Senator Specter Questions

1. **My constituents in the western portion of the state are not able to watch in-state news, because they are part of the Youngstown, Ohio television marketing area. I understand the problem for those residents and others in specific Pennsylvania counties—and on how offering them Pennsylvania TV signals would address those issues. Is it your position that the local-into-local compulsory copyright license should be amended to include the ability for satellite providers to offer a Pennsylvania signal to the entire Youngstown DMA, which included Ohio counties, or just the affected counties in Pennsylvania?**

   Unlike cable systems, which are typically county-based, DBS systems are designed to serve entire DMAs. To account for this difference in technology, we believe the local-into-local copyright license should be amended to allow a satellite provider to provide signals from neighboring DMAs. Today many broadcasters distribute their content via the Internet nationwide, and that distribution is not limited by county or DMA boundaries. Provided that broadcasters and content owners are fairly compensated, consumers should be able to decide what they want to watch.

2. **If local into local is available but the spot beam does not hit a subscriber who qualifies as unserved, should a distant signal be allowed?**

   Unserved households that fall outside spot beams are already permitted to receive distant signals under 47 U.S.C. § 339(a)(2)(D)(iv). Unserved subscribers outside the spot beam should continue to be able to watch network stations, but they should be from neighboring areas to the extent possible.

3. **Mr. Ergen, you state that DISH Network is unable to provide distant network signals under the 119 license in southern Vermont and other places because of the court ordered injunction. Why is the only solution to this for DISH to provide distant signals themselves when you already have an arrangement with NPS to provide distant signals to residents in other markets?**

   NPS is a customer that leases wholesale satellite capacity from DISH Network. NPS independently offers a service that is based on the historic "distant" analog signal approach where signals are imported often from thousands of miles away to provide analog service to unserved households.

4. **Mr. Ergen, if you were able to carry adjacent, in-state DMAs, in what specific markets would you begin to carry stations from adjacent DMAs? Would you carry all affiliates from neighboring DMAs? How many total adjacent market stations would you import? Would current technology allow entire counties to be served? Generally, could you please explain how the technology works to make this available?**

Based on our own subscriber requests and constituent calls to Members of Congress, there is a clear demand for a broader local service offering that includes neighboring market broadcast stations. From a technical perspective, we can offer our subscribers broadcast signals from a neighboring market if those signals are presently being delivered using the same spot beam as the broadcast signals for the subscriber's "home" DMA. However, if the neighboring market is not being delivered using the same spot beam as the "home" market, then we can only offer the neighboring market broadcast signals to our subscribers if there is sufficient capacity available on the "home" market spot beam to add the channels from the neighboring market.

From a practical perspective, however, it is not possible at this time to provide a clear roadmap as to how such service would be rolled out absent a clear understanding of the critical regulatory components of such neighboring market service. For example, it would be prohibitive to offer the service if blocking out individual programming on a station-by-station, zip code-by-zip code basis were required.

It is our hope to offer neighboring market service wherever our satellite infrastructure permits and wherever our subscribers desire the enhanced service. Just as we have grown from zero local-into-local markets ten years ago to 178 markets today, this will inevitably be a market-driven organic process. We look forward to working with you this year to ensure that our collective efforts maximize the availability of neighboring market service for the benefit of your constituents and our subscribers.

Senator Feingold Questions

1. **I understand that many cable and satellite television providers are making special offers for individuals switching from over-the-air broadcasting as part of the digital transition. Are your companies making such offers? If so, do these special plans and rates last only a limited amount of time? After they expire, what kind of price increases do you anticipate?**

   DISH Network offers the lowest-cost, all digital, pay TV service in America. DISH Network provides nationwide pricing to all of America, including rural areas where consumers tend to be more cost-sensitive and in many cases, where cable TV service is not available.

   In light of the impending digital transition, DISH Network has put forward very attractive special offers to assist consumers who may want to subscribe to pay TV. First and foremost, we offered analog to digital converter boxes, including the TR-40 CRA, which had an MSRP of $39.99. Therefore, consumers with a $40 federal coupon paid nothing for the converter box. In addition, DISH Network is running one of the most aggressive promotional offers in its history that offers a low introductory price of $9.99 for six months for over 100 channels. The pricing on that promotion will increase by $20.00 following the promotional period. DISH Network is also offering customers a locals only package for a regular price of $9.99 a month. The locals only package gives customers their local news, weather and sports programming. In addition, DISH Network offers DishFAMILY for a regular price of $19.99 per month. DishFAMILY offers customers over 40 channels of low-priced, family-friendly programming.

2. **I frequently hear concerns about the consistent increase in the cost of pay-television service no matter the provider. We do not have a consumer advocate on this panel, but I'd like to ask you what you think is causing these increases, whether they are justified, and whether there is anything that can be done to make television service more affordable for Americans during these difficult economic times?**

   DISH Network is the lowest-cost, all digital, pay TV service in America. We offer nationwide pricing. We, too, are concerned about the rising costs to consumers.

   The largest cost driver for our business is programming fees, and a focus on keeping those costs in check is the key to maintaining control of consumer prices.

   Broadcast station ownership groups have begun demanding retransmission consent fees that are 200-300% greater than their previous rates. The market is broken. When the Cable Act was passed in 1992, the market consisted of one cable operator negotiating against one broadcaster, so there was equal bargaining power. Today, multiple pay TV providers negotiate against one monopoly broadcaster. Indeed, broadcasters have increasingly initiated on-air marketing campaigns (e.g., TV and radio advertisements, on-screen crawls, and website information) during retransmission consent negotiations threatening pay TV subscribers with lost programming unless they switch to a cable provider, rival satellite provider, or new telco provider. Pay TV providers cannot do the same: they are forced today to negotiate only with the local network affiliate that has monopoly rights to network content. Such an imbalance of market power translates directly into a higher cost of goods, and therefore higher costs to consumers.

Congress has an opportunity to ensure that television service remains affordable during tough economic times. During the reauthorization of SHVERA, there are a number of changes within the retransmission consent regime that could benefit consumers. First, Congress should consider the creation of a national retransmission consent rate, which would apply to all broadcasters and all pay TV providers. Such a uniform rate finds support in the fixed, per-subscriber copyright royalty rate that applies to satellite-delivered distant network signals. A similar compensation mechanism should be considered for retransmission consent. Second, another means to control the cost of television service would be to bring the market back into balance by eliminating the current monopoly power of the local broadcaster in any market. If retransmission consent negotiations break down and the local broadcaster threatens to drop their programming, pay TV providers should be able to import the signal of a nearby affiliate of the same network to fill the gap. Finally, Congress should review the successful third-party arbitration structure established by the Federal Communications Commission within its merger review process. Specifically, the FCC's third-party baseball-style arbitration approach would provide two clear consumer benefits. The inclusion of a standstill provision would ensure that consumers do not lose access to any programming during a retransmission consent negotiation impasse. Further, an impartial arbitrator guarantees a fair and equitable market-based rate based on a comparison of other relevant carriage deals.

3. **The transition to digital television seems likely to cause the production of a significant volume of e-waste. This waste could be produced indirectly through viewers deciding to upgrade to digital television instead of getting a converter box or more directly through the replacement of analog with cable or satellite tuners, for example. What are your companies' policies regarding e-waste? Do you collect obsolete equipment from customers when customers cancel service? If so, could you provide details on the fate of this equipment including the portion that is recycled? If applicable, please provide the name and location of facilities that conduct recycling?**

DISH Network leases satellite TV equipment to the majority of its more than 13.5 million customers. This model makes for a powerful reclaim-reuse-recycle operation that emphasizes environmentally friendly behavior. Over 40% of DISH Network's 20+ million active set-top receivers have been refurbished and recycled through this lease program. When a customer disconnects service or no longer needs leased equipment, DISH Network makes every effort to recover the equipment and return it to one of its three return warehouses in Spartanburg, South Carolina, El Paso, Texas or Denver, Colorado (including sending pre-paid shipping cartons to the customer so that they can conveniently return their equipment to DISH Network without additional charge). DISH does not attempt to recover equipment it does not own.

All returned equipment that is identified as obsolete or unserviceable is disassembled into clean recyclable material. DISH's policy is to recycle 100% of the e-waste that is generated through this process.

All non-environmentally volatile material (ferrous and non-ferrous metal, plastic, wire, coax cable) is processed through environmentally sound recyclers located near each of the return warehouses. The two materials that are considered environmentally volatile are printed circuit boards and batteries. These materials are processed according to federal, state and local regulations. Printed circuit boards are processed by Xstrata of Switzerland and batteries are processed by Battery Solutions Inc. of Michigan.

Senator Hatch Question

1. **Do you think the program access provisions written by the Congress in the early 1990s have kept pace with today's technology and market structure?**

No, the original program access provisions have not kept pace with today's technology and market structure. Specifically, the statute defines a cable operator as an entity that delivers programming via satellite to its head-end. This is the so-called "terrestrial loophole" that allows large cable operators with contiguous systems to circumvent the program access rules by simply delivering their programming terrestrially to their local head-ends instead of via satellite. The effects are devastating to competition. One need only look at the San Diego market, where Cox not only owns the cable system, but also its own television network-Channel 4 San Diego, to see what happens to the pay TV market under such circumstances. Cox does not deliver Channel 4 San Diego to its local head-ends via satellite, but rather terrestrially, and as a result is not compelled to offer that programming to its DBS and telephone-video competitors. Not coincidentally, the penetration rate for DBS in San Diego is lower than the average national DBS penetration rate. In fact, AT&T recently filed a program access complaint against Cox highlighting the anti-competitive result of withholding Channel 4 San Diego from competing pay TV providers. Despite compelling evidence of anti-competitive conduct, the FCC rejected the AT&T's complaint given the lack of clear statutory authority to address these situations.

Procedurally, the FCC made a number of improvements to the program access rules in 2007 to update and refine the initial implementing rules. Building off those reforms, Congress should consider further procedural improvements to better reflect current market conditions. Specifically, the program access rules should: (1) provide for a standstill provision to ensure that no consumer loses access to programming during the pendency of a program access complaint; (2) include a fixed shot clock for FCC action on program access complaints to mirror more closely commercial negotiations; and (3) incorporate a third-party arbitration structure to resolve disputes quickly in an equitable manner.