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before the

Senate Committee on Commerce, Science, and Transportation

"At a Tipping Point: Consumer Choice, Consolidation and the Future Video Marketplace"

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Chairman Rockefeller, Ranking Member Thune, Members of the Committee:

My name is Jeff Blum. I am the Senior Vice President and Deputy General Counsel of DISH Network L.L.C. ("DISH"), the second largest satellite TV provider in the U.S. with over 14 million subscribers located across every state.

DISH agrees with the title of this hearing: we are at a tipping point. The decisions that the Federal Communications Commission ("FCC"), Department of Justice ("DOJ"), and Congress make over the next 12 to 24 months will impact the future of the video market in determining whether a few large companies will have ultimate control over what Americans watch and how they do so. The future of video is broadband; and the unprecedented consolidation looming in the high-speed broadband access market will shape video consumption for years to come.

We at DISH know a thing or two about healthy competition. We launched our satellite TV service when cable enjoyed near monopoly status in the pay-TV market. When our original big-dish business started to decline, we invested in a new, small-dish service. And now that satellite and pay-TV generally have matured, we are again investing in the next transformation of the market, namely broadband and online video.

Now more than ever, a vibrant, competitive video market relies upon high-speed, high-capacity broadband services. This is because consumers increasingly want on-demand and Internet-delivered content. Allowing the broadband access market to consolidate down to a few powerful gatekeepers, each of which also has video services to sell, will hurt competition and consumers.

For our part, DISH increasingly relies on broadband to compete in the video market. We do so in two ways.

First, satellite TV can only be a competitive alternative to cable if our subscribers can utilize a broadband connection. DISH's newest set-top boxes connect to a consumer's broadband service, often provided by cable ISPs like Comcast and Time Warner Cable. The broadband connection makes possible the innovations that we need in order to stay competitive, such as video-on-demand, DISH Anywhere, Sling, various apps, and Internet-streamed programming.

Let's take the example of video-on-demand. Cable offers thousands of titles on demand, delivered through the two-way cable connection into the home. Our satellites and set-top boxes cannot serve the same volume of content on demand. In order to offer a comparable experience, we store titles on servers throughout the country and deliver them over a consumer's home broadband connection. When a DISH subscriber selects a movie on demand, she may be accessing the video file from one of our servers, transmitted to her set-top box over a broadband connection, and viewed on the TV.

Without such broadband-enabled features, DISH would fall behind our pay-TV competitors like Comcast, Time Warner Cable, AT&T, Charter, and others. Without broadband connections often provided by our pay-TV competitors, we cannot stay competitive in the traditional pay-TV market.

The second way DISH relies on broadband is when we provide a so-called "Over the Top" or "OTT" service. These services will play a large role in the future of video. Just like Netflix and Amazon, among others, DISH offers an Internet-only video product. For these services, all you need is a broadband connection; no satellite or set-top box is required.

For example, we offer DISH World, a foreign language OTT video service available over the Internet, using a broadband connection. This OTT service provides programming in Hindi, Mandarin, and dozens of other foreign languages. And, it is growing at a faster rate than our foreign language services on satellite.

We also recently announced a first-of-its kind deal to distribute live and on-demand Disney programming (such as ESPN and the Disney Channel) over a new forthcoming DISH OTT service. For the first time, consumers with a broadband connection will be able to subscribe to a smaller package of channels at a lower price than what is available today over traditional pay-TV. We are now talking to other major content companies about joining Disney on our forthcoming OTT service. We hope to launch the service later this year. These types of OTT services, however, require high-speed and high-capacity broadband connections.

Given our reliance on broadband to compete in the video market, we are very concerned that the proposed merger between Comcast and Time Warner Cable threatens competition as we know it in the video space, especially in the traditional pay-TV market, where satellite relies so heavily on a broadband connection, and in the emerging OTT video space.

The FCC and DOJ should reject this merger. There are no conditions or divestures that would offset the harms. You don't need to be an economist or antitrust expert to understand why. A competitor offering pay-TV at a lower price, or with more on-demand titles, or OTT services that cost less, is a company that can provide a different —or better— alternative to Comcast and Time Warner Cable. A combined Comcast/Time Warner Cable would have plenty of incentive to protect its business model by thwarting the broadband-enabled services of competitors like DISH.

The combined companies would control more than 47 percent of all the residential high-speed broadband connections in America, and would pass more than 60 percent of homes in America. These broadband connections are necessary to power the type of video services I just mentioned.

Comcast would like you to believe that the market for broadband is full of choices. But the truth is that DSL in most cases does not offer enough speed and capacity to support a typical household's streaming video usage. Just look at AT&T and Verizon. When they provide video for U-Verse or FiOS subscribers, they do not use their DSL networks. Instead, they use newer, high-speed fiber networks.

With such vast broadband market share under its control, the new Comcast will have at least three "choke points" in the broadband pipe where it will have the ability to harm competing video services like those provided by DISH:

1. First, the broadband connection to the consumer. This is often called the "public Internet." Comcast can prioritize its own services before those of DISH and other competitors, rendering services like ours less competitive;

2. Second, the interconnection point, where competitors' video services enter the Comcast broadband network. Comcast controls this critical point of interconnection, as it can close ports or refuse to open enough ports to allow competing content onto the "public Internet." If we pose too much of a competitive threat, we could suddenly find it more expensive, or even impossible, to reach our customers who use Comcast broadband; and

3. Third, any managed or specialized service channels, which can act as high speed lanes and squeeze the capacity of the public Internet portion of the pipe. Comcast's own services may enjoy the fast lane, while DISH's and all other competitors' data may get squeezed onto the ever more crowded public Internet lane.

Each of the above three "choke points" provide the ability for a combined Comcast/Time Warner Cable to downgrade the online video offerings of its competitors, all to the detriment of consumers.

The combination of Comcast and Time Warner Cable also would present a larger competitive threat than the companies standing alone, without a merger.

Take, for example, DISH World and the new DISH OTT service discussed above. DISH World offers programming in Hindi. Hindi speakers in the United States are concentrated in markets served by Comcast and Time Warner Cable broadband, such as New York City, Chicago, and Los Angeles.

Put all of those broadband markets under one roof and it becomes clear how Comcast would be the primary gatekeeper for DISH World reaching the Hindi-speaking community. It is also clear how Comcast easily could degrade DISH World in favor of its own foreign language service, perhaps to the point of eliminating the competition altogether.

Regarding our forthcoming OTT service with Disney and other programmers, a combined Comcast/Time Warner Cable will similarly be able to slow down or degrade the quality of service over its broadband pipe. But it will also be able to wield its greater leverage in another way— to restrict third-party programmers' digital rights licensed to competing pay-TV and OTT video providers. If you want carriage on our giant network, they'll say to a programmer, you cannot grant DISH or Netflix, for example, OTT rights to your content.

Too much power in the hands of too few— that's really what the Comcast/Time Warner Cable merger would produce.

I should note that Comcast reacted to DISH's recent opposition to its merger by characterizing us as a company just out to win an edge against a competitor. To the contrary, DISH is all in favor of healthy competition. You do not hear us complaining about Comcast competing on service quality, value, or technology features. But, we will take issue when a market participant seeks to abuse its market power to the detriment of healthy competition. We want to win when the game is played on an even playing field.

I also want to express DISH's competitive concerns about the AT&T/DIRECTV merger. Among other things, AT&T and DIRECTV will also be able to combine their market power to leverage programming content, to the potential detriment of consumers.

Finally, while merger reviews are mostly under the jurisdiction of agencies like the DOJ and FCC, Congress has an opportunity to improve video competition right now. This Committee soon will consider reauthorizing the Satellite Television Extension and Localism Act of 2010 ("STELA"). DISH and our fellow members of the American Television Alliance urge you to seize this opportunity to enact real reforms to the current laws governing how pay-TV and broadcast companies negotiate deals. We understand that Chairman Rockefeller, Ranking Member Thune, and their respective staffs have been working on a bi-partisan STELA bill. We applaud that effort. As Chairman Rockefeller said at the last video hearing, consumers cannot wait for the "mythical" re-write of the communications law.

Specifically, it is time do something to fix the broken retransmission consent system as part of STELA. Escalating programming costs are the number one source of rising pay-TV rates and one of the reasons we are seeing industry consolidation. The number of harmful programming blackouts has skyrocketed as broadcasters seek to drive up the amount of money they collect. Consumers are being negatively impacted from coast to coast, but with a few simple changes to the law, Congress can help to mitigate this harmful trend. DISH has submitted many concrete legislative proposals in writing to this Committee, and I am happy to answer any questions you might have about those ideas.

Thank you, and I look forward to the discussion today about the industry consolidation we're seeing and other trends and problems currently impacting the video industry.