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1 {York Stenographic Services, Inc.}

2 RPTS BROWN

3 HIF044.160

4 ``SATELLITE VIDEO 101''

5 Wednesday, February 13, 2013

6 House of Representatives,

7 Subcommittee on Communications and Technology

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 10:32 a.m.,
11 in Room 2322 of the Rayburn House Office Building, Hon. Greg
12 Walden [Chairman of the Subcommittee] presiding.

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

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

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

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

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48 signs of an early spring.

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

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

82 Today we are going to set the table for this discussion
83 by examining the current state of satellite television law.
84 This is perhaps the most arcane and complicated area of law
85 we confront in this subcommittee, other than Universal
86 Service Fund reform, of course. That is why I thought it
87 wise to start early, giving us ample time to hear from all
88 parties in advance of the December 31, 2014, sunset that
89 applies to some of the existing provisions. Rest assured, we

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90 will have several more hearings, providing additional
91 opportunity to consider not only the satellite issues
92 directly before us, but also affording time to those who
93 would ask us to take this opportunity to revisit other areas
94 of communications law.

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

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111 [The prepared statement of Mr. Walden follows:]

112 ***** COMMITTEE INSERT *****

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|
113 Mr. {Walden.} I would turn now to the vice chairman of
114 the committee, Mr. Latta, for the remaining amount of my
115 time.

116 Mr. {Latta.} I appreciate the chairman for yielding,
117 and I also thank our distinguished panel for being here
118 today.

119 I believe that today will be the beginning of a
120 thoughtful and productive policy process. We have important
121 issues in the satellite TV industry, as the chairman said,
122 before us, which we all know need to be addressed by the end
123 of next year when the Satellite Television Extension Localism
124 Act of 2010, STELA, expires. I also look forward to a
125 thorough discussion among our subcommittee members,
126 stakeholders, and consumers as we grapple with the issues in
127 STELA and others stemming from our decades of communication
128 and cable laws.

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

132 [The prepared statement of Mr. Latta follows:]

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133 ***** COMMITTEE INSERT *****

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|
134 Mr. {Walden.} Thank the gentleman.

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

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

144 Mr. Chairman, less than 3 years ago, Congress passed and
145 the President signed into law the Satellite Television
146 Extension and Localism Act of 2010, STELA. Ms. Gore, maybe
147 that is your--we should rename you, give you that as your
148 first name. I am pleased, as the chairman is, and other
149 members, that we are starting this discussion of
150 reauthorization early, and only to ensure that adequate time
151 so that we have the adequate time to work through all the
152 relevant issues, the new ideas that come forward, but also
153 for the benefit of the several new members of our

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154 subcommittee, and that is very important so that the level of
155 understanding is brought up, so that we are all up to speed
156 on this.

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

167 While my preference is to pursue a clean reauthorization
168 of STELA, there will no doubt be other video-related topics
169 raised over the course of this Congress, and chief amongst my
170 concerns are the programming disruptions that consumers
171 experience when retransmission disputes break down. Simply
172 put, consumers should not be held hostage when negotiators
173 fail to come to an agreement. These high profile disputes
174 have impacted millions of Americans, often prior to or during

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175 highly watched programming, such as the 2010 World Series.
176 That simply is not acceptable. I mean, where are the adults
177 in the room kind of thing. Our constituents all pay the
178 price for it.

179 I am fascinated by the emergence of new video services,
180 such as Skitter and Sky Angel. These companies challenge
181 existing business models, which is disruptive but very
182 important, and they provide a new means of delivering
183 traditional broadcast or cable content into the homes of
184 consumers. I think these services can contribute to the
185 establishment of a vibrant video marketplace that promotes
186 both consumer choice and competition.

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

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

195 [The prepared statement of Ms. Eshoo follows:]

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196 ***** COMMITTEE INSERT *****

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|
197 Mr. {Walden.} Thank you. I now recognize the
198 distinguished chairman of the full committee, the gentleman
199 from Michigan, Mr. Upton.

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

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

214 Issues surrounding this particular law are by no means
215 easy to grapple, but it is important that we do so. The
216 competitive landscape has evolved significantly in the video

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217 marketplace, and we must ensure our laws are having their
218 intended effect. If they are no longer needed, they need to
219 be eliminated. If they are missing the mark, they should be
220 revised. If they are working well, we should leave them
221 alone. But periodic oversight is essential to make that
222 determination. It is particularly true of all laws in the
223 communications sector. Technology is changing this industry
224 at an astonishing rate, and we must work to ensure that our
225 laws keep pace, fostering continued growth, particularly in
226 the innovation area. Indeed, while it certainly makes for
227 more work, we should consider using the sunset provisions
228 perhaps a little bit more often.

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

231 [The prepared statement of Mr. Upton follows:]

232 ***** COMMITTEE INSERT *****

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|
233 Mr. {Scalise.} Thank you, Mr. Chairman, for yielding,
234 and I will just make a couple of observations at the outset
235 of the hearing.

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

252 So I welcome this expanded conversation, appreciate our

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253 panelists for coming, and look forward to the hearing. I

254 yield back.

255 [The prepared statement of Mr. Scalise follows:]

256 ***** COMMITTEE INSERT *****

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257 Mr. {Walden.} You said Mr. Barton wanted some time?

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

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

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277 situation in this committee in the near future.

278 With that, Mr. Chairman, I yield back.

279 [The prepared statement of Mr. Barton follows:]

280 ***** COMMITTEE INSERT *****

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|
281 Mr. {Walden.} Gentleman yields back. Anyone else on
282 Republican side seeking time? If not, we will move on then
283 to our witnesses.

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

288 [The prepared statement of Mr. Waxman follows:]

289 ***** COMMITTEE INSERT *****

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

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|
298 ^STATEMENTS OF ELOISE GORE, ASSOCIATE BUREAU CHIEF,
299 ENFORCEMENT BUREAU, FEDERAL COMMUNICATIONS COMMISSION; R.
300 STANTON DODGE, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL,
301 DISH; JANE MAGO, EXECUTIVE VICE PRESIDENT AND GENERAL
302 COUNSEL, LEGAL AND REGULATORY AFFAIRS, NATIONAL ASSOCIATION
303 OF BROADCASTERS; JENNIFER KIELEY, DIRECTOR, GOVERNMENT
304 RELATIONS, ASSOCIATION OF PUBLIC TELEVISION STATIONS, ON
305 BEHALF OF LONNA THOMPSON, EXECUTIVE VICE PRESIDENT, CHIEF
306 OPERATING OFFICER AND GENERAL COUNSEL, ASSOCIATION OF PUBLIC
307 TELEVISION STATIONS; AND MICHAEL O’LEARY, SENIOR EXECUTIVE
308 VICE PRESIDENT, GLOBAL POLICY AND EXTERNAL AFFAIRS, MOTION
309 PICTURE ASSOCIATION OF AMERICA

|
310 ^STATEMENT OF ELOISE GORE

311 } Ms. {Gore.} There we go.
312 Mr. {Walden.} There we go.
313 Ms. {Gore.} Very good. Chairman Walden, Ranking Member
314 Eshoo, and members of the subcommittee, thank you for the
315 opportunity to appear before you today. I am currently the

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316 Associate Bureau Chief for the Enforcement Bureau at the FCC,
317 but for most of my FCC career, I was in the Media Bureau,
318 where my responsibilities included the Satellite Home Viewer
319 Act, SHVA, and its progeny, SHVIA, SHVERA, and STELA. I was
320 pleased to provide technical assistance to Congress on these
321 reauthorization bills, as well as spearheading the
322 implementation of the enacted laws. I appreciate the chance
323 to participate with the subcommittee and my fellow panelists
324 this morning in Satellite Video 101 to refamiliarize
325 ourselves with the legislative and regulatory structure we
326 have in place.

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

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

336 STELA and its predecessors govern satellite delivery of

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337 broadcast television to satellite subscribers and treat local
338 and distant broadcast stations in different ways. Local
339 channels are the stations that are assigned to the designated
340 market area, DMA, in which the subscriber resides, based on
341 designations by the Nielson Media Company. My outstanding
342 colleague, Laurie Robier, will hold up the map, which is a
343 precious commodity, I must tell you. Thank you, Laurie.
344 Nicely done.

345 Distant signals are those stations that are assigned to
346 a different DMA from the one in which the subscriber resides.
347 SHVIA created local into local service in 1999. Initially,
348 the two satellite providers offered the local stations in
349 fewer than 40 out of the 210 DMAs. Now they have increased
350 their local market offerings so that nearly all subscribers
351 in the 210 designated market areas have access to the local
352 station package from one or both satellite carriers. DISH
353 provides service to all 210; DirectTV, I believe, provides
354 service to 196 of the markets.

355 The local stations available to satellite subscribers
356 are essentially limited to the stations designated for the
357 DMA, although there are some additional options in certain

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358 circumstances, such as significantly viewed stations or
359 distant stations that can be used to fill in what we call a
360 short market, where there are not four of the top four
361 networks available over the air. There are certain areas in
362 the country in which Congress provided a special exception to
363 allow carriage of additional signals in the local market.

364 Distant signals are generally available only to
365 satellite subscribers who are unserved by an over-the-air
366 signal and for whom the local into local stations are not
367 available. We call this no distant where local. This being
368 101, I will try to describe some of the little terminology
369 that you will hear us use. Local into local, no distant
370 where local, DMA. Unserved means that the subscriber's
371 household cannot receive the over-the-air signal of a local
372 network station with sufficient signal strength.
373 Notwithstanding the principle of no distant where local, some
374 subscribers have been statutorily grandfathered as the
375 eligibility rules have changed in successive
376 reauthorizations. Some of the grandfathered subscribers may
377 keep the distant signals, others may, at some point, be
378 required to relinquish the distant signals, and some

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379 subscribes who are outside the satellite's spot beam, and
380 therefore unable to receive the local package, may also be
381 eligible for distant signals. Distant signal subscribers are
382 limited to no more than two network affiliated signals from
383 each broadcast network, and time shifting may be limited
384 based on the subscriber's local time zone. The subscriber
385 cannot specify which distant signals he or she wishes to
386 receive. Further, the satellite carrier is only permitted to
387 provide distant signals if it complies with the requirement
388 to provide the networks with lists of the subscribers who are
389 receiving distant signals.

390 If the local stations are not available to a subscriber
391 via satellite, the subscriber may request distant signals
392 through his or her satellite carrier. The carrier determines
393 whether the subscriber is considered served or unserved by
394 using a computer model that predicts the signal strength at
395 the subscriber's household. Satellite carriers use a
396 computer model designed by the Commission. It is called the
397 ILLR computer model, but the Commission is not involved in
398 making individual predictions. If the model determines the
399 household is unserved, that is, the signal strength is too

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400 low from the broadcast station, the satellite carrier is
401 permitted to provide distant network signals to the
402 household. If the model predicts that the household is
403 served by a particular local network station over the air,
404 the household is not eligible for distant signals for that
405 network. The subscriber may request waivers from each of the
406 local stations that are predicted to serve the household in
407 order to be eligible for distant signals. Waivers are
408 requested through the satellite carrier and the local
409 broadcast station must accept or reject a waiver request
410 within 30 days. If a local station denies the waiver
411 request, the subscriber can request a signal test to measure
412 the actual signal strength of the over-the-air signal.

413 Finally, the law allows satellite carriers to provide
414 distant signals to subscribers in some other situations, such
415 as recreational vehicles, commercial trucks, or C-band
416 satellite receivers. Mr. Barton, your C-band may be useful
417 yet.

418 Thank you for inviting me to participate in today's
419 hearing. I look forward to assisting the committee as it
420 begins this reauthorization process, and would be happy to

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421 take your questions. Thank you so much.

422 [The prepared statement of Ms. Gore follows:]

423 ***** INSERT 1 *****

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424 Mr. {Walden.} That is the best news Joe has gotten all
425 day.

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

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|

430 ^STATEMENT OF R. STANTON DODGE

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

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

441 STELA provided two big wins for consumers, giving them
442 access to more programming than ever before. First, it
443 challenged DISH to offer local stations in all of the
444 Nation's 210 television markets. We embraced that challenge,
445 and today we are the only pay TV provider to offer local
446 channels in every market. Plus, we are the largest
447 distributor of PBS nationwide. Second, STELA allowed us to
448 give consumers in short markets access to all the big four

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449 networks. And for those of you who don't know, short markets
450 are markets that lack one or more of the big four stations,
451 and they tend to be small, rural communities. Thanks to
452 STELA, consumers in 21 short markets across 19 States can
453 watch the valued network programming that the rest of the
454 country has long enjoyed.

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

462 The first incarnation of STELA, the Satellite Home
463 Viewer Act of 1988, created a statutory copyright license
464 that enabled satellite carriers to provide consumers with
465 broadcast signals originating outside of their home markets.
466 This copyright license came with an important restriction.
467 It only allowed network transmissions to ``unserved
468 households,' ' households that cannot receive a strong local
469 signal using an off-air antenna. In exchange for the

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470 license, satellite carriers paid a monthly per-subscriber fee
471 to the copyright office. That fee was set either by private
472 negotiations, or by an administrative proceeding, and the
473 revenues were then distributed to the mosaic of copyright
474 holders. This copyright fee structure remains in place
475 today.

476 Congressional legislation evolved further in 1994, 1999,
477 and 2004, and throughout this time, technological advances
478 prompted significant updates to the law. For example, with
479 the advent of spot beam technology, satellites can target
480 signals into individual local markets, rather than the whole
481 country at once. This led Congress to add the so-called
482 local into local license, which allowed for satellite
483 retransmission of local broadcast signals back into their
484 local markets. Satellite carriers seized that new
485 opportunity. They built and launched spot beam satellites
486 and they started providing local stations almost immediately.
487 AS a result, satellite providers emerged as a key competitive
488 force in the pay TV market.

489 I am going to ask you to please refer to my written
490 remarks for a more comprehensive summary of the various

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491 satellite television bills over the years.

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

507 And so, STELA stands as an example of how targeted
508 legislative solutions can work to everybody's benefit. It
509 should be reauthorized before December 31, 2014, but there is
510 much more that Congress can do through STELA to expand
511 consumer's access to local programming. In an era of fast-

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512 changing technology and the explosion of video on the
513 Internet, we believe that Congress should take this
514 opportunity to look at ways that the current statute can be
515 updated to better reflect consumer expectations and desires.

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

520 [The prepared statement of Mr. Dodge follows:]

521 ***** INSERT 2 *****

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|

522 Mr. {Walden.} Thank you, Mr. Dodge. We appreciate your
523 being here, and your testimony.

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

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|
529 ^STATEMENT OF JANE MAGO

530 } Ms. {Mago.} Thank you, Chairman Walden--
531 Mr. {Walden.} Go ahead and turn that on.
532 Ms. {Mago.} Turn on the microphone. Thank you,
533 Chairman Walden, and thanks to Ranking Member Eshoo and
534 Chairman Upton, and all the members of the subcommittee for
535 having me here to speak with you today. As Chairman Walden
536 just said, I am the Executive Vice President and General
537 Counsel of the National Association of Broadcasters.

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

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548 predecessors that we have heard about today.

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

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

567 Broadcasters have invested billions of dollars in recent
568 years to improve the quality and reach of our service. The

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569 digital television transition allowed us to proliferate high
570 definition programming, launch mobile D-TV service, and offer
571 multiple program streams. These innovations enable our
572 viewers, who are also your constituents, to receive higher
573 quality and more diverse programming on many platforms.

574 Now as you have heard, in the beginning the satellite
575 acts were crafted to help the satellite companies become
576 competitive with cable services, and ensure that satellite
577 subscribers could access network programming. It was always
578 a concern, however, that the service should not undermine
579 local broadcast stations. And so specifically, Congress
580 prohibited a satellite provider from importing a network
581 signal from a distant market to households that could receive
582 that network's programming from a local station. These
583 provisions were and remain essential to prevent diversion of
584 local station viewers and reduction in the advertising
585 revenue that is needed to provide vital local services. Now
586 even as it created this distant signal license, Congress
587 foresaw that one day technological advances might make that
588 license unnecessary, so it included a 5-year sunset
589 provision. That premonition was really correct. Technology

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590 has evolved so that satellite companies could provide each
591 market with the market's own local signals. As Stanton just
592 told us, today DISH provides its local service into all 210
593 television markets, and DirecTV is in either 195 or 196, that
594 is not somewhat clear, but thus the need to import distant
595 network signals has dramatically diminished. Only a small
596 percentage of the 34 million satellite subscribers receive
597 network programming via this distant signal. Indeed, over 98
598 percent of all U.S. television viewers have the option of
599 viewing their local networks. So accordingly, this
600 subcommittee may want to consider whether the public interest
601 would be best served by allowing the distant signal and
602 related communications act provisions to sunset, as Congress
603 originally intended.

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

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

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611 inappropriate and unwise.

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

615 [The prepared statement of Ms. Mago follows:]

616 ***** INSERT 3 *****

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|
617 Mr. {Walden.} Ms. Mago, thank you very much for your
618 testimony.

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

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|
630 ^STATEMENT OF JENNIFER KIELEY

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

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

643 First and foremost, we would like to thank this
644 committee and the Congress as a whole for the passage of
645 STELA which recognized the critical services that local
646 public broadcasting stations provide their communities
647 nationwide. Because of that legislation, viewers in even the
648 most remote corners of this country that receive local

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649 satellite HD service, have access to the best that public
650 television has to offer in the full splendor of HD. We are
651 also appreciative of the language that was included in STELA
652 which allows satellite carriers to carry local public
653 television statewide licensees' signals throughout the entire
654 state where DBS providers have the bandwidth to do so. This
655 provision removed statutory roadblocks that restricted the
656 ability of residents and tax payers in states to receive the
657 full benefits of their state's public television statewide
658 network.

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

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

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670 DirectTV.

671 Before the passage of STELA, we were still hopeful that
672 we would be able to negotiate a similar carriage agreement
673 with DISH. Unfortunately, after years of unsuccessful
674 negotiations, we were never able close a deal with DISH that
675 would have guaranteed carriage of all of our stations' HD
676 signals. As a result, before STELA was signed into law, DISH
677 was not carrying a single HD signal of any local public
678 television station, but STELA mandated the carriage of local
679 public television stations' HD signals by any carrier that
680 had not entered into private carriage negotiations with
681 public television. And now, DISH is required by law to carry
682 the local HD signals of public television stations in all
683 markets where they offer local HD service.

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

690 As a result of STELA, viewers in Oregon are able to

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

705 Public television is in the business of providing local
706 public service. We treat our viewers as citizens, not
707 consumers. Our stations provide over 98 percent of Americans
708 with the highest-quality, free, educational media available.
709 And in addition to all the great broadcast services that
710 local public television stations offer, our stations are also
711 providing cutting edge public services to communities beyond

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712 the broadcast, from educational services to public safety, to
713 veterans job retraining, these services and so much more are
714 part of the vibrant public service media that this country
715 has invested in and we are proud to deliver to your
716 constituents. Because an investment in public media is truly
717 an investment in the unique needs of local communities
718 nationwide.

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

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

728 [The prepared statement of Ms. Kieley follows:]

729 ***** INSERT 4 *****

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|

730 Mr. {Walden.} Thank you, Ms. Kieleley, and I can assure
731 you, we are not going to get between your viewers and Downton
732 Abbey.

733 Ms. {Kieleley.} Good plan.

734 Mr. {Walden.} That would not be good.

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

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|
740 ^STATEMENT OF MICHAEL O'LEARY

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

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

758 I want to be clear at the outset that we share the goal

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759 that was articulated by the chairman in his opening remarks,
760 and I believe by everyone on this committee, and that is to
761 provide consumers with the highest quality entertainment and
762 informational experience possible, and to expand choices
763 available in television in new and innovative ways. At the
764 same time, it is imperative that the hardworking men and
765 women who invest their talent and capital to create the
766 programming receive fair market compensation, and that the
767 law promote marketplace innovation.

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

777 Just as the television landscape will continue to evolve
778 in the months and years ahead, it has changed dramatically
779 since the enactment of the compulsory licenses being

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780 discussed here and in the coming months. The market
781 conditions that led Congress to create the cable and the
782 satellite compulsory licenses have long since disappeared.
783 Congress decided, as you know, in 1976 and again in 1988 to
784 introduce compulsory licenses to help what were then
785 fledgling cable and satellite industries acquire
786 retransmission rights in television programming. Government
787 intervention in the marketplace was deemed necessary at those
788 times to ensure the viability of what were then new services.
789 Today, the overwhelming majority of programming being offered
790 by cable and satellite is licensed through marketplace
791 transactions. There is simply no justification in today's
792 market for a satellite compulsory or cable compulsory
793 licenses. There is certainly no justification for retaining
794 a license that imposed below market rates for the acquisition
795 of that programming.

796 As my written testimony notes, the royalty rate paid by
797 satellite carriers under Section 119 today is roughly the
798 equivalent of the market rate paid for programming in 1999,
799 almost 15 years ago. At the same time, in that same period
800 of years, the cost of producing programming has continued to

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801 increase. Today, the cable and satellite industries are, to
802 their credit, very successful. They have over 90 million
803 subscribers and report a combined revenue in excess of \$80
804 billion. The compulsory license royalty fees paid, however,
805 equal less than one half of one percent of their combined
806 revenues. One can not help but ask how government
807 intervention in licensing of retransmitted programming by
808 these industries can be justified in today's marketplace, and
809 we believe this should be a threshold consideration for the
810 committee as you move forward over the next 2 years.

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

818 On behalf of our members, Mr. Chairman, I again want to
819 express our sincere gratitude to you and this committee for
820 holding this hearing, for getting, as you indicated, an early
821 start. This is a complicated issue. It is a difficult

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822 issue, and we are confident that this will be the first of
823 many conversations over the next few months, and we welcome
824 and look forward to the opportunity to be a part of that.

825 Thank you.

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

827 ***** INSERT 5 *****

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|
828 Mr. {Walden.} Thank you very much, Mr. O'Leary. You
829 are absolutely right. We will have additional hearings, and
830 I am sure a lot of conversations in the months ahead.

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

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

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

847 Ms. {Gore.} The only piece of that that I can tackle,

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

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

866 Mr. {Walden.} All right. Mr. Dodge?

867 Mr. {Dodge.} I am not exactly sure, I must admit, where
868 the 1 million to 1.5 million number came from. I know at

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869 DISH, we actually don't keep track, although we may be able
870 to get you that information, so we will take an action item
871 to try to do that. But certainly, I believe it is a bigger
872 issue for DirecTV today, because with the utility, the
873 license is a little different for each of us. Where DirecTV
874 still has some grandfathered subscribers, I believe, from
875 years gone by and they are not in all 210 markets today, they
876 still use a true distant license there for, I believe,
877 providing programming to unserved households in the markets
878 where they don't offer local programming, but how many
879 customers that might impact, I don't know.

880 Mr. {Walden.} Okay.

881 Mr. {Dodge.} With respect to DISH, we use a license
882 primarily for three purposes, the largest of which is to fill
883 in short markets, as Ms. Gore noted, so you know, for example
884 in a market where someone doesn't have a FOX station, we
885 import a FOX so that they are able to watch American Idol and
886 similar programming, just like all other Americans, and
887 without the license we would have to shut those people off.

888 Similarly, we provide service outside the spot beam to
889 certain customers, which allows to a safer state, like Utah,

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890 which is largely rectangle, our spot beams are round, and so
891 the corners get cut off. And unless those folks are able to
892 get local programming via an off-air antenna, we would have
893 to shut those folks out as well, and RVs and commercial
894 trucks, too.

895 Mr. {Walden.} All right. Ms. Mago?

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

910 So I think the key point for us continues to be our

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911 focus on localism, and making sure that we recognize how much
912 fewer there are.

913 Mr. {Walden.} All right, and I am going to go to Ms.
914 Kieley and then Mr. O'Leary, but I am running out of time, so
915 sorry.

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

922 Mr. {Walden.} All right. Mr. O'Leary?

923 Mr. {O'Leary.} I will be brief. I know I can't
924 validate that number. I have no way to dispute it. It
925 ultimately would lie with the carriers. I agree with the
926 comments of Ms. Mago. I would also note that even if it is
927 retained, the distant signal license is still woefully under
928 market--the rate is still woefully under market.

929 Mr. {Walden.} Okay. I thank you all for your answers,
930 and now turn to the ranking member of the subcommittee, Ms.
931 Eshoo, for questions.

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

943 Mr. {Dodge.} It would be to ensure that consumers are
944 able to continue to receive network programming during
945 retransmission disputes.

946 Ms. {Eshoo.} Very good, thank you.

947 Ms. {Mago.} As I said in my opening testimony, our top
948 policy preference is to preserve localism and allow
949 broadcasters to continue to provide the service to their
950 communities.

951 Ms. {Eshoo.} Great. Ms. Kieley?

952 Ms. {Kieley.} We just hope that any reauthorization of

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953 STELA continues to recognize the unique services of local
954 public television stations, and how we are different in the
955 marketplace.

956 Ms. {Eshoo.} Well, I am here.

957 Ms. {Kieley.} We do appreciate that.

958 Ms. {Eshoo.} Thank God we got that one worked out.

959 Thank you, Mr. Dodge. Thank you for your advocacy.

960 Ms. {Kieley.} And that would be our top priority, as
961 well as maintaining vibrant local service for our public
962 television stations.

963 Ms. {Eshoo.} Great, thank you. Mr. O'Leary?

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

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974 past.

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

983 Mr. {O'Leary.} Absolutely, and we would be happy to
984 provide that to the committee.

985 Ms. {Eshoo.} That members really be instructed and be
986 brought up to snuff on what you are referring to.

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

989 Mr. {Walden.} Gentlelady yields back the balance of her
990 time.

991 Chair now recognizes Mr. Barton for 5 minutes.

992 Mr. {Barton.} I am here.

993 Mr. {Walden.} I was looking down my list and others
994 weren't, but you were here at the gavel dropping, so--

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995 Mr. {Barton.} Thank you, Mr. Chairman.

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

1000 Mr. {O'Leary.} I think there is--that that is something
1001 that should be part of the consideration that you undertake
1002 over the next 2 months is whether or not it is essential to
1003 reauthorize all aspects of this, yes.

1004 Mr. {Barton.} Okay, so I want to make sure I understand
1005 before I go to Ms. Mago. You--the motion picture industry is
1006 not advocating allowing them to expire, it is simply saying
1007 we should think about it? So you are a little bit--you are
1008 not a hard-hard, you are kind of a medium-soft, am I right?
1009 I mean, I am not being funny, I am just--

1010 Mr. {O'Leary.} No, I understand. I think that we
1011 believe that, as I said in my testimony, that certain
1012 provisions here are anachronistic, and that they do not
1013 necessarily need to be--they could be allowed to expire.
1014 Having said that, we are also mindful, as has been alluded to
1015 in the comments made by members of the panel and members of

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1016 this panel, this is an incredibly complex web of pieces that
1017 all kind of fit together. And so what I am trying to portray
1018 to you--I am not trying to be soft and squishy and in the
1019 middle, but the truth of the matter is, I am trying to be
1020 realistic. We think that some of these things are woefully
1021 outdated and could be allowed to expire. We think that is--

1022 Mr. {Barton.} But that is different than supporting the
1023 expiration. So you are--let me ask you a straight question,
1024 yes or no.

1025 Mr. {O'Leary.} Sure.

1026 Mr. {Barton.} If this subcommittee and the full
1027 committee were to support a clean straight reauthorization,
1028 no changes except the date, would your industry support that?
1029 Yes or no?

1030 Mr. {O'Leary.} I am not in a position to say right now
1031 what they would support. I do think that that would be
1032 preferable, frankly, Congressman, to expanding the license in
1033 any way.

1034 Mr. {Barton.} I am going to go to Ms. Mago, since I
1035 have gotten a pretty squishy answer from Mr. O'Leary.

1036 Would your trade association support clean

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1037 reauthorization with no changes except the dates?

1038 Ms. {Mago.} I am sorry, Mr. Barton, I have to frustrate
1039 you as well. We are so early in this process that at this
1040 point, we are still considering where the marketplace is, as
1041 I indicated, and while we see that there are anachronistic
1042 pieces and we think that expiration should be on the table,
1043 we haven't formed a final position.

1044 Mr. {Barton.} So if we put your group with Mr.
1045 O'Leary's group, you all will hug each other and then talk
1046 around each other for as long as we allow you to.

1047 Ms. {Mago.} We would all hug each other on this panel.
1048 We are like that.

1049 Mr. {Barton.} Anyway, I yield back, Mr. Chairman. I
1050 would definitely vote for a clean reauthorization. If there
1051 is a meeting of the minds from the stakeholders, I would
1052 certainly take a look at that. My guess is that the
1053 stakeholders have different views, and as they should,
1054 because of the economic consequences, and it is probably not
1055 as much peace and love at that table as they are portraying
1056 this morning.

1057 Mr. {Walden.} And we could bring some other folks up

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1058 and there would be real fireworks.

1059 Mr. {Barton.} Right. Thank you, Mr. Chairman.

1060 Mr. {Walden.} We might do that today.

1061 I thank the gentleman and now we go to Mr. Lujan from
1062 New Mexico for questions.

1063 Mr. {Lujan.} Mr. Chairman, thank you very much.

1064 To Ms. Gore, there are some questions that I have for
1065 you which maybe aren't appropriate for this hearing, but we
1066 will be working with the FCC to look into the equitable
1067 treatment of tribal communities as well, as we talk about
1068 some of the rulings and renderings and many of the very
1069 complex world, so I will get those to you and submit them
1070 into the record.

1071 But for today's hearing, I am interested with all the
1072 witnesses, should Congress consider the changes in the
1073 competitive landscape for video services as we examine STELA,
1074 and especially with the question that Ranking Member Eshoo
1075 asked, content is very much different now. We are getting
1076 content in many different areas, and how far reaching should
1077 this be, or what should be included in that? Ms. Gore?

1078 Ms. {Gore.} Well, I think I have mentioned that I am

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1079 not going to give too many opinions. I will note one factual
1080 point, and that is that one of the things that expires is the
1081 requirement in Section 325 of the Communications Act for good
1082 faith negotiating, so that is one of the expiring provisions
1083 that perhaps you might want to consider.

1084 Mr. {Lujan.} Thank you. Mr. Dodge?

1085 Mr. {Dodge.} I guess what I would say policy-wise is we
1086 think that the law needs to be improved to address the
1087 interest of consumers in two key areas, which are, one--I
1088 mean, really, in the spirit of localism that consumers should
1089 be able to get network programming during takedowns, and two,
1090 folks in orphan counties, which are counties that actually
1091 are in a state but don't receive signals from a DMA in that
1092 state, should be given the opportunity to get local network
1093 channels from their state.

1094 Mr. {Lujan.} I would agree with that. Ms. Mago?

1095 Ms. {Mago.} First of all, let me say for the record
1096 that broadcasters are always in favor of good faith. We
1097 negotiate in good faith all the time and will continue to do
1098 that, as appropriate, to make sure the consumers are able to
1099 receive our signals, because that is very important. It is

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1100 important for us to reach every single member of our
1101 audiences that we can.

1102 I think as we look at this legislation, as I indicated
1103 earlier, you have got to look at localism. Providing that
1104 local into local service in all 210 markets is a very
1105 important goal.

1106 Mr. {Lujan.} I appreciate that.

1107 Ms. {Kieley.} I would just say on behalf of public
1108 television, that we recognize that these are very complex
1109 issues, many of which are intertwined, and we are very
1110 appreciative of the chairman and the leadership of this
1111 committee for taking an early look at this piece of
1112 legislation. And what we continue to look forward to working
1113 with Congress as you look at these issues, we too are looking
1114 at them, or early into the implementation, it feels, from the
1115 passage of STELA, and we are looking closely--as I mentioned
1116 to Ms. Eshoo's question, we first and foremost would want to
1117 make sure that any type of legislation that looks at the
1118 overall video competition would recognize a unique role that
1119 local public television stations play in that marketplace and
1120 preserve some of the unique protections that have been in

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1121 place for our local public television stations.

1122 Mr. {Lujan.} I appreciate that. Mr. O'Leary?

1123 Mr. {O'Leary.} Congressman, I don't know that I have a

1124 whole lot to add at this point. I don't disagree with

1125 anything I have heard.

1126 Mr. {Lujan.} That is a good answer.

1127 Mr. {O'Leary.} All right, I will stop.

1128 Mr. {Lujan.} Ms. Gore, does the FCC have information on

1129 how many consumers are receiving distant signals, how many of

1130 those households are receiving distant signals because

1131 Congress has grandfathered them in during previous satellite

1132 authorizations?

1133 Ms. {Gore.} No, Mr. Lujan, we do not have that

1134 information. That is not provided to us. We don't track how

1135 many distant signal subscribers--

1136 Mr. {Lujan.} Does anyone have that information?

1137 Mr. {Dodge.} We don't actually have any grandfathered

1138 subscribers at DISH.

1139 Mr. {Lujan.} Okay. Anyone? No?

1140 Ms. {Mago.} I think it is uniquely in the hands of the

1141 carriers.

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1142 Mr. {Lujan.} Okay, maybe we can go to the carriers and
1143 chat with them. Mr. Dodge, do you agree with Mr. O'Leary's
1144 statement that the current satellite royalty rates under
1145 Section 119 are only equal to the market rate from 1999?

1146 Mr. {Dodge.} Well, I agree with Mr. O'Leary on one key
1147 point. We certainly are all for fully compensating artists,
1148 you know, as they well deserve, and we are all for paying the
1149 market rate, so I guess in our view, the devil is in the
1150 detail of what a market rate should be. And if the proxy for
1151 that are retransmission rates today, we would argue that that
1152 is not a fair market rate, because it is not a fair fight
1153 today. In each DMA, you have got one broadcaster who
1154 effectively has been given a monopoly and plays all of the
1155 distributors off each other, and the rates are just going up
1156 100 percent each year. And we would put forth that those are
1157 not comparable market rates.

1158 But we also think the system today works where we sit
1159 down with the interested stakeholders, the MPA, the sports
1160 leagues, and negotiate what the rate should be after each
1161 reauthorization. And if we don't reach an agreement, then I
1162 believe it goes to the FCC or the copyright office to

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1163 actually arbitrate that, and we have been able to reach
1164 agreement every reauthorization to this point.

1165 Mr. {Lujan.} I appreciate that, Mr. Chairman, and as I
1166 yield back, you know, it has been brought up about the
1167 economic consequences and whether there is a permit or a
1168 reauthorization or STELA is not reauthorized, Mr. Chairman, I
1169 hope that we are able to explore what the economic
1170 consequences are one way or another, and what those impacted
1171 parties will fully realize.

1172 So thank you, and with that, Mr. Chairman, I yield back.

1173 Mr. {Walden.} Gentleman yields back the balance of his
1174 time. Chair now recognizes the Vice Chairman of the
1175 Subcommittee on Communications and Technology, Mr. Latta.

1176 Mr. {Latta.} Thank you very much, Mr. Chairman, and
1177 again, thanks very much to our panel for being here. You
1178 know, these are really important questions. You know, I
1179 represent what you might consider a suburban, rural-type
1180 district, and when we had the switchover to digital, I knew
1181 it was going to--we got a lot of phone calls from people
1182 about--because, you know, TV viewing is something that is
1183 important to a lot of folks out there. I can remember one

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1184 day I was doing courthouse conferences, and I think I had
1185 five people in a row that came in and sat down and asked the
1186 exact same question about what was happening to their TV
1187 viewership, and so I know that these are very important
1188 questions to folks out there.

1189 And if I could, Ms. Gore, I would like to start with you
1190 with this question. Do television viewers--and this could be
1191 maybe a loaded question. Do television viewers understand
1192 how the current law works, and following up with that, what
1193 kind of complaints about satellite law does the FCC receive
1194 from viewers?

1195 Ms. {Gore.} Mr. Latta, we looked into that and I am
1196 happy to report that the number of complaints that we got
1197 over the past year, 2012, was about--between 60 and 70
1198 complaints that were catalogued as in this category. They
1199 have shifted, over my experience with this subject area, from
1200 a focus on concern about distant signals, and now the
1201 questions are more about local stations. The questions--I
1202 can't break them down into individual categories, but
1203 basically there are some situations where a consumer is
1204 getting the local package and then for some reason, they are

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1205 suddenly getting a different local package. And so they
1206 contact us to understand why that was changed, and there were
1207 different reasons why it was changed. Sometimes it is an
1208 error on the part of the satellite operator, and sometimes it
1209 is because that DMA map may have changed, and so it is
1210 something that is accurate.

1211 The essence of those complaints actually seems to be
1212 that consumers would like to choose the local stations that
1213 they are offered, as opposed to being confined to those
1214 within the DMA. I am not expressing an opinion, I am
1215 reporting what their complaints are.

1216 Mr. {Latta.} Let me just follow up with that just a
1217 little bit. When you do get those complaints, how long does
1218 it take for the turnaround time for the FCC to get back to
1219 the consumer with those answers?

1220 Ms. {Gore.} Well actually, typically we have our
1221 wonderful call center folks who take a call, and they talk to
1222 the person on the phone and they explain it to them. If they
1223 submit a complaint in writing, then someone gets back to
1224 them, and oftentimes, if it is a complaint that is
1225 specifically about a particular satellite carrier, they will,

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1226 I believe they use the term ``serve'' that complaint on the
1227 satellite carrier in order to get a response. So there is a
1228 process in place that has a certain time frame for the
1229 satellite carrier to respond in that case. Every once in a
1230 while, a consumer finds his or her way to me and we get to
1231 have a lesson in copyright.

1232 Mr. {Latta.} Well following up with that, if we could,
1233 on the predictive model indicates that if a viewer can get an
1234 adequate signal over the air, and is ineligible to receive
1235 distant signal service, the law allows the viewer to
1236 challenge that finding on a location test. Do the viewers
1237 ever request such tests, and if so, what happens?

1238 Ms. {Gore.} The tests would be requested from the
1239 satellite carrier, not from us, so I do not have data on
1240 that. I do not know how often it happens. It used to be an
1241 issue before. That used to be the topic of some complaints
1242 and inquiries. As I said, over the past year, we have not
1243 heard any of those so--but I can't speak to that. The
1244 satellite carriers would know whether they are being
1245 requested to arrange for tests.

1246 Mr. {Latta.} Well, I guess if I could then turn to DISH

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1247 then to maybe answer that question. Do you get those types
1248 of questions that come in from the consumers, Mr. Dodge?

1249 Mr. {Dodge.} Since today we provide local channels in
1250 all 210 markets, we don't provide traditional distant
1251 service, if you will, where that would really come into play,
1252 but my understanding is historically, very few, you know,
1253 back when we did provide those services.

1254 Mr. {Latta.} Thank you very much, Mr. Chairman. I
1255 yield back.

1256 Mr. {Walden.} Thank you. I thank the vice chairman for
1257 his work on this and other issues. I now recognize the fill-
1258 in ranking member from the great State of Vermont, Mr. Welch.

1259 Mr. {Welch.} Thank you very much, Mr. Chairman.

1260 Many of us on this committee represent rural areas, both
1261 Republicans and Democrats, and many of the challenges that
1262 folks face in rural areas, both consumers and some of our
1263 broadcasters, seem to be different than some of the
1264 challenges that urban areas face for consumers and
1265 broadcasters. I really would be interested in the view of
1266 you who have so much experience about how you would describe
1267 some of the particular challenges that tend to face folks and

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1268 broadcasters in rural areas. Ms. Gore, could I start with
1269 you?

1270 Ms. {Gore.} As I mentioned, the complaints that we get
1271 or the inquiries that we get are often about the local
1272 package, and sometimes, very often, that is a rural area
1273 where consumers want to be able to get, perhaps, more of the
1274 stations that are from their own state. I know that that has
1275 been an issue in Vermont, historically, and in other places
1276 as well.

1277 Mr. {Welch.} But not just Vermont, right, I mean, that
1278 is a rural area as a whole?

1279 Ms. {Gore.} It is a rural area issue all across the
1280 country. That was what we were talking about, which we
1281 sometimes informally call the orphan county issue where the
1282 country is in one state, but it is part of a DMA that is
1283 located predominantly in another state, and so there are not
1284 a lot of or perhaps any in-state stations available to those
1285 consumers. It is a small problem, but it is a big problem
1286 just in the way it is reported to me for those areas where
1287 that occurs.

1288 Mr. {Welch.} Thank you. I would like to really get the

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1289 benefit of each of you telling us your thoughts on the rural
1290 challenges. Mr. Dodge?

1291 Mr. {Dodge.} Sure, and so I would echo everything that
1292 Ms. Gore said. It is really the short market problem, it is
1293 areas outside of our spot beams, as you would imagine, you
1294 know, using Utah as an example. The corners of the state are
1295 very rural, and then also the orphan county issue is a
1296 predominantly rural issue, and that occurs in 40 states
1297 today.

1298 Mr. {Welch.} Do you have any suggestions on addressing
1299 that?

1300 Mr. {Dodge.} Yes. What we have historically proposed,
1301 which I think is pretty darn fair, but let us use Colorado as
1302 the example where we have two counties in the southwestern
1303 portion of the state that are actually in the Albuquerque
1304 DMA. Our proposal has always been that we will provide those
1305 folks Albuquerque locals, but let us also give them one in-
1306 state signal of their choice, preferably Denver, because our
1307 spot beam covers down there, and ultimately let them choose
1308 which they prefer.

1309 Mr. {Welch.} Ms. Mago? Thank you, Mr. Dodge.

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1310 Ms. {Mago.} From the broadcaster's perspective, one of
1311 the key challenges they face in the rural areas is making
1312 sure they have enough revenues so they can continue to
1313 provide the quality programming that they need to. But let
1314 me address the DMA issue for just a moment, if I could,
1315 please, because DMAs are not just sort of random boxes that
1316 are put around. They are designed by the Nielsen Company to
1317 reflect where viewers are actually listening to the stations,
1318 and that is why they shift, as Ms. Gore was explaining. They
1319 shift when viewer patterns change. But for the most part,
1320 providing the local into local DMA market signal is going to
1321 address the needs of the county. There are a few places
1322 where that becomes a little bit more challenging, and one of
1323 the things that the carriers can do is to provide the in-
1324 state programming that is not duplicating that network prime
1325 time programming, and they can do that, and it has been done
1326 in several areas to address the issue of making sure that
1327 those that are in-state are able to receive their in-state
1328 information.

1329 Mr. {Welch.} Thank you. Ms. Kieley?

1330 Ms. {Kieley.} Congressman, I would say from public

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1331 television's perspective, serving rural areas is a top agenda
1332 item for us. We have a universal service mission, as I
1333 mentioned earlier, and we take that mission very seriously.
1334 I think part of our challenge, and with any paid television
1335 provider, is that on a broadcast--from a broadcast
1336 perspective, we serve over 98, close to 99 percent of this
1337 country with a free over-the-air signal, and it has been very
1338 costly to do that, and from a public television perspective,
1339 particularly in these rural areas. Rural areas, such as
1340 Vermont, often--your state, you would know quite well, can be
1341 mountainous and the terrain can be difficult, and for public
1342 television to serve those areas, we do that with a series of
1343 expensive equipment, many translators to fill in those
1344 coverage areas, and of course, in those areas we also have
1345 limited populations from which we can derive, you know, local
1346 support for our stations. And so we have a very robust
1347 broadcast presence in rural areas, from a public television
1348 perspective, and we very much appreciate the local into local
1349 that is part of the satellite bill that helps us to mimic
1350 that presence in satellite legislation.

1351 I would say, touching a little bit one other special fix

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1352 that public television has that was in the STELA law, we have
1353 a unique situation where a handful of our states, about 21 of
1354 them, have statewide licensees are--the licenses are issued
1355 from the state to serve the residents of the entire state.
1356 Many of those rural, not all of them, but many of them are
1357 rural and so we were appreciative of the language in STELA
1358 that allows the satellite carriers, should they get the
1359 capacity, to serve those statewide licensees with the signal
1360 originating out of their state public television networks.

1361 Mr. {Welch.} Okay, thank you very much. I yield back.

1362 Mr. {Walden.} Just for the record, my district is seven
1363 times the size of Vermont, plus, so--

1364 Ms. {Kieley.} Many translators.

1365 Mr. {Walden.} District of many translators. We go now
1366 to Representative Shimkus from Illinois.

1367 Mr. {Shimkus.} Thank you, Mr. Chairman. Of course, a
1368 great committee, great issues, a lot of fun. I have been on
1369 it a long time.

1370 I think every member should be issued a teenager in this
1371 digital age, because then you are up-to-speed on the new
1372 technology and how they watch, how they view movies. I was

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1373 talking to my son just before we came out, and he is
1374 watching--I have never seen it--`The Walking Dead'' and he
1375 can get first 2 years, I guess, he watches on the Internet,
1376 and then, of course, the third year, he can't. He has got to
1377 wait for the broadcast or whatever. And it just reiterates
1378 the difference of how people are viewing content and how they
1379 go about it, and so there is one benefit of a teenager.
1380 There are some disadvantages. I can talk about those later.
1381 So it is very exciting, and again, we want to support
1382 all of the work you do, and--but we are talking locally, too,
1383 and I was trying to--using my new technology and all this
1384 stuff, figure out my DMAs. I think I got five, Springfield,
1385 Champagne, Decatur--that is the only one that is in Illinois--
1386 -St. Louis, Cape Gerardo, Paducah, and Terre Haute. So I
1387 border three states, so we have this issue of the DMA and
1388 bleed over and the like, and we have just got to be careful,
1389 because in a congressional district that has any size,
1390 sometimes the folks will not want an Illinois signal. They
1391 will want the St. Louis DMA and they want to be there, where
1392 there may be others who will say well, can't we get Illinois
1393 news, because we are in a part of the state where they are

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1394 receiving Indiana station. So there is not a hard and fast
1395 rule of when you, you know, you want to default to one or the
1396 other, based upon the citizens of that area, so it is very
1397 tricky. I am just laying that out. We have experienced
1398 that.

1399 Let me ask a question on--does anyone know how many
1400 actually short markets there are?

1401 Mr. {Dodge.} There are 21.

1402 Mr. {Shimkus.} And are there any in my--no, I mean,
1403 because--and so since there are 21, what is a way that we can
1404 kind of fix that problem, and is that--is this an avenue in
1405 reauthorization to try to do that?

1406 Ms. {Mago.} To some extent, the market is fixing
1407 itself. As I noted earlier, the--with digital technology,
1408 stations are able to have multiple streams that they can put
1409 out over their signal and they are, in fact, carrying--

1410 Mr. {Shimkus.} Let me ask again, because I like that,
1411 the digital answer, so I don't know the answer now, but the
1412 digital cliff that we had initially, you know, the analog
1413 signal went a long ways, and then we have digital TV and we
1414 have the digital cliff. Has technology pushed that digital

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1415 signal back further out to meet the analog broadcast, or do
1416 we still struggle with that?

1417 Ms. {Mago.} You know, the Commission did a lot of work
1418 in terms of trying to raise power levels to make sure that
1419 you were, in fact, duplicating those coverage areas that had
1420 been there before, and we are about to face it again as we
1421 look at the repacking that may happen as a result of the
1422 incentive auctions and reclamation of some of the broadcast--

1423 Mr. {Shimkus.} Voluntary incentive auctions.

1424 Ms. {Mago.} Voluntary incentive auctions that will be
1425 part of that. The repacking part has never been voluntary.
1426 They hate it when I say that, but the repacking is not--has
1427 never been voluntary, and that is going to cause some issues,
1428 but I think for purposes today, the spot beams that are
1429 provided on the satellite can help to bring in some of that
1430 service as well.

1431 Mr. {Shimkus.} Okay, let me finish up. I have got 1
1432 minute left, and I agree with a lot of folks who are talking
1433 up here. Everyone views that there is some anachronism in
1434 the law, so that could be dealt with, so going--starting with
1435 Mr. Dodge, what would be anachronism that you would like to

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1436 get solved in a reauthorization or a rewrite in the law?

1437 Anything?

1438 Mr. {Dodge.} I would--

1439 Mr. {Shimkus.} This is trying to smoke you out to say,
1440 okay, what is your problem? What do you want fixed? I am
1441 using a big word. I usually don't use them that much.

1442 Mr. {Dodge.} Sure. I would say the anachronism writ
1443 large in all these laws is the fact that it is an unfair
1444 fight in retransmission consent negotiations today, and the
1445 people that suffer are the consumers, because there are more
1446 and more takedowns occurring. I think in 2010, there were
1447 roughly 10, 2011, there were 50, last year there were 100,
1448 and it is the consumer that is paying the price. So I thin
1449 that needs to be fixed. Consumers need to keep getting the
1450 signal during the--you know, while we work it out with the
1451 broadcasters, so to speak. And I would also say the orphan
1452 county issue is an anachronism of the whole system that needs
1453 to be worked out, and I think you raised a very good point.
1454 I mean, it may very well be that folks in southwestern
1455 Colorado prefer watching Albuquerque stations because they
1456 buy their Chevys in Albuquerque and they want to see those

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1457 advertisements. But I think we should give them the
1458 opportunity to make that decision for themselves.

1459 Mr. {Shimkus.} Okay. I am going way over my time. If
1460 I can get, Mr. Chairman--so why don't we just go down the
1461 line? Thanks.

1462 Ms. {Mago.} First of all, you may have seen me kick Mr.
1463 Dodge under the table. We think that the retransmission
1464 consent negotiations are going forward. There have been a
1465 few--

1466 Mr. {Shimkus.} This is what we want. I have been
1467 trained by Billy Tozan to get the fight going, so--

1468 Mr. {Walden.} Maybe this was the education--you missed
1469 the previous.

1470 Ms. {Mago.} DISH Network has been involved in a number
1471 of those disputes, but we all try to work them out together
1472 and will continue to do that. I will note also, Mr. Shimkus,
1473 that I determined that there are no short markets in your
1474 district--

1475 Mr. {Shimkus.} Thank you.

1476 Ms. {Mago.} --so that is an issue that you don't need
1477 to worry about.

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1478 Ms. {Kieley.} I would just echo my earlier comments and
1479 say we think this is a very complicated process and we
1480 appreciate being included from the very beginning, and we
1481 will be looking for those anachronisms in the law along with
1482 you.

1483 Mr. {O'Leary.} The only thing I would say, it goes back
1484 to what I said at the outset which I think that as a
1485 threshold, the committee, the subcommittee should look at
1486 whether or not the role of government, as it was originally
1487 constituted, you know, 20 years ago, 30 years ago, what have
1488 you, is still applicable in the current state that we are in
1489 right now. I think that is the single biggest issue that
1490 needs to be addressed.

1491 Mr. {Shimkus.} Thank you.

1492 Mr. {Walden.} Okay. We now turn to the former vice
1493 chair of the committee, Mr. Terry, for 5 minutes if you have
1494 questions.

1495 Mr. {Terry.} Sure, why not. It has been asked several
1496 times before, but I haven't asked it. I am slightly confused
1497 on the local into local, and here I will just lay out the
1498 scenario. In the Sand Hills area in the middle of Nebraska

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1499 where very few reside, the only option is satellite. In an
1500 area that is right outside of--in Nebraska, pretty good size
1501 town that has their own TV stations, in North Platte,
1502 Nebraska, but yet the satellite for that area, even just
1503 barely outside of the signal range from those stations, they
1504 get Denver. And the networks that cover--if you are cable or
1505 in the signal, get the Husker games and the Husker news, and
1506 people around Plattsmouth that get their satellite get Denver
1507 Broncos news, they don't like that. They like the Broncos,
1508 but they want the Huskers. So what is the technology issue
1509 here? What is forbidding the satellite companies from being
1510 able to put in the local TV that is an hour drive, hour and a
1511 half drive from these areas? Mr. Dodge, since you are a
1512 satellite guy, I will let you try and answer that.

1513 Mr. {Dodge.} I am indeed. Well, with all due respect
1514 to what Ms. Mago said about the DMA system, I think it is
1515 largely a DMA system issue. We view it largely as a system
1516 that was set up in the 1950s based on what people were
1517 watching back then, and although theoretically DMAs shift
1518 over time based on actual viewership, there really is no way
1519 to change that viewership if you can only provide the local

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1520 signal authorized for each DMA into that DMA. If, for
1521 example, we were allowed to do what I proposed for
1522 southwestern Colorado, which is give people the choice
1523 between Albuquerque and Denver, then over time, it may switch
1524 to Denver, but to Congressman Shimkus's point, it may not
1525 because those people may actually be interested in
1526 Albuquerque. Our view is let them decide and then maybe the
1527 maps shift.

1528 Mr. {Terry.} How about if the people in the area have
1529 actually received a letter from the FCC saying that they
1530 should be getting the North Platte TV stations? Is there a
1531 technical reason why the satellites couldn't do that area?

1532 Mr. {Dodge.} I think what you are referring to is a
1533 case of significantly viewed, perhaps?

1534 Mr. {Terry.} Yes.

1535 Mr. {Dodge.} I am not sure what their specific reason
1536 is in that particular area, but generally speaking, the
1537 problems we have had with significantly viewed are
1538 technology-wise, the signal that is significantly viewed may
1539 or may not be on the same spot beam as the local channel,
1540 which makes it very difficult to provide, and then there are

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1541 also contractual issues sometimes where the station being
1542 invaded, so to speak, might condition their retransmission
1543 consent unless not importing a signal, but similarly, we have
1544 to get the consent of the station we want to import to
1545 actually do the importation, and they may not grant us that
1546 consent.

1547 Mr. {Terry.} Okay. I don't know if that is the issue.
1548 I would think that would be odd that they don't want somebody
1549 100 miles away from their station not to see their station.
1550 But the answer is the technology changes would be too costly,
1551 and I just didn't understand what that entailed, the
1552 technology changes.

1553 Mr. {Dodge.} Yeah, typically the issue is that the
1554 station that folks desire to import or that is significantly
1555 viewed is not on the same spot beam as the local market.

1556 Mr. {Terry.} How much generally does that cost a
1557 satellite company?

1558 Mr. {Dodge.} It depends. Satellites cost typically
1559 these days about \$350 million a piece, so--

1560 Mr. {Terry.} Okay, so you would have send up a whole
1561 new satellite to bring that--

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1562 Mr. {Dodge.} In certain cases, yes.

1563 Mr. {Terry.} Okay, interesting. Well, my time is
1564 almost up, but I am not done yet.

1565 Mr. {Dodge.} We would be happy to get the specifics of
1566 that particular issue for you.

1567 Mr. {Terry.} You have them. You may not, personally,
1568 but your company does.

1569 Mr. {Walden.} Gentleman yields back the balance of his
1570 time. Chair now recognizes the gentleman from Louisiana, Mr.
1571 Scalise, for 5 minutes.

1572 Mr. {Scalise.} Thank you, Mr. Chairman, for the 101
1573 hearing we are having to start getting into this. Of course,
1574 the reason we are here is because STELA expires. The laws
1575 that we are discussing today have sunset provisions and that
1576 is why we get to these various iterations, and it forces
1577 Congress to come back and look and work with industry and say
1578 what works, what doesn't work, and you know, hopefully when
1579 we are going into the next iteration before the expiration of
1580 STELA at the end of next year, we address the problems and
1581 the changes in the marketplace. It is a very dynamic
1582 marketplace. A lot of you have done some wonderful things to

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1583 allow and bring high definition and great programming to more
1584 people, and so that sunset provision allows that to happen.

1585 Now, you know, as we look at the broader marketplace of
1586 video regulations, most of them do not have sunsets, and I
1587 would be curious to take--it is more a policy question, so
1588 Ms. Gore, I will hold you harmless on this one, but I would
1589 be curious to see what the rest of the panel, what your
1590 thoughts are and not just looking at Section 119, but having
1591 sunset provisions on all of these laws that we would then
1592 force Congress to go back and say what is working, and what
1593 isn't, not just in the satellite arena, but in the others?

1594 I will start with you, Mr. Dodge.

1595 Mr. {Dodge.} And I think since 119 is the actual
1596 statute that is expiring at the end of 2014, people tend to
1597 look at just that and say I like this or I don't like that.
1598 It should sunset, it shouldn't. And our view of the world is
1599 if you are going to consider letting that sunset, it is a
1600 much broader discussion. We do think there are problems with
1601 119. I have mentioned a bunch of those today. But if you
1602 are going to let that sunset, then I think you have to look
1603 at the entire mosaic, if you will, or quilt of all the

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1604 statutory copyright licenses, 122, the cable licenses,
1605 because in my view and as long as I have been involved in
1606 this, they are all interrelated, and you can't just throw out
1607 119 and not look at things like must carry, retrans, et
1608 cetera, et cetera. And I think it is a discussion that is
1609 worthy of having.

1610 Mr. {Scalise.} Maybe another day we will have that
1611 discussion. Ms. Mago?

1612 Ms. {Mago.} Well, if you letting me go outside of the
1613 realm of the specific hearing that we have here, I mentioned
1614 the broadcast ownership regulations are ones that we have
1615 advocated for some time need to have some relook at them.

1616 Mr. {Scalise.} I agree with you there. Thank you. Ms.
1617 Kieley?

1618 Ms. {Kieley.} Thank you. I would echo, it is very
1619 complicated and very intertwined. Many of these pieces are
1620 very intertwined and we do just hope, you know--public
1621 television are must-carry stations and doing things like
1622 doing away with the compulsory license could actually--even
1623 though we aren't involved in retransmission consent, could
1624 impact public television stations and so we are just

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1625 appreciative that the committee is taking an early look at
1626 this and hope that they will continue to look at how
1627 intertwined these issues are, and what the unique needs of
1628 local public television stations are.

1629 Mr. {O'Leary.} Congressman, I would agree with what you
1630 said. I think it is never a bad idea to have Congress go
1631 back and see what is working and what is not working. I
1632 think implicit in your question is the simple fact that these
1633 things are intertwined and that if you look at them
1634 collectively, you are more likely to have a better view of
1635 what works for the consumer in the long run and so I would
1636 agree with what you are saying.

1637 Mr. {Scalise.} Thank you, and I think you had talked in
1638 your testimony about, you know, what is it that consumers
1639 really want? Consumers, you know, they want content. They
1640 want the entertainment. They are not--they don't necessarily
1641 want to have--they don't want to buy a satellite dish, they
1642 want to have the content and the entertainment that comes
1643 with it. They don't want cable or fiber optic, that is not
1644 why they are paying the monthly bill. It is because of what
1645 comes in, and so when you look at what they are really

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1646 interested in, is it the broadcast signal that they are
1647 interested in or is it the content that comes with that
1648 broadcast signal?

1649 Mr. {O'Leary.} Well, I think quite honestly it is a
1650 little bit of both. I think that there is--you know, people
1651 want local broadcasters for news and things like that. I
1652 think they want content. I think the short answer,
1653 Congressman, is consumers want everything right now, and the
1654 good news is that they are living in an era where you have
1655 got a better chance of getting everything than you did
1656 before. You look at the television as it existed when we
1657 were children and you look at the television that our
1658 children are growing up with, those are vastly different
1659 platforms, frankly, and in the future, it is going to be even
1660 more. I think the real question and the question which is
1661 underlying the entire discussion today is what is the proper
1662 role of the government in terms of facilitating that
1663 happening? And my focus, frankly, is on the compulsory
1664 licenses because we think they unnecessarily dampen the
1665 development of that market. But to your question, it bears
1666 looking at all of the different issues that are before us.

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1667 Mr. {Scalise.} Okay, last question before I run out of
1668 time. Ms. Mago, when you look at what has happened with--of
1669 course, DISH is here, DirecTV, the ability to negotiate with
1670 cable companies for their copyright content, we have seen in
1671 a real dramatic expansion of cable companies, you have got
1672 the Food Network, Nickelodeon, a lot of these other pay TV
1673 companies that have seen real expansion in their viewership
1674 because of their ability to negotiate in a more open
1675 marketplace. Would you say that the same kind of marketplace
1676 should exist with the retransmission consent, with
1677 compulsory, with--

1678 Ms. {Mago.} For local stations, the signal that they
1679 put together is the amalgamation of all of the programming,
1680 and there is many, many different kinds of authorizations,
1681 licenses, that one needs to get in that area. Our members
1682 continue to be concerned that trying to put that together on
1683 a local station basis is one that is a difficult process.

1684 Mr. {Scalise.} Thank you. We can continue that
1685 conversation and look forward to it, but I appreciate all of
1686 your input today for being here. I yield back.

1687 Mr. {Walden.} Thank the gentleman. Chair now

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1688 recognizes the gentleman from Colorado, Mr. Gardner, for 5
1689 minutes.

1690 Mr. {Gardner.} Thank you, Mr. Chairman. Thank you for
1691 holding the hearing today. I just wish my colleague from
1692 Nebraska was still here so we could give him a hard time for
1693 wanting to watch Nebraska football.

1694 Mr. {Walden.} He may be watching on a distant signal
1695 somewhere in an orphan area.

1696 Mr. {Gardner.} I don't have much room to talk, though,
1697 according to some of the performance we have seen the past
1698 couple years out of some Colorado teams, so I will just stop
1699 with that.

1700 But I wanted to particularly welcome Mr. Dodge to the
1701 committee today. As a result of redistricting, DISH is a
1702 constituent company and I am glad that you could be here
1703 today, and all the witnesses, thank you for your time.

1704 I wanted to just talk briefly about some of the issues
1705 that most of you have touched on already at various times
1706 throughout the testimony and so to Mr. Dodge, can you just
1707 give me a quick explanation--the committee a quick
1708 explanation, what would happen if STELA were to expire and

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1709 what would that effect be on consumers across the country?

1710 Mr. {Dodge.} Yeah, with respect to DISH particularly,

1711 it would mean that the short markets I described, those folks

1712 would no longer be at level playing field with folks in other

1713 markets around the country, because they would lose whatever

1714 affiliates are not represented in their particular DMAs.

1715 They would lose the ability to access that programming.

1716 Similarly, folks who are outside of our spot beams would lose

1717 their local channels. RVs and commercial trucks would no

1718 longer be able to get network programming via satellite. And

1719 with respect to DirectTV, who doesn't provide local service in

1720 all markets, they would lose the ability to provide network

1721 programming to folks who are unserved by their local

1722 broadcast stations, and presumably, they would lose

1723 subscribers who have been grandfathered from prior Satellite

1724 Home Viewer Act reauthorizations.

1725 Mr. {Gardner.} Ms. Gore, would you add anything to

1726 that, or want to add anything to that, if you can?

1727 Ms. {Gore.} No, I think that covered the list that I am

1728 aware of.

1729 Mr. {Gardner.} Ms. Mago?

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1730 Ms. {Mago.} Only to note that I think, again, as I said
1731 in my testimony, that that is a diminishing number as we go
1732 through the various fixes that are happening, including
1733 addressing the issues in short markets through the stations,
1734 channels, and such things.

1735 Mr. {Gardner.} Okay, and then I wanted to take another
1736 opportunity at Mr. Dodge to perhaps have you respond to
1737 something that was in Ms. Mago's testimony, and I believe it
1738 was stated on page seven, ``That today over 98 percent of all
1739 U.S. television viewers have the option of viewing their
1740 local network affiliates by satellite'', and then goes on to
1741 say ``With few exceptions, there are no unserved viewers in
1742 areas in which local into local satellite transmissions are
1743 available, and that accordingly, no public policy justifies
1744 treating satellite subscribers in local into local markets as
1745 unserved and therefore eligible to receive distant network
1746 signals.'' It talks a little bit about viewing that language
1747 as perhaps a loophole, but I was wondering if you could
1748 respond to that assertion and whether or not you view that as
1749 a loophole, and what would happen to your customers if that
1750 were to change?

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1751 Mr. {Dodge.} Yes, we don't view that as a loophole. We
1752 view that as exactly what the law says, which is if there is
1753 a retransmission dispute, then we are no longer offering a
1754 local affiliate related to that network, and we are allowed
1755 to import a distant signal to folks who are unserved in the
1756 traditional sense, meaning they don't get an off-air signal
1757 of decent quality.

1758 Mr. {Gardner.} Okay, and then to both you and Ms. Mago
1759 as well, conditions in the law sometimes prevent viewers from
1760 getting access to the programming they really want. We have
1761 talked about that here. Broadcasters can waive some of these
1762 conditions on a case-by-case basis, and do they ever, and if
1763 not, why not? I guess Ms. Mago, I will start with you.

1764 Ms. {Mago.} I think Mr. Dodge said a little while ago
1765 that that doesn't really happen on the DISH Network, as I
1766 understood it. If I misunderstood your question, I am sorry,
1767 but in terms of the broadcasters, what broadcasters are
1768 looking for is to make sure that they are able to serve their
1769 audiences and continue to be able to do that by having local
1770 viewers. We are able to do that, maximize the amount of the
1771 revenues that we can then plow back into the better service,

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1772 and that is why we look at those markets and make sure that
1773 the local into local service is there. It helps the viewers
1774 themselves because they are able to get whatever local
1775 weather information and other things that are important to
1776 them, and that is why we continue.

1777 Mr. {Gardner.} Do broadcasters ever do the waiver,
1778 talking to--

1779 Ms. {Mago.} There are a few that I know of that have
1780 done that. I think it is becoming less now because one of
1781 the concerns that was waivable for a while was that the high
1782 definition programming wasn't available through the
1783 satellite, and we are now getting to the point where that is
1784 always going to be available for the local stations as well.
1785 I am aware of a marketplace in Wilmington, North Carolina,
1786 and the local station there, in fact, had granted a waiver to
1787 allow the distant signal to come in because it was more--it
1788 was high definition when the local signal was not. I am
1789 hoping that has been corrected.

1790 Mr. {Gardner.} And the good news for Mr. Terry is that
1791 in a couple of years, the Cornhuskers and the Buffalos will
1792 be playing again, so he will be able to at least watch that

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1793 game, even if it comes from Colorado.

1794 Ms. {Mago.} That sounds like many--

1795 Mr. {Gardner.} To that point, the discussion that we
1796 have had, we have talked about the markets and I guess for
1797 the entire panel as I run out of time here, do we know how
1798 many viewers are assigned to a designated market area that is
1799 not within their state? So I know we have identified the
1800 number of areas, but do we actually know or have an idea of
1801 how many viewers are there?

1802 Ms. {Mago.} I am sorry, I don't.

1803 Mr. {Dodge.} I do know in Colorado I believe it is
1804 10,000 folks or TV households--

1805 Mr. {Gardner.} The southwestern part?

1806 Mr. {Dodge.} Yes, in those two counties, but
1807 nationwide, I don't have the number off the top of my head.

1808 Mr. {Gardner.} Okay.

1809 Ms. {Kieley.} From a public television perspective, I
1810 know we had about 21 of our statewide licensees that were
1811 impacted by that, with some states it being a much bigger
1812 problem. For instance, in Wyoming, I believe that--I think
1813 it was close to about 75 percent of viewers in that state

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1814 resided outside of--from a public television perspective, the
1815 DMA where our public television station had all three of its
1816 transmitters located, so it varies from state to state, but
1817 for public television, some of those areas out West and in
1818 smaller parts of the East were problematic.

1819 Mr. {Gardner.} Thank you, Mr. Chairman, for your
1820 leniency with the time.

1821 Mr. {Walden.} No problem. We are going to move now to
1822 the gentlelady from North Carolina, a new member of our
1823 subcommittee. We are delighted to have Renee Ellmers with
1824 us, and we look forward to your questions as we wrap up this
1825 hearing.

1826 Mrs. {Ellmers.} Great, thank you, Mr. Chairman. I am
1827 happy to be here. I apologize for being late. I had dueling
1828 subcommittees going on, so thank you to our panel for being
1829 here as well.

1830 Ms. Gore, I have a question for you. Are there
1831 instances where the local broadcaster as defined by the
1832 statute is not actually carrying news, alerts, closings,
1833 sports, civic affairs, and other content in the viewer's
1834 state?

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1835 Ms. {Gore.} Yes, I believe there are those situations.
1836 That plays into what we have been talking about as the orphan
1837 county situation, so that technically on paper it may appear
1838 that there is an in-state station in the DMA, but it may be a
1839 station that its programming does not include news or weather
1840 or traffic or public affairs of that sort. I am sure they
1841 are meeting their public interest requirements that Ms. Mago
1842 would know about.

1843 Ms. {Mago.} Yes, they are.

1844 Ms. {Gore.} But they don't necessarily have the kind of
1845 newsroom, staff, or situation to cover breaking weather
1846 events or something of that sort.

1847 Mrs. {Ellmers.} Thank you, and I have question, and I
1848 would like for each one of the panel to give a quick, you
1849 know, brief response. You know, because this is kind of our
1850 introductory hearing on this issue, we are not yet debating
1851 on how to change the law, so to speak, but we do need to know
1852 what the main problems are. So if every panelist could just-
1853 -without, you know, giving us a solution, so to speak, just
1854 kind of touch on the problems that we need to be aware of,
1855 what your main issue is with the law and how we can be

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1856 looking towards the future. And I will start with Ms. Gore.

1857 Ms. {Gore.} Well, as I mentioned, I am not here to talk

1858 about any problems we have with the law. I will only say

1859 that there seem to be some circumstances where perhaps the

1860 hope was that the availability of significantly viewed

1861 stations might help to alleviate of the concerns that some

1862 consumers have had, and I am not sure if the significantly

1863 viewed option is being taken advantage of as often as it

1864 might be. My colleagues would know more about that, and also

1865 would know more about why that might be.

1866 Mrs. {Ellmers.} Okay. Mr. Dodge?

1867 Mr. {Dodge.} I would say the biggest thing we would

1868 like to see remedied is having the retransmission consent

1869 process be put on a more level playing field between the

1870 broadcasters and the distributors, and fixed in such a manner

1871 that consumers don't inevitably lose access to network

1872 programming during disputes.

1873 Mrs. {Ellmers.} Perfect.

1874 Ms. {Mago.} And I, of course, disagree with what Mr.

1875 Dodge just said, but I would also say that our biggest issue

1876 is that we want to encourage local into local service.

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1877 Mrs. {Ellmers.} Okay.

1878 Ms. {Kieley.} And I would say we are taking an early
1879 look at the law and its implementation, and looking for any
1880 problem areas that are there, but I will reiterate that we
1881 were quite pleased with the process. We trust the process.
1882 It worked quite well last time, and we are very appreciative
1883 that our unique needs were addressed the last go around with
1884 STELA, and we hope that if we come upon any of those issues
1885 again, that we can again work with this leadership of this
1886 committee and Congress.

1887 Mrs. {Ellmers.} Excellent.

1888 Mr. {O'Leary.} From our perspective, it is very simply
1889 that the committee step back and take a look at the law and
1890 determine, you know, we believe there are pieces of it that
1891 are trying to solve a problem which no longer exists, and so
1892 we would ask them to look at those, and then at a minimum, to
1893 not expand those areas where we believe that the government
1894 intervention has, you know, reduced our ability to be
1895 compensated fairly for the work that we create.

1896 Mrs. {Ellmers.} Well thank you. Thank you very much
1897 for your responses, and thank you, Mr. Chairman, for allowing

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1898 me to wrap up this hearing, and I yield back.

1899 Mr. {Walden.} Thank the gentle lady from North Carolina
1900 for her participation.

1901 And I think we should have an online contest to name
1902 this one ELOISE, but I have been struggling trying to figure
1903 out how we would do that, so we will welcome your
1904 suggestions.

1905 Ms. {Mago.} Please just don't name it Stanton.

1906 Ms. {Gore.} I actually worked on that the last time, so
1907 I will get that back to you.

1908 Mr. {Walden.} You would get that to me. I know it is
1909 not weighing in on any policy, but the name is important, and
1910 given four reauthorizations you have lived through.

1911 We want to thank our panelists for testifying today. We
1912 appreciate your input as we begin down this path. We will
1913 have, obviously, additional hearings going forward, and I am
1914 sure all of us will have lots of individual meetings going
1915 forward to have these discussions. And so thank you all for
1916 your participation, and with that, the committee stands
1917 adjourned.

1918 [Whereupon, at 12:10 p.m., the Subcommittee was

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1919 adjourned.]