

Chairman Boucher, Ranking Member Stearns and members of the Subcommittee, thank you for allowing me to give a consumer perspective on the reauthorization of the Satellite Home Viewer Extension and Reauthorization Act (SHVERA).

As Congress considers renewing satellite compulsory licenses, it should take the opportunity to repair the current fragmented regulatory structure by accomplishing three goals:

- 1) treat all those who retransmit broadcast content and signals equally;
- 2) ensure special protections given to broadcasters do not result in unfair licensing terms for Multichannel Video Providers (MVPDs); and
- 3) move towards a world without restrictive distant signal regulations.

The current patchwork of laws and regulations unnecessarily differentiates between types of providers, restricts the availability of content to consumers, and sets the stage for discriminatory pricing.

I have three recommendations:

***First, unify the regulatory and licensing systems for MVPDs.***

While at one time there may have been justification for maintaining separate regulatory structures for cable and satellite retransmission, that time has passed.

Disparities in treatment of cable systems and satellite services are a result of historical and technical factors that are no longer relevant. In its report on SHVERA, the Copyright Office emphasized that regulatory parity between MVPDs is a “governmental goal of the first order.”

It is time to level the playing field not just between these services, but also for new types of MVPDs, including those who deliver content through the Internet.

Allowing Internet-based MVPDs to voluntarily join this regulatory structure could provide much needed competition in the MVPD market.

Congress should therefore create a single, unified structure for *all* MVPDs, extending the benefit of the compulsory license to any that opt-in and meet their regulatory obligations, including local carriage requirements and license rates. In addition, no provider should be subject to a 5-year reauthorization cycle. This presumably means that DBS providers, like cable providers, would be required to carry all local broadcast stations – a fair trade for significant regulatory relief.

***Second, reform retransmission consent rules to promote competition and eliminate unfair price discrimination.***

The current retransmission consent scheme, when combined with distant signal and carriage regulations, produces anticompetitive results. The rules create an

imbalance that allows broadcasters to engage in discriminatory pricing or tie in carriage of unrelated stations, raising prices for customers and harming the ability of smaller MVPDs to compete.

Unfortunately, most broadcaster-MVPD agreements are not public, preventing anyone from determining the scope of these discriminatory practices. Therefore, first and foremost among Congress' remedies should be transparency in retransmission consent deals.

But Congress should go farther – for instance, by requiring that retransmission consent licenses be on reasonable and nondiscriminatory terms. Even more effective would be a statutory retransmission consent license that parallels the copyright license for broadcast retransmission. This would ensure price parity among MVPDs, eliminate troubling tying arrangements, and prevent broadcasters from withholding important local content as leverage against smaller video providers.

***Third, move towards eliminating distant signal protection.***

Distant signal protection is an anachronism in an Internet Age, where consumers who have Internet access can view content that is not restricted by state lines or artificial “market areas.” Attempts to force subscribers to watch only local stations

are misguided and doomed to fail. Perhaps more pressingly, current rules create situations in which satellite providers are unable to provide customers with the local broadcast channels that are most relevant to their lives because they originate in a different DMA.

Over the long term, Congress should work towards eliminating distant signal restrictions. MVPDs should be free to respond to customer desires and offer, in addition to local stations, other stations from wherever they broadcast.

In the short term, Congress should fix the immediate problems caused by DMA-based and distance-based restrictions on MVPD retransmission. At minimum, the rules should be relaxed to allow retransmission of any in-state signals, stations from neighboring areas, and any missing networks.

Finally, I urge the Subcommittee to reject efforts to make SHVERA a vehicle for unrelated changes to copyright and communications law.

I would like to thank the Subcommittee again for giving me the opportunity to testify today.