

TESTIMONY OF JEFFREY BLUM
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DISH NETWORK L.L.C.
before the
UNITED STATES COPYRIGHT OFFICE
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Ms. Pallante and staff members of the U.S. Copyright Office:

My name is Jeff Blum and I am Senior Vice President and Deputy General Counsel for DISH Network. On behalf of our 35,000 employees and more than 14 million subscribers, I thank you for this opportunity to present our opinions on the compulsory copyright regime, an issue critical to our business.

We have submitted comments for the record. My testimony today will focus on two main points:

First, the statutory licensing regime should be maintained.

When Congress established that statutory licensing regime for satellite TV, it laid the foundation for Direct Broadcast Satellite to become the competitive force it is today. The two nationwide DBS providers, DIRECTV and DISH Network are now the second and third largest pay-TV providers in the country and together serve about thirty percent of the overall market. The FCC and Department of Justice consistently cite satellite TV as a major price and quality competitor to incumbent cable operators, promoting better service and lower prices for consumers throughout the country.

The statutory copyright licensing regime has been an essential element in the industry's rise.

Following its passage in 1999, Section 122's local-into-local license played an integral role in DBS providers' unprecedented growth by enabling us to carry local broadcast signals to our subscribers and compete with cable operators. More than a decade later, all the industry players have adapted their business models to reflect the existence of a statutory license regime.

Negotiation of copyright licenses with all the owners of broadcast programming content in the private market simply is not feasible. There are too many copyright holders in the chain to allow us to negotiate quickly and effectively enough with all of them.

As the only pay-TV provider to offer local programming in all 210 DMAs nationwide, DISH Network has insight into the need for the statutory copyright license. Without it, DISH Network would never have been able to clear the thousands of copyrights necessary to provide local news, weather, sports, political commentary, and emergency information to millions of consumers across the country.

And, we disagree with the broadcasters' argument to eliminate the distant satellite statutory license under Section 119. DISH Network currently imports distant signals from 43 unique stations to 26 "short markets," where one or more "Big 4" broadcast

networks is missing an in-market affiliate. Distant signals can also provide broadcast network programming to those subscribers living outside DISH Network's spot beam for a particular DMA. It would be impossible to provide the full complement of local programming our customers demand in all 210 DMAs absent some form of distant signal license.

In addition, the distant signal license is necessary for subscribers choosing DISH Network's RV Packages to receive broadcast network programming while travelling in their recreational vehicle, commercial truck or motor home. Unfortunately, Section 119 does not permit us to provide boat and plane owners with those same distant signals. This is unfair, and makes it more difficult for DISH Network to attract this subset of consumers, who might be interested in purchasing service for their boat or plane if they could receive network programming. Therefore, rather than eliminate distant signal rights under Section 119, DISH Network encourages the Copyright Office to recommend that Congress extend the distant satellite statutory license to apply to watercraft and aircraft.

The frequent impasses of retransmission negotiations between broadcasters and distributors illustrate the chaos that would almost certainly result were the statutory licenses to be abolished. Substitute the thousands of copyright holders that would have to give their consents in private licensing negotiations for the four network stations -- that now need provide *only* retransmission consent -- and the result would be market failure.

In short, the compulsory copyright regime is necessary for a robust, competitive pay-TV industry.

That is not to say, however, that the current statutory licensing regime is perfect. Rather, as with any forward-thinking policy, the system should be updated to reflect the modern marketplace.

My second point is that it is time for a uniform digital statutory license.

Today, cable, telco and satellite providers, as well as emerging online video providers, compete for the same customers. No matter what distribution technology is used, programming on broadcast television channels still accounts for more than one-third of all primetime U.S. television viewing, and all pay-TV providers must carry local broadcast content if they hope to compete effectively. The marketplace no longer calls for the antiquated, disparate licensing regimes between the different types of distributors.

DISH Network believes that Congress should enact a single, uniform digital statutory copyright license that will ensure an equitable, competitive playing field among current pay-TV providers, while accommodating nascent and future distribution methods, such as online video providers.

By recommending to Congress a more efficient, holistic, and technology-neutral approach to the statutory copyright license regime, the Copyright Office can help afford

copyright holders, distributors, and consumers more flexibility and protection than under the current system. DISH Network is happy to work with you on the specifics of these recommendations to ensure a vibrant, competitive pay-TV market now, and for years to come.

I look forward to answering your questions. Thank you.