Testimony of

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On the

Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act of 2004

Before the

Committee on Commerce, Science, and Transportation

Subcommittee on Communications, Technology, and the Internet

United States Senate

October 7, 2009

Chairman Kerry, Ranking Member Ensign, 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 L.L.C. ("DISH Network"), the nation's third largest pay-TV provider.

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Providing consumers with local over-the-air broadcast stations by satellite in all 210 designated market areas has been a goal of the Senate Commerce Committee for some time. This year's review of the Satellite Home Viewer regime provides an opportunity to improve upon the existing regulatory and legal structure to incentivize the launch of the remaining unserved markets.

DISH has launched local-into-local service in 182 markets, including Puerto Rico, covering approximately 98 percent of households nationwide in less than a decade's time. This is a considerable achievement that would not have been possible absent the regulatory and legal structure Congress created to encourage and foster such investment.

The job, however, is not complete until all consumers have the opportunity to view their local channels. Today, we would like to detail some of the key technical and financial hurdles to serving the remaining 29 markets to help frame the debate on what steps this Subcommittee could take to make service in all 210 markets a reality.

First, the upfront and recurring costs of providing local-into-local service in every market are daunting. In each market in which we provide local service, DISH must establish a physical presence. This local receive facility is needed to collect the local broadcast signals and send them back to our satellite uplink centers. To do so, we need to acquire adequate fiber facilities to bring the content back to our uplink centers as well as establish a secure location to acquire broadcast signals in each of these markets. The upfront costs alone to establish this infrastructure would be approximately $35 million for the remaining unlaunched markets. Importantly, substantial annual recurring costs are also necessary to maintain local-into-local service. The recurring cost for the remaining local facilities would be approximately $15 million annually including the costs of associated terrestrial infrastructure and staffing. These figures do not, however, include the expense associated with retransmission consent fees and other programming-related costs.

Our ability to recoup this substantial investment is constrained by the small size of many of the remaining markets. For instance, there are fewer than four thousand households in the Glendive, Montana designated market area. This provides very few potential households to subscribe to our service to help defray those costs, yet the costs to provide a local-into-local service are largely fixed. The economics of launching Houston are easy. Presque Isle, Maine and similar smaller markets are not.

The opportunity costs of earmarking capacity for local service are also very real. DISH has finite satellite spectrum available to provide a national service that competes with bandwidth-rich cable and telephone companies. At a very basic level, the decision to provide a local NBC affiliate to a few thousand subscribers precludes DISH from providing a new national service, a high definition channel, or an international or Spanish-language offering to 13 million subscribers. This has clear competitive implications. It is certainly true that our investment in cutting edge spot-beam technology and satellites – each a $350 million investment – has provided a more efficient means to provide local channels today. Nonetheless, the decision to include a local-dedicated spot beam on our next satellite or a national beam has real consequences to our long-term competitive viability. Launching 29 additional markets would require us to find or create capacity for approximately 100 additional channels on a system that is effectively at, or near, full capacity today.

The last key hurdle is one of consumer expectations. If any customer subscribes to a locals package, they expect to receive at least NBC, CBS, ABC, and FOX content. Yet, in 26 of the 29 markets we have yet to launch, one or more of those networks is not available as the primary video feed of a local broadcast station. In some instances, only a single national network affiliate is present in these markets. Without action by Congress as part of the reauthorization process, we will be unable to provide a commercially viable offering by filling in these so-called "short markets" with the missing national content pursuant to our local-into-local compulsory license.

We do not ask today for $100 million to subsidize the launch of these markets or the resources to construct more satellites, but we did want to give this Subcommittee an appreciation for the challenges faced by any provider seeking to launch all 210 markets. There are, however, concrete steps this Subcommittee can take to improve the economics of serving these small markets.

To that end, the Satellite Television Modernization Act of 2009 – which was voted out of the Senate Judiciary Committee two weeks ago – is a good first step. This bill would provide for the first time the legal authority to retransmit quasi-local signals to consumers under the local compulsory license. Among those rights would be the ability to fill in short markets with adjacent broadcasters, the ability to bring in those stations that are deemed significantly viewed in the local market, and low-power stations that may offer valuable content within the local market. Each of these proposed changes increases the likelihood that consumers in the remaining 29 unlaunched markets would receive service that is more comparable to their urban counterparts.

But restructuring of the compulsory copyright regime as currently proposed could create a hurdle that has a significant policy consequence. Other pay TV providers pay either a retransmission fee to the local broadcast station or a copyright royalty payment for carriage. Any requirement to pay double compensation – that is, both a retransmission consent fee and a royalty payment – to carry the same station would create an unintended financial disincentive to provide these signals. Layering on additional costs to the already precarious business model to serve these economically challenging markets would undercut our mutual goal to serve every market. Indeed, to ensure that the incentives are properly aligned and that all consumers in the U.S. receive comparable services, DISH would need to be on equal footing with its competitors. For example, this would include the ability to import signals during emergencies and to serve recreational vehicles and commercial trucks, as well as households outside of our local spot beams.

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The Satellite Television Modernization Act of 2009 also includes provisions for a study by the U.S. Copyright Office of the proper means to implement a phase-out of the copyright compulsory license regime with respect to the Copyright Act. We welcome such a study to provide a roadmap towards a market-based solution to replace a heavily regulated system that has too often failed consumers. So much of the current rules sit atop a complicated and outdated regulatory structure that treats competing pay TV platforms differently and deprives consumers of desired content.

As we move towards that market-based approach, we believe that a companion report from the Federal Communications Commission is warranted to address corresponding issues and challenges raised by provisions within the Communications Act. Among the topics that merit expert study are: an economic analysis of the current compensation regime, the appropriateness of subsidizing over-the-air viewers in a market-based world, and whether a new framework would provide a more workable path to providing all consumers with in-state news, weather and sports. The current system fails households in 45 states on that account. Such a report could provide this Subcommittee with an invaluable roadmap as work begins on a true market-based carriage mechanism.

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In sum, we are hopeful that the reauthorization process this year will modernize an out-dated statute as well as provide the incentive to achieve a national policy goal: making local TV service available to consumers in all 210 markets. We look forward to working with members and staff to accomplish both objectives.

Thank you for the opportunity to testify today, and I'd be happy to answer any questions.