

ATTACHMENT B

For purposes of establishing regulations for the carriage of digital signals by satellite carriers, the following amendments should be made to 37 C.F.R. § 258, as amended by the Copyright Office's April 6, 2005 Notice.

PART 258 -- ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

1. Amend text of Section 258.2 so that "for purposes of § 258.3(b)" reads "for purposes of § 258.3(a)."
2. Amend title and text of Section 258.3 by inserting "analog signals of" before "broadcast station" each time the words "broadcast station" appear in the subsection.
3. Add a new Section 258.4 with the following text:

Sec. 258.4 Royalty fee for secondary transmission of digital signals of broadcast stations by satellite carriers.

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

(1) For private home viewing –

- (i) 20 cents per subscriber per month for distant superstations.
- (ii) 17 cents per subscriber per month for distant network stations.

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

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

(1) For private home viewing –

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

- (ii) 20 cents per subscriber per month for distant network stations.
 - (2) For viewing in commercial establishments, 43 cents per subscriber per month for distant superstations.
- (c) Commencing January 1, 2007, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:
- (1) For private home viewing –
 - (i) 23 cents per subscriber per month for distant superstations.
 - (ii) 23 cents per subscriber per month for distant network stations.
 - (2) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.
- (d) Commencing January 1, 2008, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:
- (1) For private home viewing
 - (i) The 2007 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.
 - (ii) The 2007 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.
 - (2) For viewing in commercial establishments, the 2007 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

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

(1) For private home viewing –

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

(2) For viewing in commercial establishments, the 2008 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(f) For purposes of calculating the royalty rates for secondary transmission of digital signals of broadcast stations by satellite carriers –

(1) in the case of digital multicasting, the rates in subsections (a)-(e) above apply to each digital stream that a satellite carrier or distributor retransmits pursuant to Section 119; *provided*, however that no additional royalty shall be paid for the carriage of any material related to the programming on such stream, within the meaning of *WGN v. United Video, Inc.*, 693 F.2d 622, 626 (7th Cir. 1982) and *Second Report and Order and First Order on Reconsideration in CS Doc. No. 98-120*, FCC 05-27 at ¶ 44 & n. 158 (Feb. 23, 2005); and

(2) satellite carriers and distributors are not required to pay a Section 119 royalty for the retransmission of a digital signal to a subscriber who resides in a community where that signal is “significantly viewed,” within the meaning of 17 U.S.C. §§ 119(a)(3) and (b)(1), as amended.