



Testimony of

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On the

“State of Video”

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Chairman Rockefeller, Chairman Pryor, Ranking Member Thune, Ranking Member Wicker, and members of the Subcommittee, I appreciate the opportunity to testify today. My name is Stanton Dodge, and I am the Executive Vice President and General Counsel of DISH Network.

Background on DISH

DISH is the nation's third largest pay-TV provider with more than 14 million subscribers and over 25,000 employees across the country. It is the only provider of local broadcast television service in all 210 TV markets. Considered an industry leader in technology, DISH's award-winning innovations include the Hopper Whole-Home HD DVR and TV Everywhere devices and functionality that consumers can use to watch their TV on smartphones, tablets, and computers. Additionally, our dishNET satellite broadband service offers affordable high-speed broadband Internet access, which can be bundled with DISH's satellite TV service. DishNET enables data speeds of 10-15 Mbps, which is fast enough to support high-definition video, voice-over-IP telephony, and other applications previously unavailable to Americans living in unserved and underserved areas. The dishNET satellite broadband service is operated by our corporate affiliate, Hughes Network Systems, which altogether serves approximately 700,000 U.S. customers who tend to be located in rural areas outside the reach of traditional terrestrial broadband networks. DISH's recent offer to merge with Sprint would allow us to extend cable-quality fixed wireless broadband service to more than 40 million underserved and unserved rural households.

Summary

For Congress, the convergence of video, mobile, and broadband services has two major implications. First, outdated laws and regulations need to be updated to reflect changes in the

market and changes in how consumers view their content. Second, and more broadly, public policy should preserve and expand consumer video choices, which are repeatedly under attack. As distributors like DISH offer advances in technology that allow consumers to have greater choice and control over their content, content providers again and again cry wolf, saying that *this* time the threat is real and they will not be able to survive the onslaught of innovation.

We believe Congress should safeguard viewer choice in the increasingly frequent and highly unfortunate phenomenon of retransmission consent disputes and “blackouts.” When a local broadcast station is pulled from a consumer due to a retransmission dispute, video distributors should be able to temporarily provide another market’s network signal and prevent the total disenfranchisement of the consumer. The reauthorization of the Satellite Television Extension and Localism Act of 2010 (“STELA”) gives Congress the opportunity to enact this important reform.

In the three years since STELA was enacted, the video industry has not been sitting still. Consumers can, and increasingly want to, watch news, sports and entertainment on the go, using increasingly high-resolution screens available on their smartphones and tablets. Over the years, DISH has done much to respond to changing consumer preferences. Now, DISH stands ready to make a significant investment to satiate consumers’ growing appetite for increased mobility and flexibility in consuming video. DISH’s recent \$25.5 billion dollar offer for Sprint would create game-changing services and capabilities by offering, for the first time, a nationwide fixed and mobile service for voice, video, and data, in the home and out of the home.

STELA Has Been a Success

DISH is a company dedicated to giving its customers what they want, and STELA has been a big part of DISH's ability to deliver upon those customer needs. The satellite licenses established and reauthorized by STELA and its predecessors were instrumental in opening the video industry to competition by placing satellite distribution on a more level playing field with cable. The 1999 reauthorization, for example, created the first satellite "local-into-local" license allowing satellite distributors to retransmit local broadcast stations to their subscribers. In 2004, Congress took the opportunity to update the law for the digital transition. STELA built on these successes by giving DISH an opportunity to earn back its distant signal license—an opportunity that DISH seized to expand its local-into-local service into all 210 of the country's local TV markets.

STELA and its predecessors have been especially important for Americans living in remote, underserved areas. Among other things, STELA allows more than 1.5 million Americans residing in predominantly rural areas to receive distant network signals for any missing local Big-4 stations in their market. The distant signal license sunsets at the end of 2014, and without reauthorization, these 1.5 million American households will be left without access to a full complement of network channels.

The Video Industry Is Changing Dramatically

Consumers expect to be in control of what they watch as well as where, when, and how they watch it. Rapid innovations in the device and distribution marketplaces have now made that degree of choice and control possible. Every day, more and more consumers watch video on smartphones, tablet computers, and other portable wireless devices. Online video streaming services grow in popularity, and startups like Aereo are challenging the status quo by giving consumers greater freedom to watch their local broadcast stations whenever and wherever they

want. Consumers can use DISH's innovative Hopper DVR with Sling place-shifting technology, which won "Best of CES" at this year's Consumer Electronics Show, to exercise unprecedented control over their own TV viewing choices. This is good for consumers and good for competition.

Although evolution stands to benefit all players in the video marketplace, incumbents are often resistant – if not hostile – to that change. Rather than embracing consumers' evolving expectations and tastes, entrenched incumbents are fighting to preserve the status quo. The broadcasters' lawsuits against DISH's Hopper DVR are a perfect example. The networks are accusing millions of subscribers of being copyright infringers just because they want to skip commercials more easily or watch TV on iPads in their bedroom. Fortunately, the Supreme Court's landmark decision in the *Sony-Betamax* case protects the right of consumers to record their favorite shows and watch them later, skipping through commercials if they want. Congress has also repeatedly chosen to protect consumers' fair use and private performance rights. Two examples are the Audio Home Recording Act and the Family Movie Act. Congress should continue to protect consumer control over viewing choices.

Congress passed the Cable Act in 1992. Remember how you watched TV then? How disappointing it was to miss your favorite show and have to wait for it to rerun or get the highlights around the water cooler the next day? You likely only had one choice for a cable company from which to get service, as most markets were served by a single operator. You likely had never heard of the Internet, as it was in its infancy. If you had a mobile device, it was probably the size of a brick. All these years of progress later, with increased competitive forces now at play in the video marketplace, it is difficult to look at the laws on the books and tell that much has changed. Nowhere does the Cable Act mention the Internet, wireless, or online video.

Congress Should Fix the Broken Retransmission Consent System to Protect Consumers

A key area where the law has not been updated to reflect a growing imbalance in market power is retransmission consent. This is the system whereby video distributors must negotiate with the broadcasters for the ability to transmit the broadcasters' signals. The laws remain largely unchanged, and yet, in most markets, there are now a growing number of distributors (one or more cable companies, two satellite providers, one or more telcos, an over the top provider, etc.) that network stations can play against one another. By contrast, the local broadcast stations still enjoy a government-created monopoly where all of the video distributors have only one door to knock on in order to transmit each of the four networks in almost all local markets. Consequently, the broadcasters have the luxury of threatening to withhold their programming altogether in order to extract higher and higher retransmission consent fees. We are seeing increased fee demands of several hundred percent.

The result: more impasses and more blackouts interrupting consumers' services. The proof is in the numbers. In 2010, there were 12 instances where a broadcast signal was blacked out in a local TV market. In 2011, there were 51. In 2012, the number soared to almost 100. These numbers do not even include all of the near-misses, which are almost equally disruptive. Adding insult to injury, the timing of many blackouts coincides with marquee events like the World Series or the Oscars. Ultimately, the losers in these one-sided contests are the consumers who get their programming pulled from them by the broadcasters and see their bills on the rise. Some broadcasters have floated the idea of becoming a cable channel, thus stopping the broadcast of their channels over the air. If the broadcasters choose to do that, they should give back all of their government-granted broadcast spectrum.

The STELA Reauthorization Is an Opportunity to Protect Consumers and Further Support Video Competition

In the retransmission consent context, Congress can restore balance to the negotiating table by allowing cable and satellite carriers to substitute a network signal from a non-local market during an impasse in retransmission consent negotiations with a local market affiliate of that same network. For example, if a broadcaster blacks out the local Denver FOX station, the video distributor will be able to temporarily bring in an out-of-market station, such as the Cheyenne FOX station. The replacement station will not be a perfect substitute for the blacked-out local station, since consumers won't have their local content, but at least some measure of protection will be extended to affected consumers. Additionally, this fix will introduce some fairness into the negotiating process and make it more likely that the broadcaster won't pull its signal in the first place. Broadcasters will be introduced to some of the same competitive pressures that satellite carriers and cable operators face every day, and consumers will benefit as a result.

The State of Video Will Continue to Evolve to Include More Wireless Services – Consumers Will Demand It

As I've mentioned, the video industry is a place where the marvels of yesterday have become commonplace today. The needs and desires of consumers are evolving as technological innovations continue to be deployed in the marketplace. We should give American consumers what they want. They want to watch programming on their television sets, on their phones and on their tablets – no matter where they are. They also want to surf the web or make a phone call – again, no matter where they are. Consumers want choice and control. They want mobile video. They want mobile voice. They want mobile data. When we look at the marketplace for video, we need to be able to provide all of those communications options to every one of our customers, and we need to do it anywhere and anytime, on any device.

At DISH today, I submit that we have done a fine job of efficiently providing fixed video to the home. But customers increasingly want more than just home video. As consumers seek to utilize wireless devices and connectivity to view their content, the future of video relies more and more on wireless providers. The explosion in wireless data usage rates is due almost entirely to video consumption.

Our company is moving in that direction. By rolling out technological innovations like the Hopper with Sling, our customers can use a smartphone or tablet from any location in a controlled and private manner to enjoy the video content for which they have already paid. Our new PrimeTime Anytime and AutoHop technologies take the DVR to a new level. Consumers can, at their option, enable these features to more easily view their preferred programming when they want, while skipping what they don't want to see.

These are some of the ways in which we have responded to our customers' changing needs. But we have further to go. In the past, we haven't shrunk from "betting the company," so to speak, in order to stay competitive. We went from selling big dishes to launching our own small-dish DBS business. To give customers what they want, including mobile video, voice, and data, we are taking a risk again. Recognizing the evolution in video, DISH is on its way to becoming a wireless service provider. We acquired satellite spectrum and, after almost two years, secured FCC approval to use that spectrum for terrestrial mobile broadband services. We now want to compete against the established players by offering video, voice, and data inside and outside the home, from a single platform.

To that end, we have made an offer valued at \$25.5 billion dollars to acquire Sprint. Our offer is better for American consumers, Sprint shareholders, and the national security of this country than the competing offer for Sprint made by SoftBank, a foreign company. A combined

DISH/Sprint would establish more competition in the wireless marketplace. It will lead to less expensive options for consumers to watch their video content using wireless broadband – either fixed or mobile. Particularly for rural areas, a combined DISH/Sprint will be able to offer a never-before-seen integrated fixed broadband/video service that will place rural Americans on the same footing as New Yorkers and Los Angelinos.

DISH is driven to provide consumers with all that they want, including the choice in services and providers that they seek. If we are successful, we will fuel billions of dollars in investment and create tens of thousands of new jobs throughout the United States. Just as businesses must foster change in a rapidly evolving video marketplace to keep pace with what consumers want, government should work to ensure its regulations mirror today's competitive realities, consumer expectations, and advances in technology.

Thank you. I look forward to answering any questions you may have.