**SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR SENATE JUDICIARY COMMITTEE HEARING "REAUTHORIZATION OF THE SATELLITE TELEVISION EXTENSION AND LOCALISM ACT," MARCH 26, 2014**

**Questions for Alison Minea (DISH Network)**

***1. What are your views on how the video marketplace has changed since Congress last authorized STELA? What has happened in terms of technology, competition and pricing for consumers?***

Among other things, the current system of retransmission consent, established by Congress over 20 years ago in the 1992 Cable Act, gives each "Big Four" broadcast station a monopoly in its local market. While it may have been a fair negotiation when it was one cable company against one broadcaster, today the local broadcaster holds all of the cards and plays multiple MVPDs off of each other in any given market. Ultimately, it is the American consumer who suffers.

Broadcasters abuse their retransmission consent rights during negotiations, using brinksmanship tactics and blackouts to extract ever-greater fees from MVPDs, with no end in sight. Blackouts happen when companies like DISH try to fight back and reject broadcasters' unreasonable price demands, which often involve rate increases of several hundred percent. Retransmission consent fees cost MVPDs $758 million in 2009. They rose to $3.3 billion in 2013. They are expected to reach $7.6 billion in 2019.

In 2013, there were 127 broadcaster blackouts, compared with 96 blackouts in 2012, 51 blackouts in 2011, and 12 blackouts in 2010. Thus, the number of blackouts increased over *one thousand percent* since Congress passed STELA. These numbers do not even include all of the near-misses, which are equally disruptive to the consumer experience. Compounding the injury, the timing of many blackouts coincides with marquee events like the World Series or the Oscars.

***2. What is the proper role for Congress in responding to marketplace disputes in the communications industry?***

Among other things, it is time for Congress to act to fix the broken retransmission consent system, and STELA reauthorization presents the perfect vehicle. Every five years Congress updates the law to account for changes in the marketplace, technology, and consumer demand. It should continue to make updates and improvements to the law that will benefit consumers. Specifically, we advocate specific measures to amend current communications law, including:

- Authorizing the FCC to impose baseball-style arbitration and a standstill so the programming stays up while the parties arbitrate their dispute; or, alternatively, permitting the importation of distant signals during retransmission consent disputes.

- Stipulating specific, anti-consumer actions that would fail the "good faith" requirement.

- Prohibiting joint sales agreements and other collusive methods used by

broadcasters.

- Updating the definition of "unserved household" to reflect how Americans actually receive over-the-air broadcast signals today, as opposed to how they did decades ago.

- Prohibiting broadcaster blocking of online content to the broadband subscribers of a multichannel video programming distributor ("MVPD") during a dispute with that MVPD.

- Encouraging the unbundling of broadcast programming from other programming, both at the wholesale and retail levels.

- Permanently reauthorizing STELA.

***3. It's been reported that incidents of television programming blackouts have been steadily increasing, from 12 blackouts in 2010 to over 100 blackouts in 2013. What do you believe is causing this trend? Is this evidence of a system that is broken, or just a function of the free market?***

It is evidence of a system that is broken.

The retransmission consent rules date from 1992—the same year Wayne's World was released, AT&T introduced the first video phone (for $1,500), and the Washington Redskins won their last Super Bowl. The video marketplace has changed beyond recognition since then. But regulation of the retransmission consent regime has not.

In particular, when Congress created the retransmission consent regime in 1992, it sought to balance the market power of monopoly cable operators against the monopoly power of broadcast network affiliates with exclusive territories. In the ensuing two decades, however, the video programming distribution industry has undergone profound changes. While cable operators still have market power, they are not monopolies in the markets for video distribution. Most consumers can now choose from among three or more distributors—not to mention online video providers, among others. But broadcasters' exclusive territories and the Commission's retransmission consent regime have remained largely unchanged.

Moreover, broadcasters have increasingly engaged in conduct designed to enhance their bargaining power even beyond what they possessed in 1992. This includes collusion in the negotiation of retransmission consent and prohibiting the use of their programming as a distant network or significantly viewed station, even though the law allows it.

Broadcasters have exploited this situation by abusing their retransmission consent rights during negotiations, using the tactics of brinksmanship and blackouts to extract ever-greater fees from MVPDs—this is an escalating problem with no end in sight. SNL Kagan estimates that MVPDs paid $3.3 billion in retransmission consent fees in 2013, and that this figure will soar to a staggering $7.6 billion by 2019.

When MVPDs decline to meet broadcaster's demands, they face the loss of programming for their subscribers. The result? Consumers are harmed no matter what the MVPD chooses. Either the MVPD acquiesces, in which case subscribers pay higher prices for programming. Or the MVPD resists, in which case the subscriber loses key programming. Consumers also may be forced by blackouts to switch from their first choice provider. This, in turn, can cause the loss of their chosen package, pricing, and DVR recording history, not to mention the inconvenience of transferring billing, equipment and set up to their second (or third) choice provider. Broadcaster blackouts, moreover, affect all MVPDs. Thus, a consumer who switches MVPDs in order to obtain broadcast programming may find herself needing to do so again within a short time.

As DISH has noted previously, rural households suffer disproportionately from broadcaster blackouts. Moreover, broadcasters in many cases simply have failed to provide an adequate over-the-air signal to reach many rural communities.

***4. If local programming is truly valuable to consumers, some argue that the free market alone is sufficient to ensure that this content will be negotiated for and distributed to consumers who are willing to pay for it. Do you agree or disagree with this statement? Why or why not?***

Given a broadcaster's monopoly in each local market, among other things, we disagree that a "free market" exists for the negotiation of retransmission consent and refer to our response to Question #3 above.

***5. Do you believe that any laws currently affecting the video marketplace are unnecessarily creating higher costs for consumers?***

Yes, and refer to our response to Questions # 2 & 3 above.

***6. Do you believe that the Section 119 license will ever become obsolete? If so, when? If not, why not?***

It is difficult to predict whether Section 119 will ever become obsolete, but Section 119 today serves an important role that should be retained.

More than 1.5 million satellite subscribers—many of them in the most rural areas of the country—depend on Section 119 in order to receive distant signals. Were Congress not to reauthorize STELA, these subscribers would lose access to TV service that most Americans take for granted.

Some have suggested that private licensing could take the place of STELA. That may be true under the comprehensive deregulatory approach championed in the Senate last Congress by then-Senator Jim DeMint (R-SC) and Rep. Scalise (R- LA), which would eliminate nearly all regulation of broadcast television, including the enormous regulatory benefits enjoyed by broadcasters. But nobody seriously contends that, if Congress were to eliminate STELA's *distant signal* provisions only, private licensing would replace them. Even NAB, which has opposed these provisions for decades, does not believe this.

The distant signal provisions must be renewed by Congress in order for a largely rural segment of the American population to receive the same broadcast network programming as the rest of the American populace. In other words, were Congress not to renew STELA, distant signals would disappear, depriving rural Americans of a lifeline to broadcast network programming and eliminating any chance of watching a network station in "short" markets, which do not have a station affiliated with that network.

***7. How many households are currently served by the distant signal license? Has the number of unserved households increased or decreased since STELA was passed in 2010?***

See response to Question #6 above.

***8. Do you foresee a time in the near or distant future when satellite television providers are able to provide all of their customers with local channels, as opposed to importing distant signals?***

That is entirely up to the broadcasters who fail to provide local service in all 210 DMAs, thus necessitating the use of the distant signal license to, among other things, fill in "short" markets.

***9. What are the current impediments to DISH Network being able to provide local signals to all households that are currently deemed "unserved"?***

For years, the law specified that households would be considered "served" (and thus ineligible for distant signals) if tested or predicted to receive signals of a specified strength using a "conventional, stationary, outdoor rooftop receiving antenna." (Since the antenna is supposed to be pointed at each station tested, this really means a "rotating" antenna, not a "stationary" one.) But most Americans do not have rooftop antennas and have not for many decades. People today use indoor antennas. We have consistently argued that the relevant standard should reflect the kinds of equipment actually deployed in the marketplace.

Moreover, just before the digital transition, the FCC ruled that broadcasters did not have to replicate their analog "Grade B" signal coverage areas with the new, digital broadcast signal contours, increasing the number of households that cannot receive an over-the-air signal using a typical indoor digital antenna.

In response, Congress changed the relevant statutory criteria to refer simply to an "antenna." Congress removed all prior specifications—"conventional," "stationary," "outdoor," and "rooftop."

We believe that Congress intended to permit use of indoor antennas as part of the standard. This certainly was our understanding at the time, based on our conversations with Members of Congress and Congressional staff.

The FCC, however, did not construe the deletions in that manner, and decided to leave the "outdoor rooftop" criteria unchanged in its rules. Thus, the predictive model and test still assume use of equipment that almost nobody uses.

This means that satellite subscribers in rural areas often can be left without access to broadcast network programming. If, for whatever reason, a satellite carrier does not offer a local station, the subscriber often can get no network service at all. She cannot receive local signals because she is too far from the transmitter. And we cannot give her distant signals because the FCC test thinks she can receive local signals.

This occurs far more often than one might think. Last summer, DIRECTV conducted nearly 1,800 signal tests in three local markets, and compared those results to the FCC's predictive model that is intended to predict whether people can receive local signals. As many as *two-thirds* of those predicted to receive local signals could not actually receive a viewable picture—and this was using a rooftop antenna. If it had been able to conduct indoor antenna tests, the figures would undoubtedly have been much worse still.

We thus believe that Congress should, among other things, mandate a change to the standard and give the FCC more unequivocal direction than was issued in STELA.

***10. Do you believe that receiving local news, weather and emergency alerts from video subscription services is still valued by your consumers and in the best interest of the American public?***

Yes.

***11. In Northwest Iowa, many of my constituents are either in the Sioux City, Iowa DMA or the Sioux Falls, South Dakota DMA. Should cable or satellite providers be allowed to bring in a neighboring broadcaster's signal to better reflect the market demands of that area? Why or why not? Some argue that the marketplace would be better served if consumers had more choice as to which broadcast signal they could receive – do you agree?***

Satellite subscribers tell DISH the same things they tell Members of Congress. They do not want to be told which "local" stations they must watch. They want choices. They also want to be able to watch news and sports that originate from within their own states.

Congress could address this issue in many ways. One legislative approach would be to permit satellite carriers to provide in-state stations to so-called "orphan counties," which are counties that receive no in-state broadcasting. Permitting the FCC to modify DMAs holds some promise as well.

Broadcasters occasionally suggest that they can "solve" the in-state local news problem by offering private copyright licenses for local news. This, however, results in a product that consumers do not want—a "channel" that offers a blank screen for as many as 23 hours a day. We know this because DIRECTV offers such a product in Arkansas. Very few people watch it. People want to watch channels with around-the-clock programming, not blank screens.

That said, we must present two notes of caution. First, we have spent hundreds of millions of dollars on spot-beam satellites and ground equipment based on the Nielsen DMA boundaries. Therefore, we may not be able to adjust our channel offerings to implement changes that Congress or the FCC might enact.

Second, for this reason, we urge Congress to avoid single market "fixes," as it did when it passed STELA five years ago. We can comply more easily with systematic changes than with one-off changes to individual local markets.

A general remedy proposed by DISH would give subscribers the option to purchase station signals from an in-state DMA if they first receive local service. We would compensate the in-state broadcaster pursuant to the Section 119 distant signal license. To the claims from broadcasters that this would reduce local station viewership, we would note that (a) a subscriber's local stations still would be on the channel lineup, and (b) if local programming is as important and compelling as local broadcasters claim, then no material decrease in viewership should result.

***12. In Iowa, many consumers aren't able to receive the broadcaster's digital signal because the consumer lives outside of the broadcaster's digital contour. So, if not for a cable TV provider, a satellite provider or the consumer installing a 30 foot antenna outside their home, the consumer wouldn't be able to receive "free" over the air broadcast news. Should all broadcasters be mandated to serve their entire DMA footprint with a digital signal? In areas where it's technically not feasible, should cable TV companies and satellite companies be required to pay for the signal through the retransmission consent regime?***

Broadcasters should attempt to serve their entire DMA footprint with a digital signal. If they fail to do so, however, satellite providers should be able to provide a distant signal to households unable to receive a sufficient signal using an indoor antenna, as we explained in Question # 9 above.

***13. How often has DISH Network utilized the "significantly viewed" option that Congress has provided in previous satellite authorizations to provide local, non-duplicative content from adjoining DMAs to their consumers?***

Since 2010, DISH has not utilized the "significantly viewed" option that Congress has provided in previous satellite authorizations, and we are not aware of instances prior to 2010 where we have utilized the "significantly viewed" option.