

FCC Issues Report to Congress on Access to In-State Television Programming

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The FCC just issued a [Report to Congress](#) concerning the access of television viewers to **in-state television stations**. This report was requested by Congress as part of **STELA (the Satellite Television Extension and Localism Act)**, which extended the **compulsory license for direct to home satellite television operators (DISH and DirecTV)** - a license which gives them copyright clearances to retransmit all the programming transmitted by the broadcast television stations that they make available as part of their service packages. Congress also requested a Report from the Copyright Office on the need for the compulsory license - a [report also issued this week](#), which we will write about in another article. The issue of access to in-state television stations has been a controversial issue, as several Congressmen have sought (and in a few cases actually received) legislative authority for cable providers to carry out-of-market television stations on cable systems serving areas in one state that are part of television markets where the television stations come from a different state. The report refers to these areas as "orphan counties." Once legislative authority was granted in one state, many other bills popped up in Congress trying for the same relief in their state - causing concern that the existing television markets (or **Designated Market Areas** or "**DMAs**", designated by the Nielsen Company) might be undermined. To see what impact such changes would have, Congress requested this report from the FCC.

The report for the most part does not make recommendations, but instead simply provides information about the service provided to US television viewers, the potential options for bringing an in-state service to all viewers, and the issues that such proposals would raise. Perhaps the most interesting fact revealed by the report is that 99.98% of all US television households already have access to an in-state television station, either over-the-air or through a Multichannel Video Programming Distributor (e.g. cable or satellite TV system), so this is a very isolated issue. However, when the FCC sought comments on the issues discussed in the report, a number of individuals in particular DMAs responded about situations where they could not get access to in-state television stations and asked that something be done. The report assesses the implications of any action that could be taken.

Any attempt to provide access to in-state television stations to all television viewers implicate the following legal issues:

- Potential issues with the must-carry and retransmission consent process. Some television stations are concerned that changes could disrupt the retransmission consent process by allowing out-of-market TV stations to be substituted for in-market stations during disputes over retransmission consent fees. Satellite carriers, on the other hand, are concerned that any sort of obligation to carry additional television stations could affect channel capacity.
- Syndicated exclusivity and sports blackout rules are all based on existing DMAs, which could be disrupted if new stations were imported into existing markets
- Copyright compulsory licenses are based on DMA definitions, so issues under those licenses could arise with new carriage obligations

Potential alternatives to the DMA were suggested, though many parties were concerned about the disruption to existing business relationships in the television industry and of long-established consumer viewing habits. Virtually all such relationships are all based on DMA definitions. Nevertheless, the Commission looked at alternatives including:

- Market drawn along state lines, a proposal that drew almost universal condemnation for the disruption of existing relationships, and the fact that the proposal would also ignore real viewing patterns based on the interests that center on multi-state metropolitan areas.
- An expanded market modification process that would allow petitions to include a distant in-state signal in a market where that signal provided in-state programming to viewers in a DMA, allowing MVPDs to carry that signal.
- A modified definition of a significantly viewed stations, with implications similar to the option above
- An approach suggested by broadcasters to allow the importation of the news and local programming by in-state stations, but not the network and syndicated programs (an approach criticized by MVPDs who note that this programming constitutes a small portion of any station's broadcast day, and that would leave channels with large amounts of blocked programming, making it unlikely that audiences would find the in-state programs.

This is obviously a very sticky problem, where any solution to help the few people who do not have access to in-state programming may raise more problems than it solves. The report generated by the Commission is fascinating in the detailed information that it provides about interstate viewing patterns in markets all across the country. While not putting this issue to rest once and for all, the FCC certainly has provided plenty of information for consideration by those who may want to continue to debate how to help the .02% of the population that falls into this unfortunate hole where they cannot receive in-state television programming.

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