Satellite Broadcasting
and Communications
Association

Testimony of Lori Kalani
Chairman of the Board
Satellite Broadcasting & Communications Association

Before the General Court of the Commonwealth of Massachusetts
Joint Committee on Revenue
Regarding Senate Bill No. 1314

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Chairman Downing and Chairman Kaufman, and members of the Committee, thank you for the opportunity to testify before the Joint Committee. My name is Lori Kalani, and I serve as the Chairman of the Satellite Broadcasting & Communications Association of America ("SBCA").

The SBCA is the national trade organization representing all segments of the satellite industry. It is committed to expanding the utilization of satellite technology for the broadcast delivery of video, audio, data, music, voice, interactive, and broadband services. The SBCA's largest members are DIRECTV and DISH Network, but they are by no means our only members. Our association also includes distributors, retailers, and installers—a number of which are located in Massachusetts.

I am here today to urge you to reject Senate Bill No. 1314. This proposal would impose a new 5% sales tax on satellite TV service, but no tax on cable TV service. While we recognize that difficult decisions must be made in these challenging budget times, this tax simply does not make sense. It would unfairly hurt nearly a half million households in Massachusetts, and disproportionately affect the rural, second language, and lower income families of the State, while yielding little additional revenue.

I. The Proposed Tax will Hurt Massachusetts Families

TV is our primary source of information on everything from local news and weather to national politics. We click it on first thing in the morning to learn if a storm is brewing, if our schools are closing, and if we have to take an alternative route to work. Throughout the day, it tells us if our Medicare payments will be cut, if our streets are safe, and how our troops are faring in far-away wars. At night, we turn to TV to entertain us, to teach us and inspire us, to keep us awake or lull us to sleep.

When times are tough and wallets are thin, TV is the entertainment of last resort for thousands of Massachusetts families. We can cut out luxuries such as plays, movies, concerts, and sporting events. But when we do, we stay at home and click on the TV. The proposed tax— $45 a year for the average subscriber—would put many Massachusetts families to an untenable choice between a tax they cannot afford to pay and a service they cannot afford to lose.

But, worse yet, the proposed tax is also unfair and discriminatory. It would burden satellite TV subscribers—who are disproportionately found in rural and lower income neighborhoods—with an additional 5% tax, while, at the same time, granting cable a tax credit that would effectively shield it from the tax.

Giving cable a discriminatory tax credit yields two unjustifiable results: *First*, since cable has over 80% of the market in Massachusetts, this measure will generate very little revenue for the State. *Second*, what little revenue the tax does generate will be taken directly out of the pockets of those who are least able to afford it—the rural and lower income families that have come to rely on satellite TV as their bridge to the rest of the world. This is no time to tax TV. But there is never time to pass a tax that will generate so little revenue at so great a cost.

II. The Proposed Tax on Satellite TV Service is Discriminatory and Violates the Commerce Clause of the U.S. Constitution

The cable companies attempt to justify this discriminatory tax credit by pointing to the fact that they pay franchise fees whereas satellite does not. So, they say, it is only fair that if they pay franchise fees, satellite customers should be forced to pay an equivalent amount in taxes. Don't be fooled. Franchise fees are ***not*** the same as taxes. Franchise fees are a cost of cable's business. Cable pays franchise fees, by voluntarily negotiated contracts, to compensate municipalities for digging up the public streets and sidewalks to lay its cables and to use the public rights-of-way. Simply put, franchise fees are rent for very valuable property rights—rights the cable companies list as their most valuable asset. So when a proposal, like SB 1314, allows cable to subtract its franchise fees from a tax bill, it means that taxpayers are subsidizing a cost of cable's business. You don't have to take my word for it. Let me read a few quotes from some of the leading authorities on the issue:

- "Franchise fees are commonly understood to be consideration for the contractual award of a government benefit."
- "Franchise fees are a form of rent."
- Cable's "largest asset[s]" are "cable franchise rights" purchased with franchise fees. In contrast, "[t]axes simply have no contractual element; they are a demand of sovereignty."

These are not the words of a satellite lobbyist. No, these are the words of the ***cable companies*** themselves.

Do satellite TV companies pay franchise fees? Of course not—and the reason is simple: They have found an innovative way to deliver their programs directly to subscribers' homes from outer space without the need to burden the cities and towns of Massachusetts by digging up their streets and sidewalks. We don't ask Massachusetts taxpayers to subsidize our infrastructure costs – satellites, spectrum, rockets, and launch pad fees; likewise cable should not be granted a subsidy for its costs of doing business.

It's also important to note that the proposed tax is not just bad for satellite TV subscribers. Competition is especially important in the video marketplace. We all remember what the world looked like when cable had 100% of the pay TV market. Customers were forced to pay high prices, were offered inferior programming, and were subject to inferior or, in some cases non-existent, customer service. While the satellite industry still has a long way to go in Massachusetts, I think we would all agree that the world looks a lot different today than it did in the early 1990s. I urge you to not to turn back the clock with this discriminatory and anti-competitive tax policy.

You should also consider the legal infirmities of this bill. Any tax that discriminates against interstate commerce is unconstitutional and this tax would be no exception. If SB 1314 is enacted, the satellite industry would have no choice but to challenge it in court—a challenge that we expect to win. Thus, rather than generate new revenue for the State, SB 1314 would instead create a substantial liability for the Commonwealth of Massachusetts. This is simply not a risk that makes sense in the current economic climate.

In sum, I ask you all for your support in rejecting SB 1314 and its discriminatory tax on satellite TV service. It's the wrong tax at the wrong time. It's discriminatory, illegal, and not worth the risk. Simply put, it's just bad policy.

Thank you for your time and attention. I will be happy to answer any questions.