



**Testimony of**

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**On**

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Chairman Upton, Chairman Walden, Ranking Member Eshoo, Ranking Member Waxman, and Members of the Subcommittee, I appreciate the opportunity to testify today. My name is Stanton Dodge, and I am the Executive Vice-President and General Counsel of DISH Network, the nation's third largest pay-TV provider and the only provider of local television service in all 210 of this nation's local TV markets. DISH employs over 25,000 people across the country. In addition to its satellite television business, DISH is seeking to expand into the deployment of broadband services through currently unused spectrum, which has the potential to create tens of thousands of additional U.S. jobs.

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

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

We built and launched the satellites and received a number of regulatory and court approvals, all as envisioned by STELA. The result: today we are the only multi-channel distributor, whether satellite or cable, to offer local broadcast stations to consumers in all of the nation's local markets. This makes us the biggest distributor of public and commercial local broadcast stations in the United States.

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

### **From SHVA to SHVIA to SHVERA to STELA**

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

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

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

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

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

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

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

Recognizing this technological innovation, Congress enacted the Satellite Home Viewer Improvement Act ("SHVIA") in 1999. That statute created the so-called "local-into-local" statutory license, allowing the satellite retransmission of local broadcast signals back into their local markets. It also took the rules created for cable in the 1992 Cable Act and applied them to satellite companies: a system in which local broadcasters may elect either to negotiate for

retransmission by the satellite carrier on commercial terms, or choose mandatory carriage—“must carry”—for a 3 year term. Unlike cable, however, satellite was given a choice: either don’t carry any local broadcast signals in a market or, if you do, carry all of them.

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

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

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

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

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

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

Following certification by the FCC and the federal district court, DISH has been able to take full advantage of STELA’s distant network signal license, subject only to continued provision of local programming packages in all 210 markets. This means two things: since 2010, DISH has been offering local stations in all of the nation’s TV markets, becoming the only multi-channel provider in the country, whether cable or satellite, to achieve that milestone. Second, DISH has been able to supply distant stations to qualified customers. To stress again: the process set forth in STELA worked precisely as envisioned, and it stands as an example of how a targeted legislative solution can work to everyone’s benefit.

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

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