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1 {York Stenographic Services, Inc.}

2 HIF167.160

3 HEARING ON ``THE SATELLITE HOME VIEWER ACT''

4 TUESDAY, JUNE 16, 2009

5 House of Representatives,

6 Subcommittee on Communications, Technology, and the Internet

7 Committee on Energy and Commerce

8 Washington, D.C.

9 The subcommittee met, pursuant to call, at 10:07 a.m.,
10 in Room 2322 of the Rayburn House Office Building, Hon. Rick
11 Boucher (chairman of the subcommittee) presiding.

12 Members present: Representatives Boucher, Markey,
13 Eshoo, Weiner, Butterfield, Christensen, Space, McNerney,
14 Stearns, Upton, Deal, Shimkus, Shadegg, Radanovich, Walden,
15 Terry, and Barton (ex officio).

16 Staff present: Amy Levine, Counsel; Tim Powderly,
17 Counsel; Greg Guice, Counsel; Shawn Chang, Counsel; Roger
18 Sherman, Chief Counsel; Pat Delgado, Chief of Staff; Sarah

19 Fisher, Special Assistant (Waxman); Neil Fried, Minority
20 Counsel; Amy Bender, Minority FCC Detailee; and Garrett
21 Golding, Minority Legislative Analyst.

|
22 Mr. {Boucher.} Subcommittee will come to order.

23 Today the subcommittee takes another step toward renewal
24 of The Satellite Home Viewer Act which enables satellite
25 carriers to retransmit distant television signals under
26 certain circumstances. Some provisions of The Communications
27 and Copyright Acts expire at the end of this year, making
28 reauthorization of this measure a must-pass undertaking. At
29 the subcommittee's oversight hearing in February, I indicated
30 that Congress should proceed with the reauthorization in the
31 most straightforward manner possible, and I believe today as
32 I did then that we should avoid in this measure collateral
33 matters such as retransmission consent reform that are
34 relevant to all multi-channel video providers not just to
35 satellite platforms.

36 The discussion draft that we have under consideration
37 today takes this straightforward approach. It renews for 5
38 years the provision allowing carriers to deliver a distant
39 network station to homes under specified circumstances which
40 otherwise would expire at the end of this year. It
41 reauthorizes the good faith negotiation requirements in The
42 Communications Act that also otherwise would expire at the
43 end of this year. It provides needed clarification regarding
44 the provision by satellite carriers of significantly viewed

45 signals by stating that a significantly viewed signal may
46 only be provided in high-definition format if the satellite
47 carrier is passing through all of the high-definition
48 programming of the corresponding local station, also in high-
49 definition format. It directs the FCC to develop a
50 predictive methodology for the reception of digital signals
51 within six months in order to determine with accuracy which
52 households are eligible to receive distant network signals.
53 It makes technical changes to the Law to reflect the fact
54 that after last Friday, full-power television stations are no
55 longer broadcasting analog signals.

56 In addition to these changes that are made by the
57 discussion draft that is before us, there are additional
58 matters that we could potentially address. One is developing
59 appropriate incentives to encourage satellite carriers to
60 provide local service in all 210 designated market areas
61 nationwide. Today, Direct TV offers local service in about
62 150 markets while Dish will soon offer local service in 182
63 markets but that still leaves about 28 markets without any
64 service at all. Most of the DMAs that lack local-into-local
65 service today are in rural areas and many of these markets do
66 not have a full complement of network affiliates within the
67 local market. In our parlance they are referred to as short
68 markets.

69 While I understand that the numbers of subscribers in
70 these unserved rural markets are small, their residents are
71 highly vocal in expressing their views that they should have
72 the same opportunities to receive local programming delivered
73 by satellite as people who live in more densely populated
74 regions. I am hopeful that ongoing discussions among the
75 stakeholders will lead to an arrangement through which all
76 210 markets will receive local satellite delivered service.

77 Another matter for possible discussion is whether
78 residents in short markets should be able to receive the
79 programming of networks missing in their local market from an
80 adjacent local market within the State of their residence.
81 While satellite carriers can today import distant signals
82 from any market, they are hindered in their desire to do so
83 by the so-called Grade B believed problem that prevents them
84 from offering distant signals to those households that can
85 receive the signal of an out-of-market network affiliate over
86 the air. That problem as well as the larger short market
87 concern could potentially be successfully addressed by the
88 subcommittee. Stakeholders are currently discussing the
89 short market and local 210 matters, and it is my hope that
90 these conversations will lead to an arrangement whereby we
91 will be able to address both of these concerns when we
92 conduct our subcommittee's markup.

93 [The prepared statement of Mr. Boucher follows:]

94 ***** COMMITTEE INSERT *****

|

95 Mr. {Boucher.} I want to welcome our witnesses this
96 morning and thank them for sharing their views with us. I
97 also want to say thank you to our Republican colleagues,
98 primarily our ranking Republican member from Florida, Mr.
99 Stearns, and his very fine staff for their excellent
100 cooperation and collaboration as we have assembled the
101 bipartisan discussion draft which is before the subcommittee
102 this morning.

103 And that said, I am pleased to welcome Mr. Stearns for
104 his opening statement.

105 Mr. {Stearns.} Good morning and thank you, Mr.
106 Chairman, and thank you, frankly, for including us in a
107 bipartisan fashion so that we could be instrumental and
108 helpful in developing this draft bill.

109 I would point out in retrospect, the DTV transition went
110 smoothly by most reports and many of my colleagues had been
111 concerned about it. I think this smooth transition will help
112 everybody realize that there is probably few issues we can
113 talk about anymore about it because it is pretty much good
114 news and we can forward. Some consumers simply need to have
115 their converter boxes rescanned for stations that have moved
116 or might need a different antenna, and some stations may need
117 to increase their broadcast power but basically it appears

118 that we could have saved some money, at least that is our
119 position but the good news is that we can move forward.

120 Turning to today's topic, I am glad that we have a
121 discussion draft, legislation to reauthorize the satellite
122 television act. The original satellite legislation in 1988
123 is credited with helping foster competitive video marketplace
124 that we have today to the benefit of all of our consumers.
125 Indeed, one of my district employees tells me how much he
126 enjoys his satellite service and my sense is this sentiment
127 is equally shared by lots of consumers across this country's
128 satellite subscribers. That is why we have to reauthorize
129 this legislation each time it comes up for renewal and that
130 is why the discussion draft before us extends for another 5
131 years the authority of satellite operators to provide the
132 signals of out-of-market station to subscribers who cannot
133 receive their local stations over the air.

134 In addition, my colleagues, the draft makes clerical and
135 substantive changes to the statute to reflect the end of
136 analog broadcasting. In particular, it directs the FCC to
137 update for digital broadcasting both the predictive model and
138 on-location testing rules for determining whether a
139 subscriber is eligible for a distant signal.

140 The draft also rectifies the FCC's poor implementation
141 of the ``significantly viewed'' provisions. These provisions

142 added to the statute 5 years ago, allow a satellite operator
143 to provide subscribers in a local market with signals from a
144 network affiliate in a nearby market if that nearby affiliate
145 is watched over the air by a significant number of consumers
146 in the local market. The statute prohibited a satellite
147 operator however from carrying the significantly viewed
148 affiliate in high-definition format if it didn't also carry
149 the local affiliate of the same network in high-definition
150 format. The FCC construed that provision to prohibit
151 carriage of the significantly viewed affiliate in high-
152 definition at any moment of the day that the local station
153 was not simply broadcasting in high-definition. Because
154 satellite operators find it difficult to match the
155 transmission formats of the two stations moment-by-moment,
156 they usually choose not to carry significantly viewed
157 stations at all. So to address that, the draft makes clear
158 that a satellite operator may carry the significantly viewed
159 affiliate in high-definition when the local affiliate is not
160 broadcasting in high-definition so long as the satellite
161 operator does carry the local affiliate at high-definition
162 when it is simply available in that format.

163 An issue not addressed but I am sure will come up today
164 is what to do about consumers who cannot receive programming
165 they truly consider local either because they are missing

166 local affiliates from one or more networks in their market or
167 because they have been assigned to a designated market area
168 which is simply outside their State. My sense is there will
169 be sympathy for such viewers. If we address this issue
170 however, we must do so in a way that clears existing
171 regulatory obstacles rather than creates a whole new set of
172 rules. As I have already mentioned, the video market is
173 robustly competitive. In that environment there should be
174 less interference in the market, not more. Whatever we do,
175 we should ensure that the satellite operator, the out-of-
176 market station and the owners of the content are allowed to
177 freely negotiate. That is the best way to ensure that
178 consumers get as much desirable content as possible at simply
179 the lowest rates. Anything else simply protects one company
180 at the expense of another without really helping the
181 consumers. And at bottom, this legislation is all about the
182 consumers.

183 So thank you, Mr. Chairman, for holding this hearing.
184 Again, thank you for your allowing us to participate freely.

185 [The prepared statement of Mr. Stearns follows:]

186 ***** COMMITTEE INSERT *****

|
187 Mr. {Boucher.} Thank you very much, Mr. Stearns.

188 The gentleman from Massachusetts, Mr. Markey, former
189 chairman of this subcommittee, is recognized for two minutes.

190 Mr. {Markey.} Thank you, Mr. Chairman, very much and
191 thank you for having this hearing.

192 The Satellite Home Viewer Act is a Law that this
193 subcommittee revisits every 5 years to both reauthorize
194 certain aspects of it and to review the applicability of
195 particular provisions in light of changes in the marketplace.
196 For example, it was 10 years ago that I was able to
197 successfully offer the so-called local-into-local amendment
198 that permitted satellite video providers to carry local
199 broadcast stations in local markets providing a major
200 competitive boost to such satellite providers. 5 years ago,
201 the subcommittee made other adjustments to the Law, including
202 adding provisions for the carriage of significantly viewed
203 stations. The issues of short markets and significantly
204 viewed signals must be dealt with in a serious fashion this
205 year and I look forward to working on them.

206 Clearly, a major change that will need to be factored
207 into this year's legislation is the conversion of the
208 broadcast television industry to digital service. When I
209 held the first Congressional hearing on high-definition TV in

210 this room in September of 1987, and I never imagined that it
211 would take 22 years to reach this moment but it appears that
212 the delay we enacted to move back the date from February
213 resulted in over three million additional households that
214 were able to receive greater education and awareness to occur
215 and for those three million homes to be properly prepared.
216 The fielding of hundreds of thousands of consumer calls was
217 facilitated by the ramp-up in the last few months of critical
218 call center operations.

219 This is a government program that worked. We made the
220 transition. We have been able to move from analog to
221 digital, compress the amount of spectrum that was needed,
222 auction off the remaining spectrum for \$20 billion opening up
223 a whole new area for entrepreneurial activity while giving a
224 more flexible technology to consumers that in the years ahead
225 will benefit them. So this has been a success and it proves
226 that the government when it puts its mind to it can work for
227 the benefit of consumers.

228 I thank you, Mr. Chairman, for conducting this hearing.

229 [The prepared statement of Mr. Markey follows:]

230 ***** COMMITTEE INSERT *****

|
231 Mr. {Boucher.} Thank you very much, Mr. Markey.

232 The gentleman from Michigan, Mr. Upton, is recognized
233 for two minutes.

234 Mr. {Upton.} Thank you, Mr. Chairman. I want to also
235 commend you and Mr. Stearns and our staffs for working
236 together.

237 This has been a success and it is critical that we send
238 the proper message to consumers and subscribers and providers
239 that we are going to act in a timely way that will not let
240 this legislation expire. I look forward to working with you
241 as we have had a great relationship over the last number of
242 years as we move this bill through the committee. This is
243 one of the bills that our committee can take credit for in
244 working in a bipartisan manner and I am glad that we continue
245 that trend.

246 And I yield back.

247 [The prepared statement of Mr. Upton follows:]

248 ***** COMMITTEE INSERT *****

|
249 Mr. {Boucher.} Thank you very much, Mr. Upton.

250 The gentleman from California, Mr. McNerney, is
251 recognized for two minutes.

252 Mr. {McNerney.} Thank you, Mr. Chairman, for convening
253 this hearing to discuss the legislation to reauthorize The
254 Satellite Home Viewer Extension and Reauthorization Act. I
255 would like also to thank the witnesses for coming here today
256 to share their inputs on the legislation.

257 A tremendous amount of behind-the-scenes work is
258 required every day to ensure that Americans are able to turn
259 on their television sets any time to watch a program. The
260 intricacies of how satellite providers and broadcasters
261 interact are complex. Today's hearing should offer an
262 opportunity to hear thoughtful evaluation of the proposed
263 reforms.

264 I am excited to be a part of the debate and I look
265 forward to the hearing and the resulting legislation. Thank
266 you, Mr. Chairman.

267 [The prepared statement of Mr. McNerney follows:]

268 ***** COMMITTEE INSERT *****

|
269 Mr. {Boucher.} Thank you, Mr. McNerney.

270 The gentleman from Illinois, Mr. Shimkus, is recognized
271 for two minutes.

272 Mr. {Shimkus.} Thank you, Mr. Chairman.

273 I, too, want to kind of highlight the successful
274 transition on Friday. I have only received, I think, four
275 phone calls in my congressional office on the DTV transition
276 and I have five DMAs that kind of cover my congressional
277 district, a great success. Obviously, we have ushered the
278 most significant revolution in television since the advent of
279 color broadcasting. We have cleared 24 megahertz of spectrum
280 for public safety use and that is what I have been focusing
281 on for a long time of providing first-responders with a
282 billion dollar grant program for interoperability. And
283 another thing that has been critical in this whole
284 transition, 84 megahertz of spectrum nationwide for advanced
285 wireless broadband services and \$20 billion in auction
286 proceeds for the taxpayers.

287 I also want to thank both government and industry for
288 what they did in promoting this, the National Association of
289 Broadcasters, the National Cable Telecommunications
290 Association, the American Cable Association, Dish Network and
291 Direct TV, they are here today along with the NTIA and the

292 FCC, because we informed the public and the public was able
293 to respond as we hoped they would. It is important to note
294 that if SHVERA were not reauthorized, there would be more
295 Americans affected by changes to their television broadcast
296 then during the DTV transition. That is the importance to
297 this reauthorization. It is my hope that we will have a
298 frank and open discussion and not move hastily with this
299 important legislation.

300 I appreciate both Chairman Boucher and Ranking Member
301 Stearns for calling this hearing. I look forward to hearing
302 from the witnesses and I yield back my time, Mr. Chairman.

303 [The prepared statement of Mr. Shimkus follows:]

304 ***** COMMITTEE INSERT *****

|
305 Mr. {Boucher.} Thank you, Mr. Shimkus.

306 The gentleman from Georgia, Mr. Deal, is recognized for
307 two minutes.

308 Mr. {Deal.} Thank you, Mr. Chairman. I, too,
309 appreciate you holding the hearing.

310 If it does make the news, it is unfortunate that some of
311 my folks in North Georgia will have to learn about it by
312 watching Tennessee television.

313 I have a statement for the record that I will submit and
314 I yield back my time.

315 [The prepared statement of Mr. Deal follows:]

316 ***** COMMITTEE INSERT *****

|
317 Mr. {Boucher.} Thank you very much, Mr. Deal, and your
318 statement along with that of other members will be included
319 in the record.

320 The gentleman from California, Mr. Radanovich, is
321 recognized for two minutes.

322 Mr. {Radanovich.} Thank you, Mr. Chairman. I want to
323 thank you and Mr. Stearns for holding this hearing to review
324 the draft legislation reauthorizing The Satellite Television
325 Act and I appreciate both your leadership and your efforts to
326 reauthorize this bill continuing to provide satellite
327 operators with the authority to provide the signals of out-
328 of-market broadcast ability to subscribers who cannot receive
329 their local affiliates over the air.

330 My staff and I learned a few years ago when many in my
331 district lost their access to distant signals. We have a
332 large population of constituents who are very vocal satellite
333 subscribers and while this problem has since been addressed,
334 it illustrates the impact and importance of this legislation
335 to me and my constituents, although there are still a few
336 issues that we need to look out.

337 I look forward to working with the committee in a
338 bipartisan manner towards a product that reflects the best
339 interests of all television viewers. And I want to thank the

340 witnesses for being here today sharing your testimony and,

341 Mr. Chairman, I yield back. Thank you.

342 [The prepared statement of Mr. Radanovich follows:]

343 ***** COMMITTEE INSERT *****

|
344 Mr. {Boucher.} Thank you very much, Mr. Radanovich.

345 We are pleased now to turn to our panel of witnesses for
346 this morning and I want to thank each of them again for
347 taking the time to join us here and share their very
348 thoughtful views and comments with us on our discussion
349 draft. Mr. Stanton Dodge is executive vice president and
350 general counsel and secretary for Dish Network. Mr. Derek
351 Chang is the executive vice president for content strategy
352 and development for DIRECTV. Mr. Mike Mountford is the chief
353 executive officer of NPS, one of the companies that is in the
354 business of delivering distant network signals to households
355 that are unserved according to the law's definitions. Mr.
356 Preston Padden is executive vice president for Worldwide
357 Government Relations for the Walt Disney Company. Mr. Paul
358 Karpowicz is the president of Meredith Corporation. He
359 testifies today on behalf of the National Association of
360 Broadcasters.

361 Without objection, each of your prepared written
362 statements will be made a part of the record. We would
363 welcome your oral summaries and ask that you keep those
364 summaries to approximately five minutes.

365 Mr. Dodge, we will be pleased to begin with you.

|
366 ^STATEMENTS OF R. STANTON DODGE, EXECUTIVE VICE PRESIDENT,
367 GENERAL COUNSEL AND SECRETARY, DISH NETWORK; DEREK CHANG,
368 EXECUTIVE VICE PRESIDENT, CONTENT STRATEGY AND DEVELOPMENT,
369 DIRECTV, INC.; MIKE MOUNTFORD, CHIEF EXECUTIVE OFFICER, NPS
370 LLC; PRESTON PADDEN, EXECUTIVE VICE PRESIDENT, WORLDWIDE
371 GOVERNMENT RELATIONS, THE WALT DISNEY COMPANY; AND PAUL
372 KARPOWICZ, PRESIDENT, MEREDITH CORPORATION

|
373 ^STATEMENT OF R. STANTON DODGE

374 } Mr. {Dodge.} Thank you for the opportunity to testify
375 today regarding renewal of The Satellite Home Viewer Act.

376 The subcommittee's discussion draft provides a
377 foundation to help shape how satellite TV providers will
378 offer broadcast stations in the digital world, a world that
379 began in earnest over the weekend with the digital
380 transition. For that transition, the Federal Government,
381 Congress, broadcasters, satellite TV providers and other
382 industry leaders came together in a coordinated fashion to
383 further a key national objective. We hope that same spirit
384 of cooperation can carry over to satellite TV's transition
385 from analog to digital rules.

386 The discussion draft provides a number of key provisions

387 to help with that transition, however standing alone, we
388 believe, it does not go far enough to provide consumers with
389 the access to programming they desire. In each previous
390 iteration of The Satellite Home Viewer Act, Congress has
391 taken incremental and concrete steps to expand the ability of
392 satellite TV providers to offer consumers the services they
393 want while protecting the rights and interests of local
394 broadcasters and content providers. At each juncture,
395 satisfied consumers and enhanced video competition has been
396 the result. Starting from the important building block that
397 you have provided, we have the opportunity to again enhance
398 competition and meet consumers' needs this year with
399 additional reform in two key areas, designated market or DMA
400 reform and serving all 210 markets.

401 Mr. Chairman, members of Congress have noted that the
402 need for DMA reform to ensure that all customers have access
403 to in-state broadcasters, yet in 43 States today, that is not
404 the case. Similarly, it was provided for four markets in
405 2004 and importantly consumers benefited but I am not aware
406 of any evidence of harm to broadcasters in those markets. We
407 believe at a minimum, that a full national rollout of that
408 program is now warranted so that all consumers can gain
409 access to key in-state news, information and other
410 programming. This would be a necessary, incremental step and

411 but would not address our consumers concerns fully. Broader
412 DMA reform that provides consumers with the ability to
413 receive the local stations of their choosing should remain
414 our long-term objective limited only by what technology
415 allows.

416 To date, broadcasters have failed to offer constructive
417 DMA reform proposals and instead offer solutions that are
418 consumer unfriendly and technically not possible. It should
419 be highlighted that satellite TV providers and broadcasters
420 have not been able to resolve this consumer issue through
421 private contract arrangements in the decade since local-to-
422 local service was introduced underscoring the need today for
423 affirmative action by Congress to achieve this result now.

424 The second area of reform we can achieve this year is
425 serving all 210 markets. Mr. Chairman, you and others on the
426 subcommittee have expressed a desire for satellite delivered
427 local stations at all 210 DMAs. We believe that an
428 incentive-based structure to achieve this result can be
429 accomplished if satellite TV providers and broadcasters are
430 willing to compromise and contribute to serving these
431 economically challenging markets. We pledge our willingness
432 to work with DIRECTV and the broadcasters to find common
433 ground and share your believe that this would be a pro-
434 consumer result.

435 We serve 178 local markets today by satellite which is
436 more than any other pay TV provider in the nation. We are
437 proud of that investment and are equally excited to report
438 that Dish Network will maintain its leadership position for
439 launching four additional markets in the next month,
440 Marquette, Michigan, Bend, Oregon, Alexandria, Louisiana and
441 Lima, Ohio. That brings the Dish Network total to 182 out of
442 the 210 markets. The upcoming launch of these markets
443 underscores our good faith commitment to continue to extend
444 service to even more local communities provided certain
445 conditions exist.

446 Critically, each of these four new markets has a local
447 affiliate of each of the big four networks. The vast
448 majority of the remaining 23 markets, however, do not and we
449 are unable to justify the substantial cost of investing in
450 markets who not provide the means to offer a competitively
451 viable service. That said, we are ready to provide service
452 to the remaining markets assuming the broadcasters are
453 willing to partner with Dish Network and DIRECTV to find a
454 commonsense regulatory and financial framework for doing so
455 and that we have successful satellite launches to enable us
456 to do that.

457 As an industry, Dish Network and DIRECTV have come
458 together with a set of principals that should be included in

459 any solution. First, all satellite providers should enter
460 the digital world with the same set of rights so consumers
461 have true choice across all 210 markets. The regulatory
462 disparities should not dictate consumer choices. For
463 example, in any market missing one or more network affiliate,
464 all satellite TV providers should have the ability to import
465 a missing network affiliate to that entire market regardless
466 of whether there is bleed over from a nearby market.

467 Second, the finite amount of satellite spectrum
468 available for any video programming should be addressed heads
469 on. As a national provider, Dish Network provides over 1,400
470 local broadcast stations today. If we move forward towards
471 service in all 210 markets, realistic limits on the amount of
472 local broadcast stations that can be shoehorned into our
473 national satellite platform should be established.

474 Similarly, broadcasters should be obligated to provide a
475 minimum amount of local content to earn satellite carriage.

476 Finally, making local stations available to all
477 Americans for the first time on any platform is a noble but
478 financially daunting undertaking. To achieve the same result
479 for telephony, our nation has established a \$7 billion a year
480 universal service program and there is an ongoing national
481 dialog on how to fund similar universal broadband coverage.
482 Asking satellite carriers alone to expand to every market is

483 a substantial burden, a burden that is not being asked of
484 broadcaster, the cable industry or telecos. There should be
485 clear financial commitments from broadcasters to share in the
486 burden of getting local TV service to remote areas for the
487 benefit of our mutual viewers.

488 In conclusion, increasing the number of communities
489 served by satellite TV providers and the number of households
490 able to receive in-state broadcasters are obtainable and
491 worthy public policy objectives for this year. The
492 discussion draft provides a starting point to achieve these
493 consumer goals but does not go far enough. We stand willing
494 to work with this subcommittee, broadcasters, DIRECTV and the
495 contact community to find the proper balance to accomplish
496 both goals.

497 Thank you again for inviting me to testify.

498 [The prepared statement of Mr. Dodge follows:]

499 ***** INSERT 1 *****

500 | Mr. {Boucher.} Thank you.

|
501 ^STATEMENT OF DEREK CHANG

502 } Mr. {Chang.} Is this all right?

503 Mr. {Boucher.} That is pretty good.

504 Mr. {Chang.} I apologize. I am neither an engineer nor
505 an attorney so I may be at a severe disadvantage here.

506 Chairman Boucher, Ranking Member Stearns and members of
507 the subcommittee, thank you for inviting DIRECTV to testify
508 today regarding the reauthorization of The Satellite Home
509 Viewer Act.

510 We support the straightforward approach of the
511 subcommittee's draft bill which makes narrow but nonetheless
512 important changes to the law for the delivery of broadcast
513 stations in today's all-digital world. However, if the
514 subcommittee chooses to broaden the draft bill to address
515 other issues we offer the following suggestions. These
516 include modifying the DMA system, allowing distant network
517 stations to be delivered in DMAs with missing affiliates and
518 further improving the significantly viewed rules. I would
519 like to address each of these issues.

520 First, I would like to discuss improving choice in local
521 service. Throughout the country, viewers in so-called orphan
522 counties on the edges of DMAs cannot receive local broadcast

523 service from within their own State. The 2004
524 reauthorization allowed consumers in a handful of these
525 orphan counties to gain access to in-state local content.
526 The results have been heralded by consumers and public
527 officials. Even broadcasters who originally opposed these
528 changes found their areas of service expanded and gained
529 revenue from the additional copyright payments. These pilot
530 projects provide Congress with a roadmap for applying this
531 concept nationally. Representative Ross has drafted
532 legislation that seeks to do just that. We urge its
533 adoption. The approach is simple. It would allow consumers
534 in these orphan counties the opportunity to watch their home
535 State programming.

536 Second, we would ensure that all consumers have access
537 to network programming. Today overall DMAs lack one or more
538 local affiliates. Subscribers in such markets are ineligible
539 for distant signals if they are predicted to receive even a
540 faint signal from a neighboring, out-of-market station. This
541 is known as the great D bleed problem. It prevents
542 subscribers in those markets from getting any network service
543 via satellite. We see no reason why out-of-market stations
544 should deny consumers access to network programming. There
545 is a simple solution. Subscribers should be able to receive
546 distant signals unless they receive a sufficiently strong

547 signal from an in-market station.

548 Third, I would like to briefly address significantly
549 viewed stations. We applaud your decision to remove the
550 onerous equivalent bandwidth requirement. Yet satellite
551 carriers face another obstacle in offering significantly
552 viewed service, obtaining consent from broadcasters to offer
553 stations outside their DMAs. Some broadcasters tell us that
554 network affiliation agreements prohibit them from granting
555 consent to satellite operators. Others have proven on
556 interest sitting granting consent outside their DMAs even
557 when they grant such consent to cable. We recommend that
558 broadcasters be required to grant consent for significantly
559 viewed carriage on equal terms and conditions to all
560 distributors seeking such carriage. Alternatively, Congress
561 could remove the retransmission consent requirement and
562 instead compensate broadcasters under the distant signal
563 regime.

564 Last, Mr. Chairman, you and others have expressed an
565 interest in satellite delivered locals in all 210 DMAs.
566 While DIRECTV does not generally support a universal carriage
567 mandate, we have worked constructively with Dish Network to
568 develop a minimum set of requirements we believe are
569 necessary for any such mandate to be imposed. By way of
570 background, DIRECTV has spent billions of dollars to provide

571 local service to 95 percent of the country. In 10 short
572 years, the satellite industry has reached 98 percent of the
573 country with local service. Broadcast and cable which have
574 been in business since the 1920s and 1940s respectively, have
575 still not reached those numbers. Cable still does not pass
576 nearly four million households, a figure larger than homes
577 and markets without satellite delivered locals.
578 Additionally, there are over 50 DMAs lacking one or more
579 network affiliates leaving almost seven million households
580 without a full complement of network programming.

581 Universal carriage is a worthy public policy goal but it
582 requires an enormous capital investment that would be
583 difficult if not impossible for us to recoup and while the
584 broadcasters would prefer that the entire burden be placed on
585 satellite operators, this approach is neither economic nor
586 fair to our subscribers who ultimately bear the cost of such
587 mandates. If Congress is to pursue a universal carriage
588 mandate, it must do so in a way that shares the burden more
589 equitably among all parties and accounts for other critical
590 factors in the marketplace. We developed with Dish Network
591 the following set of minimum criteria for your consideration,
592 applying a one-third capacity cap similar to cable's,
593 limiting carriage rights to those stations with local
594 content, requiring broadcasters to shoulder their fair share

595 of the financial burden for expansion of their over-the-air
596 footprint, prohibiting broadcasters from increasing the
597 already substantial cost of such a mandate through
598 retransmission consent fees and as discussed above,
599 addressing the missing affiliate problem and improving the
600 significantly viewed rules.

601 Mr. Chairman and members of the subcommittee, I thank
602 you and your staff for all of your hard work. I am happy to
603 take your questions.

604 [The prepared statement of Mr. Chang follows:]

605 ***** INSERT 2 *****

|

606 Mr. {Boucher.} Thank you very much, Mr. Chang.

607 Mr. Mountford.

|
608 ^STATEMENT OF MICHAEL MOUNTFORD

609 } Mr. {Mountford.} Chairman Boucher, Ranking Member
610 Stearns and members of the subcommittee, I am Michael
611 Mountford, CEO of National Programming Services LLC and we do
612 business as AllAmericanDirect.com.

613 Mr. Chairman, before I get started, I just want to
614 mention that I have been in this industry for 26 years and no
615 one has done more for satellite TV consumers, especially
616 rural satellite TV consumers than you, so thank you.

617 I am pleased to have the opportunity to testify here
618 today on behalf of not only my company but also frustrated
619 consumers everywhere. From my experience, consumers want
620 their local stations first and foremost however thousands of
621 people have come to our website to urge you, Congress, to
622 allow them to purchase distant network signals without
623 restrictions. They have several reasons. Maybe they have
624 elderly parents who live in a different city. Maybe they
625 have a child who goes to a school somewhere else in the
626 country. Heck, you guys probably want to check in on your
627 districts once in awhile, don't you? These customers don't
628 understand and these consumers don't understand why they
629 can't purchase this product like they can purchase the New

630 York Times or a Chicago radio station, for example. This
631 country was built on the principle of the freedom of
632 information. Consumers want that freedom and they don't
633 understand why Congress won't grant them those rights.

634 I understand the concern about localism and I would like
635 to suggest a simple solution, allow the consumers to purchase
636 distant networks only after they purchase the local channel
637 of the same network. This is allowed under the current
638 legislation for significantly viewed stations from adjacent
639 markets. Why not expand that?

640 I urge Congress to take this bold step now and lift the
641 restrictions on distant networks because if you don't, more
642 and more constituents are going to be frustrated by these
643 rules and they will be asking you, how could you have passed
644 such a law. Hopefully, you will agree with me that lifting
645 the restrictions is the best solution however please let me
646 comment on the draft legislation. It calls for a predictive
647 model which we agree is the best way to determine
648 eligibility. The most important thing about a predictive
649 model is viewability standard. The analog model right now
650 calls for 90 percent viewability that means 10 percent non-
651 viewability. This would allow for 12 30-second interruptions
652 during an hour program and with digital the interruptions are
653 outages, they are gone. Clearly, that is unacceptable while

654 viewing the digital signal.

655 We urge Congress to require the FCC to adopt a minimum
656 viewability standard of 99 percent, better would be better.
657 Even at that rate, it would allow for 12 3-second
658 interruptions in an hour program. We urge the committee to
659 ensure that no additional expense be required of the consumer
660 to get their local networks. Congress did an excellent job
661 with the digital conversion coupons. In the same spirit, we
662 urge you to direct the FCC not to require additional
663 equipment purchases by the consumer to get network
664 programming. It just wouldn't be fair.

665 The waiver system was put into the legislation because
666 it is universally known a predicted model cannot be perfect
667 and it will not be perfect. The waiver system as it exists
668 today is broken and needs to be changed. Your constituents
669 are being denied service without the proper appeal envisioned
670 by the legislation. Thirty-four percent of all the stations
671 we submit waivers to deny over 90 percent of those
672 submittals. In essence, a third of the stations are denying
673 all the waivers that come to them except for maybe a friend,
674 a relative or after a call from a congressional office. That
675 is not the spirit of the law. That is not fair to your
676 constituents.

677 Fortunately, the digital conversion allows for us a

678 simpler, less expensive, more consumer-friendly waiver system
679 that works in this way. A consumer who is denied by the
680 predicted model can sign an affidavit under penalties of
681 perjury and fines that they do not receive the signal. The
682 provider can temporarily authorize that consumer and submit
683 the consumer information to the broadcaster. The broadcaster
684 can challenge by sending a clerical employee or a contractor
685 to the home to view the signal for about 10 minutes. That is
686 all it takes. With digital, the signal is either there or
687 not there. It is not like analog where you see ghosting and
688 artifacts. It is very simple.

689 So in closing, I would urge you to listen to your
690 constituents and lift the restrictions on distant networks
691 signals. Require the FCC to adopt a 99 percent or better
692 viewability standard in the predictive model, and fix the
693 waiver system.

694 Thank you very much.

695 [The prepared statement of Mr. Mountford follows:]

696 ***** INSERT 3 *****

|

697 Mr. {Boucher.} Thank you, Mr. Mountford.

698 Mr. Padden.

|
699 ^STATEMENT OF PRESTON PADDEN

700 } Mr. {Padden.} Thank you, Mr. Chairman and Ranking
701 Member Stearns.

702 I want to begin by thanking this committee for creating
703 a competitive marketplace for subscription for television.
704 It wasn't all that long ago that I was chatting with many of
705 you about the problem that we only had one provider in the
706 business, the local cable company. And when you think about
707 what this committee has accomplished for the American people
708 and for programmers like our company, it is really remarkable
709 now the amount of competition that we have out there and I
710 think the committee ought to take great pride in that.

711 I also want to emphasize that we love our satellite
712 customers over here at DIRECT and Dish. Disney Channel and
713 ESPN were two of the first channels that were willing to
714 license their content to the satellite industry to help them
715 get off the ground. They now carry many, many of our
716 channels. They are excellent customers and we love them very
717 much.

718 We are appreciative to the committee for its
719 straightforward discussion draft and particularly
720 appreciative that the committee avoided collateral issues

721 such as completely trying to revamp the system of free
722 transmission consent in the context of this legislation. I
723 want to talk just a minute about the underlying compulsory
724 underwrite license. A compulsory license is just what it
725 sounds like. It is a government act that takes private
726 property, in this case our programming, from us and compels
727 us to license it to certain customers designated by the
728 government at a price set by the government.

729 Now, I know that sounds like something that could only
730 happen in Moscow or Tehran but it actually did happen here in
731 the United States. How did that happen? The answer is that
732 back in 1976, the Congress found that it would be impractical
733 and unduly burdensome to require every cable system to
734 negotiate with every copyright owner whose work was
735 retransmitted by a cable system. A reasonable position back
736 in 1976, and then the satellite industry came along and to be
737 fair, Congress extended the same compulsory copyright license
738 to the satellite industry. But when you extended it to
739 satellite, you put a 6-year sunset on it and you said this
740 committee does not favor interference with workable
741 marketplace relationships for the transfer of exhibition
742 rights in programming. The committee expects that the
743 marketplace and competition will eventually serve the needs
744 of home satellite dish owners.

745 Well, the good news is there now are workable marketplace
746 mechanisms that can take the place of this government
747 compulsory license. The industry created cable networks.
748 This is after the compulsory license was first adopted and
749 there are now about 500 cable networks, none of which are
750 eligible for the compulsory copyright license which applies
751 to broadcasting. And yet, without the help of the
752 government, the owners of these cable networks managed to get
753 them in front of virtually every man, woman and child in
754 America.

755 Just to give you one example, we have two networks at
756 our company. One is called ABC and the other is called ABC
757 Family. They actually carry some of the same programs. ABC
758 Family is not eligible for a compulsory copyright license and
759 yet we have signed agreements with these gentlemen at the end
760 of the table to transmit that programming to the American
761 people.

762 We have a huge self-interest in wanting to get our
763 programming, whether it is ABC or ABC Family in front of
764 every eyeball in America and you can rely on that self-
765 interest that we are going to get the product to everyone.
766 The last time you extended The Satellite Home Viewer Act, you
767 asked the copyright office to conduct a study of the
768 underlying compulsory copyright license. They did that

769 study. They released it last summer and they concluded that
770 the Congress should begin to phase out the compulsory
771 copyright license and associated regulations and we would
772 urge that as this bill goes through the legislative process
773 and all of the relevant committees of jurisdiction, that we
774 take a look at trying to get out of this business of
775 government licensing where it is not necessary.

776 In the meantime, we urge that you not expand the scope
777 of the compulsory license and in particular, don't adopt the
778 proposal that has been discussed for adjacent markets. We
779 are completely supportive of the idea of getting local in-
780 state news and other local programming to consumers. It can
781 be done today without a compulsory license. All it takes is
782 an agreement between the station and either the cable
783 operator or the satellite operator. There are many cable
784 operators that today carry local news outside of the
785 designated market area to other orphan counties they are
786 called, in the State. For example, our Philadelphia station
787 news is carried down in Harrisburg and recently two of the
788 leading Little Rock local news stations sent letters to
789 DIRECTV and Dish openly offering to sit down and work out
790 arrangements to retransmit their local news in the Shreveport
791 market.

792 The problem with the adjacent market proposal is the

793 proponents are talking about bringing the entire signal of
794 the adjacent market station, not just the local programming.
795 Our affiliation agreements with our affiliates give them
796 exclusive rights to the network programming in their market.
797 We have 220 affiliates across the country. We only own 10 of
798 those stations ourselves and we are here today to stand
799 shoulder to shoulder with our affiliates for the exclusive
800 rights we have granted them and say to you please do not
801 abrogate our contracts. Please do not duplicate the
802 programming of the local affiliate. It serves no public
803 interest for consumers to be able to watch Desperate
804 Housewives on two different channels at the same time.

805 We are fully supportive of bringing in the local news
806 and local programming. That can be done without expanding
807 the compulsory license.

808 Thank you very much, Mr. Chairman.

809 [The prepared statement of Mr. Padden follows:]

810 ***** INSERT 4 *****

|

811 Mr. {Boucher.} Thank you, Mr. Padden.

812 Mr. Karpowicz.

|
813 ^STATEMENT OF PAUL KARPOWICZ

814 } Mr. {Karpowicz.} Chairman Boucher, Ranking Member
815 Stearns and members of the subcommittee, thank you very much
816 for having me here today.

817 My name is Paul Karpowicz and I am president of the
818 Meredith Broadcasting Group which operates 11 television
819 stations in small, medium and large markets throughout the
820 United States. I testify today in my new role as chairman of
821 the NAB Television Board.

822 Local broadcasters appreciate the opportunity to talk
823 with you about the issues of importance for local television
824 service we provide to our communities. Chairman Boucher, I
825 want to especially thank you and the committee staff for all
826 of your work on the draft bill. Broadcasters support the
827 discussion draft and look forward to continuing to work with
828 you and other members of the committee as we move forward.

829 As we discuss the draft legislation today, it is
830 imperative that two principles remain paramount, localism and
831 the respect for relationships that cover the distribution of
832 programming and that have been found by the government to
833 serve the public interest. Meredith Broadcasting, along
834 television stations across the country, works everyday to

835 embody the spirit of localism which Congress has affirmed
836 time and time again as a vital public policy goal. We don't
837 charge our viewers to watch our programming. We rely on
838 payments from advertisers to deliver a free service to your
839 constituents. The draft we are discussing today is a
840 positive step towards updating telecommunications law for the
841 new era of digital broadcasting.

842 Local broadcasters have stepped up and invested billions
843 of dollars to complete the transition and we are excited
844 about the benefits that digital broadcasting will bring to
845 your constituents. We are particularly appreciative that the
846 draft continues to recognize the value of the DMA structure.
847 The DMA system which is updated every year enables
848 broadcasters to serve every community with highly valuable
849 local programming.

850 Now for example, our company owns and operates WHNS in
851 Greenville, South Carolina. Now 34 percent of the households
852 in its DMA are located in North Carolina and four percent are
853 in Georgia. WHNS provides locally attuned service to those
854 North Carolina and Georgia communities everyday just as it
855 does the South Carolina communities within its coverage area.
856 The nearest North Carolina television market to these North
857 Carolina counties is Charlotte which is 95 miles away while
858 Greenville is only 25 miles away. These out-of-state

859 communities all share with Greenville the same weather,
860 topography and have very close economic and cultural ties.
861 WHNS serves these communities everyday with the news stories
862 of specific relevance to the region of service that cannot be
863 matched by distant stations.

864 Now the satellite industry wants to change the law so
865 that they can bring in duplicative network and national
866 syndicated programming. As a practical matter, let me
867 explain what would happen if this were to occur. Our station
868 in Greenville has exclusive rights from Fox and our
869 syndicators to air popular programming including American
870 Idol, 24 and the Simpsons in its local market. If a
871 satellite or cable operator could import the signal of a FOX
872 station from Charlotte including the exact same primetime
873 programming into the Greenville market, it would
874 significantly reduce our viewership and thus our advertising
875 revenues. As a result, we would have fewer resources to
876 serve the viewers whether they are in South Carolina, North
877 Carolina or Georgia with local programming including news,
878 weather, emergency information and all these other local
879 services our viewers have come to expect. In addition, a
880 satellite or cable operator in a retransmission consent
881 dispute could try to drop the viewers' local station in these
882 North Carolina communities and instead a distant Fox

883 affiliate thereby depriving viewers of local information.

884 It is important to recognize that cable and satellite
885 carriers can already import news and information into distant
886 in-state counties today without changing the law. Finally,
887 we appreciate the efforts of Congressman Stupak to make sure
888 that no community is denied access to local programming by
889 satellite carriers and we hope to work with the community to
890 address this problem. As you consider reauthorization of
891 SHVERA, I urge you to preserve our ability to serve every
892 local community. We are very appreciative of the important
893 steps reflected in this draft bill and believe the
894 subcommittee is headed in the right direction.

895 I thank you for your efforts so far and look forward to
896 answering any questions.

897 [The prepared statement of Mr. Karpowicz follows:]

898 ***** INSERT 5 *****

|
899 Mr. {Boucher.} Thank you very much, Mr. Karpowicz, and
900 thanks to all of the witnesses for their testimony here this
901 morning.

902 I am going to ask unanimous consent that a variety of
903 letters we have received addressing issues concerning the
904 reauthorization of The Satellite Home Viewer Act be made a
905 part of the record. These have been shared with Mr. Stearns
906 and his staff. Without objection, they will be included.

907 Mr. Chang, let me begin my questions with you. You had
908 noted in your testimony that in order for service to be
909 provided in the markets that do not have local-into-local
910 service today, those approximately 30 markets across the
911 country that the carrier would have to find a means of
912 getting the broadcast station's signal to its uplink facility
913 and the uplink facility for some of these very rural markets
914 could be hundreds if not more than 1,000 miles away, I would
915 assume. On the other hand, the law as of several years ago
916 required that for every market in which local-into-local
917 services provided that the satellite carrier have a local
918 receive facility within that market in order to receive the
919 signal from the local broadcasters. Why would it not be
920 sufficient to simply take the backhaul to take that local
921 broadcast signal from the unserved market to a nearby market,

922 perhaps an adjacent market where a local receive facility by
923 the satellite carrier would be located? Why would that not
924 be sufficient?

925 Mr. {Chang.} As I said earlier, I am not an engineer so
926 I don't know the details but my understanding is the cost of
927 build out the facilities within each of the markets that we
928 are not serving in addition to the transmission costs.

929 Mr. {Boucher.} Well, I will grant you that there are
930 costs associated with it but the cost of getting it to
931 something as close as an adjacent market where a receive
932 facility is already in place would be substantially less than
933 the cost of having to take that signal hundreds if not more
934 than a thousand miles to one of the satellite carriers'
935 uplink facilities. So let us assume for the sake of the
936 question that getting it to a receive facility would be
937 satisfactory, Mr. Dodge, would you confirm that it is? Is
938 that a means of getting it to your uplink facility?

939 Mr. {Dodge.} I would say that is a constructive
940 suggestion towards reducing the cost but you still have to
941 pay for the fiber from, if you will, the adjacent receive
942 facility back to our uplink facility.

943 Mr. {Boucher.} Back to your uplink facility?

944 Mr. {Dodge.} Right, back to our uplink facility.

945 Mr. {Boucher.} Well, doesn't that already exist because

946 the purpose of that local receive facility is for you to
947 receive the signal in that market of the local broadcaster
948 and then take that over your already in-place infrastructure
949 back to your uplink.

950 Mr. {Dodge.} Correct and we use either we backhaul via
951 satellite or via fiber and the question would be you would
952 need additional fiber or a satellite capacity to uplink it to
953 bring it back to the uplink facility.

954 Mr. {Boucher.} So you are saying that the existing
955 infrastructure by which you are taking the signals of the
956 broadcaster in that adjacent market back to you uplink would
957 not be sufficient in and of themselves to enable you to carry
958 the signals from broadcasters in the unserved market next
959 door.

960 Mr. {Dodge.} I believe so.

961 Mr. {Boucher.} Okay. Let us check this. Let me ask
962 both of you if you would go back and examine this and maybe
963 talk to some of the engineers.

964 Mr. {Dodge.} Sure.

965 Mr. {Boucher.} We occasionally do accept testimony from
966 engineers here, it is not always lawyers, and give us an
967 answer as to whether or not, A. we are right in saying that
968 providing that signal to the receive facility nearby is a
969 possible means of lowering that backhaul cost and if it is,

970 would the infrastructures that typically are already in place
971 to take the signal from that receive facility back to your
972 uplink, be satisfactory for this purpose?

973 Let me on the same issue, slightly different aspect of
974 it, ask Mr. Karpowicz and Mr. Padden a question. I have
975 heard it estimated that the cost of backhaul for all 210
976 unserved markets, the new capacity by whatever means would
977 have to be added, would be about \$30 million collectively and
978 the broadcasters have a tremendous interest in getting all
979 210 markets served. It is their signal that would then be
980 disseminated to a broader group of viewers in a way the
981 viewers would like to have that signal, and among the
982 suggestions made by DIRECTV and Dish in their offering to you
983 in terms of how they would be willing to serve these 210
984 markets, was a suggestion that on some terms broadcasters be
985 willing to help share in that cost, given the benefits that
986 inure to you if those markets are served. So, Mr. Karpowicz
987 and Mr. Padden, your companies own some television stations,
988 what is your answer to that? Is there a possibility that you
989 would be willing to help them in some measure share in that
990 cost?

991 Mr. {Karpowicz.} I think what we have heard are a lot
992 of different numbers relative to what that cost might be and
993 at the NAB we have established a subcommittee that consists

994 of technical people, real engineers and members of our board
995 that are from small markets that would have a very real stake
996 in this, you know, in this type of a decision. So we would
997 stand very ready to work with the committee and work with the
998 satellite operators to continue discussions about exactly how
999 that would work, whether it be fiber, additional satellite,
1000 whatever but I think there is still not enough information
1001 relative to what the real costs might be for us to make a
1002 determination as to what our level of participation might be.

1003 Mr. {Boucher.} The broadcast industry has had this
1004 proposal from the two satellite carriers now for more than a
1005 week and I know you have a committee that is looking at it.
1006 Do you have a timeframe within which you intend to have a
1007 response?

1008 Mr. {Karpowicz.} We actually have had one committee
1009 meeting already and it would be my hope that we could get
1010 back to you very shortly. I don't have the specific days in
1011 my mind yet but it would be our intent to get back with you
1012 very quickly.

1013 Mr. {Boucher.} Okay. I am going to pursue one other
1014 question and the chair will be lenient with other members in
1015 taking time to ask their questions. These are important
1016 matters.

1017 The current law contains a curious legal consequence

1018 that with the digital television transition and the
1019 termination of analog television broadcasts by the full-power
1020 television stations, virtually every viewer in America today
1021 is classified as being in a white area and therefore being
1022 eligible to receive distant network signals. Now of course,
1023 that was never the intent of the law and the old law, well
1024 the current law says that the standard for eligibility is
1025 determined over whether or not the viewer can receive by
1026 means of an outdoor antenna an analog signal of Grade B
1027 intensity and of course then when the analog signals were
1028 turned off nobody was getting analog signals and so no one
1029 could get analog signals of Grade B intensity. Therefore,
1030 under current law you have got this curious consequence that
1031 technically everyone if eligible to get a distant network
1032 signal.

1033 Realizing that problem, last year I asked the satellite
1034 carriers to refrain from offering distant network signals
1035 until we had an opportunity in this reauthorization to
1036 address that problem and correct it, and commendably all of
1037 the carriers responded favorably and sent letters indicating
1038 their restraint, and so far no one has taken advantage of
1039 this existing loophole in the law. But I just want to ask
1040 Mr. Dodge, Mr. Chang and Mr. Mountford for your statement of
1041 continued adherence to that pledge not to utilize that

1042 loophole in the law. There was some discussion last week
1043 about whether that might change and given that little bit of
1044 confusion I thought it appropriate to get on the record a
1045 statement from all three of you that you would not seek to
1046 utilize that loophole while we are in the process of changing
1047 the law to say that it is digital signals that are in
1048 question here not analog signals. Mr. Mountford, can we get
1049 that pledge from you?

1050 Mr. {Mountford.} We currently are using the existing
1051 analog model because the digital model which we have ordered
1052 is not ready yet so as soon as that becomes available we will
1053 be using that. In the interim, we are telling customers who
1054 get rejected by the analog model that we will rerun them once
1055 we get a digital model and we will continue to use that
1056 digital model, and we will be testing those consumers. As I
1057 said in my testimony, there is an easy way to test consumers
1058 so we will be testing consumers who get rejected under the
1059 digital model and depending upon those tests we will go
1060 forward.

1061 Mr. {Boucher.} Okay. I think that means yes, you are
1062 going to continue to restrain and not utilize the law.

1063 Mr. {Mountford.} That means yes unless we are
1064 disenfranchising a bunch of consumers and then we may come
1065 talk to you.

1066 Mr. {Boucher.} Well, Mr. Mountford, we are rewriting
1067 the law in such a way just as to contain a clarification of
1068 this issue and use the word digital instead of analog, and I
1069 would assume until that happens you would continue to abide
1070 by the terms of the letter that you sent last year and not
1071 seek to utilize that loophole in order to serve those
1072 customers, is that correct?

1073 Mr. {Mountford.} We will never seek to use that
1074 loophole.

1075 Mr. {Boucher.} Thank you, Mr. Mountford. Mr. Chang, I
1076 would like to hear from you as briefly as possible. This
1077 could be just one word, a yes would do but if you want to
1078 elaborate, that is fine.

1079 Mr. {Chang.} Yes, we will.

1080 Mr. {Boucher.} Thank you. Mr. Dodge, I know you are
1081 not delivering distant network signals but if something
1082 happens that should enable you under some circumstances to do
1083 that would you agree to this pledge?

1084 Mr. {Dodge.} We would.

1085 Mr. {Boucher.} Thank you, Mr. Dodge. That was a good
1086 answer. That was right to the point. Thank you.

1087 My time has expired. The gentleman from Florida is
1088 recognized for five minutes.

1089 Mr. {Stearns.} Thank you, Mr. Chairman, and I think we

1090 on this committee should feel blessed because you serve on
1091 judiciary and I know judiciary has had a hearing and they
1092 will have a referral on this. I don't think the Senate had a
1093 hearing yet but when they go into the right to carry signal
1094 and the copyright protection you will be right there
1095 protecting us and perhaps the nuance of this bill will be
1096 protected. But my feeling is just overall that the bill has
1097 to move forward and I am not sure many of us on this side are
1098 either side want to hold this bill up to solve this problem
1099 which seems a little bit complicated. Just as a observation,
1100 Mr. Padden mentioned how cable is solving the problem so I
1101 would ask Mr. Mountford, the solution to which cable is doing
1102 this problem is that something that could be as a paradigm or
1103 something that we could work off in this bill?

1104 Mr. {Mountford.} I am not sure if I understand the
1105 question.

1106 Mr. {Stearns.} The missing affiliates problem that Mr.
1107 Padden mentioned so basically he is saying that the local
1108 broadcasters have been solved through the cable and he
1109 described how they did it. I don't know. Do you remember
1110 what he said?

1111 Mr. {Padden.} I think you are referring to my reference
1112 to the fact that some cable operators are carrying local news
1113 and other local programming.

1114 Mr. {Stearns.} Right.

1115 Mr. {Padden.} From an adjacent market station today.

1116 Mr. {Stearns.} Right.

1117 Mr. {Padden.} And there is no reason that we are aware
1118 of why a satellite distributor couldn't make the same?

1119 Mr. {Stearns.} Right, that is my question and I will
1120 let each, Mr. Dodge and Mr. Chang, yes.

1121 Mr. {Mountford.} That would be something we would have
1122 to look into, something that I haven't even considered or we
1123 haven't even thought about yet but it sounds interesting.

1124 Mr. {Stearns.} Okay. Mr. Chang.

1125 Mr. {Chang.} Can you hear me okay?

1126 Mr. {Stearns.} Yes, sure.

1127 Mr. {Chang.} From DIRECTV's perspective, we do
1128 blackouts as Mr. Padden suggested but they are difficult to
1129 implement and we do them on an irregular basis, mostly for
1130 sports product which is kind of mandated by various sports
1131 leagues and teams and such and to be quite honest with you,
1132 it is a very difficult process to implement from an
1133 operational perspective for us. We do it because we are
1134 forced to. Our customers do not like it. To do what Mr.
1135 Padden has suggested would in essence be the reverse of that
1136 which is really, literally to blackout probably 90 percent of
1137 a channel from an adjacent market to just then show the local

1138 news that they are allowed to pass through to the adjacent
1139 market and I think to do that, you know, across the country
1140 itself would be difficult. It would compound incredibly our
1141 operational issues. I think also from a customer
1142 perspective, to sit there and have to see a black screen for
1143 kind of 90 percent of the time in order to see local news
1144 doesn't make a lot of sense. It is not a customer-friendly
1145 proposition.

1146 Mr. {Stearns.} Mr. Dodge?

1147 Mr. {Dodge.} I guess I would just reiterate what Mr.
1148 Chang said. I mean we really look at it as a three-fold
1149 issue which is at the top of the list we agree with you,
1150 Ranking Member Stearns, that this is all about the consumers
1151 and quite frankly to reiterate what Mr. Chang said they don't
1152 want their screen black 90 percent of the day, let alone
1153 paying for that privilege. And additionally, while the
1154 screen is black, they will miss important emergency weather
1155 alerts because they won't see the crawls that would be coming
1156 through on the programming from that broadcaster.
1157 Additionally, there are substantial technical difference
1158 between satellite and cable where they have people generally
1159 in all their local areas monitoring. They can monitor these
1160 signals 24/7. We have a single staff who is, as I said
1161 earlier, is monitoring about 1,400 different channels which

1162 is basically impossible for us to monitor in blackout
1163 programming at all. And finally, from legal perspective we
1164 are not quite sure that the broadcasters have all the
1165 necessary rights to do what they are saying. For example,
1166 they have the rights to the copyrights to send through the
1167 national programming clips that they include in their
1168 broadcast and advertising. And similarly while the cable
1169 folks are able to splice in alternate programming, we don't
1170 have the similar provision in our statutory license that
1171 would allow us to do it, so we couldn't do it even if it was
1172 technically feasible.

1173 Mr. {Stearns.} So you are saying right now it is not
1174 technically feasible in your mind?

1175 Mr. {Dodge.} It is not.

1176 Mr. {Stearns.} And that is what you are saying, Mr.
1177 Chang, that it is not technically feasible to do this, and
1178 forget the idea that you're blacking out. I mean that could
1179 be worked through but you are saying it is not even
1180 technically feasible?

1181 Mr. {Chang.} I don't know if strictly it is technically
1182 infeasible. It would be very difficult to implement. I know
1183 that.

1184 Mr. {Stearns.} Thank you. Mr. Padden?

1185 Mr. {Padden.} I think Mr. Dodge said he wasn't sure it

1186 was lawful under his statutory license but we are talking
1187 about is simply an arms length marketplace negotiated license
1188 where the local station says as the two Little Rock stations
1189 have said in their letters that are in the record to both
1190 DIRECTV and to Dish we, the local station, would like to
1191 license you in a normal contractual license arrangement, our
1192 local news to carry to these in-state viewers and I believe
1193 that all of the satellite operators are required to dedicate
1194 a certain percentage of their channels for public service
1195 programming. And maybe one thing you might think about is
1196 rather than worry about a blackout, simply license the local
1197 news and carry it on one of those public service channels
1198 that you are obligated to transmit anyway. I think it would
1199 be a tremendous service to your customers and it might help
1200 attract customers.

1201 Mr. {Stearns.} Anyone else on this question? Do you
1202 have anything?

1203 Mr. {Karpowicz.} I guess my only thought would be the
1204 beauty of our six o'clock news and our eleven o'clock news,
1205 it runs at six o'clock every night and eleven o'clock every
1206 night.

1207 Mr. {Stearns.} Right.

1208 Mr. {Karpowicz.} So compared to trying to schedule
1209 around a blackout of a sports event which is a live, fluid

1210 event that there is no timeframe, our six o'clock news runs
1211 30 minutes every night and I would think that with server
1212 technology available as it is today that it would not be that
1213 difficult to setup a system like that.

1214 Mr. {Stearns.} Okay.

1215 Mr. {Padden.} All the networks I am told and certainly
1216 our network has given their affiliates the necessary
1217 clearance for the national news that is included in these
1218 local newscasts so there is no legal impediment in that
1219 regard.

1220 Mr. {Stearns.} I am just going to ask one more
1221 question, Mr. Chairman. The bill as such is we are trying to
1222 get the FCC to update the predictive model and the on-
1223 location test for digital broadcasting. Mr. Chang, what
1224 would be your advice to the FCC and then I will ask Mr.
1225 Padden. What would be your advice to the FCC?

1226 Mr. {Chang.} I think we said we are willing to adhere
1227 to the FCC's digital predictive model.

1228 Mr. {Stearns.} So the predictive model that they have
1229 now, you could adhere to?

1230 Mr. {Chang.} We would adhere to, yes.

1231 Mr. {Stearns.} Okay. Yes?

1232 Mr. {Karpowicz.} Again, I am not an expert relative to
1233 what that would entail but my sense would be that we continue

1234 to look at it but I don't think we have any major objections.

1235 Mr. {Stearns.} Thank you, Mr. Chairman.

1236 Mr. {Boucher.} Thank you very much, Mr. Stearns.

1237 The gentlelady from California, Ms. Eshoo, is recognized
1238 for five minutes.

1239 Ms. {Eshoo.} Good morning, Mr. Chairman, and thank you
1240 for holding this hearing. To all of the witnesses, thank you
1241 for being here and providing your testimony.

1242 I have two questions. The first of Mr. Dodge, as a
1243 longtime supporter of public television, I am concerned with
1244 the disparate treatment that Dish is affording our nation's
1245 local public television stations. As you probably know, I
1246 have reintroduced in this Congress the Satellite Consumers'
1247 Access to Public Television Digital Programming Act to
1248 address Dish's refusal to negotiate meaningfully on the
1249 carriage of local multi-cast public broadcast programming.
1250 It has been brought to my attention that Dish is carrying the
1251 HD signal of the big four stations in 85 markets and yet to
1252 date, you haven't carried the HD signal of public television
1253 stations anywhere except in Alaska and Hawaii where you are
1254 legally obligated to do so.

1255 In my district, for example, Dish is carrying the big
1256 four networks and KRON in HD but not in my local public
1257 television station, KQED. It seems to me that Dish is

1258 engaging in a pattern of discriminatory behavior against
1259 public television stations. Stations which are funded get
1260 some funding from Congress annually because of the quality of
1261 their noncommercial, educational programming that they
1262 deliver to the American public. I think that this behavior
1263 is reminiscent of past discriminatory actions including the
1264 practice of placing public television stations and Spanish
1265 language stations on a second satellite receiver.

1266 So my question to you is why is Dish almost alone is
1267 refusing to negotiate a carriage agreement with public TV
1268 that provides for nondiscriminatory carriage in HD and at
1269 least some multi-casting. I think if there is a market
1270 failure here, Congress should address it and I will continue
1271 to pursue that. Now, what is really deeply disturbing to me
1272 is that it has been reported that Dish has targeted the
1273 Hispanic caucus members and telling them that if my bill were
1274 to pass, Dish would be forced to stop carrying Spanish
1275 language channels. You know and I know and many of us know
1276 that this is really completely false. My bill does not
1277 prevent satellite carriers from carrying any program. It
1278 merely mandates the carriage of all digital PBS programming,
1279 and I know what I have heard the argument before that you
1280 don't have enough room, enough space and that you would have
1281 to drop some. And I would suggest that you drop some of your

1282 pay-per-view channels that carry soft porn. I would take PBS
1283 any day over soft porn so would you address yourself to the
1284 question as to why you refuse to negotiate a carriage
1285 agreement with public TV that provides for nondiscriminatory
1286 carriage in HD?

1287 Mr. {Dodge.} I would be happy to.

1288 Ms. {Eshoo.} I don't know about happy but if you can
1289 explain it, yeah. I really can't, I mean I ask this every
1290 time we have a hearing on this subject matter and others have
1291 negotiated an agreement, you haven't. What is the sticking
1292 point here?

1293 Mr. {Dodge.} Well, I guess first and foremost I believe
1294 we have for years engaged in good faith negotiations with the
1295 public broadcasters and during that process the FCC actually
1296 had a proceeding to determine how best to implement HD must-
1297 carry, that the public broadcasters fully participated in
1298 that hearing.

1299 Ms. {Eshoo.} What was the most recent discussion you
1300 have had with the FCC?

1301 Mr. {Dodge.} On that issue.

1302 Ms. {Eshoo.} I mean with public broadcasting people.
1303 What is the most recent meeting you have had with them?

1304 Mr. {Dodge.} I do not know the answer to that question.

1305 Ms. {Eshoo.} Well you can get that back to us.

1306 Mr. {Dodge.} I definitely can.

1307 Ms. {Eshoo.} I really think that there shouldn't have
1308 to be legislation for you to get to do this and it seems to
1309 me that you have stayed in a place where I don't really think
1310 distinguishes you and you should look for ways to distinguish
1311 yourself. I mean you do other things that are good but this
1312 is you are cheating I think or holding back on the consumer
1313 because PBS is important in the life of the American people
1314 and I think what they do has already been set down and is a
1315 gold standard and this business of not having room and can't,
1316 you have got these pay-per-view things. You can make some
1317 room there. So I would like you to get that information back
1318 to me.

1319 To, Mr. Karpowicz, I know that Mr. Ross is a member of
1320 this subcommittee is raising a very important interstate
1321 issue. I think I have an important intrastate issue. I have
1322 constituents in the southern portion of my congressional
1323 district that would prefer to view the local news of San
1324 Francisco or San Jose but they are in the Monterey-Salinas
1325 DMA. Now, I mean there is a lot to be said obviously about
1326 localism and it is best served when the consumer has the
1327 choice to receive the broadcast signals of the community that
1328 they identify with. I don't know if you can appreciate the
1329 geography of the district but the identification is in the

1330 very southern part and not with San Francisco that is might
1331 as well be 500 miles away. That is not what they identify
1332 with and I know that these issues are politically sensitive
1333 but for many consumers in my district, these distinctions
1334 defy logic. How do you think localism and consumer choice
1335 are balanced correctly in the new digital age?

1336 Mr. {Karpowicz.} I think.

1337 Ms. {Eshoo.} It seems to me that we have got some kind
1338 of blurred old line dictating this.

1339 Mr. {Karpowicz.} Well, I don't know if the lines are
1340 old to the extent that the DMA lines are changed every year
1341 and are up to variability and every year.

1342 Ms. {Eshoo.} How about old looking?

1343 Mr. {Karpowicz.} But to answer your question relative
1344 to your constituents in Salinas-Monterey, if in fact the
1345 cable systems down there wanted to make a deal with the
1346 broadcast stations in San Francisco to get those newscasts
1347 that can happen today. There is no reason to change the law.
1348 Where the broadcasters have said we have a problem with what
1349 Congressman Ross was proposing was the ability for the
1350 viewers in Salinas-Monterey to get two Wheels of Fortune, to
1351 get two Desperate Housewives. We don't think that is
1352 necessary but if in fact there is interest in the community
1353 to get local news out of San Francisco that can happen now

1354 without any change in the law.

1355 Ms. {Eshoo.} All right. Well, we may follow-up with
1356 you on that but I appreciate your answer and, Mr. Dodge, I
1357 would like you to get back to us and I wish that we didn't
1358 have to use the hammer of legislation to get these
1359 negotiations done and done well and out of the way. I just
1360 would really urge you I mean you said that you have
1361 negotiated in good faith. I don't know when that was. I
1362 don't know if it was five years ago, two years ago so I am
1363 asking the date but I would use this hearing to once again
1364 urge you to come to the table and really take care of this.
1365 For you to be leaving out public broadcasting and carrying
1366 some of this other stuff, it just square off with consumers
1367 so thank you.

1368 Thank you, Mr. Chairman.

1369 Mr. {Boucher.} Thank you, Ms. Eshoo.

1370 Mr. {Dodge.} If I could address one of the issues you
1371 brought out.

1372 Mr. {Boucher.} Very briefly, Mr. Dodge.

1373 Mr. {Dodge.} Thank you. First, we are working with
1374 Congresswoman DeGette's office referring to the last hearing
1375 to setup another round of discussions with PBS.

1376 Ms. {Eshoo.} I am sorry. I didn't hear you.

1377 Mr. {Dodge.} I said we are working with Congresswoman

1378 DeGette's office to setup another round of discussions with
1379 the folks from PBS as we said we would at the last hearing.

1380 Ms. {Eshoo.} Well, I would like to be included in those
1381 if I might. I think that I can bring something to that. You
1382 may not think so but I think I can.

1383 Mr. {Dodge.} I have no reason to believe you wouldn't.

1384 Mr. {Boucher.} Okay. Thanks very much, Ms. Eshoo.

1385 Mr. {Mountford.} Mr. Chairman.

1386 Mr. {Boucher.} Mr. Mountford, we are going to move on
1387 to the next member now who is going to be asking questions.

1388 The gentleman from Georgia, Mr. Deal, is recognized for
1389 five minutes.

1390 Mr. {Deal.} Thank you, Mr. Chairman.

1391 I have this mental picture that we are all standing on
1392 the loading dock of a train station. Some of us are holding
1393 the hands of some people that we call orphans. Some of them
1394 are wiping their eyes and they are sniffing and people are
1395 sitting in those railcars that are saying come on over, we
1396 would like to adopt you. And we are being told as we hold
1397 their hands and saying well Congress has said you don't
1398 belong to them, we have let you be adopted by somebody else.
1399 And the only answer that I have heard today is to say to
1400 those orphans well we will let you go to their house and you
1401 can watch the local news but as soon as the news goes off, we

1402 are going to turn that television off and you got to come
1403 home because you belong to us. Congress has let us adopt you
1404 and by the way, you got to pay us because we have adopted
1405 you. Now, that just doesn't make a whole lot of sense to me
1406 and the question I guess that comes up is why is that fair,
1407 and if we are not going to deal with it today what other
1408 piece of legislation and what timeframe is going to be
1409 appropriate to deal with that issue? And I will just let you
1410 all talk.

1411 Mr. {Dodge.} Well, I would say it is fair and there is
1412 more than that, there is a precedent for it. As Mr. Chang
1413 and I both said in our testimony, this issue was recognized
1414 in 2004 and was fixed for four communities to great success
1415 for the consumers and as far as I can tell, to no harm to the
1416 broadcasters. And the reason I say that is because if there
1417 was some harm I think we would be hearing about it for the
1418 last four years and I haven't heard a peep so I think it is
1419 unfair.

1420 Mr. {Chang.} I would reiterate what Mr. Dodge has said,
1421 I think that we feel there is a solution and it has been
1422 proposed and we want to support it. I think that what is
1423 difficult for us is what these folks have suggested in terms
1424 of and what you reiterated which is having it only be able to
1425 watch the news and then getting sent home and that is

1426 difficult for us to implement.

1427 Mr. {Mountford.} I agree and it is not only just the
1428 orphan next door. It is the orphan anywhere else in the
1429 country. My wife has a sister who lives in a different city
1430 and her sister calls her up when she is watching a different
1431 program and sees a commercial that she wants my wife to see.
1432 That wouldn't happen if we were only showing the news. So
1433 and it doesn't happen obviously but there is one other quick
1434 point I would like to make about the predicted model. This
1435 sheet tells you got in my written testimony, it shows the
1436 mathematical formula on a predicted model and how much outage
1437 is predicted and I also have a disc for you, a DVD that shows
1438 you a 30-second outage, 7-1/2 second outage and other outages
1439 which we can supply to you now or later. Thank you.

1440 Mr. {Padden.} Mr. Deal, the rationale that has been
1441 articulated to us for Mr. Ross' adjacent market proposal is
1442 to get in-state news and other in-state local programming to
1443 viewers and we are just here to explain that that can happen
1444 today. It does happen today as I said in my testimony. We
1445 own a TV station in Philadelphia. Our cable operator is in
1446 Harrisburg who believe their customers have an interest in
1447 seeing our Philadelphia newscast and they provide it to their
1448 customers today. And we got the two leading local news
1449 stations in Little Rock to send letters to Dish and to DIRECT

1450 saying we are ready to sit down with you and make
1451 arrangements for you to carry out Little Rock news into these
1452 Arkansas counties in the Shreveport market. To date, I don't
1453 believe the local stations have even gotten a response from
1454 Dish or Direct.

1455 Mr. {Deal.} Is your answer that they have to turn it
1456 off after the news goes off and go home?

1457 Mr. {Padden.} No, my answer is that in our free market
1458 society, it is wrong for the Congress to abrogate free market
1459 negotiated exclusive licenses just so people can watch
1460 Desperate Housewives on two channels at the same time. That
1461 is wrong.

1462 Mr. {Deal.} I understand your concern for your
1463 affiliates but I don't understand why you would take your
1464 programming and put it on ABC.com and totally bypass your
1465 affiliates if that is your concern.

1466 Mr. {Padden.} Well, actually we don't totally bypass
1467 our affiliates. We have included our affiliates in that
1468 operation. We use a geo-location service. There are four
1469 commercial positions in each program on ABC.com and the local
1470 affiliate gets to sell the ad in one of the four, very
1471 similar to the shared advertising arrangement we have on our
1472 network. We are also concerned about local advertisers who
1473 the local station says would you like your ad to run in

1474 Desperate Housewives, well yes I would and I am going to pay
1475 you a lot of money to run it in Desperate Housewives but if
1476 you bring in a second Desperate Housewives at the same time,
1477 some portion of the audience that that local advertiser
1478 expected to reach is not going to see his ad because they are
1479 watching the out-of-market signal. We are completely
1480 sympathetic.

1481 Mr. {Deal.} Even if that advertiser has to try to
1482 attract that audience from across State lines which doesn't
1483 make a whole lot of sense to me, quite frankly. Yes, sir.

1484 Mr. {Karpowicz.} I guess I would say that given the
1485 example that I gave in my testimony about our station in
1486 Greenville, we would be challenged to continue to produce six
1487 hours of live, local news everyday if in fact our advertisers
1488 were being whittled away by other signals coming into our
1489 market. I mean if Mr. Mountford's sister-in-law was watching
1490 a commercial coming in from Indianapolis versus the
1491 commercial that I ran in Greenville, that is a viewer that I
1492 have lost.

1493 Mr. {Deal.} Well and you say you got four percent in
1494 North Georgia and I use to be in that four percent area and
1495 had to buy television in Greenville to reach four percent of
1496 your market. Got a lot of votes in South Carolina by running
1497 political ads in Greenville, but they realistically could not

1498 vote for me. Those four percent in that northeast Georgia
1499 area that are having to be tied into your Greenville station,
1500 I think in many instances would prefer to be tied into the
1501 State of Georgia where they live and I just I do not see why
1502 we allow these artificial negotiated arrangements to
1503 interfere with that and or why there can't be some realistic
1504 accommodation to it other than going dark or going blank or
1505 having to duplicate.

1506 Mr. {Boucher.} Thank you very much.

1507 Mr. {Deal.} Who in the world would like to have two
1508 versions of Desperate Housewives is beyond me.

1509 Mr. {Boucher.} Thank you very much, Mr. Deal.

1510 The gentleman from North Carolina, Mr. Butterfield, is
1511 recognized for five minutes.

1512 Mr. {Butterfield.} Thank you very much, Mr. Chairman,
1513 for convening this hearing today and I particularly want to
1514 thank the five witnesses who have come forward. I am sorry I
1515 missed your testimonies. I have a written copy of your
1516 testimony in my binder and when I get a chance I will try to
1517 scan most of those.

1518 Mr. Chairman, as you know, I am relatively new to this
1519 committee and so this subject matter is new and so I am
1520 trying as best I can to learn it and get up to speed on it.
1521 When I first got appointed to this committee, the

1522 broadcasters in my State came to my office and very painfully
1523 and carefully worked with me in trying to understand SHVERA
1524 and I am still struggling to get the detail and so this
1525 hearing today is certainly very helpful. I am going to ask
1526 unanimous consent, Mr. Chairman, that my opening statement
1527 that I was not able to give be included in the record.

1528 Mr. {Boucher.} Without objection.

1529 Mr. {Butterfield.} I had two questions that I brought
1530 to the committee and, Mr. Chairman, you asked one of those
1531 two questions and so I only have one that I would like to
1532 very briefly ask if I can find it but it has escaped me.
1533 Here it is. It deals with the terrestrial loophole and I
1534 want to address this again to Mr. Chang and to Mr. Dodge and
1535 the terrestrial loophole permits vertically integrated cable
1536 operators to deny programming to certain multi-channel video
1537 programming distributors when such programming is not
1538 transmitted by way of satellite. What can you tell me about
1539 the terrestrial loophole and any harm to customers who might
1540 not be able to get this programming?

1541 Mr. {Dodge.} I think I would let Mr. Chang take that
1542 because of the programming expert.

1543 Mr. {Chang.} We do believe we are at a disadvantage to
1544 the cable operators on account of the terrestrial loophole in
1545 the areas that this exists particularly in the Philadelphia

1546 market. We do see penetration rates in terms of our
1547 subscribers take lower than in other areas and I mean it is
1548 due to the lack of local sports programming. I think that
1549 simply put it is we are at a disadvantage because we don't
1550 have that program to share with our customers.

1551 Mr. {Butterfield.} Do you concur with that, Mr. Dodge?

1552 Mr. {Dodge.} We do and I don't see why the method of
1553 distribution is relevant to whether or not we have access to
1554 the programming.

1555 Mr. {Butterfield.} All right. Thank you and I yield
1556 back, Mr. Chairman.

1557 Mr. {Boucher.} Thank you very much, Mr. Butterfield.

1558 The gentleman from Illinois, Mr. Shimkus, is recognized
1559 for five minutes.

1560 Mr. {Shimkus.} Thank you, Mr. Chairman.

1561 My first question will be to Mr. Karpowicz. I know
1562 there has been talk on the regional aspects and crossing
1563 State lines. In my opening statement I mentioned that I had
1564 five DMAs that cover my congressional district so depending
1565 upon the intensity of the campaign you make choices and you
1566 eventually buy. You guys like it. We have to buy all even
1567 though the broadcast sector of who we are going to hit could
1568 be very, very limited. If the Ross bill, how would the Ross
1569 bill affect smaller broadcasters? If in my five DMAs, if

1570 they all had to compete with St. Louis how would they affect,
1571 you know, the other four or really the other four probably
1572 would be competing with maybe Indianapolis and maybe Memphis
1573 and so maybe you would have a sector there that would be
1574 challenged. What is your response to how they affect the
1575 smaller broadcasters?

1576 Mr. {Karpowicz.} Effectively, what would happen in
1577 those smaller DMAs with a St. Louis or an Indianapolis
1578 station coming in over the top not only with local news but
1579 with additional NBC programming or CBS programming or Fox
1580 programming and additional syndicated product, I think it
1581 would put a tremendous challenge on those broadcasters in the
1582 smaller DMAs to have the same resources available to them to
1583 continue to provide the services that they provide today
1584 because their audience would be splintered, quite frankly, so
1585 that instead of having all of the audience for 60 minutes,
1586 you may have, you know, audience coming in from KMOV in
1587 St. Louis would be coming in over the top. That is the risk
1588 that we run that the small broadcasters and this is a very
1589 difficult time for small broadcasters. I have a station in
1590 Flint, Michigan that is going through an incredibly difficult
1591 time right now and to put this burden on those broadcasters
1592 whereby they would have additional signals coming in over the
1593 top, I think it would really hinder their ability to serve

1594 their local communities.

1595 Mr. {Shimkus.} So it is not just the news aspect. I
1596 mean I think that is where a lot of members come. It would
1597 be, you know, if it was broadcasting in but there is the
1598 basic programming would in essence compete with the local
1599 broadcasters paired programming.

1600 Mr. {Karpowicz.} I think we have tried to be--we are
1601 sensitive to the fact that, you know, these out-of-state
1602 stations or I guess in-state stations out of DMA stations
1603 that may want to come in and that constituents in those
1604 areas, those counties may want to see their news from the
1605 capital, for example. We understand that but we think that
1606 if that is limited to local news that that should be adequate
1607 to serve their needs but we don't see any need for
1608 duplicative programming to come in over the top of those
1609 smaller broadcasters.

1610 Mr. {Shimkus.} What about the issue of emergency
1611 service broadcasting for the elements that may be occurring?

1612 Mr. {Karpowicz.} Well as I indicated in my testimony,
1613 in most cases as we have looked at these, in most cases the
1614 severe weather would be closer to their DMA base so in the
1615 case of Greenville that I had given in my testimony, if
1616 Greenville is only 25 miles away, they are certainly going to
1617 be responding to severe weather that is happening up in North

1618 Carolina more quickly than Charlotte would be which is 95
1619 miles away. And beyond that, I think every broadcaster
1620 understands it is their responsibility to make sure that they
1621 cover everyone in their DMA with emergency services, weather
1622 updates and so forth. So whether it is at the far northern
1623 end of your DMA or the far southern end, it is our
1624 responsibility to cover that.

1625 Mr. {Shimkus.} Yeah, I would tell you in just about a
1626 month ago, maybe 5 weeks ago we had what was called an inland
1627 hurricane in southern Illinois which in essence wouldn't have
1628 been covered by St. Louis just on the periphery. It would be
1629 covered by Carbondale. It would have been covered by Marion.
1630 It would have been covered by maybe Paducah, maybe Cape
1631 Girardeau but it was a major, major event that the public
1632 really had to be concerned about.

1633 Mr. Padden, if you could wave the magic wand and
1634 eliminate all statutory and FCC video regulations so that
1635 Disney could negotiate directly with any entity that wants to
1636 distribute Disney programming to anyone that wants to watch
1637 it, would you?

1638 Mr. {Padden.} Absolutely. We negotiate with every
1639 program distributor today for all of our networks and
1640 programs except ABC because ABC is covered by the compulsory
1641 license. If the compulsory license and the related

1642 regulations went away, we would be working 24 hours a day to
1643 see that ABC was in front of every set of eyeballs in America
1644 because that is how we make our money, and the more rules
1645 that the government layers on top of this compulsory license,
1646 the more mixed-up the market gets.

1647 Mr. {Shimkus.} Do you think that approach would lower
1648 cost?

1649 Mr. {Padden.} Yes.

1650 Mr. {Shimkus.} Thank you, Mr. Chairman. I yield back.

1651 Mr. {Boucher.} Thank you very much, Mr. Shimkus.

1652 The gentlelady from the Virgin Islands, Ms. Christensen,
1653 is recognized for five minutes.

1654 Ms. {Christensen.} Thank you. I am similarly situated
1655 to my colleague here from North Carolina being new and new to
1656 some of the issues so some of my questions may be very basic
1657 but one question to Mr. Padden. On the issue of securing so-
1658 called orphan counties with in-state local programming, you
1659 testified that the satellite carriers can today cut deals
1660 with local stations to retransmit those signals. Do your
1661 affiliation agreements prevent your affiliates from granting
1662 retransmission consent to send the signal outside of that
1663 station's DMA?

1664 Mr. {Padden.} There is nothing in our affiliation
1665 agreement that prevents our local affiliate from making an

1666 arrangement for their local news and other local programming
1667 to be distributed by anyone they want.

1668 Ms. {Christensen.} On the issue of the DMAs from
1669 listening to Mr. Karpowicz and looking at your testimony you
1670 think that it is fine the way it was. We don't need to
1671 change it because that has come up in several hearings and I
1672 would like to just know what all of the panelists feel if we
1673 can work within the DMAs as they exist today or do we need to
1674 change them?

1675 Mr. {Karpowicz.} I believe we can.

1676 Ms. {Christensen.} Because it would seem to me that I
1677 mean I come from a small community so I can't even use mine
1678 but if say the southern part of North Carolina was in with
1679 South Carolina and might be must more similar to the northern
1680 part of North Carolina, so DMAs should work. Does everybody
1681 agree or do we need to change how the DMAs are configured.

1682 Mr. {Karpowicz.} The DMA is determined by the Nielsen
1683 Rating Company and it is a measure of to which city do is
1684 most of the viewing from this county directed so it is a
1685 living definition that changes every year based on to which
1686 television market the people in that county are directing
1687 most of their viewing. So by definition it reflects consumer
1688 preferences.

1689 Ms. {Christensen.} And we can address all of the

1690 emergency--the situation that Mr. Shimkus talked about is
1691 kind of scary if they can't get the information because they
1692 are based out of the St. Louis.

1693 Mr. {Karpowicz.} Right, I think as a practical matter
1694 what we have found is that the information coming from the
1695 DMA that those so-called orphan counties are in is certainly
1696 more relevant and closer to those counties than the
1697 information that would be coming from a distant DMA.

1698 Mr. {Mountford.} Congresswoman Christensen, thanks for
1699 the question.

1700 The DMA system works and people do want their local
1701 station however, how do I respond and I have to respond to
1702 this about five times a day now to a consumer who says how
1703 come I can't get your channel from San Francisco or from New
1704 York and my only response is because that is the law. People
1705 know that that channel is up there and that it is on their
1706 Dish Network system and they want to receive it. Why can't
1707 they?

1708 Ms. {Christensen.} Mr. Chang?

1709 Mr. {Chang.} From DIRECTV, we believe that the current
1710 DMA system is not perfect. It is also probably not wildly
1711 broken. I think we highlighted earlier in my earlier
1712 testimony some of the simple fixes we would probably make to
1713 the extent that this became part of a broader discussion

1714 including dealing with the orphan counties, the significantly
1715 viewed issue, the Grade B, and all that sort of stuff.

1716 Mr. {Dodge.} I think it is not surprising we do favor
1717 DMA reform because I guess in the broadest sense we think as
1718 technology evolves and the current market in which we live
1719 where contents are free on the Internet, a consumer should be
1720 able to decide what is local for them, and for every case
1721 where there might be an example where you are in an out-of-
1722 state DMA and that is actually closer to your home, there is
1723 probably a case where it is not true. For example, in
1724 Wyoming there are many people in the Denver DMA where Denver
1725 is actually about 300 miles from their house. And similarly,
1726 although there is a parade of horrors that gets rolled out
1727 every time the concept is floated, we do have examples today
1728 of the four markets where this was approved in 2004. And if
1729 you look at Vermont, I don't think you hear the Albany
1730 broadcasters or the Boston broadcasters complaining that the
1731 folks in southern Vermont have access to Burlington signals.

1732 Ms. {Christensen.} Okay. The committee staff had
1733 mentioned in the briefing that satellite carriers and I guess
1734 I would direct this at Mr. Chang and Mr. Dodge, had problems
1735 with the interpretation of Section 340 of equivalent
1736 bandwidth as being too restrictive and therefore limiting the
1737 practical utility of it for satellite carriers. Could you

1738 explain what concerns you might have with that or are there
1739 no concerns with the interpretation of equivalent bandwidth
1740 as being too restrictive?

1741 Mr. {Chang.} I think in the prior bill and I believe it
1742 is being or in the current draft it has been changed to the
1743 language that we think is fine in terms of the equivalent
1744 bandwidth?

1745 Ms. {Christensen.} Okay.

1746 Mr. {Dodge.} We agree.

1747 Ms. {Christensen.} Thank you. Thank you, Mr. Chairman.

1748 Mr. {Boucher.} Thank you very much, Ms. Christensen.

1749 The gentleman from Oregon, Mr. Walden, is recognized for
1750 five minutes.

1751 Mr. {Walden.} Thank you very much, Mr. Chairman. I
1752 appreciate the panel and the testimony today and I wanted to
1753 thank Dish Network, Mr. Dodge, thank you for your opening
1754 statement announcing you are going to be in the Bend market,
1755 local-into-local by July 9. We appreciate that in the Bend
1756 market. I was down at another hearing that is going on in
1757 the O and I Committee so I wasn't here for the openings. I
1758 am a big fan of local-into-local and I would certainly
1759 encourage you to continue on down the rankings until all
1760 communities that have television have that ability and the
1761 viewers have that ability to see their local stations on

1762 their satellite system.

1763 I want to talk a little bit about this notion of the
1764 evils of blacking out the rest of the duplicative programming
1765 and the effect that has on viewers. I have before me a
1766 channel changing device and it seems to be that during the
1767 course of any day, people pick and choose programs on
1768 different channels whether it is over-the-air broadcast, or
1769 cable, or satellite. And it seems to me that if I want to
1770 watch a out-of-market local program, I have the ability to
1771 push this button. I won't because God only knows what I will
1772 do to this monitor but I will never get it back but I would
1773 have that ability wouldn't I? I mean this happens on your
1774 systems, right? People change channels.

1775 Mr. {Dodge.} You certainly would.

1776 Mr. {Walden.} They do that with pay-per-view, right?
1777 The pay program ends, they are done. It goes blue screen to
1778 the next pay program until they buy, right?

1779 Mr. {Dodge.} That is true for pay-per-view. I mean I
1780 think the general concept is as you are scrolling through
1781 people don't want to see a black screen 90 percent of the
1782 day.

1783 Mr. {Walden.} But they might see a blue screen with a
1784 pay-per-view sales pitch, right? So I mean you do that.

1785 Mr. {Dodge.} Well but, you know, quite frankly if you

1786 are watching the news and you don't want to change the
1787 channel, you want to just roll on to the next program.

1788 Mr. {Walden.} Can you get that mike a little closer,
1789 too.

1790 Mr. {Dodge.} If you are watching the news and it is
1791 rolling into your next favorite program, you know, why should
1792 you have to change the channel when you could otherwise?

1793 Mr. {Walden.} Well, yeah but I think viewer habits are
1794 such that people do watch the local news and I know this will
1795 be sacrilegious to those in the networks but they may choose
1796 a different network newscast then the one that--I mean they
1797 change, right? They make those choices. Let me--so it seems
1798 to me that you have a legal way to do non-duplicative
1799 programming a customer wants to see by it can be offered to
1800 cable and satellite customers without a change in the law,
1801 correct, if you negotiate it for their local content?

1802 Mr. {Dodge.} We are actually not. I am not certain of
1803 that. Mr. Padden said that ABC has granted the right to all
1804 of its affiliates to broadcast.

1805 Mr. {Walden.} Well, you would have to negotiate it. It
1806 is their local programming but you would have under the
1807 current law you are allowed to do that?

1808 Mr. {Dodge.} Included in their local programming are
1809 advertisements for which they may not own the copyright and

1810 therefore have the rights to allow us to broadcast it because
1811 it is out of their DMA.

1812 Mr. {Walden.} Well, correct.

1813 Mr. {Dodge.} And their national content as well
1814 although Mr. Padden says.

1815 Mr. {Walden.} Right but they would have to order. That
1816 would be their responsibility.

1817 Mr. {Dodge.} It would.

1818 Mr. {Walden.} To make sure they are offering you
1819 something they are legally allowed to offer, right?

1820 Mr. {Dodge.} It would, correct.

1821 Mr. {Walden.} And that doesn't require a change in the
1822 law?

1823 Mr. {Dodge.} If they have those rights, it would not.

1824 Mr. {Walden.} Right, that is all I am talking about. I
1825 am not talking about selling you the Brooklyn Bridge, you
1826 know. If they have the rights to sell it they should be able
1827 to sell it. Mr. Padden, isn't that correct?

1828 Mr. {Padden.} That is absolutely correct and it is
1829 being done today by cable operators.

1830 Mr. {Walden.} Mr. Karpowicz.

1831 Mr. {Karpowicz.} And in addition to ABC, we also know
1832 for a fact that CBS and NBC have agreed that any content that
1833 of theirs that would end up in our local newscast, we would

1834 have the right to move that forward to a provider.

1835 Mr. {Walden.} And I serve in a district of 70,000
1836 square miles with all kinds of media markets surrounding. I
1837 am not unsympathetic to my constituents certainly who would
1838 like to see Oregon news. If you are out on the Idaho border
1839 and 360 or 400 miles from Portland, I still have people out
1840 there who say I would like to see the Oregon news but what I
1841 am hearing in this hearing is there is a way to do that
1842 within the law to get that product because they don't say I
1843 want to see, pick your show. They are really talking about
1844 how they get that local news and that seems to me it can be
1845 done now. And I know that you raised a technical issue of
1846 how you would go in and out of that local programming that
1847 would come up to your satellite systems. Now, I confess I
1848 spent almost 22 years in the radio business and actually have
1849 been on the cool end of a soldering iron a number of times
1850 wiring in those satellite receiver systems to pick up
1851 different programming, and they are pretty sophisticated yet
1852 simple if I was able to make it work, systems of switching,
1853 and couldn't the local stations as you do your uplink simply
1854 have a coded digital switching, Mr. Karpowicz? Isn't that
1855 the way it works?

1856 Mr. {Karpowicz.} Yes, you would build in a tone and the
1857 tone would trigger a switch at their head end which would

1858 then trigger the programming.

1859 Mr. {Walden.} I mean this happens all the time so I
1860 think that is important for the committee to know. It is
1861 not--this is sort of normal backroom stuff and the engineers
1862 do all the time. And I guess my final question would be to
1863 Mr. Mountford because you said how many interruptions should
1864 be allow per hour in terms of this digital programming I
1865 think you meant. Don't you face that problem with satellite
1866 distribution, you know, especially during the sort of sun
1867 cycles in the spring and the fall? Don't you have
1868 interruptions, as well, and storms?

1869 Mr. {Mountford.} Absolutely.

1870 Mr. {Walden.} And I am not picking on satellite.

1871 Mr. {Mountford.} No, no, no.

1872 Mr. {Walden.} You get your share of digital
1873 interruptions, so does cable and so does broadcast now.

1874 Mr. {Mountford.} There is rain fade and there is sun
1875 interruptions but in the predictive model what you are saying
1876 to a rural consumer is that if you are saying it is 90
1877 percent viewability, you are saying that 10 percent of the
1878 time we are going to allow your signal to be totally
1879 unviewable. Now, mathematically that would work out to as I
1880 said before, 12 30-second interruptions which is totally
1881 unacceptable or even six 1-minute interruptions in an hour

1882 program. I truly believe that the FCC has to tighten that
1883 standard because it is digital because an analog interruption
1884 twice as bad.

1885 Mr. {Walden.} Is much different. Much different, I
1886 agree. Mr. Padden, Mr. Karpowicz, do you have any?

1887 Mr. {Padden.} We favor the Congress adopting the noise-
1888 limited signal intensity standard in Section 72.622(e)(1) of
1889 the FCC's rules.

1890 Mr. {Walden.} And you were just reading that again this
1891 morning I bet that whole rule.

1892 Mr. {Padden.} It is fascinating. You know, if I could
1893 make one point. I have just met Mr. Mountford. He is a
1894 wonderful man, a great advocate. He is in the business of
1895 selling ABC to people. Now, how does that happen? We have
1896 no contract with him. We spent billions of dollars a year
1897 creating this programming. He is selling it to people by
1898 satellite. He neither owns the network nor a satellite
1899 system. This is entirely a creation of the Congress and it
1900 helped get the satellite industry launched but the existence
1901 of 500 other networks that we manage to get out to satellite
1902 customers without government intervention strongly suggests
1903 as the copyright office found, that we ought to be looking at
1904 how to phase out of what we have got here because I just
1905 think the existence of someone who is selling something that

1906 is not theirs through transmission facilities that are not
1907 theirs, suggest that there is something wrong here.

1908 Mr. {Mountford.} We pay for that programming. It is
1909 called the copyright fee and so we do pay for it. We also
1910 pay for all of our transmission facilities, our backhauls
1911 through a lease agreement. Thank you.

1912 Mr. {Padden.} My point only is you are paying a price
1913 set by the government rather than through a negotiation with
1914 the people whose programming you are distributing.

1915 Mr. {Mountford.} And the government has chosen to set
1916 that price as a fair price.

1917 Mr. {Boucher.} Thank you very much. Thank you, Mr.
1918 Walden and gentlemen.

1919 The gentleman from New York, Mr. Weiner, is recognized
1920 for five minutes.

1921 Mr. {Weiner.} Do you guys want us to leave while you
1922 keep doing this?

1923 Mr. Chang, does DIRECTV produce content in the classic
1924 sense? Does it produce programming?

1925 Mr. {Chang.} We do produce a limited amount of
1926 programming.

1927 Mr. {Weiner.} I mean I don't mean like what is on TV at
1928 eight o'clock, nine o'clock and ten o'clock but that is not
1929 your primary model here, is it?

1930 Mr. {Chang.} No, our primary model is the distribution
1931 of programming content.

1932 Mr. {Weiner.} I just think it is worth us taking a step
1933 back here as a group and recognizing that consumers do have,
1934 in your term, an interest in wanting to choose from moment to
1935 moment what is on their screen but there is also a higher
1936 imperative that Congress has always endeavored to protect to
1937 make sure that content in the general sense was incentivized
1938 by the marketplace and that we figure out how we get people a
1939 rich amount of content distributed in a way that they want to
1940 get it.

1941 Now, that latter part, how they want to get it is
1942 changing every single day but one of the things that we try
1943 to do and I think that Mr. Boucher's draft does, is it
1944 protects the idea that yes you naturally want to be able to
1945 go out and distribute Mr. Padden's content any which way you
1946 want but we need to figure out a way to incentivize Mr.
1947 Padden's company to produce it and that is ultimately in the
1948 long term interest of our constituents, as well. If you, you
1949 know, you are not going to have Desperate Housewives getting
1950 produced at all if we don't have a model that allows Disney
1951 or ABC to produce the content, negotiate for how it is
1952 distributed in the marketplace. So I think we have to be
1953 careful not to say yeah, why shouldn't someone be able to get

1954 five or six or eight Desperate Housewives because that is a
1955 model that would have guaranteed them in a very short time of
1956 being able to get none.

1957 That also--now I don't know in Mr. Deal's metaphor which
1958 I frankly lost track of, I don't know who is holding the hand
1959 and whose hand was being held or who was on the train or who
1960 was driving the train or what the next stop was but I do know
1961 that if we look at the interests are of consumers, we can't
1962 only look at the near term decision that they may want to
1963 make to see content. We also have to figure out a model that
1964 works that incentivizes creation. Now, sometimes the
1965 industry is going to have to work that out and they did it
1966 woefully badly in the music business but sometimes government
1967 is going to have to help by saying that we are going to be
1968 much tougher and making sure people can't copy or pirate
1969 information. So we strike that balance here and I think that
1970 Mr. Boucher's bill does that fairly well. If there seem to
1971 be kind of shotgun relationships between your companies, it
1972 is because we are trying to find the way to ensure that we
1973 incentivize content being produced.

1974 It is not in Mr. Chang's job description to be all that
1975 concerned about it. You are trying to figure out a way to
1976 get consumers as much choice as you can, zapping it all over
1977 the place and I can tell you as someone who represents New

1978 York City, I probably would benefit. My, you know, when Mr.
1979 Shimkus says probably the opposite for me. I probably could
1980 run statewide just advertising in New York on New York City
1981 because the guys in Albany wouldn't have a chance to compete
1982 against the resources of a New York market. So I just think
1983 we have to remind ourselves that the interest of the consumer
1984 is not a near term thing, it is also a larger framework that
1985 we invoke going back to the Cable Act in the '80s, we have
1986 tried to balance. Maybe we don't get it exactly right. Mr.
1987 Chang, do you want to respond to that?

1988 Mr. {Chang.} Sure. I don't disagree with you. I think
1989 that it is in the interest of the consumers' long term to
1990 deliver as much content as possible that they want to see. I
1991 think that where you talk about incentives for the content
1992 producers to make sure that they can invest in their content,
1993 similarly I think we need to talk about the not having
1994 disincentives for folks like us on the distribution side who
1995 provide a very valuable service to customers, not to having
1996 to invest in unnecessary technologies or capital investments
1997 such as potentially duplicating signals and thereby wasting
1998 valuable bandwidth in terms of having to black out for
1999 instance, programming that is not the local news. When, in
2000 fact, we think the impact of what we are talking about here
2001 is limited in nature and I think in the limited areas where

2002 it has been done in the past, we don't believe that there has
2003 been a significant impact. So I don't think there is a huge
2004 disincentive from a content producer's standpoint and for
2005 folks like Disney, who also own multiple other content
2006 sources, I think it is up to them to decide how they want to
2007 divvy up their own internal resources and whether they put it
2008 on ABC.

2009 Mr. {Weiner.} But it is also under their control to
2010 decide when they are making contractual arrangements of how
2011 and when their product is going to be distributed in local
2012 markets to not have the specter of you guys hanging over and
2013 say we will just drop in someone else here. I think that is
2014 the problem. The problem is they have a right to some
2015 control over their content and I think you agree with that
2016 and you say that well in some selective cases they should
2017 lose that control and I think that is where you and I part
2018 company. I mean I think that if we both agree, you know, Mr.
2019 Padden says that his solution and Mr. Karpowicz says their
2020 solution for getting local content, they say it is a
2021 relatively small thing. You say your solution is a
2022 relatively small thing. The problem is your relatively small
2023 thing would have a rather dramatic structural problem in
2024 those communities that you are seeking to serve, meaning
2025 essentially Mr. Padden would lose the right to make exclusive

2026 arrangements, essentially.

2027 Mr. {Chang.} Right but I would ask a question. I mean
2028 how big or what percentage of the population are you talking
2029 about and how would that really impact the programming cost.

2030 Mr. {Padden.} I just come back to you want to abrogate
2031 our contracts for the purpose of the customer being able to
2032 watch the same show on two channels. I just don't see the
2033 public benefit.

2034 Mr. {Chang.} No, we are trying to respond to
2035 Congressman Ross and his desire to have his constituents as
2036 well as several of the other congressmen, have their
2037 constituents be able to watch relevant programming and try to
2038 do it in a fashion that is not a huge burden to anyone of us
2039 from an economic standpoint.

2040 Mr. {Weiner.} Well, can I interrupt this conversation
2041 and ask this question, Mr. Chang. Do you agree that you
2042 shouldn't be in a position to offer Desperate Housewives on
2043 two different stations in the same market?

2044 Mr. {Chang.} What I would agree with is that we are
2045 trying to deliver relevant programming to customers.

2046 Mr. {Weiner.} Understood. But would you answer, take a
2047 stab at my question. Do you agree that you shouldn't have it
2048 in your rights to distribute two Desperate Housewives not the
2049 housewives but the show, two Desperate Housewives?

2050 Mr. {Chang.} That I would agree with.

2051 Mr. {Weiner.} To the same customers?

2052 Mr. {Chang.} Listen, I think that when you take into
2053 account the law and the various contracts, it is what it is
2054 in terms of what we are allowed to do. All we are asking for
2055 is to try to be responsive to various members and their
2056 requests that their customers can see, their constituents can
2057 see relevant programming.

2058 Mr. {Weiner.} Well, I have already gone well over my
2059 time and I thank you, Mr. Boucher, but I think that if we can
2060 reach one conclusion that the answer is no, they shouldn't be
2061 able to because that severely undermines Mr. Padden's ability
2062 to negotiate a contract and therefore by extension, to
2063 produce the content. And I think we are at a foundation
2064 where Mr. Boucher starts us which is let us try to solve the
2065 other problem and I think then I think you will find broad
2066 agreement here and I think we want to solve Mr. Ross'
2067 problems but I don't think that what your solution is, is a
2068 real structural undermining, at least in those communities
2069 there is structural undermining of the thing that makes
2070 Desperate Housewives available once, let alone twice but I
2071 thank you, Mr. Chairman.

2072 Mr. {Boucher.} Thank you very much, Mr. Weiner.

2073 The gentleman from Arizona, Mr. Shadegg, is recognized

2074 for five minutes.

2075 Mr. {Shadegg.} Thank you, Mr. Chairman.

2076 As I sit here and listen to this debate and review the
2077 issue, I have got to tell you that it drives into my mind the
2078 issue of our inability to discern reasonable requests from
2079 unreasonable requests. Mr. Chang, you just struggled
2080 mightily to try to answer Mr. Weiner's question about whether
2081 or not people should be able to see Desperate Housewives two
2082 times. I guess you would have the same problem with people
2083 demanding to see it 20 times on the same TV station in one
2084 town. And the problem with that is that Mr. Padden's
2085 constituents, the people he represents, have to have the
2086 capital to make attractive programming and if you are allowed
2087 to sell that programming in one particular area two times,
2088 five times, eight times, each time it gets sold or made
2089 available in the same area and you say they are demanding
2090 this, I don't particularly see that demand. I don't see--I
2091 am not sure I know why anybody watches Desperate Housewives
2092 but I don't know why you have to be able to watch it twice at
2093 once. And I guess it seems to me that with regard to local
2094 news or with regard to sports, I can understand some issue
2095 but how do you deal with the fact that Mr. Padden has right
2096 now a certain level of exclusivity that lets him market that
2097 product in a way that creates enough economic value that he

2098 can produce something that is worth watching. And how is Mr.
2099 Ross' problem not solved by what is currently available?

2100 Mr. {Chang.} Again, I don't know specifically how many
2101 people we are talking about and what sort of overlap we are
2102 talking about whereby people would get duplicative
2103 programming such as Desperate Housewives and what that would
2104 do to his advertising.

2105 Mr. {Shadegg.} Well, let me stop you right there. If
2106 we don't know how big a problem this is, why are we
2107 struggling here in this hearing so mightily to overcome it?

2108 Mr. {Chang.} Well, we don't think it is a large
2109 problem. I don't know the specific number I guess is a
2110 better characterization. And I guess the question that I
2111 would have back is to these folks, is if we end up having to
2112 duplicate signals and thereby investing a lot more in terms
2113 of our satellite infrastructure and our maintenance
2114 infrastructure, is that our burden to bear alone to solve
2115 this problem or are they going to pay for that?

2116 Mr. {Shadegg.} Well, why don't you ask the customers to
2117 pay for it? If the customers really want that local thing,
2118 why don't you make that pay-per-view? Mr. Padden, let me ask
2119 you, have I accurately expressed your concern with regard to
2120 having the same show made available multiple times in one
2121 market or otherwise destroying the economic value of what you

2122 produce?

2123 Mr. {Padden.} Yes, you have captured it precisely and
2124 let me give Derek an example. Under Mr. Ross' proposal, the
2125 satellite operators would be able to bring the Richmond
2126 stations to every household in northern Virginia in the
2127 Washington, D.C. television market. They represent about a
2128 third of the market. You would be duplicating the exclusive
2129 network programming in a third of the market. It would have
2130 a devastating impact on the Washington station. On the other
2131 hand, if what we are trying to do is get Richmond news to
2132 folks in northern Virginia, there is absolutely no bar under
2133 current law for you to negotiate a deal with the Richmond
2134 station to carry their news to your northern Virginia
2135 customers and we would encourage you to do that.

2136 Mr. {Shadegg.} Mr. Mountford, you said that the only
2137 thing that stops this from happening right now is the law. I
2138 guess I would say to you that is right. It is the law of
2139 copyrights. Mr. Padden, has a property right to the program
2140 he produces. If you diminish that property right, you can
2141 destroy the value of the program he produces and we will have
2142 nothing worth watching. It seems to me that nobody here is
2143 looking at the choices people make. If somebody chooses to
2144 live in some backwater town in Idaho or Montana or Wyoming
2145 and they say but I want to be able to watch the Miami local

2146 news station in Miami because my sister lives in Miami and I
2147 want to look at the news she is watching, maybe you should
2148 make that available to her for a price and let her pay in
2149 Wyoming to watch the news programming in Miami, Florida but I
2150 don't see how you should do it in a way that costs Mr. Padden
2151 his business.

2152 Mr. {Mountford.} That is exactly what we want to do, is
2153 offer it to the person in Wyoming at a price.

2154 Mr. {Shadegg.} So she can buy the second right to watch
2155 Desperate Housewives.

2156 Mr. {Mountford.} Well, it wouldn't be Desperate
2157 Housewives.

2158 Mr. {Shadeeg.} You would compensate Mr. Padden for the
2159 diminution in the value of Desperate Housewives in that
2160 marketplace?

2161 Mr. {Mountford.} We would pay what, you know, either a
2162 negotiated agreement or a set copyright fee to the providers.
2163 That is what we do today, for people in Wyoming, for example
2164 and a lot of the rural customers, it wouldn't be a
2165 duplicative program because they don't get it. They don't
2166 get their station. That is why I am advocating the 99
2167 percent viewability standard because at 90 percent it is
2168 going to say you get your station but 10 percent of the time
2169 it is not there but Congress says you get it, so that is the

2170 law. That is not right.

2171 Mr. {Shadegg.} I think he is now saying, Mr. Padden, he
2172 is willing to pay you but I don't see that in the legislation
2173 before us.

2174 Mr. {Padden.} No, if the government wasn't involved we
2175 would have every economic incentive to meet with and license
2176 our content to anybody that can get us additional eyeballs
2177 because that is in our self-interest.

2178 Mr. {Shadegg.} That is the copyright you are selling.
2179 Thank you.

2180 Mr. {Boucher.} Mr. Shadegg, thank you very much.

2181 All of the members present have been recognized for
2182 questions. We want to thank our witnesses very much for your
2183 testimony here today. This subject is always interesting.
2184 Every five years we address it again and it seems to get even
2185 more interesting over time, so thanks to all of you for
2186 excellent testimony today.

2187 And with that this hearing is adjourned.

2188 [Whereupon, at 12:15 p.m., the subcommittee was
2189 adjourned.]