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1 {York Stenographic Services, Inc.}
2 HIF176.160
3 MARKUP ON ``H.R. 2994, A BILL TO REAUTHORIZE
4 THE SATELLITE HOME VIEWER EXTENSION AND
5 REAUTHORIZATION ACT OF 2004''
6 THURSDAY, JUNE 25, 2009
7 House of Representatives,
8 Subcommittee on Communications, Technology, and the Internet
9 Committee on Energy and Commerce
10 Washington, D.C.

11 The subcommittee met, pursuant to call, at 10:08 a.m.,
12 in Room 2322 of the Rayburn House Office Building, Hon.
13 Rick Boucher [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Boucher, Doyle,
15 Butterfield, Matsui, Murphy, McNerney, Stearns, Upton, Deal,
16 Shimkus, Blunt, Buyer, Radanovich, Walden, Terry, Blackburn,
17 and Barton (ex officio).

18 Staff present: Kristin Amerling, Chief Counsel; Roger

19 Sherman, Chief Counsel; Greg Guice, Subcommittee Counsel;
20 Shawn Chang, Subcommittee Counsel; Liz Eraker, Intern; Will
21 Cusey, Special Assistant; Sarah Fisher, Special Assistant;
22 Stephanie Bazell, Intern; Tim Powderly, Subcommittee Counsel;
23 Mitch Smiley, Special Assistant; Caitlin Haberman, Staff
24 Assistant; Jen Berenholz, Clerk; Sharon Davis, Chief Clerk;
25 Neil Fried, Minority Counsel; Will Carty, Minority
26 Professional Staff; and Garrett Golding, Minority Legislative
27 Analyst.

|
28 H.R. 2994

29 10:08 a.m.

30 Mr. {Boucher.} Good morning, everyone, and welcome to
31 our subcommittee's first markup session of the year 2009.
32 Today we convene for the purpose of marking up H.R. 2994, the
33 Satellite Home Viewer Reauthorization Act which I am pleased
34 to have introduced along with the ranking Republican member
35 of our subcommittee, the gentleman from Florida, Mr. Stearns.
36 It is truly a bipartisan measure and we have worked together
37 as the provisions of our legislation were drafted.

38 Certain provisions of the Communications and Copyright
39 Acts expire at the end of this year making reauthorization of
40 the ability of satellite carriers to retransmit distant
41 network signals must pass legislation, and that largely
42 accounts for the reason that it is the first legislative item
43 to come to markup in our subcommittee. At the subcommittee's
44 hearings on this matter, I suggested that we proceed with
45 this reauthorization in the most straightforward manner
46 possible and I am pleased that we are following that course
47 today and are avoiding in the bill collateral matters such as
48 retransmission consent reform that are relevant not just to
49 the satellite platform but to all multi-channel video
50 providers.

51 The Satellite Home Viewer Act reauthorization or SHVERA
52 has these key provisions. It renews for 5 years the
53 provision allowing carriers to deliver a distant network
54 station to homes under specified circumstances and that
55 provision otherwise would expire at the end of this year. It
56 reauthorizes the good faith negotiation requirements in the
57 Communications Act which also would expire at the end of this
58 year. It provides needed clarification regarding the
59 provision by satellite carriers of significantly viewed
60 signals by stating that a significantly viewed signal may
61 only be provided in high definition format if the satellite
62 carrier is passing through all of the high definition
63 programming of the corresponding local station in high
64 definition format, as well. It directs the Federal
65 Communications Commission to adopt a predictive methodology
66 for the reception of digital signals within six months, in
67 order to determine which households are eligible to receive
68 distant network signals. And it makes a series of technical
69 changes to the Law to reflect the fact that after June the
70 12th, full-power television stations are no longer
71 broadcasting analog signals.

72 There are other matters that are not addressed in H.R.
73 2994 that are the subjects of ongoing discussions and that
74 will continue between now and the time of our full committee

75 markup. It is my hope that we will be able to resolve these
76 matters over the coming weeks and include these resolutions
77 in the full committee markup vehicle when that full committee
78 markup occurs later this summer.

79 The first of these matters was brought to us by the
80 gentleman from Michigan, Mr. Stupak. His effort is to bring
81 the local satellite services to all 210 designated market
82 areas nationwide. Today, DIRECTV offers local service in
83 about 150 of those 210 markets and very soon, Dish Network
84 will be offering local service in 182 of the 210 markets.
85 But even with that full complement of 182 markets being
86 carried, that still leaves about 28 local markets without
87 local-into-local service.

88 I want to commend all of the stakeholders who have been
89 participating in the discussions that are designed to achieve
90 a way through a set of incentives to encourage one or both
91 carriers to carry all 210 local markets. And I am pleased to
92 report this morning that we are very close to achieving
93 agreement among broadcasters, satellite carriers and other
94 interested parties on this subject. I fully anticipate that
95 an agreement will be reached on this matter prior to the time
96 of our full committee markup. That would be a victory not
97 only for broadcasters and satellite carriers but also and
98 most importantly, for television consumers nationwide.

99 Another matter that I look forward to resolving both
100 here and in the House Judiciary Committee, is ensuring that
101 residents in short markets, these are markets that do not
102 have a full complement of local affiliates carrying all of
103 the major networks, can receive the programs of networks
104 missing in their market from an adjacent designated market
105 area if the signals of those missing networks are not already
106 being offered locally by a full-power broadcaster on one of
107 it's multicast streams. While satellite carriers can today
108 import distant signals from any market, they are hindered in
109 their desire to bring in adjacent market signals by the so-
110 called ``Grade B bleed'' problem that prevents them from
111 offering distant signals to those households that can receive
112 the signal of an out-of-market network affiliate over the air
113 and this Grade B bleed problem persists in numerous markets
114 across the nation. That problem can and should be resolved
115 and usefully addressed and I think we will be in a position
116 to do that as well by the time of the full committee markup.

117 I want to express my appreciation to Mr. Stearns and to
118 members on the Republican side of the aisle for their
119 excellent coordination and cooperation with us as over the
120 last several months we have discussed the provisions of the
121 reauthorization of The Satellite Home Viewer Act, as we
122 undertook an oversight hearing and then a legislative

123 hearing, and as we made preparations for the markup today.
124 This has been a truly excellent bipartisan process and I want
125 to thank Mr. Stearns and all members for their outstanding
126 cooperation.

127 [The prepared statement of Mr. Boucher follows:]

128 ***** COMMITTEE INSERT *****

|
129 Mr. {Boucher.} At this time, I am pleased to recognize
130 the gentleman from Florida, Mr. Stearns, for his opening
131 statement.

132 Mr. {Stearns.} Good morning and thank you, Mr.
133 Chairman. You are correct, this is a bipartisan bill and we
134 appreciate the opportunity to cooperate and I think I urge
135 all my colleagues to support our bill.

136 The original satellite legislation in 1988 is credited
137 with helping foster the incredibly competitive video
138 marketplace that we have today to the benefit of all
139 consumers. Constituents and friends often tell me how much
140 they love their satellite service. My sense is that is the
141 sentiment of most satellite subscribers and that is why we
142 have reauthorized the legislation each time it has come up
143 for renewal and why is this reauthorization is just so
144 important.

145 The bill before us extends for another five years, the
146 authority of satellite operators to provide the signals of
147 out-of-market stations to subscribers who cannot receive
148 their local stations over the air. In addition, the bill
149 makes clerical and substantive changes to the statute to
150 reflect the end of analog broadcasting. In particular, it
151 directs the FCC to update for digital broadcasting both the

152 predictive model and the on-location testing rules for
153 determining whether a subscriber is eligible for a distant
154 signal.

155 The bill also rectifies the FCC's implementation of the
156 significantly viewed provisions. These provisions added to
157 the statute five years ago, allow a satellite operator to
158 provide a subscriber in a local market with signals from a
159 network affiliate in a nearby market if that nearby
160 affiliate is watched over the air by a significant number of
161 consumers in that local market. The statute prohibited a
162 satellite operator however from carrying the significantly
163 viewed affiliate in high definition format if it didn't also
164 carry the local affiliate of the same network in high
165 definition format. The FCC construed that provision to
166 prohibit carriage of the significantly viewed affiliate in
167 high definition at any moment of the day that the local
168 station was not broadcasting in high definition.

169 Because satellite operators find it infeasible to match
170 the transmission formats of the two stations moment-by-
171 moment, they usually choose not to carry the significantly
172 viewed stations at all. To address that, the bill makes
173 clear that a satellite operator may carry the significantly
174 viewed affiliate in high definition when the local affiliate
175 is not broadcasting in high definition so long as the

176 satellite operator does carry the local affiliate in high
177 definition when it is available in that particular format.

178 An issue that the bill does not address, my colleagues,
179 but that may come up today is what to do about consumers who
180 cannot receive programming they truly consider local either
181 because they are missing local affiliates from one or more
182 networks in that market or because they had been assigned to
183 a designated market area outside that State. This issue is
184 only worth considering if it is done in a way that truly
185 respects the rights of the broadcasters that would be
186 imported, the owners of the programming, and the satellite
187 operators, to negotiate the terms of such carriage. We must
188 clear existing regulatory obstacles rather than create a
189 whole new set of rules, and as I have already mentioned, the
190 video market is robustly competitive. In that environment,
191 there should be less interference in the market, not more.

192 At the last hearing on satellite legislation, some
193 raised an interest in letting satellite providers carry
194 broadcast stations to viewers in adjacent markets, that is
195 outside of the DMA, even where there are local affiliates in
196 the DMA. I agree with leaving it out of the bill at this
197 time. While I can understand the goal of delivering more in-
198 state news throughout a State, I am still not convinced we
199 have to legislate in this area to reach that goal. Going

200 down the road, poses significant harm to consumers,
201 broadcasters and content creators. Whatever we do, my
202 colleagues, we should ensure that the satellite operator, the
203 out-of-market station and the owners of the content are
204 allowed to freely negotiate. That is the best way to ensure
205 consumers get as much desirable content as possible at the
206 lowest rates. Anything else, simply protects one company at
207 the expense of another without really helping consumers and
208 at its core, this legislation should be about the consumers.

209 I would conclude, Mr. Chairman, by just making a little
210 personal announcement. Many of you saw Amy Bender, who is
211 our counsel on the Republican side. She had the birth of her
212 daughter recently, Megan Clare Bender Perkins. She was born
213 this past Tuesday and mother and baby are doing very well.
214 And also, I would like to congratulate our other Republican
215 counsel, Neil Fried, on his engagement and pending wedding
216 this fall. So congratulations to both Amy and Neil.

217 [The prepared statement of Mr. Stearns follows:]

218 ***** COMMITTEE INSERT *****

|
219 Mr. {Upton.} Will the gentleman yield?

220 Mr. {Stearns.} I would be glad to yield.

221 Mr. {Upton.} I would just note that the parents are
222 named for the first time this afternoon in New York at 5:00
223 and it is important that we finish this so he can catch a one
224 o'clock train up to New York.

225 Mr. {Boucher.} Mr. Upton, I appreciate you encouraging
226 promptness here. That is extraordinarily helpful.

227 The gentlelady from California, Ms. Matsui, is
228 recognized for three minutes and the gentlelady waives her
229 opening statement.

230 The gentleman from Pennsylvania, Mr. Doyle, is
231 recognized and Mr. Doyle also waives.

232 The gentleman from Ohio, Mr. Space, is recognized and he
233 also waives.

234 We are cooperating as well as we can on this side.

235 At this time, I would like to recognize the ranking
236 Republic member of our full committee, the gentleman from
237 Texas, Mr. Barton, for five minutes.

238 Mr. {Barton.} Thank you, Mr. Chairman. I will submit
239 my formal statement for the record.

240 I am just glad to say we are having a boring
241 reauthorization hearing on the satellite television

242 reauthorization act instead of a contentious, controversial
243 hearing about the failure of the DTV transition. I think we
244 all know that happened several weeks ago and nothing
245 happened. It just went seamless. I still have yet to buy my
246 coupons so I have some TVs that don't work but I am going to
247 talk to my congressman about that and tell him to get off the
248 dime. On this act, Mr. Chairman, we have worked in a
249 bipartisan fashion as we get ready to reauthorize another few
250 issues that are of local interest to several members but we
251 think that this is going to be a pretty straightforward
252 reauthorization and we look forward to working with the
253 majority to make that happen.

254 With that, I yield back.

255 [The prepared statement of Mr. Barton follows:]

256 ***** COMMITTEE INSERT *****

|

257 Mr. {Boucher.} Thank you very much, Mr. Barton.

258 The gentleman from Michigan, Mr. Upton, is recognized

259 for three minutes.

260 Mr. {Upton.} I will defer.

261 [The prepared statement of Mr. Upton follows:]

262 ***** COMMITTEE INSERT *****

|

263 Mr. {Boucher.} Thank you, Mr. Upton.

264 The gentleman from Illinois, Mr. Shimkus, is recognized

265 for three minutes.

266 Mr. {Shimkus.} Only because Michael Doyle did not say

267 anything on telecommunications, I will also defer.

268 [The prepared statement of Mr. Shimkus follows:]

269 ***** COMMITTEE INSERT *****

|
270 Mr. {Boucher.} Thank you, Mr. Shimkus. This is just
271 excellent cooperation.

272 The gentleman from Nebraska, Mr. Terry, is recognized
273 for three minutes. Thank you, Mr. Terry.

274 The gentleman from Missouri, Mr. Blunt, is recognized
275 for three minutes.

276 Mr. {Blunt.} Mr. Chairman, I have a statement for the
277 record only and I am just glad you are having this hearing
278 and hope that we are able to move forward with the markup as
279 it is intended.

280 [The prepared statement of Mr. Blunt follows:]

281 ***** COMMITTEE INSERT *****

|
282 Mr. {Boucher.} Thank you very much, Mr. Blunt.

283 The gentleman from Oregon, Mr. Walden, is recognized for
284 three minutes and he waives.

285 And the gentleman from California, Mr. Radanovich, is
286 recognized for three minutes. Thank you very much, Mr.
287 Radanovich.

288 Do we have anyone else?

289 The gentlelady from Tennessee, Ms. Blackburn. I did not
290 see you on the front row.

291 Mrs. {Blackburn.} I am the only one taking a front row
292 seat and in the spirit of cooperation, I will waive and then
293 offer my amendment, and in the spirit of cooperation I will
294 just withdraw my amendment.

295 [The prepared statement of Ms. Blackburn follows:]

296 ***** COMMITTEE INSERT *****

|
297 Mr. {Boucher.} I can't thank you enough.

298 That concludes opening statements from committee
299 members.

300 And at this time we will declare the bill open for
301 amendment at any point, and I am pleased to call up H.R.
302 2994, The Satellite Home Viewer Reauthorization Act.

303 [H.R. 2994 follows:]

304 ***** INSERT C *****

|
305 Mr. {Boucher.} It is without objection open for
306 amendment at any point, and I have a manager's amendment at
307 the desk.

308 The clerk will report the amendment.

309 The {Clerk.} Amendment to H.R. 2994 offered by Mr.
310 Boucher of Virginia.

311 [The amendment follows:]

312 ***** INSERT A *****

|
313 Mr. {Boucher.} And without objection, further reading
314 of the amendment is waived and I will recognize myself for
315 five minutes to explain the amendment.

316 This manager's amendment is very straightforward. It
317 makes one technical change and has two provisions further
318 defining the digital over-the-air reception predictive model
319 that we are directing the Federal Communications Commission
320 to develop. The first provision requires that the Commission
321 rely on the current Longley-Rice model which has worked very
322 well for predicting the reception of analog signals, and this
323 direction would require the Commission to continue utilizing
324 that Longley-Rice predictive model and simply update it to
325 predict the reception of digital signals.

326 The second provision clarifies that the model should
327 predict the ability of homes to receive the local over-the-
328 air signal through the use of a conventional stationary
329 rooftop antenna. That has been the test that we have had in
330 the Law since the first Satellite Home Viewer Act was passed
331 in 1998 and we continue that standard with the manager's
332 amendment.

333 That is all that the amendment does. I hope it will be
334 the privilege of the committee to accept it and I would ask
335 at this time if there are any other members who have comments

336 or seek recognition on the amendment.

337 The gentleman from Florida, Mr. Stearns.

338 Mr. {Stearns.} Thank you, Mr. Chairman.

339 And I would just say to my colleagues, basically his
340 manager's amendment is providing a status quo. I think there
341 was in the bill itself, there was a change and the chairman
342 has gone back to the status quo which frankly I have no
343 problem with at this time. I think we should go along and
344 accept this in the subcommittee. I think when it gets to
345 full committee with Mr. Barton and his counsel they should
346 have an opportunity to look at this manager's amendment.

347 Basically, it would reinsert a statutory provision
348 forcing the FCC to assume all consumers have a large outdoor
349 antenna on their roof. It does not specify whether it is 20
350 or 30 feet. We know that many consumers, if not most, do not
351 have such a rooftop antenna. This has certainly been
352 highlighted in the recent digital transition. And assuming
353 they don't have an antenna that makes it appear that they
354 don't get the adequate signal over-the-air when both we and
355 they know that many of them don't, this disqualifies them
356 from receiving a distant network signal over the satellite.
357 As a result, many of them do not get network programming at
358 all because without the rooftop antenna, they can't get a
359 signal over-the-air. So the implications of this is still, I

360 don't think, a major concern but I want to leave that option
361 open in case members either on both sides when they look at
362 this, they might hear from constituents about, you know, what
363 this means in terms of their satellite reception. We can
364 look at it more carefully in the full committee but, Mr.
365 Chairman, I certainly will support the manager's amendment as
366 you have offered it.

367 Mr. {Boucher.} Thank you, Mr. Stearns, and would you
368 yield to me for just a moment?

369 Mr. {Stearns.} I would be glad to yield.

370 Mr. {Boucher.} I appreciate the gentleman's comments
371 and I will have to say that from time-to-time over the last
372 two decades, I have had many of the same concerns that the
373 gentleman has expressed. This is the model that we have used
374 and for purposes of today's markup, I think it is appropriate
375 that we announce our intention to continue it but in my view,
376 just as in Mr. Stearns' view, that is a decision subject to
377 further conversation, and we would welcome the views of
378 others who might have an interest in this subject between now
379 and the full committee markup.

380 And I thank the gentleman for raising that point and for
381 yielding to me.

382 Mr. {Stearns.} I yield back.

383 Mr. {Boucher.} Is there further comment on the

384 manager's amendment? Does any other member seek recognition?

385 If not, the question occurs on the amendment. Those in
386 favor will say aye. Those opposed no. The ayes have it and
387 the amendment is agreed to.

388 Do other members seek recognition for purposes of
389 offering amendments?

390 The gentlelady from Tennessee, Ms. Blackburn.

391 Mrs. {Blackburn.} Thank you, Mr. Chairman.

392 I do have an amendment at the desk.

393 Mr. {Boucher.} The clerk will report the amendment.

394 The {Clerk.} Amendment to H.R. 2994 offered by Ms.

395 Blackburn of Tennessee.

396 At the end of the bill add the following new section.

397 [The amendment follows:]

398 ***** INSERT B *****

|
399 Mr. {Boucher.} Without objection, further reading of
400 the amendment is considered as read and the gentlelady is
401 recognized for five minutes in support of her amendment.

402 Mrs. {Blackburn.} Thank you, Mr. Chairman. I do
403 appreciate that.

404 I am wanting to bring to everyone's attention a tragic
405 yet critically important event that informs my deliberation
406 on a great many policy issues that come before this
407 committee. On February 5, Super Tuesday, last year we had
408 the Super Tuesday tornadoes in west Tennessee. It was
409 devastating. It left 33 people dead and over 150 were
410 seriously injured. We had entire communities that were in
411 tatters and some of those communities still are. Through the
412 dedicated work of State and Federal disaster response
413 coordination, many lives were spared. We had property that
414 was protected and yet government agencies were not alone in
415 preparing west Tennessee. Local broadcasters played a
416 critical role by providing communities up-to-the-minute
417 information so that families could take the proper
418 precautions in advance of the gathering storm. Without the
419 service local broadcasters provided, I have no doubt the
420 storm's impact would have been much more devastating.

421 This was not the first and it will not be the last

422 tornado that threatens west Tennessee. Yet, in the wake of
423 the successful transition to an all-digital broadcast signal,
424 many of my constituents find themselves out of range, out of
425 luck and unable to receive an over-the-air signal of any
426 kind. In most urban and suburban communities, this is not a
427 problem. Cable and satellite providers can supplement a weak
428 or non-existent over-the-air signal and provide communities
429 the local programming they need. But in the rural areas like
430 Hardin, Hardeman and Chester County in the Seventh District
431 of Tennessee, these options are not always available.

432 Cable service is often unavailable outside the county
433 seat and in the Jackson DMA, satellite providers do not carry
434 local-into-local programming. Why? The Jackson DMA which
435 includes just over 98,000 television household is a short
436 market served by only two of four major broadcast network
437 affiliates. Since the Jackson DMA lacks a full complement of
438 major broadcast network affiliates to serve the community,
439 both major satellite providers elect not to deliver, not to
440 deliver local-into-local programming deeming the service
441 either too expensive or undesirable for consumers to merit
442 the cost of delivery.

443 Further, though the current Law allows for distant
444 signal retransmission when a subscriber is deemed unserved,
445 some subscribers in short markets are deemed served. As a

446 result, they are ineligible to receive the out-of-market
447 signal from the satellite provider. This is known as signal
448 bleed.

449 Constituents in these rural areas are therefore left
450 with no option to receive broadcast programming. This is not
451 a simply inconvenient problem. In areas throughout the
452 nation and like in west Tennessee, this is a public safety
453 issue. The amendment before you reflects a commonsense
454 solution to solve the signal bleed in the short market
455 problem. It provides a free market mandate free incentive
456 for satellite providers to carry those affiliates that are in
457 the local market. The amendment accomplishes this goal by
458 allowing satellite providers to retransmit missing network
459 signals from an adjacent market to subscribers who reside in
460 the short market and are within the over-the-air signal
461 bleed.

462 What it does not do is this. The amendment does not
463 require satellite providers to provide the service, does not
464 impact the retransmission consent rights, does not affect the
465 local broadcasters' network non-duplication syndicated
466 exclusivity or sports blackout rights. And just as
467 important, the amendment is 100 percent silent as to whether
468 a compulsory license applies or whether the license shall be
469 freely negotiated. This is a decision that will be dealt

470 with before the Judiciary Committee and not in Energy and
471 Commerce and I understand that. If adopted, the amendment
472 would provide a free market incentive for satellite providers
473 to solve the short market problem while protecting
474 contractual rights and intellectual property value for our
475 local broadcast affiliates.

476 Recognizing all of that, I am going to withdraw this
477 amendment this morning as I said earlier, Mr. Chairman, in
478 the spirit of full cooperation. I recognize that
479 stakeholders including broadcasters and members of the
480 creative community have raised concerns and we need to work
481 through all of this. The NAB has pledged to work with me,
482 the chairman and all of our impacted committee members, to
483 make appropriate changes and ultimately solve the short
484 market problem.

485 And, Mr. Chairman, if you would indulge me in a brief
486 colloquy I would like to take this opportunity to seek your
487 help in bringing all parties together. I know you are
488 committed to solving the problem and if that is appropriate
489 at this time, I would like to yield to you for comment.

490 Mr. {Boucher.} Thank you very much, Ms. Blackburn.

491 I want to express my appreciation to you for bringing
492 this matter before the committee. I also made reference to
493 this need in my opening statement and I think we absolutely

494 much fix this short market gap. The Grade B bleed as you
495 have so well described in your statement is the principal
496 impediment to doing that and the correction of the Grade B
497 bleed barrier actually is not within our jurisdiction. It is
498 within the jurisdiction of the House Judiciary Committee as
499 you have also noted in your statement.

500 Nevertheless, I think this is the committee where we can
501 assemble all of the interested parties. We can conduct
502 useful negotiations and discussions with the relevant
503 stakeholders and your urging that that take place is an
504 urging that I will second, and I look forward to working with
505 you and interested parties and all members who have a concern
506 about this issue as we continue to address it.

507 I also appreciate your willingness to withdraw the
508 amendment for today's purposes and we in fact will continue
509 these conversations and I thank you for yielding.

510 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I
511 appreciate your work on this. It is a public safety issue
512 for some of my counties and I thank you for consideration and
513 yield back my time.

514 Mr. {Boucher.} Thank you very much. Without objection,
515 the gentlelady's amendment is withdrawn.

516 Do other members seek recognition for purposes of
517 offering amendments, any members on the Democratic side,

518 other members on the Republican side?

519 The gentleman from Georgia, Mr. Deal.

520 Mr. {Deal.} Thank you, Mr. Chairman.

521 I have an amendment at the desk but I am not going to
522 offer it. I would ask the chairman if he would engage in a
523 colloquy with me.

524 Mr. {Boucher.} I would be happy to respond if the
525 gentleman will yield to me.

526 Mr. {Deal.} If I may precede that, I would like to lay
527 out the issue that I have.

528 Mr. {Boucher.} Let me recognize the gentleman for
529 purposes of striking the last word, and the gentleman has
530 asked for a colloquy, and let me ask if the gentleman will
531 yield to me for that purpose.

532 Mr. {Deal.} I certainly will.

533 Mr. {Boucher.} I would be happy to engage the
534 gentleman.

535 Mr. {Deal.} Thank you very much.

536 Mr. Chairman, as you know, under the current designated
537 market area system, in 98 DMAs across the country satellite
538 and cable subscribers cannot get their in-state programming.
539 These are the so-called orphan areas that can't get in-state
540 broadcast stations for news, sports, public affairs
541 programming simply because they are assigned to a DMA whose

542 broadcast signals originate from a city in another State.
543 Many of the viewers in this county, some of whom are my
544 constituents, would like to view their in-state television
545 and are willing to pay to do so but cannot under the current
546 DMA system.

547 The amendment that I have at the desk is a little
548 different approach than what has been discussed on this issue
549 in the past. It is designed to allow all the stakeholders to
550 continue the discussion of how to provide in-state
551 programming to consumers who are assigned to these out-of-
552 state markets. It applies only to satellite, although
553 personally I would like this to apply to all MVPDs for
554 purposes of parody. The amendment does not make carriage of
555 the adjacent market signal mandatory for either the satellite
556 operator or the broadcaster. It would allow broadcasters to
557 negotiate retransmission consent agreements and while the
558 network non-duplication rules do not currently apply to most
559 satellite programming, the amendment does not prohibit the
560 FCC from applying network non-duplication rules in these
561 circumstances.

562 The amendment also does not force carriage of the
563 content with a compulsory license. This is a copyright issue
564 within the jurisdiction of the Judiciary Committee of course
565 of which you serve as well.

566 It is my hope that we can before we go to full committee
567 sit down together along with other members on both sides of
568 the aisle who have expressed concern about this issue and see
569 if there is any resolution that we can come to before we get
570 to the markup in the full committee. And I would just simply
571 ask the chairman if he would be willing to engage in that
572 discussion.

573 Mr. {Boucher.} Well, I thank the gentleman very much
574 for those comments and for bringing the issue before u

575 This is a matter that was raised in both of our previous
576 hearings on The Satellite Home Viewer Act. There is interest
577 in accomplishing the same goal the gentleman has identified
578 by members on the Democratic side also, and it is my hope
579 that through a process of consultation, we can at the proper
580 time arrive at a consensus-based solution to this problem.

581 There are areas around the country where a fairly small
582 population in one State are receiving their television
583 programming from the balance of the DMA in which they are
584 situated, which is the majority part of the DMA, and that is
585 located in another State. And so the local television
586 programming that these individuals receive actually
587 originates in the neighboring State, and many people in that
588 situation think that that news and local programming is less
589 relevant to them than would be the news and local programming

590 that originates in the adjacent market in the State in which
591 they live. And that situation pertains in a variety of
592 markets across the United States.

593 Now, it is my hope that we can reach a solution and some
594 of the issues that have been raised in connection with
595 reaching that solution would be the need to respect the
596 retransmission consent rights of broadcasters and not in some
597 way diminish their market opportunities to obtain
598 retransmission consent agreements because of adjacent market
599 imports. Having perhaps some kind of percentage cap on what
600 the size of this orphan market that would be subject to
601 whatever repair is made would happen to be. Having a respect
602 for the complementarity of high definition carriage so that
603 you would not have a circumstance where the in-state signal,
604 the in-DMA signal was being carried in standard def and the
605 imported signal was high def that would create something of a
606 competitive disadvantage. And then there is the much more
607 thorny issue of whether or not to respect the syndicated
608 exclusivity and network non-duplication rights. So as that
609 list suggests, resolving this is perhaps not an easy matter.

610 Now, all of that said, I would very much like to see it
611 resolved, just as I know the gentleman from Georgia would.
612 And I will be happy to continue discussions with him and
613 other interested members of the subcommittee and interested

614 external parties as we seek to get to that goal.

615 Mr. {Deal.} I thank the chairman very much. He
616 certainly has an understanding of the complexity of the issue
617 but he also, I am sure, has an understanding of the
618 importance of this to those constituents and there are many
619 of them all across this country who fit into that category.
620 I thank you for that and with that, Mr. Chairman, I would
621 yield back my time.

622 Mr. {Boucher.} Thank you very much, Mr. Deal, and
623 without objection, well the gentleman didn't offer the
624 amendment so it is not pending.

625 Are other members seeking recognition for the purpose of
626 offering amendments?

627 I just received a note saying that Mr. Stupak, who very
628 much wanted to be here this morning had to depart to attend a
629 funeral in his State, and he is apparently at the airport and
630 seeking to get back to this markup, and due to the
631 extraordinary cooperation of members, we are nearing the end
632 point of this markup. So let me take the opportunity and I
633 will recognize myself to strike the last work for this
634 purpose of just saying that Mr. Stupak brought before us the
635 challenge of finding a way to make sure that all 210
636 designated market areas across the United States are
637 receiving what we call local-into-local television service,

638 where the local television stations are uplinked to the
639 satellite and then retransmitted back into the market of
640 their origination. And there will be about 28 markets after
641 Dish Network completes its intended range of local market
642 carriage, there will still be about 28 markets across the
643 country not served. And we are conducting at Mr. Stupak's
644 urging and with his encouragement, negotiations among the
645 interested parties, primarily broadcasters and satellite
646 carriers, to find a way that through a set of appropriate
647 incentives we can achieve the carriage of all 210 markets.
648 As I said earlier, these negotiations are going very well and
649 we were within perhaps a day or two days of I think reaching
650 agreement on that appropriate set of incentives that would
651 assure the carriage of all 210 markets, but because of the
652 impending upcoming recess and the need to move this bill
653 forward, we held the subcommittee markup as originally
654 scheduled. But given the pace of these negotiations, I think
655 we are going to be in the position prior to full committee
656 markup to have this agreement in place.

657 So Mr. Stupak asked that I make some comments about the
658 210 issue. I think the news on this is pretty good and I
659 want to simply encourage the parties that have been involved
660 in these conversations to perhaps redouble their efforts.
661 And maybe the good news awaiting us when we return from the

662 upcoming recess will be that this challenge is resolved and
663 we will be ready to assure that all 210 markets are covered
664 when the full committee markup occurs.

665 Let me ask again if there are other members seeking
666 recognition for purposes of offering amendments. I do not
667 see any hands raised.

668 And so at this point, I will say that the question
669 occurs upon the amendment. I am sorry. The question occurs
670 upon, excuse me. At this point, I move that the Subcommittee
671 on Communications, Technology, and the Internet forward H.R.
672 2994 as amended, to the full committee with the
673 recommendation that the bill pass. Those in favor will say
674 aye, those opposed no. The ayes have it and the bill is
675 favorably reported by the subcommittee to the full committee.

676 I ask unanimous consent that staff be authorized to make
677 technical and conforming corrections, without objection, so
678 ordered.

679 And with thanks to all of the members, this markup
680 stands adjourned.

681 [Whereupon, at 10:44 a.m., the subcommittee was
682 adjourned.]