



Highlights of [GAO-12-75](#), a report to congressional committees

## Why GAO Did This Study

Most U.S. households have access to television broadcast programming through cable or satellite services. Cable and satellite operators offer this programming by providing a secondary transmission of the over-the-air programming from television broadcast stations. Three statutory licenses permit operators to offer copyrighted broadcast programming in return for paying a government-set royalty fee. Although Congress created the licenses as a cost-effective way for operators to clear the copyrights to the programming, some policymakers and others believe the licenses should be phased out and a market-based approach adopted.

The Satellite Television Extension and Localism Act of 2010 directed GAO to study and evaluate possible effects if Congress phased out the statutory licenses. This report addresses (1) the potential implications for the Federal Communications Commission's (FCC) regulations if such a phaseout were enacted; as well as how such a phaseout might affect (2) the market and regulatory environment and (3) consumer prices for cable and satellite television service and access to television programming. To address these objectives, GAO analyzed price, carriage, and royalty data; reviewed relevant laws; and interviewed industry stakeholders.

GAO provided FCC and the U.S. Copyright Office with a draft of this report. In response, both provided technical comments that were incorporated where appropriate.

View [GAO-12-75](#) or key components. For more information, contact Mark Goldstein at [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov) or (202) 512-2834.

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## STATUTORY COPYRIGHT LICENSING

### Implications of a Phaseout on Access to Television Programming and Consumer Prices Are Unclear

## What GAO Found

If Congress phased out the statutory licenses for broadcast programming, FCC's must carry and carry-one carry-all rules—which require cable and satellite operators, respectively, to carry the signals of qualified television broadcast stations upon request—could become impractical. The licenses allow operators to carry copyrighted programming without negotiating with individual copyright owners. Removing the licenses could leave operators in the paradoxical position of being required to transmit broadcast signals with copyrighted content for which they may be unable to acquire the rights. Industry stakeholders identified transaction costs and holdouts—which occur when certain copyright owners delay negotiations by demanding high compensation—as key factors that would make acquiring such rights impractical for operators absent the licenses. However, we identified a number of actions to mitigate these problems, such as requiring stations to act as copyright clearance agents for all the content on their broadcasts—a method known as sublicensing—as a condition of invoking the must carry and carry-one carry-all rules.

The effect of a phaseout on the market and regulatory environment is uncertain. Among other things, it is uncertain which timeline would be used to conduct a phaseout, and which method(s) for clearing copyrights for secondary transmissions of programming would replace the statutory licenses. For example, alternatives for clearing copyrights include sublicensing; collective licensing—where negotiations are conducted between organizations representing the copyright owners on one side and operators on the other; and direct licensing—where operators and copyright owners negotiate with each other. A phaseout could also provide an opportunity for other regulatory changes to the structure of the television industry through the modification of FCC regulations. For example, some stakeholders support the elimination of the network non-duplication rules, which protect a station's right to be the exclusive distributor of network programming within a specified zone, asserting that this would help move the distribution of copyright protected works toward a more free market setting.

The effect of a phaseout on consumer prices for cable and satellite television and consumer access to programming is unclear, because the post-phaseout market and regulatory environment is unclear. Several factors could impact consumer prices, including whether copyright royalty payments and transaction costs increase, and whether such cost increases would in turn lead to higher prices. Some stakeholders argued that any increases in operators' costs could increase consumer prices, but others argued that the cost increases would not be sufficient to impact prices. A phaseout could increase programming disruptions for consumers, but the overall impact on the nature and availability of programming is unclear. Under some scenarios, the effect on programming could be minimal, such as one where must carry and carry-one carry-all rules were modified and sublicensing were required; this would limit increases in transaction costs and holdouts, both of which would affect the availability of programming if unaddressed. However, other scenarios could have more dramatic effects. If all FCC regulations related to secondary transmissions of broadcast programming were eliminated, operators could bypass stations and acquire programming directly from copyright owners, which could decrease stations' advertising revenues and threaten their financial viability.