



**Hearing on
“Reauthorization of the Satellite Television
Extension and Localism Act”**

**United States Senate
Committee on the Judiciary**

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

Introduction and Summary

Good morning, Chairman Leahy, Ranking Member Grassley and members of the Committee. My name is Marci Burdick and I am the Senior Vice President of the Electronic Division for Schurz Communications. Schurz owns eight television stations and has operating partnerships with two others. In addition, we own three cable companies and 13 radio stations. I am testifying on behalf of the National Association of Broadcasters (NAB), where I am the Television Board Chair.

Thank you for the opportunity to discuss the Satellite Television Extension and Localism Act of 2010 (STELA), and specifically the section 119 distant signal license, which is set to expire at the end of 2014. NAB looks forward to working with this Committee as we again consider how consumers can best be served through satellite carriage of broadcast television signals.

I am proud to testify today on behalf of NAB's thousands of free, local, over-the-air television stations across the nation as well as our television broadcast network (ABC, CBS, FOX, NBC, and Univision) members. Broadcasters serve an indispensable role in the dissemination of valuable entertainment and local news, weather, emergency, and public affairs programming – a concept known as “localism” that I will discuss in further detail below. But local broadcasting also has an unmatched legacy as an engine for economic development and growth in our communities, with local broadcast television supporting over 188,000 jobs and over \$32 billion in annual GDP through local stations, advertising, and programming.

NAB's position on this reauthorization is simple: This Committee should take a hard look at whether the “temporary” Section 119 distant signal license, crafted in the 1980s to grow a nascent satellite industry and now largely supplanted by the Section

122 local license, continues to benefit consumers. This reauthorization is, at its core, a satellite bill, and every household served by this license is deprived the benefits of locally-focused programming. If, however, this Committee determines that an extension of the distant signal license is warranted, we ask that any reauthorization not serve as a vehicle to reopen well-established copyright and retransmission consent provisions that are outside the scope of this Act and enable free local broadcast television. It is important to emphasize at the outset that NAB prefers no bill over a harmful bill.

To assist the Committee's review, this testimony will discuss the bedrock principle of localism that underpins STELA and its predecessors; provide a background on the copyright and communications laws that govern the satellite industry; and examine whether the distant signal license continues to promote localism. Additionally, I will focus on one issue that, while far afield from the core questions of a STELA reauthorization, has been raised by others – the concept of retransmission consent which compensates local television stations for their broadcast signal and enables those stations to continue investing in community-based, locally-focused programming.

I. Localism: The Core Principle Underpinning the Satellite Laws

The starting point for considering any reauthorization must be localism – the bedrock principle rooted in the Communications Act of 1934 that has guided both communications and related copyright policy in this area for decades. In crafting the Satellite Home Viewer Act of 1988 (SHVA) and its progeny, Congress strived to promote this local model by adhering to two interrelated policy objectives: (1) enabling the wide availability of locally-focused, over-the-air television programming in American

television households, while (2) ensuring that the satellite retransmission of television broadcast signals did not discourage broadcasters from continuing to offer this television service for free over-the-air.¹ These noble objectives should continue to guide your review of legislation today.

Why is broadcast localism so important? Localism is coverage of matters of significance for local communities, such as local news, severe weather and emergency alerts, school closings, high school sports, local elections and public affairs. Localism is support for local charities, civic organizations and events that help create a sense of community. Locally-based broadcast stations are also the means through which local businesses educate and inform the public about their goods and services and, in turn, create jobs and support local economies. Local broadcasters address the needs of the public, based on a familiarity with and commitment to the cities and towns where they do business. This free local service is our focus, and it differentiates American broadcast television both from our peers around the world, as well as every other medium here at home.

There is no doubt that our viewers – your constituents – continue to rely on our locally-focused service. The most striking example was provided in the wake of the tragic tornados in Moore, Oklahoma last year where more viewers tuned into local broadcast news coverage in that market than watched last year's Super Bowl. Whether it was warning viewers to seek shelter based on Doppler radar reports, providing aerial footage of the storm and its destruction from a helicopter, or helping emergency

¹ S. Rep. No. 92, 102 Cong., 1st Sess. 36 (1991).

personnel communicate rescue and recovery information to residents, broadcasters served as Moore's *first informers*.²

Simply put, local broadcast television remains unique because it is free, it is local and it is *always on* – even when other forms of communication may fail.

II. Legal Background

Two distinct statutory licenses in the Copyright Act govern the retransmission of *distant* and *local* over-the-air broadcast station signals by satellite carriers:

- Section 119 permits a satellite carrier to retransmit distant television signals to subscribers for private home viewing and to commercial establishments for a per subscriber fee.
- Section 122 permits a satellite carrier to retransmit the signals of each local television station into the station's local market and also outside the station's market where the station is "significantly viewed," on a royalty-free basis.

Only the Section 119 license sunsets at the end of 2014 and is the subject of this reauthorization. The Section 122 license is permanent, as is the Section 111 license, which permits a cable operator to retransmit broadcast television signals.

All of these licenses are contingent upon the users complying with certain conditions imposed by the Communications Act, including rules, regulations, and authorizations established by the Federal Communications Commission (FCC)

² During the week of May 20-26, 2013, 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 the tornado and its aftermath. http://www.tvb.org/measurement/PRR_Week35

governing the carriage of television broadcast signals. Three of those provisions also expire this year and fall under the jurisdiction of the Commerce committee.

A. The Section 119 License

In 1988, Congress responded to concerns of companies using large satellite dishes, mostly in rural areas, to deliver multichannel service to consumers far away from a TV station, by adopting the Satellite Home Viewer Act (SHVA). That law, adopted years before DISH or DIRECTV were even launched, created the Section 119 statutory license enabling satellite carriers to retransmit the signals of *distant* television network stations and superstations to satellite dish owners for their private home viewing. The Section 119 license enabled satellite carriers to provide *distant* network programming to households unable to receive adequate over-the-air signals from their local network affiliates.

In adopting Section 119, Congress carefully wrote in a number of conditions to promote fundamental localism priorities. Respecting the principle of localism, only those subscribers who live in “unserved households” are eligible to receive distant network station signals. The purpose of this provision was to protect the local viewing public’s ability to receive locally oriented news, information and other programming by preserving the exclusivity local television stations have in their network and syndicated programs. That territorial exclusivity, which is common in many industries, enables stations to generate revenue needed to provide local service.

The law was originally set to expire at the end of 1994; however Congress reauthorized Section 119 in 1994, 1999, 2004, and again in 2010, for additional five year periods.

B. The Section 122 License

The 1999 renewal, called the Satellite Home Viewer Improvement Act of 1999 (SHVIA), also created a new royalty-free Section 122 license that allowed, but did not require, satellite carriers to retransmit *local* television signals into their own markets. The Section 122 license was intended, in part, to make the satellite industry more competitive with cable. In that it was wildly successful. With the addition of popular local television channels to their subscriptions, the number of satellite subscribers skyrocketed. Satellite carriers have increasingly relied upon the Section 122 license to provide *local* television signals to their subscribers. Currently, DISH provides local-into-local service in all television markets (referred to as Designated Market Areas (DMAs)), and DIRECTV reportedly offers local-into-local service to all but 15 DMAs.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) reauthorized Section 119 once again, but also set rules to further limit importation of distant network station signals into local television markets. For example, SHVERA required the satellite carriers to phase out retransmission of distant signals in markets where they offered local-into-local service. Generally, a satellite carrier was required to terminate distant station service to any subscriber who elected to receive local-into-local service, and was precluded from providing distant network station signals to new subscribers in markets where local-into-local service was available.

SHVERA additionally permitted satellite carriers to deliver television station signals from adjacent markets that were determined by the FCC to be “significantly viewed” in the local market so long as the satellite carrier provided local-into-local

service to those subscribers. SHVERA also expanded the copyright license to make express provision for digital signals.

III. Does the Section 119 License Continue to Promote Localism?

As a threshold matter, this Committee must consider whether the expiring Section 119 distant signal license continues to promote localism, and is in the public interest. It could be argued that the *distant* signal license served its purpose in 1988, when the back-yard satellite industry was just getting started; served its purpose again when DISH and DIRECTV first launched their small-receiver services in the mid-1990s; but in 2014, where DISH and DIRECTV have achieved a size and scope that allows them to fiercely compete with the most successful cable companies, the distant signal license is a vestige of a bygone era, a time before fiber optics, compression technology, and digitalization.

Experience has shown that the Section 122 local-into-local license is the right way to address delivery of over-the-air television stations to satellite subscribers. NAB strongly supported the Section 122 license when it was adopted and continues to believe that it is mutually beneficial to stations, to carriers and, most importantly, to consumers. Local-into-local has provided a boon for the satellite industry and greatly enhanced its ability to compete with cable. The local license also has promoted localism, since viewers truly realize the benefits of the local broadcast model when they receive the local signal. Thus, Congress's focus at this time should be to further these trends and promote local-into-local service in all markets.

Today, over 98 percent of all U.S. television viewers can view their *local* network affiliates *by satellite*—and that number is growing all the time. With few exceptions,³ *there are not unserved viewers* in areas in which local-into-local satellite transmissions are available, and no public policy justifies treating satellite subscribers in markets that can be served with a local signal as “unserved” and therefore eligible to receive distant network stations. Further, there are no technical or engineering reasons preventing any market from remaining unserved, which DISH has demonstrated by expanding its local-into-local service in all 210 markets.

This Committee should continue to encourage localism, and take a hard look at whether the Section 119 license should expire. An important first step is identifying the precise number and nature of households that the section 119 license continues to serve, and whether those households could be more effectively served by the local license.

More importantly, this Committee should resist attempts by the satellite industry to expand the scope of the section 119 license, which deprives viewers locally-focused broadcast services and runs contrary to the trend of recent reauthorizations. Requests that this Committee consider changes to the antenna standard employed to determine “unserved households” in 17 U.S.C. § 119(d)(10) are a naked attempt by the satellite industry to expand the number of households eligible to receive a distant signal under the license, and serves no public interest benefit. Such a change would deprive those households the benefits of locally-focused broadcast television where there is no technological impediment. The sole beneficiaries would be satellite providers who could

³ SHVIA Conference Report, 145 Cong. Rec. at H11792-793 (“the specific goal of the 119 license ... is to allow for *a life-line network television service* to those homes beyond the reach of their local television stations.”) (emphasis added).

then serve those households without compensating obtaining broadcasters' retransmission consent. This proposal re-litigates a settled policy question that the FCC addressed at Congress's instruction in the 2010 STELA bill⁴ – the satellite carriers simply were not satisfied with the outcome.

IV. Retransmission Consent

The retransmission consent right is contained within the Communications Act, and was established by Congress in 1992. Retransmission consent recognizes local broadcasters' property interest in their over-the-air signal, permitting them to seek compensation from cable and satellite operators and other multichannel video programming distributors for carriage of their signals.

In the course of the Committee's reexamination of STELA, it is likely to hear from interests seeking enactment of new exceptions to the copyright laws that would undermine broadcasters' retransmission consent rights.

Specifically, a change in law that would permit a satellite carrier to import a distant signal – not based on need, but to gain unfair market leverage in a retransmission consent dispute – would be contrary to decades of Congressional policy aimed to promote localism. Such a proposal would undermine the locally-oriented contractual exclusivity of the network-affiliate relationship by delivering to viewers in served households – *i.e.*, those who can already watch their own local ABC, CBS, FOX, Univision and NBC stations – network programming from another distant market. This importation of duplicative distant network programming jeopardizes the viability of the

⁴ *Establishment of a Model for Predicting Digital Broadcast Television Field Strength Received at Individual Locations*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd. 16426, ¶¶ 7-15 (2010).

local network-affiliated stations that offer the local news, weather and emergency information that viewers value. Additionally, it undermines the rights of content owners, who invest significant money to produce popular programming, to control the distribution of their product.

Both local broadcasters and pay television providers have an incentive to complete retransmission consent negotiations in the marketplace before any disruption to viewers occurs, and for that simple reason they almost always do. As a result, service disruptions from retransmission consent impasses represent only one-hundredth of one percent (0.01%) of annual U.S. television viewing hours.⁵ That means consumers are more than 20 times more likely to lose access to television programming from a power outage than a retransmission consent impasse. Furthermore, in the small number of instances where these negotiations have resulted in disruptions to consumers, there is one distinct pattern – the involvement of Time Warner Cable, DIRECTV, and DISH. Since 2012, over 90 percent of broadcast television service disruptions nationwide are attributable to just these three companies.

Opponents of retransmission consent cite rising retail cable and satellite bills as justification to “reform” retransmission consent. However, retransmission consent fees are not possibly responsible for the steep increase in cable bills and NAB has demonstrated this across numerous economic studies.⁶ Moreover, broadcast carriage fees represent only a fraction of total programming costs. It is estimated that only two

⁵ 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).

⁶ 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).

cents of every cable bill dollar goes to broadcast retransmission consent. This is in spite of the fact that in 2013, 97 of the top 100 most watched prime time programs were aired by broadcast TV stations.⁷

The truth is that cable and satellite operators are seeking to limit one of their operating costs – in this case, broadcast programming – and asking for Congress's help; not to lower cable bills, but to increase their own profit. The rise in cable rates outpaced inflation long before a penny of retransmission consent was paid to broadcasters, and continues to do so today.

Local television stations across the country urge the Committee to resist the overtures of a few bad actors in the pay-TV marketplace whose intent is to create an artificial crisis requiring Congress to “fix it”. Doing so would pose significant harm to the locally-focused broadcast model that has served the viewing public so well for decades and, as part of a STELA reauthorization, inject unnecessary controversy and risk of delay.

Conclusion

At the core of STELA and its predecessors is the fundamental concept and enduring value to every community in this nation of broadcast localism. This Committee should take a hard look at whether the “temporary” Section 119 distant signal license should be allowed to expire as scheduled and as originally intended by its creators. If, however, this Committee determines that an extension of the distant signal license is warranted, we ask that any reauthorization not serve as a vehicle for new laws that

⁷ The Nielsen Company-NTI, HH Live and SD Estimates, September 24, 2012 - May 22, 2013, compiled by Television Bureau of Advertising.

undermine the future of our free, locally-focused broadcasting system. Your local broadcast constituents urge you to rebuff calls from the pay-TV industry to expand the narrow examination of STELA solely to give them a leg up in market-based negotiations. I thank you for your efforts and am happy to answer your questions.