

**Stanton Dodge's Responses to Congressman Bobby Rush's Questions for the Record
from September 11, 2013 Hearing Entitled "Innovation Versus Regulation in the Video Marketplace"**

Submitted January 28, 2014

- 1. Do you believe that technologies and industry models have changed or are changing dramatically enough for Congress to consider redefining or revising the term, "multichannel video programming distributor" (MVPD) in the Communications Act?**

DISH has not yet taken a position on this matter.

As many of you know, the DC Circuit Court of Appeals heard oral arguments this week in the case of Verizon vs. FCC, which challenges the Commission's authority under the Communications Act to promulgate "so-called" net neutrality rules.

If the DC Circuit were to VACATE or to order the Commission to revise its rules substantially, how might that affect the parties' abilities to negotiate retransmission consent agreements "in good faith" and at arms-length?

DISH is still reviewing the potential impacts (if any) that the DC Circuit's decision may have on the parties' abilities to negotiate retransmission consent agreements "in good faith" and at arms-length. Separately from the net neutrality decision, we believe that the broken retransmission consent system is a major problem for DISH's business and its customers. The video laws passed in 1992 no longer reflect the marketplace (there was no satellite video business then and no Internet). Unfortunately, the broadcasters are exploiting the failure of Congress to update the rules for this Century. As a result, consumers' bills are rising and blackouts are at an historic high.

- 2. Would there be resulting business uncertainties and would those uncertainties be good or bad for consumers? Why?**

DISH was pleased that the D.C. Circuit found that the Federal Communications Commission has authority to promulgate rules governing broadband providers' treatment of Internet traffic. We were disappointed that the court vacated the anti-blocking and anti-discrimination rules, but we believe the Commission has the ability on remand to craft new rules that will comply with the DC Circuit's decision and protect consumers.

Regarding another line of cases, it appears that the DC Circuit and the US Second circuit are in some disagreement over when and whether emerging video networks can retransmit over-the-air broadcast content.

- 3. I know that the DC Circuit ruling is only a few days old and you may not have fully reviewed it, but which of the courts' interpretations of federal communications and copyright law is more defensible?**

DISH has not yet taken a position on these cases.

- 4. If one circuit court's application of the law and legal reasoning is more compelling or defensible than the other circuit court's ruling, please explain why.**

DISH has not yet taken a position on these cases.

Mr. Munson pointed out in his testimony that added regulations on broadcasters "stem from what some have characterized as a 'social contract' between the government and the broadcasting industry: broadcasters use licensed spectrum to serve the public interest and offer their service free to American consumers."

Many of these broadcast TV consumers and watchers are minorities. In the 2013 Ownership Survey and Trend Report, it was cited that 22 percent of all African-American households and 25 percent of Hispanic households are broadcast-only homes. Additionally, minorities comprise 41 percent. Notwithstanding this fact, minority and female ownership of television stations and cable systems has shrunk dramatically over the years.

- 5. Do any of you challenge or take issue with the proposition that minority TV broadcast and cable system owners can be just as if not more responsive to the needs of their minority viewers and audiences?**

DISH has not yet taken a position on this issue.

- 6. Other than the reinstatement of the minority tax certificate, which NAB has supported, what measures can Congress take so that more programming and news meeting the critical needs of minority viewers and consumers gets carried over the public airwaves, using public rights-of-way?**

Congress, as part of the STELA re-authorization, should pass meaningful retransmission consent legislation. The broken retransmission consent regime is in dire need of comprehensive reform. In the past few years we have seen an escalating number of blackouts arising from impasses in negotiations between the broadcasters and their distributors. And, these blackouts are lasting longer than in the past, and impacting millions more subscribers.

Among other things, we have voiced support for proposals such as interim carriage authority, which would temporarily permit a distant signal to be imported during a retransmission consent dispute. That measure would alleviate the problem of service disruptions and prevent the use of consumers as pawns. And, the broadcaster whose signal is imported will be compensated under the already established distant signal royalty rate. If the broadcaster's local content is as valuable to consumers as they assert, then the imported distant network is an inferior substitute, and both parties would continue to have every incentive to reach an agreement. The imported distant signal simply fills the void for the network programming.

We also support the Video CHOICE Act introduced by Ms. Eshoo and Ms. Lofgren. If passed, the legislation would give consumers greater choice over their programming, tackle the growing problem of bundling of cable channels with network channels, and empower the Federal Communications Commission with significant authority to curtail blackouts.

Mr. Munson says in his testimony that broadcasters are more regulated than any other video platform, including cable and satellite. He goes further to say that FCC public filing rules, including a requirement for local broadcast TV stations to place sensitive pricing information online should also apply to cable systems.

- 7. Assuming for argument that this requirement was made applicable to other video providers, couldn't it lead to more good faith negotiation over retransmission consent agreements?**

DISH does not believe that providing sensitive pricing information of video providers online would lead to more productive negotiations.