



LPTV
SPECTRUM
RIGHTS
COALITION

MIKE GRAVINO
DIRECTOR

PO BOX 15141
600 PENNSYLVANIA AVE,
SE
WASHINGTON, DC 20003

WWW.LPTVCOALITION.COM
LPTVCOALITION
@GMAIL.COM
(202) 604-0747

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The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
437 Russell Senate Office Building
Washington, DC 20510-4502

The Honorable Charles E. Grassley
Ranking Member, Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510-1501

RE: STELA LEGISLATION & LOW POWER TV STATIONS

Dear Chairman Leahy and Ranking Member Grassley:

The LPTV Spectrum Rights Coalition (“the Coalition”), is a research, advocacy, and lobbying project of more than 140 LPTV broadcasters and supporting industry partners with more than 900 operating stations and new construction permits in all 50 states, DC, and Puerto Rico. Our Coalition includes urban local power digital stations in most of the top TV markets; many rural private, government and non-profit TV translators; and members which are national programming networks, consulting engineers, communications attorneys, systems integrators, and tower owners. We are the most diverse and active LPTV participant in the FCC’s Incentive Spectrum Auction rule making process.

We have three issues which we would like to see addressed as you consider the reauthorization of the Satellite Television Extension and Localism Act (“STELA”) legislation your Committee is considering.

1. The inconsistency of the local service area boundaries for cable retransmission of LPTV with the boundaries STELA established for satellite retransmission.
2. The inconsistency of the satellite MVPD regional installation rules which discriminate against LPTV in how these vital local stations are displayed in the satellite MVPD channel databases.
3. The lack of vital industry statistics provided by the satellite MVPDs related to the number of their subscribers which use their local-in-local service.



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The inconsistency of the local service area boundaries for cable retransmission of LPTV with the boundaries STELA established for satellite retransmission.

In 2010, STELA facilitated the ability of satellite providers to carry LPTV stations throughout the stations' designated market areas ("DMAs") by striking an archaic and arbitrary geographic limitation on that carriage. While we welcomed this provision in STELA, the provision has created different copyright laws that apply to satellite and cable companies, and has left in place the arbitrary geographic limitation for LPTV carriage by non-satellite operators. We urge that this disparity be addressed in the STELA reauthorization through a narrow fix:

Make the local service area boundaries for cable retransmission of LPTV stations consistent with the boundaries STELA established for satellite retransmission

Prior to STELA's enactment, the retransmission of an LPTV station by either satellite or cable providers was considered "local" only if the subscribers served were within 35 miles of the station's transmitter site. This "local" service area was reduced to 20 miles if the LPTV station was located in one of the Top 50 metropolitan statistical areas. Because these geographic limits did not align with DMA boundaries, satellite and cable operators would have to pay costly statutory copyright royalty fees in order to retransmit a LPTV station throughout the station's DMA. This served as a significant disincentive for satellite and cable providers to carry LPTV stations, which in turn prevented consumers who lacked an antenna from accessing local LPTV programming.

STELA partially addressed this disincentive by allowing satellite television providers to retransmit LPTV stations to subscribers throughout the station's DMA on a local, royalty-free basis. This legal reform appropriately recognized that the programming of LPTV stations often may be of interest and relevance to *all* viewers in the station's DMA, not just those who happen to reside in an arbitrarily defined zone of 35 (or 20) miles from the LPTV station's transmitter site. However, the geographic limits remain in effect for non-satellite carriage of LPTV stations.

This disparity between how the copyright law treats satellite and cable retransmission of LPTV programming disadvantages consumers who are cable subscribers by making it more difficult for cable operators to retransmit LPTV station's television programming to all subscribers in the station's local market. This disparity also creates an uneven playing field that distorts the television distribution marketplace.

To address these issues, we request that:

The definition of "local service area" for LPTV stations in 17 U.S.C. § 111(f)(4) be updated to make the geographical limits applicable to cable operators consistent with the DMA boundaries that STELA provided for satellite carriers.



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Harmonizing the copyright laws that apply to LPTV retransmission by cable operators and satellite carriers would promote fair competition among the various television distribution platforms and would provide new programming choices to subscribers who might otherwise not receive LPTV signals from their television service provider. Moreover, such a change would enhance the sustainability of LPTV systems and the unique programming that many of us provide.

It is important to note that nothing in this proposed fix would require any satellite or cable operator to carry any LPTV stations- it would simply give those operators who choose to carry LPTV stations the ability to do so on a local basis throughout the DMA instead of only within the arbitrary 35/20 mileage limits.

2. The inconsistency of the satellite MVPD regional installation rules which discriminate against LPTV in how these vital local stations are displayed in the satellite MVPD channel databases.

In real world practice, at the installer-level in the field, satellite MVPD customers in many cases are not provided with LPTV stations in their customer-premise equipment provided for by the satellite MVPD. This is a huge problem for LPTV in that viewers within the normal coverage areas of an LPTV who subscribe to a satellite MVPD cannot see that LPTV station when they look for channels to view. This is not the same as issue #1 above, this is about the satellite MVPD customer even knowing that an LPTV signal can be obtained via an antenna. In many cases local installers want to include an antenna for customers but their regional satellite MVPD offices prevent them from letting customers know that they can also use an antenna. This will not cost the satellite MVPD in any way other than a simple database entry.

What LPTV wants is for the satellite MVPD to include in their customer premise tuners to include LPTV in their channel line-up's of what is available.

3. The lack of vital industry statistics provided by the satellite MVPDs related to the number of their subscribers which use their local-in-local service.

While the satellite MVPDs will argue that the local-in-local service subscriber statistic is confidential, it is of vital importance in knowing the impact on LPTV as a result of the Incentive Spectrum Auction Act ("the Act"). During the debate in 2011 and 2012 around whether to include LPTV as auction eligible entities in the Act, Congress never had the CBO score LPTV as either auction eligible, or to ascertain the impact of the Act on the LPTV industry. Our Coalition believes that this was a violation of UMRA, the Unfunded Mandates Regulatory Act. We believe that Congress did not have the full picture when it came to understanding how large an impact on the 10,000+ LPTV stations and new construction permits there would be (which we have estimated to be as large as \$1 billion in total costs to the LPTV industry based on an average of over \$156,000 per station and permit).



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The FCC refused in its' recent Incentive Spectrum Auction Report and Order to consider the impacts on LPTV because it believes that it is not bound by UMRA, since it is an independent agency. What this means is that both Congress and the FCC have failed to even study what the impacts on LPTV are and could be. One of the impacts our Coalition has studied is just how large is the viewing audience for free over-the-air broadcast television (OTA).

Industry statistics vary widely for this. The National Association of Broadcasters (NAB) has commissioned studies which show that as much as 19% of Americans use free broadcast television for "exclusive" OTA TV viewing. The FCC uses a more conservative number of about 12% OTA. And the cell phone and consumer electronics industry uses a very conservative number of 7% OTA. But what all three of these statistics do which our Coalition believes is not correct, is that they focus on "exclusive" OTA use, and not "total" OTA use.

Exclusive OTA use assumes that the only way a viewer gets content is by OTA, meaning no satellite MVPD subscription, and/or no internet OTT. Our Coalition has looked for a satellite MVPD local-in-local subscriber statistic since it would tell us how many of their subscribers are using OTA for local channels. But we have not been able to find this statistic. So we assume from our members' collective field experience across the country that 50% of satellite MVPD subscribers also use an antenna for local OTA reception. The FCC's 14th Video Competition Report says that about 34 million TV households, or some 88 million viewers use satellite MVPD. This works out to about 28% of the population of the country. So the Coalition assumes about 14% of the country (50% of satellite MVPD) use an antenna to receive local TV channels. (Please see attached chart for our total analysis of this issue).

The Total OTA vs Exclusive OTA Analysis:

19% = NAB exclusive OTA study

14% = 50% of satellite MVPD users

33% = Total OTA estimate or 113 million total OTA viewers based on 315 million total population

12% = FCC exclusive OTA estimate

14% = 50% of satellite MVPD users

26% = Total OTA estimate or 82 million total OTA viewers based on 315 million total population

07% = FCC exclusive OTA estimate

14% = 50% of satellite MVPD users

21% = Total OTA estimate or 66 million total OTA viewers based on 315 million total population

Congress, the FCC, and LPTV need an accurate % of satellite MVPD local-in-local subscriber statistics.



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In summary, the LPTV industry has not received adequate analysis of how the Incentive Spectrum Auction will impact it. Neither Congress nor the FCC has chosen to study what our Coalition has estimated to be a \$1 billion unfunded mandate on the LPTV industry. The STELA legislation renewal process provides Congress with an opportunity to help right this wrong by first beginning to study how large the actual total over the air TV audience is, and how LPTV can be a vital part in serving it.

Congress can also help to fix an imbalance in the way that the satellite MVPD discriminate in who gets to be displayed in their channel listings. A simple ruling that requires the satellite MVPD to accurately display local OTA LPTV channels is only fair.

And finally, Congress needs to change in STELA what is considered the local service area boundaries for cable retransmission of LPTV stations consistent with the boundaries STELA established for satellite retransmission.

The LPTV Spectrum Rights Coalition, and its national groups of LPTV station owners and supporting industry partners, is available to brief your Committee further on any and all LPTV issues. We also urge you to consider studying the impacts on LPTV as a result of the Incentive Spectrum Auction process, as the FCC has refused to do so.

Respectfully submitted,

Mike Gravino, Director
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Attachments:

- a) Coalition membership list
- b) OTA Slides