

**Statement of William Lake  
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**Before the  
Subcommittee on Communications, Technology, and the Internet  
Committee on Commerce, Science, and Transportation  
United States Senate  
Reauthorization of the Satellite Television Extension and Localism Act Hearing**

**April 1, 2014**

Good afternoon, Chairman Pryor, Ranking Member Wicker, and Members of the Subcommittee. My name is Bill Lake, and I am the Chief of the Media Bureau at the Federal Communications Commission. I'm grateful for the opportunity to appear before you today as the Subcommittee begins to evaluate reauthorization of the Satellite Television Extension and Localism Act of 2010 – commonly known as STELA.

As the Subcommittee knows – but a quick reminder is always helpful – unless reauthorized by Congress, there are two provisions in the Communications Act that will expire at the end of this year:

- The authorization for satellite operators to *retransmit distant network signals* to an unserved household without first obtaining the consent of the station; and
- The sections prohibiting broadcast stations from engaging in *exclusive contracts* for carriage, and requiring both broadcasters and MVPDs to *negotiate in good faith* for retransmission consent.

In addition, it is important to note that the distant signal copyright license will also expire, which will affect current and grandfathered subscribers as well as future subscribers who meet STELA's eligibility requirements to receive distant signals.

I provide as an attachment to my statement a broad historical background on Congressional action in this area, beginning with the enactment of the Satellite Home Viewer Act over 25 years ago and continuing through the most recent reauthorization, STELA. Also included is information on how the current rules work for consumers today. I hope that this will help to inform the Subcommittee about the evolution of the provisions under consideration.

I note that there are other issues that have been brought up in the context of this reauthorization process – by both the Committee and stakeholder representatives (some of whom are with me here today). But I will limit these remarks to the specific topic at hand.

Historically, Commission staff has provided Congress with technical assistance as it works through issues related to the expiring provisions, and we continue to stand at the ready as

you and the other Congressional Committees continue to work on the reauthorization. Additionally, as always, the Commission will be tasked with implementing any changes that Congress makes to the language in the Communications Act.

Having noted that, if we have one ask for Congress at this juncture – from the staff who work directly on these issues – it would be for Congress to keep in mind the interdependence of the Communications Act provisions with the Copyright Act statutory licenses. While I understand that the Commerce and Judiciary Committees on both sides work together very well to develop the underlying policies, ensuring that the statutory language is complementary between the two Acts is essential to make sure that the intent of Congress is effectuated.

Again, thank you for the opportunity to be here today. I'll be happy to take any questions you may have.

## ATTACHMENT

### HISTORY OF SATELLITE TV LAW

#### SHVA

It has been over 25 years since Congress first established a statutory copyright license to give satellite carriers the ability to provide consumers with broadcast programming via satellite. The Satellite Home Viewer Act of 1988 (SHVA) and subsequent reauthorizations amend provisions in the Communications Act and in the copyright statute, Title 17.

At the time of SHVA, satellite carriers were technologically limited in the number of broadcast channels they could deliver to their subscribers. SHVA was intended to provide a means for those carriers to offer the broadcast network programming while protecting the role of local broadcasters. SHVA thus limited satellite delivery of network broadcast programming to subscribers who were “unserved” by over-the-air signals. It also permitted carriers to offer distant “superstations” to subscribers. “Unserved” was defined as a household that did not receive an over-the-air signal of a particular signal strength from any station affiliated with a particular network. SHVA endorsed the Commission’s computer model that predicts signal strength at a specific location, now known as the Individual Location Longley-Rice (or ILLR) predictive model. The predictive model was coupled with a process by which a subscriber who was predicted to be served could request a waiver from the relevant local stations, and, if the waiver was denied, could request an actual signal test.

#### SHVIA

The Satellite Home Viewer Improvement Act of 1999 (SHVIA) expanded opportunities for consumers by creating a framework for satellite carriers to retransmit *local* broadcast signals directly to subscribers through a new local signal copyright license – commonly known as “local-into-local” service. Beginning with SHVIA and continuing today, “local stations” are determined based on the Nielsen Designated Market Areas (DMAs) and typically by reference to the DMA map. In contrast to the “must carry” requirements that apply nationwide to cable service, the law requires satellite operators to carry all qualified local stations on a market-by-market basis (using DMAs) only if the satellite carrier opts to carry any local station in the market by reliance on the statutory copyright license. This is known as the “carry one, carry all” requirement.<sup>1</sup> The Commission implemented SHVIA by adopting rules for satellite carriers with regard to carriage of broadcast signals, retransmission consent, and program exclusivity. These rules are comparable to the requirements for cable service.

In addition to introducing the legislative and regulatory mechanism by which satellite carriers can offer “local” stations to subscribers, SHVIA also maintained the mechanism for unserved subscribers to receive distant network stations, with a few tweaks to the waiver and

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<sup>1</sup> Satellite carriers are allowed to exclude from their local-into-local service stations that are duplicative or stations that fail to provide a good quality signal to the satellite carrier’s local receive facility. Satellite subscribers are not generally required to subscribe to the local-into-local package.

testing protocol and still with reliance on the Commission’s predictive model in the first instance.

### SHVERA

In 2004, Congress continued to expand and develop parity between satellite and cable services when it enacted the Satellite Home Viewer Extension and Reauthorization Act (SHVERA) and provided the framework for satellite carriage of “significantly viewed” stations. Significantly viewed stations are those that technically are distant signals – i.e. assigned to another DMA – but historically had “significant” over-the-air viewing in specific communities or counties in a neighboring DMA. The Commission has maintained a “significantly viewed” list since the 1970’s. In addition, if a station meets the significantly viewed criteria for a particular community or county, it can petition the Commission to be added to this list. Carriage of such stations is voluntary on the part of the satellite carriers and requires the retransmission consent of the significantly viewed station. Only subscribers in the specific community or county who subscribe to the local-into-local service are eligible to receive the significantly viewed station from out of market. SHVERA also imposed additional restrictions on the carriage of digital significantly viewed stations – requiring that the local station affiliated with the same network is provided in the same format.<sup>2</sup>

In addition to the significantly viewed provisions, Congress also modified the statutory language to account for various digital television transition issues, imposed the good-faith bargaining requirements for retransmission consent negotiations on multichannel video program distributors, and provided for some exceptions to the distant copyright license for certain areas of the country.

### STELA

The Satellite Television Extension and Localism Act (STELA), enacted in 2010, is the most recent iteration in the series of statutes that address satellite carriage of television broadcast stations. In addition to reauthorizing the expiring provisions of law, the major provisions of STELA include changes to the significantly viewed provisions enacted in SHVERA to promote use of the statutory provisions and provide additional choices for subscribers.<sup>3</sup> Congress also modified the law to account for the terrestrial digital television transition that occurred in 2009 by requiring the Commission to establish a digital signal predictive model and to revise its measurement procedures for determining eligibility for subscribers to receive distant digital

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<sup>2</sup> There were two exceptions to these restrictions on the carriage of significantly viewed stations – (1) satellite carriers could provide a significantly viewed station in areas where there was no local affiliate station; and (2) satellite carriers could negotiate a waiver with the local affiliate with regards to carriage of a significantly viewed station. Note that STELA’s revisions affect these exceptions. *See infra* n. 5 and associated text, and n. 9.

<sup>3</sup> Congress also moved the corresponding copyright provisions for significantly viewed stations from the distant signal copyright license to the local signal copyright license.

signals.<sup>4</sup> Congress also changed the definition of the stations considered when determining whether a subscriber is served or unserved by an over-the-air signal for the purpose of eligibility for satellite-delivered distant signals; specified how multicast signals would be treated; and introduced the concept of “short” markets, that is, DMAs with fewer than four of the most widely viewed networks.<sup>5</sup> Additionally, Congress required the Commission to provide a report to Congress regarding the availability of in-state programming for those counties that are assigned to a DMA served primarily by stations that are licensed to a different state.

## PRACTICAL APPLICATION OF CURRENT LAW AND RULES

### Local-into-Local Service

Since the inception of local-into-local service, the two satellite providers have increased their local market offerings to the point where subscribers in most, if not all, of the 210 local markets (DMAs) have access to the local package by one or both of the providers. The specifics are outlined below:

Date/Timing	DISH	DirecTV	Source
Nov. 2000	34	38	FCC 7 <sup>th</sup> Video Competition Report
Dec. 2004	150 (+PR)	130	FCC 11 <sup>th</sup> Video Competition Report
Fall 2007	174	143	FCC 13 <sup>th</sup> Video Competition Report
Fall 2012	210	194	SEC Filings
February 2013	210	196	STELA Section 305 Report
Nov. 2013	210	197*	STELA Section 305 Report

\*Markets currently without Local-into-Local service from DirecTV: Presque Isle ME; Alpena MI; Charlottesville VA; Victoria TX; Ottumwa IA-Kirksville MO; San Angelo TX; Bowling Green KY; North Platte NE; Cheyenne WY-Scottsbluff NE; Helena MT; Casper-Riverton WY; Grand Junction-Montrose CO; Glendive MT.

A consumer can subscribe to satellite service from one of the two providers, and opt for different program packages. As part of the available packages, consumers can opt to subscribe to the local channel package for an additional charge. The local channels will be those stations that are assigned to the DMA in which the consumer resides based on the Nielsen designations. Consumers are not allowed to choose the local stations they wish to receive via satellite, and satellite providers are limited in the stations they are permitted to include in the local package. As noted above, Congress has allowed for additional flexibility in certain circumstances that could increase the choices available to subscribers, such as permitting carriage of significantly viewed stations in appropriate circumstances.

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<sup>4</sup> Congress revised the definition of “unserved household” to eliminate a specific reference to “outdoor” antennas. The Commission rulemaking determined that, from an engineering and technical perspective, consideration of an outdoor measurement remains preferable.

<sup>5</sup> Prior to STELA, the signal of any station affiliated with a particular network was considered in determining whether a subscriber was “served” or “unserved” by that network. STELA established that only network stations that are in the subscriber’s “local” market (i.e., the same DMA) would be considered in making this determination. This change facilitated providing missing network stations via satellite to subscribers in short markets.

As noted above, if a carrier chooses to provide any significantly viewed stations from the FCC's list, it can add those stations to the local package offerings after obtaining the retransmission consent of the station. Additionally, there are certain areas in the country in which Congress provided an exception to the copyright license to allow carriage into specific counties of additional signals that would otherwise be considered distant signals.

### Distant Signals

Distant signals, generally, are those broadcast stations that are assigned to a different DMA than the one in which the consumer resides. In the past, distant signals provided the only access to broadcast network programming for many satellite subscribers. Over time, more and more subscribers gained access to the local network stations via local-into-local service. Even so, much of STELA, like its predecessors, is devoted to the requirements and limitations associated with eligibility for distant signals. The following is an overview of the highlights and concepts.

Generally, in order to be eligible to receive distant signals, a subscriber must be deemed to be "unserved" by the local signals via an over-the-air antenna. "Unserved" means that the subscriber's household cannot receive the over-the-air signal of a local network station with sufficient signal strength<sup>6</sup> as outlined in the current rules.<sup>7</sup> Additionally, subscribers are limited to no more than 2 network-affiliated signals from each broadcast network. If a subscriber is also receiving local stations, STELA restricts the time shifting permissible for the distant signals based on the subscriber's local time zone. Generally, the subscriber cannot specify which distant signals he or she wishes to receive. In addition to the eligibility criteria associated with the subscriber, the satellite carrier is permitted to provide distant signals only if it complies with the requirement to provide the networks with lists of the subscribers who are receiving distant signals. Below are some of the other major provisions regarding distant signals.

#### No Distant Where Local

When new consumers subscribe to satellite TV service, and the local-into-local package is available via satellite, they are not eligible to receive distant signals under current law. We refer to this as "no distant where local."

One exception to no-distant-where-local is if the local signals are provided in the DMA but the subscriber lives in an area that is technically outside of the spot beam used to provide the local signals. In those instances, the subscriber will be permitted to receive the distant signals if the subscriber is also "unserved" by local stations over-the-air.

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<sup>6</sup> STELA more specifically defines sufficient strength as the intensity defined by the FCC as the value for the "noise-limited service contour," which means the value associated with a station's coverage area.

<sup>7</sup> As noted below, new subscribers are not eligible for distant signals if the local-into-local package is available to them.

### No Local-into-Local Service

If the consumer resides in a market where their preferred satellite carrier does not offer a local-into-local package, they may be able to receive a distant signal package if they are “unserved.” The subscriber requests distant signals through his or her satellite carrier, and the carrier determines whether there is a sufficient signal by using a computer model that predicts the signal strength at the subscriber’s specific household. Satellite carriers must use the computer model designed by the Commission, but the Commission is not involved in making individual predictions.

If the model determines the household is “unserved” (i.e., the signal strength is too low), the satellite carrier can provide distant network signals to the household. If the model predicts that the household is served by a particular local network station over-the-air, the household is not eligible for distant signals for that network.<sup>8</sup> The subscriber may request waivers from each of the local stations that are predicted to serve the household in order to be eligible for distant signals.<sup>9</sup> Waivers are requested through the satellite carrier, and the local broadcast station must accept or reject a waiver request within 30 days. If the station does not respond to a waiver request within the time frame, the station is assumed to have agreed to the waiver.

If the local station denies the waiver request, the current law provides for a process by which the subscriber can request to have a signal test to measure the actual strength of the over-the-air signal from each station. Both the satellite and broadcast station must agree on a qualified and independent person to conduct the test. The costs of the test will be paid by either the satellite carrier or the broadcast station, depending on the outcome of the test. In limited circumstances, there are rules to provide for testing to be conducted and paid for by the subscriber directly. Others on the panel representing the affected industries can comment on whether and how often tests are requested and conducted. The Commission is not involved in the process, although we do field consumer questions about the process when requested.

### Other “Unserved” Situations

The law provides that, in situations where a satellite dish is permanently affixed to a recreational vehicle or commercial truck, that subscriber is deemed to be “unserved” and eligible to receive distant signals.

### Other Distant Signal Subscribers

As Congress has changed the eligibility rules for distant signals in successive reauthorizations, it has provided different treatment for subscribers to distant signals at the time

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<sup>8</sup> One of the revisions added by STELA to the existing protocol was to specify that the local network signal might be available via either a so-called primary or multicast stream broadcast by a local station. This distinction was added to address the enhanced capacity associated with digital transmission, which enables stations to broadcast multiple streams of programming simultaneously.

<sup>9</sup> STELA revised which stations are to be considered in the predictive model so that only stations that are “local” to the consumer based on the Nielsen DMA need to be considered. Previously, all network station signals were to be considered, including those that were not treated as local for purposes of carriage.

of the reauthorization, depending on when the subscriber first received the distant signals. These different qualifications for “grandfathering” are used to determine whether subscribers may or must take the local-into-local package if and when offered. Some of the grandfathered subscribers may keep the distant signals, others may at some point be required to relinquish the distant signals. This is a topic that has been addressed in each reauthorization process, taking into consideration equitable treatment for distant signal subscribers at the time.