Testimony of Scott Ward on behalf of
DISH Network L.L.C.
Before the Ohio Senate Finance
General Government & Agency Review Subcommittee

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Good morning Chairman Jordan and members of the Committee. My name is Scott Ward, an attorney with the law firm of Orrick, Herrington & Sutcliffe, LLP. I am here today on behalf Dish Network and the interests of more than one million subscribers of satellite television in Ohio. About 25% of pay television subscribers in Ohio use satellite television. They choose satellite because of superior service and programming. Of course, many Ohioans also choose satellite because of where they live. In rural areas of the state, where cable will not provide service, satellite is the only available pay television option.

But the State of Ohio has created a disincentive for Ohioans to choose satellite. Through tax policy, the state rewards cable companies and penalizes satellite customers. That's because since 2003, the State has subjected satellite television service to the state sales tax, while cable service is not subject to that same state sales tax. This is a clear of example of government choosing winners and losers, of treating competitors differently, and tilting the competitive marketplace through unfair tax policy. I mentioned that satellite has about 25% of the pay television market in Ohio. Nationally, that average is 35-40% of the pay television market. Unfair tax policy in Ohio has suppressed competition in the pay television marketplace.

The Governor's budget proposal recognizes this unfairness, and for the third straight cycle proposes adding the sales tax to cable television service. To be clear, the satellite television industry supports equal tax treatment of competitors in the pay television marketplace. Forty-five states tax satellite and cable the same, whether that is through no tax at all or an equal tax if they choose to do so. But we do not support subjecting cable to the sales tax as a way to fix the current inequity in Ohio. The unfairness exists today because of a competitor asking the State to tax the customers of another competitor. It would be hypocritical of me to stand here today and request the same. So we do not support adding the sales tax to Ohioans who have cable service. Rather, we ask you to set even the playing field by removing the sales tax from Ohio satellite customers.

To be clear, we are talking about a tax that impacts our customers, not any company's tax bills. Now you may hear that satellite doesn't pay the same other taxes that cable does. That is simply not true.

Tax	Rate	Cable	Satellite
State Sales Tax on the Provision of Television Services	5.75%	NO	YES
State Sales Tax on set-top boxes and other equipment	5.75%	YES	YES
County Sales Tax on set-top boxes and other equipment	Up to 3%	YES	YES
Commercial Activity Tax (CAT)	.26% on receipts > $1 million	YES	YES

As you can see satellite customers pay state sales tax, and local sales tax. And satellite companies pay the CAT tax just like hundreds of thousands of other businesses here in Ohio. Our cable competitors have and will continue to argue that the franchise fees that they pay to local governments for the right to use public rights of way, and then pass on to their customers, are equivalent to the state sales tax that satellite television customers pay. That is of course apples and oranges. We don't tax airline passengers because train operators have to pay to lay track across other people's property. So why does the state of Ohio tax satellite customers because cable has to pay rent to lay cable in the public rights of way? The cost of a train ticket reflects the cost to use a traveling method that requires the infrastructure to lay hundreds of miles of track. And likewise a cable customer's bill reflects the cost to use a television service whose business methods requires laying hundreds of miles of cable – the franchise fee.

Somehow this has gotten confused, because an Ohio satellite customer currently does pay a tax for their service simply because the cable companies have higher costs of doing business. This notion that franchise fees are really just a tax, and therefore equivalent to the sales tax on satellite ignores the basics facts of how the franchise works. A franchise fee is negotiated by the cable companies with the locality or the state for the right to place their equipment in the public rights of way, and operate their business. So while the federal government dictates that franchise fees are capped at 5%, the cable companies can and have negotiated lower rates – as low as 2% in some areas. Now I don't know about you, but I sure wish I could negotiate my tax rate with the IRS. Of course I can't, because it is a tax. But if I were to enter into a contract with a county, to use county property for my business, I could and would negotiate the fee I pay for that contractual right.

And that is consistent with how cable companies talk about franchise fees outside of these halls. In court, they call them contractual rights and defend those rights vigorously. And in documents filed with the Securities and Exchange Commission they are called franchise rights, and the value of those rights are listed in their asset column.

When franchise fees are properly understood as rent, and as a cable company's cost of doing business, there can be no justification for the unequal tax treatment of satellite customers versus cable customers.

But let's pretend for just a second that we can all agree on this unfair premise - that the State should artificially raise the costs of a service to a consumer because one provider has higher costs of doing business than another. Under that premise, the current tax treatment of satellite tv is still unfair. The rate of the franchise fees, capped at 5% but as low as 2%, does not equal the current state sales tax rate of 5.75%. This problem is made worse by the budget proposal to raise the sales tax to 6.25%. If that provision were to pass, a satellite customer will pay 6.25% tax to watch the same show their neighbor the cable customer is watching for only at most a 5% franchise fee, but in many cases even lower.

Finally, and in closing, this all assumes that a satellite customer has neighbors who choose cable television. But what about the many parts of Ohio where they have no choice, because cable will not provide service to their homes. In rural Ohio, satellite customers are paying an unfair tax not because of their choice of tv provider, but rather simply because of where they live.

The sales tax on satellite television is unfair, it stifles competition, and it particularly hurts Ohioans who live in rural areas who don't have a choice. Ohio is an outlier on this tax - it is one of only 5 states that has different rules for taxing pay television services. We urge you to fix this inequity, not by raising taxes on our neighbors who have cable television, but rather by removing the state sales tax currently imposed unfairly on satellite television services.