



**In-Person Testimony of Damon Stewart
On behalf of
DISH Network L.L.C. & DIRECTV, LLC
Before the Senate Committee on Federal and State Affairs
March 14, 2022**

SUPPORT: SB 547

Thank you, Chairman Olson, Vice Chairman Hilderbrand, and members of the Committee. My name is Damon Stewart, and I am with the law firm Orrick, Herrington & Sutcliffe LLP. I am here today on behalf of DISH Network and DIRECTV and their hundreds of thousands of subscribers here in the state. Approximately 300,000 Kansas families and businesses subscribe to satellite TV, and both companies also have approximately 100,000 Kansas subscribers to their video streaming platforms—DISH's platform is called Sling TV and DIRECTV's platform is DIRECTV Stream.

Thank you for allowing me time to share our support of SB 547. I want to emphasize at the outset that this bill is designed to clarify existing law—we are *not* asking for or suggesting any change to the status quo. The bill is necessary because municipalities across the country, including the City of Fort Scott here in Kansas, are creatively interpreting the franchise fee statute and have brought class action lawsuits against satellite TV and video streaming providers in an attempt to force them to pay **cable** franchise fees. If the Kansas legislature does not intervene, customers could pay 5% more on each of their video streaming bills—all for the same cable line that is already in the ground and for which customers already pay a 5% franchise fee on their cable bill.

If the municipalities have their way, customers will be subject to an endless number of 5% fees, all stacked on top of each other for use of the same cable line. And many Kansas households have multiple streaming platforms, so they would see 5% more on their DISH bill, 5% more on their DIRECTV bill, 5% more on their Netflix bill, 5% more on their Hulu bill, 5% more on their Disney+ bill, 5% more on their Amazon Prime bill, and 5% more on all other streaming services they have. Right now, it's only the City of Fort Scott that has filed suit, but any number of additional cities and municipalities could decide to do the same at any time, and if successful impose fee after fee on Kansas families and businesses. And, this is at the same time when literally billions of dollars of federal taxpayer funds are already being directed to municipalities.

I want to take a moment to highlight the absurdity of charging franchise fees on video streaming providers by very briefly talking about what franchise fees are and what they are for. Cable companies pay rent to municipalities so they can dig up streets and sidewalks and lay cable lines to connect customers with their television programming. Franchise fees are a form of rent, and this rent is paid to municipalities in exchange for the right to dig up the ground and use the public right-of-way—a right which can be leased or sold to other cable companies. Franchise fees are not taxes—they are rent for the use of public property. Federal law already caps the amount municipalities can collect from a cable company at 5% of

gross revenue, with many carveouts to limit taxable revenue. In return, cable companies receive these rights that are worth **billions** of dollars to the cable industry.

Satellite TV and streaming providers do not dig up streets and sidewalks to deliver their service to their subscribers. Customers receive their satellite service directly from satellites in space, and streaming video is accessed over the internet, using the same cable line that is used to transmit any website content you view or any email you send. With a video streaming platform, you can watch your favorite programs from your laptop, phone, tablet, game console, or any other internet-connected device. Just like satellite TV, Netflix and Disney+ do not dig up the ground, and they do not gain valuable franchise fee rights worth billions of dollars in order to provide you with your favorite shows or movies.

There is no logical reason why a satellite TV or video streaming provider should pay franchise fees. But this has not stopped the municipalities from trying. They are using a flawed interpretation of the definition of Video Service within the Video Competition Act to do so. We are asking for the simple clarification in SB 547 to affirm that the act does not, and never was intended to, include satellite TV or video streaming providers.

Thank you again for your time. We respectfully ask that you vote in favor of this bill.