

REAUTHORIZATION OF THE SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT

HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

FEBRUARY 24, 2009

Serial No. 111-5



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE

64-374 PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND COMMERCE

HENRY A. WAXMAN, California
Chairman

JOHN D. DINGELL, Michigan
Chairman Emeritus

EDWARD J. MARKEY, Massachusetts

RICK BOUCHER, Virginia

FRANK PALLONE, Jr., New Jersey

BART GORDON, Tennessee

BOBBY L. RUSH, Illinois

ANNA G. ESHOO, California

BART STUPAK, Michigan

ELIOT L. ENGEL, New York

GENE GREEN, Texas

DIANA DEGETTE, Colorado

Vice Chairman

LOIS CAPPS, California

MICHAEL F. DOYLE, Pennsylvania

JANE HARMAN, California

TOM ALLEN, Maine

JANICE D. SCHAKOWSKY, Illinois

HILDA L. SOLIS, California

CHARLES A. GONZALEZ, Texas

JAY INSLEE, Washington

TAMMY BALDWIN, Wisconsin

MIKE ROSS, Arkansas

ANTHONY D. WEINER, New York

JIM MATHESON, Utah

G.K. BUTTERFIELD, North Carolina

CHARLIE MELANCON, Louisiana

JOHN BARROW, Georgia

BARON P. HILL, Indiana

DORIS O. MATSUI, California

DONNA M. CHRISTENSEN, Virgin Islands

KATHY CASTOR, Florida

JOHN P. SARBANES, Maryland

CHRISTOPHER MURPHY, Connecticut

ZACHARY T. SPACE, Ohio

JERRY McNERNEY, California

BETTY SUTTON, Ohio

BRUCE BRALEY, Iowa

PETER WELCH, Vermont

JOE BARTON, Texas

Ranking Member

RALPH M. HALL, Texas

FRED UPTON, Michigan

CLIFF STEARNS, Florida

NATHAN DEAL, Georgia

ED WHITFIELD, Kentucky

JOHN SHIMKUS, Illinois

JOHN B. SHADEGG, Arizona

ROY BLUNT, Missouri

STEVE BUYER, Indiana

GEORGE RADANOVICH, California

JOSEPH R. PITTS, Pennsylvania

MARY BONO MACK, California

GREG WALDEN, Oregon

LEE TERRY, Nebraska

MIKE ROGERS, Michigan

SUE WILKINS MYRICK, North Carolina

JOHN SULLIVAN, Oklahoma

TIM MURPHY, Pennsylvania

MICHAEL C. BURGESS, Texas

MARSHA BLACKBURN, Tennessee

PHIL GINGREY, Georgia

STEVE SCALISE, Louisiana

SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET

RICK BOUCHER, Virginia

Chairman

EDWARD J. MARKEY, Massachusetts

BART GORDON, Tennessee

BOBBY L. RUSH, Illinois

ANNA G. ESHOO, California

BART STUPAK, Michigan

DIANA DeGETTE, Colorado

MICHAEL F. DOYLE, Pennsylvania

JAY INSLEE, Washington

ANTHONY D. WEINER, New York

G.K. BUTTERFIELD, North Carolina

CHARLIE MELANCON, Louisiana

BARON P. HILL, Indiana

DORIS O. MATSUI, California

DONNA M. CHRISTENSEN, Virgin Islands

KATHY CASTOR, Florida

CHRISTOPHER S. MURPHY, Connecticut

ZACHARY T. SPACE, Ohio

JERRY McNERNEY, California

PETER WELCH, Vermont

JOHN D. DINGELL, Michigan (ex officio)

FRED UPTON, Michigan

Ranking Member

J. DENNIS HASTERT, Illinois

CLIFF STEARNS, Florida

NATHAN DEAL, Georgia

BARBARA CUBIN, Wyoming

JOHN SHIMKUS, Illinois

HEATHER WILSON, New Mexico

CHARLES W. "CHIP" PICKERING,

Mississippi

VITO FOSELLA, New York

GEORGE RADANOVICH, California

MARY BONO MACK, California

GREG WALDEN, Oregon

LEE TERRY, Nebraska

MIKE FERGUSON, New Jersey

CONTENTS

	Page
Hon. Rick Boucher, a Representative in Congress from the Commonwealth of Virginia, opening statement	1
Hon. Cliff Stearns, a Representative in Congress from the State of Florida, opening statement	4
Hon. Henry A. Waxman, a Representative in Congress from the State of California, opening statement	5
Hon. John Shimkus, a Representative in Congress from the State of Illinois, prepared statement	6
Hon. Anna G. Eshoo, a Representative in Congress from the State of California, opening statement	7
Hon. Zachary T. Space, a Representative in Congress from the State of Ohio, opening statement	8
Hon. Greg Walden, a Representative in Congress from the State of Oregon, opening statement	8
Hon. Doris O. Matsui, a Representative in Congress from the State of California, opening statement	10
Hon. Nathan Deal, a Representative in Congress from the State of Georgia, opening statement	11
Hon. Lee Terry, a Representative in Congress from the State of Nebraska, opening statement	12
Hon. Mike Ross, a Representative in Congress from the State of Arkansas, opening statement	12
Hon. Marsha Blackburn, a Representative in Congress from the State of Tennessee, opening statement	13
Hon. Edward J. Markey, a Representative in Congress from the Commonwealth of Massachusetts, opening statement	14
Hon. John D. Dingell, a Representative in Congress from the State of Michigan, opening statement	152
Hon. G.K. Butterfield, a Representative in Congress from the State of North Carolina, opening statement	153
WITNESSES	
Cynthia M. Lummis, a Representative in Congress from the State of Wyoming	8
Prepared statement	8
Charles W. Ergen, Chairman, President, and Chief Executive Officer of DISH Network Corporation	15
Prepared statement	18
Answers to submitted questions	154
Martin D. Franks, Executive Vice President, Policy, Planning, and Government Relations, CBS Corporation	22
Prepared statement	24
Bob Gabrielli, Senior Vice President, Broadcasting Operations and Distribution, DIRECTV, Inc.	39
Prepared statement	41
Answers to submitted questions	168
Willard Rowland, President and CEO, Colorado Public Television, on behalf of the Association of Public Television Stations	56
Prepared statement	58
Answers to submitted questions	180
K. James Yager, CEO, Barrington Broadcasting Group, LLC, on behalf of the National Association of Broadcasters	66
Prepared statement	68
Answers to submitted questions	186

VI

	Page
Gigi B. Sohn, President and Co-founder, Public Knowledge, on behalf of Public Knowledge, Consumers Union, and Free Press	107
Prepared statement	109
W. Kenneth Ferree, President, Progress and Freedom Foundation	118
Prepared statement	120

REAUTHORIZATION OF THE SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZA- TION ACT

TUESDAY, FEBRUARY 24, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY,
AND THE INTERNET,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2123, Rayburn House Office Building, Hon. Rick Boucher (chairman of the subcommittee) presiding.

Present: Representatives Boucher, Markey, Eshoo, Stupak, DeGette, Weiner, Melancon, Matsui, Christensen, Castor, Murphy of Connecticut, Space, McNerney, Waxman (ex officio), Stearns, Deal, Shimkus, Buyer, Radanovich, Walden, Terry, Rogers, Blackburn, and Barton (ex officio).

Also Present: Representative Ross.

Staff Present: Amy Levine, policy coordinator; Roger Sherman, senior counsel; Tim Powderly, counsel; Shawn Chang, counsel; Philip Murphy, legislative clerk; Neil Fried, minority senior counsel; Garrett Golding, minority policy analyst; Will Carty, minority professional staff member; and Amy Bender, minority detailee.

OPENING STATEMENT OF HON. RICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. BOUCHER. The subcommittee will come to order. On the occasion of the first order of this subcommittee, I want to welcome all of the members of the subcommittee and encourage each member to share with me your ideas for matters that we should place on the subcommittee's agenda. It is my determination that the subcommittee will operate in a completely bipartisan fashion, and I intend to consult colleagues on both sides of the aisle about each matter that the subcommittee will address. So please give me the benefits of what you would like for the subcommittee to achieve and share those suggestions with me over the coming several weeks.

The full agenda for the subcommittee is still under construction, but I can announce this morning that the next hearing for the subcommittee will be on March 12th, during which we will begin our work on universal service reform, and that is a subject on which I hope that we can report legislation to the full committee during

the coming months. After the hearing on March the 12th, the pace for having hearings for this subcommittee will accelerate.

The subcommittee has a longstanding tradition of bipartisanship, and over 2 decades, I have enjoyed an ongoing partnership across a range of issues with the ranking Republican member of this subcommittee, the gentleman from Florida, Mr. Stearns. We have been lead sponsors of privacy legislation in past years, and in this Congress we may well consider bringing that issue forward again as well as other matters relating to information technology policy.

And so this morning as I make general opening comments, I want to say that I very much welcome the position of Mr. Stearns as the ranking Republican on this subcommittee, given the long experience and technology-related issues that he brings to this work and to that position, and I very much look forward to our work together as I do with all members of the subcommittee on both sides of the aisle.

Today the subcommittee takes the first step is reauthorizing the Satellite Home Viewer Act, which sets forth the terms pursuant to which satellite carriers retransmit distance signal broadcast programming. Certain provisions of the Communications and Copyright Acts expire at the end of 2009, making reauthorization of the Home Satellite Viewer Act and that compulsory license must-pass legislation during the course of this year.

This year marks more than 2 decades since Congress created the distance signal compulsory copyright license in 1988 and 10 years since it created the local-into-local compulsory license in the 1999 Satellite Home Viewer Improvement Act. Since 1988, direct broadcast satellite has grown to be a robust competitor to cable. Today, nearly one-third of all homes subscribing to a multi-channel video programming service choose a DBS provider. And DIRECTV and EchoStar are the second and third largest multi-channel video programming service providers in the Nation respectively.

This increase in a competitive video programming marketplace would not have been possible had it not been for a series of acts of this Congress, including the two licenses to which I have previously referred, as well as the program access rules that were adopted in the early 1990s.

Let me state at the outset my desire that Congress proceed with the reauthorization before us in the most straightforward manner possible. I do not wish for us to get sidetracked by collateral issues, such as retransmission consent reform that are relevant to all multi-channel video platforms, not just to satellite platforms.

However, there are several matters that I think we cannot avoid discussing in the hearing today and as we continue our work on this reauthorization. One is whether satellite carriers should provide local service in all 210 designated market areas nationwide as a condition of relying on the Section 122 local-into-local compulsory license.

As I mentioned earlier, the Section 122 license was created 10 years ago. At that time, due primarily to the severe capacity constraints that were faced by satellite carriers in part because spot beam technology had not been at that time widely deployed, Congress allowed satellite carriers to roll out local service on a market-by-market basis.

Today, most of the country is served with local-into-local service. Today DIRECTV relies on that Section 122 license to offer local service in 150 markets and EchoStar provides local service in 178 markets. But about 30 markets, among the 210 nationwide, do not have local-into-local coverage at all. Most of the DMAs that lack local-into-local service are in rural areas, such as the congressional district that I represent. And, in fact, constituents in one of the four DMAs that comprise my congressional district still cannot get their local stations by way of satellite, a fact with which I am reacquainted on a regular basis as constituents in that area complain to me vocally whenever I am in that region about their inability to get local signals delivered by satellite.

While I understand that the numbers of subscribers in these areas are small, these households which often cannot receive local signals over the air because the DMAs in which they reside are large or because of terrain issues—many of these regions are also mountainous—these individuals are very vocal in their desire to receive the opportunities that those in more densely plated portions of the Nation presently have.

Another matter for discussion is whether residents in one DMA should be able to receive broadcast programming from an adjacent DMA. DMAs in 45 States straddle State lines, which means residents in one State are assigned to a DMA that is primarily located at a neighboring State. For many, in that kind of situation, the local news, sports and public safety information they receive from the stations in their designated DMA actually derive from another State and/or are more concentrated on events that occur in that other State.

So, one possible arrangement might be to allow for the provision of adjacent market signals in those situations with the people in the State that has a minority of the viewers in that straddle situation being able to subscribe to the adjacent market signals of the adjacent market within the State in which those individuals live.

In past years, the law has been modified to allow adjacent market signal transmission in certain specified markets. Today we begin a discussion about the potential for enacting a general rule on adjacent market signals for situations where the DMAs straddle State lines, about 45 markets in total across the country.

The Energy and Commerce Committee and the House Judiciary Committee share jurisdiction over the Home Satellite Viewer Act. And as a member of both of those committees, it is my desire that the subcommittees work closely together and create a common text which both committees can then process. In fact, the Judiciary Committee has its first hearing tomorrow morning on this subject, and we are already in discussions, senior staff to senior staff, about the kinds of coordination we could achieve in the work between these two committees.

I want to welcome our witnesses this morning, and I want to thank each of them for taking the time to share their thoughtful comments with us. The prepared testimony is excellent. We appreciate your providing that, and after we have had an opportunity for other members to make their statements we will turn to your testimony.

In accordance with the rules of the committee, any member who decides to waive an opening statement will have 2 minutes added to the time that member can propound questions to our witnesses this morning.

It is my pleasure now to recognize the ranking Republican member of our subcommittee about whom I have already made some welcoming remarks, the gentleman from Florida, Mr. Stearns.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning. And thank you very much, Mr. Chairman, for having this hearing. Obviously we are all excited. Let me congratulate you on becoming the new chairman of this very important committee. As you pointed out, it has had a long history of bipartisanship. So I look forward to working with you. You have the capability, you have the interest and the passion for telecommunications and Internet. So you and I have worked together on other things, so I look forward to this great opportunity to work again with you on this important committee.

Obviously we live in exciting times. Advances in broadband technology, health care, and how we produce and distribute electricity will spur long-term economic growth, increase international competitiveness and improve the quality of life for all Americans. Frankly, we are only limited by our imagination.

The topic of today's hearing, the Satellite Home Viewers Act, simply allows satellite companies to deliver broadcast television signals. The act should be updated and made more consumer friendly. Its antiquated provisions are frustrating television viewers. At a minimum we should revise the law to reflect the end of analog broadcasting as well as to allow willing satellite operators and broadcasters to offer in State signals to households whose local markets include only out-of-State stations. We should resist calls to expand the carry-one/carry-all requirements governing satellite delivery of local broadcast stations. Doing so would not only be bad policy, it would be unconstitutional.

My colleagues, over the past 20 years, technology has progressed beyond what most of us have ever or could have imagined. Twenty years ago, the Internet was used as a mere fraction of what it is today. There are other signs of how much things have changed.

For example, let me just give you this little statistic. In the United States today, more people earn their living on eBay than are employed by the entire steel industry. Furthermore, in 1989, all of us remember the Tandy 5000. It was billed as the most powerful computer ever built. It had a lightning fast 20MHz processor and a whopping 2 megabytes of RAM. All of this cutting edge technology cost you almost \$9,000. Monitor and mouse were not included. Now, if you take and make in today's dollars, that would be equivalent to \$15,000. So we have seen how things have changed so dramatically.

This brings us to the subject of today's hearing. I am looking forward to this committee moving forward on the Satellite Home Viewer Act Reauthorization. This act has served multiple times to advance competition and frankly to give consumers more choices. I anticipate exploring market-based avenues for satellite providers

to continue adding even more local stations because all of us know local content is essential and a customer's desire.

I would add that I am concerned about some interest in requirements that satellite TV providers serve all 210 media markets. Now, such initiative not only challenges the laws of physics, but also challenges how one is able to go to the capital and credit markets to achieve and accomplish this goal. A better approach, I believe, is to make smaller markets more attractive by allowing them to be carried as an adjacent local market in addition to the market that Nielsen determines that you live in. That is the rational way to incentivize more carriage and one that doesn't even go as far as the Internet distribution model that the broadcast networks are already presently implementing.

The video marketplace has never been more competitive. In the past cable was the only pay TV option. Fifteen years ago, cable had 95 percent of the pay TV market. Now that share has dropped to 68 percent. More than 32 million consumers now subscribe to a service other than cable. After Comcast, the second and third largest pay TV providers are DIRECTV and DISH Network. Phone companies are aggressively stealing subscribers with their video offerings. In fact, both AT&T and Verizon would rank in the top 10 of largest pay TV providers today.

Furthermore, local and national programmers alike are offering content to consumers over the Internet either on Web sites for free or simply through services such as iTunes.

So as you can see, Mr. Chairman, consumers have a number of choices, and this competition will lead to new products and to new better services. We no longer have the justification to deny America's households access to the programming of their choice, subject only to free market negotiations by distributors and the content owners. Indeed, we should be reducing video regulation in this competitive environment, not increasing it. We need to innovate and not regulate.

So I look forward to the hearing, Mr. Chairman, and I look forward again with working with you on these important matters. Thank you.

Mr. BOUCHER. Thank you very much, Mr. Stearns. The gentleman from California, Mr. Waxman, chairman of the full Energy and Commerce Committee, is recognized for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman. Today's hearing marks the first step of the 111th Congress toward its required reauthorization of the Satellite Home Viewer Extension and Reauthorization Act, known as SHVERA. Today is also the first hearing of this newly constituted Subcommittee on Communications, Technology, and the Internet. The subcommittee has a new name, a new chairman and some new members. And I would like to congratulate Mr. Boucher on his chairmanship and welcome the new members to the subcommittee.

Mr. Boucher has a long history on this subcommittee and an exceptional command of telecommunications issues, and I look for-

ward to working closely with him and Ranking Member Cliff Stearns and relying on their expertise as we consider this reauthorization.

SHVERA is a complicated bill that grew out of competing policy goals promoting competition for pay television service and protecting our nationwide system of free over the air broadcast television. Achieving these competing goals especially during the time of dramatic change in the communications marketplace requires a careful balancing of interests, and the panel before us today represents a diverse group of stakeholders. So we are all anxious to hear their testimony and we very much appreciate their participation.

Thank you very much, Mr. Chairman, for this opportunity to say a few remarks and to express my desire to work with you and other members of this committee as we fashion this legislation.

Mr. BOUCHER. Thank you very much, Chairman Waxman, and I appreciate your kind words. And I look forward very much to working with you as well.

The gentleman from Illinois, Mr. Shimkus, is recognized for 2 minutes.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman, and I too am excited about your chairmanship of this committee. And let me just say if you can have some hearings in regular order you may be able to set the example for the rest of this Congress. So I am applauding your attempt to do that.

Let me also report on the digital transition. Many of my broadcasters have turned off their analog signal, which I applaud. And we have heard very few complaints. In fact, I think my D.C. office got one call. I know one broadcaster may have had 40 calls and that was just to set the scan button on the digital receiver. I am very excited to report that.

Yesterday I was on a major St. Louis morning talk show and the host there, a guy, McGraw Milhaven, and I have had a 10-year relationship. And it started with the debate of SHIVA, which he was really a late night guy, I think 1:00 in the morning, and had followed in the local debate, was pleased with our passage, saw the benefits and we have been friends ever since. So I mentioned it to him yesterday that I was going back to Washington to start the debate on reauthorization, which brings me to the aspect of reauthorization.

We know it ties in with the digital transition and analog. There has to be some changes because of that technology. But I would also just caution us that we be careful not to harm the multiple options that consumers have today. It is truly a phenomenon of all the availability to view and compete and receive signals from a multitude of area. It is very important in my congressional district that we have the local in the local for the public safety debate. But again, I would just caution that we move diligently, and with your promise to have hearings and move through regular order, I think that is the way in which we address the minute details of bills which could be very, very harmful.

I thank you and yield back my time.

Mr. BOUCHER. Thank you very much, Mr. Shimkus. The gentlelady from California, Ms. Eshoo, is recognized for 2 minutes.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman. First of all, my congratulations to you on assuming the chairmanship and the gavel of this really wonderful and important subcommittee. I have always enjoyed your insights and I respect them relative to technology and telecommunications issues, and I look forward to working with you and all of my colleagues on this subcommittee.

I am very pleased that we are starting out with the discussion of this reauthorization early so that we can flush out all of the issues surrounding it. The week before last, many members were visited by their local public television stations. They expressed their concern that access to local public television stations' digital programming is denied to almost half of all direct broadcast satellite households. That is nearly 12 million households in our country because one major DBS provider has failed to negotiate a long-term deal with public television.

I am reintroducing legislation in this Congress, as I did in the last, the Satellite Consumers Access to Public Television Digital Programming Act—it is a mouthful—to require DBS carriage of all public television stations, multicast digital stations. I am very pleased that DIRECTV, the Association for Public Television Stations, and PBS announced that they reached an agreement whereby DIRECTV would carry public television stations' digital signals. I think it is unacceptable for any household to be denied access to public television's digital programming.

So I am looking forward to questioning the witnesses certainly DISH Network, and I appreciate meeting Mr. Ergen this morning. I think the bill would be unnecessary if they would just come to a similar agreement as their competitor.

So thank you, Mr. Chairman, again. And congratulations and I look forward to a very full 111th Congress where we will really distinguish ourselves on behalf of our constituents. Thank you.

Mr. BOUCHER. Thank you very much, Ms. Eshoo. The ranking Republican member of the full Energy and Commerce Committee, the gentleman from Texas, Mr. Barton, is recognized for 5 minutes.

Mr. BARTON. Mr. Chairman, I won't take too long. I appreciate you doing this hearing. I think we do need to reauthorize the satellite home viewer extension and reauthorization legislation, and I think this may be an issue that we can work together on. So I am supportive and look forward to hearing from the witnesses.

Mr. BOUCHER. All happy thoughts. Thank you very much, Mr. Barton.

The gentleman from Michigan, Mr. Stupak, is recognized for 2 minutes.

Mr. STUPAK. Thank you, Mr. Chairman. Congratulations being chairman of this committee. I want to waive my time and use it for questioning.

Mr. BOUCHER. The gentleman from Michigan waives his opening statement. The gentlelady from Colorado, Ms. DeGette, is recognized for 2 minutes. She is not here, is she? The gentlelady from the Virgin Islands, Mrs. Christensen, is recognized for 2 minutes.

Ms. CHRISTENSEN. Thank you, Mr. Chairman. I will waive my opening statements.

Mr. BOUCHER. Mrs. Christensen waives her opening statement. The gentleman from Ohio, Mr. Space, is recognized for 2 minutes.

**OPENING STATEMENT OF HON. ZACHARY T. SPACE, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Mr. SPACE. Thank you, Mr. Chairman. I represent the 18th Congressional District in Ohio, a district that spans 16 counties and covers almost a fifth of the State's geographic area. This district is composed of small towns and villages and rural areas and lies in the hills of Appalachia. Our largest town and throughout the district is Zanesville, Ohio, with about 25,000 people. And perhaps of most interest pertaining to today's hearing Ohio's 18th Congressional District encompasses five designated market areas. The Columbus market covers the majority of our counties, but in the north we pick up Cleveland and Akron. To the south, two of my counties are actually part of the Charleston-Huntington, West Virginia market. In the east two more of my counties are in the Wheeling-Steubenville market. And finally, Muskingum County is the sole county comprising the Zanesville market.

This scenario makes the reauthorization of the Satellite Home Viewer Act of particular relevance to me and my constituents. I am looking forward to working with the subcommittee to address the complicated issues, many of which you mentioned in your opening statement, Mr. Chairman, that we will be talking about further today and specifically the local-into-local component of the legislation as the Wheeling-Steubenville market is one of a few dozen, I think 30, DMAs without local-into-local service.

But thank you, Mr. Chairman. I yield back.

Mr. BOUCHER. Thank you very much, Mr. Space. The gentleman from Georgia, Mr. Deal, is recognized for—I am sorry. The gentleman from Oregon, Mr. Walden, is recognized for 2 minutes.

**OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF OREGON**

Mr. WALDEN. Thank you, Mr. Chairman, and I appreciate your having this hearing. I will apologize up front. We also have an energy hearing going on at the same time. So I am going to have to bounce back and forth.

At the outset, Mr. Chairman, I would like unanimous consent to insert into the record an opening statement from our colleague from Wyoming, Mrs. Lummis, she would like in there regarding satellite issues.

Mr. BOUCHER. Without objection.

[The prepared statement of Mrs. Lummis follows:]

STATEMENT OF CYNTHIA M. LUMMIS

I greatly appreciate the opportunity to address this subcommittee on the issue of Designated Market Area (DMA) reform. While only one small part of the Satellite

Home Viewer Extension and Reauthorization Act, DMA reform is critical for the advancement of local television content.

The advent of satellite television ushered in a new era of video connectivity that for rural areas like my home state, made what had been previously impossible—multiple channel options and a clear picture—finally possible. This subcommittee deserves a great deal of praise for setting up a statutory and regulatory environment that has helped to protect local broadcasts while simultaneously allowing the satellite industry to corner 30 percent of the television viewing market. Not everything has worked perfectly, however. These are truly complicated issue, and they continue to change with each new technological breakthrough. As video technology evolves across all platforms, we can agree that the statutory and regulatory framework that governs them should evolve as well.

Ensuring that local broadcasts and local content remained viable was an early goal of this subcommittee, and it continues to be a goal we all share. However, enough time has elapsed since syndicated exclusivity and network non-duplication rules were attached to each DMA that we have begun to understand the unintended consequences of those actions. The decision to use Neilson Media's local market area map to determine the boundaries of local market areas was not without merit. After all, the DMA system was intended to link together television viewers by geographic and cultural affinities, and Neilson's map accomplishes that goal in some cases.

Unfortunately, it is also true that much of the DMA map makes little sense neither geographically, nor culturally. The problem is national, but Wyoming is the poster child of what is wrong with the DMA system. Sixteen of our twenty three counties are part of DMAs that originate out-of-state. Put differently, over 50 percent of Wyoming's television households are not eligible to receive Wyoming-originated programming, including news, weather, sports and emergency programming. I believe, and Wyoming's example illustrates, that the DMA system is an impediment to localism, not an aid.

I am thankful both to Representative Mike Ross (D-AR), and to my predecessor, Representative Barbara Cubin (R-WY), who are responsible for early, important work on this issue. I am eager to continue that work with this subcommittee to craft a solution that retains the important and necessary work of our local broadcasts and content. I urge this subcommittee to take the necessary steps to ensure that television viewers in my state and around the Nation have access to their home state's television programming.

Mr. WALDEN. And I would concur with my colleague from Illinois, Mr. Shimkus, two of the markets that serve my district also converted to digital, although one station in each market remained analog because of their corporate ownership decisions. We didn't have a signal phone call in my office about that conversion. And yes, we are listed in the phone book. The managers of the stations whom I spoke to repeatedly—in fact, I was in one of the markets when it occurred—they had a couple hundred phone calls. Predominantly it was about plugging in the box, rescanning the channels, and that was it.

So I hope in the very near future, Mr. Chairman, we might have an oversight hearing on this issue, because I am not convinced that we need to spend 90 million on community organizers and another 650 million on converter boxes. It appears in markets where the conversion has taken place it has done so rather seamlessly and with little problem.

In terms of this legislation, I look forward to working with you on the reauthorization of the Satellite Home Viewer Act. I know that I am not alone in concern out in the country about the local-into-local issue. It seems like when you represent a rural district with rural communities you are always sort of the last one considered, and I have got areas, for example, in Bend, Oregon, that still have not been able to get local-into-local. This is not a subject that you all are unaware of certainly, but it is one that I feel pretty strongly about.

So I hope you will be able to address that in your comments or at some point in this legislation because it seems to me whether you live in New York or Bend, Oregon or Medford, Oregon, when it comes to Federal law you ought to be treated the same.

So, Mr. Chairman, I look forward to working with you on this, and I yield back.

Mr. BOUCHER. Thank you very much, Mr. Walden. The gentlelady from Colorado, Ms. DeGette, is recognized for 2 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman. Mr. Chairman, I waive my opening statement in favor of extra time during questions. But I do want to mention that underscoring the fact that Colorado is ground zero for telecommunications, I have two constituents on this panel who I would like to welcome, Charlie Ergen, who will be testifying for DISH Network and Rick Rowland, who will be testifying on behalf of public TV. He is the CEO of Colorado Public Television. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much.

Ms. DEGETTE. And welcome to both of our witnesses.

Mr. BOUCHER. Thank you very much, Ms. DeGette. Two minutes will be added to your questioning time. The gentleman from Louisiana, Mr. Melancon, is recognized for 2 minutes.

Mr. MELANCON. Thank you, Mr. Chairman. I would wish to waive my opening statement.

Mr. BOUCHER. Mr. Melancon waives his opening statement. The gentlelady from Florida, Ms. Castor, is recognized for 2 minutes.

Ms. CASTOR. Thank you very much, Mr. Chairman. I will waive.

Mr. BOUCHER. Ms. Castor waives her opening statement. The gentlelady from California, Ms. Matsui, is recognized for 2 minutes.

OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. MATSUI. Thank you, Mr. Chairman, and I also would like to congratulate you on assuming this chairmanship of this wonderful committee. I look forward to working with you. I would also like to thank today's panelists for sharing their expertise on this very complex issue.

We are here today to begin the process to reauthorize the Satellite Home Viewer Extension and Reauthorization Act, which is set to expire on December 31st, at the end of this year. In the past, Congress has tried to ensure that as many households as possible have access to local television programming while expanding competition and consumer choice in programming and service providers. As we move forward, we should continue to advance these principles.

In today's marketplace, we should encourage carriers to provide local television stations and news broadcasts to more and more customers. It is particularly important that consumers have access to local emergency broadcasts. Unfortunately, California is home to many natural disasters, such as earthquakes, flooding, and wildfires. Consumers need access to local emergency information when such events occur.

I look forward to hearing from each of today's witnesses about how we can advance solutions that are effective and efficient.

Thank you again for your leadership on this issue, Mr. Chairman. I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Ms. Matsui. The gentleman from Georgia, Mr. Deal, is recognized for 2 minutes.

OPENING STATEMENT OF HON. NATHAN DEAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. DEAL. Thank you, and I add my congratulations to you on your chairmanship. And I also welcome the witnesses and thank them for their attendance today.

I am glad we are considering the reauthorization of the Satellite Home Viewers Act because it brings into focus one of the issues that has concerned me for a very long time, and that is the lack of true consumer choice in television viewing. As we all know, because DMAs, designated market areas, cut across State lines, hundreds of thousands of television households have little or no access to broadcast TV stations from their own State and therefore have very limited access to their State news, elections, government, and weather programming. And likewise, individuals who may live across a State or a DMA line but are part of a community on the other side of the line cannot receive the programming that matters to them. And as we have heard already today in these opening statements, this is a common concern that many of my colleagues share.

Now, I understand the reasoning behind the drawing of the DMA maps, but it seems to me to be an archaic system. Depending on who you ask, broadcast TV viewers make up around 10 to 15 percent of the total viewing audience. It seems odd that the other 85 to 90 percent of the television viewing audience is constrained by a system that is based on the viewing habits of a fraction of that 15 percent.

Now, I understand the desire of broadcasters to control the distribution of their programming, but it seems rather absurd to me that in this day and age that consumers who are willing to pay are still prevented from watching the content that they desire. The free market has allowed technology to meet consumer demand for content in many ways outside of the world of cable, satellite, and broadcast TV. We should strive to foster a framework that allows the free market to meet consumer demands in an equally efficient way for television viewers, and I hope that this hearing will be a step in that direction.

I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Mr. Deal. The gentleman from New York, Mr. Weiner, is recognized for 2 minutes.

Mr. WEINER. I waive my opening statement, except to offer my congratulations to you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Weiner. And we certainly welcome you as the new vice chairman of this subcommittee as well.

The gentleman from California, Mr. McNerney, is recognized for 2 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman. I want to offer my congratulations for assuming the chairmanship of this exciting committee. As a person with a technical background, I am looking

forward to learning about this issue from experts such as yourselves. And this is exciting. It is a dynamic and it is a critically important area.

So I am looking forward to contributing to our national policy in this area. Thank you very much.

Mr. BOUCHER. Thank you, Mr. McNerney. The gentleman from Nebraska, Mr. Terry, is recognized for 2 minutes.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman. I appreciate that. And frankly, I want to start off by saying congratulations and I am pleased that you are chairman and you have a depth of knowledge and a universal respect within the telecom community. So I really appreciate you accepting that role.

Digital conversion, I want to hear from you how that is going to impact or whether there should be policies we need to incorporate in this reauthorization. Like Mr. Shimkus, I had two stations out of five that converted on the 17th. Between station calls and then Nebraska set up our 211 to receive calls, there was something around 550 calls. Like Mr. Shimkus mentioned, probably well over 50 percent was helping people with their setup in the sense of learning how to scroll through or setting up the—I am just drawing a blank on the word right now—but easily resolved. And frankly, only about 10 were calls about I don't have a box and I don't have a coupon. What we did is pooled coupons before, so every one of those people received a coupon and a box that same day. So we were able to resolve every issue on the conversion.

But I also, as I mentioned, want to hear how it impacts—especially at the digital signal—and if there are still problems with the local broadcasters or is that being resolved with local-into-local. And I look forward to your testimony, and thank you all for being here.

Mr. BOUCHER. Thank you. Thank you very much, Mr. Terry. The gentleman from Arkansas, Mr. Ross, is recognized for 2 minutes.

OPENING STATEMENT OF HON. MIKE ROSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. ROSS. Thank you, Chairman Boucher, for holding this hearing and for allowing me, as a member of the full committee but not this subcommittee, to be here and to participate and to raise an issue that is extremely important to so many of our constituents.

Across our Nation, many satellite and cable subscribers cannot receive the local channels of their home State because the current law specifies that stations be transmitted primarily within their designated market area, or DMA. However, these boundaries assigned by the Nielsen Media Research Company were designated 50 years ago. And many of these DMA boundaries, up to 47 percent by some estimates, cross State lines. This leaves millions of subscribers watching the local news, weather, and sports of their neighboring State and missing vital weather information about—and other information about the State in which they live, work and, may I add, pay taxes. We are essentially using 1950s laws to deliver 21st century technology.

In the 110th Congress, I introduced legislation to remedy this problem, and I am currently drafting new legislation that will update our law and bring it into the 21st century by giving consumers access to their local channels.

But let me be clear, I am not proposing to change the DMAs. I simply want to allow those who are receiving the local channels of a neighboring State the choice, the choice to also receive local channels from their home State. Satellite and cable subscribers should not be denied the freedom, the freedom to choose stations from their home States simply because of an outdated law. And I am hopeful that we can work together to provide all subscribers more choice and greater local content. I am also hopeful that the witnesses today will specifically address this issue in their comments.

And I look forward to working with the committee and you, Mr. Chairman, to remedy this problem in this year's reauthorization. Thank you again for allowing me to be here, and I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Mr. Ross. The gentlelady from Tennessee, Mrs. Blackburn, is recognized for 2 minutes.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Ms. BLACKBURN. Thank you, Mr. Chairman, and I add my congratulations to you. I want to welcome our panelists and the return of some of our panelists who are here to talk with us today on the issues that we have got in front of us. We have heard some of the problems that we have existing with accessing local programming.

So I will submit my full statement and just add a couple of comments on this. In Tennessee, my constituents in the metropolitan areas are well served. There is no problem with accessing and having choices and expanded services. And, Mr. Ferree, I like the way you illustratively pointed that out in your written testimony, and we thank you for that.

Let me mention, though, as some of my colleagues have, in our rural and underserved areas—I have two counties: Hardin and Henderson Counties. And there the citizens cannot receive the subscription video service from traditional cable programmers and they are limited to a weak or nonexistent broadcast signal as we are making the digital switch. But the DBS, the satellite service providers, they are the only game in town for some and they don't extend the local programming option for a variety of factors, whether it is policy or market driven factors. But this is something that we are going to need to address. These constituents of ours are frustrated. We understand this. I share that frustration with them.

I also see it as an issue of safety, and this is one that I don't think my colleagues have raised yet today, so I will. We had a tornado last year: 30 dead, 150 that were injured. We know that that local programming is important. We want to work with you as we look at reauthorization and see how we best address this issue. It is one of convenience and enjoyment, but it is also one of safety. So we do want to hear from you on this.

Thank you, Mr. Chairman, and I yield back.

Mr. BOUCHER. Thank you very much, Mrs. Blackburn.

The gentleman from Massachusetts, Mr. Markey, former chairman of this subcommittee, is recognized for 2 minutes.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman. I am chairing a hearing on energy upstairs as the former chairman of the energy subcommittee. A decade ago, Mr. Chairman, I successfully offered the local-to-local amendment that made it possible for direct broadcast satellite companies to offer consumers their local broadcast channels as part of a seamless satellite video service offering. This new legal ability dramatically increased the competitive prospects for the DBS companies against incumbent cable operators.

The rise in subscribership to satellite service in urban and suburban America as a result of my local-to-local amendment had another beneficial consequence. It induced cable operators to invest heavily in greater bandwidth for additional channel capacity, enhanced picture quality, and to offer broadband and voice services in a headlong effort to distinguish its services in competition with DBS satellite.

The point is that even if consumers stuck with their local friendly cable operator, such consumers have also benefited from the satellite competition this subcommittee fostered.

In previous legislative consideration of these issues, questions have been raised about out-of-market signal carriage of broadcast signals, as well as the applicability of syndicated exclusivity, sports blackout, and network nonduplication rules that were adopted originally decades ago to protect the interests of free over the air broadcasters and the viability of their services. As the march of digital technology moves inexorably forward, it is appropriate to once again examine all of those issues so that our laws and regulations not only keep pace with changes in technology, but so that we may reassert policy support for the long held communications values of localism and diversity in a manner that embraces competition and innovation. The consumer ultimately should be the beneficiary of the policies we advance.

I want to commend you, Chairman Boucher, for calling this important hearing this morning and the excellent panel of witnesses that I see down here. It is like Hall of Fame weekend as I look down: Mr. Ergen, Mr. Franks, Mr. Gabrielli, all of them who have helped us so much over the years in framing our policies.

I yield back the balance.

Mr. BOUCHER. Thank you very much, Mr. Markey.

The gentleman from Connecticut, Mr. Murphy, is recognized for 2 minutes.

Mr. MURPHY. Thank you very much, Mr. Chairman. I look forward to the testimony, and I will submit my statement for the record.

Mr. BOUCHER. OK. The gentleman waives his opening statement.

The Chair asks unanimous consent for two matters. First, that a written statement prepared by National Programming Service, which distributes distant network signals to the subscribers of the

DISH Network, be submitted for the record. Without objection, so ordered.

[The information was unavailable at the time of printing.]

Mr. BOUCHER. And also that all members of this subcommittee may submit their prepared written statements for the record. And without objection, so ordered.

We now turn to our panel of witnesses. And just as the gentleman from Massachusetts has welcomed our witnesses, I want to do the same and note that they have worked with us cooperatively and very constructively for a number of years as we have adopted the Home Satellite Viewer Act, the Home Satellite Viewer Improvement Act with its local-into-local opportunities, and now as we reauthorize the Home Satellite Viewer Act are with us again. So they are old hands at this subject matter, and we very much welcome them here this morning. Mr. Charles Ergen is the Chairman, President and Chief Executive Officer of DISH Network Corporation. Mr. Martin Franks is Executive Vice President of Policy Planning and Government Relations for the CBS Corporation. Mr. Bob Gabrielli is the Senior Vice President for Broadcasting Operations and Distribution for DIRECTV. Mr. Willard Rowland is the President and Chief Executive Officer of Colorado Public Television. He testifies today on behalf of the Association of Public Television Stations. Mr. James Yager is the Chief Executive Officer of Barrington Broadcasting Group. He testifies on behalf of the National Association of Broadcasters. Ms. Gigi Sohn is the President of Public Knowledge, a very respected public interest group. She testifies today on behalf of Public Knowledge, the Consumers Union, and Free Press. Mr. Kenneth Ferree is the President of another respected public interest group, the Progress and Freedom Foundation.

And we welcome each of our witnesses. Without objection, your prepared written statements will be made a part of the record, and we would welcome your oral summaries and ask that you try to keep those to approximately 5 minutes so that we will have plenty of time for questions, of which I am sure there will be many.

And, Mr. Ergen, we are pleased to begin this morning by hearing from you.

**STATEMENT OF CHARLES W. ERGEN, CHAIRMAN, PRESIDENT,
AND CHIEF EXECUTIVE OFFICER OF DISH NETWORK CORPORATION**

Mr. ERGEN. Thank you, Chairman Boucher, Ranking Member Stearns, and members of the subcommittee. I appreciate the opportunity to testify today. My name is Charlie Ergen, and I am the Chairman and CEO of DISH Network, the Nation's third largest paid TV provider.

We are in the middle of a digital transition that is changing the way people watch TV. It is pretty simple. People want to watch what they want to watch, when they want, and where they want. And as TV evolves, there are some things that no longer make sense for consumers under today's laws.

First, many consumers can't get local news and sports in their home State because of the way local markets are defined.

Second, many rural communities are missing one or more of the four major networks.

Third, consumers are losing their local stations during disputes over retransmission consent.

And fourth, consumers suffer when must-carry stations have little or no local content.

It is our hope that all these challenges can be fixed as part of the SHVERA reauthorization this year. The digital age has arrived and the laws need to catch up. On DMA reform, many of your constituents are being denied access to news, weather, and election coverage from their home State.

For example, depending on where a customer lives in Indiana, from the map over here, they may get local news from Indiana, Illinois, Kentucky, or Ohio. As you can see from the map, defining local map based on DMA does not make sense from a consumer perspective. This is an issue in 45 States. The Copyright Office recognized this problem in their report last year. Paid TV providers should be allowed to bring in a neighboring broadcaster and consumers should be able to determine what local means to them.

With respect to missing network affiliates, DISH Network provides local service in 178 markets today, reaching 97 percent of households nationwide. This translates into over 1,400 local broadcast stations, which is far more than any other pay TV provider. In most of the remaining markets, one or more of the four networks is missing.

The Copyright Office has highlighted this problem in its report. We agree with the Copyright Office that all consumers should have access to NBC, CBS, ABC, and FOX programming. If a local community is missing one of the Big Four network stations, pay TV providers should be able to treat a nearby affiliate as the local affiliate under copyright and communications law.

On retransmission consent reform, a broadcaster used to negotiate with a single cable company and the leverage was relatively equal. But today, DISH Network customers and others are held hostages as broadcasters play their local monopoly off against multiple pay TV providers. In 2008 alone, consumers lost programming in approximately 15 percent of our markets because of retransmission consent disputes. This is a huge increase over prior years, and the problem continues to get worse.

Today, stations in seven of our markets remain down because of unreasonable demands from Fisher Communications. Yet broadcasters provide the same content for free on the Internet and those lucky enough to live within the shrinking areas of digital over-the-air coverage.

Because broadcasters receive billions of dollars of spectrum for free, we think retransmission consent should be free. Failing that, we support the creation of a national retransmission consent rate, which would apply to all broadcasters and all paid TV providers. Treat a monopoly like a monopoly. Satellite providers already pay a fixed per subscriber copyright royalty rate, and we see no reason why a similar concept can't work for retransmission consent.

As a second alternative, we support the creation of an actual market. If a broadcaster threatens to drop programming, paid TV providers should be able to get a nearby affiliate to fill the gap.

Consumers should never have to wonder what happened to Sunday Night Football.

Finally, on must-carry, we are forced to carry hundreds of stations today that have little or no local content. This increases our cost, raises our prices to consumers at a time when consumers need all the disposable income they can get. Must-carry stations should be required to earn carriage by offering at least 20 hours of local programming each week. This is beneficial to consumers and has no harmful effect on broadcasters that invest in their local market.

Each of these four issues can be addressed within the structure proposed by the Copyright Office. Specifically, a unitary compulsory copyright license for all pay TV providers would give Congress the chance to make sure all consumers get the services they need in a digital world in a manner that is fair to copyright holders, broadcasters, cable and satellite.

The Copyright Office recognizes that TV has changed fundamentally and incremental changes to outdated rules are not good enough. We encourage you to review the recommendations and act boldly on behalf of your constituents.

Thanks again for allowing me to testify.

[The prepared statement of Mr. Ergen follows:]



Testimony of

Charles W. Ergen

Chairman, President, and Chief Executive Officer of DISH Network Corporation

On the

Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act

Before the

Subcommittee on Communications, Technology, and the Internet

Committee on Energy and Commerce

U.S. House of Representatives

February 24, 2009

*Testimony of Charles W. Ergen
DISH Network Corporation
February 24, 2009*

Chairman Boucher, Ranking Member Stearns, and Members of the Subcommittee, I appreciate the opportunity to testify today. My name is Charlie Ergen, and I am the Chairman, President, and CEO of DISH Network, the nation's third largest pay-TV provider.

* * *

We are in the middle of a digital transition that is changing the way people watch TV. It's pretty simple: people want to watch what they want, when they want, where they want. As TV evolves, there are some things that no longer make sense for consumers under today's laws:

First, many consumers can't get local news and sports from their home state because of the way local markets are defined;

Second, many rural communities are missing one or more of the four major networks;

Third, consumers are losing their local stations during disputes over retransmission consent; and

Fourth, consumers suffer when must carry stations have little or no local content.

It is my hope that all of these challenges can be fixed as part of the SHVERA reauthorization this year. The digital age has arrived and the laws need to catch up.

*Testimony of Charles W. Ergen
DISH Network Corporation
February 24, 2009*

On DMA reform – many of your constituents are being denied access to news, weather, and election coverage from their home state. As you can see from the map, depending on where a customer lives in Indiana, they may get “local” news from Illinois, Kentucky or Ohio. This is an issue in 45 states. The Copyright Office recognized this problem in their report last year. Pay-TV providers should be allowed to bring in a neighboring broadcaster, and consumers should be able to determine what “local” means to them.

With respect to missing network affiliates – DISH provides local service in 178 markets today, reaching 97 percent of households nationwide. This translates into over 1400 local broadcast stations – way more than any other provider. In most of the remaining markets, one or more of the big four networks is missing. The Copyright Office highlighted this problem in its report. We agree with the Copyright Office that all consumers should have access to NBC, CBS, ABC and FOX programming. If broadcasters won’t invest in their local communities, pay-TV providers should be able to treat a nearby affiliate as the “local” affiliate under copyright and communications law.

On retrans reform – a broadcaster used to negotiate with a single cable company and the leverage was relatively equal. But, today, DISH customers are held hostage, as broadcasters play their local monopoly off multiple pay-TV providers. In 2008 alone, consumers lost programming in approximately 15 percent of our markets because of retrans disputes. This is a huge increase over prior years, and the problem keeps getting worse. Today, stations in seven of our markets remain down because of unreasonable demands from Fisher Communications. Yet broadcasters provide the same content for free on the Internet and to those lucky enough to live within the shrinking areas of digital over-the-air coverage.

*Testimony of Charles W. Ergen
DISH Network Corporation
February 24, 2009*

Because the broadcasters got their spectrum for free, I still think retrans should be free – but I understand I’m in the minority on that. So, first option, create a national retrans rate, which would apply to all broadcasters and all pay-TV providers. Treat a monopoly like a monopoly. Satellite providers already pay a fixed, per-subscriber copyright royalty rate, and I see no reason why a similar concept can’t work for retrans. Or, second option, create an actual market. If a broadcaster threatens to drop programming, pay-TV providers should be able to bring in a nearby affiliate to fill the gap. Consumers should never have to wonder what happened to Sunday Night Football.

Finally, on must carry – we are forced to carry hundreds of stations today that have little or no local content. This increases our costs, and raises our prices to consumers at a time when consumers need all the disposable income they can get. Must carry stations should be required to earn carriage by airing 20 hours of local programming every week. This is beneficial to consumers and has no harmful effect on broadcasters that invest in their local market.

Each of these four issues can be addressed within the structure proposed by the Copyright Office. Specifically, a unitary compulsory copyright license for all pay-TV providers would give Congress the chance to make sure all consumers get the services they need in a digital world, in a manner that is fair to the copyright holders, broadcasters, cable and satellite. The Copyright Office recognizes that TV has changed fundamentally and incremental changes to outdated rules are not good enough. I encourage you to review their recommendations and act boldly on behalf of your constituents.

Mr. BOUCHER. Thank you very much, Mr. Ergen. Mr. Franks, we will be pleased to hear from you.

STATEMENT OF MARTIN D. FRANKS, EXECUTIVE VICE PRESIDENT, POLICY, PLANNING AND GOVERNMENT RELATIONS, CBS CORPORATION

Mr. FRANKS. Thank you, Mr. Chairman.

Mr. BOUCHER. And we need the microphone.

Mr. FRANKS. Sorry. Thank you, Mr. Chairman and members of the committee.

First, let me congratulate the committee on a remarkable legislative success story. Twenty-one years ago, prodded by Chairman Boucher and others through the original Satellite Home Viewer Act, Congress began a process which has resulted in a robust video distribution and programming marketplace which happily has made the local cable monopoly a relic of the past. There are many winners from Congress' vision in this aspect of the video marketplace, but none bigger than the American consumer.

The legislative issue on the table today is really a very narrow one, whether to extend satellite's compulsory distance signal license once again. In contrast, the local-into-local license is permanent and not part of this debate. Yet during the course of congressional deliberation over the distance signal license, you will hear from parties seeking to exploit this legislation as a vehicle for a wish list of unrelated items such as changes to retransmission consent or DMA modification. Besides complicating the legislative process, the issues of retrans and DMA modification are not broken and do not need fixing.

Each year, CBS and other television broadcasters conclude hundreds of retransmission consent agreements with cable, satellite, and telephone operators. In an overwhelming majority of such instances, agreements are reached quietly, amicably and in a mutually beneficial manner. Infrequently, a dispute erupts at least initially and both sides threaten the disruption of service. Even more infrequently, a very small handful of those disputes lead to a short-term disruption. Legislating to deal with a few disputes against a pattern where there are literally hundreds of instances where willing sellers and willing buyers successfully reach agreement would be a solution in search of a problem. In the end, the retransmission consent regime works and in the manner Congress intended.

As for DMAs, they are not a governmental creation. Rather they are a product of Nielsen Media Research, which groups counties by viewing patterns and the laws of physics and signal propagation rather than geographic boundaries. DMAs are the center of a broadcaster's economic universe. And any tinkering with the system, even in good economic times, could be financially seismic, not only for smaller local broadcasters but also for local merchants who buy time on their local stations in order to reach potential customers in their local areas without competing and confusing ads coming into the market from a station 100 or 1,000 miles away. But if the desired outcome is for viewers to access news from their out-of-market but in-state television stations, right now, without the need to change any law or redefine any DMA, MVPDs may already import any station's newscast into any other market simply

by securing the imported station's permission to do so. Stations control the copyright of their news programming and can make them available to multi-channel providers in nearby markets looking to augment news programming.

We are prepared to work on any problem areas where there may be issues with regard to local and in-state news. But please do not fall for the masquerade of those who are using DMA reform as a proxy for their real objective, a means for MVPDs to obtain bargaining leverage in a retransmission content regime that is now in nearly perfect balance.

Please also remember that television broadcasters have the right to the copyright and communications acts and private contracts to control the distribution of the national and local programming they transmit. The CBS television network alone invests billions of dollars each year to deliver the highest quality news, sports and entertainment programming. We are not complaining. We strongly believe that our heavy investment in programming pays off. Superior programming generates viewing that helps not only the CBS network in our owned and operated television stations, but also our affiliated stations nationwide. When network programming is of high quality and compelling, local stations benefit because they sell advertising within the network programming. That allows them to make significant financial investments in local news, sports, weather, and other programming, including syndicated shows like *Wheel of Fortune*, *Jeopardy*, and *Oprah*, some of your constituents' favorite programs.

This network affiliate, national and local arrangement, of course, is not unique to CBS. It is also enjoyed by the other networks, including Univision and Telemundo, and their affiliated stations across the country. In the end, however, it is local viewers who benefit most from this system.

Mr. Chairman, again I would like to thank the Committee for helping to steer our industry through the complex technical and market conditions to get us where we are today, a robust video delivery marketplace where thanks to vigorous competition, broadcast television is still an integral player deeply valued by American viewers. We look forward to working with the committee to preserve and advance the role of broadcast television in that extremely competitive marketplace.

Thank you.

[The prepared statement of Mr. Franks follows:]



STATEMENT OF
MARTIN D. FRANKS, EXECUTIVE VICE PRESIDENT OF
PLANNING, POLICY AND GOVERNMENT RELATIONS
FOR CBS CORPORATION

BEFORE THE HOUSE COMMITTEE ON ENERGY AND
COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND
THE INTERNET

HEARING ON REAUTHORIZATION OF THE SATELLITE HOME
VIEWER EXTENSION AND REAUTHORIZATION ACT

FEBRUARY 24, 2009

Chairman Boucher and Ranking Member Stearns, on behalf of CBS, I thank you for the invitation to present our views to the Committee about over-the-air broadcast television and the video programming marketplace.

Almost five years ago to the day, I testified before this Committee on the very matter that is the subject of today's hearing --the end-of-year expiration of satellite's compulsory license to deliver distant broadcast television signals. The legislative issue on the table now, as it was five years ago, is really a very narrow one, that is, whether to extend the distant-signal license. Yet, during the course of congressional deliberation over this issue, you are likely to witness some parties seeking to exploit any legislation relating to the license as a vehicle for a wish list of unrelated items, items such as changes to retransmission consent or DMA modification that are likely to bog down and complicate what we believe should be a clean and streamlined reauthorization.

Besides complicating the legislative process, the issues of retransmission consent and DMA modification are not broken items that need fixing. Each year, CBS along with other television broadcasters collectively conclude hundreds of retransmission consent agreements with MVPDs --successfully, quietly, amicably, and in a mutually beneficial manner. Yes, there are times, as in any free market negotiation in any industry when negotiations do not succeed, at least initially, and a dispute erupts and both sides threaten a disruption of

service. And, in a very few instances, there may be a short-term disruption. But legislating to deal with a handful of disputes, when there are literally hundreds of instances where willing sellers and willing buyers reach agreement, would be a solution in search of a problem. In the end, the retransmission consent regime works and in the manner Congress intended.

With respect to DMA modification, it is important to note that these geographic areas were not designed by Congress, the FCC or any governmental body. That is, a DMA –a Designated Market Area– is not a political creation; rather, it is a trademarked term of Nielsen Media Research to describe a group of counties and used to measure television viewing by people who live in those counties. Based on which over-the-air stations receive the majority of viewing, Nielsen assigns counties into a DMA. According to Nielsen, it uses DMAs “solely in measuring *who* is watching *what* within a given area.” DMAs are the center of broadcasters’ economic universe and any tinkering with the system, especially during this tumultuous economic time, could be financially seismic, particularly to smaller local broadcasters and to local merchants who buy time on their local stations in the expectation they are paying to reach potential customers in the locale in which they conduct business.

It is significant to note here that if the desired outcome is for viewers to access news from their in-state television stations, that arrangement is already legal and in existence. Right now, without the need to change any law or redefine any DMA, MVPDs are free to carry a local station’s newscast anytime they want by simply securing the station’s permission to do so. Stations control

the copyright of their news shows and can, and do, make them available to cable operators in nearby markets looking to augment news programming. In fact, according to a February 24, 2008 Broadcasting & Cable Magazine story, Matt Polka, the president of the American Cable Association, which is pushing for DMA changes, concedes that cable operators already carry out-of-market newscasts. But he adds that "current network nonduplication rules and DMA boundaries prohibit greater competition for retransmission consent signals that would benefit consumers." What Mr. Polka really means is that MVPDs would benefit—at the expense of the American over-the-air television broadcasting system and their viewers. Congress should be wary of calls for DMA modification masquerading as nothing more than a means for MVPDs to obtain a bargaining advantage in a retransmission consent system that is now in perfect equipoise.

As was the case five years ago, I come before you now perfectly content if you do nothing on this topic. If absolutely no legislation at all emerged, meaning that the distant-signal license were not extended, CBS would find a way to live with that. But an immediate and drastic cut-off would not be our preference.

My message today is simply this: As you and your colleagues contemplate in the next several months extending the distant signal license for satellite carriers for the fourth time, please continue to be guided, as you have in the past, by the twin pillars of (1) competition in the multichannel video programming marketplace and (2) preservation of local, free over-the-air television broadcasting. At this juncture, we believe that the best means for

achieving these goals is for Congress to continue to encourage satellite carriers to provide local television stations to subscribers in more and more markets so that the need to import distant stations is eliminated. And the best means, in turn, for encouraging the carriage of local stations is to wean the satellite industry from the distant-signal license, a special exemption Congress created to assure network signals to all and to foster exactly what exists today: Competition.

More on that later.

First, I wish to congratulate the Committee for a remarkable success. Twenty-one years ago, when the sole multichannel video programming distributor was cable, Congress knew that it needed to find a way to help the nascent satellite industry become a competitor and it did so by ensuring the availability of broadcast programming comparable to that offered by cable operators. The legislation that became the Satellite Home Viewer Act (SHVA) gave satellite carriers an efficient means of providing broadcast network programming to those homes that could not receive adequate signals over the air from their local network affiliates.

Congress originally adopted SHVA to cover C-Band satellite, a big-dish service, before the existence of direct broadcast satellite, a high power, mini-dish service. In 1994, when DBS was just entering the market, Congress amended SHVA in order to, among other things, extend for five years the sunseting statutory license for the carriage of distant broadcast signals.

By the end of 1994, what is today DirecTV had launched the nation's first DBS satellite, had rolled out its service mostly to rural markets, and boasted one

million subscribers. A little more than a year later, a second DBS service, EchoStar, was born.

Yet, cable, which was initially developed as a means for delivering and repeating broadcast television station signals to homes unable to receive them over the air, continued to dominate the pay television landscape, mainly because they could provide their customers with local broadcast signals and satellite could not. Representative Cliff Stearns noted this problem in early 1999:

As our colleagues in the House know, all of our constituents who subscribe to satellite services rightfully expect to receive their local television programming one way or another through their satellite carrier. Until today, our constituents have not had the ability to do so because satellite providers have not had the proper copyright authority to retransmit those signals.

Once again, and just in time, Congress's vision resulted in a needed boost to the satellite competition. In the Satellite Home Viewer Improvement Act of 1999 (SHVIA), Congress gave satellite carriers a royalty-free, statutory copyright license to transmit local programming to customers in their markets, as those markets --DMAs-- are defined by Nielsen. For the first time ever, consumers had a real choice among MVPDs: DBS operators, like cable operators, could now offer viewers a full complement of their local broadcast television stations.

As Representative Boucher, an architect of the 1999 legislation, described the new law:

Now the satellite industry for the first time has the potential to be a full and complete competitor for cable television, and the arrival of that event is celebrated not just by people who subscribe to the satellite service. They

can for the first time get their local programs, local TV stations by satellite, but it is also an event that will be celebrated by people who elect to continue their cable subscription because cable rates now for the first time will be market based. They will not be based on monopoly pricing, which has been the case in the past. The cable companies are also going to be in a position now to increase their number of programs to improve their services, which they will literally have to do in order to compete effectively with the new satellite services.

How prescient were those words. With the first-time ability to access their local television stations from satellite carriers, consumers chose DBS in droves. In mid-2005, DBS was the choice of 26.1 million American households, constituting well over one-quarter of total MVPD subscribers. In fact, DBS subscribers have increased every year since their numbers were first reported by census data in 1993, with the growth from 2004 to 2005 alone reaching 12.8%.

Today, DirecTV and EchoStar's Dish Network serve 17.6 million and 13.78 million households, respectively. The 31.38 million homes they serve collectively constitute nearly one-third of all MVPD subscribers. In their most recent financial results, The DirecTV Group, Inc. reported fourth quarter 2008 revenues of \$5.31 billion, while Dish Network Corporation reported third quarter 2008 revenues of \$2.94 billion. The DBS industry has come a long way, particularly when viewed against the early financials of USSB, the original DBS operator (now DirecTV), which in July 1996 had yet to show a profit.

There are many winners emerging from Congress's 20/20 vision in this aspect of the video programming marketplace, but no one more important, however, than the consumer.

Of course, competition to cable today has flourished beyond satellite and DBS and the wildest of expectations. Verizon and AT&T are no longer just

telephone companies delivering voice. They now provide hundreds of channels of video programming through their FiOS and U-Verse services to three million homes. And the ubiquitous Internet is a platform that offers up more than informative websites and answers to arcane trivia questions: Today it is a destination for consumers seeking not only professionally created news, entertainment and sports programming, but endless hours of user-generated video content.

It is important to remember that as Congress transformed its vision into reality through satellite legislation, it strove not only to promote competition to cable via satellite but to preserve the role of local broadcasters in providing free, over-the-air television. Localism has been the bedrock principle of broadcast policy since the Radio Act of 1927. Broadcasters must serve their communities by providing programming to meet the needs and interests of those communities. And they clearly do so, as acknowledged time and again by Congress. As one example, Representative Bart Stupak has said:

Basics such as access to television, before this transition and after the transition, we need access to the emergency alert system, as well as news information for local communities. This is access that's a critical component of public safety.

And Representative Greg Walden:

At the end of the day though, broadcasters are there when there is an emergency. In our own situation, we have gone commercial-free and programming cancelled in cases of emergency to provide full-time information. I am not alone in that effort. Many of my colleagues have done that. And as you mentioned, in Katrina, in other crises around the country, that is just what we do. And we are there. We are there when the snow piles up on the road and the school buses can't run. It is not other forms that are telling you that. It is your local broadcasters. . . .

In light of the recognition of broadcasters' unique contribution to localism, Congress throughout the history of the satellite legislation has sought to balance the goal of preserving the broadcast television industry as it has promoted the competitive status of the satellite television industry. Summing up this balancing act, Rep. Edward Markey said at a hearing to consider extension of the satellite legislation in 2004:

As we act to modify that Act, the subcommittee should aim to fulfill and enhance the cornerstones of telecommunications policy—namely, universal service, diversity, and localism. In the past, we have promoted universal service through the delivery of distant signals to those who reside in so-called white areas, where local over-the-air broadcast signals do not adequately reach.

To enhance localism, back in 1999, I offered the so-called local-to-local amendment in the satellite subcommittee markup, which for the first time granted to satellite operators the right to carry local broadcast stations in local markets. In addition to the benefits of localism, another key reason why I offered the local-to-local amendment was to enhance competition to cable.

Representative Dingell, in 2004, echoed the need for equilibrium:

[T]he act will protect consumers and foster localism by ensuring that satellite customers receive all of their local broadcast signals when these signals become available via satellite. Local broadcasters provide their communities with important local programming. Whether it is local news, weather, or community events, these broadcasters are there, on the ground serving their friends and neighbors.

CBS appreciates the fine line that Congress has walked over the last 20 years in crafting satellite legislation. As the owners of a major broadcast television network and a group of 30 local broadcast television stations, we believe that the indefinite or permanent congressional grant of a distant-signal license to satellite carriers will jeopardize the economic viability of stations

affiliated with national networks. It would do so by placing at risk a significant and critical source of local news and information.

The broadcast television industry has the right, through the Copyright Act and private contracts, to control the distribution of the national and local programming that it transmits. The CBS Television Network alone invests billions of dollars each year in developing, producing and securing the highest quality entertainment, sports and news programming. A single, 30-minute episode of a sitcom series costs anywhere from \$1 to \$4 million to produce. And a single, 60-minute episode of a drama series anywhere from \$4 to \$5.5 million. For sports programming, CBS pays hundreds of millions of dollars each year to the NFL and to the NCAA for rights to March Madness alone. That is before you consider millions of dollars in rights fees CBS pays each year for SEC Football, regular season NCAA basketball, to the PGA for golf, and to the USTA for rights to the U.S. Open Tennis Tournament.

We strongly believe that heavy investment in programming pays back: In the current television season that began last September, CBS is the most-watched television network and the only major broadcaster to increase its prime-time audience. Our investment in superior programming helps not only the CBS network and our owned-and-operated television stations, but also our affiliated stations nationwide. When network programming is of high quality and compelling, local stations benefit. From large DMAs like Los Angeles and Dallas to smaller DMAs like the Tri-Cities of Virginia-Tennessee and Gainesville, Florida, local stations are able to present this network programming to obtain

advertising dollars so that they, in turn, can make significant financial investments in the production, gathering and reporting of local news, sports, weather and other information. Local stations also are able to invest in rights to syndicated programs, such as "Wheel of Fortune," "Jeopardy," "Oprah," "Live with Regis and Kelly," "Seinfeld" and "Friends," which are obtained from other content producers.

This network-affiliate arrangement, of course, is not unique to CBS—it is also enjoyed by others, including the ABC, FOX, NBC, The CW (of which CBS owns 50%), Univision and Telemundo networks and their affiliated stations across the country. In the end, however, it is local viewers who profit most from this system.

The House Commerce Committee recognized the invaluable nature of this relationship when it reported out the original SHVA in 1988: "Historically and currently," it said, "the network-affiliate partnership serves the broad public interest." That is why, in attempting to accommodate those households unable to receive network-affiliated stations directly over the air, Congress designed SHVA back in 1988 so as to carve but a narrow exception to the exclusive programming copyrights held by television networks and their affiliates. This limited compulsory copyright license under Section 119 of the Copyright Act permits satellite delivery of distant, or out-of-market, network broadcast stations to only "unserved" households. When the license was originally adopted in 1988, the House stated, "The distribution of network signals is restricted to unserved

households; that is, those that are unable to receive an adequate over-the-air signal."

In its wisdom, Congress made the license for local-into-local a permanent one, while the compulsory license for the satellite delivery of distant-network signals was never intended to be so. In 1988, SHVA provided that the distant-signal license sunset in 1994; in 1994, the license was extended for 5 years; and in 1999, the license was extended for another 5 years. At the end of this year, on December 31, 2009, the license comes to an end unless renewed. What was supposed to be a temporary license is now 21 years old.

We are now at an important crossroads in the decades-long history of satellite legislation. Rather than automatically renewing the distant-signal license for satellite carriers for the stock five-year term, this Committee should carefully consider ways of encouraging MVPDs to provide local instead of distant television stations to American homes. We believe the best route to that end is by phasing out the distant-signal license over the next few years with a clear and precise sunset deadline. We understand that a sudden and immediate sunset would be disruptive to the small remaining number of consumers who still receive distant signals and that it may take satellite carriers time to ramp up their operations to provide local signals in every market. But the deletion of the distant-signal license no doubt would motivate satellite carriers to provide local signals in all markets sooner rather than later.

Offering local broadcast stations to customers is apparently good business. A mere week after SHVIA was enacted into law in November 1999,

DirecTV made local channels available to its subscribers in New York and Los Angeles. In making the announcement, then-DirecTV President Eddy W.

Hartenstein said it best:

The availability of local channels ushers in a new era for DIRECTV, and we are excited to commence our local channel offerings in the nation's two largest markets. By offering local channels on DIRECTV, our customers can access entertainment and information that's most relevant to their lives -- and they can watch their local channels with digital picture and CD-quality sound.

In the first full reporting quarter following enactment of the 1999 satellite legislation, the DBS companies realized positive results from their local-into-local offerings. DirecTV reported that it had added 405,000 subscribers during the three months ended March 31, 2000, a number that represented 33% more units than the 304,000 subscribers the company added during the same period the previous year. And EchoStar reported that the company's DBS subscribers had increased approximately 71% in the first quarter of 2000 compared to the same period in 1999. This strong subscriber growth, according to the EchoStar 10-Q filing, was due, among other things, to "increased interest in satellite television resulting from the availability of local network channels by satellite."

In my testimony regarding the local-into-local satellite legislation five years ago, I commended DirecTV and EchoStar for their rollout of local channels. I do so again today. Of the 210 television markets in this country, EchoStar reportedly is serving 179 with local stations and DirecTV is serving 150.

However, in suggesting a phase-out of the distant-signal license, I neither offer up a novel solution nor intend to do harm to my DBS friends, who are our

partners in the television world. In fact, just this week, Dish Network and CBS successfully reached a new, long-term agreement for carriage by Dish of the stations we own. And we look forward to a continued positive and mutually beneficial relationship with our friends at DirecTV.

But rather than counting on my recommendation, look to the 225-plus-page "Satellite Home Viewer Extension and Reauthorization Act Section 109 Report" to Congress last summer from the Register of Copyrights who recommends a phase-out of the distant-signal license. The license, the report states, was a "stop-gap solution for a nascent satellite industry" and "in its present form, undergirded by outdated rationales set forth in 1988, is no longer necessary nor appropriate." Like cable operators, the report states, DirecTV and EchoStar "have the market power and bargaining strength to negotiate favorable program carriage agreements." The report suggests that Congress extend the distant-signal license for one final additional five-year term. By the year 2015, the report concludes, the DTV transition should be settled, broadband penetration will be greater, and Americans will be able to receive video programming from many providers. "It will be a whole new era by then. . . "

We at CBS agree with these recommendations and we look forward to that new era in which CBS is prepared to compete and take our chances. In the meantime, we thank the Committee for helping to steer our industry through the complex technical and market conditions to get us where we are today, a robust

38

15

video delivery marketplace, where, thanks to vigorous competition, broadcast television is still an integral player deeply valued by American viewers.

Thank you.

Mr. BOUCHER. Thank you very much, Mr. Franks. Mr. Gabrielli.

**STATEMENT OF BOB GABRIELLI, SENIOR VICE PRESIDENT,
BROADCASTING OPERATIONS AND DISTRIBUTION, DIRECTV,
INC**

Mr. GABRIELLI. Thank you. Chairman Boucher, Ranking Member Stearns, and members of the subcommittee, thank you for the opportunity to testify.

My name is Bob Gabrielli, Senior Vice President for Programming Operations and Distribution at DIRECTV. On behalf of more than 17 million customers, I offer the following suggestions for updating SHVERA. First, Congress should retain and modernize the distance signal statutory license. Second, Congress should improve consumer access to local stations. Third, Congress should not require satellite subscribers to bear the burden of nationwide mandatory carriage. And fourth, the retransmission consent system should be modernized to protect consumers from high prices and withheld signals.

To begin, I would like to discuss the distance signal license. Today, the vast majority of subscribers get network programming from local, not distance stations. Only about 2 percent of satellite subscribers receive distance signals, but those subscribers rely on distance signals to receive network programming and many will continue to do so into the future. Congress should thus renew the distance signal license. It should also modernize the license to make it simpler and to protect consumer access to network programming. In particular, it should ensure that consumers in markets missing one or more local affiliates have access to network programming through distance signals.

Next, let me discuss DMAs. Millions are unable to receive truly local news and sports and entertainment because they live in one State while their DMA is mostly in another State. For example, viewers in Fulton County, Pennsylvania, are assigned to the Washington, D.C. DMA. As a result, they do not receive any Pennsylvania-based local programming.

Five years ago, SHVERA addressed a handful of these situations by creating special rules. The time is right for a more general approach. Congressman Ross has a proposal allowing delivery of neighboring stations to households in these orphan counties like Fulton County. DIRECTV endorses this effort. Time and again, consumers tell us what local channels best meet their needs. Where possible, we should be able to meet those demands.

I would like to now discuss local carriage. Satellite is an excellent medium for distributing national programming to even the most remote locations, but it is far more difficult to deliver thousands of local network stations from a handful of satellites in space.

Congress recognized the difficulty of this task when it created the carry-one/carry-all rule. We have nonetheless made extraordinary progress in offering local programming. Our track record speaks for itself. We have spent billions of dollars to provide local service and now offer local television by satellite to 95 percent of households, and we intend to add six more markets by the end of this year.

Using the FCC calculations, over 80 percent of our satellite capacity is now devoted to this local service, nearly triple the amount cable operators are required by law to carry. This is because, unlike cable, we have to rebroadcast identical network programming hundreds of times throughout the country. For the 5 remaining percent of households, we now offer a local seamless solution. We will install a rooftop antenna and tuners that integrate local broadcast signals into a set top box. To our subscribers, offer signals will appear and function exactly as any other channel on the guide, in the DVR, et cetera.

If the broadcasters made their signals available throughout the DMA, every DIRECTV subscriber could receive local channels in this fashion. This simple investment in repeaters and translators by broadcasters would be the fastest and most efficient way to achieve the goals of H.R. 927.

Last, I would like to discuss the retransmission consent. Congress created the must-carry/retransmission consent regime before we even offered local channels. The regime functioned until recently in part because of the equilibrium that existed between monopoly broadcasters and monopoly cable operators. But as satellite emerged, broadcasters found their relative bargaining power increased.

Today, the market is tilted even more heavily in favor of broadcasters. Each has at least three competitors with whom to negotiate government-protected exclusive control over their content and public air waves they use for free.

At the same time, new private equity investors have pressured broadcasters to increase rates. Broadcasters now routinely demand fees three times those previously paid, and it does not appear that this additional money is being used to provide more or better local programming. In fact, the opposite appears to be true. Many broadcasters are producing less and less local news, while others have replaced local programming with national infomercials.

DIRECTV willingly pays for high-quality content. We think programmers deserve fair and reasonable compensation for the product they create, but it does not serve the American public if the broadcasters have the unfettered ability to raise rates without any obligation to provide local content.

We would like to work with you to establish a new rate transmission consent policy that compensates broadcasters fairly for its investment in high quality content yet protects consumers from withheld services.

In closing, millions of your constituents throughout America, whether they are satellite or not, are better off because of the legislation this committee has championed over the years. I ask you to keep those consumers in mind as you consider SHVERA reauthorization this year.

Thank you.

[The prepared statement of Mr. Gabrielli follows:]

**Written Testimony of
Bob Gabrielli
Senior Vice President, Broadcasting Operations and Distribution,
DIRECTV, Inc.
Before the House Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet**

February 24, 2008

Thank you for inviting DIRECTV to discuss the future of the satellite statutory copyright licenses. I sit before you today on behalf of more than seventeen million of your constituents. They get hundreds of channels, amazing picture quality, state-of-the-art innovation, and industry-leading customer service. DIRECTV, DISH Network, and others present a real challenge to our cable competitors. The result is better television for everybody.

While DIRECTV can take some of the credit, much of the credit goes to Congress. In 1988, you passed the Satellite Home Viewer Act (“SHVA”), allowing satellite carriers to retransmit broadcast signals for the first time. In 1992, you passed the program access provisions of the Cable Act, giving satellite subscribers access to key cable-owned programming. And in 1999, you passed the Satellite Home Viewer Improvement Act (“SHVIA”), allowing satellite carriers to retransmit *local* broadcast signals for the first time. The result is today’s vibrant competitive video marketplace, which provides consumers more choice and better service than ever before.

This year, you have the opportunity to continue Congress’s commitment to consumers and competition as you consider reauthorization of the Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”). SHVERA provides the basic legal

infrastructure for delivery of television programming to millions of Americans. Their access to this programming depends on this infrastructure.

But SHVERA, like all infrastructure, must be maintained. Just as our roads and bridges need repair and our aviation system demands modernization, SHVERA requires some updating to reflect the realities of a 21st century video market. DIRECTV offers the following suggestions:

- Congress should renew and improve the satellite distant signal license. It should *not* harm consumers by eliminating or rewriting the license.
- Congress should improve consumer access to and choice of local stations. It should *not* require satellite subscribers to bear the burden of nationwide mandatory carriage.
- Congress should modernize the retransmission consent system to reflect the new market structure brought about by competition. It should protect consumers from inflated prices and withheld signals.

Implementing these recommendations will help ensure both that your constituents continue to receive the channels on which they have come to depend and that the satellite licenses work efficiently, predictably, and in a consumer-friendly manner.

I. The Satellite Distant Signal License Serves Consumers Across the Nation.

A. Renewing the License Will Protect Consumers.

The satellite distant signal license lets consumers who can't receive over-the-air television receive out-of-market television stations from satellite. Since its inception, the license has brought network television to millions of Americans who otherwise wouldn't have access to it. For this reason, the distant signal license is a great success story that serves the public interest.

Today, most satellite subscribers receive network programming from their local stations. And the law now restricts satellite operators' ability to bring distant signals to

those subscribers. Yet nearly a million satellite subscribers still rely on the distant signal license today. Others will rely on the license into the future, including those in markets where we don't yet offer local signals, those in markets missing one or more network affiliates, and those in places like parts of Alaska that are outside of any local market. To all of these people, the distant signal license is critical. Without it, they would be denied access to programming that they love and that virtually all other Americans get to see. Without this license, rural Americans would be cut out of the national conversation.

Copyright holders contend that there are other ways to serve these consumers. They hypothesize "market mechanisms," "voluntary licensing arrangements," "sublicensing" and the like. Yet nobody really thinks such alternatives will actually result in satellite carriers offering distant signals. Sublicensing, for example, depends on broadcasters amending all of their programming contracts to permit satellite distant signal retransmission. No one has explained why broadcasters, who oppose the very notion of distant signals in the first place, would undertake such an effort.

The satellite distant signal license, though far from perfect, is the only realistic way to bring network programming to millions. It should not be allowed to expire.

B. "Harmonizing" the Cable and Satellite Statutory Licenses Will Lead to Unacceptable Consumer Disruption.

Some have suggested that Congress should "harmonize" the cable and satellite distant signal licenses by creating one giant, omnibus license. This idea has theoretical appeal because it would apply the same rules to satellite and cable. Yet harmonization is better in theory than in practice. It would take an extraordinary amount of work to achieve results that, in a perfect world, would largely replicate the system already in place today.

In the *real* world, however, harmonization would almost certainly result in consumer disruption. The cable and satellite industries have built their contracts and delivery plans all around the country on the stability of their respective statutory licenses. DIRECTV, in particular, has spent billions of dollars to design its systems to comply with the satellite statutory licenses. Changing the rules now would disturb the settled expectations of viewers throughout the country and would cause compliance problems on all sides. Inevitably, both cable and satellite viewers would lose stations they now rely upon.

Harmonization would also ignore important differences between cable and satellite technologies and businesses. To take one example, the cable license ensures broadcast exclusivity through the network nonduplication and syndicated exclusivity rules, while the satellite license does so through the “unserved household” requirement. The cable exclusivity rules make sense for operators of localized cable systems, who can easily measure “zones of protection” for the handful of stations they carry and can manage blackouts where necessary. DIRECTV, which retransmits thousands of stations across the country from satellites above the equator, cannot do any of this.

Imposing cable rules on satellite is problematic. Imposing satellite rules on cable cannot be any better. Congress should resist the temptation to combine the cable and satellite licenses.

C. Congress Should Maintain the *Status Quo* on Royalty Rates and Eligibility Rules.

As an alternative to eliminating the distant signal license or combining it with the cable license, some parties have called on Congress to make drastic changes to the

mechanisms of the license itself. Because we believe that such changes will undermine the consumer experience, we urge Congress to resist these calls.

First of all, Congress should not drastically increase royalty rates. As a business that depends on content, DIRECTV recognizes the value of intellectual property. DIRECTV is thus willing to pay its fair share, and was able to negotiate reasonable rates at arm's length with copyright holders during the last reauthorization. These, however, are exceptionally difficult economic times for all Americans. In such circumstances, Congressional action that would directly lead to drastic price increase for consumers would be especially difficult.

Second, Congress should not let the digital television transition change the distant signal eligibility rules. Congress set a "hard deadline" for the DTV transition *after* it last renewed the distant signal license. This created several ambiguities in the law. Some of these could make it easier to sign up for distant signals, others could make it harder, but none were intended. Thus:

- The DTV transition should *not* mean that everybody is "unserved," as the broadcasters fear.
- The DTV transition should *not* mean that DIRECTV can no longer offer high-definition distant signals in markets where it offers local signals in standard definition.
- The DTV transition should *not* mean that viewers become ineligible for distant signals when a local station adds network programming to a multicast feed.

If, as we believe, Congress never intended to change these rules after the transition, it should now clarify the law accordingly.

D. Simplifying the “Unserved Household” Provision Will Make The Law Fairer and More Understandable For Your Constituents.

While DIRECTV does not advocate wholesale revision of the distant signal license, Congress could help consumers by making modest changes to the distant signal license’s “unserved household” restriction. This restriction limits satellite distant signals to those consumers who can’t get local signals over-the-air. But the process for determining which households are “unserved” satisfies no one. Satellite carriers think it is far too complicated and expensive. Broadcasters think it allows satellite carriers to count too many households as “unserved.” Most importantly, consumers despise the process of computer prediction, waiver, and on-site testing.

We have two suggestions to simplify the license. One concerns markets in which we offer local stations. The other concerns the “unserved household” definition more generally.

1. Over-the-Air Qualification Is Unnecessary in Local Markets Served by Satellite.

In markets where a satellite carrier offers local service, the criteria for “unserved household” should not be *over-the-air* reception. The test instead should be whether the viewer can get local service *from satellite*. More specifically, subscribers in such markets should be eligible for distant signals only if they are located outside the satellite spot beam on which local channels in a particular market are offered.

This approach has numerous advantages. It is logical because, in markets where subscribers receive local signals over the satellite, over-the-air reception is irrelevant. It is simple because spot-beam coverage is a known quantity. It is fair because spot-beam

coverage can be published so everybody knows who's eligible. Most importantly, it ensures that all subscribers can receive network programming.

2. Congress Should Address the "Grade B Bleed" Problem More Generally.

Under today's rules, subscribers in markets lacking one or more network affiliates, or subscribers outside the satellite spot beam, are ineligible for distant signals if they are within the service contour of a neighboring, out-of-market station. This is known as the "Grade B bleed" problem, and it can prevent subscribers from getting any network service via satellite.

The spot-beam proposal described above would address the Grade B bleed issue in the majority of markets in which DIRECTV provides local service. Yet the problem caused by neighboring stations' over-the-air signals harms consumers in the remaining markets, as well.

This harm is most acute for consumers in markets missing one or more network affiliates. Lafayette, Indiana, for example, has a CBS affiliate but no other affiliates. So one might logically expect DIRECTV to be able to deliver NBC, ABC, and FOX distant signals to Lafayette subscribers. But some subscribers in the Lafayette market are predicted to get one or more faint over-the-air signals from Chicago, Indianapolis, or Champaign. We cannot deliver these subscribers local network programming (because there is none), nor can we deliver them distant network programming (because they are technically "served"). These antiquated rules deny subscribers access to network programming based on the transmissions of non-Lafayette stations.

There is a solution. The test should be whether a subscriber can receive a sufficiently strong signal *from an in-market station*. We see no reason why out-of-market

stations, whatever their predicted signal contour, should deny consumers in other markets access to distant network signals.

II. Targeted Changes Would Greatly Improve the Satellite Local Signal Statutory License, But an Unfunded Carriage Mandate Would Harm Consumers.

A second statutory license permits satellite operators to deliver local stations within their own “local markets,” generally defined in terms of “designated market areas” (or “DMAs”). This license has generated far less controversy than the distant signal license and, unlike the distant signal license, does not expire at the end of year. While it, too, needs updating and modernization, Congress should resist attempts by the broadcasters to rewrite it to impose onerous unfunded carriage mandates on consumers.

A. Addressing Inequities in the DMA System Will Give Viewers the Stations that Truly Serve their Communities.

Congress could begin by modernizing “local markets” and the decades-old DMA system. DMAs are part of a private subscription service offered by Nielsen Media Research, used primarily for advertising purposes. This system was never meant to determine which local signals are available to viewers. Using it for this purpose means that viewers throughout the country are barred from receiving local news, sports, and entertainment because they happen to live on the wrong side of a DMA border.

The problem is most acute in so-called “orphan counties” that are located in one state but placed in a DMA centered in another state. Fulton County, Pennsylvania, for example, is in the Washington, D.C. DMA. But Washington, D.C. newscasts do not run stories about Fulton County. Nor do they typically report emergencies, severe weather, or other public safety issues in Fulton County. Fulton County residents thus receive service that cannot really be described as “local.”

We understand Congressman Ross will soon introduce legislation, the Local Television Freedom Act that would begin to address these issues. It would allow viewers in counties like Fulton to receive stations from in-state “adjacent” markets that better serve their communities. DIRECTV urges members of the Committee to support this legislation.

B. Fixing the “Significantly Viewed Rules” will Rescue Congress’s Good Idea from the FCC’s Implementation Mistakes.

Cable operators have long been permitted to offer neighboring “significantly viewed” stations. (For example, certain New York stations are “significantly viewed” in New Haven, Connecticut.) In an explicit attempt to level the playing field with cable, Congress gave satellite carriers similar rights in 2004. Congress also, however, included an “equivalent bandwidth” provision that does not apply to cable. The FCC subsequently interpreted this rule so onerously that it effectively undid Congress’s efforts.

Satellite operators (unlike cable operators) must offer local stations the “equivalent bandwidth” offered to significantly viewed stations. But the FCC has interpreted this to mean that DIRECTV must carry local stations in the same format as significantly viewed stations every moment of the day. This is infeasible. DIRECTV cannot monitor the format of hundreds of station pairs around the clock. Nor can DIRECTV black out signals when, for example, a high-definition ballgame runs late on one station while the other offers standard definition hourly fare. We think the FCC’s decision conflicts with Congress’s intent to promote cable-satellite parity. Unless Congress revisits this issue, satellite operators will remain unable to carry signals that cable operators have carried for years.

C. Unfunded Carriage Mandates Unfairly Burden Satellite Subscribers.

This testimony suggests a few modest attempts to update the local signal license. Broadcasters, by contrast, seek to alter the very essence of the license with huge unfunded carriage mandates. These are technically infeasible, hugely expensive, and unfair to satellite subscribers.

DIRECTV today offers local television stations by satellite in 150 of the 210 local markets in the United States, serving 95 percent of American households. (Along with DISH Network, we offer local service to 98 percent of American households.) DIRECTV also offers HD local service in 119 markets, serving more than 88 percent of American households. By the FCC's calculations, over **80** percent of DIRECTV's satellite capacity is now devoted to local service – nearly triple the amount cable operators can be required by law to carry.¹ We have devoted several billions of dollars to this effort. And we are working every day to serve more markets. In the meantime, we have developed equipment that allows subscribers in the remaining markets to integrate digital terrestrial broadcast signals seamlessly into their DIRECTV service.

All of this does not satisfy the broadcasters. Last week, legislation was introduced that would require satellite carriers to serve all remaining local markets by satellite within a year. Very respectfully, while expanding the reach of broadcast service might be a worthy goal, H.R. 927 is the wrong approach.

¹ *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, 23 FCC Rcd. 5351, ¶ 11 n.48 (2008) (“*Satellite HD Carriage Order*”) (using hypothetical local and national programming carriage figures to estimate that a satellite operator would dedicate 91 percent of its capacity to local programming). With DIRECTV's actual figures, this number is closer to 80 percent.

H.R. 927 would upset the delicate balance that has guided Congressional policy in this area for decades. In enacting SHVIA's statutory copyright license for local broadcast signal carriage, Congress specifically recognized that the capacity limitations faced by satellite operators were greater than those faced by cable operators.² In light of those limitations, Congress adopted a "carry-one, carry-all" regime in which satellite operators can choose whether to enter a market, and only then must carry all qualifying stations in that market.³ This regime was carefully crafted to balance the interests of broadcasters and satellite carriers alike. Indeed, both Congress and the courts concluded that the carry-one, carry-all regime was constitutional largely because it gave satellite carriers the choice of whether not to serve a particular market.⁴

The same concerns that led Congress to limit satellite carriage requirements still apply today. Last year, the FCC "recognize[d] that satellite carriers face unique capacity, uplink, and ground facility construction issues" in connection with offering local service.⁵ It concluded that, if faced with onerous carriage requirements, satellite carriers might be "forced to drop other programming, including broadcast stations now carried in HD pursuant to retransmission consent, in order to free capacity," or might be "inhibited from

² 145 Cong. Rec. H11,769 (1999) (joint explanatory statement), 145 Cong Rec H 11769, at *H11792 (LEXIS) ("To that end, it is important that the satellite industry be afforded a statutory scheme for licensing television broadcast programming similar to that of the cable industry. At the same time, the practical differences between the two industries must be recognized and accounted for.") ("Conference Report").

³ 47 U.S.C. § 338(a)(1).

⁴ See Conference Report at *H11795 ("Rather than requiring carriage of stations in the manner of cable's mandated duty, this Act allows a satellite carrier to choose whether to incur the must-carry obligation in a particular market in exchange for the benefits of the local statutory license."); *SBCA v. FCC*, 275 F.3d 337, 354 (4th Cir. 2001) (holding that the carry-one, carry-all rule was content-neutral because "the burdens of the rule do not depend on a satellite carrier's choice of content, but on its decision to transmit that content by using one set of economic arrangements [e.g., the statutory license] rather than another").

⁵ *Satellite HD Carriage Order*, ¶ 7.

adding new local-into-local markets.”⁶ In light of these findings, we respectfully urge Congress not to upset the balance it struck in 1999.

By imposing such burdens, H.R. 927 would unintentionally create real inequality. Broadcasters already make their signals available in every market over the air, for free. More people could surely receive those signals if offered over satellite. But more people could also receive those signals if broadcasters themselves invested in the infrastructure to increase their own footprint so everyone in the market could receive a free over the air signal. We suggest that it is inequitable, especially in this economy, to place the financial burden of expanding broadcast coverage on satellite subscribers alone.

III. Retransmission Consent is Broken.

Numerous parties have suggested that, in considering SHVERA reauthorization, Congress should examine the rules governing retransmission consent agreements. DIRECTV reluctantly agrees. I say “reluctantly” because DIRECTV has successfully negotiated thousands of programming agreements over the years – many hundreds of them with broadcasters. While these were often contentious, hard-fought battles, the marketplace generally worked to deliver consumers the programming they want. Because of recent changes in the market, however, many consumers now pay more than they should for broadcast programming and broadcasters withhold their signals far too often.

The retransmission consent marketplace worked, in part, because of the equilibrium that used to exist between broadcasters and cable operators. In 1992, Congress gave all full-power television stations the right to engage in private carriage

⁶ *Id.*, ¶ 8 (citations omitted).

negotiations with cable operators.⁷ Back then, these negotiations pitted one monopoly against another. Each broadcaster had a monopoly over the distribution of content within its local market. Each cable operator had a monopoly over multichannel distribution within its franchise area. Because the value to broadcasters of expanded carriage roughly equaled the value to cable operators of network programming, most retransmission consent agreements did not involve cash payments.

In 1999, Congress allowed satellite operators to carry local stations. This was an overwhelmingly good thing for consumers. But it had the unintended effect of skewing retransmission consent negotiations. Cable and satellite operators still had to negotiate with monopoly broadcasters. But broadcasters could now play cable and satellite against one another. In this new market, broadcasters found their relative bargaining power dramatically increased.

Today, the market is tilted even more heavily in favor of broadcasters. Every broadcaster has at least three competitors with whom to negotiate. Some have five or more. All the while, they maintain government-protected exclusive control over their content, not to mention the public airwaves they enjoy for free. The result is predictable: higher retransmission consent fees (which get passed along to subscribers), more frequent threats to withhold stations (which confuse subscribers), and more withheld signals (which deprive subscribers, who have done nothing wrong, of critical network programming).

Exacerbating this imbalance is the recent influx of private equity investments in broadcast television. This has resulted in broadcasters demanding ever increasing rates,

⁷ This is not a copyright "exclusive right." Rather, retransmission consent is a right given to broadcasters separate and apart from copyright.

in some instances two to three times what we were previously paying. One broadcaster reported a 23 percent rise in retransmission consent revenues between 2006 and 2007 alone.⁸ Another broadcaster recently told the FCC that it could reasonably demand **\$20.00** per-sub-per-month for a single station.⁹

It does not appear that this additional money is being used to provide more or better local programming. In fact, the opposite appears to be true. Many broadcasters are producing less local news, and others have replaced local programming with national infomercials.

As I said earlier, DIRECTV willingly pays for high-quality content that our subscribers value. All programming entities deserve fair and reasonable compensation for the product they produce. This includes value-added content we receive from broadcasters. But it does not serve the American public if broadcasters are allowed the unfettered ability to raise rates without any correlating benefit to consumers in the form of improved local content.

While I believe the retransmission consent regime is broken, I cannot sit here today and give you a specific solution. Rather, we would like to work with members of this committee to establish a construct that accomplishes the following policy goals:

- It should *fairly and reasonably compensate the broadcaster for its investment in high-quality content*. DIRECTV has always been willing to pay a fair price to

⁸ "Nexstar Expects \$75M from Retrans Deals," TVNewsday, Feb. 19, 2009, *available at* <http://www.tvnewsday.com/articles/2009/02/19/daily.12/>.

⁹ See Reply Comments of Hearst-Argyle Television, Inc., MB Docket No. 07-198, at 9-10 (filed Feb. 12, 2008) (arguing that the true market value of the average Hearst-Argyle station is \$20.18 per subscriber per month and stating that, while it has not yet sought such fees, "the Commission could hardly conclude, on any basis of fairness of equity, that a negotiating request for such a fee was not based on marketplace considerations or was in any way inappropriate or unlawful").

retransmit local signals. We are not looking at SHVERA reauthorization to change this.

- It should *protect consumers from withheld service*. Consumers caught in the middle of a retransmission consent dispute don't care about the particulars of the dispute. They simply want their programming. Congress should consider restricting, to all but the most limited circumstances, the ability of broadcasters to shut off signals.

DIRECTV hopes to work with this Committee and other stakeholders to develop specific proposals that would meet these criteria.

* * *

Mr. Chairman and members of the Committee, please allow me to end where I began. Consumers throughout America – whether they subscribe to satellite or not – are better off because of the legislation you and your Committee championed over the years. I ask you to keep those same consumers in mind as you consider SHVERA reauthorization this year.

Thank you once again for allowing me to testify. I would be happy to take any of your questions.

Mr. BOUCHER. Thank you, Mr. Gabrielli.
Mr. Rowland.

**STATEMENT OF WILLARD ROWLAND, PRESIDENT AND CEO,
COLORADO PUBLIC TELEVISION, ON BEHALF OF THE ASSO-
CIATION OF PUBLIC TELEVISION STATIONS**

Mr. ROWLAND. Thank you, Mr. Chairman and Ranking Member Stearns, for inviting me to testify today on behalf of Colorado Public Television in Denver and the Association of Public Television Stations.

As an aside, at the outset I might note that this is probably a first in the history of communications policymaking in which a humble public broadcaster is sitting here situated in the middle of the panel between all of these distinguished members of the broadcast and telecommunications media to my right and left. Perhaps, indeed, this means change is in the air.

The reauthorization of SHVERA is of great importance to my station and the 364 local public television stations across the country. KBDI is located in Five Points, the historically African American and Latino neighborhood of north Denver, and over the years, under the banner "World View, Community Voice," we have developed a wide range of local and international programming that serves 85 percent of Colorado's population.

There are three SHVERA reauthorization issues of particular interest to public television stations: multicast carriage; local-to-local; and the reach of public television Statewide networks.

Public stations nationwide were early adopters of digital technology and have been at the forefront of maximizing the new digital capacity to serve our core missions of localism, education, and diversity. My station in Denver currently offers three multicast streams and plans to offer more. In addition to our traditional mix of local and national public affairs and cultural programming on one channel, we provide a documentary service and an international stream featuring news, foreign affairs, and arts programs.

Without multicast carriage, this rich educational content made available through digital technology is lost. Given the complexities of multicast carriage, we prefer voluntary market-driven arrangements with multi-channel video providers, such as those we have already reached with cable, Verizon, and DIRECTV. The DIRECTV agreement proves that a mutually beneficial creative approach is possible involving high-definition, multicast standard definition, and video-on-demand options. Such an approach provides viewers with a full array of public television's high quality digital content while respecting the capacity constraints of DBS providers.

However, after years of unsuccessful attempts to reach a similar private agreement with Dish Network, we have no choice but to conclude that there is a market failure, and it is time for the Federal Government to intervene to ensure that Dish's 14 million customers have access to the full benefits of their local public television stations' digital offerings.

As she noted today, Congresswoman Eshoo introduced H.R. 4221, which would mandate DBS coverage of public television stations' complete digital signals where no private agreement between the DBS provider and the local station has previously been reached.

We are delighted that Representative Eshoo is going to reintroduce this legislation. We applaud her initiative and urge that this important legislation be incorporated as part of the SHVERA reauthorization.

Turning to local-into-local, SHVERA does not require that DBS providers carry local broadcasts in all the areas they serve. As a result, viewers in more than 50 smaller and often rural markets cannot receive even the primary offerings of their local public television stations through one or both DBS providers.

Public television is strongly and irrevocably committed to the principle of localism. As stations transition to digital-only broadcasting and invest in greater local services, carriage by all multi-channel video providers is critical. Public television calls on Congress to ensure that DBS customers in every market are able to view through some mechanism the offerings of their local public television stations as soon as reasonably practicable.

The final SHVERA issue for us involves Statewide or regional public television networks charged by statute or mission with reaching all viewers in their State or region. Because the SHVERA carriage regime is based on the DMA system, many of these networks cannot be carried by DBS providers in certain portions of their States because they do not have full power transmitters in each DMA.

The most glaring example is with our neighboring Wyoming Public Television, which reaches only 45 percent of the State's population through DBS carriage. But this problem affects State or regional public television networks in at least 18 States. It is our hope that public television can work closely with the committee to solve this problem.

Finally, Mr. Chairman, I would be remiss if I did not stress the importance of Federal funding for public broadcasters. Federal funding is more critical now than ever before as public stations are rolling out their new digital services while facing the greatest economic challenge in their 42-year history. We ask this authorizing committee to support increased Federal funding to offset the projected 15 percent declines in other sources of funding.

Again, thank you, Mr. Chairman, for inviting me to participate in today's hearing. I look forward to answering any questions you might have.

[The prepared statement of Mr. Rowland follows:]

**Testimony of Willard D. (“Wick”) Rowland, Jr., Ph.D.
President and CEO, Colorado Public Television, KBDI-TV/12
Before the House Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet
February 24, 2009**

Mr. Chairman and Ranking Member Stearns, thank you for inviting me to testify before you today on behalf of my station, Colorado Public Television (KBDI) in Denver, Colorado, and the Association of Public Television Stations (APTS). The reauthorization of the Satellite Home Viewer Extension and Reauthorization Act (SHVERA), which, among other things, governs the transmission of local public television signals to millions of direct broadcast satellite (DBS) viewers, is of great importance to the 364 public television stations across the country. It also will bear directly on the future of public broadcasting in the digital era.

This matter is of particular interest to KBDI, because of the unique character of our community-oriented services and our efforts to reach out to the entire state of Colorado. KBDI is located in Five Points, the historically African-American and Latino neighborhood in North Denver, and over the years under the banner “World View, Community Voice” we have steadily developed a wide range of local and international programming that serves 85 percent of Colorado’s population.

KBDI offers a great deal of local public affairs programming—eight to nine shows a week from a variety of political perspectives and for diverse audiences. Also each election season we provide the greatest amount of candidate and ballot issue debate programming of any television station in the state. During the 2008 election season our series, “Colorado Decides,” aired debates for most of the U.S. congressional district races, the nationally prominent Senate race (twice) and all the major statewide ballot referenda and initiatives. Altogether last year, including the campaign-oriented topics of our regular weekly shows, KBDI provided 86 original hours of candidate and issue programming; with repeats it was a total of 136 hours.

One of KBDI's foremost long-term strategic planning goals is to extend all that political coverage to the entire state, and to be sure as well that any carrier of our signal anywhere in the state, including in the greater Denver Metro area, includes the full multicast array of our services.

As Congress looks to reauthorize SHVERA, there are three issues that are of particular interest to public television stations. Our primary concern, and the one I will spend the most time on today, is that currently a large portion of DBS customers have no access to public television stations' extensive and valuable multicasting services. Another pressing issue for public broadcasters is the fact that DBS viewers in more than 50 smaller and often rural markets cannot receive even the primary offerings of their local public television stations. Finally, I would like to call the Committee's attention to an issue that is unique to public television and which hinders our statewide broadcasters' ability to serve all DBS subscribers in their states, thereby undermining our local mission.

DBS CARRIAGE OF MULTICAST SERVICES

As you are aware, SHVERA does not address DBS carriage of local broadcast stations' multicast offerings. Public television stations nationwide were early adopters of digital technology and have been at the forefront of developing content and maximizing the new digital capacity to serve our core missions of localism, education and diversity. Public television stations are utilizing their multicasting capabilities to provide dedicated channels for public affairs programming, for educational services and for programming designed to reach underserved audiences.

For example, WFSU in Tallahassee partners with the Florida State Legislature to offer the Florida Channel, a public affairs network that is carried by several public television stations in the state. The Florida Channel features live, gavel-to-gavel coverage of the state Senate and House of

Representatives, as well as other local electoral and public affairs coverage. Georgia Public Broadcasting, which operates nine full-power stations throughout the state, airs GPB Knowledge, a digital channel featuring quality educational content for teachers and students, as well as documentaries, public affairs and lifestyle programming. My station in Denver serves our globally minded audience by using one multicast stream to offer a documentary channel, featuring the works of independent documentary filmmakers, and another stream to provide a lineup of news, foreign affairs, music, sports and arts programs from around the world. In time we expect to have a total of four multicast services.

However, without carriage on all multichannel video platforms, this content is lost to millions of taxpayers who have invested their hard-earned dollars in public broadcasting. Almost exactly one year ago, APTS, PBS and DIRECTV reached a landmark agreement which allows DIRECTV's nearly 17 million subscribers to access a broad array of public television's digital services. Public television is cognizant of the DBS providers' concerns about capacity limitations and worked with DIRECTV on creative solutions to ensure that subscribers have access to the myriad content and services provided by the local stations. The agreement provides that in each market in which it provides high-definition (HD) local channels, DIRECTV will carry either an HD signal or two standard-definition (SD) streams from each station, at the station's option. In addition, DIRECTV will carry two national SD feeds featuring educational programming with local stations' identification on the Electronic Programming Guide. In the future, DIRECTV will provide public television stations the ability to offer additional localized programming through dedicated on-demand services to its new MPEG4 receivers, which are equipped with broadband connections. For example, KBDI will be able to offer on-demand access to all our weekly local public affairs program and political campaign coverage on DIRECTV. Finally, in markets where DIRECTV is not yet offering local broadcast signals, it will provide stations with marketing

materials regarding an offer for an antenna and ATSC tuner so many customers can gain access to local signals over-the-air.

Public television also has implemented beneficial carriage agreements with the National Cable and Telecommunications Association (NCTA), the American Cable Association (ACA), and Verizon so that households that receive their video programming through cable or fiber will have access to their local public television stations' multicast offerings. However, there remain nearly 14 million Dish Network subscribers across the country who do not have those benefits. Public television has tried for years to reach a carriage agreement with Dish Network, but to date we have been unsuccessful. As was the case with our negotiations with DIRECTV, APTS acknowledges that full multicast carriage poses a potential capacity constraint for Dish Network. However, we have urged Dish Network to consider creative solutions similar to those in the DIRECTV agreement that will provide viewers with the digital advantages of more locally produced content delivered over multicast streams while still respecting reasonable limitations on Dish Network's capacity. The DIRECTV deal proved that these goals are attainable. In the meantime, however, as we await an agreement with Dish Network, its subscribers are denied the high quality educational, cultural and public affairs multicast programming offered by their local public television stations.

To remedy this situation, during the last Congress, Representative Anna Eshoo introduced H.R. 4221, the Satellite Consumers' Access to Public Television Digital Programming Act of 2007, which would mandate DBS carriage of public television stations' complete digital signals where no private agreement between the DBS provider and the local station has previously been reached. We greatly appreciate the work of Representative Eshoo and the bill's co-sponsors, including Representatives Engel, Gonzalez, Hill, Schakowsky, Braley, Green and others, to try to ensure that all DBS subscribers

have access to the content and services offered by their local public television stations. We urge that this important legislation be considered as part of the SHVERA reauthorization.

DBS CARRIAGE OF LOCAL PUBLIC TELEVISION SIGNALS IN ALL MARKETS

As you know, SHVERA does not require that DBS providers carry local broadcast signals in all of the areas they serve. As a result, viewers in more than 50 smaller and often rural markets—including portions of both of your districts, Mr. Chairman and Mr. Ranking Member— cannot receive even the primary offerings of their local public television stations through one or both DBS providers.

In most parts of this country, local public television stations are the last truly locally owned and operated television stations. Public television is strongly and irrevocably committed to the principle of localism and to translating that commitment into practice and programming that enables residents of communities they serve to cope with local problems and engage in the civic life of their towns, cities and states. Despite their limited resources and the fact that it costs a public television station at least *20 times* as much to produce its own programming as it does to acquire it from the Public Broadcasting Service (PBS) or another supplier, public television stations are producing and airing a wide array of programs focused specifically on their local communities and the issues that affect them. All the local KBDI programming I have already described is but a microcosm of the full story. Nearly all the 174 public television licensees around the country provide similar and variously rich mixtures of locally-produced public affairs, educational and cultural programming. As the Government Accountability Office has noted, many public television stations are the only source in their communities of local programming unrelated to news or sports.

As stations transition to digital-only broadcasting and production, and as they invest in greater local capacity and services, local carriage by all video providers is critical to ensure that Americans have access to the fruits of their financial commitment. Public television calls on Congress to renew its commitment to localism by ensuring that DBS customers in every market are able to view, through some mechanism, their local public television stations as soon as reasonably practicable.

STATEWIDE NETWORKS' ABILITY TO REACH DBS SUBSCRIBERS THROUGHOUT THE STATE

The final SHVERA issue I would like to address today is one that is, as far as I am aware, unique to public broadcasters. As you know, SHVERA establishes a copyright license that enables DBS providers to retransmit, within a Designated Market Area (DMA), local stations located in that DMA. In many states, state governments or community foundations operate statewide or regional networks made up of several public television stations. These networks are charged by statute or mission with reaching all viewers in their state or region. However, because the SHVERA carriage regime is based on the DMA system, many of these networks cannot be carried by DBS providers in certain portions of their states because they do not have a full-power transmitter in each DMA reaching into the state.

For example, Wyoming is divided among seven DMAs that include Wyoming and portions of six other states: Utah, Idaho, Montana, Iowa, Nebraska and Colorado. Wyoming Public Television, which is licensed by a state university, has three full-power stations, all located in the Casper-Riverton DMA, and serves the rest of the state with translator stations. Because DBS providers lack a statutory copyright license to retransmit Wyoming Public Television in the other six DMAs, the network can reach only 45 percent of its state population through DBS carriage. The rest of the state receives either

out-of-state public television stations or—in several of the DMAs—no local public television signals at all.

Wyoming is the most severe example, but this problem affects state or regional public television networks in at least 18 states, from Louisiana to Nebraska and from North Carolina to Oregon, and implicates counties encompassing more than a million households. In many situations, these are rural areas with difficult terrain where DBS is the best option for viewers to receive their local television stations. Additionally, because of the challenges of digital conversion, many small cable systems have since closed down, leaving towns in these areas without cable service. This further highlights the necessity of ensuring that homes in these areas can receive the signal of their local statewide public broadcaster through satellite service.

State or regional public television networks are charged by their state legislatures to provide statewide services including news and information, public affairs, K-12 services to schools, higher education, workforce services and emergency response information. Statewide public television networks typically receive funding from their states to provide these unique programming services in return for their pledge to serve all citizens of their states. Public television's statewide networks take this mandate very seriously. When DBS carriage does not cover all state residents, citizens of the state do not receive the promised benefit of their state licensee's programming and services. That is not acceptable.

As this committee looks toward reauthorizing and refining SHVERA, it is our hope that public television can work closely with you, Mr. Chairman, and the other members of the committee to find a solution to ensure that DBS providers are able to retransmit state or regional public television networks to all viewers within their state or region.

FEDERAL FUNDING

Finally, I would be remiss if I didn't stress the importance of federal funding for public broadcasters. Federal funding is essential to public broadcasters' ability to deliver quality local service to all Americans, including the millions of viewers that receive their local signal through DBS. Federal funding is more critical now than ever before as public broadcasting is rolling out new digital content and services and fulfilling its core objectives of education, localism, and diversity, while simultaneously facing the greatest economic challenge in its 42-year history. To that end, we ask for the support of members of this authorizing committee for increased federal funding to offset the dramatic declines in anticipated revenues from other sources of funding—states, individual contributions and corporate underwriting—that constitute 85 percent of public broadcasting's total operational revenue. Such increased support will be essential to realize the promise of public broadcasting as it seeks to provide its unique educational content across all platforms including over-the-air broadcasting, satellite, cable and the internet.

Again, thank you for inviting me to participate in today's hearing. All of us in public television look forward to continuing to work with you as you examine SHVERA reauthorization, our funding requests and other issues of importance to public broadcasters in the exciting new media world unfolding before us and which public broadcasting can do much to help shape.

Mr. BOUCHER. Thank you very much.
Mr. Yager.

STATEMENT OF K. JAMES YAGER, CEO, BARRINGTON BROADCASTING GROUP, LLC, ON BEHALF OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Mr. YAGER. Chairman Boucher, Ranking Member Stearns, and members of the subcommittee, thank you very much for having me here today. My name is Jim Yager, and I am the CEO of Barrington Broadcasting, which owns and operates 21 television stations in 15 small- to mid-size markets. I am also the chairman of the Television Board of the National Association of Broadcasters.

Ever since Congress crafted the original Satellite Home Viewer Act of 1988, it has worked to further two objectives: first, that free over-the-air television will remain widely available to American households; and, second, that satellite re-transmissions will not jeopardize the strong public interest in maintaining vibrant local television services. Those two goals remain paramount today.

Our Barrington stations keep our communities informed and connected. We work every day to embody the spirit of localism which Congress has affirmed time and time again as a vital public policy goal. We do not charge our viewers to watch our programs, rely on payments from advertisers to deliver a free service to our constituents.

Without free, over-the-air television, cable and satellite companies would essentially be unrestrained in their ability to charge subscribers even higher prices. Broadcast television stations remain the primary source of the most diverse and popular entertainment, news, weather, and sports programming in the country. In fact, according to data from Nielsen Media Research, in a 2007-2008 television season, 488 of the top 500 prime time television programs were broadcast on over-the-air television.

While these stations represent a relatively small number of channels of those on cable and satellite systems, broadcast stations offer a unique and valuable service to their local markets that could be undermined by unnecessary changes to the law.

As Congress considers updates to SHVERA, it is vital that you uphold the strength and tradition of localism. Any changes should not impair enforcement of program market agreements that are essential to local broadcast service.

Furthermore, this committee should strengthen localism by phasing out satellite licensing for distant signals. The license should be replaced with a requirement for local-into-local carriage in all television markets which would enhance localism, programming, and price competition, and increase viewer choice.

To assist viewers in this difficult economic climate, Congress should mandate local-into-local satellite service in every market. I would like to thank Congressman Stupak for the introduction of legislation to accomplish this goal.

There are 31 of 210 television markets in small and rural areas like Marquette, Michigan, that the satellite companies do not serve. They have said that this is a capacity issue, but I believe it is quite simply a business decision on their part. I am certain that,

if Congress does not step in, the satellite companies won't ever provide local service to every market in this country.

Broadcasters have invested well over \$1 billion in making the transition to digital television. So far, there is very little economic return on that investment. Nevertheless, those investments are still in the public interest. The satellite industry's investment to provide local-into-local service to all Americans would also be in the public interest.

Localism is at the forefront of broadcaster operation. In emergency situations, it is the broadcaster, not the cable or satellite companies, who is on the scene providing the public with the emergency, life-saving, and timely information it needs. Localism is not in cable or satellites's DMA or their business models.

Some Members of Congress have expressed frustration that their constituents do not have the access to in-State but out-of-market broadcast stations. Current law allows cable and satellite systems to offer nonduplicating, out-of-market programming to their subscribers, but many cable and satellite systems choose not to do so. However, Congress should not change current law to allow cable and satellite companies to offer network and syndicated programming that is identical to programming already offered by the local broadcasters with rights to that market. Doing so would be inconsistent with the long-standing principle of localism and the carefully balanced system of retransmission consent that was established by Congress to further this principle.

If the retransmission consent rights of an in-market station were undercut by the importation of distant in-State duplicating signals, the economic basis for the local broadcaster service to the public would be eroded, and the public, in my opinion, would be harmed.

Thank you for giving me this opportunity to testify. I welcome your questions following the panel.

[The prepared statement of Mr. Yager follows:]



**Hearing on "Reauthorization of the Satellite Home Viewer
Extension and Reauthorization Act"**

**United States House of Representatives Committee on the
Energy and Commerce
Subcommittee on Communications, Technology, and the
Internet**

February 24, 2009

**Statement of K. James Yager
Barrington Broadcasting**

On behalf of the National Association of Broadcasters

INTRODUCTION AND SUMMARY

Chairman Boucher, Ranking Member Stearns, and members of the Subcommittee, thank you very much for having me here today. My name is Jim Yager and I am the CEO of Barrington broadcasting which owns and operates 21 television stations in 15 small to mid-sized markets.

Ever since Congress crafted the original Satellite Home Viewer Act of 1988 ("SHVA"), it has worked to ensure *both* (1) that free, over-the-air network broadcast television programming will be widely available to American television households, *and* (2) that satellite retransmission of television broadcast stations will not jeopardize the strong public interest in maintaining free, over-the-air local television broadcasting. Those two goals remain paramount today.

There can be no doubt that delivery of *local* stations by satellite is the best way to meet these twin objectives. The first two times Congress considered the topic—in 1988 and 1994—delivery of local stations by satellite seemed far-fetched. Congress therefore resorted to a considerably less desirable solution: permitting importation of *distant* television stations, although only to households that could not receive their local network-affiliated stations over the air.

When Congress revisited this area in 1999, the world had changed: local-to-local satellite transmission had gone from pipe dream to technological reality. And in response, in the 1999 Satellite Home Viewer Improvement Act ("SHVIA"), Congress took an historic step, creating a new "local-to-local" compulsory license to encourage satellite carriers to deliver *local* television stations by satellite to the viewers in their home communities. At the same time, Congress knew that allowing satellite carriers to

use the new license to “cherry-pick” only certain stations would be very harmful to free, over-the-air broadcasting and to competition within local television markets. Congress therefore made the new “local-to-local” license available only to satellite carriers that deliver all qualified local stations.

Congress’ decision to create a carefully-designed local-to-local compulsory license has proven to be a smashing success. Despite gloomy predictions by satellite carriers before enactment of SHVIA that the “carry-one-carry-all” principle would sharply limit their ability to offer local-to-local service, the nation’s two major DBS companies, DIRECTV and DISH Network, today deliver local stations by satellite to the overwhelming majority of American television households.

DISH Network now serves 177 television markets, or Designated Market Areas (“DMAs”), that collectively cover 97 percent of all U.S. TV households. DIRECTV today serves 150 DMAs covering more than 94 percent of all U.S. TV households.

When Congress renewed SHVIA in 2004 with the Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”), the dramatic growth in satellite delivery occasioned by the enactment of the local-to-local license in 1999 was already apparent. Recognizing that service by local television stations was better than service by distant television stations, SHVERA incorporated the important new requirement colloquially known as “if local, no distant.” Under this requirement, distant analog signals cannot generally be imported into a television market to new subscribers if the satellite carrier is delivering local analog signals in that market. Similarly, a distant network digital signal cannot be imported if the satellite carrier is offering local-to-local digital signal carriage of a local station affiliated with that network. Thus, distant signal importation by satellite

carriers has, in the four plus years since SHVERA was enacted, been gradually phased out as the satellite carriers have extended analog and digital local-into-local service in more markets and new subscribers have signed up.

The distant signal license today is principally an artifact. Of the 31 million subscribers to DBS service only around 2 percent continue to receive a distant signal package, and that number continues to steadily decline.

While the local-to-local compulsory license has worked well, the distant-signal compulsory license (codified in Section 119 of the Copyright Act) has not. For the first ten years after this law was enacted, satellite carriers systematically ignored the clear, objective definition of “unserved household” and instead delivered distant signals to anyone willing to say that they did not like their over-the-air picture quality. Only through costly and protracted litigation were broadcasters able to bring a halt to this behavior.

Experience has shown that the local-to-local compulsory license has been the right way—and the distant-signal compulsory license has been the wrong way—to address delivery of over-the-air television stations to satellite subscribers. Congress’s focus should be to require local-to-local service in all markets and to hasten the delivery of local-to-local service in high definition format (“HD”) to subscribers. At most, the distant-signal compulsory license should be limited to markets in which the satellite carrier does not yet offer local-to-local service until such service in all markets is achieved.

To a great extent, Section 119 has outlived its usefulness and with respect to the provision of distant network stations in markets where local-to-local is being provided,

should sunset at the end of 2009. Local-to-local should be mandatory in all television markets by the end of 2010, at which time Section 119 should sunset for those markets as well. If Congress should nevertheless choose to renew Section 119, it should again specify that Section 119 will sunset after a limited period (no longer than five years) so that Congress can decide then if there is any reason to continue this government intervention in free market negotiations for copyrighted television programming.

**I. THE PRINCIPLES OF LOCALISM AND OF RESPECT FOR
LOCAL STATION EXCLUSIVITY ARE FUNDAMENTAL TO AMERICA'S
EXTRAORDINARILY SUCCESSFUL TELEVISION SERVICE**

As Congress has consistently stressed—going back to 1988, when it originally crafted the rules governing satellite importation of distant broadcast stations—the principles of localism and of local contract rights have been pivotal to the success of American television service.

**A. The Principle of Localism is Critical to America's Extraordinary
Television Broadcast Service**

Unlike many other countries that offer only national television channels, the United States has succeeded in creating a rich and varied mix of *local* television service providers through which more than 200 communities—including towns as small as Glendive, Montana, which has fewer than 4,000 television households—can have their own local voices. But over-the-air local TV stations—particularly those in smaller markets such as Glendive—can survive only if they can generate advertising revenue based on local viewership. For this reason, stations bargain for and obtain exclusive rights to present certain programming in their markets that they believe will attract viewers. If satellite carriers can override the copyright interests of local stations by

offering the same programs on stations imported from other markets, the viability of local TV stations—and their ability to serve their communities with the highest-quality programming—is put at risk.

The “unserved household” limitation on importation of distant signals is simply the latest way in which the Congress and the FCC have implemented the fundamental policy of localism, which has been embedded in federal law since the Radio Act of 1927. In particular, the “unserved household” limitation in the SHVA implements a longstanding communications policy of ensuring that local network affiliates—which provide free television and local news to virtually all Americans—do not face importation of duplicative network programming.

The objective of localism in the broadcast industry is “to afford each community of appreciable size an over-the-air source of information and an outlet for exchange on matters of local concern.” *Turner Broadcasting Sys. v. FCC*, 512 U.S. 622, 663 (1994) (*Turner I*); see *United States v. Southwestern Cable Co.*, 392 U.S. 157, 174 & n.39 (1968) (same). That policy has provided crucial public interest benefits. As the Supreme Court has observed

Broadcast television is an important source of information to many Americans. Though it is but one of many means for communication, by tradition and use for decades now it has been an essential part of the national discourse on subjects across the whole broad spectrum of speech, thought, and expression.

Turner Broadcasting Sys. v. FCC, 117 S. Ct. 1174, 1188 (1997).

Thanks to the vigilance of Congress and the Commission over the past 60 years, over-the-air television stations today serve more than 200 local markets across the

United States, including markets as small as Presque Isle, Maine (with only 31,000 television households), North Platte, Nebraska (with 15,000 television households), and Glendive, Montana (with 4,000 television households).

This success is largely the result of the partnership between broadcast networks and affiliated television stations in markets across the country. The programming offered by network affiliated stations is available over-the-air for free to local viewers, unlike cable or satellite services, which require subscription payments by the viewer. See *Turner I*, 512 U.S. 622, 663; *Satellite Broadcasting & Communications Ass'n v. FCC*, 275 F.3d 337, 350 (4th Cir. 2001) ("SHVIA . . . was designed to preserve a rich mix of broadcast outlets for consumers who do not (or cannot) pay for subscription television services."); Communications Act of 1934, § 307(b), 48 Stat. 1083, 47 U.S.C. § 307(b). Although cable, satellite, and other technologies offer alternative ways to obtain television programming, tens of millions of Americans still rely on broadcast stations as their exclusive source of television programming, *Turner I*, 512 U.S. at 663, and broadcast stations continue to offer most of the top-rated programming on television.

The network/affiliate system provides a service that is very different from pay networks. Each network affiliated station offers a unique mix of national programming provided by its network, local programming produced by the station itself, and syndicated programs acquired by the station from third parties. As Congress recognized in drafting the original SHVA in 1988, "historically and currently the network-affiliate partnership serves the broad public interest." H.R. Rep. 100-887, pt. 2, at 19-20 (1988). Unlike pay networks such as Nickelodeon or USA Network, which telecast the same material to all viewers nationally, each network affiliate provides a customized

blend of programming suited to its community—in the Supreme Court's words, a "local voice."

The local voices of America's local television broadcast stations make an enormous contribution to their communities. Television broadcasters' commitment to localism extends beyond just broadcasting itself in the form of help to local citizens—and local charities—in need. It is through local broadcasters that local citizens, civic groups and charities raise awareness and educate members of the community. Every year broadcasters raise many millions of dollars to support the needs of their local communities.

Community service programming, along with day-to-day local news, weather, and public affairs programming, is made possible, in substantial part, by the sale of local advertising time during and adjacent to network programs. These programs (such as "Desperate Housewives," "CSI," "American Idol," and "The Office") often command large audiences, and the sale of local advertising slots during and adjacent to these programs is therefore a crucial revenue source for local stations.

A variety of technologies have been developed or planned—including cable, satellite, telco, and the Internet—that, as a technological matter, enable third parties to retransmit distant network stations into the homes of local viewers. Whenever those technologies posed a risk to the locally-oriented network/affiliate system, Congress or the Commission or the courts have acted to ensure that the retransmission system does not import duplicative network programming from distant markets and thereby erode the public's local television service. For example, the threat of unauthorized Internet retransmissions of television stations was quickly halted by the courts (applying the

Copyright Act) and condemned by Congress as outside the scope of any existing compulsory license.^{1/}

B. Protecting the Rights of Copyright Owners to License Their Works in the Marketplace Is Another Principle Supporting a Highly Circumscribed Distant-Signal Compulsory License

By definition, the Copyright Act is designed to *limit* unauthorized marketing of works to which the content creators or owners hold exclusive rights. See U.S. Constitution, art. I, § 8, cl. 8 ("The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"); *Mazer v. Stein*, 347 U.S. 201, 219 (1954) ("The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in 'Science and useful Arts.'").

While Congress has determined that compulsory licenses are needed in special circumstances, the courts have emphasized that such licenses must be construed narrowly, "lest the exception destroy, rather than prove, the rule." *Fame Publ'g Co. v. Alabama Custom Tape, Inc.*, 507 F.2d 667, 670 (5th Cir. 1975); see also Cable Compulsory License; Definition of Cable Systems, 56 Fed. Reg. 31,580, 31,590 (1991) (same). The principle of narrow application and construction of compulsory licenses is

^{1/} See *National Football League v. TVRadioNow Corp. (d/b/a iCraveTV)*, 53 U.S.P.Q.2d (BNA) 1831 (W.D. Pa. 2000); 145 Cong. Rec. S14990 (Nov. 19, 1999) (statements by Senators Leahy and Hatch that no compulsory license permits Internet retransmission of TV broadcast programming).

particularly important as applied to the distant-signal compulsory license, because that license not only interferes with free market copyright transactions but also threatens localism.

C. In Enacting SHVA, SHVIA and SHVERA, Congress Reaffirmed the Central Role of Localism and of Marketplace Negotiations for Local Program Distribution

When Congress crafted the original Satellite Home Viewer Act in 1988, it emphasized that the legislation “respects the network/affiliate relationship and promotes localism.” H.R. Rep. No. 100-887, pt. 1, at 20 (1988). And when Congress temporarily extended the distant-signal compulsory license in 1999, it reaffirmed the importance of localism as fundamental to the American television system. For example, the 1999 SHVIA Conference Report says this:

*“[T]he Conference Committee reasserts the importance of protecting and fostering the system of television networks as they relate to the concept of localism. . . . [T]elevision broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities. To that end, the Committee has structured the copyright licensing regime for satellite to encourage and promote retransmissions by satellite of *local* television broadcast stations to subscribers who reside in the *local* markets of those stations.”*

SHVIA Conference Report, 145 Cong. Rec. H11792 (daily ed. Nov. 9, 1999) (emphasis added).

The SHVIA Conference Report also stressed the need to interfere only minimally with marketplace arrangements—premised on protection of copyrights—in the distribution of television programming:

“[T]he Conference Committee is aware that *in creating compulsory licenses . . . [it] needs to act as narrowly as possible to minimize the effects of the government’s intrusion on the broader market in which the affected property rights and industries operate. . . . [A]llowing the importation of distant or out-of-market network stations in derogation of the local stations’ exclusive right—bought and paid for in market-negotiated arrangements—to show the works in question undermines those market arrangements.*”

Id.

The SHVIA Conference Report also emphasized that “the specific goal of the 119 license, which is to allow for a *life-line network television service to those homes beyond the reach of their local television stations*, must be met by *only* allowing distant network service to those homes which cannot receive the local network television stations. Hence, the ‘unserved household’ limitation that has been in the license since its inception.” *Id.* (emphasis added).

Finally, the SHVIA Conference Report highlighted “the continued need to monitor the effects of distant signal importation by satellite,” and made clear that Congress would need to re-evaluate after five years whether there is any “continuing need” for the distant signal license. *Id.*

Against this consistent historical backdrop, SHVERA continued to confirm the importance of minimizing the abrogation of the rights of local broadcast stations and content creators/distributors:

The abrogation of copyright owners' exclusive rights and the elimination of transaction costs for satellite carriers are valuable accommodations that benefit the DBS industry. The terms and conditions of § 119, therefore, are crafted to represent a careful balance between the interests of satellite carriers who seek to deliver distant broadcast programming to subscribers in a manner that is similar to that offered by cable operators, and the need to provide copyright owners of the retransmitted broadcast programming fair compensation for the use of their works.

[. . .]

An element of the § 119 license since inception, the unserved household limitation has been a central tenet of congressional policy on distant signal carriage. Its primary purpose is to ensure that those residing in rural areas or in areas where terrain makes it impossible to receive an acceptable over-the-air signal from their television stations can receive a "life-line" network television service from a satellite provider.

Where a satellite provider can retransmit a local station's exclusive network programming but chooses to substitute identical programming from a distant network affiliate of the same network instead, the satellite carrier undermines the value of the license negotiated by the local broadcast station as well as the continued viability of the network-local affiliate relationship. . . .

The Committee has consistently considered market-negotiated exclusive arrangements that govern the public performance of broadcast programming in a given geographic area to be preferable to statutory mandates. Accordingly, a second purpose of the unserved household limitation is to confine the abrogation of interests borne by copyright holders and local network broadcasters to only those circumstances that are absolutely necessary to provide the "life-line" service.

H.R. REP. NO. 108-660, at 9-11 (2004).

But SHVERA is not merely a continuation of the Section 119 *status quo*. Building upon the local-into-local Section 122 compulsory license enacted in SHVIA, SHVERA also began to *phase out* the Section 119 distant compulsory license. The class of viewers to whom satellite carriers may retransmit distant duplicating network signals was considerably narrowed through the principle of "if local, no distant," as discussed above. Thus, Section 103 of SHVERA, codified in 17 U.S.C. § 119(a)(4), created a new limitation on the distant signal license, greatly restricting its applicability where local-into-local retransmissions are available. Section 204 of SHVERA, codified in 47 U.S.C. § 339(a)(2), created a Communications Act analogue to the Copyright Act amendment. The new, fundamental limitation imposed by SHVERA is the *ineligibility* of distant network signals for satellite delivery to subscribers who are served by the network-affiliated signals of local broadcast stations via local-into-local satellite service. This principle applies as fully to digital signals as it does to analog signals.² The relationship

² See 17 U.S.C. § 119(a)(4)(D); 47 U.S.C. § 339(a)(2)(D).

between localism and the congressional policy preference for local-into-local service was expressed by Congressman Buyer as follows:

The act imposes a variety of limits designed to protect free, local, over-the-air broadcasting. . . . Put another way, local-to-local service is the right way, and—except when there is no other choice—distant network stations are the wrong way, to deliver broadcast programming by satellite. Local-to-local fosters localism and helps keep free, over-the-air television available to everyone, while delivery of distant network stations to households that can receive their own local stations (whether over the air or via local-to-local service) has just the opposite effect.

150 CONG. REC. H8221-H8222 (Oct. 6, 2004) (statement of Rep. Buyer).

II. **THE LOCAL-TO-LOCAL SERVICE IS A WIN-WIN-WIN FOR CONSUMERS, BROADCASTERS, AND SATELLITE COMPANIES**

Unlike the importation of distant network stations, which can do grave damage to the public service made possible by effective network/affiliate relationships, delivery of *local* stations to the stations' own *local* communities—e.g., San Antonio stations to viewers in the San Antonio area—is a win-win-win for consumers, local broadcasters, and DBS firms alike. As Congress explained in 1999 when it created the new local-to-local compulsory license in Section 122 of the Copyright Act, the new Act “structures the copyright licensing regime for satellite to encourage and promote retransmissions by satellite of *local* television broadcast stations to subscribers who reside in the *local* markets of those stations.” 145 Cong. Rec. H11792 (daily ed. Nov. 9, 1999) (emphasis added).

A. Satellite Firms Have Enjoyed Extraordinary Growth, Thanks in Major Part to the Local-to-Local Compulsory License

As the FCC recognized in its most recent Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, the Direct Broadcast Satellite ("DBS") industry is thriving—and offering potent competition to cable. The DBS industry, which enrolled its first customer only 15 years ago, grew to almost 28 million subscribers as of June 2006. 13th Annual Assessment, MB Dkt. No. 06-189, ¶ 75 (released Jan. 16, 2009). In recent years the growth rate for DBS has far exceeded the growth of cable every year. Thus, in June 2002, DBS subscribers grew by 13.5% over the prior year, followed by growth of 11.6% by June 2003, another 13.8% by June 2004, and yet another 12.8% by June 2005. At the same time, cable subscription penetration was essentially stagnant. 13th Annual Assessment, Appendix B, Table B-1. Just in the 12 months between June 2005 and June 2006, the DBS industry added another 1.9 million new subscribers, surging from 26.12 million to 27.97 million households. 13th Annual Assessment at ¶ 75. Today, the total subscriber base tops 31 million.³

DIRECTV is currently the second-largest multichannel video programming distributor ("MVPD"), behind only Comcast, while DISH Network is the third-largest MVPD. *Id.*, ¶ 76.

³ DIRECTV, Inc., Press Release, The DIRECTV Group Q4 Results Cap Record Setting Financial Performance in 2008 (Feb. 10, 2009), *available at* <<http://dtv.client.shareholder.com/releasedetail.cfm?ReleaseID=364395>> (stating that DIRECTV ended 2008 with 17,621,000 subscribers); DISH Network Corp., Press Release, DISH Network(R) Reports Third Quarter 2008 Financial Results (Nov. 10, 2008), *available at* <<http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=346565>> (stating that DISH Network ended the third quarter of 2008 with 13,780,000 subscribers).

The growth of the DBS industry has far outstripped even optimistic predictions made just a few years ago. In its January 2000 Annual Assessment, for example, the FCC quoted industry analysts who predicted that “DBS will have nearly 21 million subscribers by 2007.” 2000 Annual Assessment, 15 FCC Rcd. 978, ¶ 70. As the statistics quoted above show, DBS reached that level not in 2007, but in 2003—four years earlier than predicted.

As the FCC has repeatedly pointed out, delivery of local stations by satellite has been a major spur to this explosive growth. *E.g.*, 2004 Annual Assessment, ¶ 8. In June 1999, just before the enactment of the new local-to-local compulsory license in SHVIA, the DBS industry had 10.1 million subscribers. 2000 Annual Assessment, ¶ 8. Only four years later, the industry had more than doubled that figure to 20.4 million subscribers. 2004 Annual Assessment, ¶ 8. And in the nine years since 1999, that 10 million subscriber number has tripled to more than 30 million subscribers today. That this growth has been spurred by the availability of local-to-local is beyond doubt: the DBS industry’s own trade association, the Satellite Broadcasting & Communications Association, stressed that “[t]he expansion of local-into-local service by DBS providers *continues to be a principal reason that customers subscribe to DBS.*” SBCA Comments at 4, Dkt. No. 03-172 (filed Sept. 11, 2003) (emphasis added).

**B. Contrary to the DBS Industry’s Pessimistic Predictions,
Satellite Local-to-Local Service is Now Available to the
Overwhelming Majority of American Television Households**

Over the past few years, DISH Network and DIRECTV have repeatedly claimed that capacity constraints severely limit their ability to offer local-to-local service to more than a small number of markets. The DBS firms used that argument—unsuccessfully—

in 1999 in attempting to persuade Congress that it should permit DBS companies to use a new compulsory license to “cherry-pick” only the most heavily-watched stations in each market. They used it again in arguing—again unsuccessfully—in 2000 and 2001 that the courts should strike down SHVIA’s “carry one, carry all” principle as somehow unconstitutional. And they made the same claims as a justification for the proposed horizontal merger of the nation’s only two major DBS firms, DIRECTV and EchoStar. In 2002, for example, the two DBS firms claimed that unless they were permitted to merge, neither firm could offer local-to-local in more than about 50 to 70 markets. *EchoStar, DIRECTV CEOs Testify On Benefits of Pending Merger Before U.S. Senate Antitrust Subcommittee*, www.spacedaily.com/news/satellite-biz-02p.html (“Without the merger, the most markets that each company would serve with local channels as a standalone provider, both for technical and economic reasons, would be about 50 to 70.”) (quoting DIRECTV executive).

Contrary to these pessimistic predictions, each of the two DBS firms today offers local-to-local programming to the overwhelming majority of U.S. television households. Although the DBS firms claimed they would *never* be able to serve more than 70 markets unless they merged, DISH Network today serves 177 television markets which collectively cover 97 percent of all U.S. TV households.^{4/}

DIRECTV currently offers local-to-local in 150 markets covering more than 94 percent of all U.S. television households.⁵ In other words, the consistently pessimistic

^{4/} See DISH Network Local ChannelMarkets, *available at* <https://customersupport.dishnetwork.com/netqualweb/localmarkets.pdf>.

⁵ See DIRECTV Local Channel Markets, *available at* <http://www.directv.com/DTVAPP/global/contentPage.jsp?assetId=1000013>.

predictions of DISH and DIRECTV concerning their ability to provide local-into-local service via satellite have been consistently wrong.

C. DIRECTV and DISH Network Can and Should Deliver Local Signals, Including Local Digital Signals, Into All Markets

As discussed above, DIRECTV and DISH Network have consistently found ways to deliver more programming in the same spectrum. Nevertheless, in policy debates in Washington, the two firms regularly assure Congress (and the FCC) that no further technological improvement can be achieved.

This year, the Committee can again expect to hear from DIRECTV and DISH Network that they have no hope of finding enough capacity to provide local-into-local signals in all 210 television markets. Yet, in fact, the satellite carriers have available a wide range of techniques for expanding capacity to carry local station signals, including:

- o spectrum-sharing between DIRECTV and DISH Network;
- o use of Ka-band as well as Ku-band spectrum;
- o higher-order modulation and coding;
- o closer spacing of Ku-band satellites;
- o satellite dishes pointed at multiple orbital slots;
- o use of a second dish to obtain all local stations;^{6/} and
- o improved signal compression techniques.

Congress should not allow unsupported assertions by DIRECTV and DISH Network to undermine good public policy. Rather, Congress should commission a study

^{6/} SHVIA permits a satellite carrier to offer *all* local stations via a second dish, but not to split local channels into a “favored” group (available with one dish) and a “disfavored” group (available only with a second dish).

independently to verify satellite operators' present and future capacity, not only in absolute terms, but relative to providing public service such as local-to-local in all television markets. Just as today's desktop computers are unimaginably more powerful than those available just a few years ago, we can expect similar improvements from America's satellite engineers.

III. THE DISTANT-SIGNAL COMPULSORY LICENSE HAS BEEN ABUSED; REQUIRING LOCAL-TO-LOCAL SERVICE IN ALL MARKETS WOULD ELIMINATE THE NEED FOR IT.

America's free, over-the-air television system is based on *local* stations providing programming to *local* viewers. When satellite carriers began delivering television programming in the 1980s, however, retransmission of local television stations by satellite was not yet technologically feasible. In 1988, Congress therefore fashioned a stopgap remedy: a compulsory license that allows satellite carriers to retransmit *distant* network stations, but only to "unserved households." 17 U.S.C. § 119. The heart of the definition of "unserved household" has always been whether the residence can receive an over-the-air signal of a certain objective strength, called "Grade B intensity," from a local affiliate of the relevant network. *Id.*, § 119(d)(10)(A) (definition of "unserved household"). In 1994, Congress extended the distant-signal license for another five years, but expressly imposed on satellite carriers the burden of proving that each of these customers is "unserved." 17 U.S.C. § 119(a)(5)(D).

In 1999, Congress again extended the distant-signal license as part of SHVIA and statutorily mandated use of the FCC-endorsed computer model (called the "Individual Location Longley-Rice" model, or "ILLR") for predicting which households are able to receive signals of Grade B intensity from local network-affiliated stations. 17

U.S.C. § 119(a)(2)(B)(ii). In SHVIA, Congress also classified certain very limited new categories of viewers as “unserved,” including (1) certain subscribers who had been illegally served by satellite carriers but whom Congress elected to “grandfather” temporarily, see 17 U.S.C. § 119(e), and (2) qualified owners of recreational vehicles and commercial trucks, see *id.*, § 119(a)(11).

By its terms, grandfathering will expire at the end of 2009. 17 U.S.C. § 119(e). Unlike in 1999, when Congress saw grandfathering as a way to reduce consumer complaints by allowing certain ineligible subscribers to continue receiving distant signals, the end of grandfathering will have little impact in the marketplace. *First*, DIRECTV and DISH Network offer local-to-local in 180 DMAs, which collectively cover nearly 98 percent of U.S. television households. All of the subscribers in these markets (including subscribers claimed to be grandfathered) are able to receive their local channels by satellite, making the availability of distant signals unnecessary, irrelevant, and undesirable. *Second*, a federal court found in 2006 that EchoStar (i.e., DISH Network) forfeited the right to rely on grandfathering because of its abusive practices. *Third*, because of ordinary subscriber churn and relocation, many grandfathered subscribers are no longer DBS customers or are no longer grandfathered. *Fourth*, for the small number of subscribers in non-local-to-local markets that they might claim are currently grandfathered, DIRECTV and EchoStar are free to seek (and may already have obtained) waivers from the affected local stations. *Finally*, any grandfathered subscriber is (by definition) predicted to receive at least Grade B intensity signals over the air from their local network stations and thus are able to view their own local stations

even if they obtain no network stations by satellite. This special exception should therefore be allowed to expire routinely.

A. Delivery of Distant Signals Is a Poor Substitute for Delivery of Local Television Stations

There is no benefit—and many public interest drawbacks—to satellite delivery of distant, as opposed to local, network stations. Unlike local stations, distant stations do not provide viewers with their *own* local news, weather, emergency, and public service programming. Viewership of distant stations undercuts *local* stations' ability to fund their free, over-the-air localized service. Distant network signals delivered to any household that can receive local over-the-air stations simply siphon off audiences and diminish the revenues that would otherwise support free, over-the-air programming, and including local programming services.

Members of Congress and other candidates are also impacted by importation distant signals: a viewer in Phoenix, for example, will not see political messages running on local Phoenix stations if he or she is watching New York or Los Angeles stations from DIRECTV instead. And, it seems most unlikely that a candidate in Phoenix would want to purchase advertising on stations in the costliest media markets in the United States—New York and Los Angeles. It is also significant that viewers would not receive other political programming (such as debates between candidates for Arizona offices) if they are watching out-of-market stations.

B. Providing Local-To-Local Service in All Markets Would Virtually Eliminate the Number of Truly "Unserved" Households

Unlike the local-to-local compulsory license, the distant-signal compulsory license threatens localism and interferes with the free market copyright negotiations. As

a result, its only defensible justification is as a “hardship” exception—to make network programming available to the small number of households that otherwise have no access to it. The 1999 SHVIA Conference Report states that principle eloquently: “the specific goal of the 119 license . . . is to allow for a *life-line network television service to those homes beyond the reach of their local television stations.*” 145 Cong. Rec. at H11792-793. (emphasis added).^{Z/}

As noted above, nearly 98 percent of all U.S. television viewers have the option of viewing their *local* network affiliates *by satellite*—and that number is growing all the time. Thus, as a real-world matter, *there are no unserved viewers* in areas in which local-to-local satellite transmissions are available, because it is no more difficult for subscribers to obtain their local stations from their satellite carriers than to obtain distant stations from those same carriers. Therefore no policy or other rationale justifies treating satellite subscribers in local-to-local markets as “unserved” and therefore eligible to receive distant network stations, and there is every reason to close this loophole.

The distant-signal compulsory license is *not* designed to, and should not be allowed to, permit satellite carriers to undermine the locally-oriented network/affiliate

^{Z/} See, e.g., Copyright Office Report at 104 (“The legislative history of the 1988 Satellite Home Viewer Act is replete with Congressional endorsements of the network-affiliate relationship and the need for nonduplication protection.”); Satellite Home Viewer[] Act of 1988, H.R. Rep. No. 100-887, pt. 2 at 20 (1988) (“The Committee intends [by Section 119] to . . . bring[] network programming to unserved areas while preserving the exclusivity that is an integral part of today’s network-affiliate relationship”); *id.* at 26 (“The Committee is concerned that changes in technology, and accompanying changes in law and regulation, do not undermine the base of free local television service upon which the American people continue to rely”); H.R. REP. No. 100-887, pt. 1, at 20 (1988) (“Moreover, the bill respects the network/affiliate relationship and promotes localism.”).

relationship by delivering to viewers in *served* households—who can already watch their own local ABC, CBS, Fox, and NBC stations—network programming from another distant market. Consider, for example, a network affiliate in Sacramento, California, a DMA in which there are today no DBS subscribers who are genuinely “unserved” because both DIRECTV and DISH Network offer the local Sacramento ABC, CBS, Fox, and NBC affiliates by satellite. Nevertheless, for any Sacramento-area viewer who is technically “unserved” under the Grade B intensity standard, satellite companies can undercut the public’s local service from their Sacramento stations with duplicative programming on distant signals from East Coast network affiliates. The Sacramento stations—and every other station in the Mountain and Pacific Time Zones that has local-to-local service—therefore can lose badly needed local viewers, even though the viewers have no need to receive a distant signal to watch network programming.

Similarly, the ability of satellite carriers to offer distant stations that carry alternative sports events is a needless and destructive infringement of the rights of copyright owners, who offer the same product—out-of-town games—on a free market basis. For example, the NFL has for years offered satellite dish owners (at marketplace rates) a package called “NFL Sunday Ticket,” which includes all of the regular season games played in the NFL. The distant-signal compulsory license creates a needless “end-around” this free-market arrangement by permitting satellite carriers to retransmit distant network stations for a pittance through the compulsory license.

**IV. PROPOSALS TO MODIFY STATION MARKETS COULD SEVERELY
UNDERMINE LOCALISM**

**A. Cross-State Market Modifications Are Neither Necessary Nor
Desirable.**

Legislation has been proposed that would modify the copyright laws so that the programming broadcast by certain *in-state* television stations may be retransmitted by cable and satellite companies to residents of that state, regardless of the local television market in which these residents are located. This legislation is inconsistent with the carefully balanced system of "local" broadcast service established by Congress and would have significant adverse consequences for the public's local broadcast service, particularly the local services provided by local stations in small, rural markets.

Legislation is not necessary to enable cable and satellite companies to retransmit throughout a state the local news, weather, sports, public affairs, and informational programming broadcast by in-state stations. This kind of specific programming, not duplicating network and syndicated entertainment programming can already be imported by in-state cable and satellite services. Thus, the existing regulatory scheme already permits existing carriage of the type of in-state programming that the proposed legislation seeks to promote. To be explicit, these in-state produced programs may be retransmitted, with the consent of the originating stations, without any change in existing copyright or other laws.

Satellite and cable operators wishing to provide locally-produced and locally-owned news, weather, sports, public affairs, and informational programming of "in-state" stations may simply carry the specific locally produced programming of one or more of these in-state stations. In some areas of the country, cable companies, do, in

fact, carry this kind of out-of-market *local* programming (without also importing “duplicating” out-of-market network and syndicated programming). The originating stations readily consent to the out-of-market retransmission of their local news, weather, sports, public affairs, and informational programming to other communities in the same state. Local cable companies can put these programs on a desirable, low dial “public access” channel without disrupting another cable entertainment program channel. Satellite carriers could also add these programs to a local satellite channel.

For Congress to artificially realign the scope of the local cable and satellite compulsory copyright licenses and reconfigure the boundaries of local television markets, overriding market conditions and natural viewing patterns would destabilize the television broadcast and advertising industries, would have adverse economic consequences for local stations, and, worst of all, would harm the public’s localized broadcast service. In short, it would also disrupt the carefully balanced system of “local” broadcast service established by Congress in the Communications Act.

Stations in smaller, rural markets would sustain the most economic harm from legislation of this kind as a result of loss of viewers and advertisers to out-of-market big city stations that would be imported. For example, one can easily imagine the adverse financial consequences on local stations in small markets in Pennsylvania if duplicating programming from Philadelphia stations were to be imported into other markets within the state. The viewing fragmentation from distant duplicating network and syndicated entertainment and national sports programming would impair the economic ability of local stations to provide *local* news, weather, sports, and informational programming—a

result contrary to the interest of the very viewers the legislation is intended to serve and of many other viewers as well.

Measures to facilitate and encourage importation by satellite of out-of-market stations into local markets would also remove an important economic incentive for satellite carriers to uplink *local* stations in every market and retransmit those local stations by satellite. For years Congress and the FCC have encouraged—rather than discouraged—satellite carriers to retransmit *local*—not *distant*—television stations into each of the nation's 210 local television markets. Legislation to expand the distant signal compulsory copyright license would be inconsistent with that well-established policy. The effect of similar legislation for cable would similarly run counter to the careful balance that the Congress and the FCC have struck to protect the public against cable's power and incentives to injure the public's *local* television service.

Manipulation of the scope of the compulsory copyright license to achieve market modifications would not necessarily produce the intended result in any event. Networks and syndicated program suppliers have always *restricted* the area in which a station may give retransmission consent to cable and satellite companies. So even if the copyright laws were modified by Congress, and even if the network non-duplication and syndicated program rules were eliminated, program suppliers would not likely change their local market program licensing arrangements.

This kind of legislation has significant implications for local stations in terms of program licensing, program exclusivity, and retransmission consent negotiations. Stations and program suppliers have strong incentives to maintain the integrity of their

local markets and the exclusivity within those markets of their network and syndicated programming.

B. Harm to the Digital Transition.

As part of a very special public/private partnership, the broadcast industry, related industries and the federal government have all dedicated extraordinary energy, effort and resources to implement successfully the transition to digital broadcasting. Changes in television station markets at this time could jeopardize this unprecedented effort and substantial benefit of the transition, which include crystal-clear pictures and sound, more channels and more services – all provided for free.

As all members of this Committee are aware, by June 12 of this year every full-power television station in the nation will have made the switch to digital-only broadcasting. Broadcasters have worked tirelessly to implement the digital television (“DTV”) transition. Thanks to the expenditure of billions of dollars and millions of person-hours, broadcasters have already built—and are on-air with—1655 DTV facilities providing digital service throughout the entire country.

Broadcasters are also fully committed to making certain that television viewers in all demographic groups understand what they need to do to continue receiving their local television signals after the switch to digital-only broadcasting. To that end, broadcast networks and television stations nationwide are participating in a multifaceted, multi-platform consumer education campaign that uses all of the tools available to broadcasters, their community partners, and related industries to ensure a smooth transition for viewers. The campaign includes DTV Action television spots, local speaking engagements, informational Web sites, a nationwide road show and a variety

of other grassroots initiatives. Valued at over a billion dollars, the campaign will reach nearly all television viewers and generate over 132 billion audience impressions before it is complete later this year. The success of this public education effort was demonstrated by the relatively limited number of viewer calls that occurred when over 400 stations terminated analog broadcasts on February 17, 2009.

As millions of television viewers can already attest, digital television—especially high definition television (“HDTV”)—provides a dramatic improvement over analog television. Even at its most basic resolution, digital television offers service of a far higher quality than analog. Standard definition digital service is free from the snow, ghosts and lack of vertical hold that can plague analog signals. Sound is also vastly improved. Viewers with connected stereos can experience surround sound and the attendant subtleties of a high fidelity television experience. Programming seen in HDTV marks a revolutionary improvement, especially when viewed on newer televisions capable of handling higher resolution signals. HDTV programming is presented in a cinema-like 16:9 aspect ratio, or widescreen image, that more naturally suits the human eye. Everything seen in HDTV, from scripted shows to news to sports programming, is in brilliant detail. Viewers can see blades of grass on a football field, clearer depth of field in dramas, and the dimples on both a golf ball and a local news anchor.

Local broadcasters and networks have invested billions of dollars in high-definition (“HD”) programming. Today, the majority of primetime programming shown by the major television networks is in HD. Nearly every major sporting event aired by the networks, including almost every NFL game, NBA game, the NCAA Basketball Tournament, most major golf tournaments, major tennis tournaments and both the

Winter and Summer Olympics, is broadcast in HD. Major network programs, including most scripted programs and non-scripted “reality” programs, are shown in HD. And increasingly local stations across the country are broadcasting their local news in HD. For local stations, this represents a major investment in advanced television technology, including costs for new cameras, new video processing and storage equipment, updated studios, and training.

In addition to improved picture quality, the switch to DTV allows local broadcasters flexibility to provide multiple channels of programming (i.e., multicasting) from a six MHz stream and substantially increases the overall amount of free programming. Stations across the country are experimenting with new formats and other ideas for multicast television, including local news, weather and sports programming.⁸ As the transition to all-digital television progresses, broadcasters will continue to increase multicast offerings and provide alternatives to the increasingly costly cable and satellite programming.

⁸ Examples include: WRAL in Raleigh, NC, which on one of its subchannels airs local news and public affairs programming 24 hours per day with shows like “Focal Point” and “WRAL Listens”; KTVB in Boise, ID, which airs its “24/7” local news channel on a multicast channel; KFSN in Fresno, CA, which uses one of its subchannels to air local news, sports programming, and shows such as “Hispanic Today”; and WFSB in Hartford, CT, which is airing a local news and weather channel—Eyewitness News Now—and has, in conjunction with Connecticut Public Television, started Connecticut Television Sports Network, an all-local sports channel that covers local high school and college sports. In addition, niche programming, especially programming for Spanish-speaking audiences, has found a home on digital subchannels. LATV, based in Los Angeles, is a bilingual network channel distributed on digital multicast streams that offers music and entertainment programming for young Latino audiences. Likewise, Mexicanal Network, which features Spanish-language news, sports, and entertainment programs, is operating on multiple broadcast digital subchannels across the United States. MHz Network, based in northern Virginia, programs seven digital multicast channels to the Washington D.C. market, including channels that air Chinese, Nigerian, French, and Polish news and information in both English and foreign languages.

In light of this massive investment in and commitment to a successful DTV transition, this Committee should be wary of proposals to modify television markets in a manner that would ultimately undermine local stations' ability to provide free, over-the-air digital services to consumers. The digital transition has not altered the policy commitment to broadcast localism, but has reaffirmed it. The FCC has been worked to ensure that, to the extent possible, DTV stations replicate the same local coverage patterns of their companion analog television stations. And the national commitment to preserving free, over-the-air television for local viewers has been clearly demonstrated by Congress's and the President's decision to delay the transition until June 12, 2009, so that no viewer is accidentally left behind.

Sweeping market modification proposals could not only undermine this investment in and commitment to locally-oriented television service, but could ultimately jeopardize many of the benefits of the DTV transition for viewers. If "in-state" distant stations are imported in lieu of local stations, long-established viewership and service patterns will be disrupted.⁹ The investment in replicating established analog coverage

⁹ The Communications Act already has a provision, and the FCC a process, to modify the television markets of must carry stations. See 47 U.S.C. § 534(h)(1)(C); 47 C.F.R. § 76.59. These provisions are utilized by television stations and cable operators to adjust market boundaries based on the statutory criteria. This system works. The FCC has recognized that there may be good reasons not to modify a market to incorporate an additional "in-state" county, even though that county is part of a local "out-of-state" television market—namely, that county has a greater nexus to the other market than to the "in-state" market. When it comes to localism, state boundaries may be as arbitrary as television market boundaries. For example, counties in Northern Virginia (such as Arlington and Alexandria) are clearly appropriately part of the Washington, D.C. television market, not other markets in Virginia, such as Richmond, Norfolk or Charlottesville. Programming imported from these other Virginia markets would certainly not be more "local" to residents of Arlington than programming from stations in Washington, D.C. The same is true in many other parts of the country as well. See, e.g., *Agape Church, Inc.*, 14 FCC Rcd 2309 (1999) (denying market modification

would be compromised as would the investment in educating viewers about the transition and how to be able to continue to watch the local television stations they have always seen.

In addition, one of the other key benefits of the digital transition, the ability of local television stations to program multiple channels (multicasts) will also be threatened. Reduced advertising revenue could inhibit, or even prevent, local television stations from producing and airing innovative local news and sports channels such as WFSB's Connecticut Television Sports Network in Hartford. Moreover, stations' incentive to develop local multicast channels airing, for example, news, sports or foreign language programming, could well be undermined if market modifications permit the importation of similar types of programming from outside their markets.

In short, market modification proposals actually stand to harm viewers by undermining localism; decreasing, rather than increasing, the diversity of voices and programming options; and jeopardizing many of the benefits of the digital transition.

V. WHAT CONGRESS SHOULD DO THIS YEAR

As Congress is aware, the local-into-local compulsory license in Section 122 of the Copyright Act is permanent. Congress, however, has wisely, upon each reauthorization of the satellite legislation, limited the duration of the distant signal

petition to add Crittenden County, Arkansas, to the must carry market of a Jonesboro, Arkansas, television station because Crittenden County was really part of the core of the Memphis, Tennessee, television market and such modification would "modify the basic nature and competitive relationships within the core area of the Memphis" market).

license in Section 119 of the Copyright Act to five years. SHVERA's five-year extension of the distant signal license expires at the end of 2009.

A. Phase-Out of the Section 119 Distant Network Signal License

The Section 119 license both sunsets, in its entirety, and has phase-out provisions that affect the satellite retransmission of distant network signals to certain subscribers. The principal phase-out provision, which affects distant network signal delivery in local-into-local markets, has mooted much of the utilization of the license even before the license completely sunsets on December 31, 2009.

In particular, the Section 119 license contains a provision, known as the "if local, no distant" provision, that prohibits the delivery of distant network signals to new subscribers in television markets in which the satellite carrier offers local-into-local service under the Section 122 license. See 17 U.S.C. § 119(a)(4). Because the number of distant network signal subscribers has steadily declined since the introduction of local-into-local service at the same time that local-into-local service has expanded to 98% of all television households—the number of new subscribers to distant network signals, other than those for which local television stations have granted waivers of the restrictions, has diminished significantly. This phase-out of the utilization of the distant network signal license, and the expansion of local-into-local service under the Section 122 license, advances the Congressional policy goal of localism. Accordingly, Section 119 should sunset at the end of December 2009 with respect to the provision of distant network stations in markets where local-to-local is being

provided. As explained below, local-to-local should be made mandatory by the end of 2010, at which time Section 119 should sunset for those markets as well.¹⁰

B. Require Provision of "Local-into-Local" Satellite Service in All Television Markets

The next and final step in positioning DBS service as a competitor to cable service, and enhancing and preserving the public's stake in broadcast localism, is to require satellite carriers that provide "local-into-local" service to do so in *all* 210 television markets. Satellite carriers should be required, as a condition of reliance on the Section 122 "local-into-local" license in any television market, to extend "local-into-local" service to all 210 television markets no later than December 31, 2010, absent a waiver, for good cause, by the FCC. The extension of "local-into-local" satellite service in all markets would advance the longstanding national communications policy of localism, enhance multichannel video programming and price competition with cable and telco companies, and increase viewer choice. Congress could provide no greater service to assist viewers and consumers in this difficult economic climate than to enhance competition by mandating "local-into-local" satellite service in all 210 television markets.

C. Accelerate the Provision of Local Television Signals in High Definition

The full benefits of the digital television transition will not be experienced by all Americans if the satellite industry is permitted to delay the availability of local television signals in high definition format. Unfortunately, in 2008 the FCC allowed the satellite

¹⁰ There are other dimensions of Section 119, however, including delivery of superstations and delivery of signals to "significantly viewed" areas, that are not subject to phase-out. Those provisions should be renewed for an additional five-year term.

industry to delay for five years the retransmission of local television stations in high definition throughout the nation, thereby allowing satellite carriers to discriminate against certain local broadcast stations, especially in smaller, rural television markets. Moreover, independent stations, Spanish and other foreign language stations, and other minority and ethnic stations, even in larger television markets, are not, in general, being retransmitted by satellite carriers in HD. Thus, consumers in these markets who have purchased HD television sets in anticipation of the digital transition are deprived of receiving by satellite various local HD television broadcast signals. Congress should, accordingly, accelerate from February 17, 2013, to December 31, 2010, the date by which satellite carriers that retransmit local-into-local digital signals must retransmit those signals in HD if the station is broadcasting in HD.

D. Revise the Signal Intensity Standard to Reflect the Digital Transition

If Congress reauthorizes the distant network signal license, then Congress should revise that license to comport with the nation's transition to digital television service. Currently, due to an oversight, the license permits a satellite carrier to deliver a distant network signal to an "unserved household," as defined in 17 U.S.C. § 119(d)(10)(A), which is a household that cannot receive an over-the-air signal of Grade B intensity, as defined by the FCC in 47 C.F.R. § 73.683(a) (1999), of a station affiliated with the requisite network. That definition, in turn, applies a signal intensity standard—the Grade B standard—that has meaning with respect to *analog* signals but not *digital* signals. Because analog signals will not generally be transmitted after June 12 of this year, the definition of "unserved household" should be changed to one in which the household cannot receive an acceptable digital signal. Congress,

accordingly, should substitute the FCC's noise-limited *digital* signal intensity standard, as set forth in 47 C.F.R. § 73.622(e)(1) of the FCC's Rules, for the existing Grade B *analog* standard. This substitution would change the definition of an "unserved household" in 17 U.S.C. § 119(d)(10)(A) to a household that cannot receive a *digital* signal from a local network station whose intensity is less than the signal standard the FCC has established for an acceptable *digital* signal in 47 C.F.R. § 73.622(e)(1) (i.e., the digital "noise limited" service standard). It is our understanding that the satellite carriers concur in this recommendation.

The "unserved household" provision in 17 U.S.C. § 119(d)(10)(A) should also expressly recognize that a subscriber that receives the relevant network programming from a local television station broadcasting that programming on a *multicast* digital channel is a "served" household. In other words, a household should be considered served without regard to which digital channel the local network station uses to broadcast its network's programming. In smaller markets, especially (but not exclusively) those that do not have a full complement of affiliates of the four major networks (ABC, CBS, FOX, and NBC), the "missing" network, as well as newer networks that satisfy the programming thresholds embodied in 17 U.S.C. § 119(d)(2), may affiliate with an existing full power television station for broadcast of that network's programming on a multicast channel of the station. Such arrangements are widespread, promote diversity and support other, often localized, programming initiatives on that and other multicast channels.

E. Adopt a Digital Signal Predictive Methodology

In determining whether households are “unserved” under the Section 119 license, Congress, in 1999, established a predictive methodology, based on the FCC’s development of the Individual Location Longley-Rice (“ILLR”) computer algorithm, whose application provides a rebuttable presumption of Grade B quality *analog* television service. Subsequently, with SHVERA in 2004, Congress directed the FCC to recommend to Congress an ILLR *digital* signal predictive methodology. In response, and following an extensive proceeding, the FCC recommended an ILLR digital signal predictive methodology to Congress in ET Docket No. 05-182, FCC 05-19 (released December 9, 2005). Congress should now adopt the ILLR digital signal predictive methodology that the FCC has recommended to Congress for predicting whether a household can receive an acceptable *digital* signal from a local *digital* network station.

F. Apply Network Non-Duplication and Syndicated Programming Exclusivity Protections Against All Distant Stations and For All Programming Channels, Including Digital Multicast Channels

The Satellite Act as a general matter only provides network non-duplication and syndicated programming exclusivity protections to programming distributed by national superstations. That limited protection, however, creates a lack of parity with the traditional program exclusivity protections afforded broadcast stations from duplicative programming retransmitted by cable systems. The Copyright Office has recognized this lack of parity and has previously recommended to Congress that Section 119 be amended to provide program exclusivity protection for local broadcast stations whose programming is duplicated by *any* distant station. See U.S. Copyright Office, SATELLITE

HOME VIEWER EXTENSION AND REAUTHORIZATION ACT § 110 REPORT (2006) ("Section 110 Report"), at 52. Congress should implement the Copyright Office's recommendation.

In addition, the digital television transition creates the opportunity for new services to be made available to the public via multicasting. Many stations, particularly in smaller markets, have launched additional channels of programming that may contain programming of the principal television networks (ABC, CBS, FOX, NBC, CW, MyNetworkTV) as well as other types of programming, including syndicated and sports programming. While some multichannel video programming distributors have recognized that the network non-duplication and syndicated programming exclusivity and sports blackout rules apply to programming contained on these multicast channels, others have refused to honor station notices invoking exclusivity protection. Congress should confirm that these rules apply to programming contained on all digital channels, including multicast digital channels, with respect to both satellite carriers and cable systems.

G. Terminate All Grandfathered "Illegal" Subscribers

SHVIA in 1999, and then SHVERA in 2004, grandfathered certain otherwise "illegal" distant signal subscribers as new provisions of the statute were being phased in. Because this provision has outlived its usefulness, any remaining grandfathered "illegal" subscribers should be brought into compliance.

H. Make Any Remaining Provisions of the Section 119 License Fully Digital

With the digital television transition, no useful purpose would be served in continuing to afford a compulsory copyright license for satellite retransmission of distant *analog* signals; thus, the distant *analog* signal compulsory license (and various

references to "analog" in the statute) should now be eliminated. This housekeeping step will eliminate confusion and ambiguity in the law and to ensure full compliance. NAB has other, purely technical recommendations that it will share with you as appropriate.

I. Require Companies That Rely on Section 111's Compulsory Copyright License to Comply with the Communications Act's Regulatory Requirements

Some companies utilize a video signal delivery technology using Internet Protocol ("IPTV") to provide video services rather than technologies traditionally used to deliver television signals to subscribers. But while these companies claim the benefit of Section 111's cable television compulsory copyright license, they nevertheless contend that they are not subject to the Communications Act's cable television regulations. In the interest of copyright and regulatory parity, Congress should clarify that Section 111's cable compulsory copyright license is available only to parties that comply with the Communications Act's cable television regulatory requirements.

CONCLUSION

With the perspective gained from 21 years of experience with the Act, Congress should be guided by the same principles it has consistently applied: that localism and free-market competition are the bedrocks of sound policy concerning any proposal to limit the copyright protection that supports the public's free, over-the-air local broadcast service.

Reauthorization of the Act should not be used to effect market modifications that would undercut localism, disrupt local viewing and service patterns and run roughshod

over the fair, balanced and market-based principles that underlie the current statutory retransmission consent system.

The distant signal license, which dates back to the inception of the Act, has outlived its usefulness and should expire. At the same time, Congress should promote the principle of localism by requiring local-to-local satellite service for all Americans in each of the 210 television markets and to ensure that all satellite customers reap the benefits of the digital transition by accelerating the satellite carriers' provision of high definition programming in local television markets.

Mr. BOUCHER. Thank you very much, Mr. Yager.
Ms. Sohn.

**STATEMENT OF GIGI B. SOHN, PRESIDENT AND CO-FOUNDER,
PUBLIC KNOWLEDGE, ON BEHALF OF PUBLIC KNOWLEDGE,
CONSUMERS UNION, AND FREE PRESS**

Ms. SOHN. Chairman Boucher, let me extend my hearty congratulations to you.

Ranking Member Stearns, members of the subcommittee, thank you for inviting me to give a consumer perspective on the reauthorization of SHVERA.

As Congress considers renewing satellite compulsory licenses, it should repair the current fragmented regulatory structure by accomplishing three goals: one, treat all those who retransmit broadcast content and signals equally; two, ensure special protections given to broadcasters do not result in unfair licensing terms for multi-channel video providers, or MVPDs; and three, move toward a world without restrictive distant signal regulations.

The current patchwork of laws and regulations unnecessarily differentiates between types of providers, restricts the availability of content to consumers, and sets the stage for discriminatory pricing.

I have three recommendations: first, unify the regulatory and licensing systems for MVPDs. While at one time there may have been justification for maintaining separate structures for cable and satellite retransmission, that time is passed. Disparities in treatment of cable systems and satellite services are a result of historical and technical factors that are no longer relevant. In its report on SHVERA, the Copyright Office emphasized that regulatory parity between MVPDs is "a good governmental goal of the first order."

It is time to level the playing field, not just between these services but also for new types of MVPDs, including those who deliver content through the Internet. Allowing Internet-based MVPDs to voluntarily join this regulatory scheme could provide much needed competition. Congress should therefore create a single unified structure for all MVPDs, extending the benefit of the compulsory license to any that opt in and meet their regulatory obligations, including local carriage requirements.

In addition, no provider should be subject to a 5-year reauthorization cycle. This presumably means that satellite providers, like cable providers, would be required to carry all local broadcast stations, a fair trade for significant regulatory relief.

Second, reform retransmission consent rules to promote competition and eliminate unfair price discrimination.

And, Mr. Chairman, I would take issue that retransmission consent rules are unrelated to SHVERA. I would say that the problems with retransmission consent are directly related to restrictions on distant signals and the combination of the two produces anti-competitive results.

The rules create an imbalance that allows powerful broadcasters to engage in discriminatory pricing or tie in carriage of unrelated stations, raising prices for customers and harming the ability of smaller MVPDs to compete. Unfortunately, most broadcaster-MVPD agreements are not public, preventing anyone from deter-

mining the scope of these discriminatory practices. Therefore, first and foremost among Congress's remedies should be transparency in retransmission consent deals.

But Congress should go farther, for instance, by requiring that retransmission consent licenses be on reasonable and nondiscriminatory terms. Even more effective would be a statutory retransmission consent license that parallels the copyright license for broadcast retransmission. This would ensure price parity among MVPDs, eliminate troubling tie-in arrangements, and prevent broadcasters from withholding important local content as leverage against smaller video providers.

Third, move toward eliminating distance signal protection. Distance signal protection is an anachronism in an Internet age, where consumers who have Internet access can view content that is not restricted by State lines or artificial market areas. Attempts to force subscribers to watch only local stations is doomed to fail.

More pressingly, current rules create situations in which satellite providers are unable to provide customers with the local broadcast channels that are most relevant to their lives because they originate in a different DMA.

Over the long term, Congress should work toward eliminating distant signal restrictions. MVPDs should be free to respond to customer desires and offer, in addition to local stations, other stations from wherever they broadcast.

In the short term, however, Congress should fix the immediate problems caused by DMA-based and distant-based restrictions on MVPD retransmissions. At a minimum, the rules should be relaxed to allow retransmissions of any in-State signals, stations from neighboring areas, and any missing networks.

Finally, I urge the subcommittee to reject efforts to make SHVERA a vehicle for unrelated changes to copyright and communications law.

I would like to thank the chairman, the ranking member, and this subcommittee again for giving me the opportunity to testify today.

[The prepared statement of Ms. Sohn follows:]



**Consumers
Union**

Nonprofit Publisher
of Consumer Reports



**Testimony of Gigi B. Sohn
President, Public Knowledge**

**Before the
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet**

**Hearing on:
Reauthorization of the Satellite Home Viewer Extension and
Reauthorization Act**

**Washington, D.C.
February 24, 2009**

**Testimony of Gigi B. Sohn
President, Public Knowledge**

**Before the
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet**

**Hearing on:
Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act**

February 24, 2009

Chairman Boucher, Ranking Member Stearns and distinguished members of the Subcommittee, thank you for giving me the opportunity to give a consumer perspective on the reauthorization of the Satellite Home Viewer Extension and Reauthorization Act (SHVERA). My name is Gigi B. Sohn. I am the President and Co-Founder of Public Knowledge, a non-profit public interest organization that seeks to ensure that citizens have access to a diversity of voices, a robust public domain, an open Internet, and flexible digital technology. Today I am also speaking for Consumers Union and Free Press.¹

Introduction

As Congress considers renewing satellite compulsory licenses and revisits the relevant regulations, it should take the opportunity to address the way in which the current, fragmented regulatory structure fails to meet consumer needs and the public interest by decreasing competition and creating unfair pricing practices in the Multichannel Video Programming Distributor (MVPD) market. To remedy this situation, Congress should strive to accomplish three goals:

- 1) treat all those who retransmit broadcast content and signals equally;
- 2) ensure special protections given to broadcasters do not result in unfair licensing terms for MVPDs; and
- 3) move towards a world without restrictive distant signal regulations.

Such measures would benefit consumers by promoting competition among MVPDs, increasing choice of programming, and lowering prices.

The current framework governing MVPD retransmission of broadcast signals is a patchwork of laws and regulations that unnecessarily differentiates between types of providers, restricts the availability of content to consumers, and sets the stage for discriminatory pricing. There are at least three sets of statutory provisions, regulations, and contractual relationships which

¹ I would like to thank Public Knowledge's Equal Justice Works Fellow Jef Pearlman, Staff Attorney Rashmi Rangnath, and Law Clerks Daniel McCartney and Michael Weinberg for assisting me with this testimony.

contribute to this problem, and which apply differently (but with similar effect) to cable and satellite providers:

- 1) With few exceptions, an MVPD cannot retransmit a local broadcaster's signal without acquiring consent from that broadcaster.²
- 2) In most cases, a local broadcaster can elect to force an MVPD to carry their signal, either through must-carry on cable³ or carry-one-carry-all on satellite.⁴
- 3) MVPDs are extremely limited in their ability to seek alternatives to a local broadcaster. Local broadcasters generally retain the exclusive right to offer retransmission of programs in a given geographic area.⁵ Contracts between distant broadcasters and their programming providers prevent MVPDs from retransmitting their signals.⁶ And with few exceptions, satellite MVPDs may only retransmit signals that originate in the customer's Designated Market Area (DMA).⁷

Taken as a whole, this scheme gives local broadcasters too much leverage and places smaller MVPDs at a disadvantage when it comes to offering consumers the content they want at reasonable prices. MVPDs are required to carry less valuable content and cannot seek competitive sources for more valuable content. This places MVPDs – especially small providers – in an untenable bargaining position that results in unreasonable costs that are passed on to the consumer and reduced competition.

In its report on SHVERA, the Copyright Office recognizes a number of problems in existing law and makes a number of recommendations about how Congress should address them.⁸ Chief among these recommendations is achieving regulatory parity between cable, satellite, and other MVPDs, an objective which it refers to as “governmental goal of the first order.” While our

² See 47 U.S.C. § 325(b) (“No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except . . . with the express authority of the originating station; . . .”); 47 C.F.R. § 76.64.

³ See 47 U.S.C. § 534(b) (“Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations . . .”); 47 C.F.R. § 76.56(b)(1).

⁴ See 47 U.S.C. § 338(a)(1) (“secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market”); 47 C.F.R. § 76.66(b)(1).

⁵ See 47 C.F.R. § 76.62 (“Cable network non-duplication”); 47 C.F.R. § 76.122 (“Satellite network non-duplication”), 47 C.F.R. § 76.101 (“Cable syndicated program exclusivity”); 47 C.F.R. § 76.123 (“Satellite syndicated program exclusivity”). See also 47 C.F.R. § 76.5(ii) (defining “syndicated programs” as those programs sold “in more than one market” but excluding “network programs”); 47 C.F.R. § 76.5(m) (defining “network programs” as “any program delivered simultaneously to more than one broadcast station”).

⁶ See e.g., *In the Matter of ATC Broadband LLC and Dixie Cable TV, Inc. v. Gray Television Licensee, Inc.*, licensee of WSWG-DT, Valdosta, Georgia Retransmission Consent Complaint, *Memorandum Opinion and Order* 4 n.25, CSR-8010-C, DA 09-246 (Feb. 18, 2009) (quoting a CBS affiliate agreement restricting distant signal retransmission).

⁷ See 17 U.S.C. § 122(a) (limiting satellite MVPDs' statutory license to retransmit only those from the “local market”); 17 U.S.C. § 122(f)(2) (detailing the harsh damages for satellite retransmission beyond the local market). But see 17 U.S.C. § 119 (allowing satellite MVPDs to retransmit distant signals, but only for 2 network stations and only to “unserved households”).

⁸ Copyright Office, *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report* (June 30, 2008), available at <http://www.copyright.gov/reports/section109-final-report.pdf> [hereinafter *Copyright Office Report*].

organizations do not support all of the Copyright Office's specific recommendations for how to achieve that goal,⁹ we wholeheartedly agree that however Congress chooses to address these issues, regulatory parity should be a part of the solution.

Finally, I urge the Subcommittee to reject the inevitable flood of interests who will seek to make SHVERA a vehicle for unrelated changes to copyright and communications law. Congress should not allow this important and focused legislation to become a hodgepodge of disparate, unvetted, and potentially dangerous changes to the law.

Recommendations

I. Unify the Regulatory and Licensing Systems for MVPDs

While at one time there may have been justification for maintaining parallel, yet different regulatory structures for cable and satellite retransmission, that time has certainly passed. Cable and satellite offer comparable services, and new types of MVPDs entering the market are facing an uncertain and fractured statutory regime. When all MVPDs are able to compete on equal footing, consumers will reap the benefits.

The regulatory structures applied to cable and satellite MVPDs differ in several important ways. While the Copyright Act provides a compulsory license for the performance of copyrighted works to both services, it subjects them to different rates for the license. Cable licenses are based on a percentage of gross receipts for carriage of distant signals¹⁰ and a minimum fee only for carriage of local signals.¹¹ Satellite carriers instead pay royalties based on a fixed fee per subscriber.¹²

These compulsory licenses are conditioned on compliance with provisions of the Communications Act, which impose different rules on which stations cable systems and satellite carriers may carry. As described above, cable systems are free to retransmit both local and distant stations, but are effectively restrained by the network non-duplication rules and syndicated exclusivity rules.¹³ Satellite carriers cannot provide distant signals except for one or two channels to "unserved households."¹⁴

In addition, the Communications Act subjects cable systems and satellite carriers to different obligations with respect to carriage of local stations. While cable systems are required to carry all local stations that elect to be carried (up to a certain portion of their capacity),¹⁵ satellite carriers are under no obligation to carry any local station. However, if the satellite carrier carries one

⁹ For example, unlike the Copyright Office, we believe that the compulsory license should be available to MVPDs using the Internet to distribute programming, see *Copyright Office Report* at 205, that the license should be permanent, and not subject to sunset or the necessity of reauthorization, see *Copyright Office Report* at 223.

¹⁰ 17 U.S.C. § 111(d)(1).

¹¹ *Copyright Office Report* at 4.

¹² 17 U.S.C. § 119(b)(1)(B).

¹³ See *supra* note 5.

¹⁴ See *supra* note 7.

¹⁵ See *supra* note 3.

local station, it is under an obligation to carry all local stations that request carriage.¹⁶

We agree with the Copyright Office's suggestion that disparities in treatment of cable systems and satellite services are a result of historical and technical factors that are no longer relevant.¹⁷ Further, upgrades in cable and satellite technologies mean that now both services are "able to offer essentially the same programming mix of broadcast stations and non-broadcast networks."¹⁸ Additionally, the Copyright Office points out that the unserved household rules which prohibit satellite carriers from importing distant signals in most situations creates a "competitive disparity" between the two systems.¹⁹

Such disparate treatment is simply no longer warranted. Both cable systems and satellite carriers provide essentially the same service. Leveling the playing field between these services would help them compete better for subscribership thereby benefiting consumers. Further, new types of MVPDs are entering the market, providing more choices. As the Copyright Office has recommended, fiber-based MVPDs should be subject to the same obligations and offered the same protections as existing providers.²⁰ Further fragmenting the regulatory structure will simply lead to more "competitive disparities" and less choices for consumers.

With the advent of Internet Video, regulatory parity should also be available to services that want to stream broadcast stations over the Internet and opt in to the regulatory regime which governs other MVPDs. Internet streaming has the potential to provide much needed competition²¹ in the MVPD marketplace, as the Internet provides the ability for numerous providers to enter the market and offer new, competitive services. If an Internet-based MVPD wishes to be subject to the same regulatory obligations as facilities-based providers, there is no reason it should not have access to the same statutory licenses.²²

Therefore, in renewing satellite carriers license to retransmit distant signals, Congress should create a single, unified structure for all MVPDs, including cable and satellite. This structure should extend the benefit of the compulsory license to all MVPDs, including Internet-based operators who wish to be treated as an MVPD. The same local carriage obligations and rates should apply to all providers. This would mean, presumably, that satellite carriers, like cable providers, would be required to carry all local broadcast stations wherever they provide service.

¹⁶ See *supra* n.4.

¹⁷ See *Copyright Office Report* at 100-102, 151 (explaining the historical sources of the differences and why they no longer provide justification).

¹⁸ *Id.* at 102.

¹⁹ *Id.* at 153.

²⁰ *Copyright Office Report* at 220.

²¹ Currently, cable systems and satellite carriers are the dominant MVPDs, serving 97% of all MVPD subscribers. See Federal Communications Commission, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report* 4, M.B. Docket No. 06-189 (Nov. 27, 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-206A1.pdf. And although, arguably they compete with each other, cable prices have not gone down as a result of this competition. See *id.* at 3-4. Furthermore, very few customers have access to more than one cable system, further inhibiting competition. See *id.* at 5.

²² To be clear, any such system should be *entirely* optional: an MVPD which uses the Internet for content delivery and wishes to be subject to the whole of the MVPD regulatory structure, including statutory licenses and carriage requirements, should be allowed to. Under no circumstances should an Internet-based video or other online service provider be *obligated* to participate in such a regime.

As members of the Subcommittee know, Congressman Stupak has introduced legislation, H.R. 927, which would do just that. While satellite carriers have expressed concern about the cost of a “local-into-local” requirement, should Congress unify the statutory license and reform retransmission consent and distant signal restrictions as the groups suggest below, carriage of local stations by a satellite carriers would appear to be a fair trade for significant regulatory relief.

The Copyright Office has expressed concern that a unified licensing system might result in licensing rates that have adverse effects on small MVPDs.²³ As such, in setting rates, Congress should consider the impact on small operators of all types, and provide them with statutory protection where necessary.

Regardless of whether Congress succeeds in unifying the disparate licensing regimes as a whole, it should eliminate the 5-year reauthorization cycle. There is no remaining rationale for imposing the burden of a periodic renewal on only one type of MVPD. Congress should therefore remove the renewal requirement for satellite copyright licenses and make changes to the regulatory structure when those changes become necessary.

II. Reform Retransmission Consent Rules to Promote Competition and Eliminate Unfair Price Discrimination

The Communications Act provides significant protections for local broadcasters. These protections are meant to promote localism and diversity of programming. But when taken as a whole, the entire scheme produces anticompetitive results. The current retransmission consent scheme, the must-carry/carry-one-carry-all rules, and distant signal restrictions combine to create an imbalance that allows broadcasters to engage in discriminatory pricing. This in turn raises prices for customers and hurts the ability of smaller MVPDs to compete in the marketplace. To remedy this, Congress must at the least provide for more transparency in pricing and effective remedies for anticompetitive behavior, and ideally create a regulatory structure to prevent such behavior in the first place.

As discussed above, broadcasters generally have the option of requesting mandatory carriage or negotiating transmission consent licenses with a given MVPD.²⁴ This means that when there is little consumer demand for a local channel, local broadcasters have a cost-free way to reach MVPD customers through must-carry or carry-one-carry all. On the other hand, if there is demand for a local broadcaster’s channel in the region, the broadcaster can leverage that fact to demand higher prices from smaller MVPDs even though there is no correspondingly higher cost to the broadcaster. Broadcasters can afford to lose the small percentage of their viewers that come from small video providers, while those providers cannot afford not to offer a given network. And because MVPDs are unable to go outside the market area to find a competing local broadcaster²⁵ (and the law further forbids cable operators from offering service without broadcast

²³ *Copyright Office Report* at 121.

²⁴ *See supra* notes 2-4.

²⁵ *See supra* notes 5-7.

stations for lower prices²⁶), there is no other source for a network and little market discipline on the prices charged by broadcasters and the MVPD must “take it or leave it.”

Larger MVPDs, with correspondingly larger customer bases, pay much lower (or even zero) retransmission consent fees²⁷ because broadcasters cannot forego the viewership. However, in order to get unrelated non-broadcast stations to more viewers, it can be to the broadcasters’ advantage to condition consent for a larger MVPD not on cash, but on the carriage of unrelated non-broadcast stations owned by the same entity.²⁸ These tying arrangements use MVPD capacity and reduce the ability of providers to respond to consumer demand and carry other, more valuable programming that customers may desire.

These complex and non-uniform regulatory structures do a triple harm when they raise prices and primarily favor larger, incumbent MVPDs. First, the lack of competition between broadcasters forces increased costs on *all* MVPDs, which is in turn passed directly to the consumer, who faces higher prices. Second, higher costs paid by smaller MVPDs are passed on to their customers as an additional cost. Third, the unjustified cost differences produce an anticompetitive MVPD market, forcing smaller providers to charge higher prices and receive lower profit margins, reducing price discipline, and further entrenching larger incumbents. And even the large incumbents do not escape unscathed by disparate treatment, as they are often forced to carry undesired programming in order to acquire broadcast retransmission consent.

The existing set of regulations, which produces an uneven playing field and sets the stage for smaller MVPDs to receive the worst of all possible outcomes at the bargaining table, needs to change. Currently, most broadcaster-MVPD agreements are not public, preventing anyone from determining the scope of these discriminatory practices. Therefore, first and foremost among Congress’ remedies should be transparency in retransmission consent deals. When paired with an effective and streamlined complaint process at the FCC, transparency would go a long way towards disciplining pricing imbalances. However, evidence suggests that existing processes, such as good faith negotiations regulations, are ineffective tools for smaller providers.²⁹

Congress should therefore go farther. For instance, a transparency/reporting requirement combined with a requirement that retransmission consent be offered on reasonable and nondiscriminatory terms could be effective. Even more effective, though potentially more controversial, would be a statutory retransmission consent license that parallels the statutory copyright license for broadcast retransmission. A compulsory license with standardized rates would ensure price parity among MVPDs, as well as effectively eliminating the troubling tying

²⁶ See 47 U.S.C. § 534(b) (requiring cable operators to offer commercial broadcast stations to all customers); 47 U.S.C. § 543(b)(7) (requiring cable operators to offer a “basic tier” including broadcast signals).

²⁷ Jeffrey A. Eisenach, *Economic Implications of Bundling in the Market for Network Programming* 44, M.B. Docket No. 07-198 (Jan. 4., 2008), http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519821757.

²⁸ See, e.g., Federal Communications Commission, *Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements, Report and Order and Noticed of Proposed Rulemaking*, FCC 07-169, M.B. Docket No. 07-198 (Sept. 11, 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-169A1.pdf.

²⁹ See, e.g., American Cable Association, *Petition for Rulemaking to Amend 47 C.F.R. §§ 76.64, 76.93, and 76.103 iv-v* (Mar. 2, 2005), available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517495117.

arrangements³⁰ and preventing broadcasters from withholding important local content as leverage against smaller video providers. Regardless of what path Congress takes, parity, transparency, and effective enforcement are essential to protecting smaller MVPDs and consumers.

III. Move Towards Eliminating Distant Signal Protection

Distant signal protection is increasingly an anachronism in an Internet Age, where computers and broadband connections are providing content choices from around the globe for those citizens who have Internet access. Perhaps more pressingly, the rules that require satellite providers to carry only those local stations within a customer's DMA create situations in which satellite providers are effectively unable to provide customers with even the local channels they desire. Because DMAs often cross state boundaries and satellite providers are more inclined to retransmit channels from large metropolitan areas, many customers can only receive out-of-state channels, depriving them of the news, sports, weather and political information that is relevant to their daily lives. This harms localism rather than aiding it.³¹

Likewise, because satellite providers cannot offer channels even 1 mile outside a DMA unless they are deemed "significantly viewed,"³² customers on the edge of a DMA may be cut off from the local content they could receive via broadcast. Additionally, a number of DMAs do not have a full complement of major networks, preventing satellite from offering those to customers *at all*.³³ And while cable's situation is currently different, the network nonduplication, syndicated exclusivity rules, and contractual obligations of broadcasters combine to produce similarly consumer-unfriendly restrictions on the availability of programming.

In the long term, Congress should move away from distant signal restrictions. While I recognize the value in ensuring that local broadcasts survive and are available to consumers, this need not be accomplished at the expense of consumer choice. All MVPDs should be free to respond to customer desires and offer, in addition to local stations, other stations their customers want, whether they're from next door, the next state, or the opposite coast. In the age of the Internet, where access to content is not restricted by state lines or artificial "market areas," attempts to force subscribers to watch only local stations are misguided and doomed to failure. Congress should recognize this and move towards a world where MVPDs can compete on equal footing with, and on, the Internet.

Recognizing that this world may be farther away than the reauthorization of SHVERA, Congress should, in the context of a unified regulatory structure, seek to fix the immediate problems caused by DMA-based and distance-based restrictions on MVPD retransmission. There are several approaches that could help alleviate the problems. At minimum, the rules should be relaxed as the Copyright Office suggests to allow retransmission of any in-state signals, and in cases where this still fails to provide a network, importing a signal from elsewhere should be

³⁰ See *supra* at 5.

³¹ See *Copyright Office Report* at 138 (citing *Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking*, 23 F.C.C.R. 1324, 1345 (2008)).

³² See *supra* note 7; 47 C.F.R. § 76.54 (defining "significantly viewed").

³³ See *Copyright Office Report* at 176 n.100.

allowed.³⁴ Further, the rules should allow providers to import stations from all neighboring DMAs.³⁵ Fixes such as these could be taken as first steps towards a simpler national regulatory structure that promotes choice and competition instead of the complex web of restrictions that currently constrain choice and inflate prices.

Conclusion

In reauthorizing SHVERA, Congress should seek to achieve the following:

- Create regulatory and licensing parity between all types of MVPDs, including Internet-based providers.
- Eliminate the 5-year reauthorization cycle for satellite-based providers.
- As a step towards eliminating distant signal restrictions, relax DMA-based and distance-based restrictions on retransmission of broadcast signals.
- Reform retransmission consent by increasing transparency and reporting requirements, streamlining complaint processes, and considering compulsory retransmission consent licenses.
- Ensure that changes to unrelated copyright and communications laws are not attached to any bill reauthorizing SHVERA.

I would like to thank the Subcommittee again for giving me the opportunity to testify today. Our organizations are eager to work with you to find ways to accomplish the goals discussed above. I look forward to your questions.

³⁴ *Id.* at 220-21.

³⁵ In 2007, Congressman Ross introduced the *Television Freedom Act of 2007* (H.R. 2821), which would have allowed retransmission of broadcasts from “adjacent market[s].”

Mr. BOUCHER. Thank you very much, Ms. Sohn.
Mr. Ferree.

**STATEMENT OF W. KENNETH FERREE, PRESIDENT, PROGRESS
AND FREEDOM FOUNDATION**

Mr. FERREE. Thank you, Chairman Boucher and Ranking Member Stearns, and thank you to members of the committee.

I am Ken Ferree, president of the Progress and Freedom Foundation, a think tank here in Washington that is focused on studying the digital economy.

Today's hearing is about the reauthorization of the Satellite Home Viewer Act, but in fact, this discussion we are having is really about a much larger debate about how and whether traditional media platforms will thrive in the emerging media world.

The evidence is all around us. The days of force-feeding consumers media selected for them by monopolistic or near monopolistic operators is over. The gems of traditional media, the dominant daily newspapers, are losing prescribers at precipitous rates. The doyen of electronic media, terrestrial radio, has been in extremis for years. Its progeny, satellite radio, too, is struggling in a world of media abundance and consumer choice.

Broadcast television ratings are a fraction of what they once were, and prime content is now migrating not only to multi-channel platforms such as cable and DBS but also to a platform with essentially infinite capacity and flexibility: the Internet, of course. And, thus, the relative newcomers in the media landscape, the multi-channel systems, also have a sharp eye on technological developments that may threaten their business models.

So, as we talk today about distant signal importation, DMA boundaries and the like, we need to bear in mind that the technological workarounds to most any restriction already exist, and consumers are learning to use them with more and more facility every day. Allow me to highlight one example.

Under existing rules, DBS systems make local signal determinations based on DMA boundaries. I don't pretend to understand the intricacies of how DMAs are developed or why they were chosen for this purpose, but I do know that because DMA boundaries and State political boundaries are not coterminous, there are a number of markets where television viewers receive their local broadcast services via satellite from neighboring States rather than their home State.

As chief of the FCC's media bureau from 2001 to 2005, I heard numerous complaints about just this problem, and I have to say, I have some sympathy for those subscribers.

As a practical matter, of course, technological innovation is rendering obsolete many of the restrictions that protect marketplace exclusivity. A new class of Web sites and services, including NetFlix, Hulu, Amazon Video on Demand, iTunes, and Vuze, are changing the way we view broadcast television.

Moreover, it is increasingly easy for consumers to view content from any geographic market directly on Internet-ready televisions or through the use of set-top box devices, such as NetFlix Player, TiVo, or Slingbox, and through popular game consoles like the Xbox 360 and the PlayStation 3.

In short, time and geography increasingly are meaningless concepts with respect to video content. If traditional platforms, including DBS systems, are to thrive in this competitive market, it makes little sense to hamstring their ability to provide viewers in-State stations based on the vagaries of DMA boundaries.

Similarly, it is increasingly difficult to justify carriage burdens on traditional media. I have read recently of legislative proposals that would require satellite operators to carry local television stations in even the smallest markets using satellite capacity rather than some other delivery mechanism.

Now, there are only two ways in which a satellite company might comply with such a mandate: It could add the capacity; that is assuming it is physically possible given spectrum constraints. Or, it may convert capacity currently used for other more highly demanded programming services. Neither approach makes economic sense.

Moreover, carriage requirements impose significant burdens on the First Amendment rights of those bound by them. In the current environment, imposing enhanced carriage mandates on DBS would be unwarranted, economically indefensible and unconstitutional.

Thank you, Mr. Chairman, for the opportunity to testify today. I look forward to your questions.

[The prepared statement of Mr. Ferree follows:]

**Written Testimony of
Kenneth Ferree
President, The Progress & Freedom Foundation
Before the House Committee on Energy and Commerce
February 24, 2008**

Chairman Waxman, Ranking Member Barton, and members of the Committee, I am Ken Ferree, President of the Progress & Freedom Foundation, which is a think tank focused on the digital economy. Thank you for inviting me to discuss the renewal of the Satellite Home Viewer Act.

I. The Video Market Is Extremely Competitive And Growing More So Everyday.

The watchword among policy-makers dealing with the communications infrastructure industries for the past twenty-five years has been competition. As compared to regulated monopolies, competitive markets provide more consumer choice, lower prices, and faster technological innovation. Since the breakup of the Bell monopoly, U.S. communications policy has been focused on bringing these benefits to video, voice, and data communications.

The evolutionary path has not always been smooth, but competitive markets have emerged in each of these broad areas. In consumer video services, the success of Direct Broadcast Satellite (DBS) service has been of singular importance. Today, nearly one-third of multichannel video consumers subscribe to a DBS service (see attachment 1). Of the remaining two-thirds, the vast majority subscribe to a cable service, though telephone company video services have gained a foothold in the market and are growing. Some analysts predict that telephone companies will enjoy a 10% share of the multichannel video market by 2012.

At the same time, the degree of vertical integration in the market is shrinking rapidly. While the number of cable programming services has grown from approximately 70 in 1990 to nearly 600 today, the percentage of those programming services affiliated with a cable operator has plummeted from 53% in 1992 to less than 10% (see attachment 2). As my colleague, Adam Thierer, has written, “with more independently owned networks, there is a greater diversity of niche programming on cable and satellite TV today than ever before. There really isn’t any human interest or hobby that is not currently covered by some video network.”

In sum, the video marketplace is a competition success story; Congress deserves some credit for that success. As history has shown, the passage of the Satellite Home Viewer Act (“SHVA”) and its progeny (the Satellite Home Viewer Improvement Act of 1999 (“SHIVA”) and the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”)), allowing satellite carriers to retransmit local broadcast signals, have played an important role in the evolution of the video market. It is time to take the next step in that evolution.

II. Congress can help increase competition and enhance viewer satisfaction with multichannel video services by dealing with some incoherencies that result from the distribution of broadcast television DMAs.

While Congress considers renewal of SHVERA, it should take the opportunity to make minor amendments that would increase consumer choice on the edges of several markets throughout the country. In particular, I refer to marketplace oddities that can occur when consumers reside in a broadcast television Designated Market Area (DMA) that predominately covers an adjacent state.

Because DMA boundaries and state political boundaries are not coterminous, there are numerous instances throughout the U.S. in which television viewers receive their “local” broadcast services via satellite from neighboring cities and states rather than their home state. As Chief of the FCC’s Media Bureau from 2001 to 2005, I heard numerous complaints about just this problem.

Worse, from my perspective, was that it was nearly impossible, at least for one of my poor learning, to explain the arcane system of DMAs, copyright limits, and broadcast exclusivity that required DBS companies to deprive viewers of access to what they regarded as their home stations while carrying stations from distant cities in other states. Whatever the legal justification, the outcome simply does not harmonize with common sense.

Congress appropriately has addressed specific instances of this sort of marketplace incoherence, but the time is ripe for a more general solution. At minimum, viewers who reside in a DMA such that their local broadcaster is licensed to a neighboring state should be allowed to receive programming from in-state stations in adjacent markets.

III. More Broadly, Consumers Should Be Permitted To Access Whatever Programming They Desire So Long As Distributors And Rights-Holders Can Negotiate An Agreement In The Marketplace.

As I outlined above, the video marketplace is more competitive than ever, and growing more so every day. Indeed, I did not even mention Internet video and the disruptive affect it will have on business models, consumer behavior, and legal/regulatory classifications. As a practical matter, technological innovation will render obsolete many

of the restrictions that we accept as necessary to protect marketplace exclusivity within specific geographic regions.

Most importantly for these purposes, it is apparent that the large-scale delivery of *television* content online is becoming a reality. A new class of rapidly-growing Internet Video Programming Distributor (IVPD) websites and services, including Netflix, Hulu, Amazon Video on Demand, iTunes, Vuze, Sony Playstation Store, and the Microsoft Xbox 360 Marketplace, are changing the way we view and think about broadcast television. These IVPDs already offer a staggering library of currently-airing and archived content—as much as 90% of broadcast shows and 20% of cable shows. It is increasingly easy for consumers to use IVPDs to view content from any geographic market directly on Internet-ready televisions or through the use of set-top devices (*e.g.*, Netflix Player by Roku, TiVo, Slingbox) and wildly popular game consoles (*e.g.*, Microsoft Xbox 360, Sony PlayStation 3). In short, time and geography increasingly are meaningless concepts with respect to video content.

The emerging video world is one unfamiliar to old folks of my generation, but exciting to my children's: It is a world in which the power of the consumer is paramount and market dynamics, not arbitrary physical or legal boundaries, are the only limit. I would caution that, if established video providers are to thrive in this brave new world, they will need to be freed from unrealistic and outdated regulatory strictures.

IV. Expanding The Must-Carry Obligations Of Satellite Carriers Would Be Bad Policy And Unconstitutional.

The nature of legislation is that it sometimes requires, or results in, uneconomic commercial activity. Such legislation is troubling in good times when business activity is

robust, companies are flush, and unemployment is low. It is inexcusable, however, when times are tough, as they are now; when credit is tight, the economy is contracting, and unemployment is on the rise.

I have read recently of legislative proposals that would require satellite operators to carry local TV stations in even the smallest markets. Because Congress cannot repeal the laws of physics, there are only two ways in which a satellite company might comply with such a mandate: 1) it may add capacity (*i.e.*, launch new satellites and build associated ground equipment), or 2) it may convert capacity currently used for other purposes to local television carriage in the most sparsely populated parts of the country. Neither approach makes economic sense. That is, these proposals, if they were to become law, would impose considerable costs on satellite operators while generating no appreciable revenue.

Building and launching new satellites in order to carry local television stations in the smallest markets would of course cost hundreds of millions of dollars, while the return on such an investment, without any doubt, would be negligible. On the other hand, satellite television operators make capacity decisions in order to maximize net revenue. If they are required to delete program services that are profitable to make room for those that are less so, they necessarily lose in the transaction. Indeed, if delivering local television signals in the smallest markets made sound business sense, the satellite companies would be doing so already and no legal mandate would be necessary.

Moreover, and fatally for any such proposal, requiring DBS companies to provide local signals (effectively adopting a satellite must-carry requirement) would almost certainly be unconstitutional. Cable must-carry was upheld by the Supreme Court by a

bare majority only because there was a voluminous record suggesting that weaker broadcast stations would fail absent a cable must-carry requirement, thus depriving over-the-air viewers of additional video programming choices. There is no similar record, nor any reason to believe that one might be assembled, suggesting that the same would hold true absent some enhanced satellite carriage rule.

Carriage requirements impose significant burdens on the commercial and First Amendment rights of those bound by them. In the current environment, imposing enhanced carriage mandates on DBS operators would be unwarranted, economically indefensible, and unconstitutional.

Diagram 1

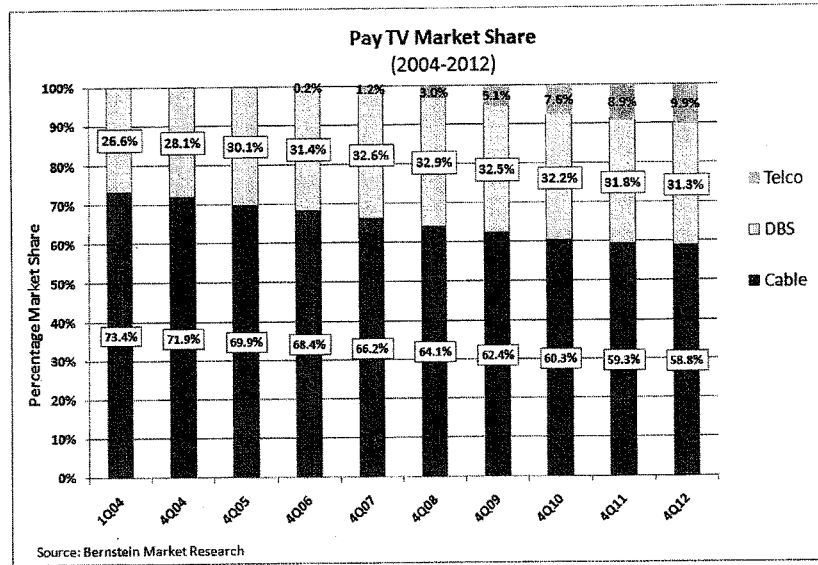
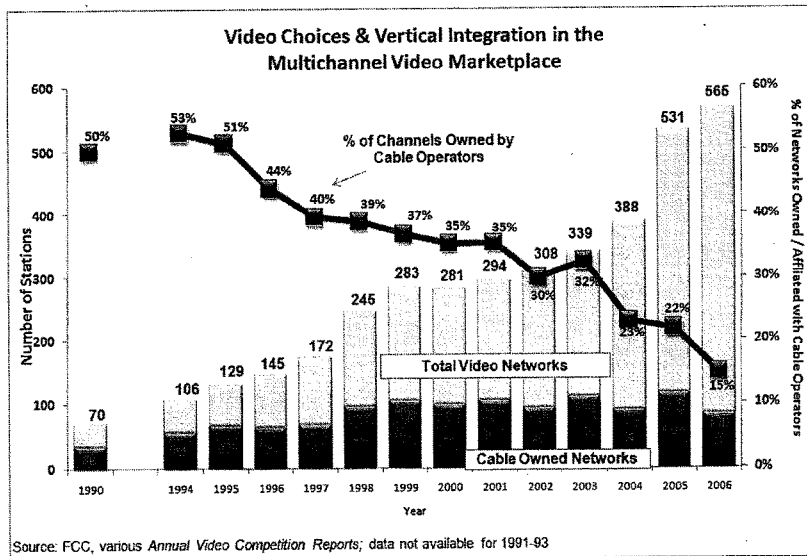


Diagram 2



Mr. BOUCHER. Thank you, Mr. Ferree.

And thanks to each of the witnesses for your very thoughtful comments here this morning, and we look forward to continuing our conversations with you as we continue with our work on reauthorizing the law.

Mr. Gabrielli, I am going to pose a question to you, and I also intend to pose it to National Programming Service that delivers out-of-market signals as well. I understand that you have about 800,000 subscribers to your out-of-market signal service.

Mr. GABRIELLI. That is correct, Mr. Chairman.

Mr. BOUCHER. And I wonder if you know, and if you don't know this morning, if you can do the research and inform us, of the number of subscribers among that 800,000 who reside in places where there is currently local-into-local service. There are two grandfather provisions in the law that under two different sets of circumstances allow the residents of markets that have local-into-local service to continue to receive distant signals or to opt to receive them instead. And I wonder if you know how many people living in those local-into-local markets are receiving distant signaling, or if you could find that out for us.

Mr. GABRIELLI. I don't know offhand.

But there is a question, there is the grandfathered customers who had distant signals before we carried locals and who opt to keep them. But there are also those customers in markets like Lafayette who receive the one local station and receive the other networks via distant network. They are part of the 800,000. So I will try to break out those that receive networks where they are fully covered by locals but choose to receive distance.

Mr. BOUCHER. Well, we call that latter situation short markets, where there is really only—where not all of the networks have local affiliates within that market. And that is kind of a special case. But carve that out also. Give us those numbers, if you can. And we are very interested in knowing the numbers of subscribers you have for out-of-market signals and areas where there is full local-into-local service with all networks represented in that market. So if you could send that to us, that would be very helpful.

Mr. GABRIELLI. We can do that, sir.

Mr. BOUCHER. Thank you very much.

Mr. Yager, you have recommended that the section 192 license be eliminated coincident with the statutory requirement that local-into-local service be provided in all of the 210 local television markets. If that were to be adopted, what would you do in the situation where, as Mr. Gabrielli has just described, there are markets where not every network is represented by a local affiliate in that market, so-called short markets? Would you permit the importation of a distant signal into those markets for the network that does not have a local affiliate in that market?

Mr. YAGER. I am unaware of all of these markets that supposedly don't have a full network service.

Mr. BOUCHER. Well, there are a number of them.

Mr. YAGER. But in regard to that, let me say that I think we have to come up with a local service. We have to maintain local-into-local.

Mr. BOUCHER. I understand that, Mr. Yager. But my time is limited, and the question is today we don't have it everywhere. And even if you mandate it, you are still going to have markets where not all networks are not represented with local affiliates. What do you do in a situation like that?

Mr. YAGER. Well, we have significantly viewed status right now for many of those.

Mr. BOUCHER. That doesn't cover it all, either. OK. Why don't you perhaps submit to us an answer in writing?

Mr. YAGER. Fine.

Mr. BOUCHER. And we would be happy to hear from you on that.

Mr. Ergen and Mr. Gabrielli, I have a question for both of you, and it goes to the heart of what much of our debate in this committee on reauthorizing the law is going to be about. It has been 10 years now since the local-into-local license was first granted. And in that 10-year period, much has changed. Most of the country now has the benefit of local-into-local service, but there are 30 markets that still do not. And I actually represent one of those markets or at least part of it. Spot beams were not commonly in use at the time this license was created 10 years ago. Today, spot beams are. That makes for far more efficient use of your spectrum. And in the meantime, another major thing that has changed is that you are now adding high definition service, which consumes quite a bit of spectrum in the more populated markets.

But we still have 30 markets around the country where there is no local-into-local service. And in these markets, oftentimes you have a very small number of television stations. Maybe it is all of the networks represented, nothing else. Maybe you don't even have that many. Maybe not all the networks are represented with local affiliates. And these are oftentimes geographically challenging areas where people really need the satellite service because they can't get service delivered over the air because of being a long way from the television station or because of terrain. And so though the arguments from people in these 30 markets are very vocal that if you are going to get the benefit of a nationally granted license that lets you offer the local-into-local service, in return for getting that license you should be required to offer that service everywhere. And the technology now has improved to the point that it is somewhat easier for you to do that.

So that is the complaint we are hearing. And I want to give you an opportunity, both of you, to respond to that. And my time is expiring, so as soon as you conclude your answer, I will turn to Mr. Stearns.

But Mr. Ergen, would you like to respond, and then Mr. Gabrielli.

Mr. ERGEN. Sir, it is a great question.

First of all, our company delivers in the 178 DMAs, so there are only 32 DMAs that we don't deliver a signal in. I was a little bit shocked that Mr. Yager was unaware, and in all those markets, those are short markets, Mr. Chairman. So, our company, as you may know, after a long court battle is not allowed to bring in a nonbroadcast network in those short markets. So we have—not only do we have technical issues that we perhaps could overcome with enough time and money, but we have real economic issues

that, without bringing in a short market station, without the ability to do so, no customer would buy it from us anyway.

And it is a shame that the representative from the National Association of Broadcasters doesn't realize that we have this issue of short markets without all network stations in all markets.

We certainly believe that it shouldn't be mandated from a legislative point of view. What I would like to see this committee do is bring the economic incentives so that we could generate competition and that we would have the desire from an economic point of view to go out and do all 210 markets. And, again, our company is certainly prepared to meet the challenges to do those kind of things with the ability to actually bring in short market signals. And you have to balance similar with the must-carry laws as well, which is why we suggested that where there is not local content, you free that bandwidth up for those local markets. If you do those things, I think you have a good shot at getting most, if not all, by one or both of the DBS providers.

Mr. BOUCHER. Thank you, Mr. Ergen.

Mr. Gabrielli.

Mr. GABRIELLI. Mr. Chairman, I would like to make the point, though, that both Dish networks announced were secondary transmitters of a primary broadcast. So we are really doing what the television stations are supposed to do, which is cover their market. We happen to have some advantages of doing it, but it is not our primary business.

The covering of 210 markets, as Mr. Ergen has said, has got a number of technical difficulties. One is, and we have picked up some stations like in Gainesville and in Lafayette where it is a single station, but getting the other networks is tough because we have to get agreements from all the locals around it that bleed into it, and all have some right to claim that those are their customers and that we can't bring somebody else in. So we have to negotiate with everybody in the surrounding territory.

A technical issue is that the local station often is in a pretty remote place, and we have a very tough time of getting the signal back to us that we have to get those signals via fiber in-ground, and quite often, there is no fiber to these stations and that is a huge economic burden to take that we have to go to try to get those signals.

Mr. BOUCHER. Thank you very much.

Mr. Stearns for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

I remember SHVERA, when we had this act in 2004, and we marked it up, and I thought it was rather simple that we could do, but it became very complicated. And after hearing a little bit of the opening statements, I can see that this has become complicated again.

But the difference is, as I mentioned in opening statement, is we now have not only satellite and cable, but we have broadcasters and we have the phone companies, Sprint and AT&T coming in. We have the Internet. We have the iPhone. We have so much more. So is it possible some of the arguments we made back when Billy Tauzin was chairman of this committee and the Republican majority, some of the arguments we made about letting the market de-

cide may be even more so today. And so this is to follow up a little bit on what Chairman Boucher has talked about in dealing with the must-carry requirements.

When it was brought up, the argument was, ultimately, it was constitutional, and must-carry had to be provided because there was insufficient competition to ensure broadcast stations would gain carriage on the marketplace. So this question is sort of fundamental to our whole debate this morning.

And this is to Mr. Ergen, Gabrielli, and Ferree. In light of what I mentioned with the satellites and broadcasting and the phone companies, the Internet, and all these various new markets, and the multiple outlets for carriage, does the Constitutional argument still apply? Is it still that the must-carry requirements have to be implemented because of law?

I will start with Mr. Ferree first.

Mr. FERREE. In my judgment, it would be unconstitutional without a doubt. I don't think you have to be Oliver Wendell Holmes to figure this out.

The original must-carry rule was held up by a 5-4 majority in the Supreme Court based on an extensive record showing that broadcast stations, some broadcast stations, would fail without carriage on their local cable systems. I don't think you could—I mean, first of all, we don't have that record for satellite services, and I don't think you could create such a record. So I think without a doubt it would be struck down as unconstitutional.

Mr. STEARNS. And then we will go to Mr. Gabrielli.

Mr. GABRIELLI. I guess the answer would be, we would rather not have a must-carry. The capacity we use to carry a number of stations that don't have local content; we would love to use that capacity to carry local stations in, again, these smaller markets that we still can't currently carry right now.

Mr. STEARNS. Mr. Ergen.

Mr. ERGEN. I don't know about the constitutionality, but again, I think I am sympathetic to the local broadcaster who invests in his community and invests in his local content, that, when possible, we should carry him, and we do that today. Where I think this committee has it wrong is where you mandate must-carry when a broadcaster doesn't invest in his community and he gets the benefit without the investment. I will give you a simple example.

We carry home shopping channels. And if we carry a national home shopping channel, we may carry it 20 different times in 20 different spot beams, and it is exactly the same signal minute by minute, second by second. And there is not one local commercial, and there is not one local newscast. In my opinion, if the broadcaster doesn't invest in his local community with local content, news, weather, sports, political, so forth and so on, there shouldn't be a requirement for cable or satellite or phone companies that we have to carry their signal, because we can carry—we uniquely can carry it on a national basis and get the customer the same signal. It happens sometimes with a religious broadcast, shopping, some international channels.

Mr. STEARNS. You could argue then the religious broadcaster has to have local participation in his community before it meets your criteria.

Mr. ERGEN. For example, we may carry a national religious channel; we may give it to all 110 million homes, every square inch of the United States. But to duplicate that same signal on a local basis, as the law requires us to do today, doesn't make any economic sense if that local broadcaster only just rebroadcasts the same national signal because there is no local—they don't have any local content, news, weather, sports. So it doesn't hurt them in any way, but it adds cost to the satellite providers.

Mr. STEARNS. What you are saying, if we carry the must-carry mandate, we should stipulate some of the requirements that these stations have to participate in their local community.

Mr. ERGEN. And I think that is a fair compromise.

Mr. STEARNS. Mr. Ferree, what do you think of that comment?

Mr. FERREE. I don't think that gets to the underlying constitutional problem here. The original rule was held up, again, to protect over-the-air viewers from losing some broadcast service. I don't think you could—

Mr. STEARNS. Are you saying Home Shopping Network doesn't fit that requirement, what you are just saying?

Mr. FERREE. No. It may fit that requirement. But I don't think you could make the case that, absent carriage on a DBS system, that these stations would fail. They are not being carried now, and they are not failing. So the over-the-air viewers would not lose the service.

Mr. STEARNS. Would anyone else like to comment quickly? I have one more question.

Ms. SOHN. I have sort of a grand bargain that might work and actually also may perhaps resolve some of the constitutional issues. One never knows what a court is going to do, so I can't guarantee it.

So I think a local-into-local requirement is required if, and only if, you reform retransmission consent, because that is a monopoly problem for the broadcasters; two, you allow the importation of distant signals without restriction; and you have this unitary license.

So I wouldn't be in favor of just imposing local-into-local on satellite providers without those other three reforms. In this way, the government is giving something to the DBS providers and asking in return, and that could resolve the constitutional problems.

Mr. STEARNS. Let me go to my other question for Mr. Ergen and Mr. Gabrielli.

There has been a delay in the DTV transition because February 17th is no longer the date, and by June 12th, we will finally have reached the end of the analog full power broadcast. What do we need to be made in the satellite television law after the completion of this digital TV transition? Is it as simple as plugging a digital standard into the FCC predictive model and testing regime for distant single eligibility, or is there anything else that we need to do?

Mr. ERGEN. Well, assuming you keep the 119 license and it doesn't go into like a unitary license, 122, as the Copyright Office has recommended, then you must go out. And the digital signal is much different than the analog signal. As we all know, there is a waterfall effect: The signal normally doesn't go as far, and you either get it perfectly, or you don't get it at all, or it breaks up a lot on you.

So I think there has to be a new model. The predictive model has always been subject to interpretation, court battles, and so forth. It seems there has to be a way. In the digital realm, a customer knows whether they get a signal or not. In the analog world, it is always subjective, subjective is the picture quality, but in the digital world the customer knows. And I think there has to be a much better model in the digital world if you are going to keep the 119 license.

Mr. STEARNS. Mr. Gabrielli.

Mr. GABRIELLI. I agree with Mr. Ergen.

The basis for this was a prediction where the customer could not get an over-the-air signal. So, as we go from analog to digital, we need to switch the model from an analog model to a digital model because that is now the signal that the broadcaster is producing.

It is a much more clear drop-off. There is less of this ambiguous—you get a signal so much percent of the time, and there is no snow and stuff like that. So we need to go to a digital model, if it is a little gap in the way the law versus the digital transition has gone, and use that because there would still be customers who do not get an over-the-air signal and need some other way of getting network services.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Stearns.

The gentleman from Michigan, Mr. Stupak, is recognized for 7 minutes.

Mr. STUPAK. Thank you, Mr. Chairman.

My questions, of course, are going to deal with local-into-local.

So let me ask Mr. Gabrielli and Mr. Ergen, do you believe local-into-local in all 210 markets is in the public interest and would promote localism?

Mr. Gabrielli.

Mr. GABRIELLI. If it is truly local content, it will certainly help. As Mr. Ergen said, we both rebroadcast numerous stations locally that are equally available on a national basis.

Mr. STUPAK. But do you believe it is in the public interest to do this?

Mr. GABRIELLI. We believe it is in the public interest. But, again, my point is, both of us are secondary transmitters of a primary broadcast that the broadcasters are supposedly putting out.

Mr. STEARNS. Sure.

My time is limited, so I am not going to let you filibuster.

Mr. Ergen.

Mr. ERGEN. Yes, I do believe it is in the public interest. And we would love to be able to do it if the right incentives and legal things were able for us to do it.

Mr. STUPAK. Why do you need incentives?

Mr. ERGEN. Well, because there is a huge cost to do this. It costs about \$1 million for each beam that you put—

Mr. STUPAK. So you have 32 more areas you said you have coverage?

Mr. ERGEN. \$32 million. It costs about \$250,000 or more per year to receive the signal via fiber. So that is 32 times \$250,000 per year. In one DMA, like in Glendive, Montana, there are 3,700 homes. If you got every single subscriber to Dish Network, you

couldn't pay your cost to do it. And in our particular case, we do not do not have a statutory 119 license to be able to bring in the missing short market signals.

Mr. STUPAK. So what incentives are you looking for?

Mr. ERGEN. So we would look for a few things. One is some reform of the must-carry legislation so that we can free up bandwidth that helps us from an economic point of view.

Second, we would look for some help with how do we get the signal back through our up-link sites. Perhaps we could even share that cost with DIRECTV under antitrust exemption and so forth.

The third thing we would look for is a license, a compulsory license so that we can bring in short market signals where a network affiliate is missing in a particular short market. So, for example, in the cities that we don't do today—we have done every market that is not a short market, so and otherwise, and it makes no sense to do a short market if we can't also deliver the other networks. And so we need a reform there from a licensing point of view—

Mr. STUPAK. Not going to start asking for all four of them. We just want local-into-local. Like when my schools were closed yesterday, we want to know about it. ABC isn't going to tell me that unless it is local media, right?

Mr. ERGEN. Give me the particular DMA. Which is your DMA?

Mr. STUPAK. Marquette.

Mr. ERGEN. So Marquette is missing which networks?

Mr. STUPAK. We only have one.

Mr. ERGEN. So for us to spend over \$1 million and \$250,000 a year in Marquette, where we only can bring in one network, and we as a company are not able to bring in ABC, CBS, and Fox, that doesn't make economic sense to us. And every market where we as a company can bring in all four networks, we have done it. More than anybody else on this panel, we have done it. But we are in a situation where we do not have the ability to bring in all the networks.

Mr. STUPAK. You mentioned capacity.

Mr. ERGEN. And the economics don't work.

Mr. STUPAK. You mentioned capacity, and that you would be willing to provide to the members—would you be willing to provide us responses as to your capacity to reach all 210?

Mr. ERGEN. Yes, we would.

Mr. STUPAK. And you would provide that to us, and we will follow it up in writing?

Mr. ERGEN. Yes. We would like to work with you, Congressman.

Mr. STUPAK. How about you, Mr. Gabrielli?

Mr. GABRIELLI. Yes.

Mr. STUPAK. OK. I would like to work with you guys, too. But the part that bothers me is like when DIRECTV, when News Corp. bought you out, if you look at the September 22, 2003 document, page 4, you said: as early as 2006 and no later than 2008, all 210 DMAs would be covered.

And then I understand you are now owned by Liberty. But we keep getting these promises that we are going to have our local-into-local, and we never get it. So we have no choice but to enter into a mandatory requirement. I actually have not just Marquette

but also El Pena where my district is not being covered. And even point to your Indiana example, but that is not the upper peninsula of Michigan. That may work in Indiana, but certainly not in the upper peninsula of Michigan. So all these promises we get from you guys, you never seem to fulfill it. The same thing you said back in 1999: Give us 10 years because technology and expense would come down, and we will do it. It has never been done.

Mr. GABRIELLI. Let me respond to that. Very respectfully, I don't think it is a fair characterization. It was News Corp., not DIRECTV, which no longer owns a part of DIRECTV.

Mr. STUPAK. News Corp. buying DIRECTV. Right?

Mr. GABRIELLI. News Corp. owned a percentage of DIRECTV. But that was their—News Corp. It really wasn't—

Mr. STUPAK. That was your application to do it. Right?

Mr. GABRIELLI. The promise was for a seamless integrated local solution in these markets, which we think with our integrated off-air tuner, which literally connects to our set-top boxes, it receives over-the-air signals; it puts them on the guide. You can control them just like you can control any other channel.

Mr. STUPAK. Sure. But you promised to do it in 2003; and now you are telling me here in 2009 you can't do it.

Mr. GABRIELLI. No, we can do it.

Mr. STUPAK. So why didn't you do it then? You said you would do it by the end of 2008.

Mr. GABRIELLI. By the end of 2008, last year, we had this product. We have a product that the consumer can get, plug it in with our box, put an outdoor antenna on it, to receive over-the-air signals. It integrates the two. The customer has no idea which ones come over the air versus which ones come from satellite.

Mr. STUPAK. Mr. Ergen, you wanted to state something.

Mr. ERGEN. This is my personal opinion. From a public perspective—what the gentleman from DIRECTV says is correct, but from a public perspective, it doesn't really work. I think people want it via satellite, because the picture quality is better and you can always guarantee the customer a signal. I think, from our perspective, what we need is we need the right in Marquette, for example, to bring in the neighboring DMA channels' networks that aren't available in Marquette, so then you get a full complement of ABC, NBC, CBS, and Fox, one of those being Marquette. That would give us the economic incentive to go and do the 32 markets that we don't do today.

Mr. STUPAK. Well, if Dish is doing more than DIRECTV, how come you are doing more than DIRECTV then? Why aren't you both at 178 as opposed to—

Mr. ERGEN. I can't speak for DIRECTV, and I will let Mr. Gabrielli do it. But we have made different choices. For example, Mr. Gabrielli has done more with PBS. He has done more—

Mr. STUPAK. So that takes care of Ms. Eshoo's issue.

Mr. ERGEN. So he has made a choice to do some additional PBS high definition channels. We have taken that spectrum and said, we can do more local markets, because that is what the vast majority of our consumers have asked us to do. So what happens is, it is difficult to do both. I think I have heard from the Congressman that people would like all 210 markets; everybody would like must-

carry; and people would like all HD, which takes four times the capacity of standard definition. And, oh, by the way, I think, from PBS, they wanted all the multicast channels, which could be another 8 or 10 subchannels, for every channel that you have. The laws of physics won't allow us to do that from a satellite perspective.

Mr. STUPAK. Those of us in the rural areas just want to be treated the same as those in the urban areas. Why should we be treated any less after repeated promises, and we license it? So why—

Mr. ERGEN. I tend to agree with you, because I grew up in rural America, and we started our business in rural America. So I have a real sympathy there. What happens there is it becomes a zero-sum game. You would like to have capacity for Marquette. Fair point. PBS would like to have capacity for high definition PBS and 10 subchannels. Other people would like to have capacity for multicast channels, even though there is no local content. And what happens is we can't physically, the laws of physics, do all that. We have made huge strides. And as Mr. Gabrielli pointed out, 80 percent of our capacity today is just for local.

Mr. STUPAK. That is why I asked the question, and you said you would provide the capacity issue, because we keep hearing that, but no one ever can directly point to it.

Mr. ERGEN. I would like to come work with your staff. And I would like to—I think I understand your issue, and I would like you to understand our capacity issues. And we will certainly come open and share everything. And I would like to work with you to solve the problem that you are addressing, because I think it is a real problem.

Mr. STUPAK. We will follow up with written questions as capacity, because I think it is important for all members of the committee to understand this capacity issue.

Mr. BOUCHER. Thank you very much, Mr. Stupak.

The gentleman from Illinois, Mr. Shimkus, is recognized for a 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman.

And I appreciate my colleague from Michigan's comments. He is an ardent fighter for rural America, and I appreciate that.

But I just want to get a clarification. Mr. Ergen, in this debate or discussion you had with Mr. Stupak, and I saw another panelist wanting to get attention. Are you saying that since Marquette has one local station and that is the market reason why it is difficult? But if you are allowed to broadcast the additional networks that may not now serve that area, that that would make an economic argument for doing so? Did I hear that right?

Mr. ERGEN. That is correct.

Mr. SHIMKUS. Mr. Yager, you were jumping out of your seat, and I just kind of want to know why.

Mr. YAGER. I am afraid I didn't totally understand the chairman's question when it came to me about short markets. That is a rather new term to me.

Marquette, Michigan is a very interesting market. There are four affiliated stations in Marquette, Michigan. Two of them are doing news. One is a full-fledged satellite of CBS station out of Green Bay. And, yes, I think that should be carried and should be part

of the carriage. The Fox station there is in terrible economic shape, but if it were carried, I think it might improve its economic condition. So I am sorry I misunderstood the chairman when he talked about short markets. I wasn't quite aware that is the way he was terming the market.

Mr. SHIMKUS. But you are agreeing with Mr. Ergen's statement on broadcasting the four networks.

Mr. YAGER. I am surprised Mr. Ergen doesn't know there are four network stations in Marquette.

Mr. SHIMKUS. I am just trying to get clarification here. We are all among friends here. What I have learned in the digital transition, not the satellite debate, is that there is going to be some communities that, because of the length of the analog signal, they are going to assume that that is their local station; where, when we do a digital broadcast, the local affiliates are going to say this is our market area, and this is how far we are going to service. And people are going to say, hey, I lost, where they have another region. I know before, when we started, the State of Indiana was up there in the placard, and two of those bled into my congressional district.

So we have this, where Vincennes is the major market for southeastern Illinois, or Paducah is a major market and that is where they get all their, or Cape Girardeau, Missouri, or Springfield or the St. Louis one. I have five markets that cover my congressional district.

Let me ask a question to all the panelists, and the time is short, so if you can kind of keep this—this is not a gotcha one. I do some gotcha questions every now and then.

Even apart from specific substantive changes to this legislation, could we improve things by simplifying the law, the current law as written? Are there things that we could simplify that makes it easier versus any major rewrite? And let's go left to right.

Mr. FERREE. Gee, I am not sure how to answer that question. Simple is always better. But right now, I don't have an obvious answer.

Mr. SHIMKUS. That is fine.

Ms. SOHN. I advocate for one unitary license. There is no rationale either technologically or for any other reason to have satellite and cable under two different compulsory licenses. I think in the short term, a DMA fix allowing the importation of signals from adjacent DMAs or in-State DMAs, that is pretty simple. That is not hard. And in the future, getting rid of distant signal protection altogether.

Mr. SHIMKUS. Mr. Yager.

Mr. YAGER. My answer would be, yes, local-into-local would simplify greatly.

Mr. SHIMKUS. OK.

Mr. ROWLAND. It is simple. From a public television standpoint, we would prefer carriage in all markets and want to have conditions that maximize our digital multicast carrying capacity. The Eshoo bill would be a very useful way of making that happen.

Mr. SHIMKUS. Mr. Gabrielli.

Mr. GABRIELLI. The simple answer is, yes, it would be a grateful help. An example is those stations that actually bleed over into another market that doesn't have that network affiliate. It is not part

of their DMA, but yet they have rights under us that we can't bring somebody else in. That would be a very simple fix.

Mr. FRANKS. None of these issues are simple, Congressman. The simple, most straightforward thing for the committee to do is a straight reauthorization of the distance signal license.

Mr. SHIMKUS. Thank you.

Mr. ERGEN.

Mr. ERGEN. Well, an absolute signal is to treat television like newspapers. Which means, in Washington, you can buy the New York Times, you can buy the Miami Herald, you can buy the Washington Post. Let customers buy any network signal they want to.

Mr. SHIMKUS. I would ask another one, Mr. Chairman, but my time has expired so I yield back.

Mr. BOUCHER. Thank you very much, Mr. Shimkus.

The gentlelady from Colorado, Ms. DeGette, is recognized for 7 minutes.

Ms. DEGETTE. Thank you very much, Mr. Chairman.

There seems—I want to go to this issue of the local-into-local transmission. And there seems to be some agreement on the panel that, at least among Mr. Gabrielli and Mr. Ergen, that it is a good goal to try to carry these channels if they have local content.

Mr. Gabrielli. I would like to ask you, how many of the channels you are being asked to carry under the local-into-local do not have local content?

Mr. GABRIELLI. Offhand, I really don't know. I know—

Ms. DEGETTE. Can you give me a percentage? Is it a large percentage?

Mr. GABRIELLI. It is a significant percentage. I would say it is 30 percent of the channels.

Ms. DEGETTE. Thirty percent of the local channels have no local content?

Mr. GABRIELLI. That would just be a guess from dealing with—

Ms. DEGETTE. And why is that? Is it channels that are being rebroadcast?

Mr. GABRIELLI. To a large majority, yes. The shopping channels that Mr. Ergen talked about; certain religious channels are just delivered via satellite to a facility and just rebroadcast out to that local channel.

Ms. DEGETTE. Mr. Ergen, would you agree with that percentage, 30 percent?

Mr. ERGEN. The channels that have no local content is between 15 and 20 percent.

Ms. DEGETTE. And does that provide a real burden on you? Because I know you share the goal if it is truly a local content that you want to be able to rebroadcast that.

Mr. ERGEN. I agree with Congressman Stupak, that we would be much better off to free up that 15 to 20 percent of channels that have no local content and go get Marquette and get them up on the satellite, and some of these other locations, the other 32 markets that we don't do today. To me, that is an economic trade-off where the local broadcaster suffers zero and the 32 markets that we don't do today get a great benefit, and then therefore the consumer gets a great benefit.

Ms. DEGETTE. I hear what you are saying, and that kind of goes to the heart of the issue. How are you going to determine and who determines whether there is local content?

Mr. ERGEN. My suggestion would be that probably the broadcasters submit their—to the FCC or so forth, and they determine the cutoff that you are allocated, just as they would define a network today, I believe the FCC could define a local content hurdle. That would—

Ms. DEGETTE. So you think it should be up to the FCC?

Mr. ERGEN. I prefer that this committee do it, but I think—

Ms. DEGETTE. We will put the chairman in charge of determining that.

I wanted to ask you, Mr. Rowland, I want to ask you to comment on that, because it seems to me to make sense, on the one hand, to require transmission of the shows truly with local content. But if you have these retransmitted shows that don't have any local content, that seems to be cluttering up the problem. What is your response to that?

Mr. ROWLAND. I think, from a public television standpoint, there is a tremendous amount of local content in all of the licensees. The stations across the country are not just retransmitters of the PBS signals.

Ms. DEGETTE. I don't think that is the problem that Mr. Gabrielli and Mr. Ergen are identifying, though. There is a different problem they see with that, which I will get to in a minute. But what they are saying is there is a lot of other shows, shopping shows and other shows that have no local content that are being asked to—for example, with Colorado Public Broadcasting. If they were transmitting that, sure, they might have some of the national PBS shows, but there would also be substantial local content.

So I think you would be OK. What about these shows that are just being rebroadcast by local TV stations that really don't have any local content at all?

Mr. ROWLAND. Yes, that is a very difficult issue, and I don't have a real clear sense of the dimensions of that problem.

Ms. DEGETTE. Well, as Mr. Ergen just said, it is 15 to 20 percent.

Mr. ROWLAND. Yes. I haven't seen the statistics on that. I have to look at it much more closely.

Ms. DEGETTE. What is the view of the public broadcast systems? I don't know if you are here representing them or just Colorado Public Broadcasting. But of that 15 to 20 percent, what would your view be if we could somehow find some standard to take that out? Wouldn't that free up space for you folks to get broadcasting?

Mr. ROWLAND. Yes, it might.

Ms. DEGETTE. Have you thought about that issue?

Mr. ROWLAND. No, I haven't—

Ms. DEGETTE. That might be worth doing that. What about this point that Mr. Gabrielli was making, about it is not just public broadcast systems, but it is also high definition, and then there is all of these substations. I didn't really understand that issue so much. Is that something that the Public Broadcasting System is shooting for?

Mr. ROWLAND. I think what has happened, of course, is as digital has advanced—and it is always a moving target. It is dynamic, it

is changing with compression technologies. We are no longer in a world of a single HD channel opportunity any longer. You can get more multicast capacity. And many of those are very, very valuable. To think of them as subchannels sometimes demeans them when, in fact, they are very, very important in the eyes of the viewers who use them. And I think that is what we are talking about, is broadening out the range of the multicast stream capacity.

Ms. DEGETTE. So that is a very interesting question, then. And that question is, as we broaden out the HD capacity of the local shows and the public broadcasting, how much of that should these folks be required to carry?

Mr. ROWLAND. Well, ultimately, the objective would be to have as much as we are otherwise putting out over our free over-the-air transmitters that affect the full 19.4 megabits capacity that we have.

Ms. DEGETTE. And, Mr. Ergen, what is your view on that?

Mr. ERGEN. You have asked a really good question there. In today's technology, that 19.4 megabits could be 15 channels. So I don't think it is realistic to pass legislation that would require cable and satellite and phone broadcaster companies to retransmit 10 or 12 or 15 PBS subchannels. We are supportive of the core PBS signal, and we do believe it does, in almost every case, have a lot of the local content and needs the local fund raising. So we are very supportive of the main PBS feed. But the multicast is not a requirement that anybody has burdened us with today, and we would be against that.

Ms. DEGETTE. Mr. Rowland, what is your response to that, that you should really look at the number of channels, not the number of—

Mr. ROWLAND. Yes. And evaluate the services that are being provided. In Colorado, as you know, we have got two public television stations. Traditionally, in the analog role, they have been quite differentiated from one another. They have been value-added in the public broadcasting firmament of television services. Between us now, we offer six multicast streams that are all differentiated from one another, ranging from Latino-oriented programming through to international news and public affairs, that together add up to a considerable service that is not otherwise available in the market. So it seems reasonable to argue that those services should be made available.

Ms. DEGETTE. Yes. You know, you didn't exactly answer that, but I get the sense that, frankly, the public broadcasters and the companies share sort of some of the core values, and the question is, how do we make it work? So I will reiterate, at least for my own industries, what I did before, which is I would be happy to convene a meeting of you folks to talk about what we should do and if there is some kind of resolution. I had done that before, and that never came about. So I will—

Mr. ROWLAND. And we would relish that. And just understand, we understand there are some capacity issues. And we are willing to work around that. We have with DIRECTV already.

Ms. DEGETTE. Thank you. Thank you very much.

Mr. BOUCHER. Thank you very much, Ms. DeGette.

The gentleman from Georgia, Mr. Deal, is recognized for 5 minutes.

Mr. DEAL. Thank you, Mr. Chairman.

There are issues here that some people won't talk about, and some people don't.

Mr. Franks, I was somewhat amazed when you made the pronouncement that the DMAs and the retransmission consent are not broken and we shouldn't tamper with it and that straight reauthorization is what this committee should be dealing with. I am sure that was spoken with the same conviction that King George dismissed the taxation without representation of our early colonial revolutionaries. It is a statement of a monopolist.

Now, I am more inclined to agree with Ms. Sohn's analysis here that retransmission is tied into it. And I know the chairman would prefer us not to get into that, but apparently your panelists didn't have that information because almost all of them in some form or fashion have mentioned it. And I think ultimately it is one of those things we have to deal with.

Let me talk about some of the other issues.

Mr. Yager, what percentage of the viewing population of your broadcasters receive their signal now over the air?

Mr. YAGER. Well, it varies by market.

Mr. DEAL. Well, average overall. Now, I am told that the 2006 FCC study showed that it was about 15 percent.

Mr. YAGER. That is probably a good average.

Mr. DEAL. Do you expect that percentage to increase or decrease with the digital transition?

Mr. YAGER. I am hoping it decreases.

Mr. DEAL. All right. So less and less people are going to get their signal from your broadcasters free of charge; they are going to have to go through some of these other medians: cable, et cetera?

Mr. YAGER. Well, no. The over-the-air signal will still be very, very strong and I think it will be superior in digital than it has been in analog.

Mr. DEAL. But you said it was going to decrease in percentage of viewers.

Mr. YAGER. Well, I think that is true because right now the preferred delivery method for digital has been through cable and satellite. But as we get the converter boxes out, as we see more conversion to digital on the part of the home set, I think you will see about the same kind of 15, 16 percent.

Mr. DEAL. So you think it may go up then. I thought you just said a minute ago it will go down.

Mr. YAGER. What I am really saying is I think it will go down because second sets are not included in anything we are doing.

Mr. DEAL. Let me ask. You like the DMA system; is that right? You like what DMAs give you in terms of protection?

Mr. YAGER. I believe in the DMA system as a way to designate a marketing area where there is a common kind of commonality of interests of the people served.

Mr. DEAL. Well, that is all well and good but over the year doesn't serve the needs of constituents in the DMAs. What are your broadcasters doing to increase or enhance the ability to reach those

viewers without the necessity of going through some of the multi-channel providers?

Mr. YAGER. I am sorry. I am not quite sure I understand the question.

Mr. DEAL. Well, there are places in my district and I think everybody we have heard from, places in their districts that they can't get your broadcaster's signal over the air. Now, in going to digital may or may not enhance that spread. In fact, I am inclined to think it may decrease it rather than increase it. If you are not doing anything to enhance the ability to expand the over-the-air, why would you object to us looking at the issue of DMAs as to the problems they present?

Mr. YAGER. We think, first of all, that the local-into-local will solve the problem of people not being able to get a signal.

Mr. FRANKS. Mr. Deal, may I interrupt? You may not hold my opinion in high regard, but I would like to express it.

Mr. DEAL. Maybe you can enhance my opinion.

Mr. FRANKS. I will try valiantly.

Actually, we are spending hundreds of millions of dollars on the digital transition to try and perfect that signal. In many instances, we are still not on the designated channel that we will be on. We are not at the tower height. So as soon as we do make those switches, we are—we know for a fact that KCBS in Los Angeles is not going to as easily reach the full market as the KCBS analog. We are prepared to spend millions of dollars to try to enhance that signal, change the antenna height, if need be go to translators and repeaters, so that we do—it is in our interest. We do better in over-the-air homes. We get higher ratings in over-the-air homes. So it is very much in our—

Mr. DEAL. But you don't get the retransmission money?

Mr. FRANKS. You know what, I would happily go back to a three-channel universe, no retransmission. That was a wonderful business, Congressman. And I would go back—

Mr. DEAL. Well, let me ask you this. I don't think we are going back to that, but we may be going—

Mr. FRANKS. I would swear off retrans if we could go back to an over-the-air regime, purely over the air. Happily.

Mr. DEAL. We may go into consideration of allowing some of your CBS affiliates to cross the DMA boundaries.

Mr. FRANKS. They can do it today. I keep hearing this concern about local news. I grew up—well, the map is down. I grew up in that corner of Indiana, Michigan City. We were served by the Chicago market. My father commuted to Chicago, so we have an economic affinity with Chicago. But if there is a desire to bring South Bend news into Michigan City, that can be done today. It can be done this afternoon with no change to the law, no change to regulation.

Mr. DEAL. So you are saying, then, the issue of adjoining DMAs or in-State DMAs crossing those lines is not an issue?

Mr. FRANKS. I think it is only an issue for people who are masquerading either to evade retrans or to bring in competing program, a competing network—a second source of network programming. But what I hear from this committee is that the desire is for news. If the desire is for news, that is controlled by the local sta-

tion. They control the copyright. They can authorize it this afternoon.

Mr. ERGEN. I have to jump in there a little bit. I can't let Mr. Franks get away with that.

He is talking just about news, and it is not practical. That means we would be turning on and off that channel 6, 8, 10 times a day. It means when a Senator runs his political commercial, you don't get it across State lines. And we obvious know people think about their weather and their news and their sports and everything else. So it just doesn't work from a practical point of view.

And what Mr. Franks and the broadcasters are saying here is that we are not going to build the towers out. So you have to build your satellites and your cable systems and your plant equipment, right, and we want you to build the towers. And then we are going to charge you for a signal on top of that. And then, from a satellite perspective, you have got to pay the fiber costs to get the signal back to your uplink center, right. And we are just going to sit back in one little building and have a signal that we kind of send out to get to you. And I don't think the economics of that is quite fair, and I think you have pointed that out correctly.

Mr. DEAL. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Deal.

The gentlelady from the Virgin Islands, Mrs. Christensen, is recognized for 7 minutes.

Ms. CHRISTENSEN. Thank you, Mr. Chairman.

And I recognize that this is the first hearing of our newly constituted subcommittee. I want to applaud Chairman Waxman for creating it.

And thank you, Chairman Boucher and Ranking Member Stearns, for holding this hearing on what, for me, who is new to this depth of the telecommunications world, are very complex issues as we prepare to reauthorize the Satellite Home Viewer Act.

Hopefully, by the end of this hearing, I will understand why I have to have one TV on satellite and another on cable so that I can get network as well as local stations and distant programming at home and also why I have to try to find an excuse not to go home during baseball playoffs so I won't be bombarded by all of the complaints on why it is blacked out in the U.S. Virgin Islands. I have a lot to learn.

But it is clear that the disparities remain between the satellite and cable providers and also, importantly, in the ability of consumers based on where they live to have access to programs that they want to see.

It is also clear that we are reauthorizing this act in a time of a changing landscape in terms of how broadcast programming is provided in the move to digital.

So I want to thank my colleagues and the panel for this baptism by fire, but I am learning.

Mr. Franks, I am still trying to get clear on all of the issues around DMAs.

Mr. FRANKS. OK, so am I, Congresswoman.

Ms. CHRISTENSEN. As I was reading last night—I guess Mr. Yager also feels similarly to you—but I thought you were the only one that didn't want to change the system. I have a very simple

question on that. Is that the position of all of the network stations, or is that just—

Mr. FRANKS. I can only speak for CBS and the stations we own, Congresswoman. I can't speak for the other networks.

Ms. CHRISTENSEN. Thank you.

Ms. Sohn, do you think that being able to obtain regional sports programming is critical to competition in the multichannel video programming distribution marketplace? Or, put another way, is a consumer less likely to subscribe to services of an MVPD provider if the services don't include regional sports programming? There isn't any substitute for that, is there? Or is this a situation that is harmful to consumers?

Ms. SOHN. Well, absolutely.

I mean, I am a huge sports fan, so I can safely say that when viewers can't see their local sports team, they are harmed, and it might make them less inclined to buy service from an MVPD. So, absolutely. Unfortunately, the one entity that is missing from this panel are the sports leads themselves because they have an awful lot of power to say, yes or no to an MVPD carrying their programming. It is a shame that we don't have anybody from the NFL or Major League Baseball here to talk about that.

Ms. CHRISTENSEN. And then I could ask them my question about the Virgin Islands, too.

Thank you.

Who is from cable? Do I have a cable witness?

Well, to Mr. Gabrielli and Mr. Ergen, one of the problems that occurred in the past with satellite operators was around the issue of the underserved homes and how programming was or was not provided to them. Satellite TV has advocated adopting a policy whereby satellite operators would be permitted to offer distant high definition digital signals to consumers who currently only have access to local over-the-air SD signals. Given our past history with the satellite television industry that I referred to, what is to stop the industry from trying to—I don't know what word to use—poach or just get around this with local broadcast station subscribers?

Mr. GABRIELLI. I think, again, the reason for distant network signal is to deliver to a customer a service that he can't get locally. We carry a lot of markets in HD as DISH network does. And in those markets, if we offer HD locally, they get HD locally. We don't offer distance. In places where either we don't carry it or a station does not get HD and a customer wants HD, we feel the right we should offer them HD. And we had agreements way before we started offering HD locally that we turned on a number of networks for customers because we were the only national carrier.

As those markets became local HD markets, we have turned off those customers. The number of distant network service subscribers has decreased, not because of them reaching an over the air broadcast but because we carry both the SD and the HD versions. And as we do that, we will turn off the distant networks.

Ms. CHRISTENSEN. Ms. Sohn or anyone else who might want to answer this, I am informed that the Communications Act permits cable companies to refuse to permit access to certain programming if it is provided terrestrially, the so-called terrestrial loophole. It seems that the FCC thinks the current law prevents it from taking

action on this. Is the commission right, or do you think—would you recommend a fix as we reauthorize this act?

Ms. SOHN. Well, I would love to see Congress close the terrestrial loophole. There is an ambiguity as to whether an MVPD can avoid the program access rules by sending programming terrestrially as opposed to via satellite, because the 1992 cable act says that if a vertically integrated cable operator sending programming via satellite does not make that programming available, unreasonable on nondiscriminatory terms, then somebody can file a program access complaint to the FCC. But because at the time the cable act was passed, it wasn't—the programming wasn't sent terrestrially, it was sent by a satellite; so therefore Congress used those words not recognizing that the technology would change, which is, of course, a good warning to Congress when they do pass laws to try to be as technologically neutral as possible. So that is a long-winded answer to your question to say that I do think that Congress should make it clear that however a vertically integrated cable operator provides programming, it should be subject to the program access rules.

Ms. CHRISTENSEN. I don't know if anyone had another comment. I have got about 5 seconds.

Mr. GABRIELLI. I guess we just agree to the same thing. There is only a couple of cases where this loophole is being used, and it is specifically being used to keep both the DISH Networks from carrying that content. There is really no reason for it anymore.

Mr. BOUCHER. Thank you very much, Mrs. Christensen.

The gentlelady from Tennessee, Mrs. Blackburn, is recognized for 5 minutes.

Ms. BLACKBURN. Thank you, Mr. Chairman.

And I just have a couple of questions.

Mr. Ferree, I want to come first to you. In your testimony, you had specifically said that you believe consumers should be permitted to access whatever programming they desire so long as distributors and right holders can negotiate an agreement in the free market. And I would love—and you can send this to me in writing, because what I would like is for you to elaborate on how you think we could best approach and realize that result, and what recommendations that you may have for improving that DMA system that would spark an expansion of the DBS-provided local programming.

Many of us have talked about rural areas. I specifically mentioned Hardin and Hardeman counties in my district and the problem that we have there with accessing the program and that being, again, a security issue. So I would love to hear an expansion or an elaboration on those comments from you if you will. And very briefly, if you want to add one or two points for me.

Mr. FERREE. Well, I appreciate the opportunity to do it in writing later when I have had more of a chance to reflect on the question. The problem with this area, as several of the members have mentioned, is that it is an incredibly complex web of rights and consumer expectations. And there is no simple way to untangle this web and just say, OK—I wish there were an ideal simple free-market answer, here is how everybody would trade and deal. I don't have that.

Ms. BLACKBURN. I think Ms. Sohn has an idea or two on that.

Mr. FERREE. And I expect—actually, we are very close on most of these issues. I tend to disagree that it is as easy as unifying the licensing standards between all MVPDs, because one law for the lion and the ox is oppression. They are not all similarly situated to begin with. And again, I think there would be tremendous practical difficulties in trying to come up with just a simple unified compulsory license. So I will endeavor to come up with something, but I don't have it for you right now off the cuff.

Ms. BLACKBURN. Thank you. I appreciate that. And I will look forward to your response.

Mr. Yager, I want to come to you if I may, please, sir. Thank you for your testimony. I know you favor that DMA system, and I wonder if you would favor it in a digital world. But the question I really want to ask you goes to what I think is one of the act's bedrock principles, which is section 122 of the Copyright Act, which gives you a compulsory license for satellite carriers to retransmit your programming in a local market. And it allows all of you broadcasters to maintain control over that programming to protect those advertising revenues and then to ensure appropriate compensation to you for that signal and its content. And that makes sense to me. And I agree with that because I think that it is an appropriate intellectual property protection. And using that same logic, what I want to ask you is this: Do you or do you not believe that creators of musical works deserve that same protection when the terrestrial radio stations broadcast creative content over the air, and if not, why you would not agree extending that?

And I would also ask you, sir, if you do not think this is a mirror image argument, and why do you think that the cable, satellite and telephone subscription video providers provide similar royalty compensations while the radio broadcasters do not?

Mr. YAGER. That is an excellent question, Congresswoman.

Unfortunately, my side of the aisle as the National Association of Broadcasters is television. The side of the aisle you are talking about there is radio. And I understand that radio does have a hearing coming up in front—maybe this committee or the Judiciary.

Ms. BLACKBURN. Do you not think that they are the same argument, sir?

Mr. YAGER. No, I don't. I think they are very different arguments.

Ms. BLACKBURN. So you think they are very different intellectual properties?

Mr. YAGER. I don't really profess to be an expert on—

Ms. BLACKBURN. Mr. Franks.

Mr. FRANKS. Congresswoman, if I can speak on behalf of CBS radio and CBS television. With all due respect, I think you are making an apples and oranges comparison. On the television side of things, we spend a great deal of money procuring our programming and procuring that content from which we then seek compensation. In our radio businesses, A—in the TV business, we then have an exclusive right to that program. At our radio stations, the same record is played on seven or eight different stations and is aggressively pushed by the record companies and by the artists to the stations asking us, please, please, to play this station—to play

the music. Five weeks from now, we will broadcast proudly the Academy of Country Music Awards. Every one of those winners is going to stand up and say thank you to country radio for making their music known.

Ms. SOHN. Here I think is a better question. You asked a great question, Mrs. Blackburn, but here is a better question. Why does satellite radio pay public performance royalties to their artists and the recording industry? Why do Web casters—a lot of whom are going out of business—pay those royalties but over-the-air broadcasting does not? That is the comparison that makes absolutely no sense because those, satellite radio and Web casting, promote the heck out of music just the same as broadcasters do. And if those two have to pay, in my opinion, broadcasters should have to pay as well.

Ms. BLACKBURN. Thank you, ma'am.

Yield back.

Mr. BOUCHER. Thank you very much, Mrs. Blackburn.

The gentleman from Louisiana, Mr. Melancon, is recognized for 7 minutes.

Mr. MELANCON. Thank you, Mr. Chairman. I appreciate it.

Most of my questions are probably going to deal with, Mr. Ergen and Mr. Gabrielli. I have a distinct issue that raised its head around the end of May and kind of hangs around until around November of each year. It is called hurricane season. And because of that and the alignment of my district along the coast, I kind of live in what I call a black zone. They know we are out there, because they want to get TV and such to us, but they don't want to cover our news very much.

I have got a low power station, which I understand creates a dilemma from the standpoint of getting broadcast vis-a-vis satellite. Prior to the storm, this station, low power, has been on local cable. When the storm came 6 weeks, he has got a drag line out there with his tower worth of signals, sending the signal off the top of a drag line, at least he had been for several months until he could get a new tower built.

In the meantime, satellite people came in and started advertising throughout the community. It doesn't matter when the power goes down, you have got a generator, you can get TV coverage. The only problem is you couldn't get this low power station. If he went to the tuner, then, in fact the tuner is—if my understanding is correct, only gives him a several mile radius because it is local reception through the satellite. Is that a correct statement?

Mr. GABRIELLI. His territory is depicted or controlled by his power. So the tuner can pick it up if he has got the power to the tuner.

Mr. MELANCON. On cable, he was carrying—approximately several hundred thousand people were receiving on the cable network that he is being carried on. When the storms hit, the satellite companies said, we can get you all your stations but in fact couldn't provide him.

My dilemma is I have got this black area that is in between Lafayette, Louisiana; New Orleans, Louisiana; and Baton Rouge, Louisiana. And none of them reported what was going on down there on a daily basis, which people who had evacuated wanted to know

when they could come back, how they could get back, what the circumstances were.

And let me just tell you, Mr. Gabrielli, your people, we have been working with them and talking to and trying to figure this out somewhere—and, Mr. Ergen, your people, too—to see if there is some help. Is there something that can be done in this reauthorization that provides for a station that provides more public service and 100 percent of local content to the community in which I am; that New Orleans doesn't help them. Baton Rouge doesn't help them, other than for network coverage. And Lafayette doesn't even get there. Is there anything that we can do in this bill that allows for me to help this—it is a business to this guy, but it is an information source to several hundred thousand people—that I can inject into this bill that would allow us to get him on to satellite or to some mechanism where those people will be able to get the information, particularly after disasters or hurricanes have been through.

Mr. ERGEN. You bring up a really good point. As I have said in my testimony and in answer to a previous question, I think the best thing you can do is relax the must-carry obligation on cable and satellite broadcasters and make—and eliminate any kind of must-carry requirement where there is not local content provided by the local broadcaster.

And in your situation, it is just the opposite. Your local broadcaster provides 100 percent local broadcasting and can't get carriage. He is being bumped off the satellite by somebody who doesn't have any local carriage at all because they are a bigger company or part of a big conglomerate or whatever. And the way the law is situated today, it doesn't recognize the value of the local broadcaster that you have in your situation. So that is what I would recommend.

Mr. GABRIELLI. The limiting resource for both of our companies is really the satellite capacity. It takes 3 years to build and launch a satellite, \$250 million, and they are up there for a long time. It is not like you can launch them every couple of years to update the capacity. So that is our limiting resource.

In this case, Mr. Ergen is probably right. There is a full power shopping channel in New Orleans that we have to carry, and we can't, no longer have the capacity to carry a truly local station like yours. So not having that must-carry for those nonlocal stations like that frees up the capacity where we can help them pick up these truly local stations that fit within existing spots and capacities.

Mr. MELANCON. Is that your prerogative on the must-carry or can you take the option, QVC or—

Mr. GABRIELLI. No. There is no option. If that full power QVC station in New Orleans says carry me, we have to carry it.

Mr. MELANCON. The local tuner, as I appreciate it, is just like a local adapter with rabbit ears if you would. I have a duck camp 15 miles from this place; I can get the station. I live 30 miles away; I can't get the station. And, of course, 30 to 50 miles is where all the people moved away after the hurricane. Is there some other technology that is out there that, vis-a-vis the DISH Networks, the

DIRECTV network, satellite actually that might be able to give them more distance at this particular station?

Mr. GABRIELLI. The two options are with us, an integrated tuner that receives an over-the-air broadcast. If you can add a repeater or a translator to reach farther, our systems will pick it up. The only other option is to be on the satellite, and we need to find the capacity to do that.

Mr. MELANCON. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Melancon.

The gentleman from Oregon, Mr. Walden, is recognized for 5 minutes.

Mr. WALDEN. Thank you very much, Mr. Chairman.

To our satellite providers, I am just curious again, as I mentioned in my opening comments, Bend, Oregon—that is B-E-N-D, Oregon—it does not have the local-into-local yet on your services, and I am curious of two things. One, if you have a timeline, and I don't imagine you have every market memorized as to where you stand. But to do local-into-local, it is the second biggest community in my district, but it is also a rural district. So a lot of people use your services, and I am just curious if you have a timeline there. And second, on that similar point, I understand that you will go or assist in terms of putting up an antenna for people to receive the local signal and then it comes seamlessly through, in effect, the tuner. And I am curious how you market that, what kind of awareness there is in terms of your marketing strategies for that service. I don't think people are fully aware of how that works.

Mr. GABRIELLI. When a customer calls us, we know by his phone number approximately where he lives. And in those markets, we don't offer a local solution. We do tell them we have another off-air solution that is integrated with it. I am very familiar with Bend. I am an Oregon State grad. So I know where Bend is.

Mr. WALDEN. Well, you seem to have turned out OK despite that.

Mr. GABRIELLI. And there is a station in Eugene, the guy calls me probably every other month and asks me the same question. And with Bend, it is an interesting market. And because when it first started there was, I think, one local station. And then when the stations or other stations went to digital, now it says, well, instead of now just being a FOX there on my digital secondary channels, I am going to be an NBC and a CBS. So now I have rights instead of being one station, I have to worry about one seat on the bus—now I have to worry about more seats. So that really kind of complicated the situation of—it was for years thinking about, we will find this one seat able for Bend, oops, now it is three seats.

Mr. WALDEN. Now it is three. Delay has its costs.

Mr. Ergen.

Mr. ERGEN. Thank you.

We recognize that Bend now has all—their subcarriers, all four networks. So we have under construction a satellite that will allow local-to-local in Bend, Oregon, in January of next year. As we seat here next year, a year from now, when I see you with your kids at college, then we will hopefully be celebrating the launch of Bend.

Mr. WALDEN. That is terrific. I will be happy to help flip a switch.

Mr. Yager—and I appreciate that, and there is a good example of a role model to your left.

Mr. Yager, talk to me about DTV in the remaining 2 minutes I have. The Medford market shifted, except one station. Tri-Cities Washington, which also serves my district, shifted. We didn't get a single phone call. Did any of your stations?

Mr. YAGER. None of ours shifted. We did apply for a couple of shifts. We were turned down by the FCC. For whatever reason, they didn't want all the stations in the market, in one of our markets Quincy, Illinois, which is not from Congressman Shimkus's district. One station did go; we did not.

Mr. WALDEN. I understood that the FCC had decided on that policy.

Mr. Chairman, I would be curious—I don't know if you are planning a hearing on this DTV—I mean, a post February—

Mr. BOUCHER. Will the gentleman yield?

Thank you for yielding. We do indeed intend to have an oversight hearing on the DTV transition. We will probably wait until such point in time as the new money in the stimulus bill has made its way into the system, and the converter box program, the coupon program has been re-energized with those new funds. So it will not be the most immediate thing that we do. But certainly in the spring of this year, well before the June 12th transition date, we will have an oversight hearing on that.

And I thank the gentleman for yielding.

Mr. WALDEN. I am glad we are going to do the hearing. I would actually argue just the opposite, and maybe it is because I am now syncing with our new President who wants us to reduce spending where we can, that maybe if this transition worked OK in the markets where it occurred we wouldn't need to spend all that money, and this would be a great place and time to save a little.

One other comment, and, Mr. Yager, maybe you can address this, The fairness doctrine. Congressman Pence and I succeeded in getting an amendment in to prevent the FCC from using its funds to promulgate some version of the fairness doctrine. I understand in the omnibus bill that we are about to vote on that that restriction has been stripped out. And so now the FCC, if this is the case, could use their funds to promulgate the fairness doctrine or some—it won't come up under those terms. It will be called something else if they do it. Is that a concern you have, and do you think it should apply to cable and satellite if it does come back?

Mr. YAGER. It is a major concern to me, and I hope it doesn't come back. And if it doesn't apply to us, then it certainly shouldn't apply to cable or satellite.

Mr. WALDEN. The gentleman from our satellite distributors, what is your view on the fairness doctrine?

Mr. ERGEN. I am with Mr. Yager.

Mr. GABRIELLI. I also agree.

Mr. WALDEN. Anybody else want to comment, even though I have overshot my time?

Ms. SOHN. I spent a lot of the first part of my career defending the fairness doctrine. I think it is a doctrine whose time has come and passed, long passed. But that doesn't mean that the whole public trustee doctrine shouldn't be reviewed to see whether broad-

casters aren't getting a few too many government bennies, including free spectrum exchange for not the best local programming.

Mr. WALDEN. What if you got your spectrum allocation in an auction, is that free?

Ms. SOHN. They don't. They didn't—

Mr. WALDEN. In the radio business you do.

Ms. SOHN. Broadcasters get their spectrum for free.

Mr. WALDEN. No, no, no. In the radio where you have competing applications in a market, you go to auction. And the highest bidder—

Ms. SOHN. I see. I just think the entire public trustee doctrine needs to be looked at again.

Mr. BOUCHER. Well, we are getting a little bit far afield.

Mr. WALDEN. I am just trying to give you new ideas for hearings.

Mr. BOUCHER. Mr. Walden certainly gets the award for covering the largest number of issues during the course of 5 minutes in this hearing today.

Thank you, Mr. Walden.

The gentleman from California—Mr. Buyer, is here. The gentleman from Indiana, Mr. Buyer, is recognized for 5 minutes.

Mr. BUYER. Thank you.

First of all, since we are going to bring up other issues while we are investigating this particular one, a couple of things of note, in Indiana last fall, it appeared that LINbroadcasting sort of went first out there in the marketplace in the retransmission negotiations with cable, i.e. Comcast, of which LIN Broadcasting in their local went dark in Indianapolis. Not a good thing. OK? So when we talk about free market principles in a market that really is also highly regulated, this is really hard. And I don't believe that was good in the public interest for a station to go dark. It was one of these things where, who is going to blink first? And I just want you to know that was not a good thing. It was not healthy.

So we, I guess, like to use terms about serving the public interests. That didn't do it at all. That is a CBS affiliate. So I got that sorted. And I kind of hold that thought because I recognize there are many retransmission agreements that are coming on line. So I don't know if that was sort of posture about what is to occur.

And then I noticed that—Mr. Franks, I don't want to pick on you, but I had noticed in December that your CEO of CBS had made some comments about how the model of the network broadcast is changing and we have to change with the landscape. And he talked about that perhaps even in the future, that the network will move toward cable; and that with regard to all these affiliate agreements that also are going to be coming up for renewal here relatively soon, that you are going to cut the affiliates out of the retransmission money to go directly with cable and then cut out the local broadcasters.

Now, for a lot of Members of Congress of whom have close relationships with their localities, I have a strong curiosity here of what are those interests. So we can talk about all—the spirit of this hearing today about trying to get the local programming while there is some big issues out there in front of us. So I almost got a sense that I don't want to get lost in the high weeds. So I am

going to do my opening and ask you, Mr. Franks, if you could sort of explain what your boss meant.

Mr. FRANKS. First, Congressman, he was asked a hypothetical question, and he gave a—

Mr. BUYER. That is dangerous. Go ahead.

Mr. FRANKS. I would be happy to send to you the full context of the question and the answer, because it has been reported in a number of places as if it was something that was being contemplated in the very near term. And I think his answer made clear that this is something that may happen over the course of 10 or 15 years. I mean, local broadcasting—we own a number of stations. So they are amongst the most valuable assets of the corporation. So the notion that we are going to abandon any time soon local broadcasting is, I think, counterintuitive. So he was responding to a hypothetical. And, in fact, we continue to support our affiliates; there are any number of legislative arenas, maybe even this one, where we could take a more selfish course than we do. We do not do that because we believe in the system. We believe in our local affiliates. Our network is a \$4½ billion business that we are not going to walk away from quickly.

Mr. BUYER. Would this article have been accurate, that you wanted a percentage of the retransmission fees from the local broadcasters?

Mr. FRANKS. Other networks have talked about that. I mean, a large part of what drives the retransmission value is the national programming. And in order to compete for the NFL, in order to compete for March Madness, we spend billions of dollars. And we may need help from our affiliates. We may need a share of their retransmission consent money in order to remain competitive for those rights.

Mr. BUYER. OK. So they are out there in tough negotiations. I mean, take the Indianapolis for example, where LIN and Comcast—

Mr. FRANKS. It is Time Warner, not Comcast. And 2 months later, we reached an agreement with Time Warner and—I mean, the LIN situation was unfortunate; it was unfortunate for the network. It hurt the network's ratings. So we were monitoring it very closely, but we also respected LIN's right. It is their right. We didn't bigfoot them. We didn't cut them off. They are the licensee. And under the law, they have the retransmission consent right. What deal we then negotiate with them in an affiliation agreement is a matter between us and LIN.

Mr. BUYER. All right. I know my time is exhausted. May I ask—

Mr. FRANKS. I will come back.

Mr. BUYER. Mr. Chairman, may I ask one more? I know my time is exhausted.

Mr. BOUCHER. Go ahead, Mr. Buyer.

Mr. BUYER. I want to now go back into this free market, I am well aware that the CBS affiliate through LIN Broadcasting, which is the Lafayette, finally, after many years, had learned that there really were no legal ramifications as to why an affiliate in Illinois can sort of block that signal.

And I appreciate, Mr. Gabrielli, for you to finally get this negotiated and on line.

But as a curiosity, if we are going to say, OK, really don't do the Stupak bill, let the marketplace work, but why, then, Mr. Ergen, wouldn't you then get on board and do the very same thing that DIRECTV is doing in Lafayette? This is almost 150,000 households. So don't give me the 1,400 household answer.

Mr. ERGEN. Yes. It is a unique problem to DISH Network. We don't have a compulsory license to bring in—I think in Lafayette there is a CBS affiliate, but there is not an ABC, NBC, or CBS. It is what we call a short market. We don't have the license to bring in those networks. So just to have one station and go to the expense for one station without the ability to bring in the other markets—DIRECTV does have a license, so they can bring in the other ones. So that is why we haven't done it.

Mr. BUYER. So that is a money answer?

Mr. ERGEN. No, it is a regulatory—it is an issue where we, after a long court battle, we don't have a license to do it. So if that doesn't—if we had a license to do it, then the economics would make sense for us.

Mr. BUYER. Can we let Mr. Franks answer and then I am done?

Mr. FRANKS. It is a little off point, So you may be sorry that you let me back in. So, in the context of all the talk about DMA reform, I understand the problem of the short markets. I truly do. I understand Lafayette. I am from Michigan City. But why it is then preferable to bring in our station from New York to Lafayette as opposed to figuring out a way to bring in the Indianapolis stations into Lafayette when here we are talking about we need more help on getting in-State signals to—and then you are going to bring in New York City, it—I understand the attractiveness of providing the network programming, but it sure isn't localism.

Mr. BOUCHER. On that note, thank you, Mr. Buyer. Thank you members of the panel for what has been a very constructive and informative conversation. We will be having further discussions with each of you, I am sure, as we construct the legislation. And members of this panel will perhaps be sending some additional questions to you. In fact, with Mr. Stearns' consent, I will ask unanimous consent that all members of the subcommittee have the opportunity to propound in writing questions to the witnesses for a period of, shall we say, 10 days. So without objection, and you probably will be getting questions from a number of our witnesses. So your responses today have been very helpful to us. This has been a truly constructive discussion. And when you get questions sent by the members of the panel, please return the answers as quickly as you can.

With the thanks of the Chair to all participants, this hearing is adjourned.

[Whereupon, at 12:46 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL

Thank you, Mr. Chairman, for holding this hearing today. Once again, the Committee is tasked with reauthorizing portions of the Communications Act of 1934 that affect satellite carriers' ability to retransmit broadcast television signals. The last reauthorization of these provisions in 2004 benefitted from the cooperation and insightful contributions of many, including several of my friends, among them Senator Hollings and Representatives Boucher and Markey. I hope that this collegial spirit

will be characteristic of today's proceedings and the mark-ups to come, so that we may produce consensus-driven, common-sense legislation that ultimately serves the interests of our Nation's consumers.

In essence, we are again concerned with the two competing policy goals of fostering competition among Multichannel Video Programming Distributors, while at the same time preserving the viability of free broadcast television. I submit that the Satellite Home Viewer Extension Reauthorization Act of 2004 helped in large part to balance these at times conflicting objectives, but I also recognize that the passage of time has brought new issues to light, such as whether satellite providers should be allowed to retransmit adjacent market local signals and also whether satellite providers should be statutorily required to offer all local signals in the markets where they offer service. These are multifaceted issues for which solutions may only be found in deliberate discussions among all stakeholders involved.

I support your stated goal of a clean reauthorization of these provisions, Mr. Chairman, and offer my cooperation in achieving it. Moreover, I commend your foresight in beginning the Committee's work of examining these provisions well in advance of their expiration at the end of this year. With the benefit of experience, I can safely say that this affords the Committee the opportunity to produce well reasoned and effective legislation.

Thank you, and I yield back the balance of my time.

PREPARED STATEMENT OF HON. G.K. BUTTERFIELD

Mr. Chairman, let me start by saying how thrilled I am to be a Member of this subcommittee. I am happy to be here today to discuss the Satellite Home Viewer Extension and Reauthorization Act. Subscriptions to satellite based television services are very popular in my Congressional District as many of my constituents live in extremely rural areas where traditional cable service does not reach.

In 2006, the Federal Communications Commission estimated that 85% of US households subscribe to some sort of pay television service so this reauthorization will ultimately impact the vast majority of Americans. It is important we cautiously move forward to ensure all stakeholders' views are taken into account. With many different views represented, I am confident we will arrive at a compromise with which everyone can be pleased.

One issue I hope we'll explore is the addition of more quality children's programming available on satellite television. I have had the pleasure of working with ION Media Networks and have learned about their children's learning channel called Qubo. Now more than ever, children are turning to television to educate and entertain. I commend ION Media Networks and networks like ION for filling the void in using television to educate our young people.

I look forward to hearing from the witnesses today. I know that all of the witnesses come with a plethora of institutional knowledge and industry experience and I thank each of them for their time on this important issue.

Mr. Chairman, I am eager to work with my colleagues on this Subcommittee on this and future issues.

Thank you.



April 24, 2009

Mr. Earley Green
Chief Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Green:

Please find attached Mr. Ergen's responses to the questions submitted by the Committee regarding the February 24, 2009 hearing entitled "Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act".

Please let us know if you have any further questions or concerns. Thank you.

Respectfully submitted,

Lori Kalani
Director of Government Affairs and Senior Counsel
DISH Network L.L.C.

cc: Hon. Joe Barton
Ranking Member, Energy and Commerce Committee

Hon. Rick Boucher
Chairman, Subcommittee on Communications,
Technology, and the Internet

Hon. Cliff Stearns
Ranking Member, Subcommittee on Communications,
Technology, and the Internet

Hon. Anna Eschoo
Hon. G.K. Butterfield
Hon. Bart Stupak
Hon. Steve Buyer

The Honorable Congressman Bart Stupak

1. How much has your company's capacity to provide video and audio programming services increased in the 10 years since the creation of the Section 122 local-into-local compulsory license in 1999? How much of that increase is due to additional satellite capacity and how much to improved compression technologies?

Our capacity has increased significantly in the past decade due to investment by DISH Network in satellite infrastructure, compression technologies and additional spectrum opportunities. All three factors have been critical and are interdependent. We have launched service in 178 local markets covering over 97 percent of the nation's population since we received authority to provide local-into-local service.

Satellite Fleet

In 1999, our satellite fleet consisted of four satellites (Echo I, Echo II, Echo III, and Echo IV). Together with its affiliated companies, DISH Network now owns or leases 15 satellites and provides direct-to-home satellite service from U.S., Mexican, and Canadian orbital locations. We plan to add two additional satellites to our fleet this year.

Beyond increasing the sheer number of satellites in the sky, the key development that jump started our ability to provide a substantial amount of local-into-local service was the implementation of spot beam technology. Prior to spot beam technology, satellite providers were required to dedicate national "CONUS" capacity to local service, *e.g.*, national capacity that could have had ESPN2 and Lifetime instead was dedicated to Los Angeles local ABC and CBS affiliates. Dedicating national capacity to content only viewable to residents of a single local market is extremely inefficient. The vast majority of our local services are now carried on dedicated spot beam capacity, which allows us to use our limited bandwidth more efficiently.

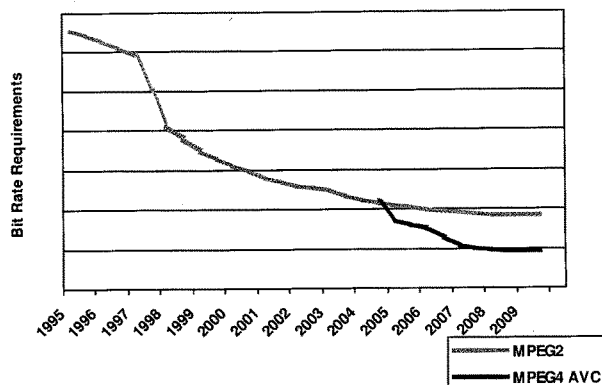
Satellite Spectrum

Adding new satellites alone cannot increase capacity significantly. It has been critical for DBS providers to add additional spectrum bandwidth as well. Both DBS companies have sought out non-U.S. DBS orbital positions and explored usage of non-DBS spectrum (*e.g.*, Ka-Band, Ku-Band and FSS spectrum) to provide as much satellite capacity as possible to our subscribers.

Compression Technology

The following chart provides an overview of the improvements in compression technologies alone going back to 1995:

Video Compression Improvements (1995 to 2009)



As you can see, MPEG-2 compression technology improved dramatically during the past decade, and those improvements have been bolstered by the introduction of state-of-the-art MPEG-4 compression technology used today primarily for high definition service. The ability to provide these improved compression technologies is a direct result of building higher and higher powered satellites with the ability to process and deliver as much high-quality video services per frequency channel as possible to consumers. Although DISH Network continues efforts to expand the number of services available per frequency channel, the chart above shows that the substantial efficiency gains of compression technology have been achieved, and future gains will not be as dramatic.

2. Please provide an estimate of the amount of duplicative broadcasting your satellites carry and how much spot beam capacity is taken up by duplicative broadcasting? In your response, please explain how your company defines as duplicative broadcasting.

There is no simple definition of duplicative programming. The bulk of our spot beam capacity is dedicated to content that is duplicative for some or all of the day. A typical network affiliate – whether a NBC or PBS affiliate – airs the same pre-packaged national programming for over half of any given day.

Some broadcast affiliates carry virtually identical content. For instance, a review of Trinity Broadcasting Network affiliates in four markets shows that these stations carry identical content during prime time, and the same content over 50 percent of the rest of the day.

Any duplication-based relief would raise a number of implementation and logistical challenges. First, the resource-intensive nature of reviewing programming lineups would make critical which party was responsible for demonstrating or refuting duplication. A DBS provider would have difficulty calculating the content on hundreds of stations, and an individual broadcaster would have difficulty tracking all its affiliated broadcasters nationwide. Further, there would be challenging definitional issues considering that a review of programming line-ups would not be sufficient for determining duplication for programming that is simply titled in the programming

guides as “paid programming.” Similarly, time zone differences would need to be built into any national carriage rule in some manner.

3. What is your company’s estimate of the number of new markets where it would launch local-into-local service if Congress were to enact legislation to eliminate duplicative broadcasting?

If a broad definition of duplicative broadcasting were enacted, DISH Network would likely have sufficient recovered capacity to serve all 210 markets. In contrast, if a more modest or limited definition of duplicative broadcasting were enacted, DISH Network may not recover sufficient bandwidth to launch any additional markets. The challenge is that any bandwidth gains would result in capacity spread among different spot beams across the U.S. For instance, freeing up spectrum in the Orlando spot beam does not help offset the lack of capacity in the Watertown NY DMA. It is important to highlight that spot beams are fixed and cannot be reallocated after satellite launch.

Given challenges associated with defining and monitoring duplicative content would be difficult to overcome, DISH Network maintains that must carry relief focused on HD carry-one, carry-all is a more advantageous route. Specifically, if DBS providers were granted the flexibility to carry must-carry stations in either standard or high definition, the bandwidth savings should be significant enough to allow for launch of the remaining local markets from a satellite capacity perspective.

4. Are there legal or technical impediments to increasing the efficiency of providing local-into-local service by sharing spectrum among satellite carriers?

Yes. Both companies’ infrastructure and software systems are separate and distinct, and there generally are no DBS-wide standards that apply to our industry. From a technical perspective, each company has specially designed dishes unique to their service that receive satellite signals from different orbital locations and different satellite frequencies. For instance, a DIRECTV dish may be looking at the 99° W.L., 101° W.L., and 103° W.L. orbital locations, while a DISH Network dish may be looking at 61.5° W.L., 72.7° W.L., and 77° W.L. There would also need to be substantial consumer equipment modifications for set-top boxes to address a number of encryption, security, and service differences. Without collaborating on new customer hardware and infrastructure, the two companies could, therefore, not “share” spectrum today. The costs of such a collaboration – both from a resource and time perspective – would likely be prohibitive absent other commercial reasons to combine operations. One key challenge to creating a single satellite platform would be how to address 31 million legacy DBS customers that do not have the ability to receive service from the other providers’ satellites. From a legal perspective, significant sharing of facilities may require a waiver of the antitrust laws.

5. What is the average radius covered by a spot beam?

The effective radius of a spot beam varies widely depending upon the intended coverage, use, and interference of that particular beam. A “typical” spot beam covers approximately 200 to 300 miles. In densely populated areas, spot beams are generally smaller because of the requirement to reuse the frequencies in order to deliver more content to those clusters of dense markets. DISH Network also attempts to shape its

spot beams as much as practicable to key population centers and the contours of local markets. As technology has evolved, the size of spot beams has tended to diminish.

6. How much of your satellite capacity is devoted to carrying local channels in high definition format versus standard definition format?

We currently carry local broadcast stations in standard definition format in 178 local markets. In 121 of those markets, some broadcast stations are also provided in high definition format. DISH Network reported to the FCC last year that 62 percent of active transponders were used to provide local service compared to national networks. The carriage of HD content requires substantially more capacity and transponder space than a SD station. Despite the SD/HD capacity difference, SD local services – largely because of the sheer number of markets and broadcasters served – remain a substantial capacity drain on DISH Network. In the New York City DMA alone, SD local signals take up all or part of six frequency channels, while the handful of HD local signals is provided on a single frequency channel.

7. Please identify any other capacity constraints faced by your company when providing local-into-local service.

The largest capacity constraints are related to spacecraft and satellite frequencies as noted in response 1 above. In addition, adding new markets requires additional ground station space, and equipment; access to sufficient fiber optic capacity at the local receive facility; additional monitoring capability at uplink facilities; and additional employee and vendor support.

8. How much does your company estimate it would cost to expand local-into-local service to all 210 Designated Market Areas?

Assuming we could reallocate capacity reserved for HD must carry stations rather than designing and building a new satellite (which as described in #13 below could cost approximately \$350 million), the cost would fall into two basic categories: (1) initial investment required to build out the remaining 33 markets; and (2) recurring costs associated with these markets.

Upfront Costs

While we are continuing to assess these costs, we currently estimate the initial implementation costs to build out and connect terrestrial facilities to the remaining unserved markets would be approximately \$39 million. The actual cost will vary significantly depending on the geographic location and special characteristics of each market. Key cost factors include: affordability and availability of sites; proximity to the market's broadcasters to permit signal reception over-the-air whenever practicable; and proximity to available backhaul fiber facilities.

Recurring Costs

While we are continuing to assess these costs, we currently estimate the average annual recurring costs for a local receive facility and associated terrestrial infrastructure for DISH Network's 178 markets are \$444,000 per market. We estimate that the average

recurring costs may be higher in some of the remaining markets, which are typically more remote and rural. These costs are discussed in more detail in response number 10 below.

In addition to the upfront costs to build out terrestrial facilities and recurring costs for local receive facilities, it should also be highlighted that there are many other annual recurring costs associated with expanding local-into-local service. Examples of such recurring costs include broadcaster retransmission consent licensing fees, additional satellite transmission path costs, and the cost of expanded customer service and installation support. We are continuing to assess those costs.

9. What steps did your company take to provide local-into-local service in the states of Hawaii and Alaska when it was mandated by Congress in SHVERA in 2004?

We built four local receive facilities: 3 in Alaska and 1 in Hawaii. In addition, we worked with Alascom to obtain fiber facilities that were large enough to transport content back to the contiguous U.S. states so that the services could be delivered to our uplink centers. These four markets are extremely expensive for us to operate and maintain. Where applicable, we also had to reach retransmission consent agreements with local network affiliates for rights to HD content. From a satellite perspective, capacity was set-aside for Alaska and Hawaii-based service. Given the limited multicast and HD programming available in Alaska and Hawaii today, there remains a substantial amount of capacity dedicated to broadcasters in those states that remains fallow, but must remain dedicated to broadcasters in case HD service is delivered.

10. What is the average cost per market for your company to install and maintain a local receive facility? Please include the cost of connecting that facility to an uplink station. Please identify any specific markets where those costs are significantly more than average.

While we are continuing to assess these costs, we currently estimate the initial implementation costs to build out and connect terrestrial facilities to the remaining unserved markets would be approximately \$1.2 million per market, and the average annual recurring cost of a local receive facility and associated terrestrial infrastructure across DISH Network's 178 markets are approximately \$444,000 annually. We estimate that the some of the cost for the remaining markets will be higher, because of their remote location. The recurring costs of a local receive facility include: (1) fiber costs; (2) the local facility lease; (3) equipment and personnel costs at the local receive facility and at the uplink; and (4) incremental staff and vendor costs for supporting additional markets. Overall, the very largest and the very smallest markets are the most expensive to install and operate. It should also be noted that uplink equipment and staff must be reflected fully in these calculations as the quality of content collected is frequently poor, which requires additional maintenance and employee time to address technical issues.

11. Are there technical solutions that your company has identified to make the process of connecting a local receive facility to an uplink station more efficient? What would be required to implement such changes? Are there different methods of signal transmission that your company has explored to reduce costs?

There is no simple means to aggregate local content nationwide to a national provider. DISH Network constantly works with our fiber providers and backhaul providers on the most efficient and affordable solutions available. We explored and implemented regional uplinks in addition to our primary uplink facilities in Cheyenne, Wyoming, and Gilbert, Arizona. These regional uplinks allow some local content to be added to our satellites without traveling to our main facilities. As long as DISH Network is required to carry individual versions of national network content, the costs of local receive facilities will be substantial.

12. Are there currently any shared costs between a broadcast station and your company to retransmit the broadcaster's signal into its local market?

No. Under current law, broadcasters are responsible for delivering a good-quality signal to the satellite carrier's local receive facility. The vast majority of broadcast stations have no out-of-pocket expense because DISH Network receives their over-the-air signal. If the limited instances in which a broadcaster's over-the-air signal is inadequate, the broadcaster is responsible for delivering a good-quality signal to the local receive facility via other means, such as terrestrial fiber, at the broadcaster's expense. Even this limited broadcaster obligation to deliver a good quality signal can be imposed on the satellite carriers as part of retransmission consent negotiations.

Once the satellite carrier receives the broadcast signal at its local receive facility, the carrier must "backhaul" the signal to the satellite uplink facility, often thousands of miles away, at its own expense. There is no cost-sharing between the satellite carrier and the broadcaster.

13. What is the estimated cost and timeframe for launching a satellite from design to finish?

It takes approximately three to four years to design, build, and launch a satellite. In some instances it has taken up to six years from signing the satellite construction contract to provision of service to customers because of construction and/or launch delays. According to a recent FCC filing by the Satellite Industry Association, state-of-the-art DBS satellites cost approximately \$350 million.

14. Please provide a timeline of the rollout of local-into-local service by your company by DMA since 1999.

See Attachment 1.

15. What suggestions, if any, does your company have for reforming how Designated Market Areas are currently structured? Please specifically identify any DMA reforms that allow your company to provide local-into-local service in DMAs that currently do not have it.

Many of the local markets that are currently unserved do not have a full complement of network affiliates (*i.e.*, they are "short markets"). In order for consumers in these markets to receive all of the big four networks, Congress should amend the Section 122 compulsory copyright license to allow DBS providers to import signals from neighboring markets to give consumers a full complement of network programming. Of the 33 local markets not served by DISH Network today, 22 fall into this category.

Many consumers are also interested in viewing TV signals from neighboring DMAs because those signals speak more to their “local” interest than the signals from the their “home” DMA, particularly if their home DMA is in another state, or they work or travel regularly outside of their home DMA. Furthermore, with advances in technology and the growth of the Internet, consumers increasingly expect to access information and entertainment anywhere, anytime, on any device. Congress should recognize and embrace these developments by allowing the market to dictate which broadcast signals pay TV companies deliver to their subscribers, provided that broadcasters are adequately compensated for the value of their content.

Furthermore, we note that imposing a mandate on the DBS industry to serve all 210 local markets would result in an unfair burden on a single industry. As this response shows, the costs are significant. If the public policy objective is to provide local TV service (particularly emergency alerts) to all US households, then there are multiple ways to achieve that goal. For example, local broadcasters could be required to build out towers to cover an entire local market in exchange for the free spectrum they received from the federal government, which is valued at billions of dollars. The added benefit of this approach is that consumers would have the option of receiving their local signals free over the air. Alternatively, wireline companies (e.g., cable, telcos) could be required to deliver local TV channels to all households in communities where they receive stimulus funds to build out broadband infrastructure. Rather than picking winners and losers -- which cannot be justified legally -- we encourage policy makers to work with the DBS industry to devise incentives that would result in a “win-win” for all interested parties. We are eager to engage in such discussions.

16. Legislation was proposed in the 110th Congress by Congressman Mike Ross to allow satellite carriers to provide in-state signals from an adjacent DMA to households in DMAs that straddle state lines. If such legislation were enacted, how would it affect your company’s capacity? Should such legislation become part of the reauthorization of SHVERA, in how many DMAs could your company provide in-state signals within the first year?

The proposed DMA reform would have little effect on DISH Network’s capacity. Currently, each set top box contains a code that allows subscribers to view signals from the subscriber’s home DMA; all signals from neighboring DMAs are blocked. The Ross bill would allow DBS carriers to “unblock” signals from certain neighboring counties. As a technical matter, most neighboring DMAs from which the signal is being “imported” must fall within the same spot beam as the subscriber’s home DMA in order for a subscriber to view both signals. Because both signals are already in the same spot beam, no additional capacity is required.

All of DISH Network’s systems are designed to provide local service according to DMA lines. We currently do not have any way to target individual counties or recognize state borders. If the Ross bill were revised to allow importation of signals to and from DMAs (as opposed to counties), we could implement the change immediately and begin providing consumers the programming they are requesting. If the bill continues to limit service to in-state signals, implementation would require costly and time-consuming changes to our systems. Moreover, if we are required to serve all 210 local markets, our engineering, IT, and other resources are likely to be devoted to those efforts in the short term. Further, if broadcasters have unfettered retransmission consent

rights over adjacent market service, such an adjacent market service may be delayed or precluded by broadcasters' unwillingness to provide access to their signal on fair and equitable terms.

17. Please provide past, present, and future cost estimates of retransmission consent.

As shown in the below chart, industry analyst SNL Kagan estimates that retransmission fees have increased and will continue to increase substantially over the next few years.

**Estimated and Projected Broadcast
Retransmission Fees (\$ mil.)**

Year	Cable	DBS	Telco	Total
2006	44.3	175.4	1.6	221.4
2007	86.0	220.5	12.9	319.4
2008(e)	160.7	287.2	39.6	487.5
2009(e)	251.1	345.2	80.3	676.7
2010(e)	411.9	390.4	127.7	930.0
2011(e)	564.2	437.2	167.8	1169.2
2012(e)	668.2	462.2	201.4	1331.8

Retransmission consent agreements are confidential and there is, therefore, no publicly available information about the scope and size of retransmission consent fees. Publicly traded broadcasters confirm the rapid growth in retransmission consent revenue in their Wall Street earnings calls:

- o Sinclair reports that "revenues from retransmission agreements were \$73.9 million [in '08], a 25.5 percent increase over '07 \$58.9 million." (Q408 Earnings Call).
- o Meredith reports that "[w]e expect retransmission fees to grow to at least \$15 million annually by fiscal 2010." (Q408 Earnings Call)
- o Belo similarly reported that retransmission "revenues increased 30% in the fourth quarter and 41% for full year 2008. Retransmission revenues for 2008 totaled \$33.1 million." (Q408 Earnings Call)

It should be highlighted that DBS providers in 2008 account for a disproportionate share of retransmission consent fees paid to broadcasters. SNL Kagan estimates that DBS providers paid 58.9 percent of retransmission consent fees (yet serve approximately 1/3 of the pay TV market). There is no readily available public data for prior years on industry breakdowns, but it is clear that DBS's share has been even higher previously. Media General reported earlier this year to Wall Street that retrans revenue before this year "came from satellite TV and some early, early [FIOS] relationships." (Q408 Earnings Call). Late last year Fisher Broadcasting similarly told

Wall Street “our current retransmission revenues primarily attributable to our satellite retransmission agreement.” (Q308 Earnings Call).

The Honorable Anna Eshoo

1. In 1999 Congress passed the Satellite Home Viewer Improvement Act which granted satellite carriers a license to retransmit local network programming in a local market. This local-into-local provision increased competition between satellite and cable carriers. It was also great for consumers because it allowed them to enjoy local programming. I believe that public broadcasting provides the most valuable local programming and its content should be provided to every satellite consumer. I applaud DirecTV and the National Cable Telecommunications Association (NCTA) for successfully negotiating a carriage deal with public television to carry their HD content throughout the country. Why hasn't Dish Network been able to negotiate a similar deal with public television stations? Don't you think your customers want public television content? Are you currently proposing to only provide two public broadcasting feeds in HD nation wide?

DISH Network customers want public broadcasting and we currently provide more PBS affiliates than any other pay TV provider. We are also preparing to roll out PBS affiliates in HD consistent with the Federal Communications Commission's schedule adopted last year. We remain willing to work with APTS and PBS on a deal that delivers PBS HD content to DISH subscribers on a faster schedule than the FCC has mandated. We would happily consider any options that reflect the realities of our satellite fleet and capacity issues. Given our current capacity, it is not feasible for DISH Network to launch every PBS affiliate in HD, particularly in markets like New York City or Washington DC where there are multiple PBS affiliates broadcasting in HD. This does not preclude any host of arrangements in which PBS HD content is delivered to our subscribers where local PBS HD content is available and our spot beams have sufficient space.

The Honorable Steve Buyer

1. If we were to amend the satellite law to authorize you to carry broadcast signals from adjacent, in-state markets, in what specific markets would you begin to carry such signals? Would you carry all affiliates from neighboring markets? How many total adjacent market stations would you carry? Please explain how this would work technologically? Would current technology allow entire counties to be served?

Based on our own subscriber requests and constituent calls to Members of Congress, there is a clear demand for a broader local service offering that includes neighboring market broadcast stations. From a technical perspective, we can easily offer our subscribers broadcast signals from a neighboring market if those signals are presently being delivered using the same spot beam as the broadcast signals for the subscriber's "home" DMA. However, if the neighboring market is not being delivered using the same spot beam as the "home" market, then generally speaking we can only offer the neighboring market broadcast signals to our subscribers if there is sufficient capacity available on the "home" market spot beam to add the channels from the neighboring market.

From a practical perspective, however, it is not possible at this time to provide a clear roadmap as to how such service would be rolled out absent a clear understanding of the critical regulatory components of such neighboring market service. For example, it would be prohibitive to offer the service if blocking out individual programming on a station-by-station, zip code-by-zip code basis were required.

It is our hope to offer neighboring market service wherever our satellite infrastructure permits and wherever our subscribers desire the enhanced service. Just as we have grown from zero local-into-local markets ten years ago to 178 markets today, this will inevitably be a market-driven organic process. We look forward to working with you this year to ensure that our collective efforts maximize the availability of neighboring market service for the benefit of your constituents and our subscribers.

The Honorable G.K. Butterfield

1. I am concerned about the amount of quality children's programming on satellite TV today. What efforts have you taken to get quality independent children's programming on the air, such as the free children's channel, Qubo, from ION Media Networks and Scholastic?

DISH Network is committed to providing consumers with the highest quality and widest variety of programming, including children's programming. In addition to the quality children's content that PBS and other broadcasters offer in 178 local markets, we have strong partnerships with Disney, Viacom, Discovery and other programmers focused on children's programming. We also provide specialized programming, including BabyFirst TV. We remain open to considering any new programming options. With respect to Qubo in particular, we recently concluded a must carry waiver

carriage deal with Qubo's parent company ION Media Networks, and carriage of Qubo was not provided for in that deal. ION Media Networks' preference was the carriage of an East Coast and a West Coast feed of its core ION broadcast content in lieu of carriage of their 60 duplicative national stations nationwide.

Attachment 1: Response to Question 14: Local-into-Local Timeline

Time Period	Markets Launched	Markets
Up to December 31, 2001	36	Atlanta, Boston, Chicago, Dallas-Ft. Worth, New York, Washington, D.C., Los Angeles, Denver, Miami, Phoenix, Salt Lake City, San Francisco, Pittsburgh, Minneapolis-St. Paul, Detroit, Seattle-Tacoma, Nashville, Philadelphia, Houston, Kansas City, Orlando, Cleveland, Tampa-St. Pete, Sacramento, St. Louis, Portland, OR, Charlotte, Indianapolis, Raleigh-Durham, San Diego, Cincinnati, Greenville SC, San Antonio, Albuquerque, Austin, Birmingham
2002	18	Grand Rapids, MI, W. Palm Beach, FL, Honolulu, Oklahoma City, Burlington, Tucson, AZ, Tulsa, OK, Waco, TX, Reno, Fresno, Harrisburg, PA, Jacksonville, FL, Las Vegas, Buffalo, Des Moines, Colorado Springs, Spokane, Louisville
2003	47	Omaha, NE, Cedar Rapids, Chico-Redding, Lexington, Monterey, Ft. Myers, Tyler, TX, Huntsville, AL, Sioux Falls, Paducah, Jackson, MS, Knoxville, Roanoke, Tallahassee, Shreveport, Little Rock, Anchorage, Eugene, Memphis, Yakima, Albany, NY, Baltimore, MD, Columbia, SC, Greensboro, NC, Madison, WI, Richmond, VA, Santa Barbara, Boise, ID, Columbus, OH, Missoula, MT, Springfield, MO, Mobile-Pensacola, Wichita et al, KS, Wilkes Barre, Chattanooga, Dayton, OH, Bakersfield, CA, Evansville, Ft. Smith, Sherman-Ada, Champaign, IL, Flint-Saginaw-Bay City, MI, Hartford, CT, Lansing, MI, Milwaukee, WI, Charleston, WV, Savannah, GA
2004	51	Grand Junction-Montrose, CO, Johnstown-Altoona, PA, Traverse City, MI, Ft. Wayne, IN, Davenport-Moline-Rock Island, Tri-Cities, TN/VA, Green Bay-Appleton, WI, Harlingen, TX, South Bend, IN, Lincoln, NE, Columbia, MO, Rochester, NY, Topeka, KS, Duluth, MN-Superior, WI, El Paso, TX, Fargo-Valley City, ND, La Crosse-Eau Claire, Syracuse, NY, Columbus, MS, Portland, ME, Peoria, IL, Providence, RI, Cheyenne, Medford, OR, Rockford, IL, Wausau, WI, Sioux City, IA, Albany, GA, Monroe, LA, Quincy, IL, Augusta, GA, Toledo, OH, Amarillo, TX, Joplin, MO-Pittsburg, KS, Youngstown, OH, Florence-Myrtle Beach, SC, Macon, GA, Wichita Falls, TX-Lawton, OK, Charleston, SC, Montgomery, AL, Greenville, NC, Puerto Rico, Norfolk, VA, New Orleans, LA, Charlottesville, VA, Idaho Falls, ID, Panama City, Clarksburg, WV-Weston, OH, Terre Haute, IN, Lubbock, TX, Meridian, MS
2005	12	Gainesville, FL, Abilene, TX, Billings, MT, Rapid City, SD, Twin Falls, ID, Erie, PA, Fairbanks, AK, Casper, Minot-Bismarck, Great Falls, MT, Juneau, AK, San Angelo, TX
2006	10	Baton Rouge, LA, Corpus Christi, TX, Lafayette, LA, Odessa-Midland, TX, Rochester, MN, Beaumont, TX, Palm Springs, CA, Dothan, Bangor, ME, Butte-Bozeman, TM
2007 to Present	4	Wilmington, Helena, MT, Yuma-El Centro, AZ/CA, Laredo



Andrew Reinsdorf
Vice President
Government Affairs

April 17th, 2009

VIA EMAIL AND FAX DELIVERY

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
Washington, D.C. 20515-6115

Dear Chairman Waxman,

Attached please find DIRECTV's written responses to the post-hearing questions posed by members of the Subcommittee on Communications, Technology and the Internet in connection with the hearing appearance on February 24th of Robert Gabrielli's, Senior Vice President, Programming Operations and Distribution.

We appreciate the opportunity to respond to the questions in which you and members of the Energy and Commerce Committee are interested.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrew Reinsdorf".

Andrew Reinsdorf
Vice President
Government Relations

Attachment

cc: Ranking Member Joe Barton

Follow-Up Questions from the Honorable Rick Boucher

1. How many distant signal subscribers does DirecTV have?

As of the end of February 2009, DIRECTV had 868,214 subscribers with at least one distant network signal ("DNS").

2. How many of DirecTV's distant signal subscribers reside in DMAs where a satellite carrier offers local-into-local service?

Of DNS subscribers, approximately 565,000 live in markets where DIRECTV carries local channels; 699,000 live in markets where local-into-local ("LIL") service may be available from either DIRECTV or DISH Network. Note that this does not take into account any satellite coverage or local issues that might interfere with a subscriber's ability to get LIL service from satellite.

To put this in perspective, in markets where DIRECTV does not offer satellite delivered LIL service, approximately 46 percent of our subscribers receive one or more distant signals (note: many of these are "short markets" where network affiliates don't exist). In markets *with* LIL service, less than 4 percent of DIRECTV subscribers receive one or more distant signals.

3. How many of DirecTV's distant signal subscribers were grandfathered under SHVIA or SHVERA?

The law provides for two kinds of "grandfathered" subscribers. The first were the so-called "Grade B doughnut" subscribers, grandfathered under SHVIA in 1999. We did not track how many such subscribers existed in 1999. In early 2005, after passage of SHVERA, we determined that 163,000 such subscribers remained. Presently, we estimate that less than 60,000 of these subscribers continue to rely on distant signals. The majority of these are in markets where we don't have satellite delivered LIL channels.

The "no-distant-where-local" provisions of SHVERA could be said to "grandfather" an entirely separate, second category of subscribers. Those who signed up for DNS service before DIRECTV first offered them satellite delivered LIL service can keep their distant signals even after they receive LIL service. The majority of DNS subscribers in markets where we provide local channels are in this second category of subscribers. However, we do not track this status in the ordinary course of business, so we do not have an exact count of such subscribers.

Follow-Up Question from the Honorable G.K. Butterfield

1. I am concerned about the amount of quality children's programming on satellite TV today. What efforts have you taken to get quality independent children's programming on the air, such as the free children's channel, *Qubo*, from *ION Media Networks* and *Scholastic*?

DIRECTV is committed to providing extensive choices of quality children's programming that our subscribers demand and that an incredibly competitive multichannel video marketplace compels us to offer. We presently carry Discovery Kids, Disney Channel, Disney XD, Disney XD (Spanish language version), PBS Kids Sprout, The N Noggin, Nickelodeon, BabyFirstTV, Nicktoons, Boomerang, Boomerang (Spanish language version), Cartoon Network, ABC Family and channels created for Spanish speaking homes: Discovery Familia, V-Me, and Foot School TV.

We constantly evaluate programming channels to add to our extensive line-up within the constraints of finite satellite capacity. We have developed a strong partnership with ION Media Networks. In fact, in the past month, DIRECTV launched a new, additional channel from ION Networks, "ION West".

Follow-Up Question from the Honorable Mike Doyle

1. The American broadcast system has been predicated for decades on the principle of licensing as many television stations to as many different local communities as possible. As a matter of federal policy, we have also sought to provide universal telephone service, universal electrification, and other services deemed important to American citizenship. The satellite industry, however, has not provided local-into-local satellite service in all 210 television markets. Is it appropriate, as a matter of the federal policy to foster localism, that Congress should tie the benefit of the local compulsory copyright license in Section 122 to provision of local-into-local service to all television markets?

DIRECTV already offers local broadcast signals in even the smallest markets. In markets serving more than 94 percent of America, it delivers these signals by satellite. In the remaining markets, DIRECTV seamlessly integrates over-the-air broadcast signals. Anybody - anywhere in the country - in range of a broadcaster's signal can view that signal on their DIRECTV system today. Broadcast signals appear exactly the same on the television (and program guide, and DVR, etc.) whether they are delivered by satellite or over the air.

The question, then, is not whether satellite carriers should be required to offer local signals in the smallest markets. It is whether satellite carriers should be required to serve areas that broadcasters themselves have deliberately chosen not to serve - and whether satellite carriers alone should bear the burden of making broadcast signals universally available.

Those burdens are substantial. If required to serve areas broadcasters will not serve, DIRECTV will have to reallocate satellite capacity, obtain and maintain local receive facilities, and (in the smallest markets) even provide its own fiber connectivity. This will cost many millions of dollars, and DIRECTV could never come close to recouping this cost from subscriber fees in these markets.

As the question points out, federal policy has supported universal service with respect to many different technologies. In all of these cases, however, Congress has spread the burden of bringing technology to difficult-to-serve areas. If Congress chooses to expand universal service principles to television, it should take the same approach here. In particular, the broadcasters who are so quick to demand that others expand their service areas must participate equally in this effort.

Finally, and to put this issue in some perspective, it is important to remember that DIRECTV began as a largely rural service. Since inception, DIRECTV offered subscribers in Minot, North Dakota exactly the same national programming, at exactly the same prices, as their counterparts in New York City. In fact, for many rural subscribers, satellite was (and remains) their only source of television. DIRECTV is eager to work with you and Congress to offer rural America even more and better service. But we think it important to point out that our record in terms of serving our rural customers is second to none.

Follow-Up Questions from the Honorable Bart Stupak

1. How much has your company's capacity to provide video and audio programming services increased in the 10 years since the creation of the Section 122 local-into-local compulsory license in 1999? How much of that increase is due to additional satellite capacity and how much to improved compression technologies?

Since Congress provided a streamlined mechanism that allowed DIRECTV to provide local broadcast signals, DIRECTV has spent billions of dollars to provide local news, information and entertainment to its subscribers, and by doing so, has expanded the reach of local broadcasters in markets thought the country. Indeed, nobody has done more to achieve universal broadcast coverage than DIRECTV. DIRECTV currently provides local SD signals via satellite in 150 markets, serving 95% of television households, and local HD signals via satellite in 122 markets, serving 89% of television households. In addition, DIRECTV makes available to its subscribers a seamless, integrated local signal offering by incorporating over-the-air digital signals into its satellite service. The over-the-air channels are included in the channel guide, and subscribers can record programs on these stations using their DVR, as well as set parental controls.

Satellite carriage of local signals has always been a highly complicated and challenging task. Because DBS systems must retransmit the signals of hundreds of local stations in markets across the country, local-into-local service requires immense amounts of satellite capacity. Yet satellite operators must generate this capacity using only a limited amount of spectrum at a few orbital locations. Finding sufficient capacity becomes even more difficult with respect to HD signals, each of which requires up to six times as much capacity as a single SD channel. DIRECTV could not have provided the number of local stations that it does today without a billion-dollar effort to develop high-power Ka-band spot beam satellites, newer MPEG-4 compression algorithms, and DVB-S2 transmission protocol.

One of the most important innovations that has allowed DIRECTV to retransmit the huge volume of local programming it carries (in both SD and HD) is the use of spot beams, rather than nationwide "CONUS" beams. Spot beam technology allows DIRECTV to divide up some or all of a satellite's total capacity into localized beams so that frequencies can be re-used in different parts of the country. Since 1999, DIRECTV has launched 3 spot beam satellites in the traditional DBS Ku-band. DIRECTV 4S was launched on November 27, 2001 to 101° W.L.; DIRECTV 7S was launched on May 4, 2004 to 119° W.L., and DIRECTV 9S was launched on October 13, 2006 to 101° W.L. Although the amount of Ku-band spectrum licensed to DIRECTV has not changed since 1999, through the use of spot beam technology, DIRECTV has been able to more efficiently utilize such spectrum for delivery of local signals.

DIRECTV pioneered the use of Ka-band capacity for the delivery of video programming. DIRECTV provides national and local HD programming (using CONUS and spot beams) from two Ka-band slots (99° W.L. and 103° W.L.) under licenses originally issued in 1997. In order

to be at the forefront of HDTV, DIRECTV repurposed satellites originally designed for broadband to provide these HD video services. Spaceway 1 and 2 were launched in April and November 2005, respectively. DIRECTV 10 and 11, which were designed for HD programming and therefore can utilize this spectrum more efficiently, were launched in July 2007 and March 2008, respectively.

DIRECTV employs state-of-the-art compression technologies developed by DIRECTV or its equipment suppliers. DIRECTV compresses and modulates all of its video programming, broadcast and non-broadcast alike, using either MPEG-2 or MPEG-4 AVC compression and either Q-PSK or 8-PSK modulation and coding schemes. Programming on its DBS satellites (Ku-band) is transmitted exclusively using MPEG-2 and Q-PSK, which is the only type of signal the DBS set-top boxes can decode. DIRECTV transmits local HD programming from its Ka-band satellites using MPEG-4 AVC compression and various coding schemes, depending upon the mode of transmission that best optimizes service under the interference environment for a given beam.

Most DIRECTV set-top boxes that are capable of receiving its HD service can decode both MPEG-2 and MPEG-4. However, its earlier, non-HD set-top boxes can decode MPEG-2 only. This equipment cannot be upgraded to support MPEG-4 decoding through a software modification. Accordingly, for most markets where DIRECTV provides local broadcast signals in HD, it carries each broadcast signal twice – once in SD on its Ku-band satellites, and once in HD on its Ka-band satellites. Thus, much of the spot beam capacity devoted to local stations is entirely duplicative.

2. Please provide an estimate of the amount of duplicative broadcasting your satellites carry and how much spot beam capacity is taken up by duplicative broadcasting? In your response, please explain how your company defines as duplicative broadcasting.

First, as mentioned above, in most markets where DIRECTV provides local stations in HD, it uses its capacity to carry each such station twice. For existing customers to continue to view the programming without changing their set-top box and the receive dish, DIRECTV carries the broadcaster's signal in SD on its Ku-band satellites, and in HD on its Ka-band satellites.

Moreover, federal law requires that DIRECTV carry all stations in a local market if it wants to carry any station in that market. Most "local" stations provide very little in the way of "local" content relative to their entire schedule of programming. Rather, they retransmit national network programming and syndicated programming. For example, in the Savannah market, three of the four network affiliates only provide five hours a week of local programming. The CBS affiliate, while producing substantially more local programming, presumably still devotes 75% of its broadcast schedule to national programming.

3. What is your company's estimate of the number of new markets where it would launch local-into-local service if Congress were to enact legislation to eliminate duplicative broadcasting?

For the most part, spot beams in satellites are fixed geographically after they are designed. Thus, after these satellites are launched, DIRECTV is unable to move the spot beams to cover different markets, or increase or decrease the number of transponders that are devoted to each market. Relief from carriage of duplicative programming can help in existing markets where the spot beams are at capacity, and DIRECTV is otherwise forced to use national capacity for a local station. However, any excess capacity that may be available on an existing spot beam could not be reused to launch additional markets. Although that capacity is capable of carrying additional stations, it cannot be reallocated to another beam for that purpose.

Far more helpful to the ability to launch new markets would be (1) cost-sharing by the broadcasters; (2) fixing the Grade B bleed problem; and (3) relief from escalating retransmission consent fees.

First, broadcasters should pay their fair share of the costs of expanding their coverage area in these local markets. DIRECTV has provided (at great expense) a seamless method for its subscribers to integrate over-the-air signals with its satellite-delivered service. Yet broadcasters have shown far more interest in increasing their coverage by riding on the investments of others rather than investing in their own facilities. Given the significant costs of serving these smaller markets, broadcasters should be required to share in the burden.

Second, in over 50 markets, there are no full power affiliates of at least one of the networks. If there is no in-market affiliate, the entire DMA should be unserved or a "white area" for that network. Lafayette, Indiana, for example, has only a CBS affiliate. One might logically expect DIRECTV to then be able to deliver NBC, ABC, and FOX distant signals to Lafayette subscribers. Some subscribers in the Lafayette market, however, are predicted to get faint over-the-air signals from one or more network stations in Chicago, Indianapolis, or Champaign. In this situation, DIRECTV cannot deliver these subscribers local network programming (because there is none), nor can it deliver them distant networks programming (because they are technically "served"). These antiquated rules deny subscribers access to network programming based on the transmissions of non-Lafayette stations. There is a solution: A subscriber should be deemed to be "served" only if she can receive a sufficiently strong signal from an *in-market* station.

Third, DIRECTV needs relief, particularly in these smaller markets, from escalating retransmission consent fees. DIRECTV has always been willing to pay for content. But broadcasters have recently doubled or tripled their rate demands while frequently offering *less* local programming. This harms consumers, especially in this economy. Moreover, given the significant costs of providing local-into-local in the smaller markets, broadcasters should be

required to refrain from imposing additional costs on satellite subscribers through retransmission consent fees.

4. Are there legal or technical impediments to increasing the efficiency of providing local-into-local service by sharing spectrum among satellite carriers?

DIRECTV and Dish Network's systems are incompatible. Among other things, they have different conditional access systems, which means that the set-top-boxes of one provider cannot be used to decode the signals of the other provider. Thus, it is impossible for the two providers to share capacity. A far more simple solution would be for the broadcasters to share their burden of the cost of using satellite capacity to expand their coverage area.

5. What is the average radius covered by a spot beam?

The usable coverage of a spot beam varies from 300 to 1000 miles.

6. How much of your satellite capacity is devoted to carrying local channels in high definition format versus standard definition format?

As DIRECTV mentioned in its testimony, by the FCC's calculations, over 80 percent of DIRECTV's capacity is now devoted to local service – nearly triple the amount cable operators can be required by law to carry. Carriage of an HD signal requires up to six times as much capacity as a single SD station. Currently, we provide local signals in SD in 150 markets, and in HD in 122 markets.

7. Please identify any other capacity constraints faced by your company when providing local-into-local service.

As mentioned above, once a spot beam is designed to cover a market and the satellite is then launched, those spot beams cannot be changed for the life of the satellite. DIRECTV has designed its spot beams very efficiently to cover as many markets as possible with its licensed spectrum. There is little, if any, unused capacity on each spot beam. It would therefore be difficult to accommodate any changes in the number of stations in any given market, such as the launch of a new station. And it would be impossible to accommodate any changes in the law as to who has must-carry rights, e.g., low power stations, multicast signals, etc.

Furthermore, in light of these constraints, subscribers should not be deemed "served" by a network signal that is on a multi-cast channel. Otherwise, a subscriber won't be able to see certain network programming because there is no room to carry this new in-market channel (which satellite operators are not required to carry). And, because the subscriber is deemed "served," DIRECTV would be unable to provide them with distant network programming. The customer is the one that loses.

8. How much does your company estimate it would cost to expand local-into-local service to all 210 Designated Market Areas?

The financial costs associated with expanding local-into-local to all 210 DMAs is a significant, if not, in some cases, insurmountable hurdle. DIRECTV would need to put in place the ground infrastructure to collect the broadcaster's signals and uplink them to its satellites. DIRECTV collects broadcasters' digital signals at a local collection facility ("LCF") that it operates in each market. In many cases, these LCFs are co-located with a broadcast station and DIRECTV pays the broadcaster for use of their space for the equipment needed to collect the broadcasters' signals. DIRECTV receives these signals either over-the-air or through fiber. Regardless of how a station's signal arrives, DIRECTV must process and transport that signal from the local market to one of its uplink facilities for processing and transmission to a satellite. Thus, to provide HD local signals in these markets, the cost of the LCF, uplink, and fiber backhaul would be about \$2.8 million per market. To reach all 210 DMAs would cost DIRECTV approximately \$170 million. Furthermore, additional annual operating expenses would be \$326,000 per market, for a total of \$19.6 million per year. In smaller markets, however, these costs can escalate dramatically because fiber may not be available to backhaul the channel to DIRECTV's uplink facility. For example, in Marquette, Michigan, there is no fiber available to transport the broadcast signals from a LCF to DIRECTV's uplink facility. The Telco in that area provided a cost estimate of \$20 million to have that fiber laid to serve a market of only 89,000 households.

Simply examining the capital and annual operating costs does not fully capture the cost of providing local service in these small markets. Utilizing scarce satellite capacity in this manner prevents DIRECTV from using this capacity for other purposes. Furthermore, because there are so few homes in these markets, DIRECTV will never recoup these costs through additional subscription fees. In fact, as noted in the Liberty proceeding, independent economists estimated the net present value of a 210 investment to be negative \$250 million.

9. What steps did your company take to provide local-into-local service in the states of Hawaii and Alaska when it was mandated by Congress in SHVERA in 2004?

As a preliminary matter, the difficulty of providing local-into-local in Hawaii and Alaska was exacerbated by the FCC's interpretation of Congress' mandate. The FCC required not only "carry one, carry all," like the rest of the country, but also mandated carriage of HD and multicast signals. To accomplish this task, DIRECTV had to redesign spot beams (these satellites were not yet fully constructed) and divert capacity away from other markets. In addition, DIRECTV designed a new dish and converted all subscribers in those markets that wanted local signals to our newer MPEG-4 boxes. Furthermore, because DIRECTV did not have satellite capacity to meet the deadline in the statute, DIRECTV was compelled to seek – and pay for – waivers from a number of stations in Alaska and Hawaii. Thus, the result of the FCC's aggressive interpretation of SHVERA's Alaska-Hawaii carriage provisions was not that

DIRECTV offered all the local signals in those states. The result was instead payments that line the pockets of local broadcasters in those states at the expense of the public interest.

10. What is the average cost per market for your company to install and maintain a local receive facility? Please include the cost of connecting that facility to an uplink station. Please identify any specific markets where those costs are significantly more than average.

Please see answer to question #8 above.

11. Are there technical solutions that your company has identified to make the process of connecting a local receive facility to an uplink station more efficient? What would be required to implement such changes? Are there different methods of signal transmission that your company has explored to reduce costs?

Currently, the most efficient and technically sound means of transmitting a broadcaster's signal from a LCF to an uplink facility is by fiber. DIRECTV contracts this service from telecommunications companies. If such companies develop alternative delivery means that are reliable and costs less than fiber, DIRECTV could utilize such means.

12. Are there currently any shared costs between a broadcast station and your company to retransmit the broadcaster's signal into its local market?

The broadcasters do not share in any of the costs of DIRECTV expanding the reach of their signal throughout the entire DMA. The only obligation a broadcaster has is to get the satellite provider a good quality signal at the LCF. In most cases, DIRECTV can simply pick up the signal over-the-air. DIRECTV pays for the cost of the LCF – many times paying a local broadcaster to lease space at their station for the needed equipment. DIRECTV pays the cost of the fiber backhaul to its uplink center. DIRECTV pays for the cost of uplinking the station to its satellites. DIRECTV pays for the costs of the building, launching an operating these satellites. And after that, the broadcasters then have the audacity to charge DIRECTV to carry their signals.

It should not be too much to ask the broadcasters to pay its fair share of these costs, and to refrain from seeking any retransmission consent fees in these smaller markets, particularly given that the additional reach that DIRECTV provides to broadcasters increases the number of viewers and consequently their potential for advertising revenue. Indeed, NAB and radio broadcasters justify not paying fees to record labels for the right to rebroadcast their songs because of the audience reach that broadcasters provide to the artists.

13. What is the estimated cost and timeframe for launching a satellite from design to finish?

It takes at least four years to design, construct and launch a spot-beam satellite. Such specialized satellites cost about \$300-400 million.

14. Please provide a timeline of the rollout of local-into-local service by your company by DMA since 1999.

By year end 1999, DIRECTV provided local into local ("LIL") in 17 SD markets.

By year end 2000 – 41 SD markets.

By year end 2002 – 51 SD markets.

By year end 2003 – 64 SD markets.

By year end 2004 – 130 SD markets.

By year end 2005 – 141 SD markets and 12 HD markets.

By year end 2006 – 142 SD markets and 49 HD markets.

By year end 2007 – 144 SD markets and 68 HD markets.

By year end 2008 – 150 SD markets and 117 HD markets.

Year to date 2009 – 150 SD markets and 122 HD markets.

15. What suggestions, if any, does your company have for reforming how Designated Market Areas are currently structured? Please specifically identify any DMA reforms that allow your company to provide local-into-local service in DMAs that currently do not have it.

DIRECTV suggests that Congress build on the tentative first steps it took in the 2004 renewal to provide consumers in Mississippi, New Hampshire, Vermont and Oregon with access to in-state television stations. Allowing consumers access to in-state stations where technically feasible works. Broadcasters get compensated and expand the reach of their signal; pay TV providers catch up in a small way with the wide open competition they face from the internet, mobile video, and technology like the Slingbox; and most importantly, consumers are allowed to watch the truly local channels that they want. This narrow, simple model should be applied to the entire country.

16. Legislation was proposed in the 110th Congress by Congressman Mike Ross to allow satellite carriers to provide in-state signals from an adjacent DMA to households in DMAs that straddle state lines. If such legislation were enacted, how would it affect your company's capacity? Should such legislation become part of the reauthorization of SHVERA, in how many DMAs could your company provide in-state signals within the first year?

Offering local stations outside of their present DMA takes up no more satellite capacity. The challenge for satellite companies is how far our existing satellite spot beams reach. Frequently,

our satellite signals spill over into the edges of adjacent DMAs making it likely that in many cases we can in fact provide consumers on the edges of these DMAs the adjacent stations they want. We have done exactly that in the special markets created in the 2004 renewal.

A second technological hurdle involves the capacity of our set top boxes to process stations from outside subscribers' present DMAs. We are exploring improvements and upgrades to our systems and technology to better meet the opportunities that national DMA reform might present. Accordingly, any DMA reform must continue to be permissive, recognizing that each pay TV provider will face their own challenges in providing these new consumer choices.

We will strive to serve as many DMAs as possible as quickly as possible within the limitations of our technology and our ability to negotiate fair compensation with the local broadcasters.

17. Please provide past, present, and future cost estimates of retransmission consent.

DIRECTV has always been willing to pay for content. Broadcasters, however, have recently doubled or tripled their rate demands, while frequently offering less local programming. These fees are now skyrocketing. Indeed, SNL Kagan estimates that retransmission consent revenue will dramatically increase over the next four years, estimating that DBS paid \$287.2 million in 2008 and will pay \$390.4 million in 2010 and \$462.2 million in 2012, and that cable paid \$160.7 million in 2008 and will pay \$411.9 million in 2010 and \$668.2 million in 2012. The fact that deals get done is not evidence of the market working; rather, it is evidence of the disproportionate advantage that monopoly broadcasters have at the bargaining table.

From: Wick Rowland [mailto:wrowland@kbdi.org]
Sent: Friday, April 10, 2009 11:53 AM
To: Green, Earley
Cc: Gross, Jena; Lawrence Sidman; Jennifer Kieley; Rishi Hingoraney
Subject: Response to Chairman Waxman

Mr. Earley Green
Chief Clerk
Committee on Energy and Commerce
Rayburn House Office Building, Room 2125
Washington, DC 20515-6115

April 10, 2009

Dear Mr. Green:

I am writing in response to the March 27, 2009 letter to me from Chairman Henry Waxman. In that letter Mr. Waxman seeks my responses to certain questions from Rep. Anna Eshoo following my testimony before the Subcommittee on Communications, Technology and the Internet during the February 24, 2009 hearing on "Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act."

My responses are attached. If you have any additional questions, please feel free to contact me.

Sincerely,

Willard D. ("Wick") Rowland, Jr., Ph.D.
President and CEO
Colorado Public Television, KBDI-TV/12
2900 Welton Street
Denver, CO 80205

Office: 303.991.5039
Cell: 303.884.0687

Celebrating 29 Years of "World View, Community Voice"

cc: Representative Anna Eshoo

**Responses to Questions
from
The Honorable Anna G. Eshoo**

April 10, 2009

**Willard D. Rowland, Jr.
Colorado Public Television (KBDI-TV/12)
Denver, Colorado**

QUESTION

Thank you for your kind words about my legislation and I welcome your comments about the importance of public television. Public television has reached a deal with the cable providers and DirecTV but why hasn't a deal been made with Dish Network? What kinds of content are Dish Network customers currently missing? You mentioned federal funding in your testimony, how has the economic crisis affected your ability to obtain new member contributions?

RESPONSES

Thank you, Representative Eshoo, for the opportunity to respond to these very important questions.

No Deal with Dish Network

With regard to our negotiations with Dish Network, it is correct that public television has been successful in reaching carriage agreements with cable and DIRECTV as well as Verizon. Each of these agreements was tailored to the technical capacities of the individual providers. For instance, when negotiating with DIRECTV, we recognized that DBS providers have certain capacity restraints that are not shared by cable providers. But those restraints did not hinder our ability to reach a mutually satisfactory agreement that ensures DIRECTV customer access to most of the breadth of local public television programming. They simply meant that both sides had to be creative in coming up with a solution that would ensure access to local stations' programming and services.

Our agreement with DIRECTV calls for full carriage of either the high-definition (HD) signal or two standard definition (SD) signals of each station (at the station's option) in each market where DIRECTV offers HD. Additionally, and very importantly, DIRECTV agreed to offer a robust video on-demand option to stations that would ensure consumer access to a wide array of stations' local programming. This was on top of carriage of two national multicast channels, branded with the local station's identity on the electronic programming. In

addition, DIRECTV agreed to market an integrated ATSC tuner and antenna option to consumers in areas where it provides no local-into-local service. Together, all of these components made for a deal that is good for consumers while recognizing DIRECTV's capacity limitations.

Unfortunately, to date, Dish Network has been unwilling to engage in any meaningful negotiations with public television. Instead, Dish makes false and misleading statements, such as Mr. Ergen's allegation at the hearing that public broadcasters are asking for carriage of 8-10 multicast channels per station. In fact, our deals with cable companies cover the carriage of up to only four channels, which represents the full extent of carriage we have sought. Dish Network continually fails to recognize the full value of stations' local programming and has been unwilling to consider carrying, in any form, the multicast offerings, or even the local HD channels, of individual local public television stations. Dish appears to be interested only in the national public television HD channels.

Given that public stations are some of the last locally owned and controlled media outlets in the country, and in the context of the rapid decline of local newspapers, this is simply unacceptable as a matter of public policy.

Content Missing for Dish Network Customers

Due to this refusal, the full array of public television's digital content is lost to Dish Network's nearly 14 million customers who, as taxpayers, have invested in both public broadcasting and the decade-long DTV conversion. Public television stations were early adopters of digital technology because we recognized the value that it brought to the American public through the quality of HD programming and the expanded programming and services available through multicasting.

Public television's local investment in multicast programming has created a growing and increasingly robust range of valued local services. A few examples of these across the country include:

- Several stations that are using one of their multicast channels to broadcast the proceedings and provide full coverage of their state legislatures when they are in session.
- Stations that are using their added bandwidth to provide all-day, commercial-free, educational children's programming.
- In the Twin Cities, the Minnesota Channel, which in close partnership with other public and private institutions features a variety of programming from or about Minnesota and its close neighbors. Similar initiatives are taking place throughout the country.

- Kentucky Educational Television is using one of its multicast channels to expand its educational mission by providing 20 hours a day of instructional and professional development programming focused on grades K-12.
- Several stations, including KQED in Northern California, provide multicast channels to broadcast *V-me* — the first-ever 24-hour Spanish language educational channel — and other national services.
- Also in the Bay Area, KCSM provides three multicast services, including in addition to a mix of college telecourses, local independent programs, and local event promotion, an international news and culture channel and a third stream, JazzTV, that is unique in the country.

As I mentioned in my testimony, my station in Denver, Colorado Public Television (KBDI), serves our globally minded audience by using one multicast stream to offer a documentary channel featuring the works of independent documentary filmmakers, and another stream to provide a lineup of news, foreign affairs, music, sports and arts programs from around the world. In time we expect to have a total of four multicast services, two of which will be largely local in content.

Remedy

Public television has always been committed to resolving carriage difficulties through private negotiations with the MSVPs, believing that process to be in the best interest of all involved. But after years of unsuccessful attempts to engage Dish Network in meaningful negotiations, we are left with only one solution — to turn to Congress to legislate carriage. For that, we are most appreciative of your work, Representative Eshoo, as you have sought full consumer access to public television programming that belongs to the American people. We are extremely grateful that once again, you have introduced your legislation, H.R. 1155, the Satellite Consumers' Access to Public Television Digital Programming Act of 2009. We urge the Energy and Commerce Committee to incorporate your legislation into SHVERA reauthorization. Dish Network's 14 million subscribers deserve access to the highest quality of educational, cultural and noncommercial programming that is made available by public television. The public has paid for this programming through its taxes and individual giving, and it has otherwise heavily invested in the DTV conversion mandate. It therefore has a right to receive the full benefits of the new services that DTV provides, including the expanded array of public television multicasting content.

The Fiscal Crisis and Public Television Funding

With regard to your question about the economic crisis, there are several issues to note. The overall point is that this crisis is perhaps the worst to hit public

broadcasting since the creation of the system more than 40 years ago. As I mentioned in my testimony, all major non-federal sources of income for public television stations have decreased significantly during the past six to nine months.

Initially, we were projecting about a 15 percent decline across the board in such critical revenue sources as state, university and foundation support, corporate underwriting and individual giving. It now looks like the situation is even worse than we had anticipated. For example, public television stations throughout the country just completed their March pledge drives, which serve as one of the largest individual donation fundraisers for the year at most stations. The Association of Public Television Stations (APTS) polled its member stations last week and found that 83% of survey respondents were facing a nearly 33 percent reduction in March pledge donations in comparison to the previous year. At KBDI our March pledge was down 30 percent from the year before.

In the same poll, APTS asked member stations to identify the key impacts of the significant declines in revenue. The following is a highlight of those results:

- 59% of stations have reduced their workforces by layoff
- On average, stations have reduced their workforces (station employment) by 11%
- 26% of stations have reduced benefits, salaries or have instituted mandatory leave without pay
- 63% of stations have reduced programming and/or services to their communities

These numbers are simply staggering, and as you might imagine they are having a significant impact on the quality of programming and services that public television can continue to offer the American public.

The economic downturn represents a serious threat at just that moment when stations all over the country are trying to take advantage of all their hard work on the DTV conversion by building out their expanded services. Here at KBDI, to meet the challenge of what may become a 15-20 percent budget shortfall, we have instituted a freeze on all discretionary spending, including no replacements of staff vacancies. The programming effect of that situation in Denver is that we are being forced to delay the deployment of our fourth multicast service.

We are most appreciative of all the support that the Energy and Commerce Committee has given public broadcasting in this time of crisis. Just this week, Chairman Waxman and Chairman Boucher, along with their colleagues in the Senate, sent a letter to the Office of Management and Budget urging the Administration to include emergency funding for public broadcasters in its budget. We are grateful for such support by the Chairmen and all members of the Subcommittee and the full Committee during this difficult period.

Despite the fiscal challenges we are facing, I am confident that with continued federal support, public broadcasting stations will be able to rise to meet them and emerge even stronger. We have very clear goals for expanded services in the digital age, and we are eager to get on with developing them. With your help we intend to remain not only as the great last bastion of locally owned and operated media outlets, but also as the leading, and indeed the indispensable, provider to the American public of the highest quality educational, cultural and public affairs programming.

Responses to questions posed to K. James Yager

The Honorable Rick Boucher

Question:

1. In your testimony before the Subcommittee, you argued for phasing out the Section 119 distant signal license and instead requiring satellite carriers to provide local-into-local service in all 210 DMAs. If Congress were to do that, how would subscribers in short DMAs, or those DMAs that lack a full complement of local network affiliates, receive the missing network programming?

Answer:

Of the 210 television markets, only a few are "short markets" that do not have a full complement of local stations affiliated with the four major networks, and this number is decreasing. In markets where four full-power network-affiliated stations are not assigned to the market, the networks, increasingly, are offering missing network programming to local low-power stations and to the local full-power stations to carry on their multicast digital broadcast channels. Thus WBOC-TV in Salisbury, Maryland carries CBS programming on its main channel and Fox programming on its multicast channel. Both channels carry local news. Other examples include Palm Springs, California, El Centro/Yuma, California, Bluefield/Beckley, West Virginia, Bakersfield, California, and Bend, Oregon. The advent of digital multicast television and the expanding practice of the networks being carried on digital multicast channels suggest that any "short market" problem is only short term.

In addition, the existence of a few "short markets" does not prevent satellite carriers from providing local-to-local service. Satellite carriers currently offer local-to-local satellite service in some of these markets (Bakersfield and Palm Springs, for example) but not in other markets (for instance, El Centro/Yuma and Bluefield/Beckley). Whatever reason satellite carriers may have for not providing local-to-local service to all of these markets, it plainly cannot be attributed to a lack of four local network-affiliated stations.

Moreover, existing law allows satellite carriers to offer a full complement of network-affiliated signals in these "short markets." Under current law, satellite carriers may (1) deliver the signals of distant network stations to subscribers that cannot receive a good signal from a local affiliate of the same network and (2) deliver adjacent market signals to subscribers in communities where such signals are "significantly viewed." Therefore, satellite carriers can offer a full complement of network-affiliated signals in these "short markets" by pairing the existing local network affiliates with the missing distant network affiliate signals and/or with adjacent market signals that are "significantly viewed."

To the extent there are remaining "short markets" without local stations that are affiliated with the four major networks, and taking into account that Congress should extend local-to-local satellite service to all 210 markets, continuation of the distant signal license to allow access to the four major network services would be appropriate. However, as the number of short markets declines, the scope and duration of this distant signal license should be limited. NAB looks forward to working with Congress and the satellite industry to develop an appropriate distant signal satellite compulsory license for this limited purpose.

The Honorable Mike Doyle
Question

What percentage of homes in each DMA you operate TV stations can receive your free, over the air digital signal? If it is less than 100%, then approximately how much would it cost to build out repeaters and translators to serve the entire DMA?

Answer:

**BARRINGTON STATION COVERAGE IN THEIR MARKETS:
 DIGITAL COMPARED TO ANALOG**

Barrington has been asked to compare at the time of the cut-over to digital the digital coverage of its stations to their analog coverage within their markets and how it intends to address any resulting loss areas. This response first addresses general considerations and then sets forth a market-by-market analysis.

I. General Principles

The Limitation Of Coverage Predictions: The market-by-market coverage comparisons described below are based on FCC coverage analyses. In some cases, these data reflect old or incorrect station facility information. Moreover, coverage prediction, while necessary and valuable, is not an exact science, and actual coverage can differ from specific predictions. This is particularly true from home to home even in the same geographic area and is usually affected by nearby surroundings and man-made clutter. But this can occur over broader areas as well. (Television reception also is based not only on signal transmission, but also on the reception equipment used by viewers, and some viewers may need to purchase new equipment, such as antennas, to obtain the best possible DTV reception.) Accordingly, although this response refers to coverage gains and losses, these gains and losses are predictions only, and a specific viewer's experience may vary from the prediction for a wide variety of reasons.

Barrington's Plans For Service Improvements Post-Transition: After the transition, Barrington will examine different techniques for enhancing coverage of Nielsen Designated Market Areas ("DMAs") in various of its markets, including facility upgrades, translators, on-channel repeaters, and distributive technologies (single frequency networks, recently authorized by an FCC rule making). Certain markets where this examination will take place are identified below, but the examination will take place in other markets as well. Coverage will also improve, post-transition, by virtue of there being many fewer interfering signals, especially analog signals.

The cost of service improvements will depend on the nature of the improvement and the circumstances of each case. For a translator, for example, the cost to purchase and construct a transmitter facility would range between \$65,000 and \$95,000 per market, assuming that a suitable transmitter tower with vacant antenna space could be located (cost of \$12,000 and \$18,000 annually). Otherwise, additional construction costs of between \$185,000 and \$200,000 would be incurred.

The FCC Always Anticipated That Various Coverage Improvements Would Have To Be Implemented Post-Transition: The DTV transition was not meant to achieve, and could not have achieved, co-equal digital coverage on the day of the cut-over to digital-only from analog. To accommodate all full power stations with a digital channel and recover spectrum for public safety and other broadband services, the FCC properly imposed certain constraints on digital facilities and, therefore, on coverage during the transition and in some cases after the transition. This observation is not intended as a criticism. In all or in most cases the FCC had no choice but to impose these constraints or it had good reasons to impose these constraints. Accordingly, the FCC anticipated that after the transition, various stations would implement substantial coverage improvements.

First, to authorize facilities that would produce greater digital coverage prior to the transition would have created unacceptable interference to viewers' existing analog service. Therefore, the FCC imposed limitations on digital facilities under a freeze that the FCC partially lifted last summer.

Second, a substantial number of applications for digital facility upgrades have not been granted, cannot be constructed until the transition has taken place, or have not yet been applied for because they would have caused interference to other stations' service areas, analog or digital.

Third, the FCC imposed a one-megawatt power limitation on digital facilities.

Fourth, other factors have imposed temporary or permanent constraints on digital facility improvements -- restrictions due to the need to coordinate digital facilities with Canada or Mexico, zoning constraints, tower siting constraints -- or resulted in small digital coverage shortfalls, such as the differences in UHF and VHF propagation characteristics and the differences between analog and digital transmission technologies.

II. Market-By-Market Coverage Comparisons As Of The Transition Date

1. Albany, GA, WFXL (analog Ch. 31, digital Ch. 12)

Digital operations will achieve service gains in the station's home market (DMA) and will result in no service losses in the DMA.

2. Amarillo, TX, KVII (analog Ch. 7, digital Ch. 7)

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

3. Clovis, NM, KVIH (analog Ch. 12, digital Ch. 12)

This is a satellite station for the Amarillo station and greatly extends its coverage.

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

4. Columbia, SC, WACH (analog Ch. 57, digital Ch. 48)

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

However, one FCC analysis shows one "cell" inside the station's DMA that will experience service loss. Barrington believes this is an anomaly and probably incorrect.

5. Columbia-Jefferson City, MO, KRCG (analog Ch. 13, digital Ch. 12)

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

6. Flint-Saginaw-Bay City, MI, WEYI (analog Ch. 25, digital Ch. 30)

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

7. Flint-Saginaw-Bay City, MI, WBSF (analog Ch. 46, digital Ch. 46)

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

However, an FCC analysis shows that there will be some area of loss inside the DMA. Barrington believes that this showing does not reflect the station's digital facility as it will be constructed and operated [as of the transition date of June 12], which will achieve service gains and no losses within the DMA compared to current analog coverage.

8. Harlingen-Weslaco-Brownsville, TX, KGBT (analog Ch. 4, digital Ch. 31)

Digital operations will achieve service gains in the station's DMA. There will be a very slight service loss. This loss is due to the technical differences between the propagation characteristics of the station's current analog VHF channel compared to the new UHF channel that it will use for post-transition DTV operation. It is not due to inferior digital facilities.

9. Marquette, MI, WLUC (analog Ch. 6, digital Ch. 35)

Although the FCC's analysis shows service loss inside the station's DMA, Barrington believes that there will actually be very little loss of service. This is principally because the FCC's digital coverage analysis takes into account the blocking of the station's digital signal by terrain but its analog coverage analysis does not do so.

With respect to both the analog and digital facilities, this coverage shortfall is made up for

by a translator just north of Marquette that beams service into the city and will continue to do so after the transition. The station has another translator in Escanaba.

After the transition, the station will aggressively pursue other ways to improve the technical quality of service in this challenging market.

10. Myrtle Beach-Florence, SC, WPDE (analog Ch. 15, digital Ch. 16)

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

11. Myrtle Beach-Florence, SC, WWMB (analog Ch. 21, digital Ch. 21)

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

12. Peoria-Bloomington, IL, WHOI (analog Ch. 19, digital Ch. 19)

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

13. Quincy, IL-Hannibal, MO, KHQA (analog Ch. 7, digital Ch. 7)

Digital operations will achieve service gains in the station's DMA and will result in no service losses in the DMA.

14. Syracuse, NY, WSTM (analog Ch. 7, digital Ch. 24)

Digital operations will achieve service gains in the station's DMA and will result in a small service loss.

15. Toledo, OH, WNWO (analog Ch. 24, digital Ch. 49)

FCC analyses are inconsistent on whether digital operations will achieve service gains. One shows that they will; another shows that they will not. They show that there will be modest service losses.

16. Traverse City-Cadillac, MI, WPBN (analog Ch. 7, digital Ch. 7 and 50)
Traverse City-Cadillac, MI, WTOM (analog Ch. 4, digital Ch. 35)
Traverse City-Cadillac, MI, WGTU (analog Ch. 29, digital Ch. 29)
Traverse City-Cadillac, MI, WGTQ (analog Ch. 8, digital Ch. 8)

These four stations collectively serve the Traverse City-Cadillac DMA. Because this is geographically the largest television market east of the Mississippi, several stations are needed to provide adequate coverage of it.

Digital operations will achieve service gains in the stations' DMA and will result in a small service loss.

17. Ottumwa, IA-Kirksville, MO, KTVO (analog Ch. 3, digital Ch. 33)

Digital operations will achieve service gains in the station's DMA and will result in a small service loss.

After the transition, the station presently plans to double its digital power. Ottumwa is the nation's 200th largest market out of 210 total DMAs, nationwide.

18. Colorado Springs-Pueblo, CO, KXRM (analog Ch. 21, digital Ch. 22)

Digital operations will achieve service gains in the station's DMA and will result in a small service loss.