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SATELLITE VIDEO 101

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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SATELLITE VIDEO 101

WEDNESDAY, FEBRUARY 13, 2013

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

The subcommittee met, pursuant to call, at 10:32 a.m., in room 2322 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Latta, Shimkus, Terry, Scalise, Lance, Gardner, Pompeo, Kinzinger, Long, Ellmers, Barton, Upton (ex officio), Eshoo, Welch, Luján, Pallone, and Matheson.

Staff present: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Sean Bonyun, Communications Director; Andy Duberstein, Deputy Press Secretary; Neil Fried, Chief Counsel, C&T; Debbee Hancock, Press Secretary; Nick Magallanes, Policy Coordinator, CMT; David Redl, Counsel, Telcom; Charlotte Savercool, Executive Assistant, Legislative Clerk; Lyn Walker, Coordinator, Admin/Human Resources; Roger Sherman, Democratic Chief Counsel; Margaret McCarthy, Democratic Staff; Patrick Donovan, FCC Detailee; and Kara Van Stralen, Democratic Special Assistant.

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

Mr. WALDEN. OK, we will call to order the Subcommittee on Communications and Technology for our hearing on Satellite Video 101. I know we had to move this hearing up from an earlier scheduled time because of some shifts in our scheduling, so we appreciate your response to this hearing on such a short time notice. And again, this is meant to be an educational hearing, meant to be Satellite Video 101. There will be other hearings where I am sure there will be a lot of vibrant discussion about what we should do going forward. But I thought it was important for the subcommittee to be able to understand the issues and intent with this legislation, and what we should or should not do going forward. So we welcome certainly all of our witnesses today and appreciate your willingness to come on short notice.

SHVA, SHVIA, SHVERA, and STELA. This law has been known by a lot of different names, and many of those acronyms, I am told, strike fear into the hearts of some, and some, I am sure, wish they could turn back to Punxsutawney Phil after seeing his shadow. I prefer to see, as Phil did this year, signs of an early spring.

We have an opportunity with our partners in the Judiciary Committee to examine whether the satellite law is still serving its purpose in a video market that, frankly, would be unrecognizable to those who worked on the original legislation back in 1988. I won't ask for a show of hands of those who did that, but I know at least somebody at the FCC has been involved in all of these. Broadcasting has gone digital. Satellite television is no longer a nascent industry. Phone companies, wired and wireless, are in the video business. Consumers can stream and download their favorite shows over the Internet. Viewers have more choices, and more expectations, than ever before. Companies are trying to keep up: launching new services; embarking on spin-offs, mergers, and partnerships. We have read in the last day or so, Comcast, NBC Universal, all coming together. Intel proposing a new service of video, and experimenting with new business models to meet consumer demand in a new and competitive reality. Our laws are also trying to keep up in a world where traditional classifications and regulations that emanate from them seem increasingly strained.

The goal, of course, is to provide consumers more of what they want while ensuring companies have the investment resources to get it to them. Can we better ensure television viewers have access to the broadcast programming of their choice while respecting the rights of stations that transmit it over the air and the networks that create it? Would finally letting the law expire help that cause? Is it better to reauthorize it as is, or are revisions called for, either narrow or sweeping? Is there something we can do to address the ongoing frustration viewers have who find themselves assigned to "local markets" that are outside their states or who live in places that don't have a full complement of network affiliates?

Today we are going to set the table for this discussion by examining the current state of satellite television law. This is perhaps the most arcane and complicated area of law we confront in this subcommittee, other than Universal Service Fund reform, of course. That is why I thought it wise to start early, giving us ample time to hear from all parties in advance of the December 31, 2014, sunset that applies to some of the existing provisions. Rest assured, we will have several more hearings, providing additional opportunity to consider not only the satellite issues directly before us, but also affording time to those who would ask us to take this opportunity to revisit other areas of communications law.

I look forward to hearing from our witnesses today. I am particularly pleased to welcome Eloise Gore, associate bureau chief of the FCC's Enforcement Bureau. And as I said, my understanding is this could be your fourth reauthorization while at the Commission, if we do in fact reauthorize the law. I want to thank you for you willingness to share your expertise. It is most helpful. I also want to set some ground rules. Ms. Gore is in a position to share her considerable knowledge on how the law operates and perhaps even on what may be working and may not. She will not, however, be making policy recommendations on how the law should change, so please don't ask her to do that. That is a pleasure reserved for us on this dais and in the Congress, in consultation with our constituents back home and those in the television business who can help

us create an environment that entertains, informs, and creates jobs.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

In a tradition we've been observing every 5 years or so for a quarter century, today we begin discussing the law authorizing satellite video providers to distribute broadcast television signals. It is important we do these period look-backs.

SHVA. SHVIA. SHVERA. STELA. These are acronyms that strike fear into the hearts of many. Some, I'm sure, wish they could turn back like Punxsutawney Phil after seeing his shadow. I prefer to see, as Phil did this year, signs of an early spring.

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# # #

Mr. WALDEN. I would turn now to the vice chairman of the committee, Mr. Latta, for the remaining amount of my time.

Mr. LATTA. I appreciate the chairman for yielding, and I also thank our distinguished panel for being here today.

I believe that today will be the beginning of a thoughtful and productive policy process. We have important issues in the satellite TV industry, as the chairman said, before us, which we all know need to be addressed by the end of next year when the Satellite

Television Extension Localism Act of 2010, STELA, expires. I also look forward to a thorough discussion among our subcommittee members, stakeholders, and consumers as we grapple with the issues in STELA and others stemming from our decades of communication and cable laws.

Mr. Chairman, I look forward to the hearing today and hearing from our witnesses on this subject, and I yield back the remainder of my time.

Mr. WALDEN. I thank the gentleman.

I now turn to the distinguished ranking member of the subcommittee, Ms. Eshoo, for 5 minutes in an opening statement.

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

Ms. ESHOO. Thank you, Mr. Chairman. Good morning to you, to all the members of the subcommittee, and most importantly, our witnesses. I might note that in my memory, I think this is the first time I am looking at a panel where the majority of those that are testifying are women. So congratulations, and welcome.

Mr. Chairman, less than 3 years ago, Congress passed and the President signed into law the Satellite Television Extension and Localism Act of 2010, STELA. Ms. Gore, maybe that is your—we should rename you, give you that as your first name. I am pleased, as the chairman is, and other members, that we are starting this discussion of reauthorization early, and only to ensure that we have adequate time to work through all the relevant issues, the new ideas that come forward, but also for the benefit of the several new members of our subcommittee, and that is very important so that the level of understanding is brought up, so that we are all up to speed on this.

The estimate of one analyst today is that because of STELA, between one and one-and-a-half million satellite subscribers who live in areas where a signal from the local network affiliate is not possible now have access to broadcast programming. These satellite subscribers also enjoy the benefits of public television stations, multi-digital signals, as well as their HD transmission, ensuring that consumers from all states have the opportunity to view publically funded programming, one of my all-time favorites, so I am—I think that it is important to underscore that.

While my preference is to pursue a clean reauthorization of STELA, there will no doubt be other video-related topics raised over the course of this Congress, and chief amongst my concerns are the programming disruptions that consumers experience when retransmission disputes break down. Simply put, consumers should not be held hostage when negotiators fail to come to an agreement. These high profile disputes have impacted millions of Americans, often prior to or during highly watched programming, such as the 2010 World Series. That simply is not acceptable. I mean, where are the adults in the room kind of thing. Our constituents all pay the price for it.

I am fascinated by the emergence of new video services, such as Skitter and Sky Angel. These companies challenge existing business models, which is disruptive but very important, and they pro-

vide a new means of delivering traditional broadcast or cable content into the homes of consumers. I think these services can contribute to the establishment of a vibrant video marketplace that promotes both consumer choice and competition.

So today's panel of witnesses offer, and will offer, a wealth of knowledge to us, spanning from the FCC to a cross section of impacted industries, including broadcast, satellite, and content. I thank each witness in advance of their testimony, and for working with us to reauthorize STELA.

I yield back the balance of my time, and thank you, Mr. Chairman.

Mr. WALDEN. Thank you. I now recognize the distinguished chairman of the full committee, the gentleman from Michigan, Mr. Upton.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well thank you, Mr. Chairman. It is hard to believe that the time has already come to revisit the satellite TV legislation. For members on this committee, it has almost become a right of passage.

Americans now have an endless amount of content available to them and the technology at their fingertips to watch it at almost any time, anywhere, and on any device. Our job is to create an atmosphere where they can do so in a way that respects the investments of the companies that create and distribute that content, as well as the underlying economics necessary to make those businesses work. We need to do our very best to make sure that our laws don't prevent willing producers of programming to strike arrangements with willing distributors to reach interested viewers.

Issues surrounding this particular law are by no means easy to grapple with, but it is important that we do so. The competitive landscape has evolved significantly in the video marketplace, and we must ensure our laws are having their intended effect. If they are no longer needed, they need to be eliminated. If they are missing the mark, they should be revised. If they are working well, we should leave them alone. But periodic oversight is essential to make that determination. It is particularly true of all laws in the communications sector. Technology is changing this industry at an astonishing rate, and we must work to ensure that our laws keep pace, fostering continued growth, particularly in the innovation area. Indeed, while it certainly makes for more work, we should consider using the sunset provisions perhaps a little bit more often.

I look forward to the testimony and the interaction, and yield and offer my time to Mr. Scalise.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

It's hard to believe the time has already come to revisit the satellite television legislation. For the members on this committee, it has almost become a rite of passage.

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This is particularly true of all the laws in the communications sector. Technology is changing this industry at an astonishing rate, and we must work to ensure our laws keep pace, fostering continued growth in the innovation era. Indeed, while it certainly makes for more work, we should consider using sunset provisions more often.

But these are larger questions to discuss along the way. The focus of today's hearing is what the law requires now. I look forward to the testimony.

# # #

Mr. SCALISE. Thank you, Mr. Chairman, for yielding, and I will just make a couple of observations at the outset of the hearing.

It is clear that based on some of today's written testimony that as much as there is somewhat a focus only on the expiring narrow satellite provisions, there is also an interest in raising other interconnected issues, like additional compulsory licenses, retransmission consent rules, and regulations that govern negotiations between broadcasters and pay TV providers. If stakeholders want to describe the various compulsory copyright licenses of 1976 and 1988 as relics or anachronistic, which I will be the first to agree with, then I am sure they would also agree that the same is true of the 1992 Cable Act. The truth is that there is a litany of regulations still burdening the video marketplace that have been piled one on top of the other over the years. So much has changed in the video distribution since the days before the commercialization of the Internet, and it is time that we recognize this fact.

So I welcome this expanded conversation, appreciate our panelists for coming, and look forward to the hearing. I yield back.

Mr. WALDEN. You said Mr. Barton wanted some time?

Mr. BARTON. Well, I have been here long enough to remember before we had the Satellite Home Viewer Act. I just purchased a new home down in Texas. It was—if it was a car dealer, it would be a pre-owned home. And back in the back yard is one of these huge satellite dishes that could get the signal from the satellite directly, not through Dish or anything like that. I have no idea what it is worth. I have tried to figure out a way to salvage it and perhaps sell it for scrap. But I bet when that satellite dish was purchased, they probably paid $5,000 to $10,000 for it.

Well today we don't need it, and we are here for the second or third reauthorization of the Satellite Home Viewers Act. It is good we are doing this ahead of time. I want to commend the subcommittee chairman and the full committee chairman for moving to reauthorize something before it is expired. That is a good thing. It appears we are going to have a bipartisan hearing and a bipartisan reauthorization. I supported the original legislation. I have supported all the reauthorizations, and I look forward to a similar situation in this committee in the near future.

With that, Mr. Chairman, I yield back.

Mr. WALDEN. Gentleman yields back. Anyone else on Republican side seeking time? If not, we will move on then to our witnesses.

Before we do that, Mr. Waxman is not able to be with us at this hearing this morning. I do have his opening statement which I would ask unanimous consent to be allowed to be put into the record. Without objection, so done.

[The prepared statement of Mr. Waxman follows:]

PREPARED STATEMENT OF HON. HENRY A. WAXMAN

Today's hearing marks the beginning of the Energy and Commerce Committee's consideration of reauthorization and updates to the Satellite Television Extension and Localism Act of 2010 or STELA.

STELA is the most recent in a series of laws that permit satellite providers to offer broadcast programming to their subscribers. Americans across the country have benefited from these actions taken by Congress.

We have fostered the development of satellite as a viable competitor in the video market, preserved and expanded access to local broadcast content, and ensured compensation for the creators whose work compels consumers to seek out these video services in the first place.

Many of our members are new to this Committee since our last consideration of these issues during the 111th Congress. Under the leadership of former subcommittee Chairman Rick Boucher, our committee's consideration of STELA was a bipartisan legislative effort from start to finish.

Although STELA was the work product of two committees, I was especially proud of the fact that the provisions within Energy and Commerce jurisdiction were completed on time and without controversy. Chairman Walden, it is my hope that our work this Congress will proceed in the same bipartisan manner.

We began our efforts in the 111th Congress with the expectation that Congress would pursue a clean reauthorization of the expiring provisions of the law. Even with that limited scope, however, the reauthorization was not completed in a timely manner.

Some stakeholders have suggested that Congress examine broader issues in the video marketplace as part of the reauthorization. I am open to those conversations, but I urge my colleagues to recognize what a complicated task we have ahead of us and to be wary of getting sidetracked by disputes about other topics.

Thank you to our panel of witnesses for appearing today. We look forward to your testimony and your continued engagement as we move forward with our consideration of this reauthorization.

Mr. WALDEN. Now we will turn to our witnesses. Again, we want to thank you for putting together your testimony and being able to be here on short notice. We are going to start with Ms. Eloise Gore, the Associate Bureau Chief of the Enforcement Bureau, Federal Communications Commission. Ms. Gore, thank you very much for being here. Slide that microphone close and turn it on, and the show is yours for the next 5 minutes.

STATEMENTS OF ELOISE GORE, ASSOCIATE BUREAU CHIEF, ENFORCEMENT BUREAU, FEDERAL COMMUNICATIONS COMMISSION; R. STANTON DODGE, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, DISH; JANE MAGO, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, LEGAL AND REGULATORY AFFAIRS, NATIONAL ASSOCIATION OF BROADCASTERS; JENNIFER KIELEY, DIRECTOR, GOVERNMENT RELATIONS, ASSOCIATION OF PUBLIC TELEVISION STATIONS, ON BEHALF OF LONNA THOMPSON, EXECUTIVE VICE PRESIDENT, CHIEF OPERATING OFFICER AND GENERAL COUNSEL, ASSOCIATION OF PUBLIC TELEVISION STATIONS; AND MICHAEL O'LEARY, SENIOR EXECUTIVE VICE PRESIDENT, GLOBAL POLICY AND EXTERNAL AFFAIRS, MOTION PICTURE ASSOCIATION OF AMERICA

STATEMENT OF ELOISE GORE

Ms. GORE. There we go.

Mr. WALDEN. There we go.

Ms. GORE. Very good. Chairman Walden, Ranking Member Eshoo, and members of the subcommittee, thank you for the opportunity to appear before you today. I am currently the Associate Bureau Chief for the Enforcement Bureau at the FCC, but for most of my FCC career, I was in the Media Bureau, where my responsibilities included the Satellite Home Viewer Act, SHVA, and its progeny, SHVIA, SHVERA, and STELA. I was pleased to provide technical assistance to Congress on these reauthorization bills, as well as spearheading the implementation of the enacted laws. I appreciate the chance to participate with the subcommittee and my fellow panelists this morning in Satellite Video 101 to refamiliarize ourselves with the legislative and regulatory structure we have in place.

My written statement provides a board overview of the statutory changes made by the previous reauthorization and the expiring provisions. I would like to spend my brief time this morning outlining how the current rules apply to consumers.

As noted in my written statement, my views are my own, and I am very happy to provide technical assistance, but will respectfully decline to provide any opinions on suggested modifications.

STELA and its predecessors govern satellite delivery of broadcast television to satellite subscribers and treat local and distant broadcast stations in different ways. Local channels are the stations that are assigned to the designated market area, DMA, in which the subscriber resides, based on designations by the Nielson Media Company. My outstanding colleague, Laurie Robier, will hold up the map, which is a precious commodity, I must tell you. Thank you, Laurie. Nicely done.

Distant signals are those stations that are assigned to a different DMA from the one in which the subscriber resides. SHVIA created local into local service in 1999. Initially, the two satellite providers offered the local stations in fewer than 40 out of the 210 DMAs. Now they have increased their local market offerings so that nearly all subscribers in the 210 designated market areas have access to the local station package from one or both satellite carriers. DISH

provides service to all 210; DirecTV, I believe, provides service to 196 of the markets.

The local stations available to satellite subscribers are essentially limited to the stations designated for the DMA, although there are some additional options in certain circumstances, such as significantly viewed stations or distant stations that can be used to fill in what we call a short market, where there are not four of the top four networks available over the air. There are certain areas in the country in which Congress provided a special exception to allow carriage of additional signals in the local market.

Distant signals are generally available only to satellite subscribers who are unserved by an over-the-air signal and for whom the local into local stations are not available. We call this no distant where local. This being 101, I will try to describe some of the little terminology that you will hear us use. Local into local, no distant where local, DMA. Unserved means that the subscriber's household cannot receive the over-the-air signal of a local network station with sufficient signal strength. Notwithstanding the principle of no distant where local, some subscribers have been statutorily grandfathered as the eligibility rules have changed in successive reauthorizations. Some of the grandfathered subscribers may keep the distant signals, others may, at some point, be required to relinquish the distant signals, and some subscribes who are outside the satellite's spot beam, and therefore unable to receive the local package, may also be eligible for distant signals. Distant signal subscribers are limited to no more than two network affiliated signals from each broadcast network, and time shifting may be limited based on the subscriber's local time zone. The subscriber cannot specify which distant signals he or she wishes to receive. Further, the satellite carrier is only permitted to provide distant signals if it complies with the requirement to provide the networks with lists of the subscribers who are receiving distant signals.

If the local stations are not available to a subscriber via satellite, the subscriber may request distant signals through his or her satellite carrier. The carrier determines whether the subscriber is considered served or unserved by using a computer model that predicts the signal strength at the subscriber's household. Satellite carriers use a computer model designed by the Commission. It is called the ILLR computer model, but the Commission is not involved in making individual predictions. If the model determines the household is unserved, that is, the signal strength is too low from the broadcast station, the satellite carrier is permitted to provide distant network signals to the household. If the model predicts that the household is served by a particular local network station over the air, the household is not eligible for distant signals for that network. The subscriber may request waivers from each of the local stations that are predicted to serve the household in order to be eligible for distant signals. Waivers are requested through the satellite carrier and the local broadcast station must accept or reject a waiver request within 30 days. If a local station denies the waiver request, the subscriber can request a signal test to measure the actual signal strength of the over-the-air signal.

Finally, the law allows satellite carriers to provide distant signals to subscribers in some other situations, such as recreational

vehicles, commercial trucks, or C-band satellite receivers. Mr. Barton, your C-band may be useful yet.

Thank you for inviting me to participate in today's hearing. I look forward to assisting the committee as it begins this reauthorization process, and would be happy to take your questions. Thank you so much.

[The prepared statement of Ms. Gore follows:]

Statement of Eloise Gore
Associate Bureau Chief
Enforcement Bureau
Federal Communications Commission

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

Satellite Video 101 Hearing

February 13, 2013

INTRODUCTION

Thank you for the opportunity to appear before you today. I am currently the Associate Bureau Chief for the Enforcement Bureau at the Commission, but for most of my FCC career I was in the Media Bureau where my responsibilities included the Satellite Home Viewer Act (SHVA) and its progeny SHVIA, SHVERA, and STELA. I was pleased to provide technical assistance to Congress on these reauthorization bills, as well as spearheading the implementation of the enacted laws. All of these activities have given me an extensive background on the relevant laws and corresponding rules.

I appreciate the chance to participate with the Subcommittee and my fellow panelists this morning in Satellite Video 101 to refamiliarize ourselves with the legislative and regulatory structure we have in place. My goal today is to provide you with a broad historical background regarding Congressional action since the enactment of SHVA. I will briefly discuss the provisions in the most recent reauthorization, the Satellite Television Extension and Localism Act of 2010 (STELA), particularly those that will expire next year. Finally, I will try to provide some insight into how the rules currently operate for consumers. The views expressed in my statement are mine, and not those of the Federal Communications Commission. Additionally, my appearance before the Committee is limited to providing an overview of the current state of the law, as well as technical assistance, but not to opine on any possible or proposed policy or legislative changes.

HISTORY OF SATELLITE TV LAW

SHVA

It has been nearly 25 years since Congress first established a statutory copyright license to allow satellite carriers the ability to provide consumers with broadcast programming via satellite. SHVA and subsequent reauthorizations amend provisions in the Communications Act and in the copyright statute, Title 17. My comments today focus on the Communications Act and rules, but it is important to bear in mind that the statutory provisions are interdependent.

As I recall, at the time of SHVA, satellite carriers had technological limitations in the number of broadcast channels they could deliver to their subscribers. SHVA was intended to provide a means for offering the broadcast network programming while protecting the role of local broadcasters. SHVA thus limited satellite delivery of network broadcast programming to subscribers who were "unserved" by over-the-air signals. It also permitted carriers to offer distant "superstations" to subscribers. "Unserved" was defined as a household that did not receive an over-the-air signal of a particular signal strength from any station affiliated with a particular network. SHVA endorsed the Commission's computer model that predicts signal strength at a specific location, now known as the Individual Location Longley-Rice (or ILLR) predictive model. The predictive model was coupled with a process by which a subscriber who was predicted to be served could request a waiver from the relevant local stations, and, if the waiver was denied, could request an actual signal test.

SHVIA

The Satellite Home Viewer Improvement Act of 1999 (SHVIA) expanded opportunities for consumers by creating a framework for satellite carriers to retransmit *local* broadcast signals directly to subscribers through a new local signal copyright license – commonly known as "local-into-local" service. Beginning with SHVIA and continuing today, "local stations" are determined based on the Nielsen Designated Market Areas (DMA) and typically by reference to the DMA map. In contrast to the "must carry" requirements that apply nationwide to cable service, Congress requires satellite operators to carry all qualified local stations on a market-by-market basis (using DMAs) only if the satellite carrier opts to carry any local station in the market by reliance on the statutory copyright license. This is known as the "carry one, carry all" requirement.[1] The Commission implemented SHVIA by adopting rules for satellite carriers with regard to carriage of broadcast signals, retransmission consent, and program exclusivity. These rules are comparable to the requirements for cable service.

In addition to introducing the legislative and regulatory mechanism by which satellite carriers can offer "local" stations to subscribers, SHVIA also maintained the mechanism for unserved subscribers to receive distant network stations, with a few tweaks to the waiver and testing protocol and still with reliance on the Commission's predictive model in the first instance.

SHVERA

In 2004, Congress continued to expand and develop parity between satellite and cable services when it enacted the Satellite Home Viewer Extension and Reauthorization Act (SHVERA) and provided the framework for satellite carriage of "significantly viewed" stations. Significantly viewed stations are those that technically are distant signals – i.e. assigned to another DMA – but historically had "significant" over-the-air viewing in specific communities or counties in a neighboring DMA. The Commission has maintained a "significantly viewed" list since the 1970's. In addition, if a station meets the significantly viewed criteria for a particular

[1] Satellite carriers are allowed to exclude from their local-into-local service stations that are duplicative or stations that fail to provide a good quality signal to the satellite carrier's local receive facility. Satellite subscribers are not generally required to subscribe to the local-into-local package.

community or county, it can petition the Commission to be added to this list. Carriage of such stations is voluntary on the part of the satellite carriers and requires the retransmission consent of the significantly viewed station. Only subscribers in the specific community or county who subscribe to the local-into-local service are eligible to receive the significantly viewed station from out of market. SHVERA also imposed additional restrictions on the carriage of digital significantly viewed stations – requiring that the local station affiliated with the same network is provided in the same format.[2]

In addition to the significantly viewed provisions, Congress also modified the statutory language to account for various digital television transition issues, imposed the good-faith bargaining requirements for retransmission consent negotiations on multichannel video program distributors, and provided for some exceptions to the distant copyright license for certain areas of the country.

STELA

STELA is the most recent iteration in the series of statutes that address satellite carriage of television broadcast stations, enacted in 2010. In addition to reauthorizing the expiring provisions of law, the major provisions of STELA include changes to the significantly viewed provisions enacted in SHVERA to promote use of the statutory provisions and provide additional choices for subscribers.[3] Congress also modified the law to account for the terrestrial digital television transition that occurred in 2009 by requiring the Commission to establish a digital signal predictive model and to revise its measurement procedures for determining eligibility for subscribers to receive distant digital signals.[4] Congress also specified how multicast signals would be treated and introduced the concept of "short" markets, that is DMAs with fewer than four of the most widely viewed networks. Additionally, Congress required the Commission to provide a report to Congress regarding the availability of in-state programming for those counties that are assigned to a DMA that is comprised mostly of stations that are licensed to a different state.

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[2] There were two exceptions to these restrictions on the carriage of significantly viewed stations – (1) satellite carriers could provide a significantly viewed station in areas where there was no local affiliate station; and (2) satellite carriers could negotiate a waiver with the local affiliate with regards to carriage of a significantly viewed station.

[3] Congress also moved the corresponding copyright provisions for significantly viewed stations from the distant signal copyright license to the local signal copyright license.

[4] Congress revised the definition of "unserved household" to eliminate a specific reference to "outdoor" antennas. The Commission rulemaking determined that from an engineering and technical perspective, consideration of an outdoor measurement remains preferable.

EXPIRING PROVISIONS

Unless reauthorized by Congress, there are two provisions in the Communications Act that will expire:

- Distant Network Signal Retransmission Consent Exemption: Until December 31, 2014, satellite operators are allowed to retransmit distant network signals to an unserved household without first obtaining the consent of the station.

- Retransmission Consent Non-Exclusivity/Good Faith Negotiation Requirements: Until January 1, 2015, broadcast stations are prohibited from engaging in exclusive contracts for carriage, and both broadcasters and MVPDs are required to negotiate in good faith for retransmission consent agreements.

Although outside the scope of this Committee's jurisdiction, it is important to note the other two expiring provisions that are contained in the copyright statutes:

- Distant Signal Copyright License: The distant signal copyright license contained in Section 119 of Title 17 of the U.S. Code will expire on December 31, 2014.

- Grandfathered Distant Signal Subscribers: There are certain subscribers that meet specific requirements that have been grandfathered and retain their eligibility to receive distant signals until December 31, 2014.

PRACTICAL APPLICATION OF CURRENT LAW AND RULES

Local-into-Local Service

Since the inception of local-into-local service, the two satellite providers have increased their local market offerings to the point where subscribers in most, if not all, of the 210 local markets (DMAs) have access to the local package by one or both of the providers. The specifics are outlined below:

Date/Timing	DISH	DirecTV	Source
Nov. 2000	34	38	FCC 7th Video Competition Report
Dec. 2004	150 (+PR)	130	FCC 11th Video Competition Report
Fall 2007	174	143	FCC 13th Video Competition Report
Fall 2012	210	194	SEC Filings
February 2013	210	196*	STELA Section 305 Report

*Markets currently without Local-into-Local service from DirecTV: Presque Isle ME; Lima OH; Alpena MI; Charlottesville VA; Victoria TX; Ottumwa IA-Kirksville MO; San Angelo TX; Bowling Green KY; North Platte NE; Cheyenne WY-Scottsbluff NE; Helena MT; Casper-Riverton WY; Grand Junction-Montrose CO; Glendive MT

A consumer can subscribe to satellite service from one of the two providers, and opt for different program packages. As part of the available packages, consumers can opt to subscribe to the local channel package for an additional charge. The local channels will be those stations that are assigned to the DMA in which the consumer resides based on the Nielsen designations.

Consumers are not allowed to choose the local stations they wish to receive via satellite, and satellite providers are limited in the stations they are permitted to include in the local package. As noted above, Congress has allowed for additional flexibility in certain circumstances that could increase the choices available to subscribers, such as permitting carriage of significantly viewed stations in appropriate circumstances.

As noted above, if a carrier chooses to provide any significantly viewed stations from the FCC's list, it can add those stations to the local package offerings after obtaining the retransmission consent of the station. Additionally, there are certain areas in the country in which Congress provided an exception to the copyright license to allow carriage of additional signals that would otherwise be considered distant signals into specific counties.

Distant Signals

Distant signals, generally, are those broadcast stations that are assigned to a different DMA than the one in which the consumer resides. In the past, distant signals provided the only access to broadcast network programming for many satellite subscribers. Over time, more and more subscribers gained access to the local network stations via local-into-local service. Even so, much of STELA, like its predecessors, is devoted to the requirements and limitations associated with eligibility for distant signals. The following is an overview of the highlights and concepts.

Generally, in order to be eligible to receive distant signals, a subscriber must be deemed to be "unserved" by the local signals via an over-the-air antenna. "Unserved" means that the subscriber's household cannot receive the over-the-air signal of a local network station with sufficient signal strength[5] as outlined in the current rules.[6] Additionally, subscribers are limited to no more than 2 network-affiliated signals from each broadcast network. If such subscriber is also receiving local stations, STELA restricts the time shifting permissible for the distant signals based on the subscriber's local time zone. Generally, the subscriber cannot specify which distant signals he or she wishes to receive. In addition to the eligibility criteria associated with the subscriber, the satellite carrier is only permitted to provide distant signals if it complies with the requirement to provide the networks with lists of the subscribers who are receiving distant signals. Below are some of the other major provisions regarding distant signals.

No Distant Where Local

When new consumers subscribe to satellite TV service, and the local-into-local package is available via satellite, they are not eligible to receive distant signals under current law. We refer to this as "no distant where local."

One exception to no-distant-where-local is if the local signals are provided in the DMA but the subscriber lives in an area that is technically outside of the spot beam used to provide the

[5] STELA more specifically defines sufficient strength as the intensity defined by the FCC as the value for the "noise-limited service contour," which means the value associated with a station's coverage area.

[6] As noted below, new subscribers are not eligible for distant signals if the local-into-local package is available to them.

local signals. In those instances, the subscriber will be permitted to receive the distant signals if the subscriber is also "unserved" by local stations over-the-air.

No Local-into-Local Service

If the consumer resides in a market where their preferred satellite carrier does not offer a local-into-local package, they may be able to receive a distant signal package if they are "unserved." The subscriber requests distant signals through his or her satellite carrier, and the carrier determines whether there is a sufficient signal by using a computer model that predicts the signal strength at the subscriber's specific household. Satellite carriers must use the computer model designed by the Commission, but the Commission is not involved in making individual predictions.

If the model determines the household is "unserved" (i.e. the signal strength is too low), the satellite carrier can provide distant network signals to the household. If the model predicts that the household is served by a particular local network station over-the-air, the household is not eligible for distant signals for that network.[7] The subscriber may request waivers from each of the local stations that are predicted to serve the household in order to be eligible for distant signals.[8] Waivers are requested through the satellite carrier, and the local broadcast station must accept or reject a waiver request within 30 days. If the station does not respond to a waiver request within the time frame, the station is assumed to have agreed to the waiver.

If the local station denies the waiver request, the current law provides for a process by which the subscriber can request to have a signal test to measure the actual strength of the over-the-air signal from each station. Both the satellite and broadcast station must agree on a qualified and independent person to conduct the test. The costs of the test will be paid by either the satellite carrier or the broadcast station, depending on the outcome of the test. In limited circumstances, there are rules to provide for testing to be conducted and paid for by the subscriber directly. Others on the panel representing the affected industries can comment on whether and how often tests are requested and conducted. The Commission is not involved in the process, although we do field consumer questions about the process when requested.

Other "Unserved" Situations

The law provides that in situations where a satellite dish is permanently affixed to a recreational vehicle or commercial truck, that subscriber is deemed to be "unserved" and eligible to receive distant signals.

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[7] One of the revisions added by STELA to the existing protocol was to specify that the local network signal might be available via either a so-called primary or multicast stream broadcast by a local station. This distinction was added to address the enhanced capacity associated with the digital signal which allows stations to broadcast multiple streams of programming simultaneously.

[8] STELA revised which stations are to be considered in the predictive model so that only stations that are "local" to the consumer based on the Nielsen DMA need to be considered. Previously, all network station signals were to be considered, including those that were not treated as local for purposes of carriage.

Other Distant Signal Subscribers

As Congress has changed the eligibility rules for distant signals in successive reauthorizations, it has provided different treatment for subscribers to distant signals at the time of the reauthorization, depending on when the subscriber first received the distant signals. These different qualifications for "grandfathering" are used to determine whether subscribers may or must take the local-into-local package if and when offered. Some of the grandfathered subscribers may keep the distant signals, others may at some point be required to relinquish the distant signals. This is a topic that has been addressed in each reauthorization process, taking into consideration equitable treatment for distant signal subscribers at the time.

CONCLUSION

Thank you for inviting me to participate in today's hearing. I look forward to assisting the Committee as it begins this reauthorization process, and would be happy to take your questions.

Mr. WALDEN. That is the best news Joe has gotten all day.

We now turn to our next witness, Mr. R. Stanton Dodge, who is the Executive Vice President and General Counsel of DISH. Mr. Dodge, thanks for joining us this morning. We look forward to your testimony.

STATEMENT OF R. STANTON DODGE

Mr. DODGE. Chairman Walden and Ranking Member Eshoo, Chairman Upton, and members of the subcommittee, I very much appreciate the opportunity to testify today. My name is Stanton Dodge, and I am the Executive Vice President and General Counsel of DISH Network, the Nation's third largest pay TV provider with over 14 million customers and 25,000 employees nationwide.

This morning, I would like to highlight the benefits that STELA and its predecessors have conferred upon consumers.

STELA provided two big wins for consumers, giving them access to more programming than ever before. First, it challenged DISH to offer local stations in all of the Nation's 210 television markets. We embraced that challenge, and today we are the only pay TV provider to offer local channels in every market. Plus, we are the largest distributor of PBS nationwide. Second, STELA allowed us to give consumers in short markets access to all the big four networks. And for those of you who don't know, short markets are markets that lack one or more of the big four stations, and they tend to be small, rural communities. Thanks to STELA, consumers in 21 short markets across 19 States can watch the valued network programming that the rest of the country has long enjoyed.

So how did we get here? Well, let us start with the basics. We all know that broadcast stations are important to consumers. They are freely available over the air, but even after the digital transition, many households cannot get a signal, especially in large western markets. Over-the-air reception often just cannot match the coverage and consistency of satellite and cable television.

The first incarnation of STELA, the Satellite Home Viewer Act of 1988, created a statutory copyright license that enabled satellite carriers to provide consumers with broadcast signals originating outside of their home markets. This copyright license came with an important restriction. It only allowed network transmissions to "unserved households," households that cannot receive a strong local signal using an off-air antenna. In exchange for the license, satellite carriers paid a monthly per-subscriber fee to the copyright office. That fee was set either by private negotiations, or by an administrative proceeding, and the revenues were then distributed to the mosaic of copyright holders. This copyright fee structure remains in place today.

Congressional legislation evolved further in 1994, 1999, and 2004, and throughout this time, technological advances prompted significant updates to the law. For example, with the advent of spot beam technology, satellites can target signals into individual local markets, rather than the whole country at once. This led Congress to add the so-called local into local license, which allowed for satellite retransmission of local broadcast signals back into their local markets. Satellite carriers seized that new opportunity. They built and launched spot beam satellites and they started providing local

stations almost immediately. As a result, satellite providers emerged as a key competitive force in the pay TV market.

I am going to ask you to please refer to my written remarks for a more comprehensive summary of the various satellite television bills over the years.

As many of you are aware, DISH was barred from providing distant network signals to subscribers in 2006, after a decade-long court proceeding. Among other things, the injunction prevented us from filling up short markets, because we needed a distant signal license to import the out-of-market stations to replace the missing local affiliates. Through STELA, Congress presented an incentive for DISH to receive a waiver of that injunction if we offered local stations in all of the Nation's 210 markets, then they would allow us to win back our distant signal license. Working cooperatively with the NAB, we followed the path precisely as Congress envisioned. The result, on June 3, 2010, we initiated service to all local TV markets, becoming the first, and to date, the only pay TV provider to offer local service in all 210 DMAs.

And so, STELA stands as an example of how targeted legislative solutions can work to everybody's benefit. It should be reauthorized before December 31, 2014, but there is much more that Congress can do through STELA to expand consumer's access to local programming. In an era of fast-changing technology and the explosion of video on the Internet, we believe that Congress should take this opportunity to look at ways that the current statute can be updated to better reflect consumer expectations and desires.

We look forward to a dialogue addressing those options in the months ahead, and I thank you again for the opportunity to testify here today, and look forward to answering any questions you might have.

[The prepared statement of Mr. Dodge follows:]

Testimony of

R. Stanton Dodge

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

On

"Satellite Video 101"

Before the

House of Representatives

Committee on Energy and Commerce

Subcommittee on Communications and Technology

February 13, 2013

Chairman Upton, Chairman Walden, Ranking Member Eshoo, Ranking Member Waxman, and Members of the Subcommittee, I appreciate the opportunity to testify today. My name is Stanton Dodge, and I am the Executive Vice-President and 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. DISH employs over 25,000 people across the country. In addition to its satellite television business, DISH is seeking to expand into the deployment of broadband services through currently unused spectrum, which has the potential to create tens of thousands of additional U.S. jobs.

This morning, I want to highlight the successes of the Satellite Television Extension and Localism Act of 2010 ("STELA") and its predecessors, and describe the work that my company has done to contribute to these successes.

STELA presented a trade to DISH: if the company offered local stations in every market, our distant network signal statutory copyright license would be restored. We lost our distant signal license after a decade-long court proceeding. We enthusiastically accepted the STELA challenge.

We built and launched the satellites and received a number of regulatory and court approvals, all as envisioned by STELA. The result: today we are 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.

In addition, STELA built on the framework of prior satellite television laws and made it possible for DISH to bring network television programming to households in markets that lacked one or more of the four networks. Today, there are 21 "short" markets. A short market is one that does not have all four major network affiliates, which are ABC, CBS, NBC, and Fox. These typically are small, rural communities. Thanks to STELA and its predecessors, American consumers now have more access to local, regional, and national programming than ever before.

From SHVA to SHVIA to SHVERA to STELA

To appreciate the success of STELA, it is important to look back at how far we have come. Broadcast stations are important to consumers. They are freely available over the air, but many households throughout the country cannot receive a strong enough signal by relying on their broadcast antenna. This is particularly true in large, Western markets where broadcasters' signals do not always cover the entire market area. Even after the transition to digital television, over-the-air reception cannot match the coverage and consistency of satellite or cable television.

The ability of multichannel distributors to retransmit broadcast stations first came up in the era of community antenna television systems – the precursors to cable television. In two decisions, in 1968 and 1974, the Supreme Court held that retransmission over cable systems was not a public performance and therefore not an infringement of the rights holders' copyrights. In 1976, Congress overruled those decisions and made retransmission a copyright infringement. At the same time, however, Congress knew that the Federal Communications Commission ("FCC") had mandated cable carriage of all broadcast signals under the "must carry" rules. Congress also recognized the impracticality of asking cable operators to negotiate copyright licenses for all content across all broadcast stations. Then, as now, receiving such licenses involved knocking

on too many doors. The programming embedded in broadcast signals belongs to a mosaic of producers, writers, composers and others who typically do not grant sublicensing rights to broadcasters. For those reasons, Congress created a statutory copyright license allowing cable systems to retransmit broadcast stations, whether local or distant.

SHVA. Then came satellite technology. In the 1980s, satellites came to the scene as a new multi-channel entertainment and news option. Backyard dishes capable of receiving video programming started appearing around the country, especially in areas without access to cable. You couldn't miss those first dishes; they were quite large. The Satellite Home Viewer Act ("SHVA"), enacted in 1988 and extended in 1994, marked the first time Congress passed a statute to facilitate satellite distribution of broadcast signals to consumers' homes. At the time, satellite TV's offerings were national in nature, delivering high-quality digital signals from satellite orbital locations to households and businesses across the country.

That law created a statutory copyright license under which satellite carriers could provide consumers with television broadcast signals originating outside of their home market. For these broadcast network signals, the license came with an important restriction: it only allowed retransmissions to "unserved" households. Unserved households could not receive a local network affiliate's signal with sufficient strength using an over-the-air antenna. In exchange for the license, satellite carriers paid then, as they pay now, a per-subscriber fee each month. That fee was set by either private negotiations among the industries or by an administrative proceeding, and the revenues were then distributed to the mosaic of copyright holders. They still are today.

SHVIA. Recognizing the value of network programming to consumers, Congress has since extended and expanded that license without fail. Congress's next move, in 1999, was to recognize the possibility of satellite service targeted to specific television markets, rather than nationwide-only offerings. By that time, satellite service had progressed from the large backyard dishes of the 1980s to the pizza-sized dishes made possible by the digital high-power satellites launched in the 1990s by DIRECTV and DISH's predecessor, EchoStar. These dishes appealed to urban and suburban users for the first time. But the satellite carriers suffered from a significant handicap. Unlike cable systems, they did not, and could not, provide local broadcast stations. Changes in satellite technology, however, prompted Congress to update the law.

The first satellites were equipped with broad beams covering the entire lower 48 states. These satellites had to transmit the same programming in New York, Los Angeles, and everywhere in between. New York programming had to be blacked out for homes in California that could receive their stations over the air, but still took up the scarce bandwidth on the satellite. Spot beam technology alleviated this bandwidth crunch. It allowed satellites to transmit signals over just one local market, rather than the whole nation at once. Picture a honeycomb of beams reusing the same spectrum to provide different programs in New York, Los Angeles and throughout the country.

Recognizing this technological innovation, Congress enacted the Satellite Home Viewer Improvement Act ("SHVIA") in 1999. That statute created the so-called "local-into-local" statutory license, allowing the satellite retransmission of local broadcast signals back into their local markets. It 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.

Spot beams, however, are not cheap. A spot beam satellite costs hundreds of millions of dollars to build and launch. The more local markets a satellite carrier serves, the more of these satellites it needs. Moreover, the primary use of the technology is precisely to retransmit local television stations back into their local markets. But despite the cost, the satellite carriers responded enthusiastically to the new opportunity afforded them by the law. They built and launched spot beam satellites, and they started providing local stations almost immediately, albeit starting with a handful of large markets. Since then, satellite providers have emerged as a key competitive force in the pay TV market, requiring cable companies to compete on price, programming, quality, and service.

SHVERA. In 2004, Congress acted again, passing the Satellite Home Viewer Extension and Reauthorization Act ("SHVERA"). That law again extended the statutory copyright license for distant signals, and made several other changes. First, SHVERA made adjustments to accommodate the digital television transition, directing the FCC to redefine the model that predicts whether a household is served by a local broadcast signal based on the new digital broadcasting format. Second, the law introduced the so-called "if-local-no-distant" rule. Generally, that rule says that satellite carriers may not provide a distant signal to a subscriber if the carrier also makes available to that subscriber the local station affiliated with the same network. Third, the law allowed satellite providers to retransmit "significantly viewed" stations in the counties outside their local market where they are broadly viewed, something the cable

industry had long enjoyed. Practical implementation of this provision was difficult, however, because it was interpreted to allow local stations to exercise a veto by conditioning their retransmission consent on the satellite carrier not importing significantly viewed stations. Finally, the law recognized the special status that Recreational Vehicles and commercial trucks have and designated these types of subscribers as unserved households eligible to receive distant signals so long as certain certification measures are met.

STELA. As many on the subcommittee are aware, DISH was enjoined from providing distant network signals to its subscribers in 2006. As part of STELA, Congress established an incentive for DISH to get that injunction waived—first temporarily, then permanently—and to once again be able to provide its subscribers with a full complement of the Big 4 network stations. Working cooperatively with the NAB, we followed that path precisely as Congress envisioned. Again, the trade offered by STELA was that if we launched local broadcast signals in all of the nation's 210 local markets, we could win back our distant network signal license. We accepted the trade.

STELA was passed on May 27, 2010. DISH applied for the temporary waiver the next day on May 28, 2010, and the court granted the waiver on June 2, 2010. Under this temporary waiver, we were permitted to provide distant network signals to subscribers residing in "short" markets – as a reminder, those are the TV markets in which one of the Big 4 networks is missing. We offered these distant network signals alongside the local broadcast channels to provide DISH subscribers with the full complement of Big 4 network stations. Thanks in part to the temporary waiver, DISH Network was able to initiate service to 29 additional TV markets on June 3, 2010, becoming the first (and to date, the only) TV provider to offer local service in all 210 markets.

This had a tremendous impact in rural communities. Until we launched the service, they had never received from any video provider—broadcast, cable, or satellite—the same service that people living in larger markets had enjoyed.

Following certification by the FCC and the federal district court, DISH has been able to take full advantage of STELA's distant network signal license, subject only to continued provision of local programming packages in all 210 markets. This means two things: since 2010, DISH has been offering local stations in all of the nation's TV markets, becoming the only multi-channel provider in the country, whether cable or satellite, to achieve that milestone. Second, DISH has been able to supply distant stations to qualified customers. To stress again: 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.

But there is much more that Congress can do to expand consumers' access to local programming, and we look forward to future hearings addressing such topics. In an era of greater MVPD competition and the explosion of video on the Internet, both at home and on wireless devices, Congress should take this opportunity to look at ways the current statute could be updated to better reflect consumer expectations and desires.

DISH looks forward to starting a dialogue with all Members and their staff in the months to come. Again, thank you for the opportunity to testify today. I look forward to any questions you may have.

Mr. WALDEN. Thank you, Mr. Dodge. We appreciate your being here, and your testimony.

We will now go to the Executive Vice President and General Counsel for Legal and Regulatory Affairs, the National Association of Broadcasters, Jane Mago. We are delighted to have you here this morning, and look forward to your comments.

STATEMENT OF JANE MAGO

Ms. MAGO. Thank you, Chairman Walden——

Mr. WALDEN. Go ahead and turn that on.

Ms. MAGO. Turn on the microphone. Thank you, Chairman Walden, and thanks to Ranking Member Eshoo and Chairman Upton, and all the members of the subcommittee for having me here to speak with you today. As Chairman Walden just said, I am the Executive Vice President and General Counsel of the National Association of Broadcasters.

Now over the next 2 years, this subcommittee, as well as your colleagues on the Judiciary Committee, will consider whether certain provisions of the legislation that is affectionately known to all of us as STELA should be allowed to sunset. The narrow issue that is before you is whether the legal framework that permits the country's two satellite providers to retransmit our stations continues to be in the public interest. As the committee begins this dialogue, your broadcast constituents ask you to be mindful of two principles that are at the core of STELA and all its predecessors that we have heard about today.

First, free over-the-air local television should remain widely available to American households, and second, the government should not interfere with the contractual relationships that promote broadcasting's local focus. Adherence to these principles will help ensure that the public benefits from free over-the-air broadcasting.

Now, the bedrock principle of the American broadcast system continues to be this localism. Whether it is local news, emergency alerts, weather information, election coverage, or sports, local television broadcasters provide these services and programming for free to communities across the country. Broadcasters support charities, civic organizations, and community events, and our locally tailored advertising provides the opportunity for your hometown businesses to promote their goods and services. Simply put, free local service is our focus. It is what differentiates American broadcast television from others around the world, and from every other medium.

Broadcasters have invested billions of dollars in recent years to improve the quality and reach of our service. The digital television transition allowed us to proliferate high definition programming, launch mobile D-TV service, and offer multiple program streams. These innovations enable our viewers, who are also your constituents, to receive higher quality and more diverse programming on many platforms.

Now as you have heard, in the beginning the satellite acts were crafted to help the satellite companies become competitive with cable services, and ensure that satellite subscribers could access network programming. It was always a concern, however, that the

service should not undermine local broadcast stations. And so specifically, Congress prohibited a satellite provider from importing a network signal from a distant market to households that could receive that network's programming from a local station. These provisions were and remain essential to prevent diversion of local station viewers and reduction in the advertising revenue that is needed to provide vital local services. Now even as it created this distant signal license, Congress foresaw that one-day technological advances might make that license unnecessary, so it included a 5-year sunset provision. That premonition was really correct. Technology has evolved so that satellite companies could provide each market with the market's own local signals. As Stanton just told us, today DISH provides its local service into all 210 television markets, and DirecTV is in either 195 or 196, that is not somewhat clear, but thus the need to import distant network signals has dramatically diminished. Only a small percentage of the 34 million satellite subscribers receive network programming via this distant signal. Indeed, over 98 percent of all U.S. television viewers have the option of viewing their local networks. So accordingly, this subcommittee may want to consider whether the public interest would be best served by allowing the distant signal and related communications act provisions to sunset, as Congress originally intended.

Because local viewers are best served when they receive local service, every satellite and cable subscriber should receive this local into local service.

Now alternatively, if STELA is reauthorized, broadcasters urge a clean, minimalist approach targeted to the problem to be solved. Efforts to graft unrelated and unnecessary issues onto this narrow legislation would be inappropriate and unwise.

I thank you for all your efforts to promote vibrant local broadcast industry, now and into the future, and I am happy to answer any questions that you may have.

[The prepared statement of Ms. Mago follows:]

Hearing on
"Satellite Video 101"

United States House of Representatives
Committee on Energy and Commerce

Subcommittee on Communications
and Technology

February 13, 2013

Statement of Jane E. Mago

On behalf of the
National Association of Broadcasters

INTRODUCTION AND SUMMARY

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. My name is Jane Mago. I am Executive Vice President and General Counsel of the National Association of Broadcasters (NAB) on whose behalf I appear today.

Thank you for the opportunity to talk with you about the reauthorization of the Satellite Television Extension and Localism Act of 2010 (STELA), which is set to expire at the end of 2014. In my testimony today, I will discuss the principles behind STELA, whether its reauthorization is needed in the current satellite television marketplace, and some issues that may arise as you consider reauthorization.

NAB looks forward to working with this Subcommittee as we again consider how the public interest can best be served through satellite carriage of local television signals. As I explain below, NAB is continuing to evaluate the current television market and taking a hard look at whether reauthorization of distant signal licenses for satellite carriers should be done at all. At most, Congress should limit any action to those narrow issues raised directly by STELA reauthorization. It should rebuff any efforts to address unrelated issues that would only prolong and complicate this reauthorization discussion.

I. Public Interest Principles

The starting point for considering this legislation must be localism – the bedrock principle rooted in the Communications Act of 1934 that has guided communications and related copyright policy for decades. Localism has been an integral part of policies governing satellite carriage of broadcast signals from the outset. Thus, it was not

surprising that Congress chose to include "localism" in the very title of the 2010 reauthorization. Localism is an equally important public policy today.

What does localism mean for the public served by local television broadcasters? Localism is coverage of matters of importance for local communities, such as local news, severe weather and emergency alerts, school closings, high school sports, local elections and public affairs. Localism is support for local charities, civic organizations and community events. Local broadcasters help create a sense of community. Locally based broadcast stations are also the means through which local businesses educate and inform the public about their goods and services and, in turn, create jobs and support local economies. They address the needs of the public, based on a familiarity with and commitment to the cities and towns where they do business.

A second important principle to consider in the context of this legislation is government respect for contractual relationships freely entered into by private parties. Especially with regard to local television service, respect for contractual rights fosters the very localism, diversity, competition and high quality service that policymakers expect from broadcasters. Promoting relationships, freely negotiated among parties, that create and distribute the diverse mix of broadcast television programming addressing the needs and interests of local viewers clearly serves the public interest.

With these principles in mind, let me briefly provide some background for the issues raised by STELA reauthorization.

II. Statutory Copyright Licenses

A statutory or compulsory copyright license is a mechanism whereby users of the license are permitted to use copyrighted works in exchange for compliance with certain

statutory conditions and payment of royalties at government regulated rates. Three statutory licenses in the Copyright Act govern the retransmission of distant and local over-the-air broadcast station signals:

- Section 111 permits a cable operator to retransmit both local and distant radio and television signals to subscribers.
- Section 119 permits a satellite carrier to retransmit distant television signals to subscribers for private home viewing and to commercial establishments for a per subscriber fee.
- Section 122 permits satellite carriers to retransmit the signals of each local television station into the station's local market and also outside the station's market where the station is "significantly viewed," on a royalty-free basis.

All of these licenses are contingent upon the users complying with certain conditions, including rules, regulations, and authorizations established by the Federal Communications Commission (FCC) governing the carriage of television broadcast signals. The Section 119 license sunsets at the end of 2014 and is the subject of this hearing. The Section 111 and 122 licenses are permanent.

III. The Section 119 License

In 1988, Congress, in the Satellite Home Viewer Act (SHVA), created the Section 119 statutory license enabling satellite carriers to retransmit the signals of distant television network stations and superstations to satellite dish owners for their private home viewing. The Section 119 license enabled satellite carriers to provide network programming to households unable to receive adequate over-the-air signals from their local network affiliates.

The conditions of Section 119 are key. Respecting the principle of localism, only those subscribers that live in unserved households are eligible to receive distant network station signals. SHVA defined an "unserved household" as a household that cannot receive, through the use of a "conventional, outdoor rooftop receiving antenna," an over-the-air signal of a network station of Grade B intensity. This provision was intended to protect the local viewing public's ability to receive locally oriented news, information and other programming by preserving the exclusivity local television stations have in their network and syndicated programs. That exclusivity, in turn, enables stations to generate revenue needed to provide local service.

Although it was originally set to expire at the end of 1994, Congress reauthorized Section 119 in 1994 and again in 1999 for additional five year periods. The 1999 renewal, called the Satellite Home Viewer Improvement Act of 1999 (SHVIA) also created a new royalty-free Section 122 license that allowed, but did not require, satellite carriers to retransmit local television signals into their own markets.

The Section 122 license, intended to make the satellite industry more competitive with cable, gave satellite companies statutory copyright parity. Satellite carriers have increasingly relied upon the license to provide local television signals to their subscribers. Currently, DISH provides local-into-local service in all television markets (referred to as Designated Market Areas (DMAs)), and DIRECTV reportedly offers local-into-local service to all but 15 DMAs.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) reauthorized Section 119 once again, but also set rules to further limit importation of distant network station signals into local television markets. For example,

SHVERA required the satellite carriers to phase out retransmission of distant signals in markets where they offered local-into-local service. Generally, a satellite carrier was required to terminate distant station service to any subscriber that elected to receive local-into-local service and was precluded from providing distant network station signals to new subscribers in markets where local-into-local service was available.

SHVERA additionally permitted satellite carriers to deliver television station signals from adjacent markets that were determined by the FCC to be "significantly viewed" in the local market so long as the satellite carrier provided local-into-local service to those subscribers. SHVERA also expanded the copyright license to make express provision for digital signals.

IV. STELA: Part Copyright Law, Part Communications Act

Sections 119 and 122 discussed above are part of the Copyright Act. These copyright sections work in tandem with parallel and closely inter-related provisions in the Communications Act. For example, Section 325 of the Communications Act requires satellite carriers to obtain retransmission consent for the carriage of local stations, but exempts carriers from obtaining such consent to retransmit distant network signals to unserved households.

Section 338 of the Communications Act contains provisions governing the carriage of local stations. These provisions include the "carry one carry all" requirement under which a carrier offering carriage of one local station in a market must offer carriage to all stations in the market.

Section 339 of the Communications Act governs the carriage of distant signals. Its provisions include: provisions relating to replacing distant signals with local signals;

carriage of distant digital signals; digital signal strength prediction testing; and program exclusivity rules for satellite.

Section 340 has provisions relating to the carriage of significantly viewed signals.

None of the Communications Act sections are scheduled to sunset, but some provisions within them do sunset in 2014. Specifically, the following provisions related to retransmission consent are set to expire: (1) the exemption satellite carriers enjoy from having to obtain retransmission consent from stations whose signals they provide to unserved households; (2) the prohibition against stations entering into an exclusive carriage agreement with only one cable or satellite provider; and (3) the requirement to negotiate retransmission agreements in good faith.

V. Distant Signals

Given the narrow scope of the Section 119 license, this Subcommittee may consider whether the time has come for its sunset. The distant signal license today is principally an artifact. While the satellite companies are in the best position to precisely identify the number of their subscribers currently receiving distant signals, in 2009 when the STELA was under consideration, only around two percent continued to receive a distant signal package, and that number was steadily declining.

Experience has shown that the Section 122 local-into-local compulsory license is the right way to address delivery of over-the-air television stations to satellite subscribers. Local-into-local has provided a boon for the satellite industry and greatly enhanced its ability to compete with cable. This license also has promoted localism. Thus, Congress's focus at this time should be to further these trends and promote local-into-local service in all markets.

To a great extent, Section 119 has outlived its usefulness. Unlike the local-into-local compulsory license, the distant-signal compulsory license as applied to distant network signals threatens localism.[1] 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*." SHVIA Conference Report, 145 Cong. Rec. at H11792-793 (emphasis added).[2]

Today, over 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. As a real-world matter, with few exceptions, *there are no unserved viewers* in areas in which local-into-local satellite transmissions are available, because it is no more difficult for subscribers to obtain local stations from their satellite carriers than to obtain distant stations from those same carriers. Accordingly, no public policy justifies treating satellite subscribers in local-into-local markets as "unserved" and therefore eligible to receive distant network stations. Quite the contrary, there is every reason to close this loophole.

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[1] The portion of Section 119 enabling retransmission of "superstations" does not pose such a threat to localism.

[2] *See, e.g.*, 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"); *id.* at 14 (1988) ("Moreover, the bill respects the network/affiliate relationship and promotes localism.").

The Section 119 distant-signal compulsory license is *not* designed, and should not be allowed, to permit satellite carriers to undermine the locally-oriented contractual exclusivity of the network/affiliate 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. This importation of duplicative distant programming undermines the local network affiliated stations that offer the local news, weather and emergency information that viewers value.

VI. Retransmission Consent

As noted above, three narrow retransmission consent related provisions in the Communications Act are set to expire in 2014. Consideration of these narrow provisions should not be used to bring unnecessary arguments outside the scope of this legislation.

It is very important that the STELA reauthorization process not be used as a vehicle for re-opening retransmission consent generally or delving into extraneous issues that undermine localism. There is no need to change the present retransmission consent process.[3] Congress should continue to rebuff the efforts of the satellite and cable industries to persuade the government to intervene in free-market retransmission

[3] FCC, *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004* (Sept. 2005) at ¶ 34 (*FCC Retransmission Report*) (recommending no revisions to statutory or regulatory provisions related to retransmission consent). *See* Navigant Economics, Jeffrey A. Eisenach, Ph.D. and Kevin W. Caves, Ph.D., *Retransmission Consent and Economic Welfare* (April 2010) at Executive Summary (concluding that retransmission consent has achieved Congress' intended purpose in enacting it, and has "benefit[ed] consumers by enriching the quantity, diversity, and quality of available programming, including local broadcast programming").

negotiations, which the FCC has expressly found benefit cable/satellite operators, broadcasters and, "[m]ost importantly, consumers." *FCC Retransmission Report* at ¶ 44.

CONCLUSION

With the perspective gained from 25 years of experience with STELA and its predecessors, Congress should be guided by the same principles it has consistently applied: that localism and free-market competition are the bedrocks of sound policy when addressing the copyright protections that support the public's free, over-the-air local broadcast service.

The distant signal license, which dates back to the inception of satellite legislation in the 1980s, has outlived its usefulness. This Subcommittee may wish to consider whether that distant signal license should, to a large extent, expire. At the same time, Congress should promote the principle of localism by encouraging local-into-local satellite service for all Americans in each of the 210 television markets. Finally, Congress should resist any calls to revise the retransmission consent rights of local television stations in the context of this legislation.

Overview of NAB Testimony

- Two principles must guide this Subcommittee's discussion over whether to reauthorize the Satellite Television Extension and Localism Act of 2010.

    - The first must be localism – the bedrock principle rooted in the Communications Act of 1934 that has guided communications and related copyright policy for decades. For the public served by local television broadcasters, this includes coverage of matters of importance for communities large and small across the country, such as local news, severe weather and emergency alerts, school closings, high school sports, local elections and public affairs.

    - The second important principle is government respect for contractual relationships freely entered into by private parties for the retransmission of broadcast signals.

- Three statutory licenses in the Copyright Act govern the retransmission of local over-the-air broadcast signals. These Copyright Act licenses work in tandem with related provisions of the Communications Act. The Section 119 license, which is the subject of this reauthorization discussion, creates a statutory license that permits a satellite carrier to retransmit a distant television signal to a subscriber for a per-subscriber fee, subject to certain conditions. This license sunsets on December 31, 2014.

- The conditions of Section 119 are key. Respecting the principle of localism, only those subscribers that live in "unserved households," i.e., households determined not to receive a local broadcast signal, are eligible for a distant network signal. This provision was intended to protect the local viewing public's ability to receive locally oriented news, information and other programming by preserving the exclusivity local television stations have in their network and syndicated programs.

- This Subcommittee may choose to consider whether the time has come to allow the Section 119 license to sunset as Congress originally intended. While originally adopted to provide network programming to the large number of satellite viewers unable to receive it from their local station, today more than 98% of viewers have the option of viewing network programming from their local affiliate.

- None of the related Communications Act sections are scheduled to sunset; however three narrow provisions within those sections related to retransmission consent are set to expire. Consideration of these narrow provisions should not invite unnecessary arguments outside the scope of this legislation. Specifically, this reauthorization discussion should not be used as a vehicle for re-opening retransmission consent generally or delving into extraneous issues that undermine localism.

Mr. WALDEN. Ms. Mago, thank you very much for your testimony.

We will now go to Jennifer Kieley, and before we do, I should point out that she is a fill-in witness this morning. Lonna Thompson was supposed to testify but fell ill last night, and so be kind to Jennifer. She is the Director of Government Relations, Association of Public Television Stations, and Lonna is the Executive Vice President, Chief Operating Officer, and General Counsel for Association of Public Television Stations, so today we have the Director of Government Relations, Jennifer Kieley. Jennifer, thank you for joining us, and we look forward to the testimony of the public television stations.

STATEMENT OF JENNIFER KIELEY

Ms. KIELEY. Thank you, Chairman Walden and Ranking Member Eshoo, members of the subcommittee. I greatly appreciate the opportunity to substitute in Lonna's place today on this very important issue to the Association of Public Television Stations.

This issue is of great importance to our 368 local public television stations throughout this country. It has a tremendous influence on the services that are available to your constituents, our viewers, nationwide, but particularly those living in rural America that are often limited to their paid television programming options and disproportionately depend on satellite services.

First and foremost, we would like to thank this committee and the Congress as a whole for the passage of STELA which recognized the critical services that local public broadcasting stations provide their communities nationwide. Because of that legislation, viewers in even the most remote corners of this country that receive local satellite HD service, have access to the best that public television has to offer in the full splendor of HD. We are also appreciative of the language that was included in STELA which allows satellite carriers to carry local public television statewide licensees' signals throughout the entire state where DBS providers have the bandwidth to do so. This provision removed statutory roadblocks that restricted the ability of residents and tax payers in states to receive the full benefits of their state's public television statewide network.

Public broadcasting is charged by the Public Broadcasting Act with providing universal service to every corner of this country, and STELA has enabled us to help meet this mission and provide the highest quality of services to our satellite viewers.

As Congress looks to reauthorize STELA, public television proudly highlights the private carriage agreements that we have been able to negotiate with almost all major MVPDs. Rather than rely on Congress to work out these carriage agreements, which can admittedly be challenging, we pioneered our own private agreements with cable, Verizon and DirecTV.

Before the passage of STELA, we were still hopeful that we would be able to negotiate a similar carriage agreement with DISH. Unfortunately, after years of unsuccessful negotiations, we were never able to close a deal with DISH that would have guaranteed carriage of all of our stations' HD signals. As a result, before STELA was signed into law, DISH was not carrying a single HD

signal of any local public television station, but STELA mandated the carriage of local public television stations' HD signals by any carrier that had not entered into private carriage negotiations with public television. And now, DISH is required by law to carry the local HD signals of public television stations in all markets where they offer local HD service.

This provision was included in STELA because Congress recognized the unique educational mission of local public television stations and the void that was felt by citizens that were previously denied access to these critical services. We were also pleased that when DISH challenged us all in the courts, the courts upheld STELA.

As a result of STELA, viewers in Oregon are able to watch Oregon Field Guide, a valuable source of information about outdoor recreational issues, ecological issues, natural resources and travel destinations in the full detail of HD. In the San Francisco Bay area, subscribers to satellite have access to the HD version of Quest, KQED's award-winning multimedia science and environment series. And in Michigan, Ohio, Illinois, Pennsylvania, Nebraska, and communities nationwide, Americans can travel the galaxies with NOVA, tune in for a live performance at the Met, celebrate the 4th of July with a front row seat at the Nation's Capital, catch up on the latest drama of Downton Abbey, all this and so much more, in the sunny display of high-definition television. This is public television as it is meant to be seen and appreciated.

Public television is in the business of providing local public service. We treat our viewers as citizens, not consumers. Our stations provide over 98 percent of Americans with the highest-quality, free, educational media available. And in addition to all the great broadcast services that local public television stations offer, our stations are also providing cutting edge public services to communities beyond the broadcast, from educational services to public safety, to veterans job retraining, these services and so much more are part of the vibrant public service media that this country has invested in and we are proud to deliver to your constituents. Because an investment in public media is truly an investment in the unique needs of local communities nationwide.

Again, we would like to thank this committee, and particularly Representative Eshoo, who authored the amendment which guaranteed our HD carriage, for all your work in crafting legislation that recognized the incredible value and critical services that are provided by local public television stations.

Thank you for inviting us to participate in today's hearing. We look forward to continuing to work closely with you as prepare to reauthorize this legislation.

[The prepared statement of Ms. Kieley follows:]

Testimony of Lonna Thompson
Executive Vice President, COO and General Counsel
Association of Public Television Stations
Before the House Energy and Commerce Committee
Subcommittee on Communications and Technology
February 13, 2013

Chairman Walden, Ranking Member Eshoo, and members of the subcommittee thank you for inviting me to testify before you today on behalf of the Association of Public Television Stations (APTS). The reauthorization of the Satellite Television Extension and Localism Act (STELA) which governs the transmission of local public television signals to millions of direct broadcast satellite (DBS) viewers, is of great importance to the 368 public television stations across the country. This law directly impacts the carriage of our local stations throughout the country and it has tremendous influence on the services that are available to your constituents and our viewers nationwide, particularly those in rural America that are often limited in their Multichannel Video Programming Distributors (MVPDs) choices and disproportionately depend on satellite as a means to receive their paid television programming.

First and foremost, we would like to thank this Committee and the Congress as a whole for the passage of STELA which recognized the critical services that local public broadcasting stations provide their communities nationwide. Because of that legislation, viewers in even the most remote corners of this country that receive local satellite HD service, have access to the best that public television has to offer in in the full splendor of high definition. No longer are customers denied access to the HD presentations of NOVA, Nature, Masterpiece Theater and exceptional local programming, thanks to the work that Congress did ensuring that all satellite providers that carry local HD channels must also carry the HD signals of local public broadcasters.

We are also appreciative of the language that was included in STELA which allows satellite carriers to carry public television statewide licensees' signals throughout the entire state where the DBS providers have the bandwidth to do so. This provision removed statutory roadblocks that restricted the ability of residents and tax payers in states to receive the full benefits of their state's public television statewide network.

Public broadcasting is charged by the Public Broadcasting Act with providing universal service to every corner of this country. We take that mission seriously and we are proud to deliver unparalleled children's educational content, the best in nature and science, in-depth historical and cultural programming, unmatched public affairs programming and some of the finest dramas on television. STELA enabled public broadcasters to meet this universal service mission and provide the highest quality of services to our satellite viewers.

PUBLIC TELEVISION'S PRIVATE CARRIAGE AGREEMENTS

As Congress looks to reauthorize STELA, public television proudly highlights the private carriage agreements that we have been able to negotiate with almost all major MVPDs. Rather than rely on Congress to work out these carriage agreements, which are admittedly challenging, we pioneered our own private agreements with cable, Verizon and DIRECTV.

THE NEED FOR A LEGISLATIVE SOLUTION IN STELA

When I last testified before Congress, before the passage of STELA, we were still hopeful that we would be able to negotiate a similar carriage agreement with DISH. Unfortunately, after years of unsuccessful negotiations, we were never able close a deal with DISH that would have

guaranteed carriage of all of our stations' HD signals. As a result, before STELA was signed into law, DISH was not carrying the HD signal of any local public television station —even in markets where they offered the HD service of commercial broadcasters.

STELA mandated the carriage of local public television stations' HD signals by any satellite carrier that had not entered into private carriage negotiations with public television. Now, DISH is required by law to carry the local HD signals of public television stations in all markets where they offer local HD service. DISH challenged this law in court and we were pleased that the courts upheld STELA.

This provision was included in STELA because Congress recognized the unique educational mission of local public television stations and the void that was felt by citizens that were previously denied access to these critical services.

RESULTS OF STELA PASSAGE

As a result of STELA, viewers in Oregon are able to watch *Oregon Field Guide*, a valuable source of information about outdoor recreation, ecological issues, natural resources and travel destinations in the full beauty of High Definition. In the San Francisco Bay area, subscribers to satellite have access to the HD version of *Quest*, KQED's award-winning multimedia science and environment series. In Ohio, viewers in the Bowling Green area can tune into WBGU's HD programming and watch *Scenic Stops*, the station's new local program that explores what is off the beaten path in WBGU's 19-county viewing area. And in Pittsburg, viewers can tune into WQED and watch the special production of *Pittsburg From the Air* which will take them on an HD aerial sightseeing tour of some of the most visually stunning attractions in Southwestern Pennsylvania.

In Massachusetts, Illinois, Iowa, Nebraska, Tennessee and communities nationwide, Americans can travel the galaxies with NOVA, tune in for a live performance at the Met, celebrate the fourth of July with a front row seat at the Nation's Capital, catch up on the latest drama of *Downton Abbey*, and so much more, all in beautiful display of high-definition television from the comfort of their own living rooms. This is public television as it is meant to be seen and appreciated.

Public television is in the business of providing local public service. We treat our viewers as citizens, not consumers. Our stations provide over 98 % of Americans with the highest-quality, free, educational media available. This includes unique community resources that would not otherwise be available, like unparalleled noncommercial children's educational content, local programming, formal and informal educational instruction for all ages, in-depth news and public affairs coverage and unmatched cultural programming. Thanks to STELA, those services are available to all DBS subscribers, regardless of where they live.

In addition to all the great broadcast services that local public television stations offer, our stations are also providing cutting edge public service to communities beyond the broadcast—particularly in the area of education. These services include bringing multimedia course work and lesson plans to teachers in Oregon; using new media tools to foster financial literacy in ESL classrooms in Northern California; pioneering educational technology in Massachusetts in a way that allows public television stations throughout the country to offer curriculum-aligned, standards-based digital learning objects for use in classrooms nationwide; and producing innovative online and video adult education resources in Kentucky, aligned to the Common Core Standards, that help adults successfully prepare for the GED® test.

Stations across the country are also partnering with their local public safety officials to use their broadcast spectrum to send encrypted information to police and rescue respondents at headquarters

and in remote locations. Many stations are serving as the CSPAN of state legislatures, broadcasting all state legislative activities to viewers throughout the state so that even those in the most remote corners of the country can be connected with their legislators. Stations have also made it a mission retrain the American workforce and serve America's returning veterans, with some stations offering extensive job retraining and certification courses for both veterans and nonveterans.

All of these services and more, are part of the vibrant public service media this country has invested in and we are proud to deliver to your constituents. Because an investment in public media is truly an investment in meeting the unique needs of local communities nationwide.

Again, we would like to thank this Committee, and particularly Representative Eshoo, who authored the amendment which guaranteed our HD carriage, for all your work crafting legislation that recognized the incredible value and critical services that are provided by local public television stations.

Thank you for inviting me to participate in today's hearing. The reauthorization of STELA is critical to all public television stations and we look forward to continuing to work closely with you as prepare to reauthorize this legislation and assess what needs remain.

Mr. WALDEN. Thank you, Ms. Kieley, and I can assure you, we are not going to get between your viewers and Downton Abbey.

Ms. KIELEY. Good plan.

Mr. WALDEN. That would not be good.

Let us go now to Mr. Michael O'Leary, Senior Executive Vice President of Global Policy and External Affairs, the Motion Picture Association of America. Mr. O'Leary, thanks for joining us this morning and rounding out our panel. We look forward to your testimony, sir.

STATEMENT OF MICHAEL O'LEARY

Mr. O'LEARY. Thank you, Chairman Walden, Chairman Upton, Ranking Member Eshoo, and members of the subcommittee. Thank you for inviting me to testify this morning on behalf of the Motion Picture Association of America. I also want to acknowledge my fellow panelists. It is an honor to be on the panel with the folks today, and to provide our perspective on the potential reauthorization that this subcommittee is undertaking.

My message on behalf of the industry that creates much of what you see on television is very simple and very straightforward. The satellite and the cable compulsory licenses are historically anachronistic that are no longer justified in today's television programming marketplace. If those licenses were to be retained, however, they should not be expanded in our view. Program owners should be more fairly compensated, and a direct marketplace should be encouraged.

I want to be clear at the outset that we share the goal that was articulated by the chairman in his opening remarks, and I believe by everyone on this committee, and that is to provide consumers with the highest quality entertainment and informational experience possible, and to expand choices available in television in new and innovative ways. At the same time, it is imperative that the hardworking men and women who invest their talent and capital to create the programming receive fair market compensation, and that the law promote marketplace innovation.

Mr. Chairman, there is no better time to be a consumer of content than today, and we are confident that the future will bring even more high quality entertainment to viewers around the Nation, and frankly, to those around the world. The studios I represent create much of the programming that we all enjoy today. We have an incentive to get those programs in front of as many viewers as possible, and we believe that the marketplace can have a big role in making that happen.

Just as the television landscape will continue to evolve in the months and years ahead, it has changed dramatically since the enactment of the compulsory licenses being discussed here and in the coming months. The market conditions that led Congress to create the cable and the satellite compulsory licenses have long since disappeared. Congress decided, as you know, in 1976 and again in 1988 to introduce compulsory licenses to help what were then fledgling cable and satellite industries acquire retransmission rights in television programming. Government intervention in the marketplace was deemed necessary at those times to ensure the viability of what were then new services. Today, the overwhelming

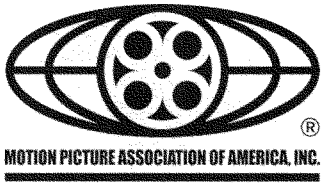
majority of programming being offered by cable and satellite is licensed through marketplace transactions. There is simply no justification in today's market for a satellite compulsory or cable compulsory licenses. There is certainly no justification for retaining a license that imposed below market rates for the acquisition of that programming.

As my written testimony notes, the royalty rate paid by satellite carriers under Section 119 today is roughly the equivalent of the market rate paid for programming in 1999, almost 15 years ago. At the same time, in that same period of years, the cost of producing programming has continued to increase. Today, the cable and satellite industries are, to their credit, very successful. They have over 90 million subscribers and report a combined revenue in excess of $80 billion. The compulsory license royalty fees paid, however, equal less than one half of one percent of their combined revenues. One can not help but ask how government intervention in licensing of retransmitted programming by these industries can be justified in today's marketplace, and we believe this should be a threshold consideration for the committee as you move forward over the next 2 years.

Should Congress, however, as a result of these proceedings determine that compulsory licenses should be prolonged, we would strongly urge the committee not to expand either license to new market entrants. Congress should not further impede the ability of program owners to obtain the true economic value of their work, and instead should encourage development of marketplace regimes.

On behalf of our members, Mr. Chairman, I again want to express our sincere gratitude to you and this committee for holding this hearing, for getting, as you indicated, an early start. This is a complicated issue. It is a difficult issue, and we are confident that this will be the first of many conversations over the next few months, and we welcome and look forward to the opportunity to be a part of that. Thank you.

[The prepared statement of Mr. O'Leary follows:]



STATEMENT OF MICHAEL P. O'LEARY,
SENIOR EXECUTIVE VICE PRESIDENT,
GLOBAL POLICY AND EXTERNAL AFFAIRS,
ON BEHALF OF
THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

BEFORE THE HOUSE ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND
TECHNOLOGY

"SATELLITE VIDEO 101"

RAYBURN HOUSE OFFICE BUILDING, ROOM 2322
WASHINGTON, D.C.

WEDNESDAY, FEBRUARY 13, 2013
10:30 A.M.

Chairman Walden, Ranking Member Eshoo and members of the subcommittee, thank you for this opportunity to testify on behalf of the Motion Picture Association of America, Inc. and its member companies to present the views of the creators and distributors of movies, television series, specials and other prerecorded entertainment programming that constitute the largest category of television programming retransmitted by satellite carriers and cable operators under the statutory compulsory licenses in sections 111, 119 and 122 of the Copyright Act.[i]

With due respect to the satellite carriers and cable operators who ever more efficiently deliver programming to the homes of consumers, it is not headends, or satellites, or fiber-optic cables that consumers crave and for which they are willing to pay. It is entertaining and informative programming that consumers desire. As the Committee begins its re-examination of the Satellite Television Extension and Localism Act of 2010, I want to stress that our goal is to provide consumers the highest possible quantity and selection of television programming in the most innovative ways. To do that, the men and women who invest their talent and capital to create that programming must receive fair market compensation, and the law must promote marketplace innovation.

With that in mind, my message today is simple and straightforward:

1. The cable and satellite compulsory licenses are historical anachronisms that are no longer justified in today's television program marketplace;
2. If the compulsory licenses are retained, their scope should not be broadened, program owners should be fairly compensated, and direct marketplace program licensing should be encouraged.

Because the sunset of the latest extension of the satellite compulsory license at the end of 2014 offers an opportunity to discuss the efficacy of continuing the compulsory licenses, I will start with a short history of the satellite license and then move on to some of the issues that are sure to be raised during the course of this discussion.

HISTORY OF THE SATELLITE COMPULSORY LICENSE

The Satellite Home Viewers Act ("SHVA") of 1988 created in Section 119 of the Copyright Act a five-year "compulsory license" that allows direct-to-home satellite program distributors (such as Dish Network and DirecTV) to retransmit broadcast television programming from distant markets to "unserved households" without the permission of the copyright owners of that programming. This satellite compulsory license, like the cable compulsory license enacted more than a decade earlier, limits the rights of copyright owners and forces them to make their creative works available for retransmission without their consent and without any ability to negotiate a fair, marketplace price.

The satellite compulsory license was extended for five-year periods in 1994, 1999, 2004, and 2009. The 1994 renewal included a royalty rate adjustment procedure aimed at providing copyright owners with market value compensation for the use of their programming by satellite companies. This procedure resulted in the establishment of market based royalty rates in 1998 by a panel of independent arbitrators appointed by the Copyright Office.[ii] However, these market based rates were short lived.

Although satellite companies pay market-based license fees for the hundreds of non-broadcast program services that they sell to their subscribers, they strongly objected to paying market based royalty rates for <u>any</u> retransmitted broadcast programming. They successfully petitioned Congress to impose a substantial discount on the market based rates, essentially creating a subsidy for satellite television services borne by the creators of broadcast programming.

After the <u>reduction</u> of satellite royalty rates in 1999, Congress in the 2004 reauthorization provided for an adjustment of the rates under the supervision of the Librarian of Congress. Voluntary negotiations between satellite carriers and program owner groups resulted in only a marginal rate increase and an annual inflation adjustment. More than ten years later, the current royalty rate paid by satellite carriers under Section 119, finally equals what was considered the market rate in 1999, notwithstanding substantial increases in programming costs and the market-based rates paid by cable and satellite operators for non-broadcast channels since that time.

NEITHER THE SATELLITE NOR THE CABLE COMPULSORY LICENSE IS JUSTIFIED IN TODAYS MARKETPLACE

The market conditions that gave rise to the cable compulsory license in 1976, and the satellite compulsory license in 1988, have long since disappeared. In 1976, distant and local television broadcast signals were the only programming cable operators could sell to their subscribers. By 1988, the emerging direct-to-home satellite industry offered some non-broadcast networks, but being able to offer distant television broadcast signals was critical to the ability of then-nascent satellite television services to compete with more established cable services. In both instances, the prevailing opinion was that the "transaction cost" of negotiating retransmission rights for the television broadcast programming that was so essential to these still emerging services justified government intervention in the marketplace to ensure the viability of these services.

Today, local and out-of-market ("distant") television broadcast signals remain a valuable part of cable and satellite program packages, even though they account for a relatively small amount of the programming sold by satellite carriers and cable systems to their subscribers.

If it were not, we would not be here. But, in thinking about whether compulsory licensing can be justified in today's marketplace environment, it is important to recognize that each one of the tens of thousands of hours of non-broadcast programming sold by cable and satellite systems to their subscribers is licensed on marketplace terms and conditions. The rapidly growing market for online video is also governed entirely at arms-length marketplace negotiations. Only the relatively small amount of local and distant broadcast programming retransmitted by cable and satellite providers is subject to a government imposed compulsory copyright license.[iii]

The fact that the overwhelming majority of programming offered by cable and satellite companies is licensed in marketplace transactions suggests that there is no longer any justification for retaining the historical relics that are the cable and satellite compulsory licenses. And there is certainly no justification for requiring licensing of broadcast television content to cable and satellite operators at below market, government imposed rates.

As the Register of Copyrights stated in the Copyright Office's most recent Section 109 Report:

> The cable and satellite industries are no longer nascent entities in need of government subsidies through a statutory licensing system. They have substantial market power and are able to negotiate private agreements with copyright owners for programming carried on distant broadcast signals. The Office finds that the Internet video marketplace is robust and is functioning well without a statutory license. The Office concludes that the distant signal programming marketplace is less important in an age when consumers have many more choices for programming from a variety of distribution outlets.[iv]

THE SATELLITE AND CABLE COMPULSORY LICENSES WERE SEPARATELY DESIGNED FOR VERY DIFFERENT SERVICES, EACH WITH ITS OWN DISTINCT NEEDS AND BUSINESS MODELS

Although the programming services offered by cable systems and satellite carriers are largely indistinguishable today, they were very different when the satellite license was first imposed in 1988. Cable systems from the outset offered subscribers a collection of local and distant broadcast signals. In many instances, the primary appeal of cable service was that it provided better reception of local signals while eliminating the need for roof-top antennas. And cable was largely an urban and suburban service because of the high cost of stringing cable wires in sparsely populated, rural areas.

When direct-to-home satellite services came on the scene, they provided no local stations and only a few distant signals because of bandwidth limitations. They catered to rural customers who had available few, if any, over-the-air local stations and in areas where satellite service had an infrastructure cost advantage over cable.

Because of these significant differences between the two services, the cable and satellite compulsory licenses were drafted quite differently. The cable compulsory license, enacted in 1976, employs a royalty formula based on a percentage of cable subscriber receipts that was not geared to market prices, but produced a royalty payment in the amount that Congress thought appropriate in 1976.[v] This formula did not directly link the royalty fee to the number of TV signals carried. Rather, the largest cable systems' fee is based on cable subscriber revenues multiplied by "distant signal equivalents," a 1976 construct of the amount

of non-network programming on different types of distant retransmitted TV signals. Congress did require, however, that even if a cable system carries no distant signals, a minimum royalty fee must be paid "for the privilege of retransmitting distant non-network programming."[vi]

The distant signal equivalent royalty fees are intricately tied to the number of distant signals that could be carried under Federal Communications Commission (FCC) rules that were last in effect in 1981. For distant signals that a cable system could not have carried under those FCC rules, a much higher royalty rate applies. In effect, the rate structure creates an incentive for the largest cable systems to limit the number of distant signals that they carry to the number allowed under the FCC rules rescinded in 1981.

The rates set by Congress in the cable compulsory license formula were set at less than market value under a government-run compulsory licensing system as a means to encourage the growth of the then-emerging cable industry. In 1988, direct-to-home satellite companies provided a very different service as compared to the service offered by cable companies. As a result, Congress chose a very different royalty formula in the satellite compulsory license, one based on the number of subscribers per month that receive each retransmitted distant broadcast station multiplied by a monthly per subscriber rate. In contrast to the more complicated cable compulsory license royalty calculation, the satellite fee relates directly to "the total number of subscribers that received such retransmissions"[vii] and is the same for all distant signals carried. The satellite flat fee per subscriber per month is also much simpler to administer than the complicated cable royalty fee calculations.

COMPULSORY LICENSE ROYALTIES PAID BY CABLE AND SATELLITE COMPANIES HAVE NEGLIGBLE IMPACT ON CONSUMERS

For 2011, cable systems paid royalties totaling $213,977,846 and satellite carriers paid royalties totaling $93,902,149, for a grand total of $307,879,995.[viii] While this is a substantial amount of money it is a negligible portion of cable and satellite's operational costs.

The National Cable & Telecommunications Association (NCTA) reports that 2011 estimated cable video revenue was $ 56,938 Billion.[ix] Compulsory cable royalties are less

than 0.4% of these revenues. DirecTV reported 2011 U.S. revenues of $ 21.87 Billion.[x] The other major satellite carrier, Dish Network, reported 2011 revenues of $3.63 Billion.[xi] Royalty fees paid under the satellite compulsory license will amount to some 0.4% of these revenues.

NCTA reports 58 million cable video subscribers in 2011.[xii] DirecTV and Dish Network subscribers totaled 19.981 million and 14.042 million, respectively, in 2011.[xiii]

IF THE COMPULSORY LICENSES ARE RETAINED, CONGRESS SHOULD ENSURE FAIR-MARKET COMPENSATION TO PROGRAM OWNERS, THE LICENSES SHOULD NOT BE EXPANDED, AND MARKETPLACE LICENSING SHOULD BE ENCOURAGED

The evidence is overwhelming that the program marketplace can and, for the vast majority of cable and satellite programming, does work without the need for compulsory licensing. Certainly there is no justification for continuing the practice of below-market license rates to compensate program owners, or for further expanding the current licenses beyond the entities now eligible, or to cover retransmission of distant programming not currently permitted. In particular, because both the cable and satellite licenses are inextricably bound to regulations of the FCC, such as those governing network program non-duplication and syndicated exclusivity, any entity not subject to those regulations should be excluded from the scope of the existing compulsory licenses.

If Congress decides to continue to allow cable and satellite companies to use broadcast programs pursuant to statutory license, Congress should not further impede the ability of program owners to obtain the full economic value of their creations through exclusive licenses with broadcast stations and networks, or diminish the value of such licenses once they are entered into. Respect for freely negotiated program licenses with stations and networks written into the existing compulsory licenses by incorporating the FCC network non-duplication and syndicated exclusivity rules should be maintained and, where necessary, strengthened where broadcast stations and program owners have bargained for exclusive rights.[xiv] Congress should encourage marketplace transactions that strike a fair bargain between rights owners and program users. The existing licenses are "compulsory" only for program owners. They allow cable and satellite companies to enter the marketplace

and license programs directly from owners even when the compulsory licenses might apply.[xv] Such direct licensing should be encouraged. Whatever Congress does in this area, it should ensure that these licenses in no way discourage such direct licensing and preserve the option to engage in direct, marketplace licensing rather than taking advantage of the mechanism of the compulsory licenses.

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[i] Motion Picture Association of America, Inc. ("MPAA") is a trade association representing six of the world's largest producers and distributors of motion pictures and other audiovisual entertainment material for viewing in theaters, on prerecorded media, over broadcast TV, cable and satellite services, and on the Internet. MPAA members include Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. MPAA also represents some 200 non-member program producer and syndicator claimants to cable and satellite compulsory license royalties with respect to the distribution of such royalties.

[ii] The Panel specifically endorsed the approach taken by PBS that looked to the viewing rights to 12 popular basic cable networks (A&E, CNN, Headline News, Discovery, ESPN, the Family Channel, Lifetime, MTV, Nickelodeon, TNN, TNT, and USA) that represented the closest alternative programming to broadcast programming for satellite homes. PBS then calculated a 'bench-mark' rate for these networks as representative of the fair market value of broadcast signals retransmitted by satellite carriers. That benchmark rate produced average market rates of 26 cents in 1997, 27 cents in 1998 and 28 cents in 1999, which translated to a royalty rate of at least 27 cents for the 1997-99 period. *Rate Adjustment for the Satellite Carrier Compulsory License*, 62 Fed. Reg. 55742 at 55648 (Oct. 28, 1997), affd SBCA v. *Librarian of Congress, 172* F.3d 921 (D.C.Cir. 1999).

[iii] Local station programming is also retransmitted under the compulsory licenses. However, copyright owners receive no compensation for the retransmission of local broadcast programming within their local markets. Local station programming is subject either to must carry or retransmission consent. See 47 U.S.C §325(b)(1).

[iv] Satellite Home Viewer Extension and Reauthorization Act, Section 109 Report, A *Report of the Register of Copyrights, June 2008,* at page 219.

[v] H.R. Rep. No. 1476, 94th Cong., 2d Sess. at page 91.

[vi] Id. at page 96.

[vii] 17 U.S.C. Section 119(b)1)(A).

[viii] http://www.ncta.com/Stats/CustomerRevenue.aspx

[ix] Copyright Office Royalty Fees Financial Statements as of 12/13/2012.

[x] http://investor.directv.com/releasedetail.cfm?ReleaseID=649162

[xi] http://about.dish.com/press-release/financial/dish-network-reports-fourth-quarter-and-year-end-2011-financial-results

[xii] http://www.ncta.com/Stats/BasicCableSubscribers.aspx

[xiii] http:www.ncta.com/Stats/TopMSOs.aspx

[xiv] The cable license requires cable operators to provide exclusivity for syndicated programming on both independent and network distant stations retransmitted in local markets ("Syndicated Exclusivity" or "Syndex Protection"). That is, if a local station has exclusive rights to broadcast a particular syndicated program, the cable operator upon request from the local station must not violate the local station's exclusive rights by retransmitting that same program from a distant station. The satellite license provides syndicated exclusivity with respect to distant independent stations, but not distant network stations. This disparity along with the network non-duplication disparity should be corrected by amending the satellite license to afford the same syndicated exclusivity protection rights as the cable license.

[xv] For instance, a cable system located in a DMA that encompasses areas in adjacent states and carrying "local" signals from another state could negotiate with distant in-state stations for retransmission rights to the news and public affairs programming owned by those in-state stations separate and apart from the cable compulsory license.

Mr. WALDEN. Thank you very much, Mr. O'Leary. You are absolutely right. We will have additional hearings, and I am sure a lot of conversations in the months ahead.

That concludes our panelist's testimony. We appreciate all of your words and your comments.

I will start out with questions this morning. This one is for the entire panel. I have read reports that—to the extent they are able to answer. I have read reports that between 1 and 1.5 million subscribers still receive distant signals. Is that accurate? Are those households predominantly rural, urban, or evenly distributed? And if Congress were to let the retransmission consent exemption and the distant signal compulsory license expire, would those households lose access to all local broadcast service? So first, is the million to million and a half number correct, where are those households, and what happens if we allow the distant signal compulsory license and retransmission consent exemption to expire?

Ms. Gore, can you tackle any piece of that?

Ms. GORE. The only piece of that that I can tackle, we do not keep figures on how many distant subscribers there are out there. I believe my colleagues on the panel here may be able to help you out there. I am aware that the distant signal license is used, as I think we all touched on, in many different circumstances. Sometimes it's someone who doesn't have access to any local broadcast stations, and so they are receiving what I tend to call a truly distant signal, which would mean perhaps from New York or Los Angeles, when they are not at all in that area.

There are other situations where the distant signal license, I gather, is used for filling in a short market, which we have talked about, and there the signal is coming from generally a more nearby area. What would happen if the distant signal license were let to expire, I cannot say. I know that the copyright office studied this and I know that the GAO looked into what the copyright office had reported, so they probably can speak for themselves. But it is a complex intertwining.

Mr. WALDEN. All right. Mr. Dodge?

Mr. DODGE. I am not exactly sure, I must admit, where the 1 million to 1.5 million number came from. I know at DISH, we actually don't keep track, although we may be able to get you that information, so we will take an action item to try to do that. But certainly, I believe it is a bigger issue for DirecTV today, because with the utility, the license is a little different for each of us. Where DirecTV still has some grandfathered subscribers, I believe, from years gone by and they are not in all 210 markets today, they still use a true distant license there for, I believe, providing programming to unserved households in the markets where they don't offer local programming, but how many customers that might impact, I don't know.

Mr. WALDEN. OK.

Mr. DODGE. With respect to DISH, we use a license primarily for three purposes, the largest of which is to fill in short markets, as Ms. Gore noted, so you know, for example in a market where someone doesn't have a FOX station, we import a FOX so that they are able to watch American Idol and similar programming, just like all

other Americans, and without the license we would have to shut those people off.

Similarly, we provide service outside the spot beam to certain customers, which allows service to a safer state, like Utah, which is largely rectangle, our spot beams are round, and so the corners get cut off. And unless those folks are able to get local programming via an off-air antenna, we would have to shut those folks out as well, and RVs and commercial trucks, too.

Mr. WALDEN. All right. Ms. Mago?

Ms. MAGO. I think what you have heard here is that there is getting to be fewer and fewer of these people that use the distant signal license, and I think it is—the exact number would be in the hands of the carriers to know that number, and I don't know that we have it. But even those instances that Mr. Dodge just talked about, they are becoming fewer and fewer as well, because as you provide local into local service into all 210 markets, it is relatively easy to provide that local signal to the—to anyone within that spot beam, and that seems to be a logical thing to do. Short markets are also disappearing as a result of the digital television transition. A lot of stations are able to use their multicast capacity to provide a second networks signal within the market.

So I think the key point for us continues to be our focus on localism, and making sure that we recognize how much fewer there are.

Mr. WALDEN. All right, and I am going to go to Ms. Kieley and then Mr. O'Leary, but I am running out of time, so sorry.

Ms. KIELEY. My answer will be easy. We unfortunately do not track that at the Association of Public Television Stations, and defer to our friends in the satellite industry to help us get a better handle on that, but I will echo what Ms. Mago has said, that localism is a top priority for us in public television.

Mr. WALDEN. All right. Mr. O'Leary?

Mr. O'LEARY. I will be brief. I know I can't validate that number. I have no way to dispute it. It ultimately would lie with the carriers. I agree with the comments of Ms. Mago. I would also note that even if it is retained, the distant signal license is still woefully under market—the rate is still woefully under market.

Mr. WALDEN. OK. I thank you all for your answers, and now turn to the ranking member of the subcommittee, Ms. Eshoo, for questions.

Ms. ESHOO. Thank you, Mr. Chairman, and thank you again to the panel for your very helpful testimony. I have a whole list of questions and I think that I will submit them in writing, but I want to ask you, with the exception of Ms. Gore, since she put it right out there that she was not going to recommend any kind of policy—no policy recommendations. To the four of you, starting with Mr. Dodge, so I have got 5 minutes with four people, so about a minute and a half. If you were going to choose your top policy preference in the reauthorization of STELA, what would it be? So that is to each one of you, starting with Mr. Dodge.

Mr. DODGE. It would be to ensure that consumers are able to continue to receive network programming during retransmission disputes.

Ms. ESHOO. Very good, thank you.

Ms. MAGO. As I said in my opening testimony, our top policy preference is to preserve localism and allow broadcasters to continue to provide the service to their communities.

Ms. ESHOO. Great. Ms. Kieley?

Ms. KIELEY. We just hope that any reauthorization of STELA continues to recognize the unique services of local public television stations, and how we are different in the marketplace.

Ms. ESHOO. Well, I am here.

Ms. KIELEY. We do appreciate that.

Ms. ESHOO. Thank God we got that one worked out. Thank you, Mr. Dodge. Thank you for your advocacy.

Ms. KIELEY. And that would be our top priority, as well as maintaining vibrant local service for our public television stations.

Ms. ESHOO. Great, thank you. Mr. O'Leary?

Mr. O'LEARY. Sure. I think that our top priority, as I outlined, is to get the content that we make in front of as many people as possible. That is our business model in simplest terms, and I think that we would advocate that the committee do that by one of two ways. One would be to step back and look at the entire context and see if the current regime continues to make sense, and if it ultimately comes to the conclusion that there needs to be some type of regime in place, to make sure that it is updated to reflect the times in which we live, and it is not necessarily bound up in the past.

Ms. ESHOO. Thank you very much. I think that we need to know more from you about—you referred to content, and I think there is an old context, an older context to it, and I think that there needs to be a new appreciation on the part of members of what you mean exactly by content and the Motion Picture Industry Association and in the 21st century. I think there are so many exciting things, but I would just make that as a recommendation.

Mr. O'LEARY. Absolutely, and we would be happy to provide that to the committee.

Ms. ESHOO. That members really be instructed and be brought up to snuff on what you are referring to.

Well, that is great. We have got—I like all of your answers. Thank you very much. I yield back.

Mr. WALDEN. Gentlelady yields back the balance of her time.

Chair now recognizes Mr. Barton for 5 minutes.

Mr. BARTON. I am here.

Mr. WALDEN. I was looking down my list and others weren't, but you were here at the gavel dropping, so——

Mr. BARTON. Thank you, Mr. Chairman.

Mr. O'Leary, I want to make sure I understand. Your testimony is not that these acts should not be reauthorized, it is that certain parts of them should be allowed to expire. Is that correct?

Mr. O'LEARY. I think there is that is something that should be part of the consideration that you undertake over the next 2 months whether or not it is essential to reauthorize all aspects of this, yes.

Mr. BARTON. OK, so I want to make sure I understand before I go to Ms. Mago. You—the motion picture industry is not advocating allowing them to expire, it is simply saying we should think about it? So you are a little bit—you are not a hard-hard, you are kind

of a medium-soft, am I right? I mean, I am not being funny, I am just——

Mr. O'LEARY. No, I understand. I think that we believe that, as I said in my testimony, that certain provisions here are anachronistic, and that they do not necessarily need to be—they could be allowed to expire. Having said that, we are also mindful, as has been alluded to in the comments made by members of the panel and members of this panel, this is an incredibly complex web of pieces that all kind of fit together. And so what I am trying to portray to you—I am not trying to be soft and squishy and in the middle, but the truth of the matter is, I am trying to be realistic. We think that some of these things are woefully outdated and could be allowed to expire. We think that is——

Mr. BARTON. But that is different than supporting the expiration. So you are—let me ask you a straight question, yes or no.

Mr. O'LEARY. Sure.

Mr. BARTON. If this subcommittee and the full committee were to support a clean straight reauthorization, no changes except the date, would your industry support that? Yes or no?

Mr. O'LEARY. I am not in a position to say right now what they would support. I do think that that would be preferable, frankly, Congressman, to expanding the license in any way.

Mr. BARTON. I am going to go to Ms. Mago, since I have gotten a pretty squishy answer from Mr. O'Leary.

Would your trade association support clean reauthorization with no changes except the dates?

Ms. MAGO. I am sorry, Mr. Barton, I have to frustrate you as well. We are so early in this process that at this point, we are still considering where the marketplace is, as I indicated, and while we see that there are anachronistic pieces and we think that expiration should be on the table, we haven't formed a final position.

Mr. BARTON. So if we put your group with Mr. O'Leary's group, you all will hug each other and then talk around each other for as long as we allow you to.

Ms. MAGO. We would all hug each other on this panel. We are like that.

Mr. BARTON. Anyway, I yield back, Mr. Chairman. I would definitely vote for a clean reauthorization. If there is a meeting of the minds from the stakeholders, I would certainly take a look at that. My guess is that the stakeholders have different views, and as they should, because of the economic consequences, and it is probably not as much peace and love at that table as they are portraying this morning.

Mr. WALDEN. And we could bring some other folks up and there would be real fireworks.

Mr. BARTON. Right. Thank you, Mr. Chairman.

Mr. WALDEN. We might do that today.

I thank the gentleman and now we go to Mr. Luján from New Mexico for questions.

Mr. LUJÁN. Mr. Chairman, thank you very much.

To Ms. Gore, there are some questions that I have for you which maybe aren't appropriate for this hearing, but we will be working with the FCC to look into the equitable treatment of tribal communities as well, as we talk about some of the rulings and renderings

and many of the very complex world, so I will get those to you and submit them into the record.

But for today's hearing, I am interested with all the witnesses, should Congress consider the changes in the competitive landscape for video services as we examine STELA, and especially with the question that Ranking Member Eshoo asked, content is very much different now. We are getting content in many different areas, and how far reaching should this be, or what should be included in that? Ms. Gore?

Ms. GORE. Well, I think I have mentioned that I am not going to give too many opinions. I will note one factual point, and that is that one of the things that expires is the requirement in Section 325 of the Communications Act for good faith negotiating, so that is one of the expiring provisions that perhaps you might want to consider.

Mr. LUJÁN. Thank you. Mr. Dodge?

Mr. DODGE. I guess what I would say policy-wise is we think that the law needs to be improved to address the interest of consumers in two key areas, which are, one—I mean, really, in the spirit of localism that consumers should be able to get network programming during takedowns, and two, folks in orphan counties, which are counties that actually are in a state but don't receive signals from a DMA in that state, should be given the opportunity to get local network channels from their state.

Mr. LUJÁN. I would agree with that. Ms. Mago?

Ms. MAGO. First of all, let me say for the record that broadcasters are always in favor of good faith. We negotiate in good faith all the time and will continue to do that, as appropriate, to make sure the consumers are able to receive our signals, because that is very important. It is important for us to reach every single member of our audiences that we can.

I think as we look at this legislation, as I indicated earlier, you have got to look at localism. Providing that local into local service in all 210 markets is a very important goal.

Mr. LUJÁN. I appreciate that.

Ms. KIELEY. I would just say on behalf of public television, that we recognize that these are very complex issues, many of which are intertwined, and we are very appreciative of the chairman and the leadership of this committee for taking an early look at this piece of legislation. And that we continue to look forward to working with Congress as you look at these issues, we too are looking at them, or early into the implementation, it feels, from the passage of STELA, and we are looking closely—as I mentioned to Ms. Eshoo's question, we first and foremost would want to make sure that any type of legislation that looks at the overall video competition would recognize a unique role that local public television stations play in that marketplace and preserve some of the unique protections that have been in place for our local public television stations.

Mr. LUJÁN. I appreciate that. Mr. O'Leary?

Mr. O'LEARY. Congressman, I don't know that I have a whole lot to add at this point. I don't disagree with anything I have heard.

Mr. LUJÁN. That is a good answer.

Mr. O'LEARY. All right, I will stop.

Mr. LUJÁN. Ms. Gore, does the FCC have information on how many consumers are receiving distant signals, how many of those households are receiving distant signals because Congress has grandfathered them in during previous satellite authorizations?

Ms. GORE. No, Mr. Luján, we do not have that information. That is not provided to us. We don't track how many distant signal subscribers——

Mr. LUJÁN. Does anyone have that information?

Mr. DODGE. We don't actually have any grandfathered subscribers at DISH.

Mr. LUJÁN. OK. Anyone? No?

Ms. MAGO. I think it is uniquely in the hands of the carriers.

Mr. LUJÁN. OK, maybe we can go to the carriers and chat with them. Mr. Dodge, do you agree with Mr. O'Leary's statement that the current satellite royalty rates under Section 119 are only equal to the market rate from 1999?

Mr. DODGE. Well, I agree with Mr. O'Leary on one key point. We certainly are all for fully compensating artists, you know, as they well deserve, and we are all for paying the market rate, so I guess in our view, the devil is in the detail of what a market rate should be. And if the proxy for that are retransmission rates today, we would argue that that is not a fair market rate, because it is not a fair fight today. In each DMA, you have got one broadcaster who effectively has been given a monopoly and plays all of the distributors off each other, and the rates are just going up 100 percent each year. And we would put forth that those are not comparable market rates.

But we also think the system today works where we sit down with the interested stakeholders, the MPA, the sports leagues, and negotiate what the rate should be after each reauthorization. And if we don't reach an agreement, then I believe it goes to the FCC or the copyright office to actually arbitrate that, and we have been able to reach agreement every reauthorization to this point.

Mr. LUJÁN. I appreciate that, Mr. Chairman, and as I yield back, you know, it has been brought up about the economic consequences and whether there is a permit or a reauthorization or STELA is not reauthorized, Mr. Chairman, I hope that we are able to explore what the economic consequences are one way or another, and what those impacted parties will fully realize.

So thank you, and with that, Mr. Chairman, I yield back.

Mr. WALDEN. Gentleman yields back the balance of his time. Chair now recognizes the Vice Chairman of the Subcommittee on Communications and Technology, Mr. Latta.

Mr. LATTA. Thank you very much, Mr. Chairman, and again, thanks very much to our panel for being here. You know, these are really important questions. You know, I represent what you might consider a suburban, rural-type district, and when we had the switchover to digital, I knew it was going to—we got a lot of phone calls from people about—because, you know, TV viewing is something that is important to a lot of folks out there. I can remember one day I was doing courthouse conferences, and I think I had five people in a row that came in and sat down and asked the exact same question about what was happening to their TV viewership,

and so I know that these are very important questions to folks out there.

And if I could, Ms. Gore, I would like to start with you with this question. Do television viewers—and this could be maybe a loaded question. Do television viewers understand how the current law works, and following up with that, what kind of complaints about satellite law does the FCC receive from viewers?

Ms. GORE. Mr. Latta, we looked into that and I am happy to report that the number of complaints that we got over the past year, 2012, was about—between 60 and 70 complaints that were catalogued as in this category. They have shifted, over my experience with this subject area, from a focus on concern about distant signals, and now the questions are more about local stations. The questions—I can't break them down into individual categories, but basically there are some situations where a consumer is getting the local package and then for some reason, they are suddenly getting a different local package. And so they contact us to understand why that was changed, and there were different reasons why it was changed. Sometimes it is an error on the part of the satellite operator, and sometimes it is because that DMA map may have changed, and so it is something that is accurate.

The essence of those complaints actually seems to be that consumers would like to choose the local stations that they are offered, as opposed to being confined to those within the DMA. I am not expressing an opinion, I am reporting what their complaints are.

Mr. LATTA. Let me just follow up with that just a little bit. When you do get those complaints, how long does it take for the turnaround time for the FCC to get back to the consumer with those answers?

Ms. GORE. Well actually, typically we have our wonderful call center folks who take a call, and they talk to the person on the phone and they explain it to them. If they submit a complaint in writing, then someone gets back to them, and oftentimes, if it is a complaint that is specifically about a particular satellite carrier, they will, I believe they use the term "serve" that complaint on the satellite carrier in order to get a response. So there is a process in place that has a certain time frame for the satellite carrier to respond in that case. Every once in a while, a consumer finds his or her way to me and we get to have a lesson in copyright.

Mr. LATTA. Well following up with that, if we could, on the predictive model indicates that if a viewer can get an adequate signal over the air, and is ineligible to receive distant signal service, the law allows the viewer to challenge that finding on a location test. Do the viewers ever request such tests, and if so, what happens?

Ms. GORE. The tests would be requested from the satellite carrier, not from us, so I do not have data on that. I do not know how often it happens. It used to be an issue before. That used to be the topic of some complaints and inquiries. As I said, over the past year, we have not heard any of those so—but I can't speak to that. The satellite carriers would know whether they are being requested to arrange for tests.

Mr. LATTA. Well, I guess if I could then turn to DISH then to maybe answer that question. Do you get those types of questions that come in from the consumers, Mr. Dodge?

Mr. DODGE. Since today we provide local channels in all 210 markets, we don't provide traditional distant service, if you will, where that would really come into play, but my understanding is historically, very few, you know, back when we did provide those services.

Mr. LATTA. Thank you very much, Mr. Chairman. I yield back.

Mr. WALDEN. Thank you. I thank the vice chairman for his work on this and other issues. I now recognize the fill-in ranking member from the great State of Vermont, Mr. Welch.

Mr. WELCH. Thank you very much, Mr. Chairman.

Many of us on this committee represent rural areas, both Republicans and Democrats, and many of the challenges that folks face in rural areas, both consumers and some of our broadcasters, seem to be different than some of the challenges that urban areas face for consumers and broadcasters. I really would be interested in the view of you who have so much experience about how you would describe some of the particular challenges that tend to face folks and broadcasters in rural areas. Ms. Gore, could I start with you?

Ms. GORE. As I mentioned, the complaints that we get or the inquiries that we get are often about the local package, and sometimes, very often, that is a rural area where consumers want to be able to get, perhaps, more of the stations that are from their own state. I know that that has been an issue in Vermont, historically, and in other places as well.

Mr. WELCH. But not just Vermont, right, I mean, that is a rural area as a whole?

Ms. GORE. It is a rural area issue all across the country. That was what we were talking about, which we sometimes informally call the orphan county issue where the country is in one state, but it is part of a DMA that is located predominantly in another state, and so there are not a lot of or perhaps any in-state stations available to those consumers. It is a small problem, but it is a big problem just in the way it is reported to me for those areas where that occurs.

Mr. WELCH. Thank you. I would like to really get the benefit of each of you telling us your thoughts on the rural challenges. Mr. Dodge?

Mr. DODGE. Sure, and so I would echo everything that Ms. Gore said. It is really the short market problem, it is areas outside of our spot beams, as you would imagine, you know, using Utah as an example. The corners of the state are very rural, and then also the orphan county issue is a predominantly rural issue, and that occurs in 40 states today.

Mr. WELCH. Do you have any suggestions on addressing that?

Mr. DODGE. Yes. What we have historically proposed, which I think is pretty darn fair, but let us use Colorado as the example where we have two counties in the southwestern portion of the state that are actually in the Albuquerque DMA. Our proposal has always been that we will provide those folks Albuquerque locals, but let us also give them one in-state signal of their choice, preferably Denver, because our spot beam covers down there, and ultimately let them choose which they prefer.

Mr. WELCH. Ms. Mago? Thank you, Mr. Dodge.

Ms. MAGO. From the broadcaster's perspective, one of the key challenges they face in the rural areas is making sure they have enough revenues so they can continue to provide the quality programming that they need to. But let me address the DMA issue for just a moment, if I could, please, because DMAs are not just sort of random boxes that are put around. They are designed by the Nielsen Company to reflect where viewers are actually listening to the stations, and that is why they shift, as Ms. Gore was explaining. They shift when viewer patterns change. But for the most part, providing the local into local DMA market signal is going to address the needs of the county. There are a few places where that becomes a little bit more challenging, and one of the things that the carriers can do is to provide the in-state programming that is not duplicating that network prime time programming, and they can do that, and it has been done in several areas to address the issue of making sure that those that are in-state are able to receive their in-state information.

Mr. WELCH. Thank you. Ms. Kieley?

Ms. KIELEY. Congressman, I would say from public television's perspective, serving rural areas is a top agenda item for us. We have a universal service mission, as I mentioned earlier, and we take that mission very seriously. I think part of our challenge, and with any paid television provider, is that on a broadcast—from a broadcast perspective, we serve over 98, close to 99 percent of this country with a free over-the-air signal, and it has been very costly to do that, and from a public television perspective, particularly in these rural areas. Rural areas, such as Vermont, often—your state, you would know quite well, can be mountainous and the terrain can be difficult, and for public television to serve those areas, we do that with a series of expensive equipment, many translators to fill in those coverage areas, and of course, in those areas we also have limited populations from which we can derive, you know, local support for our stations. And so we have a very robust broadcast presence in rural areas, from a public television perspective, and we very much appreciate the local into local that is part of the satellite bill that helps us to mimic that presence in satellite legislation.

I would say, touching a little bit one other special fix that public television has that was in the STELA law, we have a unique situation where a handful of our states, about 21 of them, have statewide licensees that are—the licenses are issued from the state to serve the residents of the entire state. Many of those rural, not all of them, but many of them are rural and so we were appreciative of the language in STELA that allows the satellite carriers, should they get the capacity, to serve those statewide licensees with the signal originating out of their state public television networks.

Mr. WELCH. OK, thank you very much. I yield back.

Mr. WALDEN. Just for the record, my district is seven times the size of Vermont, plus, so——

Ms. KIELEY. Many translators.

Mr. WALDEN. District of many translators. We go now to Representative Shimkus from Illinois.

Mr. SHIMKUS. Thank you, Mr. Chairman. Of course, a great committee, great issues, a lot of fun. I have been on it a long time.

I think every member should be issued a teenager in this digital age, because then you are up-to-speed on the new technology and how they watch, how they view movies. I was talking to my son just before we came out, and he is watching—I have never seen it—"The Walking Dead" and he can get the first 2 years, I guess, he watches on the Internet, and then, of course, the third year, he can't. He has got to wait for the broadcast or whatever. And it just reiterates the difference of how people are viewing content and how they go about it, and so there is one benefit of a teenager. There are some disadvantages. I can talk about those later.

So it is very exciting, and again, we want to support all of the work you do, and—but we are talking locally, too, and I was trying to—using my new technology and all this stuff, figure out my DMAs. I think I've got five, Springfield, Champagne, Decatur—that is the only one that is in Illinois—St. Louis, Cape Gerardo, Paducah, and Terre Haute. So I border three states, so we have this issue of the DMA and bleed over and the like, and we have just got to be careful, because in a congressional district that has any size, sometimes the folks will not want an Illinois signal. They will want the St. Louis DMA and they want to be there, where there may be others who will say well, can't we get Illinois news, because we are in a part of the state where they are receiving an Indiana station. So there is not a hard and fast rule of when you, you know, you want to default to one or the other, based upon the citizens of that area, so it is very tricky. I am just laying that out. We have experienced that.

Let me ask a question on—does anyone know how many actually short markets there are?

Mr. DODGE. There are 21.

Mr. SHIMKUS. And are there any in my—no, I mean, because—and so since there are 21, what is a way that we can kind of fix that problem, and is that—is this an avenue in reauthorization to try to do that?

Ms. MAGO. To some extent, the market is fixing itself. As I noted earlier, the—with digital technology, stations are able to have multiple streams that they can put out over their signal and they are, in fact, carrying——

Mr. SHIMKUS. Let me ask again, because I like that, the digital answer, so I don't know the answer now, but the digital cliff that we had initially, the analog signal went a long ways, and then we have digital TV and we have the digital cliff. Has technology pushed that digital signal back further out to meet the analog broadcast, or do we still struggle with that?

Ms. MAGO. The Commission did a lot of work in terms of trying to raise power levels to make sure that you were, in fact, duplicating those coverage areas that had been there before, and we are about to face it again as we look at the repacking that may happen as a result of the incentive auctions and reclamation of some of the broadcast——

Mr. SHIMKUS. Voluntary incentive auctions.

Ms. MAGO. Voluntary incentive auctions that will be part of that. The repacking part has never been voluntary. They hate it when I say that, but the repacking is not—has never been voluntary, and that is going to cause some issues, but I think for purposes today,

the spot beams that are provided on the satellite can help to bring in some of that service as well.

Mr. SHIMKUS. OK, let me finish up. I have got 1 minute left, and I agree with a lot of folks who are talking up here. Everyone views that there is some anachronism in the law, so that could be dealt with, so going—starting with Mr. Dodge, what would be an anachronism that you would like to get solved in a reauthorization or a rewrite in the law? Anything?

Mr. DODGE. I would——

Mr. SHIMKUS. This is trying to smoke you out to say, OK, what is your problem? What do you want fixed? I am using a big word. I usually don't use them that much.

Mr. DODGE. Sure. I would say the anachronism writ large in all these laws is the fact that it is an unfair fight in retransmission consent negotiations today, and the people that suffer are the consumers, because there are more and more takedowns occurring. I think in 2010, there were roughly 10, 2011, there were 50, last year there were 100, and it is the consumer that is paying the price. So I think that needs to be fixed. Consumers need to keep getting the signal during the—you know, while we work it out with the broadcasters, so to speak. And I would also say the orphan county issue is an anachronism of the whole system that needs to be worked out, and I think you raised a very good point. I mean, it may very well be that folks in southwestern Colorado prefer watching Albuquerque stations because they buy their Chevys in Albuquerque and they want to see those advertisements. But I think we should give them the opportunity to make that decision for themselves.

Mr. SHIMKUS. OK. I am going way over my time. If I can get, Mr. Chairman—so why don't we just go down the line? Thanks.

Ms. MAGO. First of all, you may have seen me kick Mr. Dodge under the table. We think that the retransmission consent negotiations are going forward. There have been a few——

Mr. SHIMKUS. This is what we want. I have been trained by Billy Tozan to get the fight going, so——

Mr. WALDEN. Maybe this was the education—you missed the previous.

Ms. MAGO. DISH Network has been involved in a number of those disputes, but we all try to work them out together and will continue to do that. I will note also, Mr. Shimkus, that I determined that there are no short markets in your district——

Mr. SHIMKUS. Thank you.

Ms. MAGO [continuing]. So that is an issue that you don't need to worry about.

Ms. KIELEY. I would just echo my earlier comments and say we think this is a very complicated process and we appreciate being included from the very beginning, and we will be looking for those anachronisms in the law along with you.

Mr. O'LEARY. The only thing I would say, it goes back to what I said at the outset which I think that as a threshold, the committee, the subcommittee should look at whether or not the role of government, as it was originally constituted, you know, 20 years ago, 30 years ago, what have you, is still applicable in the current

state that we are in right now. I think that is the single biggest issue that needs to be addressed.

Mr. SHIMKUS. Thank you.

Mr. WALDEN. OK. We now turn to the former vice chair of the committee, Mr. Terry, for 5 minutes if you have questions.

Mr. TERRY. Sure, why not. It has been asked several times before, but I haven't asked it. I am slightly confused on the local into local, and here I will just lay out the scenario. In the Sand Hills area in the middle of Nebraska where very few reside, the only option is satellite. In an area that is right outside of—in Nebraska, pretty good size town that has their own TV stations, in North Platte, Nebraska, but yet the satellite for that area, even just barely outside of the signal range from those stations, they get Denver. And the networks that cover—if you are cable or in the signal, get the Husker games and the Husker news, and people around Plattsmouth that get their satellite get Denver Broncos news, they don't like that. They like the Broncos, but they want the Huskers. So what is the technology issue here? What is forbidding the satellite companies from being able to put in the local TV that is an hour drive, hour and a half drive from these areas? Mr. Dodge, since you are a satellite guy, I will let you try and answer that.

Mr. DODGE. I am indeed. Well, with all due respect to what Ms. Mago said about the DMA system, I think it is largely a DMA system issue. We view it largely as a system that was set up in the 1950s based on what people were watching back then, and although theoretically DMAs shift over time based on actual viewership, there really is no way to change that viewership if you can only provide the local signal authorized for each DMA into that DMA. If, for example, we were allowed to do what I proposed for southwestern Colorado, which is give people the choice between Albuquerque and Denver, then over time, it may switch to Denver, but to Congressman Shimkus's point, it may not because those people may actually be interested in Albuquerque. Our view is let them decide and then maybe the maps shift.

Mr. TERRY. How about if the people in the area have actually received a letter from the FCC saying that they should be getting the North Platte TV stations? Is there a technical reason why the satellites couldn't do that area?

Mr. DODGE. I think what you are referring to is a case of significantly viewed, perhaps?

Mr. TERRY. Yes.

Mr. DODGE. I am not sure what their specific reason is in that particular area, but generally speaking, the problems we have had with significantly viewed are technology-wise, the signal that is significantly viewed may or may not be on the same spot beam as the local channel, which makes it very difficult to provide, and then there are also contractual issues sometimes where the station is being invaded, so to speak, might condition their retransmission consent unless not importing a signal, but similarly, we have to get the consent of the station we want to import to actually do the importation, and they may not grant us that consent.

Mr. TERRY. OK. I don't know if that is the issue. I would think that would be odd that they don't want somebody 100 miles away from their station not to see their station. But the answer is the

technology changes would be too costly, and I just didn't understand what that entailed, the technology changes.

Mr. DODGE. Yes, typically the issue is that the station that folks desire to import or that is significantly viewed is not on the same spot beam as the local market.

Mr. TERRY. How much generally does that cost a satellite company?

Mr. DODGE. It depends. Satellites cost typically these days about $350 million a piece, so——

Mr. TERRY. OK, so you would have send up a whole new satellite to bring that——

Mr. DODGE. In certain cases, yes.

Mr. TERRY. OK, interesting. Well, my time is almost up, but I am not done yet.

Mr. DODGE. We would be happy to get the specifics of that particular issue for you.

Mr. TERRY. You have them. You may not, personally, but your company does.

Mr. WALDEN. Gentleman yields back the balance of his time. Chair now recognizes the gentleman from Louisiana, Mr. Scalise, for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman, for the 101 hearing we are having to start getting into this. Of course, the reason we are here is because STELA expires. The laws that we are discussing today have sunset provisions and that is why we get to these various iterations, and it forces Congress to come back and look and work with industry and say what works, what doesn't work, and you know, hopefully when we are going into the next iteration before the expiration of STELA at the end of next year, we address the problems and the changes in the marketplace. It is a very dynamic marketplace. A lot of you have done some wonderful things to allow and bring high definition and great programming to more people, and so that sunset provision allows that to happen.

Now, you know, as we look at the broader marketplace of video regulations, most of them do not have sunsets, and I would be curious to take—it is more a policy question, so Ms. Gore, I will hold you harmless on this one, but I would be curious to see what the rest of the panel, what your thoughts are and not just looking at Section 119, but having sunset provisions on all of these laws that we would then force Congress to go back and say what is working, and what isn't, not just in the satellite arena, but in the others?

I will start with you, Mr. Dodge.

Mr. DODGE. And I think since 119 is the actual statute that is expiring at the end of 2014, people tend to look at just that and say I like this or I don't like that. It should sunset, it shouldn't. And our view of the world is if you are going to consider letting that sunset, it is a much broader discussion. We do think there are problems with 119. I have mentioned a bunch of those today. But if you are going to let that sunset, then I think you have to look at the entire mosaic, if you will, or quilt of all the statutory copyright licenses, 122, the cable licenses, because in my view and as long as I have been involved in this, they are all interrelated, and you can't just throw out 119 and not look at things like must carry,

retrans, et cetera, et cetera. And I think it is a discussion that is worthy of having.

Mr. SCALISE. Maybe another day we will have that discussion. Ms. Mago?

Ms. MAGO. Well, if you let me go outside of the realm of the specific hearing that we have here, I mentioned the broadcast ownership regulations are ones that we have advocated for some time need to have someone relook at them.

Mr. SCALISE. I agree with you there. Thank you. Ms. Kieley?

Ms. KIELEY. Thank you. I would echo, it is very complicated and very intertwined. Many of these pieces are very intertwined and we do just hope, you know—public television are must-carry stations and doing things like doing away with the compulsory license could actually—even though we aren't involved in retransmission consent, could impact public television stations and so we are just appreciative that the committee is taking an early look at this and hope that they will continue to look at how intertwined these issues are, and what the unique needs of local public television stations are.

Mr. O'LEARY. Congressman, I would agree with what you said. I think it is never a bad idea to have Congress go back and see what is working and what is not working. I think implicit in your question is the simple fact that these thing are intertwined and that if you look at them collectively, you are more likely to have a better view of what works for the consumer in the long run and so I would agree with what you are saying.

Mr. SCALISE. Thank you, and I think you had talked in your testimony about, you know, what is it that consumers really want? Consumers, you know, they want content. They want the entertainment. They are not—they don't necessarily want to have—they don't want to buy a satellite dish, they want to have the content and the entertainment that comes with it. They don't want cable or fiber optic, that is not why they are paying the monthly bill. It is because of what comes in, and so when you look at what they are really interested in, is it the broadcast signal that they are interested in or is it the content that comes with that broadcast signal?

Mr. O'LEARY. Well, I think quite honestly it is a little bit of both. I think that there is—you know, people want local broadcasters for news and things like that. I think they want content. I think the short answer, Congressman, is consumers want everything right now, and the good news is that they are living in an era where you have got a better chance of getting everything than you did before. You look at the television as it existed when we were children and you look at the television that our children are growing up with, those are vastly different platforms, frankly, and in the future, it is going to be even more. I think the real question and the question which is underlying the entire discussion today is what is the proper role of the government in terms of facilitating that happening? And my focus, frankly, is on the compulsory licenses because we think they unnecessarily dampen the development of that market. But to your question, it bears looking at all of the different issues that are before us.

Mr. SCALISE. OK, last question before I run out of time. Ms. Mago, when you look at what has happened with—of course, DISH is here, DirecTV, the ability to negotiate with cable companies for their copyright content, we have seen in a real dramatic expansion of cable companies, you have got the Food Network, Nickelodeon, a lot of these other pay TV companies that have seen real expansion in their viewership because of their ability to negotiate in a more open marketplace. Would you say that the same kind of marketplace should exist with the retransmission consent, with compulsory, with——

Ms. MAGO. For local stations, the signal that they put together is the amalgamation of all of the programming, and there are many, many different kinds of authorizations, licenses, that one needs to get in that area. Our members continue to be concerned that trying to put that together on a local station basis is one that is a difficult process.

Mr. SCALISE. Thank you. We can continue that conversation and look forward to it, but I appreciate all of your input today for being here. I yield back.

Mr. WALDEN. Thank the gentleman. Chair now recognizes the gentleman from Colorado, Mr. Gardner, for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman. Thank you for holding the hearing today. I just wish my colleague from Nebraska was still here so we could give him a hard time for wanting to watch Nebraska football.

Mr. WALDEN. He may be watching on a distant signal somewhere in an orphan area.

Mr. GARDNER. I don't have much room to talk, though, according to some of the performance we have seen the past couple years out of some Colorado teams, so I will just stop with that.

But I wanted to particularly welcome Mr. Dodge to the committee today. As a result of redistricting, DISH is a constituent company and I am glad that you could be here today, and all the witnesses, thank you for your time.

I wanted to just talk briefly about some of the issues that most of you have touched on already at various times throughout the testimony and so to Mr. Dodge, can you just give me a quick explanation—the committee a quick explanation, what would happen if STELA were to expire and what would that effect be on consumers across the country?

Mr. DODGE. Yes, with respect to DISH particularly, it would mean that the short markets I described, those folks would no longer be at level playing field with folks in other markets around the country, because they would lose whatever affiliates are not represented in their particular DMAs. They would lose the ability to access that programming. Similarly, folks who are outside of our spot beams would lose their local channels. RVs and commercial trucks would no longer be able to get network programming via satellite. And with respect to DirecTV, who doesn't provide local service in all markets, they would lose the ability to provide network programming to folks who are unserved by their local broadcast stations, and presumably, they would lose subscribers who have been grandfathered from prior Satellite Home Viewer Act reauthorizations.

Mr. GARDNER. Ms. Gore, would you add anything to that, or want to add anything to that, if you can?

Ms. GORE. No, I think that covered the list that I am aware of.

Mr. GARDNER. Ms. Mago?

Ms. MAGO. Only to note that I think, again, as I said in my testimony, that that is a diminishing number as we go through the various fixes that are happening, including addressing the issues in short markets through the stations, channels, and such things.

Mr. GARDNER. OK, and then I wanted to take another opportunity at Mr. Dodge to perhaps have you respond to something that was in Ms. Mago's testimony, and I believe it was stated on page seven, "That today over 98 percent of all U.S. television viewers have the option of viewing their local network affiliates by satellite", and then goes on to say "With few exceptions, there are no unserved viewers in areas in which local into local satellite transmissions are available, and that accordingly, no public policy justifies treating satellite subscribers in local into local markets as unserved and therefore eligible to receive distant network signals." It talks a little bit about viewing that language as perhaps a loophole, but I was wondering if you could respond to that assertion and whether or not you view that as a loophole, and what would happen to your customers if that were to change?

Mr. DODGE. Yes, we don't view that as a loophole. We view that as exactly what the law says, which is if there is a retransmission dispute, then we are no longer offering a local affiliate related to that network, and we are allowed to import a distant signal to folks who are unserved in the traditional sense, meaning they don't get an off-air signal of decent quality.

Mr. GARDNER. OK, and then to both you and Ms. Mago as well, conditions in the law sometimes prevent viewers from getting access to the programming they really want. We have talked about that here. Broadcasters can waive some of these conditions on a case-by-case basis, and do they ever, and if not, why not? I guess Ms. Mago, I will start with you.

Ms. MAGO. I think Mr. Dodge said a little while ago that that doesn't really happen on the DISH Network, as I understood it. If I misunderstood your question, I am sorry, but in terms of the broadcasters, what broadcasters are looking for is to make sure that they are able to serve their audiences and continue to be able to do that by having local viewers. We are able to do that, maximize the amount of the revenues that we can then plow back into the better service, and that is why we look at those markets and make sure that the local into local service is there. It helps the viewers themselves because they are able to get whatever local weather information and other things that are important to them, and that is why we continue.

Mr. GARDNER. Do broadcasters ever do the waiver, talking to——

Ms. MAGO. There are a few that I know of that have done that. I think it is becoming less now because one of the concerns that was waivable for a while was that the high definition programming wasn't available through the satellite, and we are now getting to the point where that is always going to be available for the local stations as well. I am aware of a marketplace in Wilmington, North Carolina, and the local station there, in fact, had granted a waiver

to allow the distant signal to come in because it was more—it was high definition when the local signal was not. I am hoping that has been corrected.

Mr. GARDNER. And the good news for Mr. Terry is that in a couple of years, the Cornhuskers and the Buffalos will be playing again, so he will be able to at least watch that game, even if it comes from Colorado.

Ms. MAGO. That sounds like many——

Mr. GARDNER. To that point, the discussion that we have had, we have talked about the markets and I guess for the entire panel as I run out of time here, do we know how many viewers are assigned to a designated market area that is not within their state? So I know we have identified the number of areas, but do we actually know or have an idea of how many viewers are there?

Ms. MAGO. I am sorry, I don't.

Mr. DODGE. I do know in Colorado I believe it is 10,000 folks or TV households——

Mr. GARDNER. The southwestern part?

Mr. DODGE. Yes, in those two counties, but nationwide, I don't have the number off the top of my head.

Mr. GARDNER. OK.

Ms. KIELEY. From a public television perspective, I know we had about 21 of our statewide licensees that were impacted by that, with some states it being a much bigger problem. For instance, in Wyoming, I believe that—I think it was close to about 75 percent of viewers in that state resided outside of—from a public television perspective, the DMA where our public television station had all three of its transmitters located, so it varies from state to state, but for public television, some of those areas out West and in smaller parts of the East were problematic.

Mr. GARDNER. Thank you, Mr. Chairman, for your leniency with the time.

Mr. WALDEN. No problem. We are going to move now to the gentlelady from North Carolina, a new member of our subcommittee. We are delighted to have Renee Ellmers with us, and we look forward to your questions as we wrap up this hearing.

Mrs. ELLMERS. Great, thank you, Mr. Chairman. I am happy to be here. I apologize for being late. I had dueling subcommittees going on, so thank you to our panel for being here as well.

Ms. Gore, I have a question for you. Are there instances where the local broadcaster is not actually carrying news, alerts, closings, sports, civic affairs, and other content in the viewer's state?

Ms. GORE. Yes, I believe there are those situations. That plays into what we have been talking about as the orphan county situation, so that technically on paper it may appear that there is an in-state station in the DMA, but it may be a station that its programming does not include news or weather or traffic or public affairs of that sort. I am sure they are meeting their public interest requirements that Ms. Mago would know about.

Ms. MAGO. Yes, they are.

Ms. GORE. But they don't necessarily have the kind of newsroom, staff, or situation to cover breaking weather events or something of that sort.

Mrs. ELLMERS. Thank you, and I have question, and I would like for each one of the panel to give a quick, brief response. Because this is kind of our introductory hearing on this issue, we are not yet debating on how to change the law, but we do need to know what the main problems are. So if every panelist could—without giving us a solution, touch on the problems to make us aware of what your main issue is with the law and what we can be looking towards in the future. I will start with Ms. Gore.

Ms. GORE. Well, as I mentioned, I am not here to talk about any problems we have with the law. I will only say that there seem to be some circumstances where perhaps the hope was that the availability of significantly viewed stations might help to alleviate of the concerns that some consumers have had, and I am not sure if the significantly viewed option is being taken advantage of as often as it might be. My colleagues would know more about that, and also would know more about why that might be.

Mrs. ELLMERS. OK. Mr. Dodge?

Mr. DODGE. I would say the biggest thing we would like to see remedied is having the retransmission consent process be put on a more level playing field between the broadcasters and the distributors, and fixed in such a manner that consumers don't inevitably lose access to network programming during disputes.

Mrs. ELLMERS. Perfect.

Ms. MAGO. And I, of course, disagree with what Mr. Dodge just said, but I would also say that our biggest issue is that we want to encourage local into local service.

Mrs. ELLMERS. OK.

Ms. KIELEY. And I would say we are taking an early look at the law and its implementation, and looking for any problem areas that are there, but I will reiterate that we were quite pleased with the process. We trust the process. It worked quite well last time, and we are very appreciative that our unique needs were addressed the last go around with STELA, and we hope that if we come upon any of those issues again, that we can again work with this leadership of this committee and Congress.

Mrs. ELLMERS. Excellent.

Mr. O'LEARY. From our perspective, it is very simply that the committee step back and take a look at the law and determine, you know, we believe there are pieces of it that are trying to solve a problem which no longer exists, and so we would ask them to look at those, and then at a minimum, to not expand those areas where we believe that the government intervention has, you know, reduced our ability to be compensated fairly for the work that we create.

Mrs. ELLMERS. Well thank you. Thank you very much for your responses, and thank you, Mr. Chairman, for allowing me to wrap up this hearing. I yield back.

Mr. WALDEN. Thank the gentlelady from North Carolina for her participation.

And I think we should have an online contest to name this one ELOISE, but I have been struggling trying to figure out how we would do that, so we will welcome your suggestions.

Ms. MAGO. Please just don't name it Stanton.

Ms. GORE. I actually worked on that the last time, so I will get that back to you.

Mr. WALDEN. You would get that to me. I know it is not weighing in on any policy, but the name is important, and given four reauthorizations you have lived through.

We want to thank our panelists for testifying today. We appreciate your input as we begin down this path. We will have, obviously, additional hearings going forward, and I am sure all of us will have lots of individual meetings going forward to have these discussions. And so thank you all for your participation, and with that, the committee stands adjourned.

[Whereupon, at 12:10 p.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Question from the Honorable Lee Terry
for the witness R. Stanton Dodge of DISH Network L.L.C.
"Satellite Video 101" hearing held by the House Energy and Commerce Subcommittee on Communications and Technology on February 13, 2013

Question:

Technology keeps giving consumers more and better choices for watching TV when they want, where they want it and on what device they choose. How do we make sure the Satellite Act keeps up with those demands and responds to technology?

Answer for the record from R. Stanton Dodge:

First, at the very least, Congress should reauthorize the current statute to make sure that roughly 1.5 million satellite TV homes relying on distant network signals for their network programming are not left without such programming at the end of 2014.

Second, Congress should, among other things, address the harm to consumers when a local broadcaster does not allow a pay-TV provider to carry its programming during a retransmission consent negotiation. Specifically, Congress should amend the definition of an "unserved household" to include households that lack a local broadcast signal in that situation. Congress should also amend certain exclusivity regulations, such as the network non-duplication and syndicated exclusivity rules, to give effect to the proposed changes in copyright law. These changes would then allow Direct Broadcast Satellite to import a distant signal of the same network affiliation, allowing consumers to at least receive their network programming while the DBS provider and local broadcaster continue to negotiate an agreement. Although a distant signal is not a perfect substitute for the local signal, it does afford the consumer some protection in the interim (unlike today).

Hearing on
"Satellite Video 101"

United States House of Representatives
Committee on Energy and Commerce

Subcommittee on Communications
and Technology

February 13, 2013

Responses to Questions for the Record
of Jane E. Mago

On behalf of the
National Association of Broadcasters

Question Offered by The Honorable Lee Terry

1. ***Technology keeps giving consumers more and better choices for watching TV when they want, where they want it and on what device they choose. How do we make sure the Satellite Act keeps up with those demands and responds to technology?***

   Answer: The Satellite Act was crafted to enable a viable satellite industry that is a true competitor to cable while promoting the free and local nature of broadcast television. As a result, today we have a vibrant satellite industry, as well as a broadcast system that continues to offer local news, emergency alerts, sports, weather and entertainment programming in communities around the country.

   These same bedrock principles of competition and localism should guide the Committee's consideration of the Satellite Act reauthorization today. As Congress crafted the section 119 distant signal license, members foresaw that one day, technological advances might make that license unnecessary, so it included a five year sunset provision. That premonition proved correct. Technology evolved so that satellite companies could provide each market with the market's own local stations to the benefit of many Americans.

   As Congress begins the dialog to extend the Section 119 license for another five years, the first question should be whether or not your constituents are better served with local programming from Lincoln and Omaha, rather than programming that is imported from a New York or San Francisco station? From what we have witnessed, our viewers are not well served by the importation of a distant broadcast signal in instances where a local signal could be made available, whether in the case of a satellite provider, or any distributor of broadcast content. Today's technology enables satellite carriers to provide local stations in all local markets, and the Satellite Act should incentivize providers to use this technology to provide local-into-local service everywhere.

   Additionally, broadcasters recognize that it is in the best interest of industry and the viewers we serve to have our signals accessible through a multitude of platforms, whether it be smart phones, tablets, laptops, or 70 inch 3-D televisions. To that end, local broadcasters have and continue to invest billions of dollars in the digital television transition, mobile TV, multicast channels, and high definition production and signals. To fuel this broadcast innovation and the resulting benefits to viewers, the law must also continue to ensure that broadcasters are compensated for others' use of their signals, whether they are retransmitted and resold by a satellite provider or other platform. This compensation allows broadcasters to continue to innovate in ways that guarantee high quality local programming will be available to viewers whenever and however they want it.

Lonna Thompson, Association of Public Television Stations
Response to Questions for the Record on the
February 13, 2013 Communications and Technology Hearing
"Satellite Video 101"

Question from Representative Lee Terry:
Technology keeps giving consumers more and better choices for watching TV when they want, where they want it and on what device they choose. How do we make sure the Satellite Act keeps up with those demands and responds to technology?

Thompson Response:
Public broadcasting has a universal service mandate, and as such, we are committed to ensuring that all television viewers have access to the full breadth of our services no matter how they view their programming. We are proud of the fact that between a nearly 99% broadcast coverage area, the laws that govern cable and satellite carriage of our stations, and ground-breaking private carriage agreements that we have reached with almost all Multichannel Programming Distributors, Americans have many options to view their local public television stations.

Even with the growth of programming viewing options, it is critical that we do not overlook the 34 million households that are current satellite subscribers. The Satellite Television Extension and Localism Act (STELA) ensures that those households, many of which are in the most rural parts of the country, have access to high-quality local broadcasting. It is critical that any updates to the law maintain the rights of satellite consumers to view these channels.

We are very appreciative of the fact that STELA recognized the unique role that local public television stations play in their communities and ensured that satellite subscribers have access to the highest quality local public television programming.

No matter how much technology changes, we would hope that any updates to STELA continue to preserve the rights of satellite viewers to have access to the full programming and services of their local public television stations. We cannot afford to deny 34 million subscribers access to their local public television stations which deliver unparalleled children's educational content, the best in nature and science, in-depth historical and cultural programming, unmatched public affairs programming and some of the finest dramas on television.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

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March 28, 2013

Mr. Michael O'Leary
Senior Executive Vice President
Global Policy and External Affairs
Motion Picture Association of America
1600 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. O'Leary:

Thank you for appearing at the Subcommittee on Communications and Technology hearing entitled "Satellite Video 101" on February 13, 2013.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Charlotte.Savercool@mail.house.gov by the close of business on Thursday April 11, 2013.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachment

The Honorable Lee Terry

1. **Technology keeps giving consumers more and better choices for watching TV when they want, where they want it and on what device they choose. How do we make sure the Satellite Act keeps up with those demands and responds to technology?**

Content creators, along with consumer electronics companies and content distributors, are working together to provide new, innovative options for audiences to access licensed content whenever and wherever they want. We are excited by these new developments – from the iPad and Kindle to Netflix and Roku – and the promise of even more advanced platforms and applications in the future.

Importantly, these new viewing options have been the result of marketplace negotiations, not a government-imposed compulsory copyright license. We agree with the Register of Copyrights' conclusion that the "Internet video marketplace is robust and is functioning well without a statutory license." The best way to ensure that changes in technology do not outpace the Satellite Act is to rely on the marketplace and free negotiations, which allow parties to take advantage of new technology and distribution platforms.

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