

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

Satellite Video 101 Hearing

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INTRODUCTION

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

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

HISTORY OF SATELLITE TV LAW

SHVA

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

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

SHVIA

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

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

SHVERA

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

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

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

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

STELA

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

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

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

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

EXPIRING PROVISIONS

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

- Distant Network Signal Retransmission Consent Exemption: Until December 31, 2014, satellite operators are allowed to retransmit distant network signals to an unserved household without first obtaining the consent of the station.
- Retransmission Consent Non-Exclusivity/Good Faith Negotiation Requirements: Until January 1, 2015, broadcast stations are prohibited from engaging in exclusive contracts for carriage, and both broadcasters and MVPDs are required to negotiate in good faith for retransmission consent agreements.

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

- Distant Signal Copyright License: The distant signal copyright license contained in Section 119 of Title 17 of the U.S. Code will expire on December 31, 2014.
- Grandfathered Distant Signal Subscribers: There are certain subscribers that meet specific requirements that have been grandfathered and retain their eligibility to receive distant signals until December 31, 2014.

PRACTICAL APPLICATION OF CURRENT LAW AND RULES

Local-into-Local Service

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

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

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

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

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

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

Distant Signals

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

Generally, in order to be eligible to receive distant signals, a subscriber must be deemed to be "unserved" by the local signals via an over-the-air antenna. "Unserved" means that the subscriber's household cannot receive the over-the-air signal of a local network station with sufficient signal strength⁵ as outlined in the current rules.⁶ Additionally, subscribers are limited to no more than 2 network-affiliated signals from each broadcast network. If such subscriber is also receiving local stations, STELA restricts the time shifting permissible for the distant signals based on the subscriber's local time zone. Generally, the subscriber cannot specify which distant signals he or she wishes to receive. In addition to the eligibility criteria associated with the subscriber, the satellite carrier is only permitted to provide distant signals if it complies with the requirement to provide the networks with lists of the subscribers who are receiving distant signals. Below are some of the other major provisions regarding distant signals.

No Distant Where Local

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

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

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

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

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

No Local-into-Local Service

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

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

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

Other “Unserved” Situations

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

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

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

Other Distant Signal Subscribers

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

CONCLUSION

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