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Satellite Television: An Analysis of Legislation Creating Loan Guarantees for Providing Local Broadcast TV Signals

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Marcia S. Smith
Specialist in Aerospace and Telecommunications Policy
Resources, Science, and Industry Division

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Summary

The 106th Congress passed legislation to establish a loan guarantee program to help ensure that consumers can obtain local broadcast television channels via satellite or other technologies. Called the “Launching Our Communities Access to Local Television Act,” or LOCAL, it is Title X of the FY2001 Commerce-Justice-State (CJS) appropriations bill, enacted as part of the FY2001 District of Columbia (DC) appropriations bill (P.L. 106-553).

The impetus for the legislation was passage of the Satellite Home Viewer Improvement Act (SHVIA, see CRS Report RS20425) in 1999, which allowed satellite companies, for the first time, to offer local network television to their customers—called “local-into-local” service. A major factor in Congress’ decision to allow satellites to offer local stations was to increase competition to cable because of consumer complaints about cable rate increases. The two existing satellite TV companies, EchoStar and DirecTV, plan to offer local-into-local only to the top markets in the country, however. Some Members were concerned that consumers in small and rural markets would not benefit from the new service, while others more broadly wanted to ensure that consumers in all markets, regardless of size, have competition to cable. Consequently, a provision was added to SHVIA during conference in 1999 to offer loan guarantees to satellite and other companies to build systems to provide local TV stations. The provision was removed before final passage, however, and House and Senate leaders agreed that new legislation reflecting the same concerns would be considered by each chamber in 2000.

By mid-April 2000, the House and Senate had passed H.R. 3615 and S. 2097, respectively. No conferees were appointed. Instead, a modified version was included in the conference version of the FY2001 DC/CJS appropriations bill as noted above. Representative Markey expressed concern during floor debate on that version of the bill on October 26 (*Congressional Record*, page H11283) over the extent to which cable companies will be able to apply for the loan guarantees. While the bill contains some limitations on cable companies, but certain Members wanted stricter requirements. Generally, the bill is technology neutral.

As enacted, LOCAL establishes a four person Board (Secretaries of Treasury, Agriculture, and Commerce, and the Chairman of the Federal Reserve) to select recipients of loan guarantees for up to \$1.25 billion in loans (generally, 80% of the loan may be guaranteed). The loans are to be used to build systems that would ensure that consumers throughout the country can receive local television signals. The Board is to take into account whether a project would provide service to “nonserved” or “underserved” areas and whether it also would provide high-speed Internet access. The program will be administered by the Rural Utilities Service in the U.S. Department of Agriculture.

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Satellite Television: An Analysis of Legislation Creating Loan Guarantees for Providing Local Broadcast TV Signals

Background

The Satellite Home Viewer Improvement Act (SHVIA, Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, included by cross reference in P.L. 106-113, the FY2000 Consolidated Appropriations Act) was enacted in 1999.¹ SHVIA allows satellite companies, for the first time, to offer local network television signals to their subscribers—called “local-into-local.”² Previously, satellites could offer only *distant* network signals originating outside a customer’s local market area to the very small percentage of households in the United States that cannot receive network broadcast television any other way (called “unserved households” or “white areas”).

That restriction had been enacted in 1988 to protect network broadcasters and their affiliates from having out-of-market signals being brought into their market areas by satellites, possibly reducing advertising revenue and threatening their economic viability. Policy makers want to ensure the survival of local television stations so consumers can watch local news and weather, particularly to receive weather alerts. During the 1990s, however, Congress and the Administration became concerned about rising cable rates and sought to increase competition to cable. Satellites were viewed as one of the most potentially effective competitors, leading to the local-into-local provisions in SHVIA which would still protect broadcasters through

¹For more information on the debate over SHVIA and its predecessor, the Satellite Home Viewer Act (SHVA), see CRS Report 98-942, *Satellite-Delivered Television: Issues Concerning Consumer Access to Broadcast Network Television Via Satellite*. For information on what was included in SHVIA and a summary of continuing issues for Congress, see CRS Report RS20425, *Satellite Television: Provisions of the Satellite Home Viewer Improvement Act (SHVIA) and Continuing Issues for Congress*.

²The phrase “local-into-local” refers to the fact that the local TV signal is transmitted up to the satellite and back down into the same local market, instead of to some other market.

implementation of “must carry” rules³ and hopefully increase competition to cable at the same time.

As SHVIA was being debated in conference, however, concern arose that the two U.S. companies that offer direct broadcast satellite (DBS) television today, EchoStar⁴ and DirecTV,⁵ were not planning to offer local programs in all parts of the country. Instead, they plan to offer local-into-local only to the top markets. There are 210 “designated market areas” (DMAs) as defined by Nielsen Media Research.⁶ EchoStar originally said it would offer local-into-local service in the top 67 of these market areas. Later it said it would serve 33 markets by the end of the year 2000, and more recently stated that it will serve up to 60 markets with local-into-local after two more satellites are launched late in 2001.⁷ DirecTV plans to offer local-into-local to the top 20 markets. This means that viewers in most DMAs will not receive local television via satellite. (DirecTV states that the top 20 markets represent approximately half of U.S. television households, so although most DMAs will not get local-into-local, a sizeable percentage of households will.)

The decision by the two satellite television companies to offer local-into-local only in the top markets reflects a blend of economic, technical, and regulatory factors. For example, there is a satellite capacity limitation involving the amount of spectrum allocated to the companies by the Federal Communications Commission (FCC) and the number of orbital locations (“slots”) allocated to the United States by the International Telecommunication Union for direct broadcast satellite services. Capacity is also affected by the number of satellites the companies have in orbit or plan to build and the number of television channels that can be transmitted via each “transponder” on the satellites. There are 1600 local channels across the country. The satellite television companies argue that they could not develop a successful business plan that included building enough satellites to carry all those channels plus the other channels (HBO, CNN, ESPN, etc.) that customers want. They explain that

³For more information on “must carry” rules for satellites, which go into effect on January 1, 2002, see CRS Report RS20425. Under SHVIA, the FCC had to issue regulations on precisely how the must carry rules will apply to satellite companies by November 29, 2000. According to industry sources, the FCC did adopt such regulations that day, but they are not yet publicly available. Pursuant to the 1992 Cable Act (P.L. 102-385), cable companies already are subject to must carry regulations where each cable system must carry any commercial broadcast television station in a particular market that wants to be carried up to a certain percentage of the cable system’s capacity. According to the FCC’s cable television fact sheet [<http://www.fcc.gov/Bureaus/Cable/WWW/facts/csgen.html>], each cable system with more than 12 channels must set aside one-third of its channel capacity for must carry stations.

⁴EchoStar is headquartered in Littleton, CO. Its Website is [<http://www.echostar.com>].

⁵DirecTV, headquartered in El Segundo, CA, is a unit of Hughes Electronics Corp., which is a subsidiary of General Motors. Its Website is [<http://www.directv.com>].

⁶The DMAs are listed in *Television and Cable Factbook*, 1999 Edition, Stations Volume No. 67, Warren Publishing, Inc., Washington, D.C.

⁷EchoStar Adds Satellites and Expands Dish Services, *Communications Daily*, February 24, 2000, p. 4.

the limited number of viewers in the smaller markets would not garner sufficient revenue to pay for the additional satellites needed to serve every household. Future improvements in technology could increase the number of television channels that can be transmitted per transponder, but the pace of those technological developments and the timing and cost of incorporating the technology into new satellites is uncertain.

DirecTV and EchoStar also argue that the must carry rules significantly reduce the number of markets they can serve with local-into-local because after January 1, 2002, they will have to carry all local signals in any market where they offer any local signals. Until that date, both satellite television companies are providing only four or five local channels (typically ABC, CBS, NBC, Fox, and PBS) in each market they serve with local-into-local. Once must carry goes into effect, they will have to carry more than 20 channels in large markets such as New York or Los Angeles, using up capacity on their satellites. They argue that if they could offer only a basic set of local channels, they could offer those to many more markets. They do concede, however, that even without must carry they could not serve all 210 markets with local-into-local because of capacity limits. DirecTV, EchoStar, and the Satellite Broadcasting and Communications Association filed suit in U.S. District Court, Alexandria, VA, in September 2000 to have the must carry requirement overturned on First Amendment and Fifth Amendment grounds. (The cable industry sought to have its must carry requirements overturned as well, but the Supreme Court ruled in favor of those must carry requirements in a 1997 decision.)

During deliberations over SHVIA in 1999, DirecTV's and EchoStar's plans to offer local-into-local only to the top markets were widely known. Another company, Local TV on Satellite (LTVS), had announced plans in 1997 to build two satellites operating at different frequencies from those used by DirecTV and EchoStar that would carry only local channels. LTVS had originally said it would provide all 1600 local channels to all DBS providers for distribution to their customers.⁸ As LTVS further examined its concept, however, it determined that for economic reasons similar to those espoused by DirecTV and EchoStar, it could only provide half as many channels (800), so that only the top 70 markets or so would be served.

Thus, in the fall of 1999, after SHVIA had passed both the House and Senate, the National Rural Telecommunications Cooperative (NRTC)⁹ began lobbying for inclusion of a loan guarantee program through which it could build its own satellite system for providing local signals to small and rural markets. NRTC was initially successful and the conference version of SHVIA (H.R. 1554, H.Rept. 106-464) included a \$1.25 billion loan guarantee program for providing local television to areas that would not be served by existing satellite television companies. The program would have been administered by the U.S. Department of Agriculture (USDA). Senator Burns and Representative Boucher are credited with spearheading the effort to get such language included.

⁸Testimony of James Goodmon in: U.S. Congress. House. Committee on the Judiciary. Copyright Licensing Regimes Covering Retransmission of Broadcast Signals. October 30, 1997. 105th Congress, 1st session. Washington, U.S. Govt. Print. Off., 1999, p. 39-41.

⁹NRTC is a not-for-profit cooperative association consisting of approximately 1000 rural utilities that provide electric or telephone service to rural markets.

The House passed that conference report, but Senator Gramm objected to the loan guarantee provision because it had not been included in either the House or Senate versions of the bill. He also wanted the Senate Banking Committee (which he chairs) to have an opportunity to consider it. Proponents of the loan guarantee program agreed to withdraw it from the conference version of the bill on the condition that legislation on this topic be considered by the House and Senate by the end of March 2000. A new version of the bill, S. 1948, was thereby crafted, removing the loan guarantee provision. That bill (for which there is no conference report) was incorporated by cross reference into the Consolidated Appropriations Bill, which was signed into law (P.L. 106-113) on November 29, 1999.

Rural Television Loan Guarantee Legislation: The Launching Our Communities Access to Local Television Act (LOCAL)

Congress passed and the President signed into law on December 21, 2000 the Launching Our Communities Access to Local Television Act (LOCAL). It creates a \$1.25 billion loan guarantee program, administered by the Rural Utilities Service in the Department of Agriculture. The loans are for companies to build systems that will allow consumers, particularly in small and rural markets, to receive local television signals. The Act is technology neutral, so companies can obtain loans for providing local TV to consumers via satellite, cable, or other means.

The House and Senate had each passed legislation addressing the loan guarantee issue: H.R. 3615 and S. 2097. The bills were quite different as introduced, but became closer as they moved through the respective chambers. Remaining differences were not resolved by conference, however (no conferees were appointed). Instead, a new version was included as Title X of the conference report on the FY2001 Commerce-Justice-State (CJS) appropriations act (H.R. 5548), which was enacted as part of the FY2001 District of Columbia (DC) appropriations act (H.R. 4942), signed into law December 21, 2000. The following text tracks the evolution of the final language in H.R. 4942.

Originally, three bills were introduced. On November 19, 1999, Senator Baucus introduced S. 1980. The bill was based largely on the language that had been removed from the SHVIA conference report and was referred to the Senate Agriculture Committee, which oversees USDA. The bill specified that the Rural Utilities Service (RUS), part of USDA, would be responsible for the program, both choosing loan guarantee recipients and administering the program. RUS (formerly the Rural Electrification Administration) administers \$42 billion in loans and loan guarantees for rural electric, telecommunications, water, and wastewater projects. The Senate Agriculture Committee held a hearing on S. 1980 on February 3, 2000 but there was no further action on that bill.

H.R. 3615 was introduced by Representative Goodlatte on February 15. As introduced, it was very similar to S. 1980. It was referred to the House Agriculture, Commerce, and Judiciary Committees. The House Agriculture Committee held a hearing on the bill on February 9, and reported it on March 1 (H.Rept. 106-508, Part I) with few changes. The House Commerce Committee's Subcommittee on Telecommunications, Trade and Consumer Protection held a hearing on March 16

and marked up the bill on March 23. The full Commerce Committee reported the bill on April 6 (H.Rept. 106-508, Part II). The bill was discharged from the House Judiciary Committee on March 31 without action. The Agriculture and Commerce committee versions of the bill were substantially different. Instead of either of those versions, the House Rules Committee made in order an amendment in the nature of a substitute (printed in the April 13, 2000 *Congressional Record*) for debate by the House. It was close to the House Commerce Committee version of the bill with some changes making it more similar to S. 2097 (see below), although differences remained. It passed the House on April 13, 2000.

S. 2097 was introduced by Senators Burns and Gramm on February 24 and it was referred to the Senate Banking Committee, which had held hearings on the topic on February 1 and 9. The bill was reported from the Senate Banking Committee on March 15 (S.Rept. 106-243) and passed the Senate, amended, on March 30.

In the reports accompanying H.R. 3615 and S. 2097, the Congressional Budget Office (CBO) estimated the cost of H.R. 3615 as reported from the House Agriculture Committee as \$365 million and of S. 2097 as \$265 million for loan subsidy and administrative costs over the 2000-2005 time period, assuming appropriation of the necessary amounts. It estimated the cost of H.R. 3615 as reported from the House Commerce Committee as \$210 million over the 2001-2005 time period, assuming appropriation of necessary amounts.

The following bullets show the major similarities between the House- and Senate-passed bills and significant changes, if any, made in the final version as enacted. The subsequent table describes the major differences.

Major Similarities in House- and Senate-Passed Bills.

- ! Aggregate amount of loans cannot exceed \$1.25 billion.
- ! Up to 80% of the loan can be guaranteed. In H.R. 3615 and S. 2097, the loan could have been split into two amounts so that one part (up to 80%) was 100% guaranteed and the remainder was unguaranteed as long as the same lender provided all the financing. In final version, that provision was changed so that if only a portion of a loan meets requirements under the Act, the Board may issue a loan guarantee not exceeding 80% of that amount.
- ! Term of each loan guarantee is 25 years or the economic usefulness of the primary assets to be used in the delivery of the signals, whichever is less.
- ! Recipients of loan guarantees would have been determined by majority vote of a special three-person Board created for this purpose in H.R. 3615 and S. 2097 (the members were different in the two versions). Final version increases the number of Board members to four and specified that affirmative votes of three members was needed to approve an application.
- ! Loan guarantees are administered by the Rural Utilities Service (RUS), part of USDA, which also prescribes regulations to implement the Act under the direction of and for approval by the Board.

- ! The Board shall consult such departments and agencies as the Board considers appropriate.
- ! The Board must consult with NTIA to determine that a proposed project is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to signals in an unserved area, and is commercially viable. Final version uses the term “non-served” instead of “unserved.”
- ! The Board must consult with OMB on underwriting criteria and on credit risk premium amounts.
- ! The Board must also consult with an independent public accounting on underwriting criteria.
- ! Loan must be made by an entity engaged in business of commercial lending (with certain requirements) or a nonprofit corporation, including the National Rural Utilities Cooperative Finance Corporation, if the Board determines it has one or more issues of outstanding long-term debt that is rated within the highest three rating categories of a nationally recognized statistical rating organization, and, if the Board determines that the making of the loan by such nonprofit corporation will cause a decline in the debt rating mentioned above, the Board at its discretion may disapprove the loan guarantee on this basis. No loan may be made by a governmental entity or affiliate thereof, or by the Federal Agricultural Mortgage Corporation, or any institution supervised by the Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board, or any affiliate of such entities.
- ! The Board shall consider certain priority factors (see following table for further explanation) in determining who shall get loan guarantees, and other factors including projects that offer a separate tier of local broadcast signals, provide lower projected costs to consumers of such separate tier, and enable the delivery of local signals consistent with purposes of the Act by a means reasonably compatible with existing systems or devices predominantly in use.
- ! The Board must determine that an applicant has received all necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions; that the loan would not be available on reasonable terms and conditions without a loan guarantee; and repayment of loan can be reasonably expected.
- ! GAO shall perform an annual audit of the program.
- ! Funding is subject to advance appropriations. Authorizes such sums as may be necessary for FY2001-2006 for the cost of the loans, and for administrative costs, and appropriations made pursuant to those authorizations remain available until expended. Final version adds that the Board may accept credit risk premiums from a non-federal source to cover the cost of a loan guarantee to the extent that appropriations are insufficient.

! Sunset date of the Act is Dec. 31, 2006.

Major Differences Between the House- and Senate-Passed Bills and How They Were Resolved in H.R. 4942. The following table compares the major differences between H.R. 3615 and S. 2097 as they passed the House and Senate, respectively. As already discussed, there was no conference on those bills, but a new version was included in the conference version of the FY2001 Commerce-Justice-State (CJS) Appropriations act, enacted as part of the FY2001 District of Columbia (DC) Appropriations Act, H.R. 4942 (P.L. 106-553).

Table 1. Major Differences Between House and Senate Versions and How They Were Resolved

(List of acronyms appears at end of table)

Provision	H.R. 3615 (Goodlatte) As passed by the House	S. 2097 (Burns-Gramm) As passed by the Senate	H.R. 4942 (DC/CJS Appropriations) As signed into law (P.L. 106-553)
Purpose	To facilitate access, on a technologically neutral basis and by December 31, 2006, to signals of local television stations for households located in unserved and underserved areas.	To facilitate access, on a technologically neutral basis and by December 31, 2006, to signals of local television stations and related signals (including high-speed Internet access and National Weather Service warnings), for households located in unserved areas and underserved areas.	To facilitate access, on a technologically neutral basis and by December 31, 2006, to signals of local television stations for households located in nonserved areas and underserved areas.
Eligible Technologies and Companies	No limitation on technologies, but loan guarantees may not be for extension of any cable system to any area or areas for which the operator of such cable system has a franchise if the franchise obligates the operator to extend such system to such area or areas; or the upgrading or enhancement of the services provided over any cable system, unless it is principally undertaken to extend services to areas outside the previously existing franchise area.	No limitation on technologies or companies	No limitation on technologies, but loan guarantees may not be granted or used for a project that extends, upgrades, or enhances the services provided over any cable system to an area that, as of the date of the enactment of the Act, is covered by a cable franchise agreement that expressly obligates a cable system operator to serve such area.
Composition of Board Deciding Which Loan Guarantees to Grant	Three person Board composed of Secretary of Treasury, Secretary of Agriculture, and Secretary of Commerce, or their designees.	Three person Board composed of Secretary of Treasury, Chairman of the Federal Reserve, and Secretary of Agriculture, or their designees.	Four person Board composed of Secretary of Treasury, Chairman of the Federal Reserve, Secretary of Agriculture, and Secretary of Commerce, or their designees. Approval of loan guarantees requires at least three affirmative votes.

Provision	H.R. 3615 (Goodlatte) As passed by the House	S. 2097 (Burns-Gramm) As passed by the Senate	H.R. 4942 (DC/CJS Appropriations) As signed into law (P.L. 106-553)
Additional Authority to RUS Administrator	No comparable language	Board may delegate to RUS Administrator authority to grant loan guarantees not exceeding \$20 million.	No comparable language.
Areas Targeted for Service and Priorities to Be Used in Determining Recipients	Cannot be for systems designed primarily to serve 1 or more of the top 40 DMAs. Priority given first to systems serving greatest number of households in unserved areas and the number of states (including noncontiguous states), and second to projects that will serve the greatest number of households in underserved areas. Board shall consider the project's estimated cost per household to be served.	Cannot be for systems primarily designed to serve one or more of the top 40 DMAs. Priority given first to systems serving greatest number of households in unserved areas and the number of states (including noncontiguous states), and second to projects that will serve the greatest number of households in underserved areas. Board shall consider efficiency in providing service given the area to be served. To the maximum extent practicable, the Board should give additional consideration to projects which also provide related signals (including high-speed Internet access and National Weather Service warnings).	Cannot be for systems designed to serve one or more of the top 40 DMAs or that would alter or remove National Weather Service warnings from local broadcast signals. Priority given first to systems serving non-served areas, and second to systems serving underserved areas, in each case balancing projects that will serve the largest number of households with projects that will serve remote, isolated communities (including noncontiguous states) in areas unlikely to be served through market mechanisms. Board shall give priority to those projects providing highest quality service at lowest cost per household. Board should give additional consideration to projects that also provide high-speed Internet access.

Provision	H.R. 3615 (Goodlatte) As passed by the House	S. 2097 (Burns-Gramm) As passed by the Senate	H.R. 4942 (DC/CJS Appropriations) As signed into law (P.L. 106-553)
Definitions of Unserved, Nonserved, or Underserved Areas	<p><i>Unserved areas</i> are outside Grade B contours¹ of local TV signals serving a particular DMA and do not have access to local TV broadcast signals from any commercial, for-profit MVPD.</p> <p><i>Underserved areas</i> are outside Grade A contours¹ of local TV signals and have access to local TV broadcast signals from not more than one commercial, for-profit MVPD.</p>	<p><i>Unserved areas</i> are outside Grade B contours¹ of local TV signals serving a particular DMA and do not have access to such signals by other widely marketed means.</p> <p><i>Underserved areas</i> are outside Grade A contours¹ of local TV signals and have access to local TV broadcast signals from not more than one commercial, for-profit MVPD.</p>	<p><i>Nonserved areas</i> are outside Grade B contours¹ of local TV signals serving a particular DMA and do not have access to local TV broadcast signals from any commercial, for-profit MVPD.</p> <p><i>Underserved areas</i> are outside Grade A contours¹ of local TV signals and have access to local TV broadcast signals from not more than one commercial, for-profit MVPD.</p>
Modification to Must Carry Requirements	Satellite, cable, or other MVPD provider financed under this Act shall not be required to carry in a market a greater number of local broadcast signals than the number of such signals carried by the cable system serving the largest number of subscribers in such market.	No comparable language.	No comparable language.
Other	<p>FCC shall open a filing period for accepting applications for TV translator stations and low-power TV stations in rural areas.</p> <p>[Also has language concerning cellular telephone service in rural areas, and prohibiting use of funds provided by this Act for spectrum auctions.]</p>	No comparable language	<p>No comparable language.</p> <p>[Retains language concerning cellular telephone service in rural areas. Language in House version prohibiting use of funds provided by this Act for spectrum auctions is not included, but proceeds from loans may not be used for acquiring licenses for the use of spectrum in any competitive bidding.]</p>

Acronyms:

DMA: designated market area

MMDS: multichannel multipoint distribution system

MVPD: multichannel video programming distributor

NTIA: National Telecommunications and Information Administration, part of the Department of Commerce

OMB: Office of Management and Budget

RUS: Rural Utilities Service of the U.S. Department of Agriculture

¹ Grade A and Grade B contours can be visualized as circles around a TV station's transmitter indicating the strength of a signal received within that area. The Grade A contour is close to the transmitter and reception there is better than in the Grade B contour, but reception within the Grade B contour is deemed acceptable. The FCC describes these contours as follows: "a quality acceptable to the median observer is expected to be available for at least 90 percent of the time at the best 70 percent of receiver locations at the outer limits of [Grade A] service. In the case of Grade B service the figures are 90 percent of the time and 50 percent of the locations." (FCC Cable Services Bureau, report FCC 99-14, CS Docket 98-201, paragraph 33.)

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Issues

Following is a discussion of the issues that were most contentious between the House and Senate while the bill was being debated and how they were resolved in the final version. One of these issues—the extent to which cable companies are eligible for loan guarantees—remains controversial.

Targeted Consumers. One of the most significant issues concerned what consumers are being targeted by the legislation: those who cannot receive any local broadcast signals; those who can receive local stations only via an over-the-air (rooftop or “rabbit ear”) antenna; or those who may have access to both over-the-air broadcasts and cable, but do not have competition to cable for multichannel video services.

Most households can receive local television today via over-the-air antennas although the quality of the signal varies. Those that cannot receive any over-the-air TV signals are termed “white areas” or “unserved households” and represent approximately 5% of U.S. households according to FCC estimates. In its January 2000 annual report¹⁰ on competition in the multichannel video market,¹¹ the FCC reported that 97% of U.S. television households are passed by cable. Approximately 12.5% receive direct broadcast satellite (DBS) service.¹² Thus only 3-5% cannot receive television either by cable or over-the-air broadcasts, but a much larger percentage do not have competition to cable for multichannel video services or do not receive good quality over-the-air reception.

Determining which consumers are being targeted can have a significant impact on the desired solution. The loan guarantee proposal emanated from the passage of SHVIA, one goal of which was to increase competition to cable. Therefore, to some involved in the debate, the goal of the loan guarantee program was to ensure that all communities in America had competition to cable. To others, however, it was an issue of ensuring that consumers can access local news and weather advisories, so what is needed is systems that will reach those consumers who cannot receive any local stations or get poor reception via over-the-air antennas. During the early days of the debate, it was not clear which approach was favored.

If the goal of the legislation had been ensuring competition to cable, then cable companies probably would not have been eligible for the loan guarantees. The House-passed version of H.R. 3615 included language added by the House

¹⁰ Federal Communications Commission. Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming. (FCC 99-418). CS Docket No. 99-230. Adopted December 30, 1999; released January 14, 2000. Available at [http://www.fcc.gov/Bureaus/Cable/News_Releases/2000/nrcb0003.html]. Critics assert that the FCC report overestimates the number of households passed by cable.

¹¹ Often called “multichannel video programming distribution” (MVPD) services. MVPD services offer a package of video programming, often including television broadcast programming, to subscribers for a fee.

¹² Another 2.2% receive satellite television over larger “C-band” antennas.

Commerce Committee that placed some limitations on cable company eligibility for the loan guarantees (see next issue). S. 2097 placed no limits on cable companies.

If the goal was ensuring that consumers could receive local broadcast television stations regardless of the technology employed, broadcasters could (with FCC permission) invest in facilities to boost the power of their transmitters to reach more distant areas. Or “translators” could be used, which pick up a station’s signal, amplify it, and rebroadcast the signal on another frequency, thus enabling the signal to reach further. R. Kent Parsons of the National Translators Association testified at the March 16 House Commerce hearing that the deployment of translators has been hindered by the lack of opportunities to file at the FCC for licenses¹³ and the House-passed version of H.R.3615 included a provision added by the House Commerce Committee requiring the FCC to open a filing opportunity for translators. The Senate bill had no comparable provision and it was not included in the final version of the Act.

Although all the loan guarantee bills as introduced referred to providing local TV services to “unserved” and/or “underserved” areas, only S. 2097 originally included definitions of those terms. As passed by the House, H.R. 3615 also defined those terms. The definition of underserved area was identical in both bills. Underserved areas are outside Grade A contours¹⁴ of local TV signals and can receive local TV broadcast signals from not more than one commercial, for-profit multichannel video provider (i.e., cable, satellite, or MMDS). There was a slight difference in the definition of “unserved area,” however. H.R. 3615 defined an unserved area as one that is outside the Grade B contour of local TV broadcast stations and *does not have access to local TV broadcast signals from any commercial, for-profit multichannel video provider*. S. 2097 defined it as one that is outside the Grade B contour and that does not have access to local TV broadcast signals by *other widely marketed means*. In the final version, the term “unserved” was replaced with “nonserved” and defined essentially the way “unserved” was defined in the House bill.

Eligible Companies and Technologies. A number of technologies are available for providing television to consumers. As discussed earlier, the FCC publishes an annual survey of competition in the multichannel video marketplace. It identifies the main multichannel competitors today as cable, direct-to-home satellite (including Direct Broadcast Satellites and Home Satellite Dishes), Satellite Master Antenna TV (SMATV, sometimes called “private cable”), and multichannel multipoint distribution systems (MMDS, sometimes called “wireless cable”). The report also notes that Local Exchange Carriers and electric utilities may become competitors in the future, as well as open video systems (OVS) and Internet video. The report cites broadcast television and home video sales and rental as competitors to multichannel providers.

¹³Testimony of R. Kent Parsons to the House Commerce Committee, Subcommittee on Telecommunications, Trade, and Consumer Protection, March 16, 2000, unpublished but available at the Committee’s Web site [<http://www.house.gov/commerce>].

¹⁴See footnote to preceding table for explanation of Grade A and Grade B contours.

S. 2097 as passed by the Senate was technology neutral, with no limitations on what technologies or companies can qualify for loan guarantees. The House-passed version of H.R. 3615 was technology neutral except that it placed certain restrictions on the eligibility of certain cable companies. Essentially, if a cable company that was already providing service in a particular area (an “incumbent”) was required by its franchise agreement with local authorities to provide cable service to certain households, it could not receive a loan guarantee to meet those requirements. It also could not obtain loan guarantees to upgrade or enhance its services unless the upgrade or enhancement was principally undertaken to extend services to consumers beyond the current franchise area.

Section 1004 (i) of LOCAL, as enacted, states the following:

Limitations on Guarantees for Certain Cable Operators.— Notwithstanding any other provision of this Act, no loan guarantee under this Act may be granted or used to provide funds for a project that extends, upgrades, or enhances the services provided over any cable system to an area that, as of the date of the enactment of this Act, is covered by a cable franchise agreement that expressly obligates a cable system operator to serve such area.

That language was controversial because of its use of the word “expressly” and the fact that it is limited to franchise agreements in effect at the time of enactment. Representative Markey stated during floor debate on H.R. 4942 on October 26, 2000, that this version of the bill —

... guts key provisions that were adopted in the Commerce Committee that instilled a preference for competition. This bill will not only run the risk of subsidizing large media companies who do not need taxpayer subsidies, it has now been changed so that incumbent cable companies who already provide local TV stations can get a taxpayer subsidy as well. This makes no sense as a public policy.¹⁵

Representative Markey went on to explain that by introducing the phrase “expressly” to the provision limiting what cable companies are eligible for loan guarantees, it opened a loophole that allowing many cable companies to obtain taxpayer backed loans because few cable companies have explicit provisions in their franchise agreements regarding building out their systems. Also, the final version of the bill applies only to franchise agreements in effect when the bill was enacted. Thus as franchise agreements expire and are renewed or negotiated, they will not be covered by this provision, further permitting incumbent cable companies to compete for loan guarantees. Representative Markey argued that the language is “bad for competition, bad for consumers, and unfair to taxpayers.”¹⁶

Providing Other Telecommunications Services. Another issue that was debated was whether the legislation should cover only the provision of local television

¹⁵*Congressional Record*, October 26, 2000, page H11283.

¹⁶*Ibid*, page H11284.

signals, or also of other telecommunications services such as high-speed Internet access. Congress has expressed concern about the formation of a “digital divide” between citizens who have access to advanced telecommunications services and those who do not.¹⁷ During its February 3, 2000 hearing on S. 1980, the Senate Agriculture Committee highlighted the interrelationship between the digital divide issue and the loan guarantee legislation since some of the technologies for providing TV signals could also be used to provide Internet access.

During floor debate on S. 2097 on March 30, 2000, the Senate adopted a Baucus amendment that expanded the reach of S. 2097 into the high-speed Internet access arena. The amendment revised the purpose of the legislation and the priorities to be considered by the Board in determining recipients of loan guarantees by adding “related signals (including high-speed Internet access and National Weather Service Warnings)” to local TV signals. The House-passed version of H.R. 3615 did not include language about these additional services.

In the final version of LOCAL, as enacted, the Board is directed to take into account whether a project would also provide high-speed Internet access as a factor in determining which projects receive loan guarantees.

Composition of the Board. The concept of using a specially created Board to approve loan guarantees originated in S. 2097. In that bill, the Board was composed of the Secretary of the Treasury, the Chairman of the Federal Reserve, and the Secretary of Agriculture, or their designees. Although H.R. 3615 originally would have assigned the responsibility for selecting loan guarantee recipients to the Rural Utilities Service, the House Commerce Committee version created a Board similar to that in S. 2097 and it was included in the House-passed version of the bill. The language creating the Board originated in a Largent amendment in the nature of a substitute that was adopted (amended) during markup by the telecommunications subcommittee. In the original Largent amendment, the Board would have had the same composition as in S. 2097 except that the Secretary of Commerce was added. However, during markup the argument was made that having four members opened the possibility of tie votes. At first, Representative Boucher offered an amendment to change the manner in which the Board would make decisions from majority vote to unanimous vote. That amendment failed, following which Representative Boucher proposed an amendment dropping the Chairman of the Federal Reserve from the Board to reduce the size of the Board to three while retaining the requirement for a majority vote. That amendment was adopted.

In the final version of LOCAL, the Board is composed of four members (Secretaries of Treasury, Agriculture, and Commerce, and the Chairman of the Federal Reserve, or their designees) and the bill requires that approval of loan applications be made by affirmative vote of at least three Board members.

Modification to Must Carry Requirements. As discussed earlier, the satellite TV companies object to the requirement in SHVIA that they follow must

¹⁷For a discussion of that issue, see CRS Issue Brief IB10045, *Broadband Internet Access: Background and Issues*, by Lennard G. Kruger and Angele A. Gilroy.

carry rules. They argue that it limits the number of markets in which they can offer local-into-local by using up capacity on their satellites that could be used for offering a basic set of local TV channels to more markets. As noted earlier, EchoStar, DirecTV, and the Satellite Broadcasting and Communications Association have filed suit to overturn the must carry provision. Others argue, however, that satellites should have to conform to the same rules as cable or the two would not be competing on a level playing field. The must carry battle was hard fought during debate over SHVIA, with a decision that satellites would have to follow those rules, but with a 3-year delay. Hence they do not go into effect for satellite TV until January 1, 2002.

During markup of H.R. 3615 by the House Commerce telecommunications subcommittee, Representative Cox successfully argued that not all local TV stations needed to be carried by the companies receiving loan guarantees under the bill. He argued that only those clearly providing local programming should qualify since some "local" stations (such as home shopping stations) might carry only national content. His amendment, which was adopted, required that any TV station requesting must carry status broadcast an annual average of 21 hours per week of local news, sports, and weather programming.

When the bill reached full committee, however, Representative Tauzin offered an amendment to the Cox language that was adopted by the committee and included in the bill as passed by the House. Under the Tauzin version, any company receiving a loan guarantee would be required to carry no more than the number of local TV signals as carried by the cable system serving the largest number of subscribers in a market. As described earlier, cable companies that offer more than 12 channels must set aside one-third of their channel capacity for must carry stations. Thus, depending on their size, different cable companies around the country may carry a different number of local signals. The Tauzin language therefore would have made the requirements for companies receiving the loan guarantees the same as for cable companies.

The Senate bill had no comparable provision and it was not included in the final version of the Act.

Northpoint Technology Ltd. A new provision included in the final version of LOCAL requires the FCC to choose an independent engineering firm or other qualified entity to perform tests to determine whether any terrestrial service proposed by any entity that has filed an application to provide terrestrial service in the DBS frequency band (12.2-12.7 gigahertz) will cause harmful interference to direct broadcast satellites. The demonstration must be concluded within 60 days of enactment, and is subject to public notice and comment for not more than 30 days thereafter. The law was enacted on December 21, 2000.

This is often referred to as the "Northpoint" provision because a company named Northpoint Technology is seeking FCC approval to use the DBS frequency band for terrestrial transmission of television programming and data. Prior to the passage of SHVIA in 1999, when satellite television companies were not permitted to retransmit local television signals, Northpoint proposed providing local television signals to consumers by transmitting them into a special device mounted to the back of a consumer's satellite dish. The company asserted that by transmitting into the back of

the dish, its signals would not interfere with the signals being transmitted to the same dish by a satellite, allowing consumers to get both local television and satellite signals. To accomplish its plan, Northpoint needed FCC permission to use the same frequency band used by the satellite television companies. The satellite television companies objected to Northpoint's proposal almost from the beginning on the basis that the signals would indeed interfere with their transmissions.

Although satellites now are permitted to offer local signals, Northpoint has continued with its proposal and now plans to offer not only local television signals, but other television signals and possibly data services. Essentially it would provide services similar to those offered already by MMDS companies (discussed earlier). MMDS does not operate in the 12.2-12.7 Gigahertz band, so does not pose interference issues for satellite television companies. Some argue that Northpoint should have filed for an application in the MMDS band rather than the satellite television band.

Northpoint's pending application is for a license to operate in the satellite television band, however. The FCC opened a Notice of Proposed Rulemaking regarding Northpoint's application in early 1999.¹⁸ Apparently concerned that the FCC was moving too slowly, Congress included a provision in SHVIA requiring the FCC to make a decision within one year of enactment (i.e. by November 29, 2000) on license applications for facilities that would deliver local television signals to satellite television subscribers in unserved and underserved local television markets using spectrum otherwise allocated to commercial use. Northpoint's proposal fits within that description. In accordance with SHVIA, the FCC adopted a Report and Order¹⁹ on November 29, 2000, that concluded it is possible for Northpoint-type systems to share the same frequency band with DBS on a non-harmful basis. The Commission is seeking comment through a Further Notice of Proposed Rulemaking, however, on technical sharing criteria and other issues.²⁰ Hence, the Commission stopped short of issuing a license for Northpoint, but formally opened the door for discussions on spectrum sharing. Some argue that the spectrum should be auctioned.²¹

¹⁸ET Docket No. 98-206, FCC 98-310, published in the *Federal Register* January 12, 1999, p. 1786-1789.

¹⁹FCC 00-418, ET Docket No. 98-206. A press release is available at [http://www.fcc.gov/Bureaus/Engineering_Technology/News_Releases/2000/nret0014.html]

²⁰The Report and Order also addressed Northpoint's ability to coexist with other satellite systems called NGSOs (Non-Geostationary Satellite Orbits). The NGSO compatibility issue is outside the scope of this report. The FCC created a new type of service, Multichannel Video Distribution and Data Service, MVDDS, for Northpoint-type systems.

²¹Northpoint and DBS Rivals Begin Legal Wrangling at FCC. *Communications Daily*, Dec. 4, 2000, p. 6.