Testimony of

Charlie Ergen

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Chairman Leahy, Ranking Member Specter, and Members of the Committee, I appreciate the opportunity to testify today. My name is Charlie Ergen, and I am the Chairman and CEO of DISH Network, the nation's third largest pay-TV provider.

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The U.S. Copyright Office has provided this Committee with a roadmap for updating the cable and satellite compulsory copyright licenses to reflect the changing video landscape. We agree with the Copyright Office that the digital age has arrived and the laws need to catch up. I would like to highlight three issues from the 2008

Copyright Office Report:
First, the separate cable and satellite copyright regimes no longer make sense. We compete for the same customers and should have the same rules;

Second, many consumers cannot get local news and sports from their home state because of the way local markets are defined; and

Third, many rural communities are missing one or more of the four major networks.
In addition, Congress should also address the interrelated issues of retransmission consent and must-carry when updating the compulsory copyright licenses this year.
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With respect to the first issue, the Copyright Office recommended folding the existing licenses into a unitary digital copyright license to reflect changes in technology and place all providers on a level playing field. We support that approach. Specifically, a unitary license for all pay-TV providers would ensure that all consumers get the services they need in a digital world, in a manner that is fair to the copyright holders, broadcasters, cable, satellite, and new entrants such as the telcos.

Absent a unified license, we agree with the Copyright Office that there should at least be parity going forward between cable, satellite, and telco regimes. Consumers should have the benefit of the same bundle of rights under the law regardless of the pay-TV provider they select. It should not be harder or more expensive for one pay-TV provider to carry a local, significantly viewed, or nearby broadcaster than a rival platform because of distinctions in copyright law.

With respect to the second issue, the Copyright Office also recognizes the need for DMA reform and enhanced competition between video providers. Citizens living in DMAs that straddle state borders are often denied access to news, weather, and election coverage from their home state. This is an issue in 45 states. Indeed, Senators have been receiving complaints from their constituents about this concern for many years. During the last reauthorization, the stranded-county issue was addressed in several states, including Vermont. Importantly, these fixes helped consumers and did not cause any actual harm to broadcasters. Building off the hard work started by the Judiciary Committee in 2004, we recommend a more global DMA fix. Specifically, a broadcast station from a neighboring DMA should be treated as "local" for purposes of the copyright laws, particularly if it furthers the concept of "state unity." With this change, citizens living in DMAs that straddle state borders would no longer be prevented from receiving local news from their home state.

Third, we agree with the Copyright Office that all consumers should have access to NBC, CBS, ABC and FOX programming. Today, DISH provides local service in 178 markets, reaching 97 percent of households nationwide. This translates into over 1400 local broadcast stations, which is far more than any other pay-TV provider. In most of the remaining markets, one or more of the big four networks is missing. If a local community is missing a broadcast station, pay-TV providers should be able to treat a nearby affiliate as the "local" affiliate under copyright and communications law.

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Finally, Congress should use this opportunity to examine retransmission consent and must carry, given that those issues have been tied to our compulsory license. Technology and competition have come a long way in the past five years since the last reauthorization of the Satellite Home Viewer Act. Today, there are multiple pay-TV providers in every DMA. Broadcast stations electing retransmission consent hold DISH customers hostage, as they play their local monopoly off multiple providers to extract huge license fees. In 2008 alone, consumers lost programming in approximately 15 percent of our markets because of retransmission consent fee disputes. Yet the same broadcasters provide their content for free on the Internet and to those lucky enough to live within the shrinking areas of digital over-the-air coverage.

Because the broadcasters received billions of dollars of spectrum for free, we think retransmission consent should be free. Failing that, we support the creation of a national retransmission consent rate. Satellite providers already pay a fixed, per-subscriber copyright royalty rate, and we see no reason why a similar concept would not work for retransmission consent. Alternatively, we support the creation of an actual market. If a broadcaster threatens to drop programming, pay-TV providers should be able to go get a nearby affiliate to fill the gap. Consumers should never have to wonder what happened to Sunday Night Football.

With respect to must carry, we are forced to carry hundreds of must carry stations that have little or no local content. This increases our costs, and raises our prices to consumers at a time when consumers need all the disposable income they can get. Must carry stations should be required to earn carriage by airing 20 hours of local programming every week. This would be beneficial to consumers and would have no harmful effect on broadcasters that invest in their local market.

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We are in the middle of a digital transition that is changing the way people watch TV. It is pretty simple: people want to watch what they want, when they want, where they want. The Copyright Office recognizes that TV has changed fundamentally and concludes in its report that incremental changes to outdated rules are not good enough. We encourage you to build on the hard work of the Copyright Office and act boldly on behalf of your constituents.