

Testimony of  
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Good morning, Chairman Leahy and Ranking Member Specter.

Senator Leahy, a very long time ago, you taught me first-hand how you valued the importance of local broadcasters in Vermont. As you have navigated through the various iterations of the satellite home viewer legislation, and now from my CBS perspective, I want you to know how much the industry appreciates your leadership and efforts at preserving the broadcast network-affiliate relationship while promoting competition to cable through satellite.

Senator Specter, a little more than a dozen years ago, CBS Corporation enhanced its proud history as a pioneer and leader in broadcasting when it became a part of Pittsburgh-based Westinghouse and Group W Broadcasting. We remain proud that Westinghouse pioneer KDKA radio is now part of the CBS family. No station in America has a more storied history...a Pittsburgh station founded by one of its own engineers and which made the nation's first-ever commercial broadcast -on November 2, 1920. That broadcast was devoted solely to serving the public interest: On that date, the station transmitted the results of the Harding-Cox presidential election to its listeners while other Americans had to wait until the following day to read about the outcome of the race in their newspapers. We are proud that Pennsylvania is home not only to KDKA radio and eight other CBS radio stations, but to four of our 30 local television stations: KYW-TV and WPSG-TV in Philadelphia and KDKA-TV and WPCW-TV in Pittsburgh.

On behalf of CBS, I thank you for the invitation to present our views to the Committee about over-the-air broadcast television and the video programming marketplace.

Before I begin my discussion of satellite home viewer legislation and its impact on broadcasting, I would like to speak for just a moment about CBS's content. A good example is the Men's NCAA basketball tournament. Three weeks from tomorrow, on March 19, the national phenomenon known as March Madness will tip off. Each year, CBS spends hundreds of millions of dollars just for the rights to the three weeks of NCAA March Madness alone. It is a hefty investment, but one that in partnership with the NCAA, gives us the right to determine how the content can be distributed in a way that produces a return on that investment and a benefit to American viewers ---whether they be at home in front of their television sets (watching games on a CBS-owned or -affiliated local broadcast television station); out of their homes with their laptops (watching games streamed on CBS Sports.com); or out and about with their mobile devices (watching clips). Last year was a banner year, when for the first time NCAA March Madness on Demand gave users -free of charge-- the ability to view all 63 games of the Division I Men's Basketball Championship, from the first round of the tournament through the Men's Final Four. From March 20, the opening day of the First Round through April 7 (the Championship game) in 2008, there were 4.76 million total unique visitors to the on-demand player, a 164% year-over-year growth.

CBS offers up the March Madness games on other platforms as a complement and addition to its core business ---broadcast television. But, as the paying rights holder to the tournament games, the decision how, when and where to provide the games is our decision to make, in consultation with the NCAA, the ultimate rights holder. CBS is firmly committed to the broadcast network-affiliate relationship and has determined that providing games online is accretive to our broadcast business. The ability to control content we pay dearly to produce, create or distribute is what makes content a true investment ---especially for the end user in the chain, the consumer.

This hearing, at bottom, is about who gets to decide how, when and where content is distributed. Almost five years ago to the day, I testified before Congress on the very matter that is the subject of today's hearing --the end-of-year expiration of satellite's compulsory license to deliver distant broadcast television signals. The legislative issue on the table now, as it was five years ago, is really a very narrow one, that is, whether to extend the distant-signal license. Yet, during the course of congressional deliberation over this issue, you are likely to witness some parties seeking to exploit any legislation relating to the license as a vehicle for a wish list of unrelated items, items such as changes to retransmission consent or DMA modification, that are likely to bog down and complicate what we believe should be a clean and streamlined reauthorization.

Besides complicating the legislative process, the issues of retransmission consent and DMA modification are not broken items that need fixing. Each year, CBS along with other television broadcasters collectively conclude hundreds of retransmission consent agreements with MVPDs --successfully, quietly, amicably, and in a mutually beneficial manner. Yes, there are times, as in any free market negotiation in any industry when negotiations do not succeed, at least initially, and a dispute erupts and both sides threaten a disruption of service. And, in a very few instances, there may be a short-term disruption. But legislating to deal with a handful of disputes, when there are literally hundreds of instances where willing sellers and willing buyers reach agreement, would be a solution in search of a problem. In the end, the retransmission consent regime works and in the manner Congress intended.

With respect to DMA modification, it is important to note that these geographic areas were not designed by Congress, the FCC or any governmental body. That is, a DMA --a Designated Market Area-- is not a political creation; rather, it is a trademarked term of Nielsen Media Research to describe a group of counties and used to measure television viewing by people who live in those counties. Based on which over-the-air stations receive the majority of viewing, Nielsen assigns counties into a DMA. According to Nielsen, it uses DMAs "solely in measuring who is watching what within a given area." DMAs are the center of broadcasters' economic universe and any tinkering with the system, especially during this tumultuous economic time, could be financially seismic, particularly to smaller local broadcasters and to local merchants who buy time on their local stations in the expectation they are paying to reach potential customers in the locale in which they conduct business.

It is significant to note here that if the desired outcome is for viewers to access news from their in-state television stations, that arrangement is already legal and in existence. Right now, without the need to change any law or redefine any DMA, MVPDs are free to carry a local station's newscast anytime they want by simply securing the station's permission to do so. Stations control the copyright of their news shows and can, and do, make them available to cable operators in

nearby markets looking to augment news programming. In fact, according to a February 24, 2008 Broadcasting & Cable Magazine story, Matt Polka, the president of the American Cable Association, which is pushing for DMA changes, concedes that cable operators already carry out-of-market newscasts. But he adds that "current network nonduplication rules and DMA boundaries prohibit greater competition for retransmission consent signals that would benefit consumers." What Mr. Polka really means is that MVPDs would benefit -at the expense of the American over-the-air television broadcasting system and their viewers. Congress should be wary of calls for DMA modification masquerading as nothing more than a means for MVPDs to obtain a bargaining advantage in a retransmission consent system that is now in perfect equipoise.

As was the case five years ago, I am perfectly content if you do nothing on satellite legislation this year. If absolutely no legislation at all emerged, meaning that the distant-signal license is not extended, CBS would find a way to live with that. But an immediate and drastic cut-off would not be our preference.

My message today is simply this: As you and your colleagues contemplate in the next several months extending the distant signal license for satellite carriers for the fourth time in 20 years, please continue to be guided, as you have in the past, by the twin pillars of (1) competition in the multichannel video programming marketplace and (2) preservation of local, free over-the-air broadcasting. At this juncture, we believe that the best means for achieving these goals is for Congress to encourage satellite carriers to provide local television stations to subscribers in more and more markets so that the need to import distant stations is eliminated. And the best means, in turn, for encouraging the carriage of local stations is to wean the satellite industry from the distant signal license, a special exemption Congress created to assure network signals to all and to foster exactly what exists today: Competition.  
More on that later.

First, I wish to congratulate you for a remarkable success. Twenty-one years ago, when the sole multichannel video programming distributor was cable, Congress knew that it needed to find a way to help the nascent satellite industry become a competitor and it did so by ensuring the availability of broadcast programming comparable to that offered by cable operators. The legislation that became the Satellite Home Viewer Act (SHVA) gave satellite carriers an efficient means of providing broadcast network programming to those homes that could not receive adequate signals over the air from their local network affiliates.

Congress originally adopted SHVA to cover C-Band satellite, a big-dish service, before the existence of direct broadcast satellite, a high power, mini-dish service. In 1994, when DBS was just entering the market, Congress amended SHVA in order to, among other things, extend for five years the sunseting statutory license for the carriage of distant broadcast signals.

By the end of 1994, what is today DirecTV had launched the nation's first DBS satellite, had rolled out its service mostly to rural markets, and boasted one million subscribers. A little more than a year later, a second DBS service, EchoStar, was born.

Yet, cable, which was initially developed as a means for delivering broadcast television station signals to homes unable to receive them over the air, continued to dominate the pay television

landscape mainly because they could provide their customers with local broadcast signals and satellite could not. As Senator Orrin Hatch noted in early 1999:

In the last decade, satellite broadcasters have emerged as the newest competitors in the television delivery system and industry. With hundreds of channels of programming, they are pushing the envelope of consumer options and stand poised to serve as full-fledged, full-service competitors to cable in the multi-channel video delivery marketplace.

The Satellite Home Viewer Act, however, is simply not designed for this sort of competition in its current form. It was enacted in 1988 only to provide lifeline access to television for those scattered households that were unable to get television in any other way, such as over-the-air or by cable.

The bill we will discuss today is designed to allow satellite broadcasters to compete fully in the market. Most importantly, it authorizes satellite broadcasters to provide local subscribers with their local television signals.

Once again, and just in time, Congress's vision resulted in a needed boost to the satellite competition. In the Satellite Home Viewer Improvement Act of 1999 (SHVIA), Congress gave satellite carriers a royalty-free, statutory copyright license to transmit local programming to customers in their markets, as those markets --DMAs-- are defined by Nielsen. For the first time ever, consumers had a real choice among MVPDs: DBS operators, like cable operators, could now offer viewers a full complement of their local broadcast television stations.

As Senator Leahy described the new law:

Today the only way you can get local service is through cable, or from an antenna if you have one. Now home satellite packages will be able to offer the same thing. This will be the first time that cable television has had real competition in most communities. I suspect that both the satellite companies and the cable companies will try to offer a lot more to consumers and at a lower price, and that will benefit both cable subscribers and home satellite viewers.

How prescient were those words. With the first-time ability to access their local television stations from satellite carriers, consumers chose DBS in droves. In mid-2005, DBS was the choice of 26.1 million American households, constituting well over one-quarter of total MVPD subscribers. In fact, DBS subscribers have increased every year since their numbers were first reported by census data in 1993, with the growth from 2004 to 2005 alone reaching 12.8%.

Today, DirecTV and EchoStar's Dish Network serve 17.6 million and 13.78 million households, respectively. The 31.38 million homes they serve collectively constitute nearly one-third of all MVPD subscribers. In their most recent financial results, The DirecTV Group, Inc. reported fourth quarter 2008 revenues of \$5.31 billion, while Dish Network Corporation reported third quarter 2008 revenues of \$2.94 billion. The DBS industry has come a long way, particularly when viewed against the early financials of USSB, the original DBS operator (now DirecTV), which in July 1996 had yet to show a profit.

There are many winners emerging from Congress's 20/20 vision in the video programming marketplace, but no one more important, however, than the consumer.

Of course, competition to cable today has flourished beyond satellite and DBS and the wildest of expectations. Verizon and AT&T are no longer just telephone companies delivering voice. They now provide hundreds of channels of video programming through their FiOS and U-Verse services to three million homes. And the ubiquitous Internet is a platform that offers up more than informative websites and answers to arcane trivia questions: Today it is a destination for consumers seeking not only professionally created news, entertainment and sports programming, but millions of hours of user-generated video content.

It is important to remember that as Congress transformed its vision into reality through satellite legislation, it strove not only to promote competition to cable via satellite but to preserve the role of local broadcasters in providing free, over-the-air television. Localism has been the bedrock principle of broadcast policy since the Radio Act of 1927. Broadcasters must serve their communities by providing programming to meet the needs and interests of those communities. And they clearly do so, as acknowledged by Congress. Senator

Leahy has described broadcast television this way:

I want to make clear, as I did in my recent comment to the FCC, that I strongly believe in the local affiliate television system. Local broadcast stations provide the public with local news, local weather, local informational programming, local emergency advisories, candidate forums, local public affairs programming, and high quality programs. Local broadcast stations contribute to our sense of community.

Senator Jay Rockefeller has described broadcasters as a necessity:

And as we've been reminded in the aftermath of the winter storms that have wreaked havoc on parts of our nation over the last week, television plays a very important role in keeping the public informed and safe.

Senator Kay Bailey Hutchison has, too:

Many Texas residents are unprepared for the fast-approaching DTV transition, especially those who live along the border. Households that continue watching stations from Mexico, rather than taking steps to prepare for the transition, may not receive AMBER Alert and Emergency Alert System messages.

In light of the recognition of broadcasters' unique contribution to localism, Congress throughout the history of the satellite legislation has sought to balance the goal of preserving the broadcast television industry as it has promoted the competitive status of the satellite television industry. Summing up this balancing act,

Senator Herb Kohl said in 1999 when local-into-local was being debated:

Satellite companies will finally be allowed to legally broadcast local stations to local viewers--so-called ``local into local." The strange anomaly that restricted satellite from providing local signals will be a thing of the past. And to be balanced, satellite companies will also be subject to ``must-carry" obligations, just like cable. This bill will also reduce the royalty fees for those local signals to a level closer to that paid by cable companies. All of this moves us towards parity between satellite and cable, and it is a huge step forward for consumers. Let me tell you why.

Increased competition will discipline the cable marketplace which, in turn, will create lower prices, increased choice, and wider availability of television programming for all Americans, no matter how remote. And we do this in the best way possible, by promoting competition, not increasing regulation. Moreover, it won't be at the expense of our local television stations, which provide a valuable community benefit in the form of local news, weather, sports and various forms of public service.

Senator Leahy echoed the need for equilibrium when the 2004 legislation cleared the Senate Judiciary Committee:

I want to make one final point regarding those households who were permitted to continue to receive distant network broadcast signals via satellite while they also received competing local signals from the same network. I know one Senator wants to have termination of this "dual" service at some fixed date. I will certainly work with that Senator and others on this issue of promoting localism in network broadcasting.

CBS appreciates the fine line that Congress has walked over the last 20 years in crafting satellite legislation. As the owners of a major broadcast television network and a group of 30 local broadcast television stations, we believe that the indefinite or permanent congressional grant of a distant-signal license to satellite carriers will jeopardize the economic viability of stations affiliated with national networks. It would do so by placing at risk a significant and critical source of local news and information.

The broadcast television industry has the right, through the Copyright and Communications Acts, and private contracts, to control the distribution of the national and local programming that it transmits. The CBS Television Network alone invests billions of dollars each year in developing, producing and securing the highest quality entertainment, sports and news programming. A single, 30-minute episode of a sitcom series costs anywhere from \$1 to \$4 million to produce. And a single, 60-minute episode of a drama series anywhere from \$4 to \$5.5 million. With regard to sports programming, and in addition to the NCAA March Madness discussed earlier, CBS pays hundreds of millions of dollars each year to the NFL for our package of games. That is before you consider millions of dollars in rights fees CBS pays each year for SEC Football, regular season NCAA basketball, to the PGA for golf, and to the USTA for rights to the U.S. Open Tennis Tournament.

We strongly believe that heavy investment in programming pays off: In the current television season that began last September, CBS is the most-watched television network and the only major broadcaster to increase its prime-time audience. Superior programming helps not only the CBS network and our owned-and-operated television stations, but also our affiliated stations

nationwide. When network programming is of high quality and compelling, local stations benefit. From large DMAs like Philadelphia and Dallas to smaller DMAs like Burlington, Vermont and Johnstown-Altoona-State College, Pennsylvania, local stations are able to present this network programming to obtain advertising dollars so that they, in turn, can make significant financial investments in the production, gathering and reporting of local news, sports, weather and other information. Local stations also are able to invest in rights to syndicated programs, such as "Wheel of Fortune," "Jeopardy," "Oprah," "Live with Regis and Kelly," "Seinfeld" and "Friends," which are obtained from other content producers.

This network-affiliate arrangement, of course, is not unique to CBS -it is also enjoyed by others, including the ABC, FOX, NBC, the CW (of which CBS owns 50%), Univision and Telemundo networks and their affiliated stations across the country. In the end, however, it is the local viewers who profit most from this system.

Congress has recognized the invaluable nature of this relationship. That is why, in attempting to accommodate those households unable to receive network-affiliated stations directly over the air, Congress designed SHVA back in 1988 so as to carve but a narrow exception to the exclusive programming copyrights held by television networks and their affiliates. This limited compulsory copyright license under Section 119 of the Copyright Act permits satellite delivery of distant, or out-of-market, network broadcast stations to only "unserved" households.

In its wisdom, Congress made the license for local-into-local a permanent one, while the compulsory license for the satellite delivery of distant-network signals was never intended to be so. In 1988, SHVA provided that the distant-signal license sunset in 1994; in 1994, the license was extended for 5 years; and in 1999, the license was extended for another 5 years. At the end of this year, on December 31, 2009, the license comes to an end unless renewed. What was supposed to be a temporary license is now 21 years old.

We are now at an important crossroads in the decades-long history of satellite legislation. Rather than automatically renewing the distant signal license for satellite carriers for the stock five-year term, this Committee should carefully consider ways of encouraging MVPDs to provide local instead of distant television stations to American homes. We believe the best route to that end is by phasing out the distant-signal license over the next few years with a clear and precise sunset deadline. We understand that a sudden and immediate sunset would be disruptive to the small remaining number of consumers who still receive distant signals and that it may take satellite carriers time to ramp up their operations to provide local signals in every market. But the deletion of the distant-signal license no doubt would motivate satellite carriers to provide local signals in all markets sooner rather than later.

Offering local broadcast stations to customers is apparently good business. A mere week after SHVIA was enacted into law in November 1999, DirecTV made local channels available to its subscribers in New York and Los Angeles. In making the announcement, then-DirecTV President Eddy W. Hartenstein said it best:

The availability of local channels ushers in a new era for DIRECTV, and we are excited to commence our local channel offerings in the nation's two largest markets. By offering local channels on DIRECTV, our customers can access entertainment and information that's most

relevant to their lives -- and they can watch their local channels with digital picture and CD-quality sound.

In the first full reporting quarter following enactment of the 1999 satellite legislation, the DBS companies realized positive results from their local-into-local offerings. DirecTV reported that it had added 405,000 subscribers during the three months ended March 31, 2000, a number that represented 33% more units than the 304,000 subscribers the company added during the same period the previous year. And EchoStar reported that the company's DBS subscribers had increased approximately 71% in the first quarter of 2000 compared to the same period in 1999. This strong subscriber growth, according to the EchoStar 10-Q filing, was due, among other things, to "increased interest in satellite television resulting from the availability of local network channels by satellite."

In my testimony regarding the local-into-local satellite legislation five years ago, I commended DirecTV and EchoStar for their rollout of local channels. I do so again today. Of the 210 television markets in this country, EchoStar reportedly is serving 179 with local stations and DirecTV is serving 150.

However, in suggesting a phase-out of the distant-signal license, I neither offer up a novel solution nor intend to do harm to my DBS friends, who are our partners in the television world. In fact, just last week, Dish Network and CBS successfully reached a new, long-term agreement for carriage by Dish of the stations we own. And I look forward to a continued positive and mutually beneficial relationship with our friends at DirecTV.

But rather than counting on my recommendation, look to the 225-plus-page "Satellite Home Viewer Extension and Reauthorization Act Section 109 Report" to Congress last summer from the Register of Copyrights who recommends a phase-out of the distant-signal license. The license, the report states, was a "stop-gap solution for a nascent satellite industry" and "in its present form, undergirded by outdated rationales set forth in 1988, is no longer necessary nor appropriate." Like cable operators, the report states, DirecTV and EchoStar "have the market power and bargaining strength to negotiate favorable program carriage agreements." The report suggests that Congress extend the distant-signal license for one final additional five-year term. By the year 2015, the report concludes, the DTV transition should be settled, broadband penetration will be greater, and Americans will be able to receive video programming from many providers. "It will be a whole new era by then. . ."

We at CBS agree with these recommendations and we look forward to that new era in which CBS is prepared to compete and take our chances. In the meantime, we thank the Committee for helping to steer our industry through the complex technical and market conditions to get us where we are today, a robust video delivery marketplace, where, thanks to vigorous competition, broadcast television is still an integral player deeply valued by American viewers.

Thank you.