Hearing on "The Satellite Television Law: Repeal, Reauthorize, or Revise?"

United States House of Representatives
Committee on Energy & Commerce
Subcommittee on
Communications and Technology

June 12, 2013

Statement of Marci Burdick
Schurz Communications, Inc.
On behalf of the National Association of Broadcasters

Introduction and Summary

Good morning, Chairman Walden, Ranking Member Eshoo and members of this Subcommittee, and thank you for inviting me to testify today. My name is Marci Burdick, and I am the Senior Vice-President, Electronic Division for Schurz Communications, Inc. where I supervise 13 radio stations, three cable companies, eight television stations and have operating partnerships with two additional stations. I hope that my experience with this diverse portfolio can provide insight and perspective on the communications marketplace as I testify today on behalf of the free, local, over-the-air television members of the National Association of Broadcasters (NAB).

Nearly four years after the digital television transition, local television broadcasters reach over 97% of the nearly 120 million households in the U.S. on a weekly basis. More than 54 million Americans, including young people, low-income families, and minorities, rely solely on over-the-air television. Many consumers watch local television through our partnerships with cable and satellite television providers, yet reliance on over-the-air antenna reception continues to grow. With certainty to spectrum access critical to broadcasters' ability to innovate and invest in free, high-quality, locally-oriented service, we thank this Subcommittee for including the necessary safeguards in recent incentive auction legislation and urge you to remain vigilant during the Federal Communications Commission's (FCC) implementation of this important process. I speak for all broadcasters when I say that we look forward to continuing to work with this Subcommittee, the FCC, and other stakeholders in ensuring a successful auction and the preservation of a vibrant and diverse broadcast service.

Today, as this Subcommittee continues its examination of how the public interest can best be served through satellite carriage of local, over-the-air broadcast television signals as provided for by the Satellite Television Extension and Localism Act of 2010 (STELA), I would like to focus on two key principles. First, broadcast localism is a unique and essential component of our communications ecosystem. Second, the market-based relationship that exists between local broadcast stations and pay television providers continues to both function as Congress intended and serve the public interest. As a result, any reauthorization of expiring provisions of STELA should be factually based and narrowly tailored.

Broadcast localism is a unique and essential component of our communications ecosystem

Schurz Communications is proud to own and operate the following local broadcast television stations: KTUU (NBC) in Anchorage, Alaska; KY3 (NBC) and KCZ (The CW) in Springfield, Missouri; WDBJ (CBS) in Roanoke, Virginia; WSBT (CBS) in South Bend, Indiana; WAGT (NBC) in Augusta, Georgia; and KWCH (CBS) and KSCW (The CW) in Wichita, Kansas. We also have operating agreements with KSPR (ABC) in Springfield, Missouri and KDCU (Entravision) in Wichita, Kansas. Across the nation, local broadcasters like Schurz inform, foster and connect communities.

Americans know they can turn to their local broadcasters first for live, in-depth, local information. While I could recount numerous examples of our stations excelling at informing local communities of local news, public affairs, severe weather and emergency alerts, I would like to take this time to recognize the tremendous work that broadcast stations have performed in their coverage of the recent tornados in Oklahoma. Before, during, and after the tragic tornado in Moore touched down on May 20, local broadcast television stations served Oklahomans with up-to-the-minute, life-saving information.[1] Whether it was warning viewers to seek shelter with Doppler radar technology, providing aerial footage of the storm and its destruction from a helicopter or helping emergency personnel communicate rescue and recovery information to residents, broadcasters were there in Moore, Oklahoma as first informers. At 5:30 pm local time, shortly after the worst of the storm, over 475,000 television viewers in the Oklahoma City market were watching local news coverage on broadcast television. To put that in perspective, 375,000 viewers from this market watched the last Super Bowl.

When it comes to disseminating emergency information to the public during times of both natural and man-made disasters, broadcasters remain our nation's most reliable communications network. When phone calls will not go through because either the cell network is congested or phone lines and towers are down, or cable and the Internet go dark from loss of power, anyone with a receiver and battery backup can receive free, over-the-air broadcast signals. As the case of Moore, Oklahoma makes clear, local television broadcasting, because of its boots-on-the-ground reporting and spectrally efficient, one-to-everyone transmission architecture, remains indispensable as a lifeline service in times of danger.

Finally, local television broadcasters also serve an important function in connecting local economies. Through the use of advertising airtime on local television stations,

---

[1] During the week of May 20-26, which saw a tornado strike the area on May 20, 99 of the top 100 rated programs were found on broadcast television. The top 20 shows for the week were all storm-related coverage, in particular special news coverage of tornado and its aftermath. http://www.tvb.org/measurement/PRR_Week35

local businesses are able to educate and connect with the public about their goods and services on both a geographically-targeted and wide-audience basis. This fundamentally local business model promotes both local jobs and local economic growth.

The market-based relationship that exists between local broadcast stations and pay television providers both continues to function as Congress intended and serves the public interest

Recognizing the vital importance of local, over-the-air broadcast television to viewers across America, Congress adopted retransmission consent in 1992. Congress sought to implement a market-based system of property rights and private contracts to address "a distortion in the video marketplace."[2] The distortion was the ability of cable operators to retransmit and resell a local broadcast station's signal without its permission. Retransmission consent recognizes in local broadcasters a property interest in their over-the-air signal, permitting them to seek compensation from cable operators and other multichannel video programming distributors (MVPDs) for carriage of their signals.

The fundamental factual, equitable and competition policy considerations before Congress in 1992 remain true and valid today. Congress found that "[b]roadcast signals, particularly local broadcast signals, remain the most popular programming carried on cable systems."[3] Based on these facts, Congress reasoned that "a very substantial portion of the fees which consumers pay to cable systems is attributable to the value they receive from watching broadcast signals," and because "cable operators pay for the cable programming services they offer to their customers…. that programming

---

[2] S. Rep. No. 92, 102 Cong., 1st Sess. 35 (1991).
[3] *Id.*

services on a broadcast channel should not be treated differently."[4] Finally, looking at the presence of competing channels owned by cable operators through a competitive lens, Congress did "not believe that public policy support[ed] a system under which broadcasters in effect subsidize the establishment of their chief competitors."[5]

Today, local broadcast signals remain the most watched signals on cable systems. During the 2011-2012 television season, 96 of the top 100 most watched prime time programs were aired by broadcast stations.

In recent years, some pay television providers have come before this Subcommittee and the FCC seeking either wholesale revisions of the retransmission consent framework or more targeted "solutions." The reality is the retransmission consent system, under which local broadcast stations negotiate with pay television providers for the retransmission of their signal, is working just as Congress intended.

Both local broadcasters and pay television providers have an incentive to complete retransmission negotiations in the marketplace before any disruption to the viewer occurs, and thus almost all negotiations are completed on time. NAB studies show that over a recent five-year period, service interruptions from retransmission consent impasses represented approximately one one-hundredth of one percent of annual U.S. television viewing hours.[6] In fact, consumers are more than 20 times more likely to lose access to television programming due to a power outage than a retransmission

---

[4] *Id.*
[5] *Id.*
[6] *See* Declaration of Jeffrey A. Eisenach and Kevin W. Caves at 30 (May 27, 2011), attached to NAB Comments in MB Docket No 10-71 (filed May 27, 2011).

negotiation impasse.[7] Moreover, broadcasters have never been found by the FCC to be in violation of their obligation to negotiate in good faith.

Nevertheless, opponents of retransmission consent cite rising retail cable and satellite bills as justification to "reform" retransmission consent. In reality, MVPDs are seeking to limit one of their operating costs, in this case, broadcast programming, and asking for Congress's help. NAB has demonstrated across numerous economic studies that retransmission consent payments are not responsible for high and rising consumer prices charged by MVPDs.[8] Additionally, a recent independent analysis reveals a stark contrast in the weight of costs of cable programming: it estimated that while only two cents of every dollar of cable video revenue goes to retransmission consent, nearly 20 cents goes to cable programming fees.[9] This disparity exists despite the fact that broadcast programming remains the most compelling, most watched programming available.

The fact that new competitors in the MVPD space have emerged in recent years does not weaken the justification for retransmission consent. Certainly both the marketplace and much of the underlying technology have undergone changes over the past two decades. However, the variety of MVPDs in a marketplace does not necessarily mean that the MVPD marketplace is more competitive. Rather, MVPD

---

[7] *Id*.

[8] *Id.* at 11-24 ("data simply do not support the claim that increases in MVPD prices are caused" by retransmission consent fees, as these fees represent a tiny fraction of MVPD costs); Eisenach & Caves, *Retransmission Consent and Economic Welfare: A Reply to Compass Lexecon* (April 2010), Appendix A to the Opposition of the Broadcaster Associations, MB Docket No. 10-71 (May 18, 2010) at 13-17, 21-22 (demonstrating that even a "flawed analysis" conducted for MVPD interests "shows little effect of retransmission consent fees on consumers," and that retransmission fees make up a small fraction of MVPD programming costs and an even smaller percentage of MVPD revenues).

[9] *Where Your Cable Dollar Goes*, Multichannel News (Mar. 28, 2011) at 10-11.

concentration and market power is *increasing* in local markets. Accordingly, these changes in the marketplace do not erode Congress's original rationale that broadcasters should be compensated for their signal as a matter of fairness and sound competition policy, but rather speaks to the wisdom of the property-based framework that it established in the first place. Retransmission consent merely vests in local broadcasters the right to negotiate for the retransmission of their signal—it does not guarantee carriage on an operator's system nor does it dictate the terms or outcome of that negotiation.

Any reauthorization of expiring provisions of STELA should be factually based and narrowly tailored

As this Subcommittee heard in its February hearing, several provisions of STELA are set to expire at the end of 2014, including the Section 119 satellite distant-signal compulsory license of the Copyright Act, and its companion distant-signal retransmission consent exception in the Communications Act. Because of the prevalence of the Section 122 local-into-local compulsory license and its efficacy in promoting local programming in local markets, this Subcommittee should take a hard look at the factual necessity of retaining the distant signal compulsory license for satellite providers. While it remains a factual question as to how many satellite subscribers rely on Section 119 to receive broadcast programming today, during the consideration of STELA it was estimated that only two percent of satellite subscribers received a distant-signal package, and that number was declining in 2009.

Only when every satellite subscriber receives local broadcast stations, and not out-of-market alternatives, are the public interest benefits of the local broadcast system truly realized. Thus, without this factual basis, it is difficult to justify the continuation of the policy of Section 119, “to allow for a life-line network of television service to those homes beyond the reach of their local television stations,”[10] given that the Section 122 local-into-local license has both improved satellite’s competitiveness with cable providers and enhanced broadcast localism. In fact, DISH now provides local-into-local service into all 210 Designated Market Areas (DMAs), and DIRECTV in all but 14 DMAs.

Despite the harm it poses to localism, there have been recent calls from the MVPD community to increase the instances in which the importation of a distant signal is permitted. DISH, for example, has proposed that during a retransmission consent impasse, “video distributors should be able to temporarily provide another market’s network signal.”[11] DISH suggests that Congress should enact this “reform” as part of its examination and potential reauthorization of STELA.[12]

This proposal, and those like it, would unabashedly tilt the marketplace in pay television providers’ favor during retransmission consent negotiations, undermine the equitable and competition policy goals of the statute and ultimately harm consumers. Permitting the importation of a distant signal would vitiate the privately negotiated contracts between local broadcast stations and program distributors for the distribution of network and syndicated programming on an exclusive basis. In turn, this would undercut broadcasters’ ability to invest in high quality informational and entertainment

[10] SHVIA Conference Report, 145 Cong. Rec. at H11792-793.
[11] Testimony of R. Stanton Dodge, DISH, before Senate Commerce Committee (May 14, 2013).
[12] *Id.*

programming, to serve viewers, and to compete effectively for audiences and advertisers.

Ironically, the importation of distant signals, although touted as a consumer-oriented remedy to potential retransmission consent impasses, would most likely create a greater number of such impasses with longer durations by removing a key incentive for MVPDs to reach deals. This would harm local viewers of broadcast television who subscribe to MVPDs who, during this period of impasse, would still be without local news, public affairs, severe weather and emergency alerts, as well as over-the-air viewers who benefit from the investment and scale of local television stations.

Similarly, some have argued against stations' utilization of joint sales agreements (JSAs), local sales agreements (LSAs) and shared service agreements (SSAs) as it relates to retransmission consent and localism. What I can tell you from personal experience is that such sharing arrangements benefit the public, particularly in small and medium markets, through improved news-gathering capabilities, increased local news, sports and other programming and enhanced transmission facilities. To purchase expensive equipment, such as helicopters and Doppler radars, or to offer more robust local news, these sharing agreements have been very helpful.

Schurz has SSA-JSA-LSA success stories. Our General Manager at KWCH in Wichita, Kansas, heard that the Spanish language broadcaster, Entravision, was considering entering the Wichita market. We approached Entravision about a sharing arrangement that enabled KDCU, the Entravision station, to get on the air faster. Within one year, KWCH worked with KDCU to launch a local newscast in Spanish—the first, and still the only one, in Kansas. Entravision is on record saying they may not have been able to provide these services on their own given the economics in smaller markets.

Additionally, in 2006 Schurz entered into a SSA-JSA with local businessman Bill Perkin, the owner of KSPR in Springfield, Missouri. When Mr. Perkin bought the station, KSPR had been an historical under-performer. Many day-parts were barely registering in the television ratings and a succession of short-term owners had under-capitalized the station to the point that its digital coverage consisted of a 40 watt transmitter – that's less than the power of a light bulb. Together Mr. Perkin and Schurz invested in a new facility for KSPR, making it the first full HD local news product in the market. Back-end services are shared, but the station has its own stand-alone news department. While some news product, such as sports highlights, news conferences, etc. is shared, the Perkin and Schurz entities compete robustly and aggressively in the Springfield market. Today, KSPR's news product is second in the market and the winner of numerous awards for journalism and community service.

Importantly, I want to note that Schurz will jointly negotiate retransmission consent agreements on behalf of the shared entity ***only* if the cable or satellite operator agrees to negotiate jointly**. That is a decision made solely by the operator. The reality is that these sharing agreements often simplify complex negotiations for both parties,[13] enhance localism and benefit viewers.

---

[13]For example, Time Warner Cable, the nation's second largest cable operator, routinely negotiates retransmission consent deals on behalf of itself and Bright House Networks, another sizable cable system operator. Mike Reynolds, *TWC Reach Retrans Agreement in Principle*, Multichannel News (Jan. 1, 2013). Similarly, the American Cable Association provides its members with boilerplate retransmission consent agreements to use in negotiations with local stations. *See* http://www.americancable.org/files/images/ACA-RTC_Sample_Agreement_111005.doc (last visited June 10, 2013).

Conclusion

Undermining broadcasters' retransmission consent negotiation rights would reduce the quality and diversity of broadcast programming, including local news, public affairs, severe weather, and emergency alerts, available both via MVPDs and free, over-the-air to all Americans. The current system of retransmission consent is working, and I urge this Subcommittee to resist calls to change it for the benefit of particular industries as part of its examination of STELA reauthorization. Instead, any reauthorization of STELA, in particular Section 119 distant signal license, should be factually based and narrowly tailored.

Thank you for inviting me to participate in this important hearing today.