant

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<sup>1</sup> Satellite Television Community Protection and Promotion Act of 2019 (“STCPPA”), Pub. L. 116-94, 133 Stat. 2534, 3201 (2019).

<sup>2</sup> The STCPPA contained a transition provision that allowed satellite carriers who had been utilizing the license but did not satisfy the additional conditions set forth in the STCCPA to continue to use a limited version of the existing license through May 31, 2020. That transitional authorization has now expired. *See infra* Section I.B.

<sup>3</sup> 47 U.S.C. 151 et seq.

<sup>4</sup> STELA Reauthorization Act of 2014, Pub. L. 113-200, 128 Stat. 2059 (2014).

<sup>5</sup> STAFF OF H.R. COMM. ON APPROPRIATIONS, 116TH CONG., FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020, LEGISLATIVE TEXT AND EXPLANATORY STATEMENT (Comm. Print 2020). While STCPPA made permanent several provisions of STELAR, it also allowed other provisions to expire.

<sup>6</sup> *Id.*

<sup>7</sup> Pub. L. 100-667, 102 Stat. 3949.

network retransmissions were available only to those subscribers living in “unserved households.”<sup>8</sup> This statutory license, also known as a compulsory license, allowed satellite carriers to retransmit broadcast signals without the network’s permission, so long as they paid a government-determined royalty rate.<sup>9</sup> The section 119 license was intended to encourage satellite carriers to “develop and flourish” in the absence of a sufficient marketplace<sup>10</sup> and was scheduled to expire at the end of 1994.<sup>11</sup>

The section 119 license created by SHVA was extended for successive five year periods in 1994,<sup>12</sup> 1999,<sup>13</sup> 2004,<sup>14</sup> 2010,<sup>15</sup> and 2014.<sup>16</sup> With each extension, Congress also modified the statutory terms of the section 119 license. For example, by the time of the 2014 enactment of STELAR, there were multiple types of unserved households eligible to receive distant broadcast signals defined in the statute, including RVs, commercial trucks, and households in “short markets” (markets where one of the four most viewed networks is not available from the local carrier).

In the five years following STELAR’s reauthorization of the section 119 license, use of that 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.<sup>17</sup> Royalties paid by the other

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<sup>8</sup> For purposes of the Satellite Home Viewer Act of 1988, “unserved households” were defined 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://copyright.gov/reports/cable-sat-licenses1992.pdf>. The section 119 definitions of “unserved households” evolved as the license was extended over the subsequent 26 years.

<sup>9</sup> The Copyright Office has, since 1989, administered the section 119 license, which includes collecting statements of account and royalties from satellite carriers and distributing the royalties to the appropriate rights holders. See *Statutory License for Secondary Transmissions for Satellite Carriers — Section 119*, U.S. COPYRIGHT OFFICE, [https://www.copyright.gov/licensing/sec\\_119.html](https://www.copyright.gov/licensing/sec_119.html).

<sup>10</sup> 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.”).

<sup>11</sup> Pub. L. 100-667, 102 Stat. 3949, 3960.

<sup>12</sup> Satellite Home Viewer Act of 1994, Pub. L. 103-369, 108 Stat. 3477 (1994).

<sup>13</sup> Satellite Home Viewer Improvement Act of 1999 (“SHVIA”), Pub. L. 106-113, 113 Stat. 1501A-523 (1999).

<sup>14</sup> Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”), Pub. L. 108-447, 118 Stat. 3394 (2004).

<sup>15</sup> Satellite Television Extension and Localism Act of 2010 (“STELA”), Pub. L. 111-174, 124 Stat. 1218 (2010).

<sup>16</sup> STELAR, Pub. L. 113-200, 128 Stat. 2059 (2014).

<sup>17</sup> 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>.

satellite carrier, DISH Network, decreased by 85% during the same reporting period.<sup>18</sup> In terms of gross numbers, as of 2019, between 500,000 and 870,000 households received at least one distant signal under the pre-STCPPA section 119 license.<sup>19</sup> It is estimated that these subscribers typically live in rural areas of the United States.<sup>20</sup>

This decline in use of the section 119 license has been attributed primarily to the transformation of the television marketplace since 2014, which is exemplified by “over-the-top” (“OTT”) television services that offer broadcast network programming over the internet, such as Hulu with 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.<sup>21</sup>

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

With STELAR due to expire at the end of 2019, and with it the section 119 compulsory license, Congress had to decide whether to extend the license again, and, if so, whether the extension should be for another fixed-year term. Congress decided not to reauthorize several of the uses of the license and to make others permanent. Specifically, in the STCPPA,<sup>22</sup> Congress removed coverage of the following “unserved households” from the section 119 distant network signal license:

- Households that cannot receive a local over-the-air signal via an antenna;<sup>23</sup>

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<sup>18</sup> 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. See *Licensing Division, U.S. COPYRIGHT OFFICE, Report of Receipts 10/31/2020*, 2, <https://www.copyright.gov/licensing/receipts.pdf>.

<sup>19</sup> 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](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 (last visited Nov. 30, 2020), [http://www.sbca.org/documents/Rural\\_Sat\\_Act.pdf](http://www.sbca.org/documents/Rural_Sat_Act.pdf). The number of subscribers who receive distant signals under the current license is not publicly available.

<sup>20</sup> 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, U.S. House of Representatives, Comm. on the Judiciary 1 (Apr. 19, 2019), <https://www.copyright.gov/laws/hearings/views-concerning-section-119-compulsory-license.pdf>.

<sup>21</sup> 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>.

<sup>22</sup> STCPPA, Pub. L. 16-94, 133 Stat. 2534, 3201 (2019).

<sup>23</sup> 17 U.S.C. 119(d)(10)(A) (text repealed and replaced by Pub. L. 116-94, 133 Stat. 2534, 3201 (2019)).

- Households that receive a waiver from a local network affiliate to receive a distant signal;<sup>24</sup>
- “Grandfathered” households that received distant signals via a section 119 license on or before October 31, 1999;<sup>25</sup> and
- Households eligible for the statutory exemption related to receiving “C-Band” satellite signals.<sup>26</sup>

For a satellite carrier to transmit distant signals to these households, it must now negotiate directly with the broadcaster for a license.

Additionally, the STCPPA made availability of the section 119 license for transmission of distant network signals permanent for the following “unserved households”:<sup>27</sup>

- RVs and commercial trucks;<sup>28</sup> and
- Subscribers located in short markets.<sup>29</sup>

The STCPPA made the use of the section 119 license for these purposes contingent upon satellite carriers providing local-into-local network signals to each of the 210 television designated market areas (“DMAs”).<sup>30</sup> It also established a transition period (through May 31, 2020) during which subscribers covered under STELAR who were no longer eligible for the new license (as amended by the STCPPA) remained eligible to receive distant network signals from their satellite carriers.<sup>31</sup>

In amending section 119, Congress was particularly concerned with satellite subscribers’ ability to access local network stations. As the House Judiciary Committee described the situation in its STCPPA Report:

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<sup>24</sup> 17 U.S.C. 119(d)(10)(B) (text repealed and replaced by Pub. L. 116-94, 133 Stat. 2534, 3201 (2019)).

<sup>25</sup> 17 U.S.C. 119(d)(10)(C) (repealed 2019).

<sup>26</sup> 17 U.S.C. 119(d)(10)(E) (repealed 2019).

<sup>27</sup> The STCPPA also made permanent the section 119 license for transmission of distant non-network signals to all subscribers. *See* 17 U.S.C. 119(a)(1).

<sup>28</sup> 17 U.S.C. 119(d)(10)(A).

<sup>29</sup> 17 U.S.C. 119(d)(10)(B).

<sup>30</sup> *See* 17 U.S.C. 119(a)(2)(A); (f)(7).

<sup>31</sup> Pub. L. 116-94, 133 Stat. 3203 (2019).

Most satellite television subscribers receive local broadcast programming that is retransmitted from their local network stations. When a satellite carrier provides such “local service,” subscribers have access to important local news, local weather, and local emergency information. For some (typically rural) subscribers, instead of seeing news, weather, or emergency information from their own towns, they get retransmissions of “distant” programming from outside of their local market. Those subscribers see network programming from a larger, sometimes much farther, market like New York or Los Angeles instead.<sup>32</sup>

In other words, 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.

In light of that concern, Congress sought in the STCPA to account for “the need to prioritize access to local programming”<sup>33</sup> by requiring every satellite carrier using the section 119 license to provide local network television service in all of the 210 DMAs. Additionally, by removing several household types from coverage under section 119, Congress believed that these households would be more likely to receive local instead of distant network signals.<sup>34</sup> Congress also “acknowledge[d] the vulnerabilities that some households might face in a purely market-based system”<sup>35</sup> by reauthorizing and making permanent the section 119 license for RVs and commercial trucks and households in short markets.

### **C. The Current Study**

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.”<sup>36</sup> The statement went on to

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<sup>32</sup> H.R. REP. NO. 116-354, at 4 (2019).

<sup>33</sup> H.R. REP. NO. 116-354, at 6 (2019).

<sup>34</sup> H.R. REP. NO. 116-354, at 7 (2019).

<sup>35</sup> H.R. REP. NO. 116-354, at 6 (2019).

<sup>36</sup> STAFF OF H.R. COMM. ON APPROPRIATIONS, 116TH CONG., FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020, LEGISLATIVE TEXT AND EXPLANATORY STATEMENT (Comm. Print 2020).

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 of this study to the House and Senate Committees on Appropriations by June 20, 2021.<sup>37</sup>

Pursuant to this direction, the U.S. Copyright Office is seeking public comment via this notice, as well as via a separate questionnaire that will be directed to “unserved household” subscribers both previously and currently covered by the section 119 license. A copy of this questionnaire is available at <http://www.copyright.gov/policy/119>. The questions in this notice are divided as to who should answer them, based upon the different stakeholders in the section 119 satellite television ecosystem. The overall aim of these questions is to ascertain (a) whether the STCPPA 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.

## **II. Subjects of Inquiry**

The Copyright Office invites written comments on the subjects below. A party choosing to respond to this Notice of Inquiry need not address every subject, but the Office requests that responding parties clearly identify and separately address each subject for which a response is submitted.

### **1. General Questions**

- a. Post-STCPPA, do households that previously did not receive local network stations from their satellite provider now receive them?
- b. The STCPPA removed the use of the section 119 license for households that are unable to receive local network stations via an antenna, as well as for certain other categories of households. How do these households now receive network signals? Are they distant or local network signals?

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<sup>37</sup> *Id.*

- c. The STCPPA makes a revised section 119 license permanent, on the condition that all licensees provide local-into-local service. Does this change resolve previously-voiced concerns about a subsidized distant-into-local license discouraging the provision of local network service by section 119 licensees?
  - d. Have the changes to the section 119 license made by STCPPA affected the availability of network retransmission service for households previously covered by the license? If so, how?
  - e. Have the changes to the section 119 license made by STCPPA affected the market for television service for households previously covered by the license? If so, how?
2. Questions for satellite television subscribers in unserved households.<sup>38</sup> When answering, please indicate if you receive satellite service at your residence, your RV, or your commercial truck. Please also indicate which category of “unserved household” applies to you.
- a. Before June 1, 2020, did you receive distant network retransmissions (i.e., network stations from markets outside of your local area) from DISH or DirecTV?
    - i. If your answer is “yes,” did you continue to receive the same distant networks after June 1, 2020?

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<sup>38</sup> Households in unserved markets are households in one or more of the following categories:

- Households that cannot receive a local over-the-air signal via an antenna;
- Households that receive a waiver from a local network affiliate to receive a distant signal;
- “Grandfathered” households that received distant signals via a section 119 license on or before October 31, 1999;
- Households eligible for the statutory exemption related to receiving “C-Band” satellite signals;
- RVs and commercial trucks;
- Households located in short markets (meaning markets that lack one or more of the four most widely available network stations).

- 1) If you continued to receive the same distant networks, did the price of your subscription increase or decrease? If it did, was the reason for the change explained?
  - 2) If you did not continue to receive the same distant networks after June 1, 2020, did you receive access to new networks that are physically closer to you as a replacement for the distant networks you no longer receive? Did the price of your subscription increase or decrease? If it did, was the reason for the change explained?
- ii. If your answer is “no,” did the price of your satellite subscription increase or decrease on or after June 1, 2020? If it did, was the reason for the change explained?
- b. Before June 1, 2020, did you receive local network retransmissions (i.e., network stations from a nearby market) from DISH or DirecTV?
- i. If your answer is “yes,” did you continue to receive local networks from DISH or DirecTV on or after June 1, 2020?
- 1) If you continued to receive local networks, did the price of your subscription increase or decrease? If it did, was the reason for the change explained?
  - 2) If you did not continue to receive local networks, did you receive access to replacement networks? Were these replacement networks physically closer to or further from your location? Did the price of your subscription increase or decrease? If it did, was the reason for the change explained?
- c. If you received distant network retransmissions from DISH or DirecTV before June 1, 2020, did you begin to receive local network retransmissions from DISH or DirecTV on or after that date?

- i. If you did begin to receive local networks on or after June 1, 2020, were the local networks in addition to or instead of the distant network retransmissions?
    - ii. If you did begin to receive local networks on or after June 1, 2020, did the price of your subscription increase or decrease?
  - d. Have you changed television service providers since June 1, 2020?
    - i. If your answer is “yes,” did you change to a different satellite provider, or did you obtain television service from a different type of service provider (such as a cable provider)? Why did you change television service providers?
  - e. If you are a commercial trucker, which satellite carrier do you use?
  - f. If you are an RVer, which satellite carrier do you use? Do you also receive satellite service at your residence? If so, is your home satellite carrier the same as your RV satellite carrier?
- 3. Questions for satellite carriers
  - a. If you relied upon the section 119 statutory license to provide distant-into-local network retransmissions before June 1, 2020, did you continue to rely upon the amended license (under the STCPPA) on or after that date?
    - i. If your answer is “no,” did you continue to provide distant-into-local network retransmissions after that date?
  - b. Do you meet the new STCPPA requirement of providing local-into-local network retransmissions to all 210 DMAs as a prerequisite for using the new section 119 statutory license to provide distant-into-local network retransmissions?
    - i. If your answer is “no,” what approach did you take to providing distant-into-local network retransmissions after May 31, 2020?
    - ii. If you declined to provide local-into-local network retransmissions for all 210 DMAs, thus forgoing the use of the section 119 license, and instead decided to

make individual carriage deals with each broadcast network for distant-into-local retransmission, please explain your reasoning.

- c. Did you use the transition license provided by the STCPPA from January 1, 2020 to May 31, 2020?
  - i. If your answer is “no,” please explain why you did not use the transition license.
  - ii. If you did use the transition license, did you use the new STCPPA license after May 31, 2020? If not, why not?
4. Question for broadcasters
  - a. Has the expiration of certain provisions of the section 119 license impacted your ability to provide comparable television service to households previously subject to the section 119 license? If so, how?

**Dated:** December 30, 2020.

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**Shira Perlmutter,**  
*Register of Copyrights and*  
*Director of the U.S. Copyright Office*

[FR Doc. 2020-29231 Filed: 1/5/2021 8:45 am; Publication Date: 1/6/2021]