Testimony of Jon Mandel
On behalf of
DISH Network L.L.C.
Before the Senate Budget and Taxation Committee
March 10, 2020

Thank you Chairman Guzzone, Vice-Chair Rosapepe and members of the Committee. My name is Jon Mandel of the Law firm Orrick, Herrington and Sutcliffe. I am here today on behalf of DISH Network and its tens of thousands of subscribers here in the state. In total, over 350,000 Maryland families and businesses subscribe to satellite TV, and the satellite video industry comprises approximately 30% of the pay TV market.

Thank you for allowing me the time to share with you our concerns regarding SB 1001, the 21-st Century Economy Sales Tax Act. As a principle of fundamental fairness, we believe that the imposition of any digital goods tax on a video provider and their services, such as Pay Per View and Video on Demand, should be imposed equally on all customers of such products, satellite and cable alike.

Unfortunately, the bill as written exempts cable from such tax. Specifically, it does so by stating that the tax "does not apply to a retail sale of a multichannel video programming service that is subject to a franchise fee…" We see this argument all too often, that cable should receive some form of special tax treatment, because they pay franchise fees to municipalities in order to access the right of way and satellite does not.

Typically, the argument goes like this: cable asserts that franchise fees are taxes, they pay them, satellite does not, and so in the name of "parity" or "fairness", they are entitled to a credit or in this case, an exemption, with respect to other taxes that may be imposed.

The crux of this argument relies on a single premise: that franchise fees are taxes. If they are not, then cable's argument falls apart; there is no justification for avoiding the burdens of their competitors' customers.

As you might expect, we can assure you that franchise fees are not taxes. Rather, they are payments cable makes to a municipality to gain access to the right of way. Why? Cable technology requires it. That is, the way a cable service works is that video signals are sent to one or several centralized locations in a given city, called a "headend." From there, physical lines—cable lines—are run from the headend to each and every customer home and business, snaking miles and miles throughout the city. They are typically placed under city streets and sidewalks.

But when a cable company comes to town, do they just find any building or warehouse with an empty floor and move their headend equipment in? Of course not. They would find the buildings owner, the landlord, and request permission to occupy space in the building. A landlord would grant such permission, conditioned, of course, on the payment of rent, for cable's use of his or her property.

It is no different with respect to the laying of cable. Cable companies don't just get a backhoe and start digging up streets and sidewalks, obviously. First, they must seek permission from a municipality to access the right of way, the street and sidewalks, to place their infrastructure. Permission, as you might expect, is granted upon the payment of a fee, or essentially rent, for the right to access the municipal right of way. That rent, or fee, is called a franchise fee—in some, but not all, circumstances, to be discussed below. The franchise fee is capped at 5% of gross revenues, as defined, via federal statute.

Why doesn't satellite pay franchise fees? Because satellite technology obviates the need to access the right of way. Instead of constructing headends, digging up streets and sidewalks, and running physical cables to customer residences, DISH transmits its signal directly to its customers' homes. The video signals are sent from an uplink center in Cheyenne, WY to a fleet of satellites in geosynchronous orbit over the continental U.S. Those signals are then, in turn, beamed directly to customers satellite antennas located on roofs or sides of houses. There literally is no right of way access utilized for which a payment would be required.

However, one should not assume that satellite companies don't have their own significant infrastructure costs. They pay hundreds of millions to design, build, launch and maintain a fleet of satellites in orbit. But we are not asking for tax exemptions due to the fact that we have to pay for rocket fuel and cable does not. We each have our own costs related to the technology we employ to provide our service, but that fact should not enter into tax policymaking decisions.

Furthermore, even cable companies don't consider franchise fees to be a tax. True, that's what they say when they are in the Statehouse seeking an exemption, but significantly, every year, in writing and under oath, they characterize franchise fees quite differently.

Every public company, in including cable companies and satellite companies, must file a year report to the Securities and Exchange Commission, called a "10k." This is a snapshot of a given corporations financial condition, assets, liabilities, risks and inherent market strengths. These reports are available to investors, potential investors, and the general public, and are filed under oath, with civil and criminal penalties for false or even misleading statements.

If, for example, you look through Comcast's or Charter's 10k, you might be surprised to find that there are no references to "franchise taxes." Indeed, there are not that many references to "franchise fees." However, both companies 10k's are replete with references to "franchise rights."

That is, in reality, instead of considering franchise fees as a tax, cable companies actually list franchise rights *as their largest asset.* It makes sense—both companies gain a legal right to access the municipal right of way, which obviously has vast commercial value. How vast? Comcast values its franchise rights at *$60 billion.* Charter values its franchise rights at *$67 billion.* Furthermore, cable companies are free to sell such rights; as noted in Charter's 2017 10k filing, when it purchased Time Warner Cable, it paid over $54 billion for TWC's franchise rights.

No one spends billions to purchase tax liability, and except when trying to avoid the same tax obligations as everyone else, cable companies don't even pretend that their franchise rights are anything but the largest asset on their books. Franchise fees cannot be both a tax and a multibillion dollar asset that can be bought and sold. Franchise fees simply are not a tax.

Thus, there is no reason to provide the state's dominant video provider, with 70% market share, any form of special treatment that exempts them from have to help support the Blueprint for Maryland's Future Fund like every other video provider.

We respectfully ask that if you proceed with this bill, or any other form of taxation on satellite or our customers, that you treat us fairly compared to our competitors, and tax us all the same.

Thank you.