



Testimony of

R. Stanton Dodge

Executive Vice President and General Counsel of DISH Network L.L.C.

on

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Chairman Goodlatte, Ranking Member Conyers, Chairman Coble, Ranking Member Watt, and Members of the Subcommittee, I appreciate the opportunity to testify today. My name is Stanton Dodge, and I am the General Counsel of DISH Network, the nation's third largest pay-TV provider and the only provider of local television service in all 210 of this nation's local TV markets.

The Satellite Television Extension and Localism Act of 2010 ("STELA") and its predecessors have been good for consumers. These statutes provide a framework to curb market inefficiencies and allow the free market to work smoothly. They helped to usher in new choices for consumers and better service to historically underserved populations. To make transmissions under the distant signal copyright license, DISH compensates the broadcasters, the sports leagues, the Motion Picture Association of America ("MPAA") members, and all other copyright owners at a privately negotiated rate.

It is clear that STELA should be renewed. The distant signal license sunsets at the end of 2014, and without reauthorization, over 1.5 million American households will be left without access to a full complement of network channels. But Congress should do more than simply reauthorize the distant signal license.

In particular, the broken retransmission consent regime is in dire need of comprehensive reform. Every year we see more blackouts during contractual disputes between broadcasters and their distributors, lasting longer than in the past, and impacting millions more subscribers. The headlines about the CBS service interruption during its dispute with Time Warner Cable are a stark reminder. The retransmission consent problem has reached a crescendo, the most severe crisis since Congress decided to give broadcasters a retransmission consent right in the 1992 Cable Act. This is the most destructive and outdated remnant of the 1992 Act and does not

match up with the vibrant, ever-changing, competitive landscape in the modern video marketplace.

The American Television Alliance (“ATVA”), whose membership encompasses cable and satellite providers, independent programmers, and public interest groups, and of which DISH is a member, is unified in calling for targeted fixes of these outdated retransmission consent rules as part of the STELA re-authorization.

We along with many other members of ATVA have voiced support for proposals like interim carriage authority, which would temporarily permit a distant signal to be imported during a retransmission consent dispute. That measure would alleviate the problem of subscriber disruptions and prevent the use of consumers as pawns. And, the broadcaster whose signal is imported will be compensated under the already established distant signal royalty rate. If the broadcaster’s local content is as valuable as they believe it is, then the imported distant network is a poor substitute, and both parties would continue to have every incentive to reach an agreement. The imported distant signal simply fills the void for the network programming.

Others in ATVA have expressed interest in a discussion of standalone broadcast station offerings, which would give consumers the choice of whether to pay separately to receive a particular local broadcast station. And some in ATVA support the deregulatory concepts embodied in Rep. Scalise’s legislation from the 112th Congress. These are merely a few of the ways to address this issue, which will not be disruptive to the STELA re-authorization, and are gaining support. Without immediate action by Congress, however, it seems likely that millions more screens will go dark every year, and consumers will pay more and more for their cable and satellite service. The time to act is now.

So this morning, I want to highlight the successes of STELA and its predecessors and why STELA should be renewed. I also want to review the origins and purpose of the retransmission consent system, and outline some measures that could be implemented to avoid consumer disenfranchisement and abuses of the 1992 retransmission consent right.

But first, let me say a few words about DISH. DISH employs over 25,000 people across the country and is a leader in innovation, having rolled out advanced place shifting and DVR functionality that provides our customers with the ability to view their content where, when, and how they want it. To stay relevant, we must continue to adapt to our customers' evolving preferences, and we believe that the only way to do that is to embrace innovation and change as a company. And our laws, which set the framework for a competitive video marketplace, must do the same.

The Satellite Home Viewer Act and the Distant Signal License – Creating a Marketplace Framework that Works

The Satellite Home Viewer Act, passed in 1988 and renewed in 1994, gave the nascent satellite television industry the right, for the first time, to retransmit the signals of network stations to “unserved” households through the use of a statutory copyright license. “Unserved” households are households that cannot pick up the relevant network station using a traditional, over-the-air antenna. Before the Act, if a satellite carrier wanted to retransmit a broadcast channel, it couldn't just negotiate with a single copyright holder, because the broadcasters have always maintained that they do not have sublicensing rights to all the programs they broadcast. This meant that satellite carriers would have to negotiate separately with, and procure licenses from, each individual owner of a copyright in the broadcast. A day's broadcast could contain

content owned by literally hundreds of copyright owners, and this list of entities could change every day as the programming changed.

The inefficiency in the process made it next to impossible to clear all copyrights for all broadcasts. Congress recognized this market inefficiency and addressed it in the cable context in 1976 when it created a statutory copyright license that allowed cable providers to comply with the Federal Communications Commission's must-carry rules and pay a single license fee that was then allocated among all relevant copyright holders in the broadcast. In 1988, Congress saw the sense in applying the same compulsory copyright policy in the satellite context, too, and created the distant signal license for satellite TV providers. It was not, contrary to certain assertions, meant to subsidize a particular industry. Rather, the license, like the cable license that preceded it, was addressed to a structural inefficiency in the market. It also enabled the introduction of multichannel video to rural and underserved households that never had access to cable service. The net result is a market framework that remains a win-win-win for distributors, consumers, and content owners alike.

With the license, millions of consumers get access to network programming, network shows reach audiences that are otherwise unavailable to them, and copyright owners receive a fair royalty for the additional viewers. Without the statutory license, it is very likely that the administrative costs of clearing individual copyrights alone would mean that these signals would not be carried. Since 2004, the satellite royalty is set by either private negotiations between the content owners and the distributors; or, if the parties cannot reach agreement, by an administrative proceeding. But this has not been necessary, either after the 2004 or 2010 reauthorizations. Following each of the last two reauthorizations, representatives from the content and distribution industries, including DISH, the broadcasters, and the MPAA, came to

the table and agreed to market rates for those retransmissions, including cost-of-living adjustments. We submitted those rates to the Copyright Office, and the Copyright Office adopted the agreed rates as the licensing rates under the statute. I am confident this will happen after the current reauthorization, too. In many respects, the Satellite Home Viewer Act created a market framework that works. We should keep what works.

Satellite TV Expands Rapidly, and Congress Responds by Creating the Local-into-Local License

Consumers recognized the value of satellite TV by adopting it rapidly. By the end of 1999, more than 9 million consumers subscribed to satellite TV. And we looked for ways to be even more competitive. We wanted to retransmit local broadcasts to our customers in the broadcasters' market. This would allow our subscribers to receive their local broadcasts and other programming through a single source. New spot beam technology, which allows satellites to reuse the same frequencies in multiple, smaller beams on the same satellite, would allow us to provide these broadcasts on a market-by-market basis.

Congress responded to the needs of consumers and the potential offered by this new technology by enacting the Satellite Home Viewer Improvement Act ("SHVIA") in 1999. SHVIA created the so-called "local-into-local" statutory license, which allows satellite carriers to retransmit the signals of network stations to subscribers within the broadcaster's market. These are consumers that these broadcasters are already obligated to serve by virtue of their broadcast license from the FCC. The local-into-local license merely allowed these consumers to receive these signals over their satellite carrier's service instead of over-the-air. This was a big step in leveling the playing field between satellite carriers and cable providers, who had long enjoyed the right to carry local network broadcast programming on their systems, ushering in a new era of competition in the pay-TV industry.

Consistent with its goal of fair competition, Congress also took the rules created for cable in the 1992 Cable Act and applied them to satellite companies: a system in which local broadcasters may elect either to negotiate for retransmission by the satellite carrier on commercial terms, or choose mandatory carriage—“must carry”— for a 3 year term. Unlike cable, however, satellite was given a choice: either don’t carry any local broadcast signals in a market, or if you do, carry all of them. Our response to Congress’ action was immediate. We invested hundreds of millions of dollars in spot-beam satellites, and once those satellites were in orbit, began providing broadcast signals to subscribers in those markets. Since then, satellite providers have emerged as a key competitive force in the pay-TV industry, requiring cable companies to compete on price, programming, quality, and service.

Congress Uses the Reauthorization of the Distant Signal License as an Opportunity to Accommodate the Changing Video Marketplace

Since SHVIA, the distant signal license has been reauthorized two more times. Each time, Congress took the opportunity to also update the law to reflect the some of the changing realities of the video marketplace. In 2004, Congress passed the Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”), which, among other things, made further efforts to level the playing field between cable and satellite by allowing satellite providers to retransmit “significantly viewed” stations in counties outside their local market where they are broadly viewed, a right the cable industry had long enjoyed. In 2010, STELA not only reauthorized the distant signal license, but also gave DISH an opportunity to earn back the right to use this license. As some of you are aware, DISH was enjoined from providing distant network signals to its subscribers in 2006. STELA presented DISH with a challenge and an opportunity: provide local service to all television markets in the United States, and you can get

your distant signal license back. DISH accepted that challenge enthusiastically. The result: today 29 new markets have access to a full complement of network programming, and DISH is now the only multi-channel distributor, whether satellite or cable, to offer local broadcast stations to consumers in all of the nation's local markets. This makes us the biggest distributor of public and commercial local broadcast stations in the United States. The process set forth in STELA worked precisely as envisioned, and it stands as an example of how a targeted legislative solution can work to everyone's benefit.

The Broken Retransmission Consent Regime Leaves Consumers in the Dark – Literally

In 1992, Your Regional Cable Operator Was the Only Game in Town. The broadcasters' retransmission consent right was not always with us. Congress created it and gave it to the broadcasters in the 1992 Cable Act. Before that time, distributors could simply retransmit local stations under the cable statutory license of Section 111.

Back then, we lived in a different world. Most markets were served by only a single cable company. Satellite wasn't an option, unless you wanted to install a 3-meter dish in your backyard. We likely had never heard of the Internet, as it was in its infancy. If we had a mobile device, it was probably the size of a brick. All these years of progress later, with increased competitive forces now at play in the video marketplace, it is difficult to look at the laws on the books and tell that much has changed. Except for its extension to the satellite arena, the retransmission consent system remains largely the same two-plus decades later.

Today, Networks Leverage Their Monopolies to Play Distributors Against Each Other. In most places today, multiple distributors using a traditional distribution model (the cable company, two satellite providers, and often a telco) compete for customers. This is not to mention over-the-top providers such as Netflix, Amazon, and Hulu, which are potential or

present competitors, too. The multiplicity of distributors has a significant implication under the current retransmission consent regime. Network stations play providers against one another. Instead of a broadcaster and a single regional cable operator engaging in a relatively fair fight and coming to terms on a reasonable retransmission fee, networks threaten to pull their programming, effectively (and sometimes affirmatively) pushing consumers onto other providers' systems – providers that may have given in to the same unreasonable demands of the broadcaster. In contrast to the cable and satellite providers, each broadcaster effectively owns a monopoly in its given market. No other station in the market can offer the same network programming by virtue of the network system of exclusive franchises. Consequently, the broadcasters have the luxury of threatening to withhold their programming altogether in order to extract higher and higher retransmission consent fees. The result: broadcasters leverage their government-protected exclusive network franchises by means of their government-created retransmission consent right.

The problem is exacerbated by the increasing consolidation we have seen in the broadcasting industry. In the last four months alone, acquisitions have preoccupied the industry, with the Sinclair Group seeking to increase its holdings from just over 100 stations to almost 150; Gannett proposing to acquire Belo Corporation to bring Gannett's holdings of local broadcast stations to 43; Tribune acquiring Local TV Holdings to bring its total station ownership to 42; and Media General and New Young Broadcasting announcing their intention to merge and combine ownership of their 30 broadcast station affiliates. This consolidation further imbalances the market, as multiple markets are presented to carriers with take-it-or-leave-it propositions for extraordinary rates. We are seeing increased fee demands of between three and

six hundred percent when compared to just three years ago, when Congress last acted and passed STELA.

We also urge this Committee to consider the serious antitrust issues that arise when broadcasters enter into arrangements to jointly negotiate retransmission consent deals. For example, in 2012, DISH was forced to black out three Big-4 stations in Casper, Wyoming and two Big-4 stations in Cheyenne, Wyoming. Although the five stations were ostensibly owned by three different entities, DISH was required to negotiate with a single appointed representative for all five stations. After negotiations broke down, the blackout lasted for 4 months. The consolidation of so much must-have local broadcast programming under one negotiator gives the broadcasters inordinate additional leverage, precipitating and prolonging the blackouts for DISH subscribers.

Consumers Are Getting Left in the Dark. The result: consumers are being left in the dark—literally. To gain leverage during retransmission consent negotiations, broadcasters increasingly pull their signals, resulting in blackouts of major television networks. Cable, satellite, and telco subscribers who paid for their service are deprived of key network programming, along with important local safety, emergency, weather, and news information, precisely what the broadcasters claim is their public interest charge. And the problem is worse than ever.

These blackouts are affecting more consumers in more markets than ever before. The proof is in the numbers. In 2010, there were 12 instances where a broadcast signal was blacked out in a local TV market. In 2011, there were 51. In 2012, the number soared to almost 100 blackouts affecting millions consumers. And the pace has yet to level off. In 2013, we're on track for 120 blackouts. Like most snowballing crises, individual incidents are increasing in

severity. In this case, the blackouts are increasing in length. The longest blackout lasted only 24 days in 2010. In 2011, there were 16 blackouts lasting over 24 days. Last year, there were 30 blackouts that lasted over 24 days, two of which lasted 121 days. And the CBS blackout lasted over four weeks, affecting more than 3 million consumers in some of the nation's largest markets. During the blackouts, CBS even barred Time Warner Cable's Internet customers from accessing full episodes of CBS programming on the Internet. Like many blackouts, the dispute coincided with a marquee event—in this instance, the anticipated start of the NFL season.

In the past, subscribers' access to the World Series and the Oscars has been threatened by broadcasters' brinksmanship. Ultimately, the losers in these one-sided contests are the consumers who get their programming pulled from them by the broadcasters and then see their bills on the rise as a result of outrageous broadcaster price demands. Some broadcasters have floated the idea of becoming a cable channel, thus stopping the broadcast of their channels over the air. If the broadcasters choose to do that, they should give back all of their free government-granted broadcast spectrum, must carry rights, and other public subsidies.

Congress Can Fix the Problem. Congress can restore balance to the negotiating table by temporarily allowing cable and satellite carriers to substitute a distant network signal from a non-local market during an impasse in retransmission consent negotiations with a local market affiliate of that same network. This approach has broad support from across the industry and public interest groups.

Here is how the proposal would work: If a broadcaster blacks out, for example, the local Denver FOX station, the cable or satellite provider would be able to temporarily offer subscribers an out-of-market station, such as the Cheyenne FOX station. The replacement station will not be a perfect substitute for the blacked-out local station, since consumers won't

have their local content, but at least people will be able to receive network programming. And, the broadcaster whose signal is imported will be compensated under the already established distant signal royalty rate.

Additionally, this solution will introduce some competition into the marketplace—just as pay-TV providers face competition from one another that mitigates against dropping broadcast programming. Here the broadcaster would face some degree of competition from a network affiliate in another market. The local broadcaster might think twice before pulling its signal from cable or satellite subscribers. Consumers will benefit.

Today's Laws Should Reflect Today's Marketplace, A Marketplace in which DISH is Prepared to Compete

The video industry is a place where the marvels of yesterday have become commonplace today. The needs and desires of consumers are evolving to keep pace with the options that new technology makes available to them. Our laws should also evolve to create a framework that facilitates the functions of the free market. This framework would help providers to give American consumers what they want: the content that they want, when they want it, and how they want it. Consumers want to watch their programming of choice on their television sets, on their phones, and on their tablets—no matter where they are. They also want to surf the web or make a phone call—again, no matter where they are. When we look at the marketplace for video, we need to be able to provide all of those options to every one of our customers, and we need to do it anywhere, anytime, on any device.

Our company is moving to meet this need. By rolling out technological innovations like the Hopper with Sling, our customers can use a smartphone or tablet from any location in a controlled and private manner to enjoy the video content for which they have already paid. Our new PrimeTime Anytime and AutoHop functionality take the DVR to a new level. Consumers

can, at their option, enable these features to gain the ability to more easily view their preferred programming when they want, while skipping what they don't want to see.

These are some of the ways in which we have responded to our customers' changing needs. But we have further to go. In the past, we haven't shrunk from "betting the company," so to speak, in order to stay competitive. We went from selling big dishes to launching our own small-dish DBS business. To give customers what they want, including mobile video, voice, and data, we are taking a risk again. Recognizing the evolution in video, DISH is on its way to becoming a wireless service provider. We acquired satellite spectrum and, after almost two years, secured FCC approval to use that spectrum for terrestrial mobile broadband services. We now want to compete against the established players by offering video, voice, and data inside and outside the home, from a single platform.

DISH is driven to provide consumers with all that they want, including the choice in services and providers that they seek. If we are successful, we will fuel billions of dollars in investment and create tens of thousands of new jobs throughout the United States. But just as businesses must foster change in a rapidly evolving video marketplace to keep pace with what consumers want, government should work to ensure its regulations mirror today's competitive realities, consumer expectations, and advances in technology.

Thank you. I look forward to answering any questions you may have.