

Testimony of

Eddy Hartenstein

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Vice Chairman, The DIRECTV Group
Before the Senate Committee on the Judiciary
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Chairman Hatch, Senator Leahy, and members of the Committee, my name is Eddy Hartenstein and I am the Vice Chairman of The DIRECTV Group, Inc. It is my great honor and pleasure to be here today and I thank you for allowing me to testify on behalf of DIRECTV regarding the reauthorization of the Satellite Home Viewer Improvement Act ("SHVIA").

This is a return visit for me, as I testified in front of this Committee in 1999 when Congress was deliberating SHVIA. I am pleased to return to report on the progress that the Direct Broadcast Satellite ("DBS") industry has made as a competitor to cable since that time.

The members of this Committee deserve a great deal of credit for their role in creating competition in the subscription television industry. SHVIA, which you helped enact, extended a compulsory copyright license to the retransmission of local television signals within each station's local market (known as "local-into-local"). This, combined with improved technology such as high power DBS satellites, digital signal compression and small receive dishes, has allowed satellite operators to offer a programming service more comparable to that offered by cable, unleashing for the first time real competition in the subscription television market.

In particular, the ability to offer local-into-local service has enabled satellite operators to offer a full slate of quality programming comparable to cable offerings. With last week's successful launch of our DIRECTV 7S spot beam satellite we will soon provide local-into-local service in just over 100 DMAs nationwide. We also have pending before the FCC other proposals that will give us the capacity to reach 130 DMAs by the end of this year - and maybe even as soon as this summer. At that time we will be offering local broadcast channels in markets serving 92% of American television households. In coming years, we plan to continue rolling out local-into-local service in as many markets as we possibly can.

The results have been nothing short of astounding. When SHVIA was enacted in 1999, the DBS industry had 10 million subscribers. In the last five years, that number has more than doubled, reaching 22 million subscribers, of which DIRECTV serves over 12 million. The result is that, while cable still has about 66 million subscribers, DBS has played at least some small part in limiting cable price increases and forcing cable companies to provide better customer service, improved content, and digital services.

In other words, SHVIA has been an extraordinary success. And we hope Congress will build on its success.

But we know that SHVIA is a difficult and complex issue, and we also know that, in this busy legislative session, Congress does not have a lot of time to act. With this realization in mind, we have been meeting with representatives of the broadcast industry over the last month or so to see if we could reach common ground on some of the issues associated with SHVIA reauthorization. We thought that, if we could reconcile our differences on these issues, the end result would likely represent sound and reasonable public policy.

These discussions are still ongoing. But we have been able to find some common ground, at least conceptually, on several basic SHVIA issues. Among these issues are the following:

? Legislation should extend satellite operators' ability to import distant signals for five years.

? Legislation should allow, subject to some limitations, satellite operators to offer the same out-of-market "significantly viewed" stations that cable operators already offer. Just as cable operators are able to retransmit both Washington and Baltimore stations into Columbia, Maryland, so should satellite operators.

? Legislation should extend for five years the existing satellite carrier retransmission consent exemption for distant signal stations.

? Legislation should extend for five years the existing statutory provision prohibiting television stations from entering into exclusive retransmission consent agreements.

? Legislation should extend the good faith negotiating requirement to all multichannel video providers.

? Legislation should provide some sort of mechanism for "grandfathered" distant signal subscribers (also known as "Grade B Doughnut" subscribers) to choose between distant and local-into-local signals.

? Legislation should gradually implement a "no-distant-where-local" concept, whereby satellite operators cannot offer new subscribers distant signals where local-into-local signals are available. In doing so, however, legislation must ensure that existing subscribers with both distant and local-into-local service get to keep both.

? Finally, legislation should clarify that "carry one carry all" means that satellite carriers may not "split" local analog or local digital signals, respectively, in one market between two dishes.

Do these principles reflect everything DIRECTV would want from SHVIA reauthorization? Of course not. We still think, for example, that Congress should reauthorize the distant signal compulsory license on a permanent basis, so that we don't find ourselves once again discussing these same issues in five years. But all in all, we think that these principles represent a reasonable compromise between two parties that entered these discussions with very different points of view. And we think these principles represent a modest improvement over current law.

There is, however, another issue to discuss that lies at the heart of this Committee's jurisdiction. We are extremely concerned about any proposed increase in satellite royalty rates (with no similar increase in the rates paid by cable operators). We have no objection to analyzing royalty rates, including the historical, technical and regulatory differences between the satellite and cable regimes. But we are deeply troubled by the prospect of programming rate increases, as well as by the prospect of participating in an admittedly flawed, distracting, and extremely expensive Copyright Arbitration Royalty Panel ("CARP") process - neither of which would apply to our chief competitors, the dominant cable operators.

You may hear a lot this afternoon about whether the satellite industry pays "more" or "less" in royalty fees than cable. The fact is, as set forth in great detail by Mr. Carson of the United States Copyright Office, one cannot make "apples to apples" comparisons, because the two royalty regimes are so very different. Cable royalty rates, for example, depend greatly on the size of the cable system, while satellite royalty rates do not. Cable operators' payments are predicated on a certain tiering structure that satellite operators do not employ. Cable rates for "distant network signals" cover the retransmission of such signals to all cable customers, while satellite operators of course may only retransmit such signals to "unserved households." I could go on and on. But I would take with a grain of salt any analysis that purports to show definitively that cable operators "pay more" (or, for that matter, "pay less") than satellite operators.

To the extent that copyright holders are really saying that neither cable nor satellite fees adequately compensate copyright holders, I have a few reactions. First, both the cable and the satellite statutory licenses are designed to achieve a number of goals - of which compensating copyright holders is only one. In particular, Congress must balance that goal with the goal of ensuring that consumers have access to the programming they want at a reasonable price. I would submit that some of the ideas that have been put on the table - a fifty percent increase over

two years, for example - do not strike an appropriate balance between these goals. And, when your constituents' bills go up, I think they will feel the same way.

Above all, though, I would ask this Committee to remember that satellite operators, despite recent growth, control in the aggregate only about 20 percent of the subscription television market. And, in nearly every city and town in America, we compete against a dominant cable operator with at least 70 percent market share. In such a market structure, any effort to raise only satellite royalty rates would be a competitive disaster. If Congress truly believes it is time to raise pay-TV prices, it should at the very least do so only in the context of harmonizing the cable and satellite royalty rate regimes. Any SHVIA reauthorization containing a satellite-only rate increase - no matter how positive other aspects of the bill may be - would represent a significant step backwards from current law.

Conclusion

In conclusion, Mr. Chairman and members of the Committee, I would like to thank you for all that Congress has done to nurture the satellite television industry as a vibrant competitor in the subscription television market. With your help, we will continue to provide the highest quality, best-priced competitive service to consumers.

I am happy to take your questions.