

AMENDMENT TO H.R. 848
OFFERED BY MR. CONYERS OF MICHIGAN

Page 2, beginning on line 1, strike “Equitable treatment for terrestrial broadcasts” and insert “Establishing equitable treatment for terrestrial, cable, satellite, and internet services”.

Page 2, after line 18, insert the following:

1 (d) ENSURING PLATFORM PARITY.—Section 114(f)
2 of title 17, United States Code, is amended—

3 (1) by striking paragraph (1);

4 (2) by redesignating paragraphs (2), (3), (4),
5 and (5) as paragraphs (1), (2), (3), and (4), respec-
6 tively; and

7 (3) in paragraph (1), as redesignated—

8 (A) in subparagraph (A), by striking
9 “under chapter 8” and all that follows through
10 the end of the third sentence and inserting
11 “under chapter 8 shall determine reasonable
12 rates and terms of royalty payments for trans-
13 missions subject to statutory licensing under
14 subsection (d)(2) during 5-year periods begin-
15 ning on January 1 of the second year following

1 the year in which the proceedings are to be
2 commenced, except in the case of a different
3 transitional period provided under section
4 6(b)(3) of the Copyright Royalty and Distribu-
5 tion Reform Act of 2004, or such other period
6 as the parties may agree.”;

7 (B) in subparagraph (B)—

8 (i) in the second sentence, by striking
9 “eligible nonsubscription transmission”;
10 and

11 (ii) in the third sentence, by striking
12 “eligible nonsubscription services and new
13 subscription” and all that follows through
14 “subparagraph (A)” and inserting “serv-
15 ices, in addition to the objectives set forth
16 in subparagraphs (A), (B), and (C) of sec-
17 tion 801(b)(1), the Copyright Royalty
18 Judges may consider the rates and terms
19 for comparable types of services and com-
20 parable circumstances under voluntary li-
21 cense agreements. Notwithstanding section
22 801(b)(1), the provisions of section
23 801(b)(1)(D) shall not be taken into ac-
24 count by the Copyright Royalty Judges in
25 any proceeding under this section”;

1 (C) by striking subparagraph (C) and in-
2 serting the following:

3 “(C) The procedures under subparagraphs
4 (A) and (B) shall also be initiated pursuant to
5 a petition filed by any copyright owner of sound
6 recordings or any transmitting entity indicating
7 that a new type of service on which sound re-
8 cordings are performed is or is about to become
9 operational, for the purpose of determining rea-
10 sonable terms and rates of royalty payments
11 with respect to such new type of service for the
12 period beginning with the inception of such new
13 type of service and ending on the date on which
14 the royalty rates and terms for preexisting serv-
15 ices most recently determined under subpara-
16 graph (A) or (B) and chapter 8 expire, or such
17 other period as the parties may agree.”.

18 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

19 (1) SECTION 114(F).—Section 114(f) of title 17,
20 United States Code (as amended by subsection (d)),
21 is further amended—

22 (A) in paragraph (1)(B), in the first sen-
23 tence, by striking “paragraph (3)” and insert-
24 ing “paragraph (2)”; and

1 (B) in paragraph (4)(C), by striking
2 “under paragraph (4)” and inserting “under
3 paragraph (3)”.

4 (2) SECTION 114(J).—Section 114(j)(6) of title
5 17, United States Code, is amended by striking “re-
6 transmissions of broadcast transmissions” and in-
7 serting “broadcast transmissions and retrans-
8 missions of broadcast transmissions”.

9 (3) SECTION 804.—Section 804(b)(3)(C) of title
10 17, United States Code, is amended—

11 (A) in clause (i), by striking “and
12 114(f)(2)(C)”;

13 (B) in clause (iii)(II), by striking
14 “114(f)(4)(B)(ii)” and inserting
15 “114(f)(3)(B)(ii)”; and

16 (C) in clause (iv), by striking “or
17 114(f)(2)(C), as the case may be”.

Page 2, strike line 19 and all that follows through
page 3, line 24, and insert the following:

1 **SEC. 3. TREATMENT FOR MINORITY, FEMALE, RELIGIOUS,**
2 **RURAL, SMALL, NONCOMMERCIAL, PUBLIC,**
3 **EDUCATIONAL, AND COMMUNITY STATIONS**
4 **AND CERTAIN USES.**

5 (a) MINORITY, FEMALE, RELIGIOUS, RURAL, SMALL,
6 NONCOMMERCIAL, PUBLIC, EDUCATIONAL, AND COMMU-
7 NITY RADIO STATIONS.—

8 (1) IN GENERAL.—Section 114(f)(1) of title 17,
9 United States Code, as redesignated by section 2(d),
10 is amended by adding at the end the following:

11 “(D)(i) Notwithstanding the provisions of
12 subparagraphs (A) through (C), each individual
13 terrestrial broadcast station that has gross rev-
14 enues within a range specified in clause (ii) may
15 elect to pay for its over-the-air nonsubscription
16 broadcast transmissions a royalty fee as pro-
17 vided in clause (ii), in lieu of the amount such
18 station would otherwise be required to pay
19 under this paragraph. Such royalty fee shall not
20 be taken into account in determining royalty
21 rates in a proceeding under chapter 8, or in any
22 other administrative, judicial, or other Federal
23 Government proceeding.

24 “(ii) As provided in clause (i), each indi-
25 vidual terrestrial broadcast station that has
26 gross revenues in any calendar year of—

1 “(I) less than \$100,000 may elect to
2 pay for its over-the-air nonsubscription
3 broadcast transmissions a royalty fee of
4 \$500 per year;

5 “(II) at least \$100,000 but less than
6 \$500,000 may elect to pay for its over-the-
7 air nonsubscription broadcast trans-
8 missions a royalty fee of \$2,500 per year;
9 and

10 “(III) at least \$500,000 but less than
11 \$1,250,000 may elect to pay for its over-
12 the-air nonsubscription broadcast trans-
13 missions a royalty fee of \$5,000 per year.

14 “(E)(i) Notwithstanding the provisions of
15 subparagraphs (A) through (C), each individual
16 terrestrial broadcast station that is a public
17 broadcasting entity as defined in section 118(f)
18 and that has gross revenues within a range
19 specified in clause (ii) may elect to pay for its
20 over-the-air nonsubscription broadcast trans-
21 missions a royalty fee as provided in clause (ii),
22 in lieu of the amount such station would other-
23 wise be required to pay under this paragraph.
24 Such royalty fee shall not be taken into account
25 in determining royalty rates in a proceeding

1 under chapter 8, or in any other administrative,
2 judicial, or other Federal Government pro-
3 ceeding.

4 “(ii) As provided in clause (i), each indi-
5 vidual terrestrial broadcast station that is a
6 public broadcasting entity as defined in section
7 118(f) and has gross receipts in any calendar
8 year of—

9 “(I) less than \$100,000 may elect to
10 pay for its over-the-air nonsubscription
11 broadcast transmissions a royalty fee of
12 \$500 per year; and

13 “(II) \$100,000 or more may elect to
14 pay for its over-the-air nonsubscription
15 broadcast transmissions a royalty fee of
16 \$1,000 per year.

17 “(F) Notwithstanding the provisions of
18 subparagraphs (A) through (E), each individual
19 terrestrial broadcast station that had total
20 gross revenues during the 4 full calendar quar-
21 ters immediately preceding the date of enact-
22 ment of the Performance Rights Act of—

23 “(i) less than \$5,000,000 shall not be
24 required to pay a royalty under this para-
25 graph during the 2 years immediately fol-

1 lowing the date of enactment of the Per-
2 formance Rights Act; and

3 “(ii) \$5,000,000 or more shall not be
4 required to pay a royalty under this para-
5 graph during the 1 year immediately fol-
6 lowing the date of enactment of the Per-
7 formance Rights Act.

8 The provisions of this subparagraph shall not
9 be taken into account in determining royalty
10 rates in a proceeding under chapter 8, or in any
11 other administrative, judicial, or other Federal
12 Government proceeding.”.

Page 4, line 2, strike “114(f)(2)” and insert
“114(f)(1)”.

Page 4, line 22, strike “114(f)(2)(B) of title 17,
United States Code” and insert “114(f)(1)(B) of title 17,
United States Code, as redesignated by section 2(d)”.

Page 7, line 3, strike “(6)” and insert “(5)”.

Page 10, line 21, strike “and”.

page 10, after line 21, insert the following:

13 (2) in paragraph (2)(A), by striking “digital”;
14 and

Page 10, line 22, strike “(2)” and insert “(3)”.

Page 11, after line 16, add the following new sections:

1 **SEC. 7. NO EFFECT ON LOCAL COMMUNITIES.**

2 Section 114(f) of title 17, United States Code, (as
3 amended by section 2(d)) is further amended by adding
4 at the end the following new paragraph:

5 “(6) Neither this subsection nor the payment of
6 royalties by broadcasters hereunder shall affect in
7 any respect the public interest obligations of a
8 broadcaster to its local community under part 73 of
9 title 47 of the Code of Federal Regulations.”.

10 **SEC. 8. PRESERVATION OF DIVERSITY.**

11 Section 114(f) of title 17, United States Code, (as
12 amended by section 7) is further amended by adding at
13 the end the following new paragraph:

14 “(7) PRESERVATION OF DIVERSITY.—The
15 Copyright Royalty Judges shall, in making deter-
16 minations or adjustments of rates and terms of
17 copyright royalty payments for public performances
18 of sound recordings, consider evidence on the effect
19 on religious, minority-owned, female-owned, small,
20 and noncommercial broadcasters, as well as reli-
21 gious, minority or minority-owned, and female or fe-
22 male-owned royalty recipients.”.

