

experienced no change in local-into-local service during the relevant time period, serves as the control.

- DISH Network started carrying CBS in West Palm Beach, FL on August 2, 2002, after a little over one month of carriage of the other three major broadcast networks. The Miami, FL DMA, which experienced no change in local-into-local service during the relevant time period, serves as the control.
- DISH Network started carrying CBS and NBC in Colorado Springs, CO on February 19, 2003, after three months of carriage of the other two major broadcast networks. The Denver, CO DMA, which experienced no change in local-into-local service during the relevant time period, serves as the control.¹²⁸

110. For the other six events, we have information only from the “EchoStar Knowledge Base,” a site containing content provided by DISH Network users.¹²⁹ Because we have not been able to verify these events through press releases or news stories, we present the results of our analyses both including and excluding these events. The six events about which we have information only from the EchoStar Knowledge Base are:

- DISH Network started carrying FOX in Fresno, CA on May 12, 2004, after six months of carriage of the other three major broadcast networks. The Sacramento, CA DMA, which experienced no change in local-into-local service during the relevant time period, serves

¹²⁸ Note that, in this case, the partial service involved the absence of two major networks. Hence, our results for this case, presented below, indicate that, although the introduction of DBS local-into-local service with all four broadcast networks reduces Comcast’s share, there is no significant difference in Comcast’s share between the periods when the DBS providers have two or three, rather than four, of the major broadcast networks. Because the Colorado Springs event is different from the others that we examine, we have also run our specifications without the Colorado Springs event, with no change in our findings.

¹²⁹ Available at <http://dishuser.org/dishlist.php>, site visited February 21, 2010.

as the control.

- DISH Network started carrying FOX in Ft. Myers, FL on December 19, 2003 after five months of carriage of the other three networks. The Tampa/St. Petersburg, FL DMA, which experienced no change in local-into-local service during the relevant time period, serves as the control.
- DISH Network started carrying ABC in El Paso, TX on November 5, 2004, after six months of carriage of the other three networks. The Tucson, AZ DMA, which experienced no change in local-into-local service during the relevant time period, serves as the control.
- DISH Network started carrying CBS in Harrisburg, PA on October 30, 2002, after one month of carriage of the other three networks. The Philadelphia, PA DMA, which experienced no change in local-into-local service during the relevant time period, serves as the control.
- DISH Network started carrying FOX in Charlottesville, VA on August 10, 2005, after eleven months of carriage of the other three networks. The Richmond, VA DMA, which experienced no change in local-into-local service during the relevant time period, serves as the control.
- DISH Network started carrying ABC in Meridian, MS on December 7, 2005, after eleven months of carriage of the other three networks. The Jackson, MS DMA, which experienced no change in local-into-local service during the relevant time period, serves as the control.

111. The empirical specification we use to analyze the local-into-local events is a fixed-effect (“differences-in differences”) approach similar to the one used to analyze the retransmission disputes. In particular, we rely on monthly data for Comcast subscribers and homes passed broken down by DMA. For the local-into-local analysis, we define an indicator variable for the months in which the DBS provider offered only partial service in a given DMA, as well as the month just after full service had been introduced. We estimate Comcast’s DMA-level penetration rate as a function of DMA fixed-effects, year-month fixed effects, and the “partial service” and “one-month after full service” indicator variables, which are “turned on” during the relevant months in the affected DMAs. As described above, for each affected DMA, we define a nearby control DMA in which DBS service was unchanged during the full time-period being studied. In this way, the estimated coefficients compare the change in Comcast’s penetration rate in the affected DMA (between the months with partial local-into-local service and the months with full local-into-local service) to the difference in penetration rate across the corresponding months in the unaffected, control DMA.¹³⁰

112. We consider two alternative post-event time periods for study. In the first version, we include a period of six months after the DBS provider began offering full local-into-local

¹³⁰ As with the retransmission disputes, we have also estimated versions of the model using observations at the entity, rather than DMA, level. All substantive results are confirmed. In addition, we have estimated versions in which the dependent variable is the monthly *change* in Comcast’s share. Again, all substantive results are confirmed.

service.¹³¹ Although this is longer than the three-month (pre-event) base period we used for the retransmission disputes, we include the extra months (where data permits) to allow more time for the effects of full local-into-local service to take hold. However, as a second version, we include only three months after the introduction of full local-into-local service to be sure that changes farther removed from the introduction of full local-into-local service do not confound our results.¹³² In each case, we include up to three months before the introduction of full service (for West Palm Beach and Harrisburg DMAs, the periods of partial service lasted for only one month each).¹³³ For each model, we stack all of the events into a single regression, meaning that we combine information from the various events to form a single estimate of the effect of limited local-into-local service.

113. Table 6 reports the parameter estimates for the local-into-local models. The first two columns show results for the six-month post-event period, with and without the events about which we have information only from the Echostar Knowledge Base, while the next two

¹³¹ To be precise, we include no more than six months following the introduction of full local-into-local service, but in many cases events in the marketplace or data issues require us to include fewer. In particular, in Tucson, three months after DISH Network began offering full local-into-local service, DirecTV introduced local-into-local service. Similarly, in Colorado Springs, DirecTV introduced local-into-local service two months after DISH Network began offering full local into local service. In Portland, five months after DISH Network began offering local-into-local service, there was a discontinuous break in the Comcast share data. This break appears to be due to a data reporting issue in which some homes passed were shifted to the Eugene DMA at a different point in time than the analogous subscribers. In Fresno, two months after DISH Network began offering full local-into-local service, DirecTV introduced local-into-local service. In Ft. Myers, five months after DISH Network began offering full local-into-local service, DirecTV introduced local-into-local service.

¹³² For Colorado Springs and Fresno, the post-event period is only two months, at which point DirecTV entered with local-into-local service.

¹³³ We have also estimated a version of the model including the full time during which all but one (two in the case of Colorado Springs) of the four major broadcast networks were offered locally prior to the introduction of full local-into-local service. All substantive results are confirmed. Due to the discontinuity in the data for Portland, the full partial-period could not be included; instead, we used Portland data starting in January 2002, even though the partial-period started in September 2000. For El Paso, we included data starting in July 2004 (after DirecTV entered the El Paso DMA), even though the partial period for Dish started in May 2004.

columns contain the corresponding results for the three-month post-event period. {{

}} Thus, there is no evidence of any positive effect on Comcast’s penetration rate when a DBS provider’s local-into-local offering lacks access to one of the four major broadcast networks.

Table 6

	3-Month Post-Period		6-Month Post-Period	
	All Events [a]	Four Confirmed Events [b]	All Events [a]	Four Confirmed Events [b]
Partial Local-into-Local	{{			
First Month of Full Local-into-Local				
Observations				}}

Notes:

Robust standard errors in parentheses

** p<0.01, * p<0.05

Share defined as subscribers / homes passed

[a] The regressions for all events include the following DMAs affected by partial-to-full-changes: Tucson, Portland, West Palm Beach, Colorado Springs, Fresno, Ft. Myers, El Paso, Harrisburg, Meridian, and Charlottesville/Harrisonburg. The corresponding control DMAs are El Paso, Seattle, Miami, Denver, Sacramento, Tampa/St. Petersburg, Tucson, Philadelphia, Jackson, and Richmond. The regressions include year-month fixed effects and DMA fixed effects.

[b] The regressions for the four confirmed events include the following DMAs affected by partial-to-full-changes: Tucson, Portland, West Palm Beach, and Colorado Springs. The corresponding control DMAs are El Paso, Seattle, Miami, and Denver. Regressions include year-month fixed effects and DMA fixed effects.

114. Once again, we do not claim that these results prove that, when a DBS provider adds the signal of a single broadcast station (so that the provider can offer its subscribers the programming of all four major broadcast networks), this addition has no effect on that MVPD’s ability to attract subscribers. Rather, we note that, whatever effect adding the fourth network’s signal did have, in the specific instances that we have been able to document, any reduction in the number of Comcast subscribers resulting from subscribers’ switching to the DBS provider

offering the additional network signal was so small as to be undetectable in Comcast’s subscriber data.¹³⁴

D. Implications for Departure Rates from Rival MVPDs

115. Although the empirical results presented thus far demonstrate that there is little switching to Comcast Cable in response to the temporary loss of a single broadcast network by a rival MVPD, they do not provide a direct measure of the departure rate from rival MVPDs, which is the relevant measure for comparison to the critical departure rates calculated in Section V above. To compute the implied departure rate, one must convert the estimated change in Comcast’s penetration rate to the percentage change in the affected MVPD’s (*i.e.*, DISH Network’s) share. Doing so requires two steps and two pieces of data for each affected DMA. First, we must divide the estimated change in Comcast’s penetration rate by the DMA-specific diversion ratio to Comcast among those consumers leaving the affected MVPD, α . This division is done in order to scale-up the change in Comcast’s penetration rate so that (assuming the diversion ratio is correct) the resulting estimate equals the combined change in share for all non-affected MVPDs. As discussed above, the value of α is taken to be equal to Comcast’s share of all MVPD households not subscribing to the affected MVPD.¹³⁵

¹³⁴ As noted above, we have also applied the same econometric specifications to situations in which a DBS provider introduced a full local-into-local package (with all four major broadcast networks) in a DMA that previously had no local-into-local service. {{

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¹³⁵ Note that all of our analysis is limited to Comcast’s footprint. We assume that no other cable companies offer cable service within that footprint. Thus, diversion is limited to Comcast, telco MVPDs, and DBS MPVDs. We assume that the diversion ratio to each MVPD is proportional to its share of multichannel video subscribers in Comcast’s footprint. Because we do not have share data for telco or DBS MVPDs at the level of Comcast’s footprint, we assume that each telco and DBS MVPD’s share of households within Comcast’s footprint in a given DMA is equivalent to its share in the overall DMA. We obtain DMA-level MVPD shares from the Media Census published by the Media Business Corporation.

116. The second step is to divide this combined change in share for all non-affected MVPDs by the affected MVPD's share in the DMA.¹³⁶ This step results in a number that expresses the change in share as a percentage of the affected MVPD's starting share, thus yielding the *estimated departure rate*.

117. We have data on DirecTV and DISH Network's share by DMA only for Q1 2008 and later periods. Consequently, we can make the required conversion only for two of the events discussed above: the six-month Fisher Broadcasting retransmission dispute with DISH Network in late 2008-early 2009, which affected three Comcast DMAs in the Pacific Northwest, and the three-day Young Broadcasting retransmission dispute with DISH Network in December 2008, which affected seven Comcast DMAs.

118. In order to convert the coefficients to estimated departure rates, while accounting for the differences in diversion ratios and DISH Network shares across the various DMAs affected by each event, we rely on a modification to the retransmission dispute regression models. In particular, in the new formulation, we interact each event indicator (one-month pre-event indicator; event-months indicator; and three-month post-event indicator) with an "interaction variable," equal to the product of DISH Network's pre-dispute share of television households in the DMA times the diversion ratio to Comcast among those leaving DISH Network, each computed as described above. Intuitively, including this interaction variable allows the effect of the temporary disruption in service on Comcast's share to be larger in DMAs in which DISH Network had a larger share of households and/or DMAs in which Comcast had a larger share of

¹³⁶ Because our analysis is specific to Comcast's footprint, this number should be the MVPD's share inside the Comcast footprint. But again, lacking data for rival MVPD's share within Comcast's footprint, we assume that the telco and DBS MVPDs have shares inside Comcast's footprint that are equal to their shares in the overall DMA.

non-DISH Network households. In addition, because this interaction variable gives the expected change in Comcast’s share if *all* DISH Network subscribers left due to the event, the coefficient on the event indicator times the interaction term provides an estimate of the percentage of DISH Network subscribers who *actually did* leave, and thus provides a direct estimate of the departure rate.¹³⁷

119. Results from the reformulated retransmission dispute regressions—in which each event indicator is multiplied by the appropriate interaction variable, so that its coefficient provides an estimated departure rate—are presented in Table 7.

Table 7

	Fisher Event [a]	Young Event [b]
Month Before Event	{	
Month(s) of Event		
Three Months After Event		
Observations		}

Notes:

Robust standard errors in parentheses

** p<0.01, * p<0.05

Share defined as subscribers / homes passed

Event dummies scaled by share(dish) * (share(comcast)/(share(comcast) + share(directv) + share(verizon) + share(at)))

Includes year-month-event and DMA fixed effects

[a] DISH subscribers lost access to stations in three Comcast DMAs in the Pacific Northwest for seven months in 2008-2009 due to a dispute with Fisher Communciations.

[b] DISH subscribers lost access to stations in four Comcast DMAs for three days in 2008 due to a dispute with Young Broadcasting.

¹³⁷ In essence, multiplying the event indicator by the product of the diversion ratio times the DISH Network share means that the new coefficient on the event indicator will equal the original coefficient *divided by* that product, which is exactly the calculation needed in order to rescale the change in Comcast’s share into the estimated departure rate.

120. The estimated departure rates in Table 7 are consistent with the conclusions from Tables 5 and 6 above. {{

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In Section VII, below, we compare these estimated actual departure rates to our estimated critical departure rates to show that the empirical evidence from these retransmission disputes is inconsistent with foreclosure's being a profitable strategy.

E. What We Learn from Retransmission Consent Bargaining

121. Clearly, MVPDs perceive retransmission rights to be valuable. One might ask how this fact can be reconciled with our finding that a rival MVPD's lack of access to a particular broadcast network has little or no effect on Comcast's share. To this end, it is important to recognize that harm to an MVPD from the loss of a broadcast signal does not automatically translate into gains for another MVPD. In response to at least some of the retransmission disputes and partial local-into-local events discussed above, the MVPDs that lacked a broadcast network signal offered price cuts or other promotions designed to retain subscribers.¹³⁸ Hence, even if retransmission rights are valuable to an MVPD, it is unreasonable simply to assume that the loss of retransmission rights by one MVPD will significantly increase rival MVPDs' shares of subscribers.

¹³⁸ For example, during Viacom's dispute with DISH Network in 2004, DISH Network offered rebates of \$1 to subscribers for losing the CBS signal and an additional \$1 for losing the Viacom cable networks. (R. Thomas Umstead, "Kicking Dish in the Pants: MSOs Exploit EchoStar's Brief Loss of SpongeBob and Pals," *Multichannel News*, March 14, 2004, available at http://www.multichannel.com/article/59130-Kicking_Dish_In_The_Pants.php, site visited February 21, 2010.) Similarly, during the partial local-into-local event in Tucson in 2002-2003, DISH Network charged \$4.99 per month for the local channels before it added the NBC signal and \$5.99 after. (DISH Network, Press Release, "DISH Network Satellite Television adds NBC for Tucson Customers, now broadcasts all four major local TV Channels," February 19, 2003, available at <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=243667>, site visited February 20, 2010.)

122. More generally, a potential pitfall in applying the Commission staff model is the failure to account for the use of counterstrategies by rival MVPDs. There are at least two counterstrategies that an MVPD might implement in response to actual or threatened foreclosure:

- *Promotional pricing to retain subscribers.* The use of promotional pricing by an MVPD that has lost access to NBC could discourage subscribers from switching to Comcast (or other MVPDs), thus reducing the gains to Comcast.¹³⁹ At the same time, by encouraging more consumers to remain with their existing MVPD and forgo watching NBC programs, the use of promotional pricing generates greater harm to NBC for the reasons discussed above, including reduced viewership and lower advertising prices due to NBC's reduced reach.
- *Increased use of long-term contracts.* This strategy could be effective against temporary foreclosure. Of course, if consumers anticipated being locked in, they might seek some form of price reduction. However, the point would remain that such a strategy would reduce the value of foreclosure to Comcast.

123. The finding that the loss of a broadcast station's signal gives rise to relatively little switching while at the same time MVPDs are willing to pay for retransmission consent rights is also consistent with the experience of national cable networks. In its review of the News Corp./DirecTV transaction, the Commission found that foreclosure involving News Corp.'s national cable networks was unlikely because customers were unlikely to switch in sufficient

¹³⁹ Note that, although they might lower profits for the rival MVPD, such price cuts would benefit consumers, potentially offsetting much or all of any loss in consumer welfare due to the loss of access to a broadcast network.

numbers to make foreclosure profitable.¹⁴⁰ Yet those networks were apparently valuable, and MVPDs paid significant licensing fees for several of them.¹⁴¹

F. Summary of Empirical Analysis

124. Our empirical results reveal no statistical evidence to support the proposition that large numbers of consumers would switch to Comcast if a rival MVPD were temporarily unable to provide them with access to the signal of a single network broadcast station. Indeed, the analysis did not reveal any statistically significant effects. In evaluating the implications of this finding, it is important to keep the following points in mind: although the results are based on all events we could identify to study, the total number of such events is limited; none of the events reflects the permanent withholding of a broadcast network; and we do not have data on the effects these events had on the number of subscribers at rival MVPDs. In the light of these considerations, our conclusion is that, although there is surely at least some switching away from an MVPD that loses the retransmission rights to a network broadcast station’s signal, the amount of such switching overall, and to Comcast in particular, is sufficiently small as to be undetectable in Comcast’s share data.

¹⁴⁰ As noted in footnote 4 above, the Commission earlier found

Nor does the record contain any other evidence that consumers value [News Corp.’s national cable] programming to such an extent that they will change MVPDs rather than substitute different programming carried by their chosen MVPD. Rather, we find that News Corp.’s general entertainment and news cable programming networks participate in a highly competitive segment of programming market with available reasonably close programming substitutes.

(*News Corp. - Hughes Order*, ¶ 129.)

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VII. THE COMMISSION STAFF MODEL DOES NOT ESTABLISH THAT FORECLOSURE IS LIKELY

125. The third step in application of the Commission staff model is to compare the critical departure rates calculated in the first step with the likely actual departure rates estimated in the second step.

A. Comparison of Estimated Actual Departure Rates with Estimated Critical Departure Rates for Temporary Foreclosure

126. We begin by considering temporary foreclosure. Because the Fisher event lasted for six months, it is natural to start with the results for that event, which are presented in the first column of Table 7. {{

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127. The evidence from the Young event, in the second column of Table 7, is consistent with this conclusion. {{

¹⁴² Note that, although the critical values from the model refer to the percentage of subscribers who *want to* switch, the estimated switching levels include *only* those consumers who were free of contractual commitments and thus could switch. However, in the case of the Fisher event, our combined event windows cover a period of nine months. Hence, even among those subscribers who were under contract in the first place [[
]], the majority would be free to switch at some point during the event windows.

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128. Even if one wanted to combine the point estimates of actual departure rates from the Young event with those from the Fisher event—despite the lack of statistical significance in both cases—to form a range of estimated departure rates, the range would be no higher than {{

}} percent. If one wanted to compare this range of point estimates for actual departure rates to the range of critical departure rates (from the temporary foreclosure model), one would have to acknowledge that the point estimates also imply rapid churn. For example, the after-event coefficient for the Young event is roughly {{ }}% of the event coefficient, which in the context of the model would imply that at least {{ }}% of any subscribers who switched during the event switched back immediately following the event.¹⁴³ Such rapid churn indicates that the values at the high end of our temporary foreclosure critical departure rates are the relevant values, {{

}}.¹⁴⁴ Hence, even giving these insignificant point estimates more credit than they deserve, they imply that temporary foreclosure would be unprofitable in all cases.

129. Although the confidence intervals around these results are large enough that they do not “prove” that the actual departure rates are below the low-end of some of our estimated ranges for the critical departure rates, these results provide strong evidence that—even during a six-month retransmission dispute—actual departure rates were below the critical departure rate required to

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support profitable foreclosure.¹⁴⁵ Put simply, the empirical evidence provides no support for a claim that the post-transaction NBCU would have an incentive to withhold NBC from any rival MVPD in any DMA.

B. Comparison of Estimated Departure Rates with Critical Departure Rates for Permanent Foreclosure

130. Our empirical analysis of actual switching derived estimates of switching due to temporary events. We have been unable to identify any events that would allow us to undertake a comparable exercise to derive estimated departure rates for permanent foreclosure. Clearly, one would expect greater subscriber departure under permanent foreclosure than temporary. However, the lack of any evidence for significant switching during even the six-month Fisher suggests that switching rates would not be particularly high even during longer-term events. More generally, we know of no evidence that would suggest switching levels would approach the critical departure rates calculated using the Commission staff model and reported in Table 2 above. These critical departure rates and the analysis in Section V.D, which explains why even these high critical rates are conservative, support the conclusion that permanent foreclosure is unlikely, even if one conducts the analysis solely within the framework of the Commission staff model.

C. Summary

131. The set of results presented in this section makes it clear what one can and cannot conclude by implementing a modified version of the Commission staff's foreclosure model and by studying historical switching rates during times when a non-Comcast MVPD lacked access to

¹⁴⁵ Given that our econometric analysis is based on Comcast share data, this finding could be due to the fact that actual departure rates are very low or that the diversion ratios to Comcast are very low. The conclusion in the text holds in either event.

a single broadcast network. One cannot prove that profitable foreclosure is literally impossible. A critic of the deal might cherry-pick a particular econometric specification and make a particular set of assumptions regarding model parameters as the basis for claiming that foreclosure would be profitable. But to do so would be to ignore that, taken as a whole, the econometric results provide no support for significant switching rates and certainly not for switching rates as high as the range of critical departure rates that we compute using an appropriately modified version of the Commission staff model. On the whole, then, the analysis presented above demonstrates that it is difficult, if not impossible, to conceive of a situation in which application of the Commission staff model would convincingly establish that Comcast would be likely to withhold NBC stations' retransmission rights to implement a foreclosure strategy.

VIII. CONCLUSION

132. In short, application of the Commission staff model does not support the conclusion that there is a significant threat that the Comcast/NBCU/GE joint venture would engage in foreclosure by withholding the retransmission rights to NBC broadcast stations' signals from Comcast's MVPD rivals. Given the range of critical departure values we have estimated using reasonable assumptions, the strong reasons to believe even those assumptions are conservative, and the broader considerations that are not readily incorporated into the model, the most reasonable and defensible conclusion is that foreclosure is highly unlikely.

APPENDIX I: DETAILS REGARDING RETRANSMISSION CONSENT AND LOCAL-INTO-LOCAL EVENTS

133. In this appendix, we provide details of the two types of events that we use to analyze historical switching patterns: i) retransmission consent disputes; and ii) partial local-into-local introductions. As discussed in Section VI of the report, our analysis of these events indicates that Comcast's share does not increase significantly when a major broadcast network is temporarily unavailable to subscribers of a rival MVPD. In this Appendix, we provide background information on each event based on contemporaneous press accounts and interviews with Comcast personnel.

A. Overview of Retransmission Consent Disputes with DISH Network

134. We have identified four retransmission consent disputes since 2002 in which a non-cable MVPD (DISH in each case) in Comcast's footprint lost access to one of the "big four" (ABC, CBS, FOX, and NBC) broadcast networks.^{146, 147} Table A1 summarizes the details of each dispute.

¹⁴⁶ We do not analyze two additional types of retransmission disputes that have occurred. First, we obviously cannot analyze the effect on Comcast's share of disputes that occur outside of Comcast's footprint. Second, we do not analyze retransmission disputes involving other cable operators. These disputes do not provide appropriate experiments because the territories of rival cable systems generally do not overlap with Comcast's footprint thus limiting any subscriber effects that could be observed in the Comcast data.

¹⁴⁷ To define the control set of DMAs, we identify those regions that include at least one affected DMA and use the portions of unaffected DMAs in those regions as the control group. In cases where there are no unaffected entities in the same region(s) as affected DMAs, we identify adjacent or nearby unaffected DMAs to use as control groups. As noted in the body of the report and described below, we have tested alternative control groups and found our results to be robust.

Table A1: Summary of Retransmission Disputes

Dispute	MVPD	Start Date	End Date	Stations/Affiliation	Comcast Penetration Rate
Allbritton ^(a)	DISH Network	5/31/2003	6/4/2003	WJLA Washington - ABC WBMA Birmingham - ABC WHTM Harrisburg - ABC KTUL Tulsa - ABC	{}
Viacom* ^(b)	DISH Network	3/9/2004	3/11/2004	WCBS New York - CBS KCBS Los Angeles - CBS WBBM Chicago - CBS KYW Philadelphia - CBS KTVT Dallas-Ft Worth - CBS KPIX San Francisco - CBS WBZ Boston - CBS WWJ Detroit - CBS WCCO Minneapolis - CBS KCNC Denver - CBS WFOR Miami - CBS KDKA Pittsburgh - CBS WJZ Baltimore - CBS KUTV Salt Lake City - CBS KEYE Austin - CBS	
Young Broadcasting ^(c)	DISH Network	12/11/2008	12/14/2008	WTNS Lansing - CBS KLFY Lafayette LA - CBS WTEN Albany NY - ABC WKRN Nashville - ABC WATE Knoxville - ABC WBAY Green Bay - ABC WRIC Richmond - ABC KWQC Davenport - NBC KRON San Francisco - MNT KELO Sioux Falls - CBS KCLO Rapid City - CBS	
Fisher Communications ^(d)	DISH Network	12/17/2008	6/10/2009	KOMO Seattle - ABC & The KUNS Seattle - Univision KATU Portland - ABC & The KUNP Portland - Univision KIMA Yakima - CBS & CW KVAL Eugene - CBS & The KBCI Boise - CBS KIDK Idaho Falls - CBS KBAK Bakersfield - CBS KBFX Bakersfield - FOX	}}

Notes:

* Viacom also removed all cable networks from DISH

Bold indicates major broadcast network signals withheld in DMAs where Comcast operates a cable system.

Comcast share measured in month prior to dispute. Share is defined as subscribers / homes passed.

Sources: BIA Media Access Pro 4.5 Television Analyzer Database supplied station affiliations where not provided in news reports, shares determined from Comcast subscriber data.

- [a] John Maynard, "DISH TV Denied WJLA in Contract Dispute," *The Washington Post*, June 2, 2003.
John Eggerton, "Retrans Flap Fixed, EchoStar, Allbritton settle heated carriage fight," *Broadcasting & Cable*, June 9, 2003.
- [b] R. Thomas Umstead, "Kicking Dish in the Pants: MSOs Exploit EchoStar's Brief Loss of SpongeBob and Pals," *Multichannel News*, March 14, 2004, available at http://www.multichannel.com/article/59130-Kicking_Dish_In_The_Pants.php, site visited February 21, 2010.
Sallie Hofmeister, "EchoStar Pulls Plug on Viacom in Bitter Fight," *Los Angeles Times*, March 10, 2004.
Michael Learmonth and Kenneth Li, "EchoStar/Dish Network Drops CBS Stations," *Reuters*, March 9, 2004, available at <http://www.tvantenna.com/news/echostar/cbs.html>, site visited February 22, 2010.
- [c] Jon Lafayette, "Dish Drops Young Broadcasting Content in Retrans Dispute," *TV Week*, December 2008.
Linda Moss, "New Retrans Deal Led to Young's Return to Dish," *Multichannel News*, December 15, 2008, available at http://www.multichannel.com/article/160797-New_Retrans_Deal_Led_to_Young's_Return_to_Dish.php, site visited February 21, 2010.
- [d] DISH Network, Press Release, "DISH Network and Fisher Communications, Inc. Reach Multi-Year Carriage Agreement," June 11, 2009, available at <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=389259>, site visited February 23, 2010.
Washington State Office of the Attorney General, "DISH Network Drops Fisher Communications channels," December 22, 2008, available at <http://www.atg.wa.gov/BlogPost.aspx?id=21608>, site visited February 21, 2010.
Washington State Office of the Attorney General, "KOMO and KIMA Back on DISH Network," June 11, 2009, available at <http://www.atg.wa.gov/BlogPost.aspx?id=22994>, site visited February 21, 2010.
Greg Lamm, "Dispute Unplugs Some KOMO Programs from Dish Service," *Puget Sound Business Journal*, January 9, 2009, available at <http://seattle.bizjournals.com/seattle/stories/2009/01/12/story7.html>, site visited February 21, 2010.
Linda Moss, "Retrans Fights Near Final Rounds," *Multichannel News*, December 20, 2008.

135. The first dispute occurred between Allbritton Communications and the DISH Network. From May 31 to June 4, 2003, the ABC affiliates in four DMAs (Washington, Birmingham, Harrisburg, and Tulsa) were unavailable to DISH subscribers.^{148, 149} Comcast operated cable systems in each of these DMAs with the exception of Tulsa. The dispute occurred in the middle of the NHL Stanley Cup finals and on the eve of the NBA finals, both of which ABC was broadcasting.¹⁵⁰

136. During the dispute, the local affiliates aired commercials suggesting that DISH Network subscribers switch to DirecTV or the local cable provider and included contact information for these MVPDs.¹⁵¹ Simultaneously, DISH Network ran announcements on the dark channels blaming Allbritton for the dispute. DISH Network also offered to refund the \$5-6 monthly fee that its subscribers paid for local channels.¹⁵² The companies resolved their dispute on June 4, 2003. The terms of the new agreement were not disclosed.

137. The second dispute occurred between Viacom and the DISH Network in March, 2004. Viacom withdrew the signals of 15 CBS O&O stations (along with other Viacom cable networks including Comedy Central, MTV, MTV2, Nickelodeon, Nick Games and Sports (GAS), Noggin,

¹⁴⁸ See John Eggerton, "Retrans Flap Fixed; EchoStar, Allbritton Settle Heated Carriage Fight," *Broadcasting & Cable*, June 9, 2003.

¹⁴⁹ Based on our rule for selecting control DMAs, we use the Huntsville, Mobile, Paducah, and Philadelphia DMAs as our control group. We have also experimented with including Baltimore as an additional control group, with no effect on our substantive results.

¹⁵⁰ See John Maynard, "DISH TV Denied WJLA in Contract Dispute," *The Washington Post*, June 2, 2003.

¹⁵¹ However, these commercials were presumably not available to DISH subscribers whose signal had gone dark. *Id.*

¹⁵² *Id.* As noted in the body of the report, such decreases in price represent one counter-measure that rival MVPDs can take to lessen or prevent switching. While rivals may be harmed by lowering their prices, the reduction in price benefits consumers. Furthermore, to the extent that such measures lessen the switching due to such disputes, they may also lessen the incentives of the joint venture to engage in such strategies.

VH1, VH1 Classic, MTV Espanol, and Black Entertainment Television) from DISH Network.¹⁵³

The dispute lasted for approximately 46 hours and affected most of the largest DMAs in the country, including 12 DMAs in which Comcast operated cable systems (New York, Chicago, Philadelphia, San Francisco, Boston, Detroit, Minneapolis – St. Paul, Miami, Denver, Pittsburgh, Baltimore, and Salt Lake City).^{154, 155}

138. The dispute occurred shortly before the start of the NCAA college basketball tournament (“March Madness”), which was broadcast by CBS. During the dispute, Viacom ran advertisements in national and local newspapers urging DISH Network subscribers to switch to cable or DirecTV.¹⁵⁶ Viacom also directed callers complaining about the dispute to contact local cable companies or DirecTV.¹⁵⁷ Meanwhile, as in the Allbritton dispute, DISH Network announced that it would offer rebates to those subscribers who lost access to programming equal \$1 for the cable networks and \$1 for the CBS programming.¹⁵⁸

¹⁵³ R. Thomas Umstead, “Kicking Dish in the Pants: MSOs Exploit EchoStar’s Brief Loss of SpongeBob and Pals,” *Multichannel News*, March 14, 2004, available at http://www.multichannel.com/article/59130-Kicking_Dish_In_The_Pants.php, *site visited* February 22, 2010.

¹⁵⁴ See R. Thomas Umstead, “Kicking Dish in the Pants: MSOs Exploit EchoStar’s Brief Loss of SpongeBob and Pals,” *Multichannel News*, March 14, 2004, available at http://www.multichannel.com/article/59130-Kicking_Dish_In_The_Pants.php, *site visited* February 22, 2010; Michael Learmonth and Kenneth Li, “EchoStar/Dish Network Drops CBS Stations,” *Reuters*, March 9, 2004, available at <http://www.tvantenna.com/news/echoarcbs.html>, *site visited* February 22, 2010.

¹⁵⁵ Based on our rule for selecting control DMAs, we use the Burlington, Colorado Springs, Green Bay, Harrisburg, Hartford/New Haven, Richmond, Salisbury, Santa Barbara, and Wheeling DMAs as our control group. We have also experimented with adding Indianapolis, Grand Rapids/Lansing, and Denver as additional control groups, with no affect on our substantive results.

¹⁵⁶ R. Thomas Umstead, “Kicking Dish in the Pants: MSOs Exploit EchoStar’s Brief Loss of SpongeBob and Pals,” *Multichannel News*, March 14, 2004, available at http://www.multichannel.com/article/59130-Kicking_Dish_In_The_Pants.php, *site visited* February 22, 2010.

¹⁵⁷ Michael Learmonth and Kenneth Li, “EchoStar/Dish Network Drops CBS Stations,” *Reuters*, March 9, 2004, available at <http://www.tvantenna.com/news/echoarcbs.html>, *site visited* February 22, 2010.

¹⁵⁸ R. Thomas Umstead, “Kicking Dish in the Pants: MSOs Exploit EchoStar’s Brief Loss of SpongeBob and Pals,” *Multichannel News*, March 14, 2004, available at http://www.multichannel.com/article/59130-Kicking_Dish_In_The_Pants.php, *site visited* February 22, 2010.

139. The third dispute occurred in December 2008. Young Broadcasting, which owned ten ABC, NBC, and CBS affiliate stations, withdrew its signals from DISH Network for a period of three days from December 11 - 14, affecting four DMAs in which Comcast operated cable systems (Green Bay – Appleton, Knoxville, Nashville, and Richmond).^{159, 160} During the dispute, at least some of the broadcast stations directed viewers to access the stations' signals through alternative means, including over-the-air, DirecTV, the local cable system, or the local telephone company (in some cases).¹⁶¹ Meanwhile, DISH Network issued a press release blaming Young Broadcasting for the dispute.¹⁶² DISH network apparently did not offer rebates its subscribers.

140. The fourth dispute was the most recent and lasted the longest. Fisher Broadcasting, which owned eight ABC, CBS, and Fox affiliates as well as two Univision affiliates, withdrew its stations' signals from DISH Network for approximately six months, from December 17, 2008, until June 10, 2009. This disruption affected three Comcast DMAs in the Pacific Northwest

¹⁵⁹ The dispute also affected a non-“Big Four” station in San Francisco (KRON). We exclude San Francisco from our analysis. See Linda Moss, “New Retrans Deal Led to Young’s Return to Dish,” *Multichannel News*, December 15, 2008, available at <http://www.multichannel.com/article/160797-New-Retrans-Deal-Led-to-Young-s-Return-to-Dish.php>, site visited February 22, 2010.

¹⁶⁰ Based on our rule for selecting our control DMAs, we use the Baltimore, Charlottesville, Chattanooga, Little Rock, Memphis, Minneapolis – St. Paul, Tri-Cities, and Washington DMAs as our control group.

¹⁶¹ See, e.g., KRON 4, Letter to DISH Subscribers, available at <http://images.kron4.com/images/dish.html>, site visited February 22, 2010; “Dispute takes WRIC from Dish Network,” *Richmond Times-Dispatch*, December 13, 2008, available at http://www2.timesdispatch.com/rtid/news/local/article/DISH13_20081212-212732/149810/, site visited February 22, 2010.

¹⁶² DISH Network. Press Release (reprinted by Scott Greczkowski), “Young Broadcasting, Inc. Forces Dish Network to Remove its Albany, N.Y. ABC Channel from its Lineup,” December 11, 2008, available at <http://www.satelliteguys.us/dish-network-forum/157711-statement-dish-network-young-broadcasting-removal.html>, site visited February 22, 2010.

(Eugene, Portland, and Seattle).^{163, 164}

141. The dispute caused DISH Network subscribers to miss some college football bowl games as well popular programming such as “Grey’s Anatomy.”¹⁶⁵ During the dispute, Fisher and DISH ran advertisements blaming the other party.¹⁶⁶ {{

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B. Overview of partial local-into-local introductions

142. We have identified ten “partial-into-full” local-into-local events in which either DirecTV or DISH Network’s initial local-into-local offering included only a subset of the “big four” broadcast television networks, and the DBS provider later added the final network.¹⁶⁸ Table A2

¹⁶³ DISH subscribers in Seattle and Portland also lost access to Univision programming. See Greg Lamm, “Dispute Unplugs Some KOMO Programs from Dish Service,” *Puget Sound Business Journal*, January 9, 2009, available at <http://seattle.bizjournals.com/seattle/stories/2009/01/12/story7.html>, site visited February 22, 2010; Washington State Office of the Attorney General, “KOMO and KIMA Back on DISH Network,” June 11, 2009, available at <http://www.atg.wa.gov/BlogPost.aspx?id=22994>, site visited February 22, 2010.

¹⁶⁴ We use Fresno and Sacramento as our control groups. We have also experimented with including San Francisco as an additional control group, with no effect on our substantive conclusions.

¹⁶⁵ Greg Lamm, “Dispute Unplugs Some KOMO Programs from Dish Service,” *Puget Sound Business Journal*, January 9, 2009, available at <http://seattle.bizjournals.com/seattle/stories/2009/01/12/story7.html>, site visited February 22, 2010.

¹⁶⁶ The details of these advertisements as well as any deals offered by DISH are unavailable. However, it appears that DISH did provide credits to those subscribers who lost programming as it had in previous disputes. See, e.g., Scott Greczkowski, “Yet Another Dispute for Dish Network,” *Multichannel News*, December 17, 2009, available at http://www.multichannel.com/blog/The_Satellite_Dish/I0608-Yet_Another_Dispute_For_Dish_Network.php, site visited February 22, 2010.

¹⁶⁷ Todd Lessem, Competition Marketing Manager, Comcast Corporation, February 5, 2010, interview.

¹⁶⁸ We do not consider partial-into-full events in which a signal was absent for less than one month, a distant signal was available prior to the introduction of a station, the status of local-into-local service for the other DBS provider is unknown to us, or the other DBS provider began offering service at the same time. If the event occurred on or before the 15th of any month, that month was considered to be the first month of the event. Otherwise, if the event took place after the 15th day of any month, the following month was assumed to be the first month of the event. [Footnote continues on next page.]

summarizes the details of these events. Note that the first four of these are events we have been able to confirm with press releases or other news stories. The last six—each with the notation [e] in Table A2—are drawn from the “EchoStar Knowledge Base” (maintained by a DISH network user group).¹⁶⁹ However, we have been unable to independently confirm these six events and thus are unable to include any additional details on the events. As shown in Section VI, our finding of no significant gain in Comcast share during periods of partial local-into-local service holds whether or not we include these six “unconfirmed events” in our analysis.

For each event, we selected a “control” DMA that was not affected by the event occurring in the “treatment” DMA. We used the following rule to select a control DMA: Choose a control DMA in the same Comcast region as the affected DMA, provided that: (a) there are no discontinuities in Comcast's share data for the control DMA; (b) there are no DBS service changes taking place in the control DMA during the period under consideration (*e.g.*, DISH Network or DirecTV entering the market with one or more broadcast networks); and (c) we can confirm the carriage status for DISH Network and DirecTV during the period under consideration based on public information. If there are no candidate DMAs meeting these conditions in the same region as the affected DMA, then we look for other DMAs in neighboring Comcast regions that satisfy the same conditions.

¹⁶⁹ Available at <http://dishuser.org/dishlist.php>, site visited February 21, 2010.

Table A2: Summary of Partial-into-Full Events

DMA	MVPD	Date of initial local-into-local rollout	Date of final station rollout	Final station added	Previous major stations present	Comcast Penetration Rate
Tucson ^[a]	DISH Network	7/31/2002	2/19/2003	KVOA-NBC	KGUN - ABC KOLD - CBS KMSB - FOX	{}
Portland ^[b]	DirecTV	8/25/2000	6/24/2002	KOIN-CBS	KATU - ABC KPDX - FOX KGW - NBC	
West Palm Beach ^[c]	DISH Network	6/19/2002	8/2/2002	WPEC-CBS	WPBF - ABC WFLX - FOX WPTV - NBC	
Colorado Springs ^[d]	DISH Network	11/22/2002	2/19/2003	KOAA-NBC KKTU-CBS	KRDO - ABC KXRM - FOX	
Fresno* ^[e]	DISH Network	9/28/2002	5/12/2004	KMPH - FOX	KFSN - ABC KGPE - CBS KSEE - NBC	
Ft Myers** ^[e]	DISH Network	3/5/2003	12/19/2003	WFTX - FOX	WZVN - ABC WINK - CBS WBBH - NBC	
El Paso*** ^[e]	DISH Network	4/14/2004	11/5/2004	KVIA - ABC	KDBC - CBS KFOX - FOX KTSM - NBC	
Harrisburg ^[e]	DISH Network	9/28/2002	10/30/2002	WHP - CBS	WHTM - ABC WPMT - FOX WGAL - NBC	
Charlottesville ^[e]	DISH Network	8/25/2004	8/10/2005	WAHU - FOX	WVAW - ABC WCAV - CBS WVIR - NBC	
Meridian ^[e]	DISH Network	12/15/2004	12/7/2005	WTOK-DT2 - FOX	WTOK - ABC WMDN - CBS WGBC - NBC	}}

Notes:

*DISH Network initially offered ABC and NBC in Fresno, then added CBS on 11/1/2002.

**DISH Network initially offered ABC and NBC in Ft Myers, then added CBS on 8/6/2003.

***DISH Network initially offered FOX and NBC in El Paso, then added CBS on 5/12/2004.

Comcast share measured in month prior to final station rollout. Share is defined as subscribers / homes passed.

Sources: BIA Media Access Pro 4.5 Television Analyzer Database supplied station affiliations where not provided in news reports.

[a] DISH Network, Press Release, "Dish Network Satellite Television adds NBC for Tucson Customers, now broadcasts all four major local TV Channels," February 19, 2003, available at <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=243667>, site visited February 22, 2010.

[b] "DIREC.TV Begins Offering Local Broadcast Network Channels in Portland, Ore.; Customers to Receive Local Channels with Existing Receiver and 18-inch Satellite Dish," *Business Wire*, August 24, 2000.
Eileen Davis Hudson, "Local media," *MediaWeek*, June 24, 2002.

[c] Boh Betcher, "Channel 12 Reaches Pact with DISH," *The Stuart News* (Stuart, FL), August 2, 2002.

[d] DISH Network, Press Release, "Dish Network Satellite Television now broadcasts CBS and NBC for Colorado Springs Customers," Feb. 19, 2003, available at <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=243662>, site visited February 21, 2010.

[e] EchoStar Knowledge Base (not affiliated with EchoStar Communications or Dish Network Corp.), "Dish Locals in 178 Cities," available at <http://www.dishuser.org/sdlocaldetail.php>, site visited February 19, 2010. We have not been able to independently confirm these dates.

143. In the first confirmed event, DISH began offering three of the four major local broadcast channels in the Tucson DMA on July 31, 2002 (KGUN-ABC, KOLD-CBS, and KMSB-FOX, as well as KWBA-WB, KTTU-UPN, and KUAT-PBS).¹⁷⁰ On February 19, 2003, KVOA-NBC was added to the lineup.¹⁷¹ The delay was caused by stalled negotiations between DISH and KVOA. The president and general manager of KVOA, Gary Nielsen, claimed that DISH Network refused to pay KVOA a retransmission fee for their signal.¹⁷² The terms of the final agreement are not public.¹⁷³ Before adding KVOA, DISH Network charged a discounted rate of \$4.99 a month for the local channel package, which rose to \$5.99 a month with the addition of KVOA.¹⁷⁴

144. In the second event, DirecTV began offering three of the four major local broadcast channels in Portland on August 25, 2000 (KATU-ABC, KGW-NBC, and KPDX-FOX).^{175, 176}

On June 24, 2002, it began carrying KOIN-CBS, after almost two years of negotiations with the

¹⁷⁰ Based on our rule for selecting controls, we used the El Paso DMA as the control group. We also experimented with using Salt Lake City as a control group, which resulted in no change in our substantive results. Note that because DirecTV began offering local-into-local service in June 2003, the “post”-period in our analysis does not extend past that date.

¹⁷¹ DISH Network, Press Release, “DISH Network Satellite Television adds NBC for Tucson Customers, now broadcasts all four major local TV Channels,” February 19, 2003, *available at* <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=243667>, *site visited* February 22, 2010.

¹⁷² Oscar Abeyta, “Dish Firm’s Local Slate Leaves Out KVOA-TV,” *Tucson Citizen*, July 31, 2002. *See also* DISH Network, Press Release, “DISH Network Satellite Television adds NBC for Tucson Customers, now broadcasts all four major local TV Channels,” February 19, 2003, *available at* <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=243667>, *site visited* February 22, 2010.

¹⁷³ Oscar Abeyta, “Dish Network Begins Carrying KVOA Today,” *Tucson Citizen*, February 20, 2003.

¹⁷⁴ *Id.*

¹⁷⁵ Based on our rule for selecting controls, we used the Seattle DMA as the control group. The Portland region also includes the Eugene DMA. However, we did not use Eugene as a control because we were unable to confirm the status for DISH Network and DTV in Eugene. We also experimented with using Sacramento as a control group, which resulted in no change in our substantive results. Note that, because there is a discontinuity in Comcast’s reported share of homes passed in Portland in December 2002, the “post”-period in our analysis does not extend past that date.

¹⁷⁶ “DirecTV Begins Offering Local Broadcast Network Channels in Portland, Ore.; Customers to Receive Local Channels with Existing Receiver and 18-inch Satellite Dish,” *Business Wire*, August 24, 2000.

station's owner, Emmis Communications.¹⁷⁷ While lacking KOIN, DirecTV charged \$5.99 per month for its local channel package.^{178, 179}

145. In the third event, DISH Network began offering three of the four major local broadcast channels in the West Palm Beach DMA on June 19, 2002 (WPBF-ABC, WFLX-FOX, and WPTV-NBC).^{180, 181, 182} It also added WTVX-UPN/WB, and WXEL-PBS.¹⁸³ DISH Network added the fourth major local channel, WPEC-CBS, on August 2, 2002.¹⁸⁴ The vice president and general manager of WPEC, Doreen Wade, claimed that her station was not offered any payment by DISH Network in exchange for retransmission rights.¹⁸⁵

146. In the fourth event, DISH Network began offering two of the four major local broadcast channels in the Colorado Springs-Pueblo DMA on November 22, 2002 (KRDO-ABC, and KXRM-FOX, as well as KWGN-WB from Denver and KTSC-PBS from Pueblo).^{186, 187} DISH

¹⁷⁷ Eileen Davis Hudson, "Local Media," *MediaWeek*, June 24, 2002.

¹⁷⁸ Mary Bellotti, "KOIN holds out for better fee deal with satellite company," *The Business Journal*, November 24, 2000.

¹⁷⁹ We have identified no evidence of whether this was considered a discounted rate, or if it changed once KOIN was added in 2002.

¹⁸⁰ Based on our rules for selecting controls, we used the Miami DMA as the control group. We also experimented with using Savannah as a control group with no change in our conclusions. Note that because DISH began offering local-into-local service in June 2002, the maximum length of the "pre"-period is one month.

¹⁸¹ Call signs were obtained from BIA Media Access Pro for Television database (3rd Party Attachment 2).

¹⁸² Bob Betcher "Channel 12 Reaches Pact with Dish," *The Stuart News* (Stuart, FL), August 2, 2002.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Warren Epstein, "Dish Network will serve up long-awaited local stations," *The Gazette* (Colorado Springs), November 19, 2002.

¹⁸⁷ Based on our rules for selecting controls, we used the Denver DMA as the control group. We also experimented with using Salt Lake City as a control group and found no change in our substantive results. Note that because DirecTV began offering local-into-local service in May 2003, the "post"-period in our analysis does not extend past that date.