Testimony of Scott Ward on behalf of
DISH Network L.L.C.
Before the Ohio House Finance Committee

April 26, 2017

Good morning Chairman Smith and members of the Committee. My name is Scott Ward, I am an attorney with the law firm of Orrick, Herrington & Sutcliffe, LLP. I am here today on behalf of 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 its superior service, innovative technology, and convenient 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.

Unfortunately, the State of Ohio has created a disincentive for Ohioans to choose satellite. Since 2003, the State has subjected satellite television service to the state sales tax at 5.75%, while cable service is not subject to that same state sales tax. This is a clear 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, while the Cable Association claims the satellite market share is 31%. Nationally, the average share for satellite in the pay television market is 35-40%. So even presuming Cable's proposed figures are accurate, Ohio's unfair tax policy has suppressed competition in the pay television marketplace.

The Governor's budget proposal recognized this unfairness, and for the third straight cycle proposed 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. Currently, 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, and in total only 8 states have passed unfair tax schemes on satellite similar to Ohio's model. This unfairness in Ohio's tax scheme exists today because a competitor asked the State to tax the customers of another competitor. It would be hypocritical of me to stand here today and request the same on our cable competitors. So we are asking to set even the playing field by removing the sales tax from Ohio's satellite customers.

Now you may hear that satellite doesn't pay other taxes that cable is required to pay. Let me explain and provide an illustration of how this is misleading.

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. Satellite companies also pay the CAT tax just like hundreds of thousands of other businesses here in Ohio. The Cable Association has further claimed that they pay and we somehow don't pay the local piggyback sales tax. This is simply false. Even looking at the Dish bill attached to Cable's testimony in the House Ways and Means Committee, one can see that an Ohioan's Dish bill includes a local sales tax applied for equipment. ALL pay television providers pay the local piggyback taxes on equipment. Moreover, although a local sales tax on satellite television service is preempted by federal law, Cable does not pay a local piggyback tax on its provision of television service either because localities can only apply the piggyback tax on something that the state assesses a sales tax on. Hence the name piggyback tax. The state doesn't assess a sales tax on cable television services so there is no local piggyback tax on them either.

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. Franchise fees are a cost of doing business under Cable's model of laying miles and miles of cable under the public rights of way. Satellite has its own costs of doing business related to launching and maintaining expensive satellites in space. However, we don't come to state legislatures asking that our cost of doing business in launching satellites be passed on to our cable competitors.

Similarly, 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. While the cost of an airline ticket reflects the costs for fuel and maintenance to fly a jet across different locations. Likewise a cable customer's bill reflects the cost to use a television service whose business methods require laying hundreds of miles of cable – i.e. the franchise fee. These franchise fee costs should not be showing up on a Dish customer's bill to cover cable's costs of business.

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 basic 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%, 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 in the billions of dollars. 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 even pretending for just a second that we 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 as laid out by Cable, the current tax treatment of satellite television is still unfair. The rate of franchise fees, capped at 5% but as low as 2%, does not equal the current state sales tax rate of 5.75%. This problem would be made even worse should the budget propose raising the sales tax to 6.25%. If such a provision were to pass, a satellite customer would pay 6.25% tax to watch the same programs that their neighbor, who happens to be a cable customer, would only have to pay at most a 5% franchise fee, and in many cases an even lower amount.

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 television provider, but rather simply because of where they live. Simply put, this becomes a tax on rural Ohioans.

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 8 states that has passed different rules on 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.