Before the
United States Copyright Office
Washington, D.C.

In the Matter of	)	
	)	
Section 109 Report to Congress	)	Docket No. 2007-1

REPLY COMMENTS OF CAPITOL BROADCASTING COMPANY, INCORPORATED

Capitol Broadcasting Company, Inc. ("Capitol") hereby submits these reply comments pursuant to the *Notice of Inquiry* ("*Notice*"), 72 FED. REG. 19039 (Apr. 16, 2007), issued by the U.S. Copyright Office in the above-captioned proceeding.

In its initial Comments, as well as in CEO James F. Goodmon's oral testimony before the Copyright Office on July 24, 2007, Capitol described a "cable system" that would utilize the "wires" of the Internet to retransmit in real-time local television signals solely within their Designated Market Area ("DMA") to the computer screens of paying subscribers. To restrict the retransmission to each station's DMA, Capitol explained a three-tiered security system using (1) geocoding and credit card validation similar to the process used by satellite carriers under Sections 119 and 122, (2) continuous location verification through an innovative USB antenna containing an FM radio receiver keyed to local radio stations in the subscriber's market (a device for which Capitol has a pending patent application), and (3) encryption and digital rights management software to prevent any and all diversion, redistribution, and copying of content. Finally, Capitol explained in considerable detail the extent to which this closed Internet-based "cable system" satisfies the requirements of current Section 111, why this cable system would also have to comply with the Communications Act's requirements governing cable systems, and why use of the compulsory copyright license by the cable system would be consistent with international copyright

law treaties.

The National Association of Broadcasters suggested that an Internet Protocol retransmission service with a "local market-based structure" that is "subject to the FCC's carriage and program exclusivity rules" could "operate in a fashion so functionally similar to cable systems as to justify the applicability of the Section 111 compulsory license to [it]."[1] EchoStar was sympathetic to a "broad interpretation of cable system under Section 111," but feared only that making Section 111 even "more attractive" would exacerbate alleged differences with the satellite licenses, not that Internet-based cable systems would unleash a parade of horrible from Pandora's Box.[2]

In contrast, three parties (Disney, MPAA, and the Performing Rights Organizations) in their filings attacked the applicability of the Section 111 license to public Internet-based retransmissions of broadcast signals. But each attacked retransmissions over the *open* Internet to generic Internet users with unbounded, *global* geographic reach.[3] Capitol's proposed Internet retransmission system, of course, is different from that attacked by Disney, MPAA, and the PROs in that Capitol's

---

[1] NAB Comments at 61.

[2] EchoStar Comments at 23 n.44.

[3] *See, e.g.*, Testimony of Preston R. Padden, The Walt Disney Company, at 4 (criticizing any interpretation of Section 111 license that would allow retransmission of broadcast signals to "Internet users" from "sources worldwide"); Program Suppliers' Comments at 22 (criticizing "[o]pen Internet delivery" with dangers of "worldwide delivery" and "perfect and infinite numbers of copies"); Performing Rights Organizations' Comments at 13 (opposing interpretation of Section 111 applying license to Internet retransmissions, in part, because of the "global reach of the Internet" and the perceived difficulty of applying "distant signal" or "unserved household" concepts to online users); *see also* Testimony of Fritz E. Attaway, MPAA, at 2 (further criticizing applicability of Section 111 to "open Internet delivery of programming with the capability of virtually instantaneous, world-wide dissemination that can be copied and saved at will").

proposal, as noted, relies on a triple-secured, fail-safe system to provide service only to verified subscribers within a station's DMA.

Indeed, these same parties concede that Section 111 may apply to closed Internet Protocol technologies that confine their retransmissions to defined and limited geographic areas.[4] But that "alternative" Internet delivery mechanism closely resembles—indeed very closely resembles—the system Capitol is proposing.

The only party to have expressly addressed Capitol's proposal is Disney's Preston Padden in his oral testimony to the Copyright Office on July 24, 2007. Mr. Padden asserted that Capitol's Internet-based cable system could not be what Congress had in mind when it created Section 111 in 1976. Those systems, he declared, have a defined plant and a head-end and fit within an existing structure for reporting and paying royalty fees. Mr. Padden also claimed that there is no need for a statutory license for Internet retransmissions since broadcast programming is already being streamed on the Internet today through network-affiliate partnerships.

Mr. Padden's factually unsupported argument fails of its own accord. *First*, Capitol's position that its envisioned cable system meets the statutory definition of a "cable system" under

---

[4] *See, e.g.*, Testimony of Preston R. Padden, The Walt Disney Company, at 4 (acknowledging that the "111 license might be construed to encompass" "the use of Internet Protocol based technology to deliver a signal from a central facility over a truly closed network in a defined and limited geographic area—as cable systems do"); Program Supplier's Comments at 23 (acknowledging that "[r]etransmission of broadcast programming through closed distribution systems, using in whole or in part Internet Protocol technology" presents a different case if the service's "geographic scope" is limited, "retransmissions are simultaneous with the initial broadcast," and "FCC regulations assuring respect for exclusive rights" are "applied and enforced"); *see also* Testimony of Fritz E. Attaway, MPAA, at 5 (acknowledging that a delivery system using in whole or in part Internet Protocol technology "to offer retransmitted television programming on a closed, secure distribution system that offers complete protection against copying and redistribution of programs over the Internet" "could possibly avail itself of a compulsory license").

Section 111 is clearly correct. AT&T's argument for application of Section 111 to IPTV cable systems is identical to Capitol's—yet neither Mr. Padden nor others make any real criticism of AT&T's position. Moreover, no party disputes that Section 111 applies to digital broadcast signals, just as to analog broadcast signals, even though digital broadcast signals did not exist and were not—and could not have been—intended in 1976.[5]

Second, Capitol's cable system does use defined plant and a facility that is the functional equivalent of a "head end." Capitol's plant is the combination of interconnected wires and cables that make up the Internet, together with its hardware- and software-based security system. Its plant is every bit as closed and secure as a traditional cable system or satellite system. Its "head end" is the facility in which the broadcast signal is packetized using Internet Protocol and encrypted so it can be retransmitted to paying subscribers vetted by the security and verification procedures that are inseparable from the system itself.

Third, Capitol's cable system, which can and will only retransmit broadcast signals to paying subscribers, will comply with all FCC rules and local laws applicable to cable systems and will make the same reports and pay royalties according to the same schedules as every other cable system utilizing the Section 111 compulsory license.

Fourth, and finally, Mr. Padden's comment concerning current Internet streaming of broadcast programs, especially through network-affiliate partnerships, is hardly relevant to the legal issue of Section 111's applicability. Capitol applauds Disney's efforts in this regard, but none of that bears on the legal issue of Section 111's applicability to the facts. Moreover, Disney's streaming of network programming is not in real time, simultaneous with its over-the-air broadcast.

---

[5] *See Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License*, 71 FED. REG. 54948, 54949 (Sept. 20, 2006).

Thus, viewers who may be out of the home and without access to a traditional television set, but who do have access to television via their computer, are denied the ability to view local television broadcast programming in real time. Those viewers are unable to watch live sports events, important live news and public affairs programming, live award shows, and entertainment programming of timely significance. Capitol's goal is to have a broadcast station's *full* signal—all of the programming, network and non-network alike, together with all commercial announcements—delivered to a subscriber's computer in real-time, simultaneous with its broadcast, so that the subscriber can watch television programming on a totally different medium, thereby catering to consumers' appetite to watch programming whenever and however they like. Section 111's compulsory copyright license is needed in order to do this because the transaction costs in otherwise obtaining all of the necessary copyright licenses are prohibitive and will stifle this new delivery mechanism.

While Capitol understands the Copyright Office's previous reluctance to embrace Internet retransmissions of broadcast signals, those concerns have now been obviated by technological developments that did not exist five years ago, let alone ten. If a Section 111 license is to exist at all, then it should clearly apply to a "cable system" as Capitol has proposed. The security protections and geographical limitations proposed by Capitol are at least as effective (indeed, more so) as those employed by traditional cable and satellite systems.

Conclusion

For the foregoing reasons, as well as those stated in its initial Comments, Capitol respectfully urges the Copyright Office to acknowledge in its Report to Congress that the existing Section 111 compulsory license applies to the Internet retransmission of a television station's signal within its local market by a "cable system" that otherwise complies with the requirements for cable

systems under the Copyright Act and Communications Act. In the alternative, in the event the Copyright Office concludes otherwise, it is respectfully requested that the Copyright Office recommend to Congress that Section 111 be amended to permit Internet retransmission by "cable systems" of a broadcast signal within a station's local market, or, if necessary, that a new compulsory license be enacted by Congress for this purpose.

Respectfully submitted,

CAPITOL BROADCASTING COMPANY, INCORPORATED

Wade H. Hargrove

David Kushner

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Wachovia Capitol Center, Suite 1600
150 Fayetteville Street (27601)
P. O. Box 1800
Raleigh, North Carolina 27602
Telephone:(919) 830-0300
Facsimile: (919) 839-0304

Its Counsel

October 1, 2007