

**Written Testimony of Michael Nilsson
On Behalf of DIRECTV, Inc.
Before the Copyright Office, Library of Congress
July 23, 2007**

Good morning. My name is Michael Nilsson. I am a partner at Harris, Wiltshire & Grannis LLP, which serves as outside counsel to DIRECTV, Inc. ("DIRECTV"). Thank you for allowing me to testify this morning on behalf of DIRECTV concerning the statutory copyright license for satellite delivery of signals from out-of-market broadcast television stations.

In this proceeding, the Copyright Office seeks comment on proposals for dramatic changes to this license. These range from eliminating the license to harmonizing it with the license for cable operators to creating a new statutory license governing all forms of non-broadcast distribution. The delivery of *local* broadcast signals to the overwhelming majority of TV households, however, has obviated the need to make major changes to the satellite distant signal license. Instead, DIRECTV recommends a few modest changes to that license to ensure that all consumers are able to receive a full complement of network programming.

First, the facts. Nobody in this room, I think, would dispute that satellite delivery of distant network signals is a very different business today than it was ten years ago or even five years ago. Ten years ago, distant signals were the only means by which satellite carriers could deliver network programming to the vast majority of Americans – and the distant signal license was the only means by which they could do so. Today, most

DIRECTV subscribers receive their network programming from their local broadcast stations, just as Congress intended. While DIRECTV has experienced double-digit growth in subscribership in recent years, its out-of-market retransmissions of New York and Los Angeles stations has shrunk dramatically. For example, in 2001, over fourteen percent of DIRECTV subscribers received the distant signal of the New York Fox affiliate WNYW. As of December 2006 that number is approximately five percent.

There are several reasons for this state of affairs. First, many satellite subscribers cancel distant signal services when offered local signals. Second, the “no distant where local” rule prevents satellite carriers from signing up new subscribers for distant signals if they can receive local signals. Thus, the pool of *potential* distant signal subscribers is diminishing as quickly as the pool of *existing* distant signal subscribers.

What should this mean for Congress? DIRECTV has two suggestions.

First, although distant signals are being replaced by local signals in many places, Congress should *not* mistakenly conclude that the distant signal license has outlived its usefulness. Two classes of consumers in particular will rely on distant signals for their network programming even after satellite carriers provide local signals in every market. Some consumers live outside of the satellite beam on which local signals are provided. Others live in smaller markets without a full complement of local television stations. Only the distant signal license makes it possible for DIRECTV to provide these

subscribers with programming such as the Super Bowl, the World Series, and the *Simpsons*.

If anything, Congress ought to make it *easier* for satellite carriers to serve these two classes of consumers. Today, serving such consumers can be difficult – if not impossible – because the statutory license was not explicitly designed to reach them. There is no need for such complexity. If a satellite carrier provides local service in a market, it ought to be allowed to provide distant signals to out-of-beam consumers in that market without having to subject each of those subscribers through a burdensome (and uncertain) qualification process. Likewise, if a satellite carrier provides local service in a market lacking a particular network affiliate, it ought to be allowed to provide all consumers in that market with a distant affiliate of that network – again, without having to qualify these consumers individually. In each case, satellite carriers should be allowed to take advantage of such relaxed rules only where they offer local service. This will provide an additional incentive for satellite carriers to offer local service in even the smallest markets.

I should also note in this regard that Congressman Ross has introduced a bill that would go a long way towards addressing these two classes of subscribers. This bill, HR 2821, would allow satellite carriers to offer many subscribers “neighboring” stations, along with their local stations.

DIRECTV's second suggestion is that Congress need not and should not spend the time and energy to perfect a license the impact of which is gradually but steadily diminishing. DIRECTV, naturally, has its own views on how to improve the statutory license. Viewers should have more choice, qualification should reflect modern technology, and (perhaps above all) the rules should be easier to administer. But given current trends, Congress need not balance these concerns against those undoubtedly held by other stakeholders. Congress should simply allow the license to continue diminishing in importance naturally.

Again, thank you for allowing DIRECTV the opportunity to testify today. I would be happy to answer any questions you may have.