

STELAR REVIEW: PROTECTING CONSUMERS IN AN EVOLVING MEDIA MARKETPLACE

HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS

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STELAR REVIEW: PROTECTING CONSUMERS IN AN EVOLVING MEDIA MARKETPLACE

TUESDAY, JUNE 4, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:28 a.m., in room 2322, Rayburn House Office Building, Hon. Mike Doyle (chairman of the subcommittee) presiding.

Present: Representatives Doyle, McNerney, Clarke, Loebsack, Veasey, McEachin, Soto, O'Halleran, Eshoo, DeGette, Butterfield, Matsui, Welch, Cardenas, Dingell, Pallone (ex officio), Latta (subcommittee ranking member), Shimkus, Scalise, Olson, Kinzinger, Bilirakis, Johnson, Long, Flores, Brooks, Walberg, Gianforte, and Walden (ex officio).

Staff Present: Jeffrey C. Carroll, Staff Director; Jennifer Epperson, FCC Detailee; Evan Gilbert, Deputy Press Secretary; Waverly Gordon, Deputy Chief Counsel; Alex Hoehn-Saric, Chief Counsel, Communications and Consumer Protection; Zach Kahan, Outreach and Member Service Coordinator; Jerry Leverich, Senior Counsel; Dan Miller, Policy Analyst; Phil Murphy, Policy Coordinator; Alivia Roberts, Press Assistant; Mike Bloomquist, Minority Staff Director; S. K. Bowen, Minority Press Assistant; Robin Colwell, Minority Chief Counsel, Communications and Technology; Brannon Rains, Minority Legislative Clerk; and Michael Engel, Minority Detailee, Communications and Technology.

Mr. DOYLE. The Subcommittee on Communications and Technology will now come to order. The Chair now recognizes himself for 5 minutes.

OPENING STATEMENT OF HON. MIKE DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Good morning. I would like to welcome everyone to the subcommittee's first hearing of the new Congress on STELAR and the involving media marketplace. I would also like to thank our witnesses for appearing before us today to discuss these important issues.

Five years ago, this committee passed the STELA Reauthorization Act. This bill extended the authorization for satellite television companies to provide broadcast content to unserved households. According to the satellite TV industry, this provision enables

roughly 870,000 customers in mostly rural communities to receive over-the-air broadcast television signals.

These customers fall into a few categories. The first is households that cannot receive broadcast content using an antenna. The second is markets where a satellite provider does not offer local-to-local service, and the third is short markets, where there are no local affiliated stations with one of the networks. And finally, satellite TV subscribers that receive service to a commercial truck or an RV.

In effect, this provision enables rural customers of DISH and DIRECTV to receive content from NBC, ABC, CBS, FOX, and other broadcast stations where it isn't otherwise available. STELAR also required broadcast stations and MVPDs, cable, telco, and satellite companies like Charter, Verizon, DISH, and others that offer television service, to negotiate the carriage of broadcast television content on their systems which is known as retransmission consent, or retrans, under a good faith standard to be decided by the FCC.

This regulatory backstop was and is important because there have been allegations that these negotiations have, at times, not been carried out in good faith. When negotiations stall or break down, broadcasters may pull their signal from an MVPD system channel lineup, resulting in a blackout of that content. In these circumstances, consumers suffer as a result of the two parties' inability to come to an agreement.

And while it is true that some customers have the ability to set up an antenna to get this content over the air when it gets pulled off their cable or satellite service, for many, this option is too complicated, or they go without this broadcast content during the disputes.

Requiring the parties engage in good faith negotiations was intended to reduce the number of blackouts and the resulting consumer harm. These were the major provisions of the bill that are now set to expire at the end of this year. Some in the broadcast industry have argued that this legislation should sunset, and that the provisions are no longer necessary.

While I agree that this law isn't a perfect solution, allowing this legislation to sunset would create a crisis that could result in nearly a million consumers losing access to important broadcast content. Allowing a lapse of the good faith standard in retransmission consent negotiation only invites bad behavior and consumer harm.

More broadly, the media landscape has changed a lot in the last five years, with major consolidation occurring among broadcasters and MVPDs. Ms. Boyers, in her testimony, argues that this arms race between the two sides has resulted in increased rates for smaller rural cable providers who don't have the scale to get preferential rates, and who, oftentimes, pay higher rates for the content than their larger rivals,

However, across the board, we hear from MVPDs that the rates for retransmission consent are increasing. In recent years, we have also seen the rise of over-the-top providers like Sling, HULU, and YouTube, offering live television service over the internet directly to consumers. This is a complex marketplace that consumers rely on for information and entertainment, and Americans pay a lot every year to get access to this content.

[The prepared statement of Mr. Doyle follows:]

PREPARED STATEMENT OF HON. MIKE DOYLE

Good morning, I'd like to welcome everyone to this subcommittee's first hearing of the new Congress on STELAR and the evolving media marketplace. I'd also like to thank our witnesses for appearing before us today to discuss these important issues.

Five years ago, this Committee passed the STELA Reauthorization Act. This bill extended the authorization for satellite television companies to provide broadcast content to unserved households. According to the satellite TV industry, this provision enables roughly 870,000 customers, in mostly rural communities, to receive over-the-air broadcast television signals.

These customers fall into a few categories. The first is households that cannot receive broadcast content using an antenna. The second is markets where a satellite provider does not offer local into local service. The third is short markets, where there are no local affiliated stations with one of the networks. And finally, satellite TV subscribers that receive service to a commercial truck or RV.

In effect, this provision enables rural customers of Dish and Direct TV to receive content from NBC, ABC, CBS, Fox, and other broadcast stations, where it isn't otherwise available.

STELAR also required broadcast stations and MVPDs, cable, telco, and satellite companies like Charter, Verizon, Dish, and others that offer television service, to negotiate the carriage of broadcast television content on their systems, what is known as retransmission consent or retrans, under a good faith standard, to be decided by the FCC. This regulatory backstop was and is important, because there have been allegations that these negotiations have at times not been carried out in good faith. When negotiations stall or break down, broadcasters may pull their signal from an MVPDs system's channel lineup, resulting in a blackout of that content. In these circumstances, consumers suffer as a result of the 2 parties' inability to come to an agreement. And while it is true that some consumers have the ability to setup an antenna to get this content over the air, when it gets pulled off their cable or satellite service, for many this option is too complicated, and they go without this broadcast content during these disputes. Requiring that parties engage in good faith negotiations was intended to reduce the number of blackouts and the resulting consumer harm. These were the major provisions of the bill that are now set to expire at the end of this year.

Some in the broadcast industry have argued that this legislation should sunset, and that the provisions are no longer necessary. While I agree that this law isn't a perfect solution, allowing this legislation to sunset would create a crisis that could result in nearly a million consumers losing access to important broadcast content. Allowing a lapse of the good faith standard in retransmission consent negotiations only invites bad behavior and consumer harm. More broadly, the media landscape has changed a lot of the last five years, with major consolidation occurring among broadcasters and MVPDs. Ms. Boyers, in her testimony, argues that this arms race between the two sides has resulted in increased rates for smaller rural cable providers, who don't have the scale to get preferential rates, and who often times pay higher rates for content than their larger rivals. However, across the board, we hear from MVPDs that the rates for retransmission consent are increasing. In recent years we have also seen the rise of over-the-top providers like Sling, Hulu, and YouTube offering live television services over the internet directly to consumers.

This is a complex marketplace that consumers rely on for information and entertainment, and American's pay a lot every year to get access to this content.

I look forward to the testimony of our witnesses.

Mr. DOYLE. I look forward to the testimony of our witnesses, and with that, I yield one minute to my friend from California, Ms. Eshoo.

Ms. ESHOO. I thank the chairman for yielding to me.

I think today's hearing is not so much about choosing sides between broadcasters and cable. I think it is really about consumers who I think are losing out in the media market in two ways: blackouts and unexpected fees. Too often, consumers are held hostage during disputes between broadcasters and cable. In 2017, there were 213 blackouts, which is more than double the number from

five years prior. I am pleased to report that Mr. Scalise and I have agreed to a champion legislation to end blackouts by overhauling outdated regulations.

Next, I think we should also deal with the hundreds of millions of dollars of misleading, below-the-line fees that consumers get stuck with every year. My bill, H.R. 1220, The True Fees Act, simply requires that cable, phone, and internet providers include all fees in the prices they advertise to consumers. Kind of a common-sense idea. I think that it would ensure that the consumers would then know exactly what they are paying when they sign up for a service.

So thank you, Mr. Chairman. I look forward to a productive hearing, and thank you for yielding to me.

Mr. DOYLE. I thank the gentlelady, and now the Chair recognizes Mr. Latta, the ranking member of the subcommittee, for five minutes for his opening statement.

**OPENING STATEMENT OF HON. ROBERT E. LATTA, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Mr. LATTA. Well, thank you, Mr. Chairman, and thank you very much for holding today's hearing, and thank you very much to our panel of witnesses for being with us today.

Today's hearing, once again, considers the interplay between local broadcasters and direct broadcast satellite services known as STELAR. Key provisions of STELAR expire at the end of 2019, and I am pleased that the subcommittee is continuing this process on a question of reauthorization that we started last year with a broader hearing examining the current state of the video marketplace.

In the subcommittee's hearing last September, we learned about changes in consumers' viewing habits, such as the continuing rise of the over-the-top video services, and notable shifts of advertising expenditures across the various mediums. Nevertheless, while on-line video services flourish and deliver exciting and innovating viewing alternatives, the bedrock of our video marketplace remains local broadcast programming.

All of us rely on our local broadcasters for news, emergency updates, weather, traffic, community engagement, and local interest programming. Accordingly, this subcommittee has a duty to ensure that local broadcasters retain the ability to invest in infrastructure and programming that keeps all Americans connected to their communities.

For 30 years, Congress has also played a key role in ensuring that rural Americans who are unable to receive an over-the-air broadcast network signal are able to receive local news and content via direct broadcast satellite services. Congress accomplished this in 1988 by creating a statutory copyright license fee, license fee, that helped the direct broadcast satellite industry take root.

But the video marketplace continues to evolve, and accordingly, every five years we carefully examine whether this model should be reauthorized, repealed, or revised. Through each iteration of what we now call STELAR, we ask the expert subject matter agencies to report on the effectiveness of statutory license fee model, and we hold hearings calling upon a broad collection of the stake-

holders representing both consumers and the industrial participants.

I am pleased that we have again seated a qualified panel of experts who can assist this committee to paint an accurate picture of this market. It is important that we foster a competitive video marketplace and ensure that all Americans continue to receive access to unbiased local news reports, up-to-the-minute weather updates, and critical information during emergencies.

For example, unfortunately, last week in Ohio, we had a series of tornadoes, and folks back home in my district, particularly, had to rely on the local broadcast as to what was occurring.

I look forward to working with the chairman and members of the subcommittee as we carefully examine reauthorization, and I thank our witnesses again.

And I appreciate the time, Mr. Chairman, and I yield back.

[The prepared statement of Mr. Latta follow:]

PREPARED STATEMENT OF HON. ROBERT E. LATTA

Thank you, Mr. Chairman. I appreciate the subcommittee holding this hearing today and I thank our panel of witnesses for testifying.

Today's hearing once again considers the interplay between local broadcasters and direct broadcast satellite services—namely the “Satellite Television Extension and Localism Act Reauthorization,” known as “STELAR.” Key provisions of STELAR expire at the end of 2019, and I'm pleased this subcommittee is continuing this process on the question of reauthorization that we started last year with a broader hearing examining the current state of the video marketplace.

In this subcommittee's hearing last September, we learned about changes in consumers' viewing habits, such as the continuing rise of over-the-top video services, and notable shifts of advertising expenditures across the various mediums. Nevertheless, while online video services flourish and deliver exciting and innovative viewing alternatives, the bedrock of our video marketplace remains local broadcast programming. All of us rely on our local broadcasters for news, emergency updates, weather, traffic, community engagement, and local interest programming. Accordingly, this subcommittee has a duty to ensure that local broadcasters retain the ability to invest in infrastructure and programming that keeps all Americans connected to their communities.

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I look forward to working with the chairman and the members of the subcommittee as we carefully consider reauthorization.

Thank you again to our witnesses and I yield back.

Mr. LATTA. And at this time, I am going to yield to Mr. Long.

Mr. LONG. Thank you. I thank my friend for yielding, and I would like to thank the witnesses for being here, and I am especially happy to see a fellow Missourian, Ms. Boyers, here today even though she did make the unfortunate decision to live in Jason Smith's district and not mine. But as a real estate broker for 30

years, I still have a lot of friends. If you want to move into the best of the 435 Congressional districts, we can set you up.

I think we can all agree that the media and entertainment marketplace has, and is, rapidly evolving. There is more competition than ever, and government intervention is not always the answer. It is important for us to examine the state of the video marketplace, but as we approach a potential sixth reauthorization of STELAR, we need to take a hard look at the underlying policy and its relevance today rather than assuming its passage is a necessity.

They say there is only 3 things in life that are certain: death, taxes, and the reauthorization of STELAR. We should ignore the inclination to rubber-stamp this legislation only because this committee has historically done so in the past, and I yield back.

Mr. LATTA. Mr. Chairman, at this time—are there any other members wishing to claim the remainder of my time? Mr. Scalise?

Mr. SCALISE. Thank you, Mr. Ranking Member and Mr. Chairman. I appreciate all of you coming to talk about STELAR, and really, not just STELAR in the context of reauthorization in that silo, but it is a time that forces us, I think, to look at the entire marketplace, the entire video marketplace, and all the laws governing it, because I actually share the expressions of some of the panelists who talk about why they think STELAR should expire.

It is not because they think it should just go away because they want more reforms, and some people might think that STELAR going away gets us reform, but it really doesn't. STELAR going away just brings us back to the fundamental 1992 Cable Act laws, the foundation which is incredibly outdated.

We have got a marketplace that has changed dramatically since 1992. I think everybody knows that. I mean, I literally can pull up content on this device right here, and it is not governed by—primarily most of what I would pull up is not governed by the 1992 Cable Act. Some actually is governed by the 1992 Cable Act.

But if I go on the internet and pull something up, or if I am over the top, why do we have such a diverse set of rules and laws that apply to a basic industry in our country? We need to reform the entire 1992 Cable Act. It is long past time for this Congress to do it.

I applaud Congresswoman Eshoo, and I know she spoke a few minutes ago. We have been working very closely, and hopefully, we can get to that point where we are reforming the entire marketplace that regards video.

Mr. DOYLE. The gentleman yields back. The Chair now recognizes Mr. Pallone, chairman of the full committee, for 5 minutes for his opening statement.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Doyle.

For nearly 70 years, television has been a unifying thread in American society. It brings people together, friends gather around to watch the big game, and coworkers share their theories about the twists and turns of the moments most-watched series. TV is also the place where we get our local and national news, and where

we turn for emergency information during a storm or natural disaster.

The hearing today may appear to be focused on a few discrete, arcane provisions of communications and copyright law, but it is fundamentally about consumers getting access to broadcast programming, whether they are in urban or rural areas. And we should continue to focus on the timeless values that inform our media policy, and those are localism, diversity, and competition.

The STELA Reauthorization Act of 2014, or STELAR, and its predecessors, established the framework that allows satellite television providers to deliver broadcast stations inside, and sometimes outside of a subscriber's market to their customers. Some so-called unserved subscribers can't receive their local stations from an antenna, because they are too far away, or they are in a media market that doesn't have a station affiliated with one or more of the big four networks, and these consumers must be protected.

At the same time, satellite television providers are not required to carry local broadcast networks. As a result, some subscribers receive out-of-market network programming from their satellite provider instead of local stations.

Congress also created the good faith negotiation rules that underlie the agreements that allow consumers to watch over-the-air broadcast stations as part of their cable and satellite TV packages. As media consolidation has grown, so too have the fights over these programming agreements, and unfortunately, consumers have been caught in the middle. The number of station blackouts has been increasing as have the rates consumers pay. Smaller telecommunication companies are facing a choice of whether to continue as cable operators, or simply become broadband providers.

So as we begin our examination of STELAR, it is important that we ask the ultimate question of how best to put consumers first. I expect that my colleagues on both sides of the aisle will offer a number of different solutions, large and small, tackling different issues cropping up within the media landscape.

In my opinion, we should focus our analysis on the consumers, and questions like what are the implications if STELAR is not reauthorized, and how are the over 800,000 consumers currently receiving distant signals be impacted? What is the path that gives consumers the ability to access at prices they can afford the television content they want? How do we ensure that consumers are not rendered pawns in high-stakes negotiations between video distribution companies and big broadcaster station groups?

And how can we ensure that broadcast stations remain vibrant outlets of expression and trusted sources of information for the local communities, while also promoting competition to the benefit of consumers? Also, how can we encourage the carrying of local programming at reasonable rates, and that local programming reflects a diversity of views? So this committee will closely examine these issues and work together to find a consensus approach of moving forward.

I want to thank the witnesses for being here today.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

For nearly 70 years, television has been a unifying thread in American society. It brings people together—friends gather around to watch the big game and co-workers share their theories about the twists and turns of the moment's must-watch series. Television is also the place where we get our local and national news, and where we turn for emergency information during a storm or natural disaster.

The hearing today may appear to be focused on a few discreet, arcane provisions of communications and copyright law, but it is fundamentally about consumers getting access to broadcast programming, whether they are in urban or rural areas. We should continue to focus on the timeless values that inform our media policy—localism, diversity and competition.

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Some so-called "unserved" subscribers can't receive their local stations from an antenna because they are too far away, or they are in a media market that doesn't have a station affiliated with one or more of the "big four" networks. These consumers must be protected. At the same time, satellite television providers are not required to carry local broadcast networks. As a result, some subscribers receive out of market network programming from their satellite provider instead of local stations.

Congress also created the good faith negotiation rules that underlie the agreements that allow consumers to watch over-the-air broadcast stations as part of their cable and satellite TV packages. As media consolidation has grown, so too have the fights over these programming agreements and unfortunately consumers have been caught in the middle.

The number of station blackouts has been increasing as have the rates consumers pay. Smaller telecommunications companies are facing a choice of whether to continue as cable operators or simply become broadband providers.

As we begin our examination of STELAR, it's important that we ask the ultimate question of how best to put consumers first.

I expect that my colleagues on both sides of the aisle will offer a number of different solutions, large and small, tackling different issues cropping up within the media landscape. In my opinion, we should focus our analysis on the consumers:

What are the implications if STELAR is not reauthorized and how will the over 800,000 consumers currently receiving distant signals be impacted?

What is the path that gives consumers the ability to access—at prices they can afford—the television content they want?

How do we ensure that consumers are not rendered pawns in high-stakes negotiations between video distribution companies and big broadcaster station groups?

How can we ensure that broadcast stations remain vibrant outlets of expression and trusted sources of information for their local communities, while also promoting competition to the benefit of consumers?

How can we encourage the carrying of local programming at reasonable rates and that local programming reflects a diversity of views?

This Committee will closely examine these issues and work together to find a consensus approach of moving forward. I thank the witnesses for being here today, and with that, I yield back.

Mr. PALLONE. I still have—I don't know if anybody wants my time. If not, I will yield back. Thank you. Oh, yes. I will yield to the vice chair.

Ms. CLARKE. Thank you very much, Mr. Chairman, and I thank Chairman Doyle and our ranking member.

Good morning, and I want to thank you for holding this very important hearing. Providing equal television broadcast access for consumers is crucial to informing the public, and having more competition available will assist our constituents.

We are not seated here today to discuss satellite and cable operators or broadcasters for that matter. We are here today to focus on the consumers. Our constituents deserve rules that protect them. They deserve rules that protect the diversity of voices in media and access to the spectrum. It is my hope that your input, as experts

in the field today, media marketplace, will give us that room and that space to do just that.

With that, Mr. Chairman, I yield back.

Mr. PALLONE. And I yield back as well, Mr. Chairman.

Mr. DOYLE. The gentleman yields back. The Chair now recognizes Mr. Walden, the ranking member of the full committee, for five minutes for his opening statement.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Good morning, Mr. Chairman, and good morning to our witnesses. We are delighted to have you here today. I want to thank you. I know your expertise is going to help us as we work on this legislation and review the media marketplace; and whether or not the Satellite Home Viewer Act, first passed when Ronald Reagan was President, works for television viewers today.

I would especially like to extend a warm welcome to my friend and fellow Oregonian, Senator Gordon Smith, who effectively served Oregon in the United States Senate for a dozen years. It is good to see you over here in the people's House, Senator.

Mr. SMITH. Thank you.

Mr. WALDEN. Thirty years ago, Congress sought to ensure that rural Americans, unable to receive an over-the-air broadcast signal, would still be able to view content via satellite services. For a large rural district like mine in Oregon, which would stretch from the Atlantic Ocean to Ohio if you laid it over the east coast, this was critical.

Congress would go on to bless the budding satellite industry with a discounted Copyright license as an alternative to individually negotiating with each Copyright holder. While the license to provide local-into-local is now a permanent fixture, the "distant network signal" license is still reviewed every five years, along with other elements that accompany the extension.

As I emphasize when we did this five years ago during my time as subcommittee chair, this must be a transparent process and driven by data. I am encouraged the FCC last year commenced its quadrennial review of the media landscape. I am also appreciative of the work by the Government Accountability Office in drafting its report to Congress, directing—describing the stakeholders' views on phasing out the statutory license. Our goal should certainly be that everyone in the country has access to local content and at a reasonable price.

You all have heard me discuss my background in radio broadcasting, and, hopefully, understand that my priority that local content is preserved. We must have a model that revolves around this concept, because although we might like watching the latest shows on Netflix or some other service, it is essential that we have access to our local news, sports, weather, and emergency information. Whether it is the wildfires and smoke warnings in the summer in Oregon, or tornadoes, traffic accidents, emergency situations elsewhere in the country, local content provides vitally important, trustworthy, and timely information to communities across America.

It is also certainly understandable in our fast-moving world to take stock of what has changed. Technological developments, paired with changes in how Americans consume video driven, in significant part, by online video services, have led video distributors to see steep declines in subscribers as consumers cut the cord, and broadcasters have seen advertising revenues move to digital platforms.

This fact certainly impacts the distributors, but also impacts the broadcasters and their ability to serve their local communities with in-depth news programming. Local broadcasters expend tremendous resources serving their communities, and they deserve a level playing field. Through their FCC licenses, they are also trustees of the public's airways, and must serve the public's interest. That means they serve the needs and interest of their communities. We must be careful not to hamstring with them with negotiating restrictions not justified by market conditions.

Most importantly, consumers won't tolerate gaps in coverage, blackouts, and arbitrage opportunities that drive up prices, and reduce the quality of content. The bottom line is that Congress must consider whether a distant network signal license extension is a bridge or a blockade to delivering local coverage.

So I am committed to ensuring that all rural communities, both in Oregon and across the country, continue to receive robust, effective, and affordable local coverage. I am looking forward to the hearing today and hearing from our witnesses, a cross-section of industry and public interest stakeholders, as we move forward in this process and examine the role of statutory licensing in today's video marketplace.

With that, Mr. Chairman, I yield back. Thank you.
[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Mr. Chairman, thank you for scheduling this hearing today.

And thank you to our witnesses for being with us today. I know expertise will be invaluable as we move forward in our review of the media marketplace and whether or not the Satellite Home Viewer Act—first passed when Ronald Reagan was president—works for television viewers today.

I'd especially like to extend a warm welcome to my friend and fellow Oregonian, Senator Gordon Smith, who effectively served Oregon in the United States Senate for a dozen years. It's good to see you over here in "the people's House."

Thirty years ago, Congress sought to ensure that rural Americans, unable to receive an over-the-air broadcast signal, would still be able to view content via satellite services. For a large rural district like mine in Oregon—which would stretch from the Atlantic Ocean to Ohio if you laid it over the East Coast—this was critical.

Congress would go on to bless the budding satellite industry with a discounted Copyright license as an alternative to individually negotiating with each Copyright holder. While the license to provide local-into-local signal is now a permanent fixture, the "distant network signal" license is still reviewed every five years, along with other elements that accompany the extension.

As I emphasized when we did this five years ago during my time as subcommittee chairman, this must be a transparent process driven by reliable data. I am encouraged that the FCC last year commenced its Quadrennial Review of the media landscape. I'm also appreciative of the work by the Government Accountability Office in drafting its report that Congress directed describing stakeholders' views on phasing out the statutory license.

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revolves around this concept because although we might like watching the latest show on Netflix, it's essential that we have access to our local news, sports, weather and emergency information. Whether it is the wildfires and smoke warnings in the summer months in Oregon, or tornados, traffic accidents, and emergency situations, local content provides vitally important, trustworthy, and timely information to communities across the country.

It is also certainly understandable in our fast-moving world to take stock of what has changed. Technological developments paired with changes in how Americans consume video—driven in significant part by online video services—have led video distributors to see steep declines in subscribers as consumers cut the cord, and broadcasters have seen advertising revenues move to digital platforms. This fact certainly impacts the distributors, but also it impacts broadcasters in their ability to serve their local communities with in-depth news coverage.

Local broadcasters expend tremendous resources serving their communities, and they deserve a level playing field. Through their FCC licenses, broadcasters serve as trustees of the public's airwaves, and must serve the public interest. That means they serve the needs and interests of their local communities. We must be careful not to hamstring them with negotiating restrictions not justified by market conditions.

Most importantly, consumers won't tolerate gaps in coverage, blackouts, and arbitrage opportunities that drive up prices and reduce the quality of local content. The bottom line is that Congress must consider whether a distant network signal license extension is a bridge—or a blockade—to delivering local coverage. I am committed to ensuring that all rural communities both in Oregon, and across the United States, continue to receive robust, effective, and affordable local broadcast coverage. Period.

So, I'm looking forward to hearing from our witnesses today—a cross-section of industry and public interest stakeholders—as we move forward in this process and examine the role of the statutory license in today's video marketplace. Thank you.

Mr. DOYLE. The gentleman yields back.

The Chair would like to remind Members that pursuant to committee rules, all Members' written opening statements will be made part of the record.

Now I would like to introduce witnesses for today's hearing. Ms. Patricia Jo Boyers, President and Vice-Chairman of the board of BOYCOM VISION. Welcome.

Mr. Robert Thun, Senior Vice President of Content Programming, AT&T Mobility and Entertainment. Welcome, sir.

Senator Gordon Smith, President and CEO of the National Association of Broadcasters. Senator, welcome.

And Mr. John Bergmayer, Senior Counsel, Public Knowledge. Welcome, sir.

We want to thank our witnesses for joining us today. We look forward to your testimony. At this time, the Chair will now recognize each witness for 5 minutes to provide their opening statement.

Before we begin, I would like to explain the lighting system. In front of you is a series of lights. The light will initially be green at the start of your opening statement. It will turn yellow when you have 1-minute left, so please start to wrap up your testimony at that point, and the light will turn red when your time expires.

Ms. Boyers, you are now recognized for 5 minutes, and please make sure your microphone is on.

STATEMENTS OF PATRICIA JO BOYERS, PRESIDENT AND VICE CHAIRMAN OF THE BOARD, BOYCOM VISION; ROBERT D. THUN, SENIOR VICE PRESIDENT OF CONTENT AND PROGRAMMING, AT&T MOBILITY AND ENTERTAINMENT; GORDON H. SMITH, PRESIDENT AND CEO, NATIONAL ASSOCIATION OF BROADCASTERS; AND JOHN BERGMAYER, SENIOR COUNSEL, PUBLIC KNOWLEDGE

STATEMENT OF PATRICIA JO BOYERS

Ms. BOYERS. Thank you. Good morning. I bring you greetings from the foothills of the great Ozark Mountains in southeast Missouri.

My husband and I started our mom and pop, BOYCOM, in 1992. This meant we had to take out a second mortgage on our home, and we used our farm as collateral. It has never been easy. Our systems are very rural. In most areas, you need a tomcat if you want kittens.

So our systems are 147 miles from our local NBC affiliate, and more than 75 miles away from our local NBC and CBS stations. Most of my subscribers can't get these signals free over the air, and none of these stations offer our local news, sports, or weather, no matter what others might tell you today.

We have a very price-sensitive population. Four of our five counties are perpetually impoverished. This simply means that the median annual household income of these counties has been below the national poverty level since the 1960 Census. Yet we survive.

All of y'all already know that the retransmission consent problems from your constituents, double-digit price hikes, blackouts before marquee events, and requirements to carry channels that no one has ever heard of. So the reality for us and other rural operators is, things have gotten worse since the last satellite television reauthorization.

First, broadcasters increasingly control multiple network affiliates within local markets. For instance, in my market, the same folks from Atlanta, Georgia, own both the local CBS and the ABC affiliates. This naturally leads to higher prices. There is no other game in town for us. And these two stations air the exact same local broadcast; same weather guy, same news guy, same words, same news. So that is one station for the price of two, and it is not even my local news, unless we beat Cape Girardeau playing football.

Secondly, broadcasters now control many more stations nationally. Years ago, I knew the owners of every broadcast station that I dealt with, all three of them. Now I deal with huge conglomerates. This means higher rates in the form of take-it-or-leave-it prices from the broadcasters who do not know where I am at, or anything about my customers.

And thirdly, broadcasters are acquiring these regional sports networks to increase their overall average in these bundling of contract renewals. This is especially egregious for us when Sinclair finally finishes their purchase of the Fox Sports Midwest, home of the Cardinals. Hell, we could drive all the way to St. Louis, buy tickets, hot dogs, popcorn, and beer for the price of what we are going to be paying Sinclair for our subscriber.

So it is no wonder why the broadcasters want this law to sunset. But what is needed is sunshine on their behavior, and the practices towards consumers and competition. Their prices are especially bad for small operators like me. The FCC reports that small cable operators now pay, on average, at least 30 percent more than large systems pay for retransmission consent. For my small system, that percentage is 47 percent. Today, the four affiliated broadcast stations make up 20 percent of my programming fees, and the rest is for the other 300 channels, and that percentage is growing at a rate of more than 200 percent every renewal cycle.

So I know that y'all care as much about your constituents as I do about my customers, who are elderly, on fixed incomes that depend on us for that video service, and who are greatly impacted by higher subscription fees. In fact, a lot of these folks can't get even satellite for DISH, not because it is not available to them, but because they can't afford it. They don't have a checking account. They don't have credit cards. They don't have credit. Well, they do have credit, but it is bad. All they can do is work with a local cable TV provider who will work with them. We can work with them. We can even barter out sometimes.

But by turning a deaf ear to my plight today simply ensures that those who live in the hills, and the hollows of southeast Missouri, and the rest of rural America will be uneconomical to reach, and those who do have our service are paying through the nose for it. So the mandated regulatory advantages given to broadcasters make a free marketplace solution impossible.

Now, I hate the idea of Congress getting involved in my business, but they are already involved in my business, with everything from basic tier buyouts through to channel placement rules, so I do need your help. One solution of many to help mitigate these soaring fees would be to apply the good faith rules to negotiations between larger station groups and the NCTC, which is a buying group that the small cable TV operators, like myself, use. We are affiliated with the American Communications Association. We connect. So we have an affiliation with the NCTC.

Regulations and reauthorization reform are desperately needed. Together, we can put our shoulder to the plow and figure this out now. Thank you.

[The prepared statement of Ms. Boyers follows:]

**One Page Summary of Written Statement of Patricia Jo Boyers
President and Vice Chairman of the Board of BOYCOM VISION and
Vice Chairman of ACA Connects – America’s Communications Association
Before the House Energy and Commerce Committee
Subcommittee on Communications and Technology
“STELAR Review: Protecting Consumers in an Evolving Media Marketplace”**

I helped found BOYCOM VISION, a small cable system in the Ozark Mountains, in 1992. You’re going to hear a lot today about the amazing things going on in the evolving media marketplace. But I’d like to tell you about how things look from my corner of southeast Missouri.

I’d like to focus in particular on “retransmission consent” agreements between companies like mine and television stations. If you were around the last time Congress considered satellite legislation, you heard us talk about double-digit increases, blackouts, and forced carriage of junk channels. This still happens today. And it’s a far cry from what Congress expected when it created a special rule in reliance on NAB’s promises that prices wouldn’t go up and that any fees would stay with the local station.

Recent changes in the marketplace, however, have made things far worse. First, individual broadcasters now control multiple “top-four” network feeds in more than a hundred local markets – and sometimes control three or even four such feeds – despite FCC rules that are supposed to prevent this kind of anti-consumer consolidation. Second, broadcasters have gotten much bigger nationally, with behemoths like Sinclair and Nexstar controlling more than one hundred stations across the country. Third, broadcasters increasingly bundle other “marquee” programming networks with their signals – raising consumer prices for both. This means that broadcasters have more market power than ever before, and certainly more than Congress expected, and cable subscribers pay the price.

So things are bad for everyone. But they are especially bad for smaller providers like mine. The FCC says that we pay at least one-third more for retransmission consent than do larger providers – even though the programming is the same and the cost of delivery is the same. Why? Large broadcasters simply don’t care if they aren’t carried on systems like mine, so they can charge more. How bad have things gotten? Some of the smallest providers have exited the video business entirely, and *every* small provider (including me) has considered the possibility. In the meantime, problems in the retransmission consent market have hindered us from upgrading our broadband networks and deploying in the most rural of areas, all of which contradicts constant bipartisan and bicameral calls for solving the digital divide.

I hate the idea of Congress having to get involved in my business. But at this point, something needs to be done. We have tried to employ market solutions, but large broadcasters have chosen not to deal with small cable operator buying groups, like the National Cable Television Cooperative (“NCTC”). Congress should consider approaches like the prior “Local Choice” proposal, Rep. Eshoo’s Video CHOICE Act, and Rep. Scalise’s Next Generation TV Marketplace Act. We are open to other approaches as well. The important thing, however, is that Congress do something to protect my customers and millions of your other constituents served by companies like mine.

**Written Statement of Patricia Jo Boyers
President and Vice Chairman of the Board of BOYCOM VISION and
Vice Chairman of ACA Connects – America’s Communications Association**

**Before the House Energy and Commerce Committee
Subcommittee on Communications and Technology**

“STELAR Review: Protecting Consumers in an Evolving Media Marketplace”

June 4, 2019

Chairman Doyle, Ranking Member Latta, and Members of the Subcommittee, I am Patricia Jo Boyers, founder, President, and Vice Chairman of the Board of BOYCOM VISION. Thank you for inviting me to testify today on behalf of ACA Connects – America’s Communications Association, of which I am the Vice Chairman, regarding renewal of satellite legislation. I’d like to talk to you about how the video business looks from my small corner of Missouri, and my story may sound a little different than what you are likely to hear from my esteemed co-panelists.

My husband and I started BOYCOM VISION in 1992. With our own money, we built our first system to serve our friends, family, and others living in the foothills of the Ozark Mountains of southeast Missouri. Because banks weren’t eager to lend to small rural providers and getting Rural Utilities Service loans as a cable operator was impossible, we did it on our own, which meant taking out a second mortgage on our home and our farm as collateral for our capital investment.

Over time, we invested more in our systems to ensure that our customers had access to advanced services. Today we provide broadband at speeds comparable to those in urban areas to about 3,000 residential subscribers, local businesses, and anchor institutions, including free service to our middle and elementary schools.

Our systems are *very* rural and are these are the kinds of places I hear Congress talk about all the time as needing help to ensure there is broadband everywhere. Let me explain what my reality of

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providing broadband service looks like in the Ozarks and why I urge you to help small operators like me to help you solve your national challenge of providing world class services everywhere.

We have a population density of 18 homes per mile passed. And all eight of our core systems are in what we in Missouri call “perpetually impoverished counties.” This means they have been below the poverty line consistently since the 1960 census. In other words, we have a *very* price-sensitive population that is expensive to reach in those “end-of-the-world-and-turn-left” places.

This morning you are going to hear about many of the wonderful things going on in the video industry. You are going to hear about how great it is to watch *Game of Thrones* on your smart phone, or to binge watch the latest drama from Netflix on your tablet, or to be able to watch the Boston Red Sox every night when you live in Los Angeles. And all these things really *are* great for many Americans. But things look a little different in communities like mine.

I’d like to talk about one area in which the video business *isn’t* great: carriage of broadcast television and the reason that problem hurts my ability to provide broadband. If you’ve observed the cable television business generally for any amount of time, you know about the problems concerning retransmission consent. That last time ACA Connects spoke to you about satellite TV legislation, we told you about price hikes of nearly 40 percent per year. We told you about the skyrocketing number of broadcast blackouts. And we told you about requirements that cable operators carry programming our subscribers don’t want, like Retro Television Network, MeTV, and Antenna TV, each of which features reruns. These problems remain, despite Congress’s efforts to address them in the Satellite Television Extension and Localism Act Reauthorization Act of 2014 (“STELAR”).

You might say that this is merely the “marketplace” that Congress intended when it wrote the rules in 1992. But you’d be wrong for three reasons. Congress wrote the retransmission consent rules with the reliance on NAB’s promises that it would *not* lead to price increases or significant

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revenue for broadcasters and I cite their statements below.¹ Yet cable subscribers now pay as much as \$20 per month just for what they are told is “free” broadcast programming. And retransmission consent brings stations billions every year – and is now the most important revenue stream for many broadcasters. Second, Congress created this unique set of rules not simply to establish a marketplace but instead to *promote and subsidize localism*. Indeed, in seeking retransmission consent, NAB *specifically said that it had nothing to do with networks at all*.² Yet we all know that, in today’s world, most of our subscribers’ fees go to the networks in New York or to huge multi-station conglomerates, and we hear that from the smaller broadcasters who complain to us (but not to you) about the scheme that they too have to live within. And we all know that almost none of these fees goes to local news or other locally originated programming. Third, retransmission consent is merely one government rule in a complex web of regulation, most of which favors broadcasters – hardly a real “marketplace.”³ The drafters of the 1992 Cable Act would be horrified to see the unintended results of their concept.

And I’m here to tell you that recent changes in the marketplace have made the situation much worse.

¹ National Association of Broadcasters, “How to Respond to Cable’s Attacks on Retransmission Consent” (July 31, 1991) (“Cable claims that the retransmission consent option in S.12 would provide the broadcast industry with an additional \$3 billion in revenue. This allegedly would represent a 20% “surcharge” on the rates paid by each cable subscriber. . . . These charges are false and misleading. . . . There is no reason to assume that cable consumers would see any increase in their monthly cable bills because of retransmission consent.”).

² *Id.* (“Retransmission Consent is a network plan. . . . This is sheer nonsense. Nowhere in S.12 is there any mention of network participation whatsoever. Retransmission consent is a right granted to stations in their local areas. Networks are not involved in any negotiations.”)

³ See Letter from Timothy Lee to Douglas Rathburn (May 29, 2018) (letter from the Center for Individual Freedom to the Department of Justice describing regulations distorting retransmission consent negotiations in favor of broadcasters).

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First, broadcasters increasingly control multiple “big-four” networks within local markets

(although, fortunately, this has not yet happened in my market). Obviously, if you can black out two (or more) of the big-four networks from a cable operator, you have more leverage in negotiations, and therefore, you can charge more. FCC rules nominally prohibit such combinations. But that rule contains exceptions that broadcasters have increasingly exploited. The American Television Alliance, of which ACA Connects is a member, has identified 110 instances of such duopolies, triopolies, or quadropolies formed using these loopholes.⁴

Second, broadcasters have gotten much bigger nationally. Five years ago, you had many small to medium-sized station groups. Now, you have behemoths like Sinclair (which operates in more than 100 markets) and Gray (which operates in 93 markets).⁵ If Nexstar is permitted to merge with Tribune (and not counting divestitures), the resulting entity will hold a combined 216 local TV stations in 118 markets across the country, covering 72 percent of the country’s population. These huge groups have more leverage in their negotiations with MVPDs and can therefore charge higher rates.⁶

Third, broadcasters increasingly combine with other “marquee” programming, especially regional sports networks (although, again, this has not yet happened to my systems). In particular, Sinclair is looking to acquire 21 regional sports networks from Disney.⁷ Just as your leverage is

⁴ See Comments of the American Television Alliance, Federal Communications Commission Media Bureau Docket No. 18-349 Exh. A (filed Apr. 29, 2019).

⁵ See Appendix A hereto.

⁶ DISH Network Corporation has conducted two recent economic reports showing the connection between large station groups and higher fees. See Petition to Deny of DISH Network Corporation, Exhibit B: Declaration of William Zarakas and Dr. Eliana Garcés, *Tribune Media Company and Nexstar Media Group, Inc.*, Federal Communications Commission Media Bureau Docket No. 19-30 (filed Mar. 18, 2019).

⁷ Sinclair Buys Regional Sports Networks From Disney in \$10.6 Billion Deal, *N.Y. Times* (May 3, 2019).

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higher when you control two network affiliates in a market, your leverage is higher when you control one (or more) network affiliates *and* local professional baseball, basketball, or hockey games with incredibly loyal fans.

What has this all meant? **Broadcasters have even more market power than they did five years ago and charge even higher prices.** This means that cable subscribers now pay more and more each month for retransmission consent. It means that blackouts are at or near an all-time high.⁸ It means that the market is failing, and consumers are paying the price. In terms of what these costs look like since enactment of the retransmission consent rules, consumers have seen quadruple-digit increases in retransmission consent fees and yet have less local content and less choice than before the law was enacted.

These changes are bad for everyone. But they are especially bad for small cable operators like mine and for customers in rural areas. We have always gotten the short end of the stick in retransmission consent negotiations. But the imbalance in negotiating leverage between me and broadcasters has increased enormously as they have grown. Broadcaster growth may not mean so much to Comcast. But it sure means a lot to me.

If you take one thing away from this hearing, it should be this: **The retransmission consent market today harms small cable system operators and their customers even more than it harms large cable system operators and their customers.** You don't have to take my word for it. Last December, the FCC released a report that contained new information about retransmission consent rates paid to broadcasters by different types of cable operators.⁹ The report showed that small cable

⁸ See <https://www.americatelevisionalliance.org/wp-content/uploads/2019/05/Retrans-Blackouts-Media-Center-.pdf> (containing up-to-date list of blackouts).

⁹ *Communications Marketplace Report*, Report, FCC No. 18-181, GN Docket No. 18-231 (rel. Dec. 26, 2018).

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systems, which we know are primarily located in rural areas, pay even more for broadcast signals than do large systems, which we know are primarily located in urban and suburban areas. Small systems pay at least one-third more than large systems pay for retransmission consent. Because cable operators pass such fees along to customers, rural cable subscribers pay much more for nominally “free, over-the-air” broadcast programming than do their urban counterparts.¹⁰ Small cable operators not only suffer from paying higher fees, we are also subject to more onerous terms and conditions, including bundling demands for programming we don’t want to carry. Based on my own experience, the FCC is right. Indeed, I’m positive that the *real* difference between what large broadcasters charge the largest cable operators and the very smallest ones is even larger.

This disparity has nothing to do with any real-life differences between rural and urban cable systems. The network programming is exactly the same, and the non-network programming is, if anything, of less value to rural viewers because local news tends to focus on more populated parts of the market. The costs of delivering the broadcast signal to the cable system headend are largely the same – although it certainly costs *me* a lot more to string cable and fiber to reach my rural customers than it costs a more urban cable operator serving a densely populated area. In short, this discrepancy instead has to do with simple leverage. Where a large broadcaster negotiates with Comcast or Charter, it has something to lose if it withholds retransmission consent. Where it negotiates with us, the outcome means almost nothing to its bottom line. What does this all mean for systems like mine? Well, at the risk of repeating myself, it means that my subscribers pay more for the same programming than do folks who live in St. Louis or New York City and it actually threatens my

¹⁰ For small systems that cannot receive the broadcaster’s signal over the air, the cost is significantly greater because these systems incur the cost of obtaining the signal through alternative means, like fiber, and the costs of this transport can be the same or greater than the cost they pay in retransmission consent.

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ability to survive. **This is nothing but a “rural TV surcharge” or “rural subsidization of cities,” and it’s not fair, and it is not smart policy.**¹¹

In the longer term, these factors place the cable television business itself in jeopardy for smaller operators like mine. Indeed, a handful of the smallest video providers have exited the video business entirely and become broadband-only providers. *Every* small to medium-sized cable system – including mine – has at least considered the possibility. And I don’t think I need to tell you how bad it would be for your constituents – especially older constituents less likely to turn to streaming services, and *especially* those living in rural areas like those my company serves – if small- and medium-sized cable operators were to conclude that they could no longer survive in the video business.

Even worse, these increased retransmission consent fees are affecting our ability to deploy broadband. As Craig Moffett pointed out in an earlier hearing before this subcommittee, it’s harder to deploy broadband networks relying on one stream of revenue (broadband) than it is with two streams of revenue (broadband and video). As he put it, this “means that operators have to be able to earn an acceptable return on deploying broadband absent any contribution from video.” He continued, “[a]nd almost by definition, that means higher prices for broadband (assuming that video contributed anything more than zero to profits in the past).”¹²

¹¹ Consistent with this testimony, in 2010, Professor William Rogerson of Northwestern University wrote a paper on the economic effects of price discrimination in retransmission consent agreements. He concluded that, while price discrimination has desirable effects in some markets, no such rationale applies in the case of retransmission consent. He added that “the main effect of price discrimination in this case, is simply to allow broadcasters to charge higher prices to MVPDs that possess less bargaining power.” Comments of the American Cable Association, Federal Communications Commission Media Bureau Docket No. 10-71, Appendix A (filed May 18, 2010).

¹² House of Representatives, “State of the Media Marketplace,” Subcommittee on Communications and Technology, Committee on Energy and Commerce (Sept. 27, 2018), <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/20180927-CAT%20State%20of%20the%20Media%20Marketplace.pdf>.

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I hope you see how things look different from my small corner of southeast Missouri. If you come away from this hearing understanding that not every part of the industry is doing great, that many of your constituents – especially older and rural customers – are being harmed right now, and that things may get a great deal worse if Congress doesn't act, then I have done my job.

I should, however, spend a moment talking about solutions. I'm not one to ask for Congress to get involved in my market. I'm generally of the view that businesses should do their best to solve their own problems, and cable operators have sought to do this. But, at this point, things have gotten so bad that I'm left with no choice but to encourage Congress to examine these issues now. Every time Congress has renewed the 1988 Satellite Home Viewer Act, it has considered issues about the video marketplace more generally and has often included such proposals in its updates. I can think of no good reason why it would not do the same here.

One place Congress can help is with respect to buying groups. One thing that has helped keep the smallest cable operators like mine afloat is the good work of the National Cable Television Cooperative in negotiating deals with large national programmers.¹³ NCTC negotiates standardized master agreements with these programmers and allows its members to opt into them.¹⁴ Because NCTC acts as an interface between programmers and its members, it allows the programmer to deal with a single entity for purposes of negotiating contracts, determining technical standards, billing for

¹³ NCTC has master agreements with the vast majority of cable networks, including at least 45 of the top 50 networks. Almost all small- and medium-sized MVPDs are members of the NCTC and purchase a substantial share of the programming they distribute through the NCTC. Letter from Barbara Esbin to Marlene Dortch, Federal Communications Commission Media Bureau Docket No. 12-68 (filed Apr. 15, 2014).

¹⁴ *See generally Revision of the Commission's Program Access Rules*, 27 FCC Rcd. 12605, ¶ 85 *et seq.* (2012) (describing NCTC's and ACA Connects' advocacy with respect to how the program access rules treat buying groups).

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payments, and collecting payments, along with other matters. National programmers especially benefit from working with NCTC because it reduces their transaction costs of dealing with small- and medium-sized cable operators so that they are comparable to the transaction costs of dealing with a single large provider. NCTC members benefit because they receive lower rates (sometimes significantly lower) than they would receive through direct deals.¹⁵

In recent years, as broadcast station groups have grown larger, small cable operators have encouraged the NCTC to negotiate agreements with broadcast groups. The NCTC has sought to do so, and has reached agreements with large groups like Sinclair, Quincy, and Hubbard. In those agreements, the respective broadcasters saved significant amounts on transaction costs, and NCTC members got lower prices than they could have on their own. However, even our attempts at addressing our concerns through market solutions have been thwarted because many large broadcast groups choose not to deal with NCTC, and that is not a violation of the good-faith rules.

With respect to retransmission consent more broadly, all ideas are on the table. One good idea is an idea called “Local Choice,” which would essentially get us out of the business of being a middleman between broadcasters and their viewers. Other good ideas can be found in Rep. Eshoo’s Video CHOICE Act and Rep. Scalise’s Next Generation Television Marketplace Act, which were introduced during the last satellite legislation reauthorization. And ACA Connects and the American Television Alliance, of which ACA Connects is a member, have many ideas to share with you as well. **The important thing, however, is that Congress must take action to make things better for my customers and for millions of your constituents in rural areas throughout the country.** I look forward to working with the Subcommittee as you do so.

¹⁵ See Comments of the American Cable Association, MB Docket No. 12-68, at 2-3 (filed Dec. 17, 2012) (noting that the rates NCTC can negotiate remain higher than those negotiated by the largest providers in the market).

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Thank you again for having me. It has been an honor.

APPENDIX 1

Top 20 Station Groups: Key Statistics

Group	Full-Power TVs	Markets	Total Coverage	FCC Coverage	Retrans Fees (millions)	Ad Rev (millions)	Total Rev (millions)
Nexstar	141	114	63%	39%	1300	2400	3660
Sinclair	106	89	39%	25%	1000	1600	2640
Tegna	58	50	37%	30%	919	1500	2390
Fox	28	17	37%	25%	829	1600	2380
CBS	27	18	38%	25%	718	1500	2230
NBCU	28	29	37%	20%	675	1400	2080
Gray	109	95	24%	17%	603	1500	2050
Scripps	48	43	31%	21%	391	1100	1450
ABC Disney	8	8	22%	21%	456	975	1430
Univision	41	25	45%	24%	459	788	1240
Hearst	32	27	19%	13%	364	833	1190
Terrier (Apollo)	24	20	13%	7%	265	579	884
Meredith	16	12	11%	7%	225	482	707
Graham	7	6	7%	4%	127	370	497
Quincy	18	16	3%	2%	54	164	218
Sunbeam	3	2	4%	3%	34	152	186
Hubbard	7	7	3%	2%	59	112	171
Entravision	24	24	14%	7%	37	121	158
Ion	64	61	68%	34%	0	149	149
Weigel	9	9	14%	7%	9	129	138

Source: Mark K. Miller, Nexstar Is The Star Of TV Station Groups, TV NewsCheck (May 31, 2019)
<https://tvnewscheck.com/article/top-news/235386/nexstar-is-the-star-of-tv-station-groups/>

Mr. DOYLE. Thank you very much. The Chair now recognizes Mr. Thun for 5 minutes.

STATEMENT OF ROBERT D. THUN

Mr. THUN. Thank you, Chairman Pallone, Ranking Member Walden, subcommittee Chairman Doyle, subcommittee Ranking Member Latta, and members of the committee. My name is Rob Thun, Senior Vice President of Content Programming at AT&T. In my current role, I am responsible for securing content rights for both the major networks and local broadcast station groups for the company.

AT&T has a 143-year history of innovation that includes eight Nobel prizes. We employ more than 200,000 Americans across all of the 50 States. We are deeply invested in our country, our communities, our employees, and our customers.

This hearing is aptly focused on protecting consumers in a marketplace that is undergoing revolutionary change. It is consumers, our customers, and your constituents, who are driving these changes. They are demanding high quality video content and the ability to watch it where and how they want to.

It is important for policymakers to ensure that the laws reflect a vibrant video marketplace and that all consumers benefit from it. At present, they do not, because the legal and regulatory framework for licensing broadcast television content distorts the market in favor of broadcasters. This framework is sorely in need of recalibration.

The retransmission consent regime that governs the video marketplace dates back to the 1992 Cable Act, well before today's multitude of competitive platforms and consumer options. It was first put in place to help broadcasters obtain carriage on cable platforms that, at the time, were the only pay TV offering in most areas.

Despite the competition in the video marketplace, broadcaster fees for carrying these stations have roughly doubled over the last five years. Since 2008 through 2018, the retrans fees have grown from \$500 million to \$10 billion. That is a 2,000 percent increase, which is clearly unsustainable.

Why is this happening? Because under the current law, MVPDs cannot offer their subscribers alternate network programming, even temporarily, during an impasse. These laws unfairly protect local broadcasters from the changes in the video marketplace, harming innovation and consumer choice.

When MVPDs attempt to limit the increases in these fees, local broadcasters, shielded with their statutory protections, respond with blackouts. Local broadcasters have shattered records for blackouts, and as I testify in front of you today, we face blackouts across 33 stations covering 25 markets.

The cycle of increased local broadcast fees and blackouts unfairly penalizes the nearly 90 million pay TV customers that have chosen to keep their traditional TV service, which includes over 20 million of our premium customers.

Retransmission consent has become a weapon for broadcasters to use to the detriment of these consumers. It is time to modernize the law to reflect the current marketplace, and to provide distributors a more level playing field with local broadcasters.

The marketplace has seen tremendous change since Congress last renewed STELAR in 2014. There are now over 170 million over-the-top subscriptions with Netflix having more subscribers than AT&T and Comcast combined. As is done in every past renewal, Congress should view the STELAR renewal as an opportunity to fix the big problem in the video marketplace, the broken retransmission consent regime.

To be clear, AT&T strongly supports the renewal of STELAR. STELAR contains provisions that benefit consumers, including the good-faith negotiations requirements and the statutory copyright license permitting satellite carriers to provide network programming to more than 870,000 satellite subscribers. Among these are hundreds of thousands of rural homes that broadcast stations fail to reach. In addition, it provides long-haul truckers, RV enthusiasts, tailgating sports fans, and the satellite delivery network TV.

Congress should take this opportunity to make permanent the satellite distant signal license that brings network service to hundreds of thousands of rural customers. STELAR's requirement that broadcasters and MVPDs negotiate in good-faith serves an important backstop that places guideposts on these negotiations. We still have issues with stations refusing to negotiate fairly, or even respond to offers in certain cases. Despite this, the good-faith provisions are important to helping these negotiations along. The notion that broadcasters oppose this provision is emblematic of the challenges that we face under the current law.

AT&T is grateful to the committee for holding this important hearing. We would also like to acknowledge and give thanks to the bipartisan efforts of Representatives Eshoo and Scalise to reform the broken retrans regime. We look forward to working with them and all of you to find a solution. I look forward to answering any questions you might have.

[The prepared statement of Mr. Thun follows:]

**Before the United States House of Representatives Committee on Energy and Commerce,
Subcommittee on Communications and Technology**

Hearing: “STELAR Review: Protecting Consumers In An Evolving Media Marketplace.”

Written Statement of Rob Thun: AT&T Senior Vice President Content and Programming

Thank you Chairman Pallone, Ranking Member Walden, Subcommittee Chairman Doyle, Subcommittee Ranking Member Latta, and Members of the Committee.

I am Rob Thun, Senior Vice President of Content and Programming for AT&T. In my current role I am responsible for securing content rights from the major networks and local broadcast station groups for AT&T.

This hearing is aptly focused on “protecting consumers” in a video marketplace that is undergoing revolutionary change. After all, it is consumers (our customers) that are driving these changes, demanding high-quality video content and the ability to watch it where and how they want it. And it is important for policy makers to ensure that our laws allow all consumers to benefit from this vibrant video marketplace. As I discuss below, AT&T supports proposals that further enhance the video marketplace, but there is one aspect of the traditional pay-TV ecosystem that is in dire need of reform – the retransmission consent regime for local broadcast stations.

That regime was first put in place last century, to help small local broadcasters obtain carriage on cable platforms that were then the only pay-TV offering in most areas. Now, with consumers having a multitude of options to watch their content, those statutory protections are no longer necessary and only serve to harm consumers and competition. From 2008 to 2018, local broadcaster fees for carrying these stations have risen from about \$500 million to \$10.1 billion, a nearly 2,000% increase.¹ When MVPDs² attempt to limit the increases in these fees (much less try to lower them), local broadcasters, shielded by their special statutory protections, reflexively respond with blackouts. Indeed, these antiquated laws have unfairly penalized the nearly 90 million³ customers that have chosen to keep their traditional pay-TV service.

That is why AT&T has long supported legislative efforts to end the retransmission consent regime, and we applaud the efforts of Minority Whip Scalise⁴ and Representative Eshoo⁵ to reform the system and end broadcaster blackouts and consumer harm.

¹“Broadcasters Use Old Myths in Attempt to Keep Video Marketplace Laws Old and Unfair,” American Television Alliance, January 2019, <https://www.americantelevisionalliance.org/broadcasters-use-old-myths-in-attempt-to-keep-video-marketplace-laws-old-and-unfair/>

² Multichannel Video Programming Distributors.

³ Q4’18 multichannel video losses propel full-year drop to nearly 4 million, S&P Global Market Intelligence, March 2019, <https://www.prnewswire.com/news-releases/q4-18-multichannel-video-losses-propel-full-year-drop-to-nearly-4-million-300810067.html>.

⁴ Next Generation Television Marketplace Act, H.R.6465, 115th Congress (2018).

⁵ Video Choice Act, H.R. 3719, 113th Congress (2013).

We also strongly support renewal of the STELA Reauthorization Act of 2014 (P.L. 113-200) (“STELAR”), which will expire at the end of 2019. It contains provisions that continue to benefit consumers, including the statutory copyright license permitting satellite carriers to provide network programming to more than 870,000 satellite subscribers. These include hundreds of thousands of rural homes that were left behind by broadcasters and cable providers. Congress should take this opportunity to make permanent the satellite distant-signal license that brings network programming to these rural customers.

We commend the Committee for holding this important hearing and renewing a conversation about reforming the retransmission consent regime.

Changes to the Video Marketplace Since the 2014 STELAR Review

We are all aware of the enormous changes in the video marketplace since the last STELAR renewal, in 2014. Consumers are choosing to leave traditional pay TV services to obtain their programming through the growing number of over-the-top options, including both subscription services (NETFLIX, HULU, Apple TV) and free services, like YouTube. There are now 170 million⁶ over-the-top subscriptions, with NETFLIX having more subscribers than DIRECTV and Comcast combined.⁷ NETFLIX intends to spend \$15 billion⁸ on content in 2019, more than CBS.⁹ Nearly 4 million traditional pay-TV customers have discontinued their service in the last year.¹⁰

AT&T has embraced these trends, providing consumers the innovative and mobile video alternatives they desire. In 2016, we launched our live-streaming service DIRECTV NOW, providing consumers customized packages with prices below traditional pay-TV offers and allowing them to watch TV wherever they want on different devices.¹¹ Last year, we offered a low-cost streaming service called WatchTV, with rates starting at \$15 per month. And, of course, AT&T continues to provide high-quality premium video service to over 20 million customers.

⁶ “Cord-Cutting Accelerates as OTT Video Keeps Growing,” eMarketer, August 2018, <https://www.emarketer.com/content/more-than-half-of-us-consumers-watch-subscription-ott-video-2018>.

⁷ “Netflix added record number of subscribers, but warns of tougher times ahead,” CNN, April 2019, <https://www.cnn.com/2019/04/16/media/netflix-earnings-2019-first-quarter/index.html>.

⁸ “Netflix Spent \$12 Billion on Content in 2018. Analysts Expect That to Grow to \$15 Billion This Year,” Variety, January 2019, <https://variety.com/2019/digital/news/netflix-content-spending-2019-15-billion-1203112090/>.

⁹ “CBS Execs Tout \$8 Billion Content Spend, Streaming Expansion and Ad Gains,” Variety, May 2019, <https://variety.com/2019/tv/news/cbs-q1-earnings-8-billion-content-streaming-1203203681/>.

¹⁰ Q4’18 multichannel video losses propel full-year drop to nearly 4 million, S&P Global Market Intelligence, March 2019, <https://www.prnewswire.com/news-releases/q418-multichannel-video-losses-propel-full-year-drop-to-nearly-4-million-300810067.html>.

¹¹ DIRECTV Now customers can choose between two packages, our Plus offer, offering 45+ channels for \$50 per month, or our Max offer, offering 60+ channels for \$70 per month.

No doubt, consumers have unparalleled choice and competition for video content. Yet the laws that govern the video marketplace were first written in 1934, and the present legal framework dates back to the Cable Television Consumer Protection and Competition Act of 1992, which established the local broadcast retransmission consent regime. It is long past time for Congress to take a serious look at modernizing these laws.

STELAR Reauthorization Presents An Opportunity for Broader Reform

As it has since 1994, Congress must renew STELAR, which will expire at the end of 2019. There are several discrete but important provisions, such as the satellite distant signal license, that Congress must renew. However, reauthorization matters even more because it presents Congress with the opportunity to examine changes in the licensing marketplace for broadcast television and what laws are working and not working to benefit consumers. In every prior reauthorization, Congress has also enacted substantive reform *apart* from the expiring provisions. It should do the same here. To point out a few examples,

- In 1999, Congress permitted satellite local carriage for the first time.
- In 2004, Congress permitted satellite carriage of significantly viewed signals, created privacy rights for satellite subscribers, and included a “no distant, if local” provision, which prohibits satellite operators from importing distant signals into television markets where viewers can receive the signals of broadcast network affiliates over the air.
- In 2009, Congress provided the opportunity for certain low-power stations to obtain protected status and thereby avoid interference and displacement by full-service stations, and also addressed satellite carriage of PBS stations’ high-definition signals.
- In 2014, Congress prohibited local stations from jointly negotiating for retransmission consent, though broadcasters have found ways around these protections.

Expiration of STELAR, in other words, presents an *opportunity* for Congress and for consumers. Over the last five years the video marketplace has witnessed monumental changes, and thus we urge Congress to take advantage of this opportunity to fix the real problems in the video marketplace.

The Local Broadcaster Retransmission Consent Regime Is Broken

Foremost among needed changes is reform of the current local broadcaster retransmission consent regime, which is the principal cause of rapidly rising broadcast programming costs and blackouts.

Under these laws, dating back to 1992, broadcasters can choose either: (1) retransmission consent, where cable (and later all MVPDs) must pay to carry broadcast programming (which broadcasters otherwise make free over-the-air), or (2) must-carry, where cable (and later all MVPDs) are required to devote capacity to carry the station. If a local broadcaster withholds its programming, MVPDs generally cannot offer their subscribers alternative, out-of-market network affiliate programming, even temporarily. These laws were written to protect broadcasters at time when there was only one distributor, so cable and broadcasters were mutually dependent on each other, and customers had few options besides cable. Now, these laws stubbornly protect broadcasters from the inexorable changes occurring in the video marketplace, and thus distort and stymie innovation and consumer choice.

As competition first came from satellite, and now from over-the-top providers, local broadcasters have relied on their special statutory protection to more effectively use the threat of blackouts to dramatically increase retransmission fees. As a result, these broadcasters have dramatically raised retransmission fees, as detailed above. As retransmission fees go up each year, which represent the fastest rising part of consumers' pay-TV bills, it leaves fewer resources for MVPDs to pay for things like innovative offers, independent programming and the expansion of broadband into rural areas. And, when MVPDs balk at local broadcasters' rate hikes, they have responded with blackouts. Local broadcasters shattered the record for the most TV blackouts in a single calendar year in 2017, intentionally taking down signals from cable and satellite customers 213 times.¹² Consumers were blacked out 165 times in 2018 and 41 times so far in 2019.¹³ Right now, AT&T has impasses with eight station groups covering more than 30 stations in more than 20 markets. Because of existing law, consumers are harmed by these unwarranted and unnecessary blackouts.

The problems with the local broadcast retransmission consent regime are exacerbated by broadcaster attempts to avoid the Federal Communications Commission's "top four prohibition" that prohibits a single entity from controlling more than one "top four rated station" in a given designated market area ("DMA"). Stations are increasingly using loopholes, such as carriage of one of the network affiliates on a multicast stream or low-power television stations, or both, to control two, three or even all four network feeds in a single DMA. The result is that local broadcasters in these areas can threaten sweeping blackouts and demand even higher fees. Giving broadcasters a pass on local ownership limits would all but guarantee more blackouts and higher prices for consumers in those DMAs.

We understand the desire to preserve local programming.¹⁴ However, local content will always have value and no longer needs to be given special protections in the law. Our WarnerMedia entertainment group navigates distribution issues without artificial protections and, instead, responds to competitive and economic forces by delivering — to consumers and

¹² "Eliminating the top-four Prohibition Rule Will Lead to Higher Consumer Prices, warns ATVA," American Television Alliance, April 2019, <https://www.americantelevisionalliance.org/eliminating-the-top-four-prohibition-rule-will-lead-to-higher-consumer-prices-warns-atva/>.

¹³ *Id.*

¹⁴ In fact, the law preventing ownership of multiple stations in a market was in part intended to prevent one entity from having too large an editorial voice in a community.

distributors — high quality products and programming. That should be the model for modern broadcasting, too. Continuing favoritism for some content over others is outdated and ultimately harmful to consumers. It is time for the law to catch up to the marketplace.

STELAR Renewal

AT&T strongly supports reauthorization of STELAR, which contains two critical provisions that expire at year's end. The first requires broadcasters and MVPDs to negotiate with one another in "good faith." This requirement serves as an important backstop that places guideposts around negotiations. We still have issues with stations refusing to negotiate or respond to an offer, and the good faith provision helps move those negotiations along. The second provides a statutory copyright license (called the "distant-signal license"), permitting satellite carriers to offer out-of-market network signals to customers who otherwise cannot obtain an over-the-air network signal.

DIRECTV and DISH rely on the distant signal license to provide high-quality satellite network TV service to more than 870,000 satellite subscribers. These subscribers include hundreds of thousands of rural locations that were left behind by broadcasters. In other words, absent the distant signal license, these subscribers would be unable to obtain a network TV signal because they cannot receive the local network affiliate's signal over-the-air via an antenna. Similarly, the distant-signal license allows us to provide customers network TV in "short markets," where one of the four national broadcast networks is not offered by any local broadcaster.

In addition, the distant signal license allows us to provide distant signals to mobile/recreational vehicles or commercial trucks, thereby allowing long-haul trucks, RV and camping enthusiasts, and tailgating sports fans access to satellite network TV service. In all cases, failure to renew STELAR would remove channels from people who legally receive them today -- many of whom have done so for years -- and who would not understand why those channels were taken away. Finally, Congress should take this opportunity to make the license permanent as it is for cable.

Preservation of these customers' TV services is why it is so important for Congress to permanently reauthorize the distant signal license. Otherwise, these largely rural subscribers will lose access to network TV programming that most Americans take for granted.

AT&T thanks the committee for holding this important hearing to examine the state of the media marketplace and we look forward to engaging with Members on both sides of the aisle with fresh and creative ideas to benefit consumers and competition.

Mr. DOYLE. I thank the gentleman.
Now, Senator Smith, you are recognized for 5 minutes.

STATEMENT OF GORDON H. SMITH

Mr. SMITH. Thank you. And good morning, Chairmen Pallone and Doyle, Ranking Members Latta and Walden, and members of this distinguished subcommittee. My name is Gordon Smith. I am the president and CEO of the National Association of Broadcasters.

On behalf of the free and local broadcast television stations serving your hometowns, I appreciate the opportunity to testify on how Congress can ensure that viewers are better able to access their local news, sports, weather, emergency information by allowing the expiring provisions of STELAR to sunset this year.

Today, STELAR is not only unnecessary due to considerable advances in the media marketplace, but any reauthorization will further harm the satellite viewers that are currently denied access to their local television stations as a result of this law. For these reasons, broadcasters oppose STELAR's reauthorization. Similarly, the copyright office, the expert agency charged with administering STELAR's license, released a report yesterday calling for its expiration.

In today's competitive media landscape, local broadcast television remains the most watched source of news, emergency updates, entertainment, programming, sports, and investigative journalism, something that is in trouble in this country. And in communities across America, we are their lifeline. Our viewers turn to local stations to get weather reports, learn how to help neighbors in need, and watch trusted local news anchors give an unbiased view of what is happening in their communities. Local broadcasting is a critical electronic thread that keeps every community together, informed, and safe.

The exceptions to the benefits afforded by this local broadcast system are those communities that continue to be served by out-of-market stations as a result of STELAR. In 1988, when the original satellite law was enacted, viewers had two predominant choices for video programming, over-the-air broadcasting, television, or subscription cable package offered by a single local provider.

That satellite legislation, a predecessor of STELAR, was hugely successful in enabling the Nation's satellite television companies to better compete with cable's monopoly, but it was never meant to be permanent, and it gave satellite operators a crutch, the ability to serve local viewers with out-of-market network programming at below-market rates, and without having to negotiate for it.

Thirty years later, today's media market is virtually unrecognizable and dramatically different, even compared to just five years ago at the last STELAR renewal. Those nascent satellite companies that Congress subsidized are now multi-billion dollar behemoths, and today's competition for viewers comes not from those giant pay TV providers and their cable brethren, but also by unregulated behemoth tech companies, such as Facebook, Google, and online video providers, like Netflix and Amazon.

Most importantly, no technological impediment exists today to prevent AT&T and DIRECTV and DISH from providing local broadcast channels to their subscribers across the country. Yet,

STELAR's distant signal provisions incentivize those companies to serve a shrinking universe of eligible viewers with out-of-market stations because of this subsidy.

To put this in practical terms, DIRECTV subscribers in Ottumwa, Iowa, saw a news story about a garbage truck catching fire in Los Angeles. The local news they should have seen is that of crop insurance prices rising, and its impact on farmers in their State, in the Hawkeye State.

Well, during times of emergency, the difference between what STELAR viewers see versus the local broadcast news is stark. This is a business decision that a \$200 billion AT&T DIRECTV is making in 12 rural markets across America, a choice that puts their profits ahead of service to consumers and ahead of the safety of communities.

Broadcast and viewers salute Congressman Loeb sack and other Members of Congress who have highlighted the STELAR harm. To end this consumer harm, and to modernize the video marketplace laws, Congress should allow STELAR to expire as it was originally intended. There is no policy justification or technological reason for this outdated law to be reauthorized. The time has come to stop subsidizing \$1 billion satellite companies, and to instead provide viewers with the most accurate, the most watched, the most timely source of community news, their weather, their emergency information which is their local broadcast stations.

Thank you for this opportunity.

[The prepared statement of Mr. Smith follows:]



**Hearing on
“STELAR Review: Protecting Consumers in an
Evolving Media Marketplace”**

**United States House of Representatives
Committee on Energy and Commerce**

***Subcommittee on Communications
and Technology***

June 4, 2019

**Statement of Gordon H. Smith
President and CEO**

National Association of Broadcasters

Introduction

Good morning Chairmen Pallone and Doyle, Ranking Members Walden and Latta and members of the subcommittee. My name is Gordon Smith and I am the president and CEO of the National Association of Broadcasters. On behalf of more than 1,300 full-power, free and local broadcast television stations serving your hometowns, I appreciate the opportunity to testify on how Congress can ensure that viewers are better able to access their local news, sports, weather and emergency information by allowing the expiring provisions of the Satellite Television Extension and Localism Act Reauthorization (STELAR) to sunset this year. STELAR is not only unnecessary today due to considerable advances in the media marketplace, but any reauthorization will further harm the satellite viewers currently being denied access to their local television stations. For these reasons, broadcasters oppose STELAR's reauthorization.

Local Broadcasting: The Electronic Thread That Keeps Every Community Together

In today's hyper-competitive media landscape, local broadcast television remains the most-watched source of news, emergency updates, entertainment programming, sports and investigative journalism in communities across America. Our communities turn to local stations to get the weather report, learn how to help neighbors in need and watch trusted local news anchors deliver an unbiased report of what is happening in their hometowns. Local broadcasting is the critical electronic thread that keeps every community together, informed and safe.

One shining example is Hearst Television-owned WTAE-TV in Pittsburgh. WTAE serves its viewers with 38 hours of local news each week and has received numerous local and national awards for its investigative reporting. Pittsburgh viewers turn to WTAE for special local programming such as Chronicle, a series of hour-long news specials on relevant topics to Western Pennsylvanians ranging from the high number of families struggling with food insecurity to most recently, a town hall meeting from the Pittsburgh neighborhood where a gunman murdered 11 innocent people inside the Tree of Life synagogue. Further, viewers partner with WTAE-TV and the Salvation Army to serve those less fortunate in their community. For 33 years, WTAE's Project Bundle-Up

program has raised more than \$14.5 million to provide nearly 300,000 children and senior citizens with warm clothing during winter.

Along with our unique community connection, it is broadcasters' role as a trusted lifeline during times of emergency that sets us apart from other mediums. From Hurricane Sandy bearing down on New Jersey to wildfires ravaging Oregon's forests, Americans' first choice during emergencies is to turn to their local broadcast stations to get the information they need to stay safe and informed. Local stations prepare viewers for the coming storm, help them access needed supplies and shelter during the disaster, and help towns and cities rebuild in the aftermath.

Broadcasters invest heavily in their newsrooms and infrastructure to ensure they remain on the air in times of disaster. Because of the resiliency of the broadcast infrastructure and the power of the airwaves, local broadcast stations are often the only available communications medium during disasters, especially when cellular wireless networks fail. Local television stations are part of the communities they serve, and broadcasters do not hesitate to put themselves in harm's way to bring critical information to their neighbors.

Viewers Rely On Local Broadcasters In A Rapidly Evolving Video Marketplace

In 1988, when the original Satellite Home Viewer Act (SHVA) was enacted, viewers had two predominant choices for video programming: over-the-air broadcast television or a subscription cable package offered by a single local provider. As Congress intended, SHVA injected much needed competition into the pay-TV market from the nascent satellite industry – now AT&T/DIRECTV and DISH – and those companies flourished to the benefit of consumers.

As a result, today's media marketplace is virtually unrecognizable compared to 1988, and is even dramatically different from the one that was the subject of discussion during STELAR's passage five years ago. Today's competition for viewers comes not only from giant pay-TV providers such as AT&T-DIRECTV and Charter, but also

unregulated tech companies such as Facebook and Google, and online video providers like Netflix and Amazon.

This competition benefits consumers in the form of more choice and lower prices. But for broadcasters, the competition for viewers and the advertising dollars that fuel our locally-focused programming and investigative journalism has never been more intense. As of last summer, over 200 over-the-top video services were available in the U.S., and about 70 percent of American households subscribed to Netflix, Amazon Prime and/or Hulu.

This shift in viewership has naturally led to a shift in ad spending. In 2019, BIA Advisory Services (BIA) estimates that "pure play" digital ad platforms (online, mobile, email and internet yellow pages) will receive 31.5 percent of total ad spending across all 210 television markets combined, far outpacing the 12.4 percent of all local ad spending that TV stations will receive. BIA also estimates that Google's total local advertising revenues in 2019 will roughly equal the total over-the-air ad revenues for all TV stations in the U.S. and will soon exceed them. Meanwhile, Borrell Associates reports that Facebook has become the most popular marketing vehicle for local advertisers.

To compete in this rapidly evolving media and entertainment landscape, television broadcasters now deliver our high-quality entertainment programming, sports, local news and weather whenever and wherever viewers want to access it. Broadcasters are investing in apps, digital and new distribution platforms to fit the needs of all viewers. Moreover, broadcasters are transitioning our free over-the-air broadcasts to a Next Generation Television standard, also known as ATSC 3.0.

Next Gen TV will enable local broadcast stations to deliver their programming over-the-air not only to televisions, but also to next-gen enabled tablets and cell phones, giving consumers the ability to watch their favorite broadcast shows and local news on the go without using precious wireless data. That's in addition to enhancements like ultra high-definition video, immersive theater-like sound, interactive applications, and enhanced interactive hyper-local emergency and weather alerts.

There are significant public policy benefits to ensuring that consumers continue to enjoy our sought-after entertainment, sports programming and lifeline local information even in this fragmented media landscape. Yet, amidst this fierce competition, broadcasters are not before you today to ask for new regulations to give us a leg up in this video marketplace. Instead, we are asking this committee to preserve policies that enable investment in local programming and to not extend outdated and asymmetrical regulations that disadvantage broadcasters – and only broadcasters – against our competition. Congress can achieve these goals and update its laws simply by allowing STELAR to expire at the end of this year.

STELAR's Harm to Local Viewers Must Be Stopped

Thirty years ago, nascent satellite television companies were temporarily given a significantly discounted copyright license that allowed them to better compete with big cable monopolies at a time when there were millions of Americans who could not receive their local broadcast stations over the air, from cable or from satellite. On a temporary basis, Congress allowed the satellite companies to serve those households with a broadcast station operating outside of the local community, typically from a major city, so viewers could receive their favorite network programming. This policy was the foundation for STELAR and all of its predecessors dating back to SHVA in 1988.

Congress has succeeded in SHVA's policy goal of injecting significant competition in the video distribution marketplace that is now flourishing. Yet, those nascent satellite companies that Congress subsidized are now media behemoths: AT&T-DIRECTV is a \$235 billion company, and DISH is a \$17 billion company. There are no technological impediments to providing satellite viewers with their local broadcast stations rather than out-of-market substitutes. In fact, DISH is not only providing this service in all 210 local markets today but has been for nearly a decade.

Today, AT&T-DIRECTV and DISH provide local broadcast channels to the vast majority of their subscribers across the country (only AT&T-DIRECTV does not serve all 210 television markets). The number of households being denied their local network channels is shrinking. Although only AT&T-DIRECTV and DISH have access to the

precise numbers, it is estimated that around 500,000 households that subscribed to satellite TV service in 2017 were denied their local ABC, CBS, FOX or NBC broadcast channels and instead received an imported signal from another market, primarily from New York City or Los Angeles, under the expiring STELAR distant signal provisions.

The STELAR distant signal license allows the billion-dollar satellite companies to import out-of-market TV channels for those 500,000 households instead of providing these viewers their local broadcast stations. Royalties under this outdated license are discounted substantially below the carriage fees for these stations negotiated in the market by other pay-TV providers. This below-market subsidy incentivizes the satellite companies to deny viewers local news, weather and lifesaving emergency information, while still charging their subscribers hefty fees each month for an out-of-market station.

Viewers will benefit from eliminating this outdated law, ensuring they receive the local content most relevant to them. In rare instances where a local broadcast channel is not available, private business arrangements between satellite TV providers and broadcasters can resolve these issues.

Additionally, in an earlier reauthorization of the compulsory copyright license, Congress added a requirement that broadcasters and pay-TV providers negotiate in good faith for carriage of local TV stations. In the nearly 20 years since Congress passed this provision, the Federal Communications Commission has decided only seven good faith complaints – and has found a violation of the requirement on only one occasion. Not surprisingly, the one violation was committed by a pay-TV company.

While well intended, the expiring good faith requirements have provided no quantifiable benefit to either broadcasters or pay-TV providers. This is in large part because both parties have every incentive to reach a deal and serve consumers without a regulatory requirement. Moreover, the provision has the unintended consequence of diverting time and attention from the parties' negotiations in favor of posturing in front of government officials. The countless other program carriage agreements successfully completed outside this broadcast-only framework reveal that this regulatory structure simply does not justify STELAR's reauthorization.

Conclusion

Congress should allow STELAR to expire as it originally intended. There is no policy justification or technological reason for this outdated law to be reauthorized. The time has come to stop subsidizing billion-dollar satellite TV companies and to instead provide viewers with the most accurate and timely source of community news, weather and emergency information – their local TV broadcast stations.

Thank you again for the opportunity to discuss this issue critical to America's broadcasters and the communities they serve. I look forward to your questions.

Mr. DOYLE. Thank you. We now recognize Mr. Bergmayer for 5 minutes.

STATEMENT OF JOHN BERGMAYER

Mr. BERGMAYER. Thank you, Chairman Pallone, Chairman Doyle, Ranking Member Latta, and Ranking Member Walden and all the members of the subcommittee.

Congress must reauthorize STELAR, or even better, make it permanent. Eight hundred and seventy thousand satellite subscribers should not be a bargaining chip in the decades-long disputes between broadcasters and MVPDs. Whether it is called SHVA, SHAVIA, SHAVIRA, STELA, or STELAR, it has ensured that satellite television companies can continue to retransmit local broadcast stations to all of their customers. STELAR is an important building block of video competition, allowing viewers who live in unserved areas to continue receiving a full range of national programming.

Satellite television has been a success story. Action by Congress and the Federal Communications Commission has ensured that satellite television, once a new distribution technology, could access content and reach viewers. Public policies that ensure that new distributors can access content on fair terms benefit the public interest, and the success of satellite should be a lesson for policymakers about the importance of fostering new modes of video competition.

Congress should make STELAR permanent. There is no reason for Congress to create artificial crises every few years, jeopardizing the ability of satellite to remain a competitor. The reason why Congress enacted STELAR in the first place remain unchanged. It remains a necessary part of the current overall regulatory system, which otherwise has no clear way to deal with the problem of short markets.

However, if Congress does choose to reauthorize STELAR for only a few years, it could consider timing its expiration to the expiration of other video marketplace provisions, such as distant signal importation rules, or basic tier buy-through. This approach would better incentivize all industry players to come to the table.

But fundamentally, if we are to consider reforms in the video marketplace rules, they should benefit consumers, not one industry sector at the expense of another. For years, public knowledge has believed that this is an instance where a predominantly deregulatory approach is needed and has a chance of bipartisan support.

In particular, we would like to recognize Representatives Anna Eshoo and Steve Scalise for their leadership on video marketplace reforms. A promising approach would be to replace the cumbersome and duplicative compulsory copyright license retransmission consent system with a regime based purely on copyright. This would better align the interests of programming creators, and distributors, and eliminate duplicative negotiations. It would ensure that local broadcasters have the incentive to produce original, relevant local programming they would own the rights to, that they could then license to MVPDs and online distributors. And it would make it much easier for non-MVPD video distributors to access programming by eliminating the current two-track system where online

video rights are negotiated one way, and VPD rights another way, and where incumbent MVPDs have a structural advantage.

To eliminate viewer blackouts, such an approach would keep good faith requirements in place, as well as institute dispute resolution mechanisms, and a gradual phase-in would avoid industry and consumer disruption.

Additionally, it is time to eliminate network non-duplication and syndicated exclusivity protections as the elimination of the sports blackout rule has proven that such measures are unnecessary and that the video industry can manage its affairs via private contracting alone.

Ambitious reforms of this kind are the best way to streamline the video marketplace and curb bill inflation. While public knowledge supports bold changes to the video marketplace rules, incremental reform should not be off the table if they are more feasible in the short term. The retransmission consent regime could be improved through the adoption of clear standards of good faith and through the prohibition of certain actions that should be considered bad faith, *per se*.

Congress should also consider protecting and promoting competitiveness by directing the FCC to end the basic tier buy-through rule, and unjustified policy intervention that makes a la carte offerings unlawful. It could also extend the successful policies that protect MVPDs from anticompetitive conduct to certain online providers.

Congress should also promote internet openness and prevent discriminatory billing practices that can hold back online video. In addition to supporting strong open internet rules under Title II of the Communications Act, Congress should examine whether discriminatory data caps can hold back online video competition.

It is time for Congress and the FCC to revamp the rules of the video industry to promote the public interest. A video marketplace that serves the public interest would give viewers more choice of providers and the ability to watch any programming wherever they want, and on the device of their choice.

At the same time, it would ensure that creators and distributors are paid a fair price. Congress can begin its video reform efforts by making STELAR permanent, or at least tying its sunset to the expiration of various other marketplace rules. Thank you.

[The statement of Mr. Bergmayer follows:]



**Testimony of
John Bergmayer
Senior Counsel
Public Knowledge**

**Before the
United States House of Representatives
Committee on Energy and Commerce**

**Subcommittee on
Communications and Technology**

**Hearing on:
STELAR Review: Protecting Consumers in an Evolving Media Marketplace**

**Washington, D.C.
June 4, 2019**

Congress must reauthorize STELAR or, even better, make it permanent. 870,000 satellite subscribers should not be a bargaining chip in the decades-long disputes between broadcasters and MVPDs.

This law, of course, has gone by many names. But whether it is called SHVA,¹ SHVIA,² SHVERA,³ STELA,⁴ or STELAR,⁵ it has ensured that satellite television companies can continue to retransmit local broadcast stations to all of their customers. It is an important building block of video competition, allowing viewers who live in unserved areas to continue receiving a full range of national programming.

Satellite television has been a success story, where action by Congress and the Federal Communications Commission (FCC) ensured that a new distribution technology could access content and reach viewers. Public policies that ensure that new distributors can access content on fair terms benefit the public interest, and the success of satellite should be a lesson for policymakers about the importance of fostering new modes of video competition. Congress should not put the video competition we have already achieved at risk by failing to ensure that satellite viewers can continue to access programming without interruption.

Given the importance of STELAR to maintaining competition and protecting viewers, Congress should reauthorize it permanently. There is no reason for Congress to create artificial crises every few years to ensure that satellite remains a competitor. The reasons why Congress enacted this provision in the first place remain unchanged and are unlikely to change in the foreseeable future. A “clean” reauthorization of STELAR indefinitely would not prevent Congress from revisiting the provision at a later date, perhaps along with other video reforms. If Congress does choose to reauthorize STELAR for only a few years, it should tie its expiration to the expiration of other video marketplace protections, such as distant signal rules, basic tier buy-through, and similar provisions.

Public Knowledge is aware that a number of industry stakeholders feel that STELAR should simply expire. But if we are to consider broad reforms of video marketplace rules they should benefit consumers, not one industry sector at the expense of another. For years, Public Knowledge has believed that this is an instance where a predominantly deregulatory approach is needed at first, and that a bipartisan approach has a good chance of success. In particular, we would like to recognize Representatives Anna Eshoo and Steve Scalise for their leadership on video marketplace reforms.

¹ Satellite Home Viewer Act of 1988, Pub. L. No. 100-667; Satellite Home Viewer Act of 1994, Pub. L. No. 103-369.

² Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106-113, App. I.

³ Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447.

⁴ Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175.

⁵ STELA Reauthorization Act of 2014, Pub. L. No. 113-200.

A promising approach would be to replace the cumbersome and duplicative compulsory copyright license / retransmission consent system with a regime based purely on copyright. This would better align the interests of programming creators and distributors, and eliminate duplicative negotiations. It would ensure that the local broadcasters have incentive to produce original, relevant, local programming they would own the rights to, which they could then license to MVPDs and online video distributors. And it would make it much easier for non-MVPD video distributors to access programming, by eliminating the current two-track system, where online video rights are negotiated one way, MVPD rights another way, and where incumbent MVPDs have a structural advantage. To eliminate viewer black-outs, such an approach would keep good faith requirements in place, as well as institute dispute resolution mechanisms. A gradual phase in would avoid industry and consumer disruption. Additionally, it is time to eliminate network nonduplication and syndicated exclusivity protections, as the elimination of the sports blackout rule has proven that such measures are unnecessary and that the video industry can manage its affairs via private contracting alone.

Ambitious reforms of this kind are the best way to streamline the video marketplace and curb bill inflation. To the extent that content costs and consumer bills continue to go up, other measures can be considered (such as reasonable rate requirements, increased antitrust enforcement, and other measures to increase competition), but it is better to first clear away unnecessary, industry-protective rules that have outlived any usefulness they may once have had.

While Public Knowledge supports bold changes to the video marketplace rules, incremental reforms should not be off the table if they are more politically feasible in the short term.

The retransmission consent regime could be improved through the adoption of clear standards of good faith, and through the prohibition of certain actions that should be considered bad faith per se. Such actions should include bundling different broadcast stations, or broadcast and cable channels together as part of one negotiation. At a minimum, broadcasters could be required to make a standalone offer of just the broadcast station. Broadcasters should also be prohibited from charging distributors on the basis of customers who do not even subscribe to the station in question, and from timing blackouts to coincide with marquee events. Additionally, during programming disputes, carriage should continue on an interim basis under the terms of the expired agreement.

Congress or the FCC could also reduce the leverage some large broadcast companies have over smaller MVPDs, which leads to ever-increasing bills, by restoring the top-four prohibition, and making sharing arrangements attributable. These steps would help bring our media ownership policies back into balance.

Congress should also consider protecting and promoting competitiveness in the video marketplace in several ways. It can ensure that the "Next-Gen TV" ATSC 3.0 technologies are available on reasonable and non-discriminatory terms, and do not require that viewers unnecessarily upgrade their TV sets. Additionally, such technologies should

protect consumer privacy, and not become yet another way for consumers to be invasively tracked. It can direct the FCC to end the basic tier buy-through rule, an unjustified policy intervention that makes à la carte offerings unlawful. It can also extend the successful policies that protect providers from anticompetitive conduct to certain online providers. For example, if a large cable system is prohibited by law from acting anti-competitively towards a satellite provider, there is no reason why it should be able to take the same actions against an online video provider. Measures such as program access and program carriage rules are designed to mitigate this form of market power by certain large video providers. These rules should be extended to online video as well. Also, restrictive most-favored-nation (MFN) contracts can unfairly limit the ability of smaller programmers to distribute via new outlets. They harm competition and the diversity of programming available to consumers, and Congress and the FCC should address them.

More generally, Congress should promote Internet openness and prevent discriminatory billing practices that hold back online video. In addition to supporting strong open internet rules under Title II of the Communications Act, Congress should examine whether discriminatory data caps and zero-rating hold back online video competition, and the extent to which these risks are exacerbated by vertical integration. If Congress takes action against anti-competitive and anti-consumer conduct, it will lead to lower prices, better services, and more flexibility and control for consumers.

It is time for Congress and the FCC to revamp the rules of the video industry to promote the public interest. A video marketplace that served the public interest would give viewers more choice of providers and the ability to watch any programming whenever they want on the device of their choice. At the same time, it would ensure that creators and distributors are paid a fair price. A video marketplace that served the public interest would align the interests of viewers, creators, and distributors, not set one against the other. Public Knowledge is aware that the needed reforms will be controversial, and may take time. Congress can begin by making STELAR permanent, or at least tying its sunset to the expiration of various other video marketplace rules.

Mr. DOYLE. We thank all the witnesses for their testimony. That concludes opening statements. We are now going to move to member questions. Each Member will have 5 minutes to ask questions of our witnesses, and I will start by recognizing myself for five minutes.

Mr. Thun, in your testimony, you say that roughly 870,000 satellite TV subscribers, mostly in rural areas, depend on the provisions of STELAR to receive broadcast content. What would happen if those provisions expire, and do you think any customers would lose programming that they currently receive?

Mr. THUN. If STELAR were to expire, those customers simply would not receive broadcast stations, those signals, and they would lose access to that programming.

Mr. DOYLE. Senator Smith, what do you think about that?

Mr. SMITH. Well, right now, there are 12 markets that AT&T does not provide local news to that it could. It chooses not to. There is no technological reason that they couldn't. The market has fundamentally changed, and renewing STELAR just simply perpetuates that harm to many communities, specifically Mr. Loeb's. That will continue.

Mr. DOYLE. Ms. Boyers, let me ask you. What would be the consequences if Congress allows STELAR to expire, specifically the good faith provisions related to retransmission consent negotiations?

Ms. BOYERS. Well, thank you, Congressman. It is important because the reauthorization gives Congress that ability every five years to reexamine the marketplace to make necessary changes that protect customers, consumers, your constituents, and competition. And less oversight by Congress in its critical role means harm to consumers and to competition because the broadcast industry, which has already shown a willingness every year to raise their prices to consumers, and increase their broadband TV, or their broadcast TV blackouts will have no check and no balance whatsoever. That is not good for your constituents, my consumers, my folks that we provide service to.

It is kind of that David and Goliath thing for us. I have got 3,000 subscribers, you know. I am just 3,000 subscribers. I am really just a gnat, you know. I said that this morning. I am a gnat on the butt of life because whenever you think in terms of retransmission consent, they don't care. They don't care about me. They don't care that it costs me \$12.16 a month for my four channels. They don't care. I mean, that is more than I pay for ESPN or anything else. It is like David and Goliath, you know. David needed God to help him fight Goliath, and we need you to help us with retransmission consent. Pretty close line drawn there.

Mr. DOYLE. How about you, Mr. Thun? Whether a do you think about the good faith provisions related to retransmission consent negotiations?

Mr. THUN. Will, I think they are critical, and as they sit today, they are extremely loose. They are a guidepost for negotiations, but they don't work perfectly. We are currently in a situation where we have blackouts because we put a proposal on the table 60 days ago across seven broadcasters. They refused to respond. They didn't want to do a deal independently of each other. They wanted to do

them all together. Therefore, they gave us no ability to keep the signals up. They took them away. So I welcome divine intervention as well on this, because we are having an unsustainable path of pricing increases that goes straight to the consumer, and that is a bad place to be.

Mr. DOYLE. Senator Smith, what do you think?

Mr. SMITH. I think I have heard from those seven broadcasters, all of whom have said that they offered to keep the signal up, and AT&T has said no. If we are talking about the same ones, I don't know. But I know that if you want to go through the lamentable catalog of bad faith, what you will find is that there have been very few uses of this good faith provision, and never have the broadcasters been found guilty of operating and negotiating in bad faith. Never in all the history of it. And we are committed to good faith.

Mr. DOYLE. Ms. Boyers and Mr. Thun, I understand that there is a large number of TV markets in this country that are duopolies, triopolies, and in 2 cases, a single entity owns all four of the big four broadcast networks in a single market. Tell me. What impact does this consolidation have on you and your customers?

Ms. BOYERS. We have one company out of Atlanta, Georgia, that owns two of my four, and it creates a much larger price, because they can come in and say, you know, little BOYCOM, we really don't want to mess with you. Here is a take it or leave it. But those good faith regulations help us to still have a seat at that table regardless of how egregious that price is.

Mr. DOYLE. Mr. Boyd, you have 17 seconds left. Mr. Thun.

Mr. THUN. It absolutely leads to price increases. Ironically, one of those markets that has—I believe there are two markets that have quadropolies. One of those currently do not have signals because the broadcaster has been given too much power through the consolidation of those stations in that market. I don't think that is the way the law was intended, but there are loopholes in it that allow these broadcasters to put other signals on low powered station, as well as multi-cast signals that create undue market power.

Mr. DOYLE. I see my time has expired, so thank you very much to all the witnesses. The Chair now recognizes Mr. Latta, the subcommittee ranking member, for 5 minutes to ask questions.

Mr. LATTI. Thank you, Mr. Chairman.

And to Senator Smith, I believe that local broadcasting is important to my constituents. It provides vital information and services to our communities. As I mentioned a little earlier, we all know that weather and traffic reports are the crowd favorites, but I appreciate the focus on local news programming and interest in building up the local area.

I also notice in my hometown of Bowling Green and the communities nearby, that broadcasters are engaged in community activities and put on local fundraisers, toy drives, and other charity events. I also held two large public forums in my district on the tragic opioid crisis that were moderated by local news anchors on their own time. It is evident that local broadcasters want to help build and maintain strong communities outside the newsroom.

With that, Senator, I am curious if people want to receive out-of-state rather than local broadcast programming and does

STELAR encourage programming—sorry. Does STELAR encourage providers to offer local broadcast signals?

Mr. SMITH. What STELAR enables if it were Bowling Green, Kentucky—I don't know if there's a Bowling Green, Ohio.

Mr. LATTA. That is where I am from, the Ohio part.

Mr. SMITH. Well, Bowling Green, Kentucky, for example, is not served with a local signal by AT&T DIRECTV, and they are complaining about it, and it wouldn't cost AT&T, a \$200-billion company, a whole lot to negotiate with the local broadcasters.

To me, the whole point of the distant signal was just to give them some breathing space to get big enough to compete with cable, so that over time, when technology made it possible, and it does, they would then, as they promised to do long ago, provide local into local in every one of the 110 market—212 markets in the country. That has not happened, and it should have. There is no reason for it not to.

Mr. LATTA. Let me follow up to you, Mr. Thun. From a satellite perspective, what barriers do satellite MVPDs face in providing local programming?

Mr. THUN. Well, in the 12 markets, we do serve those constituents with local broadcasting, we happen to have an over-the-air solution that is integrated in our set top box that provides a seamless experience to our customers. So we do, in fact, in those markets, do provide local programming.

The impediments to providing it are also cost. If we have to turn around—and, by the way, of the 12 markets that we don't service, they are either, in all cases, except for one, all duopolies, double duopolies, or triopolies. And the one market that isn't is a short market.

So when you face that, going into those markets with, again, stations somehow circumventing; what I think the laws were intended to have, multiple stations, that makes it even harder to enter into those markets.

Mr. LATTA. Thank you.

Ms. Boyers, STELAR was intended to help rural Americans receive local news, but your testimony makes it clear that you don't believe STELAR is properly serving rural America. How can we ensure that constituents like mine in rural areas are not disproportionately impacted by either reforming or repealing STELAR?

Ms. BOYERS. Well, obviously a rewrite as Mr. Scalise—a rewrite of the Communications Act would be awesome. We also know that maybe granular level, small changes are what is needed in a situation where the signal does get everywhere through satellite dishes, and through us, the ever-increasing prices. They have the same problem we have in getting that signal to our customers because of the price.

Now, if you are down in the hill in a holler at Clearwater Lake in Piedmont, Missouri, you are not getting anything. If you don't have BOYCOM, you are not getting anything. If you are on a fixed income and your credit's bad, you can't get DISH. You can't get, you know, DIRECTV. If you don't have BOYCOM, you are not getting anything. So those are the customers that we are concerned about. That makes up the bulk of my customers are those folks that are economically impaired and don't have the ability.

So STELAR is very important for us with the good faith rules that are on the board. That is what makes a broadcaster like Raycom or Sinclair come to the table with little 'ole me and say, You know, we don't want to talk to you, we don't care about you, but the good faith rules say we have got to honor good faith.

When those go away, if they sunset in December, they could care less probably whether or not, or they could give an exclusivity to DISH or to, you know, the other satellite companies that prohibit us from having their local channels at all. So therein lies some protection for us, simply because we are small and because we are the ruralist of ruralists.

Mr. LATTA. Thank you very much. My time has expired.

Mr. DOYLE. The gentleman yields back. The Chair now recognizes Mr. McNerney for 5 minutes.

Mr. MCNERNEY. I thank the chairman. I thank the witnesses. I appreciate you coming out here and talking to us.

Senator Gordon—or Senator Smith. Excuse me.

Mr. SMITH. It works either way.

Mr. MCNERNEY. What percentage of the retransmission fees does the local broadcast affiliate typically receive after reverse transmission fees have been accounted for?

Ms. SMITH. What is so interesting, Congressman, when you add up these claims of broadcaster gouging for the most watched, most important news and entertainment, we represent, depending on the company, probably \$0.12 on a cable bill. I don't think we are the cause of cable inflation or satellite inflation.

And what we do appreciate is the opportunity to negotiate in a free market for the value of our content, and that is what we do, and that is what supports localism so the news is about you, sir, and not somebody at the national level and thank you for local journalism.

Mr. MCNERNEY. Thank you for not filibustering here, Mr. Smith.

Mr. Thun, I am hearing that the retransmission fees have been going up over time. What has happened to the share that local broadcast affiliates have been getting?

Mr. THUN. Well, the ratings are down. So to directly answer your question, the share is diminishing, but we face an ever-increasing sea of pricing, and so, I am not sure where the \$0.12 comes from, but that certainty isn't the bill that we pay to any individual station. It is much higher than that. So it is a burden that we have to take on, and ultimately our consumers take on, and it is a bad policy. It is a bad place for our customers to be if their bills are continuously going to go up certainly, at the clip that broadcasting fees are going up.

Mr. MCNERNEY. Well, between local broadcast affiliates receiving a smaller portion of the retransmission fees and the relaxation of media ownership rules over the past two years, I am concerned that the principle of localism, one of the core principles behind broadcast licenses being undermined, and consumers have less access to local.

Mr. Bergmayer, how does the relaxation of media ownership rules over the last two years affect retransmission negotiations?

Mr. BERGMAYER. Yes. I mean, I certainly share the goal of localism. I think local content is very important to viewers. I question

whether the current Rube Goldberg-like regulatory scheme that we have in place is the best way to promote localism. And one of the things that undermines localism the most is broadcaster consolidation. When you have broadcasters, they are not really local broadcasters. They are owned by a national chain that spans the country. Companies like Sinclair, Nexstar which are just as big and powerful as any of the other media companies that are more, you know, known brand names to consumers.

And I think that structure where different stations are linked together as part of single retransmission consent negotiations where the carriage of cable content is part of local signal retransmission negotiations crowds out small, independent programmers which harms the diversity of programming generally, and it is really hard to see how this system benefits localism in any significant way.

Mr. MCNERNEY. Well, you're using the word consolidation is music to my ears, Mr. Bergmayer. Thank you for saying that.

Mr. THUN, in your written testimony, you note that while in 2014, Congress prohibited local stations from jointly negotiating for retransmission consent. Broadcasters have found ways around these prohibitions. What are the ways that they are using to get around the prohibitions?

Mr. THUN. Sure. Like I said previously, they are using the multicast fees as a vehicle to put another big four station upon their one broadcast stream as well as they are buying low power stations and placing these big four networks upon them. So we face seemingly more and more markets that have more than one station owned by the same company. And that, ultimately, as the numbers always prove out, leads to higher prices which is a bad thing for our consumers.

Mr. MCNERNEY. Ms. Boyers, please describe what effect blackouts have on your viewers and their relationship to your business?

Ms. BOYERS. Well, in my particular neck of the woods, we don't have blackouts. We just simply don't. There is no place where anything that we have to say or do is controversial enough for the broadcaster to cut their signal off to me. In my statement, obviously we are 75 to 147 miles away from our local affiliates.

Mr. MCNERNEY. All right.

Thank you, Mr. Chairman. I will give you nine seconds.

Mr. DOYLE. I thank the gentleman. The Chair now recognizes the ranking member of the full committee, Mr. Walden.

Mr. WALDEN. Thank you, Mr. Chairman. I want to thank you all for being here, and as I sit here and listen to this, I don't think there is an industry that isn't consolidating represented here. Everybody is. And so—and Ms. Boyers, you aside there for a second, there are a lot of big players represented in this room.

Ms. BOYERS. I am honored.

Mr. WALDEN. And so, you, too, could be a big player some day if you just keep going out in the hollows and the hills and all that. Yes, it is tough serving rural areas. My district's enormous, and so, I care a lot about how we get affordable programming to consumers, but I also know that programming has great value, or you all wouldn't be having this discussion, so it is how you set the value.

In my opening statement, I talked about some of that and then, the copyright office just wrote to the Judiciary Committee yesterday, and they recommended that the license be allowed to sunset, due to its limited current usage, the distance signal license. I would like to ask the letter to be entered into the record, Mr. Chairman. I think you have a copy of that. If not, we will—

Mr. CHAIRMAN. Without objection so ordered.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. So according to the copyright office data, royalties paid under the license have plummeted since we last reauthorized this act in 2014. They are down somewhere around 85 to 87 percent nationwide. And they say this is, and I quote, “due to a dramatic decline in total subscribers which, in turn, is affected: by, one, a drop in the overall number of distant network stations carried and, two, the disappearance of non-network super stations such as WGN,” close quote.

Senator Smith, NAB has estimated that about 500,000 households get at least one distant signal and Mr. Thun, I believe, according to your testimony, that number is somewhere around 870,000 individuals, or households. Can each of you explain what those numbers are based on, and what you think explains the discrepancy there between 500,000 households and 870,000 households. Mr. Smith?

Mr. SMITH. Congressman, I think the only way they could get to an 800,000 number is to include the CW Network, which is not about localism.

Mr. WALDEN. OK. Mr. Thun, is that what happens?

Mr. THUN. I am not sure of the detail behind all the subscribers that go into those numbers. All I know is that the numbers are the direct relationships that we have to customers related to distant signals and that those numbers are combined with dishes, and I assume they use the same measurement and have the same number of—or they apply the same standard in gathering their numbers, but those are the relationships combined between the companies that we have and those customers.

Mr. WALDEN. And could you look into that more and provide it for us, maybe, for the record, after this?

Mr. THUN. We will have our team work with you guys.

Mr. WALDEN. Perfect.

Now, Ms. Boyers, I want to get back to you because, our friend at the end, talked about the importance of net neutrality somehow in this hearing, and Title 2, and I am curious as a small provider, what net neutrality Title 2 regulations on you might have meant, and might mean going forward if they were restored?

Ms. BOYERS. Well, obviously, we do not favor reinstating Title 2.

Mr. WALDEN. Why is that?

Ms. BOYERS. That classification of broadband for us and hundreds of ACA Connect members do not support YOU enacting opening internet legislation that would apply in all jurisdictions across the country, and all firms operate in an internet ecosystem. No one should be able to block, or otherwise impair broadband internet access service subscribers from accessing lawful content, subject to reasonable network practices. And no one should be able to engage in unreasonable discrimination and paid prioritization.

We follow good faith practices as well in our businesses, and so all providers should be required to disclose to customers key information about their service. We do all those things.

Mr. WALDEN. Right.

Ms. BOYERS. We are a good player in that realm, and in protecting neutrality on the net is so important. I don't think it is productive to consider this issue as parts still are.

Mr. WALDEN. All right. All right. So Senator Smith said that broadcasters, I think you said, represent about 12 cents of the overall cable bill. Is that right? Where do you get that number and—

Mr. SMITH. It is a number that is not difficult to calculate. We follow it fairly regularly as an association.

Mr. WALDEN. Yes. And Mr. Thun, what do you say about that?

Mr. THUN. I am not sure. I wish they were that low.

Mr. WALDEN. Now, this is the overall cable bill, right?

Mr. THUN. Yes. Our numbers are significantly higher than that. I don't have the exact number in front of me. I could tell you—the number of 12 cents is dwarfed by what we pay overall for retransmission.

Mr. WALDEN. For retrans. All right. Ms. Boyers?

Ms. BOYERS. \$12.16 a subscriber as of March 31, 2019, right off of my P&L.

Mr. WALDEN. And that is for retrans?

Ms. BOYERS. Four stations.

Mr. WALDEN. Now, what do you pay for other programming services?

Ms. BOYERS. \$62.12.

Mr. WALDEN. OK.

Ms. BOYERS. Seventy nine percent of my retail cable programming, 79 percent is programming, and 20 percent of that 79 percent is four channels.

Mr. WALDEN. You know what I really like, Mr. Chairman, about a small operator, she knows her numbers.

Ms. BOYERS. Hell, yes.

Mr. WALDEN. Hell, yes. You heard it right there.

Ms. BOYERS. It is my pocket.

Mr. WALDEN. That is right. I was a small market radio station owner. I knew my numbers too. I have gone way over. I appreciate all your testimonies as we work on this issue. Thank you.

Mr. DOYLE. The Chair now recognizes Mr. Loeb sack for 5 minutes.

Mr. LOEB SACK. Thank you, Mr. Chair and ranking member, for having this hearing today and all the witnesses here. I really appreciate it. It is always enlightening to hear from different points of view, because this is a pretty complicated topic and we have got a lot of different points of views represented. And, unfortunately, the consumer is the one who is in the middle of all this, and those are the folks, the consumers I think, that we need to be focusing on, my constituents, the constituents of all of us here. I did write a letter recently, which I think was mentioned by Mr. Smith and I appreciate that, to this committee, to the Judiciary Committee, last week raising an issue that is facing many of my constituents who have DIRECTV, and I do ask unanimous consent if I could submit that into the record, I would like to do that.

Mr. DOYLE. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. LOEBSACK. Thank you. And what I am talking about is folks who live in Ottumwa, Iowa. They subscribe to DirecTV, those folks do. They are not able to receive local broadcast unless they have an antenna. In fact, I was interviewed by one of those stations over the weekend and they asked me what I thought about all of this, I said, Well, we are having this hearing, and we will let you know more about what comes of it, but they knew about my letter, obviously.

And in many places, even an antenna, won't pick up the local broadcast and this, again, is Ottumwa, Iowa, southeast Iowa. Some of you may be aware of that.

Mr. Thun, one of the things I talked a lot about on this committee is rural broadband. In many rural areas, the business case to build out broadband is very difficult, if not impossible, because there isn't enough infrastructure there, it costs a lot of money obviously, but with satellites, it seems the business case for local and the locals shouldn't be all that hard. Again, that DIRECTV is already beaming signals into Ottumwa. So does AT&T/DIRECTV have any intention of bringing local service to my constituents in the near future?

Mr. THUN. Well, we think we do. We provide it through a local antenna. We have an integrated solutions in our set top box that takes the signals over the air, pumps it through our set top box, and subscribers can enjoy a DVR functionality, closed captioning, parental controls. So we do have that in place, and we also, for those customers, we take \$3 off their bill regardless of the package that they are in.

Mr. LOEBSACK. What solution is there for your customers who can't access a signal via antenna?

Mr. THUN. I think it is partially incumbent on the broadcasters as well. They could invest it in their broadcast stations and put more into putting out a broader signal. They don't do that. They are not incented to do that because they want to rely on us to pay them hefty retransmission consent fees. So, I don't know if all of the blame should be shouldered upon us in this regard.

Mr. LOEBSACK. Right. Ms. Boyers, I do want to ask you and Mr. Bergmayer a question if I could. I love your perspective. Thank you so much for being here today. You clearly, I think, have unique insight when it comes to serving rural areas, and my district and I was very rural, so thank you.

And Mr. Bergmayer, I think this committee is familiar with Public Knowledge and their advocacy on behalf of consumers, so I would like to address my next question to both of you. Do you believe there is a harm for customers who don't have access to local broadcasts through available MVPDs in their area? What kind of harm are we talking about?

Ms. BOYERS. Well, do you mind if I go first? Ladies first.

Mr. DOYLE. Excuse me. Could the witnesses pull the microphones a little closer to you. We are having trouble hearing you on the streaming.

Ms. BOYERS. I am sorry.

Mr. DOYLE. Yes. Thank you.

Ms. BOYERS. On the outside, I will tell you that BOYCOM is not coming to Iowa, just to let you know. Don't wait for us. Yes, I do believe that as a general global statement, yes, I believe every customer has—should have the opportunity to receive local broadcast, and we do every daggone thing we can to make sure that happens.

Mr. LOEBSACK. And what about you, Mr. Bergmayer?

Mr. BERGMAYER. I would agree, all things being equal, it is better to have access to local programming. I think the only question is, how best to get there, whether it is STELAR expiring or being renewed may not even make or break the system. I think, basically, the current regulatory system as we see at the debates today is really not serving the interests of viewers of local programming. It is really not serving the interest of people who pay bills.

So that is why in our written testimony, we have a lot of specific detailed policy proposals, and we have supported some pretty radical approaches that I think would, in fact, promote localism better than these incremental kinds of—

Mr. LOEBSACK. Well, my interest is asking you what counts as first priority for guaranteeing improving locals and for rural consumers should be—can you specify a little bit?

Mr. BERGMAYER. I think that the first thing is to make STELAR permanent, just so that this crisis goes away, and we can address the underlying fundamental issues with the video marketplace. I think one way is to—we started the compulsory copyright licenses for television signals back in the 1970s. We then layered retransmission consent on top of that already existing system. Every little step made sense over the years, but I think we really need to radically rethink the ways that MVPDs and broadcasters and video distributors interact, and I think in doing that we will better align the interests of local broadcasters to produce local programming—

Mr. LOEBSACK. Thank you. And Mr. Chair, I am sorry. I do have questions I would like to submit for the record for Mr. Smith and Mr. Thun.

Mr. DOYLE. Yes.

Mr. LOEBSACK. Thank you.

Mr. DOYLE. OK. The Chair now recognizes Mr. Shimkus for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. Just some historical remembering of a committee. I think we went to the digital transition, and away from analog, and I think we lost some distance because there is a digital cliff, just kind of information for some of my colleagues who weren't here during those battles.

So some of the rural areas, you know, had trouble getting their signal where they used to be able to. Clearly, we have a difference of opinion on reauthorization of STELAR and the question is, is this just a binary choice?

So let me ask this question: Senator Smith, good to see you. We had a chance to serve together when you were a Senator and happy to have you here. Can you briefly describe in more detail how you envision a negotiation process between broadcasters and satellite operators for local programming if STELAR expires?

Mr. SMITH. Probably not unlike what occurs now through over-the-top offerings. There are market solutions to fix this, but as long

as the incentive is given to not bring local into local, they have no incentive to come and talk to us.

Mr. SHIMKUS. Mr. Thun, same question.

Mr. THUN. I think it would be of tremendous harm to us in our negotiations at the good faith provision with Sunset from our perspective and when we are negotiating, we feel like the minimum is being set here and it is, in certain cases, not being met.

So that would be harmful. Ultimately, if that went away, I am not sure how broadcasters would behave, presumably more aggressively than they are now, and in a regime where we have those policies in place, we have seen the increases that I talked about, 2,000 percent over 10 years.

Mr. SHIMKUS. I want to go back to Senator Smith to respond to that.

Mr. SMITH. Well, when you start from nothing, getting to 2,000 percent isn't all that hard, particularly when what we are offering is the most important, most valued, most watched programming. We appreciate the opportunity to negotiate for its value in a free market. That isn't reflected. In other words, what they pay for our content is way below what they pay for much less watched other content that they pay for.

But I would like to speak, and I don't mean to filibuster, there has to be a way, in this expanding telecommunications market, to pay for localism and investigative journalism. We are one of the last ones standing. We have two revenue streams, the advertising model, which is being cannibalized by the big digital companies, the tech companies, every transmission consent. We don't want to be like the newspapers, but that is where we are heading if we can't negotiate for the value of our content.

Mr. SHIMKUS. My district's changed quite a bit over the years because of just redistricting and the like, and when I first came here, I had much of the upper Mississippi or St. Louis north, and there was a local TV station there in Quincy that was on the levy when the levy broke, so I am torn. I believe in the need of local broadcasters and local programming. I fear consolidation in purchasing power where we lose the stories of local high school teams and emergency activity and stuff.

So we want to, as much as we can, keep that localism, and sometimes consolidation helps, because it does provide more dollars to coverage. There is some consolidation in that part of the State and you get better weather coverage because of the competition. But let me turn to Ms. Boyers. The current system is challenging for you in negotiations currently, right?

Ms. BOYERS. Yes, sir.

Mr. SHIMKUS. So you are caught between a rock and a hard place.

Ms. BOYERS. Yes, sir.

Mr. SHIMKUS. And I would ask you to, if it is a keep it or not keep it, maybe there is a middle ground of where you think the small providers are adequately listened to versus—again, if it is just a binary choice between one or the others, I don't see how you are served by either.

Ms. BOYERS. Well, for one second, if I could defer a little bit to—

Mr. SHIMKUS. Well, you got 10 seconds to defer.

Ms. BOYERS. We did a survey in 2018 on my broadcast channels. All of my customers, 47 percent returned on a survey on a daggone postcard, 61 percent watch our CBS affiliate, 21 percent watch our NBC affiliate. I am sorry, reverse that ABC 6 percent watch the affiliate that is 147 miles away, so I beg to differ that it is the most important programming.

However, in my neck of the woods, if your horse dies, you wait till it is dead before you take your saddle off. All of the things that have been happening in every revision of STELAR has incrementally helped through some retransmission consent, just little idiosyncrasies that have helped the process along for me, and to sense that this without anything to provide for that, I have no place to move my saddle.

Mr. DOYLE. The gentleman's time is expired. The Chair now recognizes Mr. McEachin for 5 minutes.

Mr. MCEACHIN. Thank you, Mr. Chairman, and thank you for holding this hearing. Local broadcast television remains a vital resource for consumers to receive information about their communities, including times of severe weather and natural disasters. This role will only grow more important in time as climate change worsens, and severe weather becomes more frequent and dangerous. Local broadcasters must be able to continue to get timely information to their communities in order to help keep them safe.

Despite the important role played by local broadcast television, especially in times of danger, retransmission blackouts remain a problem. In 2017 and 2018, there were approximately 213 and 165 disruptions of service to consumers nationwide respectively.

In the six months of 2019, we have already had 62 blackouts across the Nation. While blackouts have fluctuated annually, these numbers in comparison to 2010 with only eight blackouts are unacceptable.

Senator Smith, first of all, thank you for being here. I am going to ask the same question of Mr. Thun in just a moment, but I would like to start with you. Why do you believe blackouts are occurring despite existing good faith provisions, and what would be the effect on markets and consumers were the STELAR provisions to expire?

Mr. SMITH. First of all, Congressman, I would make the observation that 99 percent of them are negotiated successfully without any interruption. We also point out that if people just want to keep the digital antenna that comes with their TV set, all they got to do is plug that in to the other output, hit input, and they got all the local television that you can get over the air.

I don't know where retrans is in terms of it finding its market. I leave that to business people that I represent, that he represents. At the end of the day, we don't like them but we are always on, we are always available if people want to use their antenna, and we think it is really important that we have the ability to negotiate for the value of our content.

Mr. MCEACHIN. Mr. Thun?

Mr. THUN. We fully support localism. Our service is available to 99.58 percent of satellite reaches broadcast stations across the country that capture that. I am the business person on the other

end of the stick in these negotiations, and I can tell you that absent good faith rules, I can only predict that rates are going to go up. There is no other way to think that—if we think that you take those away and the rates are going to somehow stabilize and blackouts are going to go down, we are fooling ourselves.

Mr. MCEACHIN. Thank you. Mr. Bergmayer, is beefing up the good faith requirements the solution to blackouts? Is there more Congress should consider?

Mr. BERGMAYER. I think that beefing up the good faith requirements would be an important component as well as interim carriage. We just need to make it so that blackouts aren't used as a tactic in negotiations to kind of harm the other side and bring them to the table to pay more than they otherwise would, but for, you know, the local emergency that you have.

Mr. MCEACHIN. Would you define interim carriage for me, please?

Mr. BERGMAYER. So interim carriage would just mean that while negotiations are ongoing between 2 parties, and they just haven't decided to part ways, then the signal just continues being carried under the terms of the previous agreement.

Mr. MCEACHIN. Thank you. And I thank all the witnesses. And Mr. Chairman, I yield back.

Mr. DOYLE. The gentleman yields back.

The Chair now recognizes Mr. Olson for 5 minutes.

Mr. OLSON. I thank the chair. Senator Smith, it is good to see you again.

Mr. SMITH. Thank you.

Mr. OLSON. Welcome Mr. Thun and Mr. Bergmayer, and from the Shelby City of Texas 22, Missouri City, how the heck you doing, Ms. Boyers?

Ms. BOYERS. I am doing wonderful, sir.

Mr. OLSON. I hope my questions knowing firsthand how important local broadcast is during a disaster. Y'all recall that almost two years ago to the very day, April of 2017, almost my entire State, certainly my district, was hit hard by Hurricane Harvey. Parts of the district had five feet of water in less than two days dramatic flooding.

People turned to local news to get their weather information, road closures, where they should go, where those recovery operations. They, too, did the KPLC 2, NBC 2, CBS 11. One of them actually had the main studio flood, but the back-up studios they kept on air during the storm, which was just amazing. ABC-13, Fox 26, Independent TV 39, and also don't forget, be it the most diverse county in America, two big Spanish language stations stayed online. Univision 45 and Telemundo 47.

And this question is for you, Mr. Smith, and you Mr. Thun, Senator Smith, your testimony you detailed the legislative history of STELAR and how Congress always meant for it to expire at some point in the future. I know that Mr. Walden, a member of the head of our committee on our side of the aisle has said it is an open question as to whether we should reauthorize it as well.

And Senator Smith, we all know my former boss, your colleague, Phil Gramm, very well, and in this issue, he would say, it is easy to kill a vampire than a bad government program. So my question

is, if we decide that STELAR is a bad Government program that should be killed or allowed to expire, how that impacts local TV during a time of crisis?

Mr. SMITH. I would just remind the committee and thank you for the question, Congressman, broadcasters have every incentive to be viewed on as many platforms as possible. We don't want disruptions. We are there in good faith. We have never been found to be otherwise, and your question perfectly points out how vital a lifeline my members are in times when my wonderful AT&T Apple phone crashes, and the only thing you can get is your local television or radio. And so, as you tinker with the economics around here, I would just remind you of the importance of our lifeline, and the revenues that we have to support journalism and localism come from 2 sources. Advertising is being cannibalized, retransmission is where we go and it is very important that that not be upset if having the news about you Members of Congress and for your constituents remains important.

Mr. OLSON. And one comment that as well, my family tune to 8613 Doppler radar, we could see it real time what was out there as opposed to going to the weather channel, or some other channel that would drift in and drift out. It was very important to have those local TV stations.

Mr. THUN, how about you? Once you deal with disasters, how important is local TV during a disaster if we let STELAR expire?

Mr. THUN. Well, as I testified earlier, I certainly do not think that STELAR should expire. I think it will be bad for consumers and it will increase pricing. As it relates to getting programming during disasters, as it pertains to weather, I think in a lot of cases people are used to watching—looking at their weather on these, actually.

I don't know many people who sit around waiting for weather on the 8s. It does happen. But more and more you are looking at your Weather Channel app, or your weather app, to see what is happening and when it is going to happen. That is not the solution necessarily. We do have other national programs that is available, but in these cases, we certainly would rather be up than down with your broadcast partners, but unfortunately that is not always the case. We have contentious relationships with them because of the prices that they seek, and the services go down during bad weather, but they also go down during times when broadcasters are being unreasonable.

Mr. OLSON. One further question, Mr. Smith. I am sorry, ma'am. I am sorry about that, but I got to ask this question. Victoria, Texas, is a—colleague there named Representative Michael Cloud. He sent a letter to judiciary leadership asking about making sure STELAR was allowed to expire. He talked about how bad it is for his town Victoria. I submit this for the record, please, Mr. Chairman, if that is all right.

Mr. DOYLE. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. OLSON. Victoria is not a small town. Population of 62,592 with a Census of 2010. San Angelo, Texas, out that west is no small town either. Population 100,450, the Census modified in 2014. Both these towns have issues with TV reception because of

STELAR. So Senator Smith, can you explain how STELAR is responsible for 170,000 Texans in Victoria and San Angelo for not having access to local news——

Mr. DOYLE. If you can do that in five seconds, I will let him answer, but we are 45 seconds over your time.

Mr. SMITH. Well, if I understand your question, Congressman, obviously we want your constituents to have our product, is to negotiate it with the satellites and cable providers and then hopefully they can put up an antenna, if all else fails, and get it for free. I am the only one up here offering everything for free if you don't want to pay a subscription paid TV thing.

Mr. DOYLE. The gentleman's time is expired.

The Chair now recognizes Mr. Soto.

Mr. SOTO. Thank you, Mr. Chairman.

I bring greetings from Orlando, the 18th largest media market in the Nation and growing. In our area, we are really worried about diversity in programming, and increasing local content, and I worry about the modernization of programming across the Nation. There are so many great local towns across this Nation that really need to have a voice. I also worry about Spanish language in Creole stations. Every couple of years, we seem to have a crisis about certain programs being blocked, either in Florida, Puerto Rico. I wanted to start with you, Mr. Thun, regarding basic diversity requirements, if we were to put some in place as a condition of reauthorization of STELAR, would that be something that you all would be supportive of?

Mr. THUN. I think we would have to see everything to know what we are considering here. We are certainly big proponents of diversity. I think our record in providing television content that is diverse is unassailable. I think, by our measure, we think we distribute more diverse programming than any other distributor. So if there is a poster child for somebody as a good actor in that space, we believe DIRECTV, AT&T would be that.

Mr. SOTO. Thank you for that, and Senator Smith, if STELAR were to sunset, how would that affect diversity in programming?

Mr. SMITH. I think what is really important about what we do is, if you look at the percentages of people wholly reliant upon over-the-air broadcasting that tends to be minority communities, we are very anxious to keep our content appealing to all and that is why we also have networks that are specifically targeted to some in the Hispanic community.

Mr. SOTO. And how would it affect original, local content if STELAR were to sunset?

Mr. SMITH. What I have noticed, Congressman, is that if one of my members is going to succeed, they succeed when they focus on local. When they do otherwise, they are less successful and they can't sell ads unless they focus on local.

Mr. SOTO. Sure. Thank you.

Mr. Bergmayer, you mentioned changing the compulsory copyright license with the reform to pure copyright, can you explain in more detail, I guess, the increased profits, or payments to artists and local providers, how that would work, and what would the incentive be?

Mr. BERGMAYER. So the idea is that the people who are creating content should just sell content directly to the distributors instead of through various layers of middlemen like we have, and then, again, the thought is; if you are a local broadcaster and one of your primary revenue streams comes from creating local programming that is relevant to your community, that is relevant to the people who live there, then you have every incentive to make that programming the best you can and to make as much of it as you can, rather than the current system where, you know, the local content is there, but also, you know, a lot of the primary leverage that happens from retransmission consent is from reselling national programming.

Mr. SOTO. So would this help out local broadcasters and local artists and producers?

Mr. BERGMAYER. I believe the overall approach would end up certainly helping the production of local content, local artists by basically streamlining the system.

Mr. SOTO. What about local sports or more diversity content?

Mr. BERGMAYER. I think that there is this notion that if you got the government out of the way somehow that automatically localism would be fixed, you know. I am looking at how online video works today. I am noticing that CBS has CBS All Access that they are distributing without any local broadcasters at all. You have virtual MVPDs, like YouTube TV, DIRECTV now. A lot of them are missing the local broadcast content. I think that, you know, if we want to promote localism, it is going to require a lot. I think an important step would be streamlining the regulatory system, but I don't think it really can end there, because I think that we have seen that a lot of the online providers simply aren't providing the local programming without being caused to.

Mr. SOTO. Thank you, and Ms. Boyers, other than Ozark on Netflix, which I have watched multiple episodes on, has STELAR assisted in local content for the Ozark Mountains in your region?

Ms. BOYERS. Diversity—absolutely. We offer everything that is available to us through the NCTC.

Mr. SOTO. What is some local programming that you all provide?

Ms. BOYERS. We have Telemundo and B.E.T., which both come from the NCTC. We do not receive those from an off-air station.

Mr. SOTO. But, like, from the Ozark Mountain areas, is there any local programming you develop for your region?

Ms. BOYERS. No, sir. There is no local programming even being developed. Our closest local programmer is 75 miles away.

Mr. SOTO. What would help with that?

Ms. BOYERS. Funding, obviously. Money is always the bottom line. But for me, the tree transmission consent fees are—prohibit me from—I only have so much of a budget.

Mr. SOTO. Sure.

Ms. BOYERS. And where I am at, I can't raise my rates and so those folks—I just have a certain amount of dollars I can pay for programming.

Mr. SOTO. I understand.

And I yield back.

Mr. DOYLE. Thank the gentleman. The Chair now yields 5 minutes to Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman, and I appreciate the panel being here. This is a really important hearing. I represent a very rural district in Appalachia. It is the longest district east of the Mississippi, and we have many technological challenges. This is one of the biggest ones. We are here today to discuss the STELAR Act, which expires at the end of this year, and I have heard many different perspectives as to whether it should be considered must pass, or whether it should be allowed to sunset.

As we all know with the increase in new technologies, the media marketplace has changed substantially, since STELAR was first passed by Congress in the late '80s. I appreciate all the perspectives that I have heard today. Let me go to some very basic questions.

Mr. Thun, in your testimony, you explain that there are a number of people that still receive broadcast channels because of STELAR. I know many of my colleagues in both the House and the Senate have asked you for the specific breakdown of the markets for those subscribers that receive out-of-market channels because of STELAR.

While this committee considers whether or not this legislation needs to be reauthorized, it would be extremely helpful to understand what benefit the expiring provisions of STELAR are providing, how they are being used, and what the consequences would be should Congress allow STELAR to sunset.

Would you be willing to work with my staff and the committee staff to supply us with the specifics of what subscribers receive—which subscribers receive what channels and from where on DIRECTV?

Mr. THUN. Yes, we would be willing to help provide you some more information related to your question.

Mr. JOHNSON. OK. All right. We will call on you for that.

Senator Smith, my district partially encompasses the Zanesville market, which I know only has one local broadcast affiliate, the NBC station.

Can you explain to me where satellite TV subscribers in Zanesville will receive their other broadcast channels from? If Congress does not reauthorize STELAR, will they still receive those stations?

Mr. SMITH. I know my local broadcasters will be anxious to talk with them and make them a fair price to make sure that rural constituents can get their signal. We have an incentive to make sure that people see what we produce and what we put over the air, and I know it is hard for you to manage the food fight up here with my friends, but the truth is, we all need each other and, ultimately, everybody has to make a buck.

And we are not trying to put anybody out of business, but we are trying to preserve localism, which is under threat.

Mr. JOHNSON. That is a really good point. You kind of threw me off my questions because you said everybody needs everybody up here. You are exactly right. We do. It would seem to me that common sense should prevail at some point, and rather than Congress having to mediate and solve this problem, it seems to me the industry ought to be able to come together and come up with some commonsense solutions where everybody walks away a winner.

Senator Smith, moving on. In his testimony, Mr. Thun spoke about how the number of impasses between local broadcast stations and cable and satellite television seemed to peak a couple of years ago and how that resulted in some stations going off the air. What is your response to that testimony?

Mr. SMITH. I think it is a marketplace finding its level, and at the end of the day, I just remind you, we have an incentive to make sure more people see our stuff. We sell advertising off of that, and, obviously, retransmission is a piece of it, a vital piece, to keeping local television available to all these communities and to these wonderful platforms that are represented here.

Mr. JOHNSON. OK. Mr. Thun, do you have anything to add to that?

Mr. THUN. I agree. We both need each other. They are an important part of our business, but finding the level ground is what we are fighting over, I think.

Mr. JOHNSON. Yes.

Mr. THUN. And in any rational case, even though we did start a low place, I should remind everybody that we were amongst the first, if not the first to start paying for retransmission, so we didn't start at the baseline that a lot of others did.

Mr. SMITH. You are a great American.

Mr. THUN. But we can't sustain these kinds of prices and hold that back from hitting consumers, and that is bad for all of us in here.

Ms. BOYERS. Congressman, can I comment to that?

Mr. JOHNSON. I am coming to you, Ms. Boyers. You stated that retransmission consent fees deter broadband deployment. So, in addition to commenting on what I just said, or just asked, what do you mean when you say that video revenue support broadband deployment?

Ms. BOYERS. Video revenues, however small they may be, y'all care about closing that digital divide, and every precious dollar that we could put towards deployment by them back even further into the woods is being sucked up by these ever-increasing retransmission consent fees.

Now, rural and small cable operators, independent guys like me, we are the ones that are out there already on that digital divide. We operate leaner, we operate meaner, and we are already on those front lines for the deployment of this broadband, so every stinkin' dollar that goes to retransmission consent, I could be deploying—costs about \$25,000 a mile to build aerial, \$32,500 to build underground, if you can do it in the Ozark Mountains; however, they would rather string it on a pole between the trees or a fence post to get it back there because where we are at, we only have a certain amount.

Now, I would like to speak to Mr. Smith on that 12 cents. I want that deal.

Mr. DOYLE. The gentlelady's time is expired.

Mr. JOHNSON. I am going to have to yield back.

Mr. DOYLE. As much as I love spending time with all of you here, we are going to be here for a long time if we keep going minutes over peoples' time.

Mr. JOHNSON. I will let you, arm wrestle Ms. Boyers.

Mr. DOYLE. Yes, yes. I know.

The Chair now recognizes Ms. Eshoo for 5 minutes.

Ms. ESHOO. I thank the gentleman. Thank you to the witnesses, and I am sorry I have to bounce back and forth between Health Subcommittee hearing downstairs, and this very important one.

Senator Smith, it is wonderful to see you, a longtime friend, and someone that has served people in our country really so—so well.

Mr. SMITH. Thank you.

Ms. ESHOO. Thank you, and each one of the witnesses. What were you going to say, Ms. Boyers, when our distinguished chairman said we are going to be here all day? I will give you a little bit of my time so that you can share your thought.

Ms. BOYERS. I appreciate it. I appreciate it so much. Mr. Smith spoke to everybody needs to make a buck. Let it be known right now on your record, we don't make a buck on retransmission consent. What the big guys charge me gets passed to my consumer. That \$12.16 BOYCOM does not make a buck on. Simple pass-through, 100 percent to my consumer and they know what they are paying for their broadcast channels. That being said, I don't know where the \$0.12 is coming from but I want that deal, and we shall talk after the committee meeting convenes because—I mean, dismisses because I want that \$0.12 deal.

Ms. ESHOO. I think you are one hell of a witness, I tell you.

Ms. BOYERS. Thank you, ma'am.

Ms. ESHOO. I would love to be there with you, and Senator Smith, but I think I am going to have to go back downstairs.

Ms. BOYERS. I got your back.

Ms. ESHOO. Yes. OK. To Mr. Thun, you have argued for regulatory overhaul, and I agree with you, and specifically, you state that retransmission consent is in dire need of reform. I have thought this for a long time. It is not any secret. Now, I understand why AT&T doesn't like the current regime. Tell us, through your experience, how it affects your customers? Is it the same whether it is a small cable operator and, you are a giant and everyone in between? This is all passed to the consumer?

Mr. THUN. I think it affects us similarly in that we are offering a video product to our consumers, and it is predicated upon what we are charged to program that, and if those prices go up, our prices correspondingly go up, and that happens for years.

What we have hit is a wall. Consumers aren't willing to pay anymore, and so the plight that we face is, this is not a win-win where money—where our revenue is going up and their revenues are going up. This is simply margin shrinking to the point where certain businesses, especially rural cable operators, are going out of business because they can't afford the programming costs.

So this goes straight to the consumer and that is what we are here to protect.

Ms. ESHOO. And it is where we need them because the larger guys don't go out to where Ms. Boyers is.

Ms. BOYERS. Yes, ma'am.

Ms. ESHOO. Senator Smith, let me ask a really obvious question, maybe it has already been asked. Every five years, you know, this comes up, and now we are reauthorizing, and it seems to me that there is a pattern here and that is the year or the year before reau-

thorization comes up, the numbers dip a little on retrans and then afterwards, it is just jacked up all over again.

I can't imagine that this is comfortable for you, you in the broader sense of broadcasters. Have the broadcasters thought of some other kind of model? I mean, this is not sustainable, and, most frankly, and you are a very reasonable and intelligent man, it is not defensible. It is not defensible. You know, it keeps going up, up, up. The blackouts increase. People are ticked off. They are still paying. They are still paying while there is a blackout. I don't know anyone in the country that has gotten a refund when there is a blackout. So are you thinking of something else? Are you just going to hold on to this thing that is kind of a homely child?

Mr. SMITH. I would just share with you, Congresswoman, the STELAR reauthorizations are not my favorite time of year, every five years.

Ms. ESHOO. I can imagine so.

Mr. SMITH. It usually amounts to an opportunity to pound away at retransmission consent, and the point I keep making is, this is one of 2 ways in which we support localism. It is the way you have—

Ms. ESHOO. Yes, but at what price, though, localism?

Mr. SMITH. You can get it for free. I am the only one up here that offers everything we do for free. If they want it that way, if they can get a signal.

Mr. DOYLE. The gentlelady's time is expired.

The Chair now recognizes Mr. Scalise for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. I guess I will follow-up where my colleague and dear friend, Ms. Eshoo, left off, and you are right, the signal is available for free and you are seeing more people choose that option. The reason you are seeing such a growth in people cutting the cord, which means you don't get any retransmission consent dollars is because the laws don't work for today's marketplace, and so, if you can go one place and have a broader experience and a wider array of options than the other place that is confined by the 1992 Cable Act, you are seeing consumers walk.

And so what I have been suggesting is, when STELAR comes up, you shouldn't look at it in a negative way. I mean, it absolutely is an opportunity for us to look at the video marketplace. If we look at the video marketplace and recognize that the laws just don't work for today's world, then maybe we can also help solve the problem of why you are getting less retransmission consent dollars because people are cutting the cord. They are walking away from the entire system.

And so, if we say, OK, maybe you want to cherry-pick and say let STELAR expire. I don't associate myself with that because I do think we shouldn't just look at STELAR, we should look at the whole thing, and maybe in 1992, they wrote a perfect law. There is no such thing, but let's say they did in 1992.

Does anybody want to come up to this table and suggest that when they wrote the law in 1992, they took into account how the world works today, how people get their video content today? Of course they didn't. You can talk to the people who wrote the law. We weren't around when it happened, but the people that were

there when it happened, they recognize that the world's different today. Why hasn't the law been updated?

And so, what I would suggest is, as we talk about retransmission consent or any other, you ought to get paid for your content, that is the bottom line of it. The deal with retransmission consent, and again, when you talk to the people that created it, was that they wanted to help keep that local content that you talked about.

The problem is, I think Mr. McNerney talked about this earlier, more and more you are seeing the motherships, the national networks, take a bigger and bigger chunk of the retransmission consent. So your local stations aren't even getting that money, and that was the deal for the free spectrum that is out there that—again, the reason why you have to make it available for free, people can go buy a \$30 dish and get a better high definition signal off of the local stations than if they went through their local cable company.

And so, all I would ask, and I would like to ask everybody to comment on this: If you look at STELAR in a silo, regardless of where you are on expiring or being renewed, do you think the current laws, especially the foundational 1992 Cable Act, needs to be updated to reflect the world we live in today? I will start with you, Ms. Boyers?

Ms. BOYERS. Thank you, Congressman. Absolutely. I would love to be part of that.

Mr. SCALISE. I would love for all of you, including Mr. Smith. I know we have had some conversations. We might not always be in the same place, but I do think we want to get to a similar place, and can get to a better place; and I know Ms. Eshoo and I have worked very hard on how we can have a bipartisan approach that, hopefully, every member of the committee that wants to be a part of it as well as everybody here that wants to be a part of updating and modernizing our laws to reflect the world we live in. Mr. Thun?

Mr. THUN. Absolutely. We commend your efforts with Representative Eshoo's efforts to try to modernize these laws. They are clearly outdated, they are broken, and they need to be fixed, so—

Mr. SCALISE. Thanks. Mr. Smith?

Mr. SMITH. Congressman, I really appreciate your noting the, sort of, symbiotic relationship between my network members and my affiliate members. They actually really need each other. Affiliates need the networks for their sports programming and their weekly shows and they have very high ratings, and yet the networks really need the locals to provide the tornado alerts. They need this lifeline.

Mr. SCALISE. Don't sell yourself short. I want my local broadcasting brother in local sports. I want to know—when I watch the Saints and the LSU Tiger updates, I am not going to get that from Iowa, I want to get it from my local station.

Mr. SMITH. Exactly, and they are mindful—

Mr. SCALISE. And the Warriors. They go up 2-1. So would you be open to working with us on reforms to the 1992 Cable Act that create some of these problems?

Mr. SMITH. Of course. I am tempted to quote Reagan, there is nothing permanent—

Mr. SCALISE. You are always in a good place if you quote Reagan.

Mr. SMITH. With that said, we are always open to new ways to do it, but what I want to emphasize is that the earlier Act created a system that is a benefit and a blessing to the American people.

Mr. SCALISE. I only have 12 seconds left. I do want to get to Mr. Bergmayer.

Mr. SMITH. And my concern is that somehow a reform would just focus on national and forget the local.

Mr. SCALISE. We absolutely want the local content. Ms. Eshoo does—she has talked about blackouts for that very reason. Don't sell yourself short. People want that content. I am sorry. Finally, Mr. Bergmayer.

Mr. BERGMAYER. Yes. I think you need a lot of policy measures to promote localism, address consolidation, increase diversity to programming, but absolutely, an important first step is to totally rethink the 1992 Cable Act, and we are with you on it.

Mr. SCALISE. Thank you so much. Appreciate it, Mr. Chairman.

Mr. DOYLE. The Chair now recognizes Ms. DeGette for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman. So I hear all of my colleagues here and I completely agree that local broadcasters provide great coverage of local events, weather, disasters, as well as, Senator, you talked about holding elected officials accountable for their actions because they are invested in the community. I think that is really an important role, and one that we continue to see dissipate.

Something else we have seen in the Denver media market and I know we are seeing this around the country, is we are seeing venture capital and private equity start to buy up some of the media outlets, in particular, in the print industry, we saw with this with the Denver Post and we have seen it other places. And so, I want to start with you, Mr. Bergmayer. How do you think the incentives of venture capital and private equity, the financial incentives, align with this other incentive that I am talking about that local TV provides, which is coverage of local events, weather, in-depth coverage of politics and other issues? How do you think that the profit motive and those—and the need to staff up and invest in the local news weigh, and how is that going to work in the long run?

Mr. BERGMAYER. Absolutely, I agree. A huge problem throughout the economy, but it is particularly noticeable in media is when you have these investors who take over companies, and they just have such a short-term perspective. They are just interested in extracting as much cash in the short-term from these businesses as possible, and just walking away and forgetting that, you know, particularly with media, with newspapers, with local broadcasters, it is really about a long-term commitment to serve the community.

Ms. DEGETTE. How do those goals—how do those challenges line up as we look at reauthorization of STELAR?

Mr. BERGMAYER. Well, I think STELAR offers an opportunity to look at a wide range of different media and video industry policies, including media ownership rules, and I think something like, you know, the short-term investor kind of thing, that sort of relates to the broader media ownership and consolidation points that have come out in today's hearing.

Ms. DEGETTE. Senator, do you have anything to add to that?

Mr. SMITH. Yes. I would just re-emphasize to those who may want to invest in broadcasting. If you invest and you not focus on local, you are not going to make any money because people are going to change the channel. And what I am telling you is that my members who are successful financially are the ones that keep a focus on local to avoid the Denver Post kind of situation.

Ms. DEGETTE. Well, but that is assuming that there is that competition, and that if there is no channel to change it to, then that is where you run into that trouble, and so that kind of—

Mr. SMITH. We have lots of competition, I will tell you that, particularly from over-the-top now and we have got—some of our members do and people are going right directly to the internet to get—to get our product, and there is lots of ways to get our product. We want people to see it, but where others try to sell our product to their advantage, we are entitled to retransmission consent.

Ms. DEGETTE. So, I do want to talk a little bit about this consolidation issue that I kind of alluded to a minute ago. Mr. Thun, you said that some ownership groups are using loopholes to get around the FCC rules, prohibiting a single owner from controlling more than one station affiliated with a major network in some of the areas. Can you talk very briefly about that?

Mr. THUN. Yes, and I am not sure if that ownership changes the emphasis on localism between those broadcast stations, but what I am discussing is, in the negotiations that ensue when we go into a renewal of a particular deal, if the broadcast station owns more stations in that particular market beyond what they were initially entitled to, or what the law intended for them, it makes it more challenging.

They hold on to their positions, they hold on to their economics, and they are extremely stubborn, and it often yields blackouts.

Ms. DEGETTE. And I want to, of course, close with you, Mrs. Boyers, and ask you what does media consolidation do to consumers when broadcasting groups can't reach agreement of video providers?

Ms. BOYERS. Well, it removes the local programming from them, because if they were to turn the signal off because we couldn't reach any kind of an agreement, but I would tell you that the broadcasters themselves, the big affiliates, and the local broadcasters, are biting their own noses off to spite their faces. They have got over-the-top competition with themselves.

I mean, you got CBS All Access, for God sake. I mean, those kinds of things are competing with your own local stations, and I would tell you that if y'all are listening to the underlying current here, my esteemed friend down here with the broadcasters, he is only sitting on a stool with 2 legs. He has got his advertising and he has got me, and he is—and he is utilizing the captured marketplace, which is the passively tree transmitters to send our signal down to his eyeballs that he needs to see, and so his only 2 revenue streams today are advertising, which is dwindling, and me.

So the only people who are cutting their cords are the ones that can. The ones who can't cut that cord is Betty Duck out there on county road 450 who doesn't have a credit card, couldn't get Dish. She has to have me and she is 90 days past due all the time. The

one that brings me eggs. I am just telling you. They are utilizing me as their revenue source.

Mr. DOYLE. The gentlelady's time has expired. Good Lord. OK. Where we at?

The Chair now recognizes Mr. Long.

Mr. LONG. Thank you, Mr. Chairman. Ms. Boyers, I want to remind you that the IRS does monitor these hearings.

Ms. BOYERS. Yes, sir.

Mr. LONG. Talking about taking eggs for payment, you might want to——

Ms. BOYERS. I report all my income.

Mr. LONG. You might not want to go there 1974, George Foreman was going to fight Muhammad Ali and Muhammad Ali came up with a strategy to fight a younger George Foreman, and that is exactly right. That is the Rope-a-dope. He would cover up and back in to the ropes and let George just pummel away on him, and that is kind of like what I felt like the last few weeks with the broadcasters and AT&T, and there were people coming into my office. Everybody just wants to pummel on us and figure out, you know, how this thing is going to come out in the end.

Mr. Bergmayer, what is a local broadcast station? You referenced a local broadcast station earlier, what is a local broadcast station?

Mr. BERGMAYER. Well, I guess there is two ways—any broadcaster serves a specific geographic region so it is local to that region, so I think that if you are in that region, that is your station. I think the problem is when there is—when you are short a market where there is no affiliate for a particular broadcaster, then you just need some kind of station. I suppose it is not going to be local to your particular market, but, nevertheless, that station in its own market is still thought of as a local station.

Mr. LONG. So Mrs. Boyers, I believe said that—I am still with you, Mr. Bergmayer, Ms. Boyers said that her local affiliate Cape Girardeau is like 147 miles away. Is that a local station?

Mr. BERGMAYER. Well, I think the definition of local might get stretched a little bit in rural areas where the stations are, yes, fewer and far between, just due to geography and population density, but, you know, it is certainly closer than a station in Los Angeles or New York.

Mr. LONG. When I go home on the weekends 2 or 3 days a week, whatever we get to spend at home, I sit down to watch the local news with my wife, and I will say who is that? Who is that? Who is that? I mean, all the reporters are, you know—when I was growing up, you had the same reporters, same news people, same sports people, like, your whole life and now every time you go home, they have got new young kids out of college because apparently that is who they can afford to pay, and it is just constantly shifting.

And with that, Senator Smith, you are talking about bringing local into local, walk me through that. What does that look like, bringing local into local?

Mr. SMITH. It means where there is a demographic area that is served by a television station, that the people within that area get that signal and not something from Los Angeles or New York.

Mr. LONG. But if there is not, I mean, if you are Ms. Boyers in—and it is 147 miles away, I thought you were saying there was a way to bring local broadcast into that market?

Mr. SMITH. There are translators that help beam our signals to rural areas over mountains and into valleys. They are all over this country, if they don't want to have a subscription. I don't know her—in the Ozarks, whether there are a sufficient number of transmitters to get it for free, but we offer it for free.

Mr. LONG. I was a little bit confused on bringing local into local in the fact of—like I said, I go home and we are in a town of 160,000 people, 250,000 people, we have got ABC, CBS, NBC, local, but two of them, we fought this battle before, have gone into together, NBC and the ABC affiliate moved into the same building, they are run by the same people.

For a while, they tried to keep their news people separate and all that, but now they are all piled in there together. There is not a real way to bring a local station that would be functioning and make a profit into Ms. Boyers' area, correct?

Mr. SMITH. I think what you are speaking to is just the expense of running a newsroom. Journalism is expensive. Localism is expensive.

Mr. LONG. Yes, but I mean, somebody that doesn't have a local station like Ms. Boyers doesn't. What did y'all—moving to you, Ms. Boyers, what did you do during the tornado—recent tornadoes in your area? I know we were hit. Does Cape Girardeau cover the tornadoes over in Poplar Bluff?

Ms. BOYERS. Whenever you watch the weather, and it is the same on the CBS station as it is on KBI 5 Fox, it is the same news team once again. They—but the only time you are going to hear Poplar Bluff is when that radar dips way off down there in the southwest part of the circle. They call themselves Tri-State area. But the local news is Cape Girardeau.

Mr. LONG. One quick last question, you came by my office the other day and in your testimony today you mentioned this 47 percent. Tell me, you are paying 47 percent more than your competitors and that is because of what?

Ms. BOYERS. Yes, sir, based on the FCC's report, the study they put together at the end of the year last year.

Mr. LONG. But why? Because the quantity—they have more accounts than you do or what? I am sorry.

Ms. BOYERS. That is what I am offered in my negotiations with the off-air channels, 47 percent more.

Mr. DOYLE. The gentleman's time has expired. The Chair now recognizes Mr. Flores.

Mr. FLORES. Thank you, Mr. Chairman. I appreciate the hearing this morning.

Mr. Thun, I have a quick question I would like you to answer supplementally for me, if you would. AT&T and DIRECTV have made 2 commitments to serve all 210 DMAs with local channels. I would like—and each—none of those commitments have been met, so I would like for you to supplementally respond as to why those haven't been done. If you would, also, put the markets where you down convert the HD signals, and what the plans would be to remove the down conversion features moving forward.

I want to continue on to talk about the subject that Ms. Eshoo and Mr. Scalise have introduced, and that is, what should the statutory framework look like for video moving forward with the re-emergence of over the air, with OTT, with the MVPD options that we have today.

And then, there are things that are gleams in people's eyes today that are going to totally transform this business space. I would like some ideas from you as to what the statutory framework would look like for the video market of 21st century, not relying on the 1992 Act, not relying on STELAR. What should the statutory framework look like? And so I will give each you about 45 seconds starting with Mr. Bergmayer.

Mr. BERGMAYER. I believe it should start with copyright as the fundamental unit of negotiation, and let's build from there. Right now, we have a system where copyright, you have a compulsory license, and then on top of that, you have retransmission consent, which is negotiated in the marketplace. I think this adds too much complication, too many layers. I think you simplify things. You start with copyright, and you see if that improves things for consumers. And you know, I just think that offers a more sounder starting point, you know, for addressing the market. That is how it works everywhere else.

Mr. FLORES. Thank you. Thank you for staying within 45 seconds.

Ms. Boyers.

Ms. BOYERS. For us, it would be choice. Choice for the consumer, choice for us as the provider. In today's framework, we are mandated by Federal law to provide those off-air stations, first and foremost, to every one of my subscribers. If they don't want to watch them, they shouldn't have to pay for them. Choice is part of that, and just absolutely, more choice. Let the marketplace set the demands.

Mr. FLORES. By the way, you have been a great witness. I appreciate you being here today.

Mr. THUN. I think for us, we are open to any and all ideas. I mean, one of the things that has brought us here today is that retransmission consent needs to be fixed somehow. The exact measures around that, I am not sure. But I think it starts with working on the 1992 Act, starting from scratch and seeing laws that could create marketplace conditions that are not punitive to our consumers.

Mr. FLORES. I don't really want to start with the 1992 Act. I want to start with a blank sheet of paper. What would that look like?

Ms. BOYERS. Amen.

Mr. FLORES. I mean, does anybody disagree with that approach?

Ms. BOYERS. No, sir.

Mr. FLORES. I mean, because the market is totally different than it was in 1992. It is totally different than when I was a kid, and I had three channels located 80 miles from the three broadcast channels, and I would have to get up on a 45-foot tower to adjust or fix the antenna after a storm.

Ms. BOYERS. If the President was on, you were screwed. You didn't get to watch anything else. You had to watch the President on all 3 channels.

Mr. FLORES. Secretary Smith.

Mr. SMITH. Congressman, you know, basically, you have 2 options. You can have the Government manage prices and these negotiations, which I would strongly oppose.

Mr. FLORES. Yes, I am opposed to that.

Mr. SMITH. Or you can allow the retransmission consent process to go on, which I think is always kind of a food fight when people are freely trying to bargain for the value of content. And my own view is that the dollars should follow the eyeballs. We have got the eyeballs.

Mr. FLORES. OK. I think retransmission consent is part of it, but at the same time, I do think it is thinking too small. There is a new technology that is going to come in, and it is going to wire around retransmission consent, and I think we need to figure out what the statutory infrastructure looks like so that we create the video marketplace of the future that puts consumers first.

And with that, Mr. Chairman, I yield back the balance of my time.

Mr. DOYLE. The gentleman yields back, and the Chair thanks him. The Chair now recognizes Mr. Cárdenas for 5 minutes.

Mr. CÁRDENAS. T1 THANK YOU, MR. CHAIRMAN, AND THANK YOU TO THE RANKING MEMBER FOR HAVING THIS IMPORTANT HEARING.

I would like to point out that earlier today, there has been testimony that no broadcaster has been fined for violating the good faith rules. I want to point out that there was an investigation and a settlement of \$9.5 million with Sinclair. So I just wanted to state that for the record.

The way that many consumers watch video is changing, but for a lot of folks, they still receive local news, local weather, emergency alerts, and local entertainment over the air, and by way of cable and satellite. I know that this is a complicated issue for those in the video market, so I am glad to see so many stakeholders at the table so we can get this right.

Above all, we need to remember the bottom line, that consumers have access to local diverse programming. That is important to me and to millions and millions of Americans.

And my first question is to Senator Smith, the CEO of NAB. I understand that significant populations of Latinos and other communities of color depend on free local broadcasts to stay up to date on local news, disaster alerts, and other educational and entertainment programming. Can you discuss the rate of viewership amongst communities of color?

Mr. SMITH. Yes, and it is one of the proudest things we have to offer as free local broadcasters is that those who exclusively rely on us tend to be minority communities and the economically disadvantaged. And we are very proud of Univision and Telemundo, members of our association. I think we are doing everything we can to make sure that there is content available to them free over the air, and those communities disproportionately rely on us.

Mr. CÁRDENAS. T1 THANK YOU FOR THAT TESTIMONY. WITH ALL OF THE BIG PLAYERS IN THE FIELD, IT IS IMPORTANT THAT WE DON'T

LOSE SIGHT OF THE INDEPENDENT PROGRAMMERS WHO BRING QUALITY, LOCAL, DIVERSE CONTENT TO THEIR COMMUNITIES. IN A SPACE WHERE WE SEE MORE AND MORE CONSOLIDATION, WE NEED TO MAKE SURE THAT LOCAL NETWORKS CAN CONTINUE TO OPERATE AND THAT THERE IS ROOM FOR NEW ENTRANTS INTO THE MARKETS.

Ms. Boyers, we have heard from independent networks that the retransmission consent process can cut into programming budgets that could otherwise be used to create content that showcases diverse and unique voices. In your experience, is that accurate?

Ms. BOYERS. Absolutely. We only have certain buckets of money for programming, and retransmission consent fees take away funds in my small business to provide compelling independent programming. We are on the same side of this issue with the independent programmers. We all have the same financial straps. We have the same, you know, too much month at the end of the money, and we have the same problems the independent programmers have. We want to do everything we can to get those folks on our station, but we only have so many dollars.

Mr. CÁRDENAS.T1 WELL, YOU MENTIONED BUCKETS, BUT I HAVE BEEN VISITED BY SOME OF THE SMALL PLAYERS IN THE FIELD, AND IT LOOKS LIKE THEY GO AROUND WITH A LITTLE TIN CUP.

Ms. BOYERS. Yes, sir.

Mr. CÁRDENAS.T1 HOPING THEY WILL GET SOMETHING TO RATTLE IN THERE, AND THAT IS ONE OF THE THINGS THAT REALLY, REALLY CONCERNS ME, BECAUSE THE SMALLER THE PLAYER, THE MORE LIKELY THAT THEY ARE NOT GOING TO BE ABLE TO PLAY, THAT THEY WILL JUST GO AWAY. AND I THINK ONE OF THE SADDEST THINGS THAT WE COULD SEE IN AMERICA IS TO SEE SOMEONE WHO IS PASSIONATE, WHO IS HEARTFELT ABOUT WANTING TO BE THAT, TO DO THAT AS A CAREER AND REALIZE THAT THERE IS NO ROOM ON THE PLAYING FIELD FOR THEM BECAUSE IT JUST DOESN'T PENCIL. THEY CAN'T EAT AND DO THE BEAUTIFUL, WONDERFUL CONTENT THAT THEY CAN AND ARE CAPABLE OF PRODUCING, BUT IF YOU CAN'T EAT, YOU DO SOMETHING ELSE.

Ms. BOYERS. Yes, sir. That is right.

Mr. CÁRDENAS.T1 THAT IS ONE OF THINGS THAT IS A BIG CONCERN OF MINE.

Ms. BOYERS. Yes, sir.

Mr. CÁRDENAS.T1 MR. THUN, SAME QUESTION.

Mr. THUN. We, I believe, have an excellent track record carrying independent channels, hitting diverse audiences. As I testified earlier, I think we have an unassailable record. As far as I know, we distribute more diverse content than any other distributor in the marketplace, so we want to reach all the different audiences. We have national platforms so that we can touch people across the country in those different pockets, and we try to do so with providing a robust experience for them to touch different pieces of content that aren't from the same voices.

Mr. CÁRDENAS.T1 OK. THANK YOU.

Mr. Bergmayer, do you have anything to add to this?

Mr. BERGMAYER. I think the current regulatory system as well as just the market structure benefits primarily just the most major programmers. It also doesn't particularly harm, I think, the very largest MVPDs, the Comcasts, the Charters. You have a system

where you have these large players fighting each other all the time in the interest of smaller diverse programmers, as well as small cable systems, just simply often get forgotten.

Mr. CÁRDENAS.T1 SO PERHAPS THE SYSTEM'S NOT BROKEN-BROKEN, BUT SOME TWEAKS HERE AND THERE BY CONGRESS MIGHT BE WELCOME?

Mr. BERGMAYER. Well, I would favor some pretty fundamental changes to the system, but I am totally open to lots of small tweaks within the current framework, as well as addressing the consolidation issues, which I don't think help either.

Mr. DOYLE. The gentleman's time has expired. The Chair now recognizes Mr. Walberg for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and thanks to the panel. This has been one of the most interesting panels I have had the privilege of listening to with a lot of good humor, good information, and I just have to tell you. I agree with all of you. I want you all to be satisfied. Is that OK, Mr. Chairman? I am not sure if that will happen, but I have learned some great new words I can use at my town halls too. Dadgummit. I appreciate that.

Mr. Thun, one of the counties in my district, in my home county, in fact, Lenawee County in Michigan, is an orphan county. It is in the Toledo market, and as great as Mr. Latta's local broadcaster's content may be, I am sure my constituents would prefer to be watching the Michigan-Ohio State game from a local Michigan affiliate.

Mr. LATTA. They would lose anyway.

Mr. WALBERG. And we have such comity.

Localism will be especially appreciated during the football season, as Chairman Wheeler used to put it.

Mr. Thun, can you help me understand why DIRECTV can't just import local out-of-market signals to serve subscribers in Lenawee County, for instance, or what would it take to ensure subscribers in Lenawee are able to receive local content?

Mr. THUN. In terms of the orphan counties, I think in every instance that a broadcast station has come to us, we have complied and been able to distribute it, except in cases where it was technically not feasible. In certain cases, our spot teams don't cover a particular area, so therefore, technically, we wouldn't be able to deliver it.

In the case of your particular example, I am not exactly well-tuned to what that particular area is, or what has been spoken to us, but we are absolutely, you know, receptive to looking at that. And if a broadcaster comes to us for the distribution there, to provide you with a Michigan point of view instead of the Ohio point of view, nothing against the Buckeyes or nothing for necessarily the Wolverines.

Mr. WALBERG. You are starting out well.

Mr. THUN. We are happy. We are supportive of that.

Mr. WALBERG. Senator Smith, do you have anything to add to that?

Mr. SMITH. Yes. I would just note that in the last STELAR bill reauthorization, there was a provision, an authority given to the FCC to deal with orphan county issues. We supported that. We worked with them. We hope that your county, if they are orphaned,

will work through that process, and we have been able to address a number of these issues for a number of orphan counties.

Mr. WALBERG. Senator Smith, can you walk me through how the distant signal compulsory copyright works versus the retransmission consent process?

Mr. SMITH. Well, what it means, if, for example, Mitch McConnell's Bowling Green area, for some reason, that is not served with the local stations that are there. A distant signal is brought in from New York City to them. There are 12 markets like that. These are ones that AT&T, DIRECTV has not provided local, the way outlined in STELAR. And if STELAR went away, I am sure they would work with us, and I think local stations there would be anxious to find a price that they could deliver local into local. But as long as STELAR remains, they have an easy out.

Mr. WALBERG. Could I assume that that sounds something like a subsidy if they could negotiate directly?

Mr. SMITH. It is a subsidy. And if you add up all the market capitalization of every broadcaster in America, it will not equal the market capitalization of AT&T. So the question becomes, do they need a subsidy?

Mr. WALBERG. Mr. Thun, your thoughts?

Mr. THUN. As I testified earlier, we do serve those communities. We do have a solution, which is an over-the-air antenna, and part of that falls, is incumbent upon the broadcaster to provide a signal that is strong enough so that other people, other folks can receive it. They are not incented to provide a very strong signal, and we come in. We actually don't get paid for delivering them beyond their footprint that they are able to do, and so, they enjoy rates from us that are very handsome and continue to go out of control.

Like I said previously as well, the 12 markets that we don't serve, 11 of them are either duopolies, double duopolies, or triopolies, and every time we go into those kinds of negotiations, the prices somehow are higher. So the deauthorization of STELAR or the lack of reauthorization wouldn't ensure that we would go into those 12 markets by any stretch.

Mr. WALBERG. OK. Thank you. I yield back.

Mr. DOYLE. Thank you. The Chair now recognizes Mr. Butterfield for 5 minutes.

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman, and let me join my colleagues in thanking the witnesses for your testimony today. I have been ping-ponging between subcommittees, and I think Gordon understands that drill and how that works, but thank you for your patience.

Let me begin by making an observation. My district, as many of you may know, is very rural. Many of my constituents in the 1st District of North Carolina rely on satellite to receive their local news, to receive their content that really matters to their families.

And so, Mr. Smith, let me ask you: How would allowing the relevant provisions of STELAR to expire promote access to local programming in rural communities? Help me with that.

Mr. SMITH. Well, if Mr. Walden were still here, I would share with him and you a similar thing. I have a place up in the Blue Mountains of Oregon. I am a good DIRECTV customer, and we get L.A. News there. So I think if STELAR continues, that will con-

tinue. And I think if it goes away, I am sure Mr. Thun and I could work out a deal that we can fix these 12 markets, but that is left to people at a higher pay grade than we are, and our companies hopefully can get that done unless there is an out that allows them to bring in a distant signal.

Mr. BUTTERFIELD. My staff has very faithfully gone through your written testimony. I have not, I acknowledge that, but I depend on them greatly. They tell me that you question whether the good faith requirements currently imposed by Congress are necessary for fair and fruitful negotiating. Without the good faith rules, what would change from the consumers' perspective?

Mr. SMITH. I think that a good side of the retransmission consent process now is that both sides are incentivized to come to a deal. We want them to have our product. We appreciate the resources it brings to us. It helps support local journalism. And they want more eyeballs, too, so we actually have a community of interest, but these are not things Mr. Thun or I are involved in.

Mr. BUTTERFIELD. Hopefully, Mr. Bergmayer can help us with that.

Mr. BERGMAYER. Yes, sure. I mean, first, my read of the statute and the FCC's rules is that good faith does apply to both sides, both MVPDs and broadcasters. I would say that just saying that negotiations have to happen in good faith without really clarifying what that means doesn't really get you that far, so that is why we have advocated that, you know, we actually put some teeth behind it so that you find that certain kinds of negotiation tactics that tend to harm consumers and drive up bills be considered bad faith, per se.

Mr. BUTTERFIELD. All right. Let me go to the other side of the spectrum, no pun intended. Mr. Thun, let me ask you: How does the distant signal license provided by the current regulatory framework benefit rural consumers?

Mr. THUN. In a lot of rural areas, consumers are not able to get an over-the-air signal. And for those pockets that they can, we are able to provide a distant signal so they can get network programming, not local, but network programming, so that they can see the various pieces of content that they enjoy.

Mr. BUTTERFIELD. Would expiration of that affect local programming for the customer?

Mr. THUN. I don't know if it would do anything for local programming, but what it would do for those customers who can't get local programming because they get it through a distant signal, that would sunset, and I am not sure what process would take place for them to get that content.

Mr. BUTTERFIELD. Let me try this one: How do increasing programming fees affect your efforts to deploy broadband in currently underserved areas?

Mr. THUN. Well, like Ms. Boyers said earlier, we have multiple revenue streams, and one of them being video, and if that revenue stream is shrinking, that affords us less money to invest in other areas of the business, one of them being broadband. So just intuitive financial principle would dictate that if you are making less money in your business, you are going to have less money to spend in other areas.

Mr. BUTTERFIELD. Now, Ms. Boyers, you are in a rural community. Is that right?

Ms. BOYERS. Yes, sir.

Mr. BUTTERFIELD. How would this affect your universe?

Ms. BOYERS. How would the sunset setting—

Mr. BUTTERFIELD. Yes. As an operator, how would it would affect your community?

Ms. BOYERS. It would affect us dramatically. They keep talking about this no good faith complaints as a way of saying you don't need good faith rules. Rule breaking—rules aren't made for breaking, so I think that it is a testament that we do all come to the table together under the guise of these, you know, mandated good-faith rules. And to be able to allow even other folks to come in under the guise guys of the good-faith rules, I find groups like the NCTC, on our behalf, would help us have lower rates, possibly, for those so we could have more money to deploy. But the good-faith rules are, you know, an important hanger for us.

Mr. BUTTERFIELD. Thank you.

Mr. DOYLE. The gentleman's time has expired. The Chair now recognizes Mr. Gianforte for 5 minutes.

Mr. GIANFORTE. Thank you, Mr. Chairman, and thank you to the panel. This has been very insightful, your testimony today. I appreciate getting the sides.

Consumers should have access to their local news. Our local stations provide—serve a critical function in our communities in keeping public informed, connecting rural communities. In Montana, they really rely on the local stations for news and weather. Some communities in our State, including our State capital, Helena, however, does not receive their local station through DIRECTV.

What local news can DIRECTV subscribers in our State capital get? Well, New York or Los Angeles. People in Helena care about their community events, local weather, the coming wildfire season, not necessarily about standstill traffic on I-5, or the subway breakdown in New York City.

As more consumers look to cut the cord, I think providing viewers with their local broadcast stations would be an effective way to keep consumers. As we look at the TV marketplace, we should consider how to lower the cost to consumers and increase competition, all while making sure neglected markets like Helena and Glendive are covered.

First, I would like to focus on getting prices down for consumers. I see constant news stories and I hear directly from my constituents that their pay TV bills are continually on the rise. Ms. Boyers, I appreciate your testimony today. Can you help us with this? How can we get consumers relief on the prices?

Ms. BOYERS. To lower them. I mean, honestly, we are being pushed into a vacuum as the passive retransmitter of broadcast signal. We are their eyeballs. In a lot of areas, that is the only eyeballs they have because they can't do an antenna. They don't offer it on broadcast. So we are being penalized for being small and for being rural, and we are subsidizing the lack of the revenue generating in their business model. Now, if they can come up with a different business model and lower my rates, then I pass it on to my customer. We don't make a buck on retransmission consent.

Mr. GIANFORTE. And you testified earlier that 79 percent of your total P&L expenses are related to programming, not in local?

Ms. BOYERS. Yes, sir.

Mr. GIANFORTE. OK. Thank you for that.

Mr. Thun, as I mentioned, there are two markets in my State, including our capital, where DIRECTV does not provide local into local. Now, you have mentioned that you have an antenna option. The challenge we have, Montana, mountains, the broadcast doesn't work. So why can you not provide local stations to our State capital?

Mr. THUN. Well, I think we can. Just to be clear, we don't bring the distant signals into the heart of Helena. It is going into the outskirts where the white areas are. So our solution, as I said previously, is the over-the-air antenna that is integrated into our set top box.

Mr. GIANFORTE. But those over-the-air antennas don't work when you are in the mountains. Why can those citizens not get access to local news? What is the impediment today?

Mr. THUN. The impediment is that in certain cases, the broadcaster's signal technically probably can't get to certain of those areas. There are probably areas within the DMAs that you are—

Mr. GIANFORTE. But what is preventing it from going over your network?

Mr. THUN. What is preventing it? We have explored looking into these 12 markets, and as I testified previously, they are rife with duopolies, dual duopolies, and triopolies. So, in the absence of putting the signal over the air, it makes it very challenging for us to come to a market when we see what kind of prices that are being extracted in the regime.

Mr. GIANFORTE. Senator Smith, would you like to provide the broadcast perspective on this?

Mr. SMITH. Yes. I think there is no technological impediment any longer to AT&T's being able to provide this. There is plenty of competition. You have got to support the local stations there in Montana. We do that. Obviously if people in Helena want our stuff directly that is supported by advertising revenue, they just put up their digital antenna, but I do think the way you make sure AT&T does not provide it over their system is to renew STELAR.

Mr. GIANFORTE. Well, clearly, we have difference of opinions. I appreciate the transparent testimony today. I look forward to working with you all to figure this out so our constituents are better served at prices they can afford. Thank you. I yield back.

Mr. DOYLE. I thank the gentleman.

Mrs. Brooks, 5 minutes.

Mrs. BROOKS. Thank you. Thank you, Mr. Chairman, and I, too, apologize. I have been running between a couple of different hearings, but what has been pretty clear to me is that there is not a lot of agreement from the panel, and so, I guess, I would like to start out by asking, and because I have kind of gone in and out of this hearing.

Senator Smith, could you please share with us—and I apologize if this has been asked. Can you explain how retransmission consent prices are actually decided, because as I have come in and out of

this, that seems to be the sticking point, or one of the sticking points. So can you talk about how those prices get decided?

Mr. SMITH. Obviously, I don't negotiate them, and if Mr. Thun and I did, I am sure we would come up with a deal.

Ms. BOYERS. \$0.12.

Mr. SMITH. Their business people and our business people, my members, they sit down and negotiate, and I would just make the point that they pay for their own content far more than they pay for ours which is much higher watched. And so our members try to get the dollars reflected by the eyeballs that we bring to their system and ours.

Mrs. BROOKS. And is that why prices might vary based on the size of the MVPD?

Mr. SMITH. Of course.

Mrs. BROOKS. OK. And any disagreement, Mr. Thun? Anyone else on that answer? I am just trying to see if there is any agreement on—

Mr. SMITH. Well, I mean, I would just say I have some sympathy for Ms. Boyers, because I am from a very rural part of Oregon. I know what it is like to be rural and left out, and yet, the economics of going into those places sometimes make it very difficult.

Ms. BOYERS. I emphatically disagree. It costs absolutely no more from my head end to pick up that signal once it comes from their transmitter to my receiver. It comes down into my head end, and there is where I incur the expense, by the mile, to get an aerial air underground to that customer. What they are charging me for is what gets to my head end, and then I turn around and passively retransmit for them. So it costs—they have no more for me to get that signal than for them to transmit it right there in Cape Girardeau itself. However, I am paying 47 percent more. I don't understand that. I was really interested in that answer that is what we were supposed to get that you just asked. I have no idea other than the fact that we have no leverage, no bargaining power when we sit down, and it is take it or leave it.

Mrs. BROOKS. And going back a little bit to, and while I appreciate you aren't actually, Senator Smith, in the negotiations, in those discussions, and in, you know, good-faith discussions, what are the factors as we have to explore how to go forward with this incredibly changing landscape?

Mr. SMITH. I don't know because I am not in there, but I can imagine that comparables for other programming are evaluated, viewership, and ratings. Those probably come in to bear on what a broadcaster would ask, but I am just assuming that. I have never been involved in those negotiations.

Mrs. BROOKS. I have a concern about blackouts as we have all heard from various communities and what happened, particularly as it relates to public safety. And can we talk a little bit more about the public safety issues that are created when we go into blackouts? And what is the longest period of blackouts we have had, and you know, what a kind of rules should we have around this issue of blackouts as it relates to public safety? Sure. All of you. I would like to finish with each of you very briefly talking about that.

Ms. BOYERS. Blackouts are happening to other ACA members as well. I represent about 700 moms-and-pop, baby companies, and blackouts are happening. It is an issue, and it seems to me that although they say that even if there is a threat of a blackout, 99.9 percent of those contracts are made, miraculously, you know. We have a member, Liberty, in Puerto Rico threatening of a blackout before the dadgum hurricane. Now, do you think that the leverage of Liberty saying yes, I will pay your high prices we are much more able to do that because they had a hurricane coming, and they wanted to be able to watch the radar. I find it compelling that all these additional blackouts seem to hover around times of negotiations of retransmission consent.

Mrs. BROOKS. My time has expired, but I would certainly be interested in any other answers in written form on how we resolve the issue of blackouts relative to public safety.

Mr. SMITH. We would be pleased to provide that.

Mr. DOYLE. The gentlelady's time has expired. The Chair now ask unanimous consent to enter the following documents into the record: A letter from the American Television Alliance; a letter from Consumer Reports; a letter from the National Association of Black-Owned Broadcasters; a letter from Representative Golden; a letter from Ride TV; a letter from Rural Group Coalition; a statement from the Motion Picture Association of America; a broad post from Sports Fans Coalition; and a letter from R Street. Without objection, so ordered.

Mr. DOYLE. I want to thank all of the witnesses, and Ms. Boyers, you can come and testify for me any time you want.

Ms. BOYERS. Just ask and I will be here.

Mr. DOYLE. I want to thank you all for being here today. And I want to remind Members that pursuant to committee rules, they have 10 business days to submit additional questions for the record to be answered by the witnesses who have appeared, and I ask each witness to respond promptly to any such questions you may receive. At this time, the subcommittee is adjourned.

[Whereupon, at 12:59 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. BILLY LONG,

I'd like to thank the witness' for being here, and I'm especially happy to see a fellow Missourian (Patricia Jo Boyers) testifying before us today.

I think we can all agree that the media and entertainment marketplace has and is rapidly evolving. There is more competition than ever, and government intervention is not always the answer.

It is important for us to examine the state of the video marketplace but as we approach a potential sixth reauthorization of STELAR, we need to take a hard look at the underlying policy and its relevance today rather than assuming its passage is a necessity. We should ignore the inclination to rubber stamp this legislation only because this committee has historically done so.



The Register of Copyrights of the United States of America
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000 · (202) 707-8350

The Honorable Jerrold Nadler
Chairman
House Judiciary Committee
United States House of Representatives
2132 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Doug Collins
Ranking Member
House Judiciary Committee
United States House of Representatives
1504 Longworth House Office Building
Washington, D.C. 20515

June 3, 2019

Dear Chairman Nadler and Ranking Member Collins:

I am pleased to deliver this response to your letter of May 28, 2019, regarding the compulsory license for secondary transmissions of distant broadcast programming by satellite under section 119 of the U.S. Copyright Act. The Copyright Office has administered the section 119 compulsory license since it was added as a temporary license in 1988, and we appreciate the opportunity to provide you with detailed information in response to your request for the Office's views about the current usage of this compulsory license and whether it should be reauthorized.

As detailed in the attached response, after considering the general ecosystem for licensing video content and the limited current usage of the section 119 license, the Office again recommends letting the license sunset without renewal. This recommendation is consistent with the Office's long-standing position on the section 119 compulsory license, reflected in the Office's previous comprehensive reports to Congress in 2011 and 2008, recommending that the license be allowed to sunset. We appreciate, however, that Congress is considering fully the many equities involved as it deliberates whether to reauthorize this license, set to expire on December 31, 2019. We would be pleased to provide further information on this subject and look forward to working with you on this issue.

Respectfully,

Karyn A. Temple
Register of Copyrights and
Director, United States Copyright Office

Enclosure

U.S. COPYRIGHT OFFICE ANALYSIS AND RECOMMENDATIONS
REGARDING THE SECTION 119 COMPULSORY LICENSE

June 3, 2019

I. Background on the Section 119 License

Copyright law’s compulsory license for secondary transmissions of distant broadcast programming by satellite under 17 U.S.C. § 119 is set to expire on December 31, 2019. Originally enacted in 1988, this provision must be reauthorized every five years and was most recently extended by the Satellite Television Extension and Localism Act Reauthorization Act (“STELAR”) in 2014. The provision establishes a compulsory licensing regime for satellite transmissions of distant signal programming to “unserved households” by network stations and by non-network superstations “to the public for private home viewing . . . and [where] the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission,” as well as by non-network superstations to the public “for viewing in a commercial establishment.”¹

The section 119 compulsory license also interacts with the Communications Act of 1934 and federal communications policy, making the issue before Congress one involving multiple areas of the law. The House Judiciary Committee and the House Committee on Energy and Commerce, along with the Senate Committee on the Judiciary and the Senate Committee on Commerce, Science, and Transportation, have jurisdiction over STELAR and issues related to section 119’s expiration.

The section 119 compulsory license itself, however, is a copyright license. Section 119 modifies a copyright owner’s exclusive right to publicly perform and display their work (*e.g.*, via television programming) and replaces it with a right to be remunerated when others use the work within the scope of the compulsory license. Under 17 U.S.C. § 119, satellite operators do not need permission for certain carriage of distant broadcast programming, although they must pay the copyright owner a set royalty rate. The Copyright Office has administered the section 119 compulsory license for three decades: collecting statements of account and royalties from satellite operators, and distributing them to the appropriate rightsholders following determinations by the Copyright Royalty Judges.²

Section 119 applies only to satellite carriage of distant broadcast signals. In practice, this license permits the importation of network stations (*e.g.*, ABC) into underserved communities, as

¹ 17 U.S.C. § 119(a)(2)(A)–(B); (a)(1). The model type of unserved household is “a household that cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that network of Grade B intensity.” *Id.* § 119(d)(10)(A). There are four other types of unserved households, including recreational vehicles and commercial trucks. *See Id.* § 119(d)(10)(B)–(E). As discussed below, the current distribution of distant signals provided to subscribers for each type of unserved household has not been shared by the satellite operators. Carriage is limited to up to two stations from the same network each day (*e.g.*, two different NBC stations).




² *See Licensing Division*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/licensing/>; *Form SC – Statement of Account for Secondary Transmissions by Satellite Carriers*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/forms/formSC.pdf>.

well as the carriage of non-network superstations (a category that included WGN until its transformation into a destination cable network in late 2014, but today includes fewer stations with substantially fewer subscribers). Section 119 does not provide a compulsory license for the vast majority of television programming offered by satellite carriers to subscribers, whether through “base packages” (e.g., ESPN, C-SPAN), or as premium programming (e.g., HBO, STARZ).³ Nor does section 119 apply to satellite carriage of local broadcast signals (i.e., a local network affiliate such as WJLA), which falls under section 122, or carriage of local or distant broadcasts by cable systems, which falls under section 111. Both section 111 and section 122 are permanent compulsory licenses without expiration dates. Section 119 applies only to satellite carriers—not over-the-top (“OTT”) services that deliver television via the internet, which have flourished in recent years and are discussed further below. And unlike the other compulsory license for satellite carriers (section 122), section 119 does not require retransmission consent.⁴

II. Section 119 Usage has Plummeted Since 2014

Not only has the satellite industry long since matured from the fledgling industry that Congress sought to assist, but the use of the section 119 compulsory license has dropped dramatically following the last reauthorization. Satellite industry reports indicate that about 30 million U.S. households subscribe to satellite programming service, but relatively few receive a “distant signal” as defined by the copyright law.⁵ Royalties paid under section 119 have plummeted over the past five years. As seen in the table below, royalties reported by satellite carriers to the Copyright Office fell between about 85 percent and 99.5 percent between the first reporting period of 2014 and the first reporting period of 2018:

Table: Royalties Paid under Section 119 (2014/1 vs. 2018/1)⁶

	2014/1	2018/1	Change
DirecTV	\$26,649,895	\$3,524,799	 86.75%
DISH	\$15,103,235	\$2,337,095	 85%
DISH Puerto Rico	\$300,033	\$1,484	 99.5%

³ See, e.g., *DirecTV Select Package*, AT&T, <https://www.att.com/directv/select-package.html> (last visited June 2, 2019); *DISH Channel Lineup*, DISH, <https://www.dish.com/programming/channels/> (last visited June 2, 2019).

⁴ See 47 U.S.C. § 325(b)(2)(B).

⁵ The exact number of subscribers who receive distant signals is not known. The Satellite Broadcasting & Communications Association, which represents DirecTV and DISH and supports making section 119 permanent, estimates 870,000 households get at least one distant signal; the National Association of Broadcasters, which supports letting section 119 expire, estimates 500,000. See *Reauthorize and Revitalize the Satellite Home Viewer Act*, SATELLITE BROADCASTING & COMMUNICATIONS ASS'N, http://www.sbca.org/documents/Rural_Sat_Act.pdf; *Narrow Satellite Legislation Should Expire as Congress Intended*, NAT'L ASS'N OF BROADCASTERS (Sept. 2018), http://www.nab.org/documents/newsRoom/pdfs/NAB_STELAR_expiration.pdf.

⁶ In addition to paying royalties, parties using the section 119 license must file semi-annual statements of account with the Copyright Office covering the periods of January 1 through June 30, and July 1 through December 31 (i.e., January 1 through June 30, 2018 is considered period “2018/1”). See 37 C.F.R. § 201.11.

The fall in royalties paid is due to a dramatic decline in total subscribers receiving one or more stations under the section 119 license, which in turn is affected by (1) a drop in the overall number of distant network stations carried, and (2) the disappearance of non-network superstations, such as WGN.

For example, in the 2014/1 accounting period, DirecTV reported a monthly average of 4,031,442 private home viewing subscribers for network stations. (Subscription reporting figures treat each individual subscriber as a unique subscriber for each network station they receive.⁷) By 2018/1, that number had fallen to a monthly average of 2,097,663. Across those reporting periods, the number of distant network stations that DirecTV carried fell from 58 to 40. And, due to WGN's conversion from superstation to destination network, DirecTV subscribers to non-network superstations were eliminated—from a monthly average of about 12 million to zero.⁸ Each of these factors translated to a significant drop in the use of the section 119 license and, thereby, the royalties paid under the license. Taken together, these developments are responsible for the plummeting figures reported in the statements of account of the three satellite companies (DirecTV, DISH, and DISH Puerto Rico) that utilized the section 119 license, and filed with the Copyright Office as required, over the past five years.

Meanwhile, other new technologies and programming-delivery models have emerged and flourished without the assistance of a compulsory license. Particularly relevant to section 119 is the growth of OTT services that deliver television and video via the internet. OTT media, which includes services like Netflix, Hulu, and Amazon Video, now has subscribers in almost two-thirds of U.S. households.⁹ A subset of OTT media is the OTT television services, such as Hulu with Live TV, YouTube TV, and Sling TV (a subsidiary of DISH Network), that offer broadcast network programming to subscribers—and without the advantage of a compulsory license. Instead, OTT television services have negotiated licenses with programming rightsholders. And doing so has not appeared to curb their ability to establish themselves in the programming delivery marketplace. In fact, these services continue to cut into cable and satellite subscriptions as more consumers look for additional program-viewing options.¹⁰ Though OTT television accounts for a fraction of overall OTT media subscribers, the number of U.S. households

⁷ In other words, one home subscriber receiving distant network signals for ABC, CBS, and FOX would be counted as three private home viewing subscribers for network stations.

⁸ Similarly, DISH, which transmitted six superstations before WGN's conversion, saw superstation subscribers fall from about 9 million per month to about 1.3 million.

⁹ See Press Release, PR Newswire, Parks Associates Announces 2018 Top 10 U.S. Subscription OTT Video Services (Nov. 7, 2018, 10:00 AM), <https://www.prnewswire.com/news-releases/parks-associates-announces-2018-top-10-us-subscription-ott-video-services-300745430.html>.

¹⁰ See, e.g., VIDEO ADVERTISING BUREAU, YOU DOWN WITH OTT? AN OVERVIEW OF THE COMPETITIVE VIDEO ECOSYSTEM 8 (2018) (reporting that the number of U.S. households that relied on OTT services for television and video programming, rather than a traditional cable or satellite subscription, nearly tripled between 2013 and 2018, though not all of these households received broadcast network programming via OTT services), <https://www.thevab.com/wp-content/uploads/2018/03/OTT-Ecosystem-Overview-Final.pdf>; Jared Newman, *Pay TV Is Now Losing 12,000 Cord-cutters Every Day*, FAST COMPANY (May 3, 2019), <https://www.fastcompany.com/90343905/cord-cutting-speeds-up-cable-satellite-losing-12k-pay-tv-customers-a-day>.

subscribed to OTT delivery of broadcast network programming rose to 4.1 million in the first quarter of 2018.¹¹

In letters sent to the chairman and CEO of AT&T (parent company of DirecTV) and to the president and CEO of DISH Network, this Committee sought critical information about the continued use of section 119.¹² Specifically, the Committee asked about:

1. The total number of subscribers that currently receive one or more stations through a distant signal license under section 119.
2. The number of these subscribers that qualify under each of the five “unserved household” provisions found in 17 U.S.C. § 119(d)(10)(A)–(E).
3. The number of subscribers, if any, that receive a station under the section 119 license under a statutory authority not found in 17 U.S.C. § 119(d)(10)(A)–(E).
4. The number of subscribers that receive stations through a section 119 license in markets where the satellite operator provides no local stations.
5. The number of subscribers that receive stations through a section 119 license in a “short market” (per 17 U.S.C. § 119(g)(2)(E)) and whether any of those subscribers were included in the response to Question 4.

Both satellite operators responded that they use the section 119 license to provide one or more local broadcast stations to about 870,000 subscribers, but they declined to answer the Committee’s request for details about the numbers for each type of qualifying unserved household or for short markets, guarding this information as “competitively sensitive.”¹³ It is unclear from DirecTV and DISH how many of the approximately 870,000 subscribers are rural households and how many are, as DirecTV suggested, “long-haul trucks, RV and camping enthusiasts, and tailgating sports fans.”¹⁴ Neither response provided any information that would counter their statements of account filed with the Copyright Office that indicate usage of the section 119 license is in dramatic decline.

¹¹ See CONGRESSIONAL RESEARCH SERVICE, CABLE AND SATELLITE TELEVISION ISSUES IN THE 116TH CONGRESS 2 (2018), <https://fas.org/sgp/crs/misc/IF11053.pdf>.

¹² Letter from Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives, to Randall L. Stephenson, Chairman and Chief Executive Officer, AT&T Inc. (Mar. 22, 2019); Letter from Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives, to W. Erik Carlson, President and Chief Executive Officer, DISH Network Corp. (Mar. 22, 2019).

¹³ Letter from Tim McKone, Executive Vice President Federal Relations, AT&T, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019); Letter from Jeff Blum, Senior Vice President Public Policy and Government Affairs, DISH/Sling TV, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019).

¹⁴ Letter from Tim McKone, Executive Vice President Federal Relations, AT&T, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019).

III. The Section 119 License Should Sunset Without Reauthorization

From a copyright policy perspective, the U.S. Copyright Office recommends that Congress let the satellite distant signal license in section 119 expire at the end of 2019.

Although the Copyright Office has long supported permitting copyright owners to develop marketplace licensing options to replace the compulsory licenses in sections 111, 119, and 122, the case for removing the section 119 compulsory license in favor of less-regulated alternatives has never been stronger than today. Originally established to encourage the development of a nascent market, the section 119 compulsory license has been made unnecessary by the substantial growth of the satellite industry, now a strong incumbent, and the changed realities of the programming delivery market—in particular plummeting carriage of distant signals by satellite, as reflected by Copyright Office data.

Congress recognized the dangers of a long-term exemption and, accordingly, created the section 119 compulsory license as a temporary one.¹⁵ Congress enacted section 119 to provide households with distant network station service where local broadcast service from network affiliates was unavailable. It was concerned that the satellite industry, in most markets unable to carry local programming, would need to import distant signals to give subscribers access to network programming. But the rationale for renewing the expiring license has waned, and markedly so in the past five years. The satellite industry today has established itself firmly within the programming delivery market—with some 30 million subscribers, compared to about 47 million cable subscribers and 4 million OTT network programming subscribers.¹⁶ Yet the section 119 license continues to advantage the satellite industry with discounted license rates over new competitors (such as OTT television services) who must negotiate all carriage licenses.

A statutory license creates an artificial, government-regulated market that operates as an exception to the general rule that copyright owners hold exclusive rights and can negotiate whether and how and at what cost to distribute their copyrighted works; statutory licenses tend to be below the fair market value. The section 119 compulsory license also imposes a secondary cost on rightsholders: administrative fees related to the Copyright Office collecting royalties from satellite providers and distributing them to rightsholders.

The distant signal license may also negatively impact subscribers: several Members of Congress recently expressed concern that the section 119 compulsory license provides satellite operators with a financial incentive to deny subscribers local broadcast stations—including the news, weather, and emergency information carried by those local broadcast stations—and instead import distant broadcasts at below-market rates.¹⁷ Moreover, the technological

¹⁵ See H.R. REP. NO. 100-887, pt. 1, at 15 (1988) (stating that the new section 119 would have a sunset provision because “[t]he bill rests on the assumption that Congress should impose a compulsory license only when the marketplace cannot suffice”).

¹⁶ See *US Pay-TV Providers Lost 975,000 Subs in 3Q 2018*, BROADBAND TV NEWS (Nov. 14, 2018), <https://www.broadbandtvnews.com/2018/11/14/us-pay-tv-providers-lost-975000-subs-in-3q-2018/>.

¹⁷ See Letter from Susan M. Collins, U.S. Senator, & Angus S. King, Jr., U.S. Senator, to Lindsey Graham, Chairman, Comm. on the Judiciary, U.S. Senate, Roger F. Wicker, Chairman, Comm. on Commerce, Sci., & Transp., U.S. Senate, Dianne Feinstein, Ranking Member, Comm. on the Judiciary, U.S. Senate, & Maria Cantwell, Ranking Member, Comm. on Commerce, Sci., & Transp., U.S. Senate (Mar. 27, 2019) (expressing concern that

limitations that once made it burdensome or impossible to provide local programming to certain markets have been overcome. In short, the considered rationales for enacting—and renewing—section 119 no longer exist.

Unlike thirty years ago, today the market could respond to service underserved communities in the absence of the section 119 compulsory license. Satellite providers are no longer stymied by technological limitations. DISH already provides some local programming in all 210 U.S. media markets;¹⁸ DirecTV provides it in 198 markets.¹⁹ Eight years ago, the Copyright Office concluded that a variety of licensing options could ease the transition that would follow an expiration of the section 119 license;²⁰ the Report also predicted that “additional innovative solutions may develop over time.”²¹ The development of new business models since then further supports this view. And, as evidenced by DISH’s ability to carry at least one local broadcast station in all 210 U.S. media markets, satellite operators and broadcasters can successfully negotiate in good faith.

At Congress’ request, the U.S. Copyright Office has evaluated the section 119 compulsory license numerous times since its addition to copyright law in 1988. Repeatedly, the Copyright Office has recommended that Congress phaseout the section 119 compulsory license for secondary transmissions of distant television programming by satellite.

“this license has not only outlived its usefulness, but now provides a below-market incentive for AT&T/DIRECTV to deny viewers in Northern Maine the in-state coverage they desire and deserve”); Letter from Jared Golden, U.S. Representative, to Frank Pallone, Jr., Chairman, Comm. on Energy & Commerce, U.S. House of Representatives, Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, Greg Walden, Ranking Member, Comm. on Energy & Commerce, U.S. House of Representatives, & Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (May 10, 2019) (“It is clear that the distant signal license has outlived its usefulness and now disincentivizes AT&T/DIRECTV from offering local programming to viewers in Northern Maine.”); John Eggerton, *Texas Rep. to Hill: Sunset STELAR Act, MULTICHANNEL NEWS* (May 3, 2019) (reporting on a letter from Michael Cloud, U.S. Representative, to Frank Pallone, Jr., Chairman, Comm. on Energy & Commerce, U.S. House of Representatives, Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, Greg Walden, Ranking Member, Comm. on Energy & Commerce, U.S. House of Representatives, & Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives); see also Letter from Jon Tester, U.S. Senate, Michael B Enzi, U.S. Senate, Michael F. Bennet, U.S. Senate, & John Barrasso, U.S. Senate, to John Donovan, Chief Executive Officer, AT&T Communications, LLC (Mar. 14, 2019) (stating that DirecTV’s failure to provide any local broadcasts in twelve markets, despite technological advances, and to import distant signals from Los Angeles and New York causes “subscribers in these situations to miss vital information on public safety, weather, elections, and opportunities for community engagement”).

¹⁸ See Letter from Jeff Blum, Senior Vice President Public Policy and Government Affairs, DISH/Sling TV, to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Apr. 19, 2019). Seven of these 210 markets are “short markets,” meaning that they lack one or more local broadcast stations.

¹⁹ In its response to this Committee, DirecTV did not detail the media markets to which it provides local broadcast signals; however, it is reflected in statements of account filed with the Copyright Office.

²⁰ See U.S. COPYRIGHT OFFICE, *SATELLITE TELEVISION EXTENSION AND LOCALISM ACT* § 302 REPORT 66–67 (2011) (introducing sublicensing, collective licensing, and direct licensing as but three marketplace alternatives to the video compulsory licenses); see also *id.* at 67–128 (discussing each of those licensing alternatives, and suggesting that a hybrid licensing model permitting licensors and licensees to choose among licensing alternatives would work best).

²¹ *Id.* at 66.

The Copyright Office has conducted five extensive studies of copyright law's compulsory licenses for broadcast programming (sections 111, 119, and 122).²² (Links to these reports are provided in the Appendix.) These reports reflect the Copyright Office's long-held view that a compulsory license "should be utilized only if compelling reasons support its existence,"²³ and that the video compulsory licenses have outlived their purposes. In particular, as the Office concluded in 2008, section 119 is "undergirded by outdated rationales set forth in 1988, [and] is no longer necessary nor appropriate."²⁴

The Copyright Office's most recent Report on compulsory licenses for broadcast programming was the result of a 2010 mandate from Congress to provide a blueprint for phasing-out all three licenses.²⁵ The Copyright Office recommended that Congress begin by setting a firm date to end the distant signal licenses, leaving repeal of the local signal licenses to an unspecified future date. The Office concluded that business models based on sublicensing, collective licensing, and direct licensing, as well as business models that may yet emerge, provided "feasible alternatives" for licensing the rights to retransmit television programming.²⁶ In 2016, the Copyright Office also consulted on a U.S. Government Accountability Office report to Congress that concluded "that a phaseout of the statutory licenses may be feasible for most market participants."²⁷

Since the Copyright Office's 2011 Report, congressional testimony from Copyright Office leadership has reiterated that the video compulsory licenses are an area of copyright law ripe for reform. For example, in the March 2013 hearing that launched Congress' multi-year review of copyright law, the Register of Copyrights identified "updating the framework for cable and satellite transmissions" as among a long list of issues requiring congressional attention.²⁸ The following year, Copyright Office leadership testified that consumers could benefit from

²² The studies were published in 2011, 2008, 2006, 1997, and 1992. See U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT (2011); U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT SECTION 109 REPORT (2008); U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT § 110 REPORT (2006); U.S. COPYRIGHT OFFICE, A REVIEW OF THE COPYRIGHT LICENSING REGIMES COVERING RETRANSMISSION OF BROADCAST SIGNALS (1997); U.S. COPYRIGHT OFFICE, THE CABLE AND SATELLITE CARRIER COMPULSORY LICENSES: AN OVERVIEW AND ANALYSIS (1992). Links to each of these publications are provided in the Appendix.

²³ U.S. COPYRIGHT OFFICE, A REVIEW OF THE COPYRIGHT LICENSING REGIMES COVERING RETRANSMISSION OF BROADCAST SIGNALS 13 (1997) (quoting *Copyright/Cable Television: Hearings on H.R. 1805, H.R. 2007, H.R. 2108, H.R. 3528, H.R. 3530, H.R. 3560, H.R. 3940, H.R. 5870, and H.R. 5949 Before the Subcomm. on Courts, Civil Liberties, and the Admin. of Justice*, Pt. 1, 97th Cong. 959–60 (1981) (statement of David Ladd, Register of Copyrights, U.S. Copyright Office)).

²⁴ U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT SECTION 109 REPORT at 85 (2008).

²⁵ See *Satellite Television Extension and Localism Act of 2010*, Pub. L. No. 111-175, § 302, 124 Stat. 1218 (2010).

²⁶ U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT at iii (2011).

²⁷ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, STATUTORY COPYRIGHT LICENSES: STAKEHOLDERS' VIEWS ON A PHASEOUT OF LICENSES FOR BROADCAST PROGRAMMING 38 (2016).

²⁸ *The Register's Call for Updates to U.S. Copyright Law: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 2 (2013) (written statement of Maria A. Pallante, Register of Copyrights).

phasing-out the compulsory licenses and encouraging negotiations between copyright owners, broadcasters, and cable and satellite providers.²⁹

Today, section 119 is more ripe for expiration than ever.

As requested, the Copyright Office's recommendation is focused on the section 119 compulsory license for secondary transmissions of distant television programming by satellite that was renewed in 2014 for the five-year period ending in 2019. Although the Copyright Office has also recommended a phase-out of the section 111 compulsory license for secondary transmissions of broadcast programming by cable and the section 122 compulsory license for secondary transmissions of local television programming by satellite,³⁰ we recognize that repealing those licenses could be a less straightforward process because of issues related to retransmission consent.

Discussion of section 119 often gets lumped with the other compulsory licenses for broadcast programming in sections 111 and 122, but when evaluating section 119 by itself, it is apparent that the circumstances around the 119 license do not justify its renewal. The Copyright Office believes that the time is ripe to let the 119 exemption sunset, as Congress envisioned would become necessary when establishing this license thirty years ago. Congress would be justified in allowing section 119 to expire even if the other video compulsory licenses are left untouched for an indefinite period.

²⁹ See *Compulsory Video Licenses of Title 17: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 17 (2014) (written statement of William J. Roberts, Jr., Acting Associate Register of Copyrights) (discussing the Copyright Office's 2011 Report that provided a blueprint for phasing out the compulsory licenses for cable and satellite carriers).

³⁰ See generally U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT (2011).

APPENDIX: COPYRIGHT OFFICE REPORTS AND TESTIMONY ON SECTION 119

U.S. Copyright Office Reports:

- 2011 – Satellite Television Extension and Localism Act Section 302 Report, <https://www.copyright.gov/reports/section302-report.pdf>
- 2008 – Satellite Home Viewer Extension and Reauthorization Act Section 109 Report, <http://www.copyright.gov/reports/section109-final-report.pdf>
- 2006 – Satellite Home Viewer Extension and Reauthorization Act Section 110 Report, <https://www.copyright.gov/reports/satellite-report.pdf>
- 1997 – A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals, <http://www.copyright.gov/reports/study.pdf>
- 1992 – The Cable and Satellite Carrier Compulsory Licenses: An Overview and Analysis, <http://copyright.gov/reports/cable-sat-licenses1992.pdf>

U.S. Government Accountability Office (in consultation with the U.S. Copyright Office):

- 2016 – Statutory Copyright Licenses: Stakeholders’ Views on a Phaseout of Licenses for Broadcast Programming, <https://www.gao.gov/assets/680/676935.pdf>

U.S. Copyright Office Testimony and Speeches (2009–Present):

- **The Register’s Perspective on Copyright Review** – April 29, 2015 (written statement of Register of Copyrights Maria A. Pallante), <https://docs.house.gov/meetings/JU/JU00/20150429/103385/HHRG-114-JU00-Wstate-PallanteM-20150429.pdf>
- **Compulsory Video Licenses of Title 17** – May 8, 2014 (written statement of Acting Associate Register of Copyrights William J. Roberts, Jr.), <https://www.copyright.gov/regstat/2014/wjrstat05082014.html>
- **The Register’s Call for Updates to U.S. Copyright Law** – March 20, 2013 (written statement of Register of Copyrights Maria A. Pallante), <https://docs.house.gov/meetings/JU/JU03/20130320/100539/HHRG-113-JU03-Wstate-PallanteM-20130320.pdf>
- **The Next Great Copyright Act** – March 4, 2013 (Manges Lecture delivered by Register of Copyrights Maria A. Pallante), <https://docs.house.gov/meetings/JU/JU03/20130320/100539/HHRG-113-JU03-Wstate-PallanteM-20130320-SD001.pdf>
- **Copyright Licensing in a Digital Age: Competition, Compensation and the Need to Update the Cable and Satellite TV Licenses** – Feb. 25, 2009 (statement of Register of Copyrights Marybeth Peters, testifying on findings of the Copyright Office’s 2008 report), <https://www.copyright.gov/docs/regstat022509.html>

DAVID LOEBSACK
2ND DISTRICT, IOWA
COMMITTEE ON
ENERGY AND COMMERCE

Congress of the United States
House of Representatives
Washington, DC 20515-1502

May 30, 2019

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The Honorable Frank Pallone, Jr.
Chairman
House Committee on Energy and Commerce
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The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
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The Honorable Greg Walden
Ranking Member
House Committee on Energy and Commerce
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The Honorable Doug Collins
Ranking Member
House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Pallone and Nadler and Ranking Members Walden and Collins,

As the Energy and Commerce Committee and Judiciary Committees begin deliberation on the expiring provisions of the STELA Reauthorization Act of 2014 (P.L. 200-113, "STELAR"), I wanted to bring to your attention how this law impacts my constituents' ability to get local news and information in my district.

As you may know, In 1988, Congress established the distant signal license so that the nascent satellite television industry would be able to offer network programming to its subscribers because it was not yet technically feasible to deliver local channels into local markets. However, by 1999 the satellite technology had evolved and because local into local was now technically feasible, Congress created a new statutory license for local into local transmissions. Over the last 20 years, the two satellite television companies, DIRECTV and the DISH Network, proceeded to roll out local into local service across the country starting with the largest markets in the country and slowing moving into the less populated markets.

Today, satellite television customers in 198 of the 210 markets have the option of getting their local channels from both satellite television providers - DIRECTV or the DISH Network. Unfortunately, satellite customers in 12 television markets, including the Ottumwa-Kirkville DMA which covers Ottumwa, Iowa in my congressional district, do not have a choice of satellite providers if they wish to get local broadcast channels via satellite. There is no technological reason for this slight as the DISH Network offers local into local in all 210 markets. However, DIRECTV has elected to continue to use the distant signal license in my district and offer my constituents distant network programming from outside their local DMA.

It is apparent that the existence of the distant signal license creates a disincentive for DIRECTV to offer my constituents the broadcast channels from their local DMA. As the Energy and Commerce and Judiciary Committees examine STELAR, I'd ask that you keep in mind how this law impacts viewers in my district, as well as viewers in the 11 other neglected markets across the country, from accessing important local broadcast programming via satellite.

Sincerely,



Dave Loebsack
Member of Congress

MICHAEL CLOUD
27TH DISTRICT, TEXAS

COMMITTEE ON
OVERSIGHT AND REFORM

RANKING MEMBER,
ECONOMIC AND CONSUMER POLICY
SUBCOMMITTEE

SCIENCE, SPACE &
TECHNOLOGY COMMITTEE

Congress of the United States
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May 02, 2019

Honorable Jerrold Nadler
Chairman
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

Honorable Doug Collins
Ranking Member
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler and Ranking Member Collins:

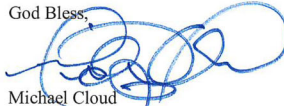
I write to express my opposition to any effort to reauthorize the Copyright Act's section 119 compulsory license for satellite retransmission of broadcast distant signals. This provision is preventing residents in Victoria, TX, located in my district, from receiving local weather, news, and alerts by providing multi-billion dollar satellite companies with the ability to import distant signals from places like New York City and Los Angeles.

As you know, created by Congress in 1988, the compulsory license for satellite retransmission of broadcast television distant signals (17 USC § 119) gave satellite television companies a significantly discounted copyright license. The goal of this policy was to enable these nascent satellite television companies to compete with what were essentially cable monopolies.

Thankfully, due to a rapid expansion of technological advances and market growth, those nascent satellite companies are no longer in need of this subsidy. Both AT&T/DIRECTV and DISH have grown into multi-billion dollar businesses and satellites can now deliver local TV stations to all 210 local media markets. Unfortunately, there are still 12 smaller markets that AT&T/DIRECTV do not serve and one of those, Victoria, TX, is in my district.

Residents in my district are being hurt by the reauthorization of this provision, so I urge you and your committee to allow this part of the law to sunset.

God Bless,


Michael Cloud
Member of Congress



June 3, 2019

The Hon. Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

The Hon. Greg Walden
Republican Leader
Committee on Energy and Commerce
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

The Hon. Michael Doyle
Chairman
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

The Hon. Bob Latta
Republican Leader
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

Re: STELAR Review: Protecting Consumers in an Evolving Media Marketplace

Dear Chairman Pallone, Republican Leader Walden, Chairman Doyle, and Republican Leader Latta:

I write on behalf of the American Television Alliance¹ to provide our perspective in advance of your hearing on “A STELAR Review - Protecting Consumers in an Evolving Media Marketplace.”

At this hearing, you will hear a lot about the evolution—if not the *revolution*—in the media marketplace. The advances really are amazing. Those of us old enough to remember when you had “appointment television” to catch your favorite show can’t help but be amazed to see our younger colleagues on their smartphones (and tweeting or snapping about it to the world at large). I’m happy to say that ATVA members are justifiably proud of their roles in this revolution. From offering innovative video streaming services that allow consumers to watch programming when and where they want it to building the blazing fast broadband networks that

¹ ATVA seeks to be a voice for the American television viewer. Our members include cable and broadband operators, satellite carriers, phone companies, trade associations, independent programmers, consumer groups and others concerned about the state of the video marketplace. You can find out more information about us at www.americantelevisionalliance.org.

June 3, 2019
Page 2 of 5

make those services possible, ATVA members can claim as important a role in the video marketplace revolution as anybody.

Yet there remains one sector of the media marketplace where the news is far less good—retransmission consent remains governed by rules Congress enacted in 1992, before anybody had heard of the Internet. Whatever Congress intended almost thirty years ago, this is what the retransmission consent marketplace looks like today:

Skyrocketing prices for lower-rated programming. Broadcast prices go up by double digits every year. Last month, Nexstar reported a 14% rise in retransmission consent revenue to \$314 million,² Gray reported an increase of 26% to \$204 million,³ Sinclair reported an increase of 12% to \$352 million,⁴ compared to \$314 million in the first quarter of 2018, while Fox reported a 29% jump in retransmission consent revenue.⁵ These increases are far higher than inflation—and, indeed, far higher than can be found in any other sector of the economy. Indeed, as one of our members explained, retransmission consent fee increases over the last decade exceeded hyperinflation in Brazil and Argentina in the 1980s.⁶ Yet these increases are not for better or more popular programming. To the contrary, broadcast ratings overall are far lower than they were ten years ago.⁷ Indeed, the broadcasters themselves cite these lower ratings as a reason why they should all receive a “discount” off the FCC’s national ownership cap.⁸

² Mike Farrell, “Retrans Helps Drive Record Q1 for Broadcaster Nexstar,” Multichannel News (May 8, 2019), <https://www.multichannel.com/news/retrans-helps-drive-record-q1-for-broadcaster-nexstar>.

³ Thomson Reuters, “Edited Transcript of GTN earnings conference call or presentation 9-May-19 3:30pm GMT,” Yahoo Finance (May 8, 2019), <https://finance.yahoo.com/news/edited-transcript-gtn-earnings-conference-233214931.html>.

⁴ Mike Farrell, “Revenue Up, Profits Down in Q1 at Sinclair,” Multichannel News (May 8, 2019), <https://www.multichannel.com/news/revenue-up-profits-down-in-q1-at-sinclair>.

⁵ Dade Hayes, “Fox Tops Wall Street Forecasts In First Quarterly Report As Stand-Alone Company,” Yahoo Finance, (May 8, 2019), <https://finance.yahoo.com/news/fox-tops-wall-street-forecasts-203152097.html>.

⁶ Petition to Deny of DISH Network L.L.C., MB Docket No. 17-179 at 37 (filed Aug. 7, 2017)(comparing figures from SNL Kagan, a media research group within the TMT offering of S&P Global Market Intelligence, “Broadcast retransmission and Virtual Service Provider Carriage Fee Projections Through 2023” (July 2017) with “Brazilian Hyperinflation,” Encyclopedia of Money (*last accessed*: May 31, 2019), <http://encyclopedia-of-money.blogspot.com/2010/01/brazilian-hyperinflation.html> and “Hyperinflation in Argentina,” Citéco (*last accessed*: May 31, 2019), <https://www.citeco.fr/10000-years-history-economics/contemporary-world/hyperinflation-in-argentina>).

⁷ Rick Porter, “TV Long View: The Bar for Rating Success Has Come Way Down — or Has It?” Hollywood Reporter (May 11, 2019), <https://www.hollywoodreporter.com/live-feed/bar-ratings-success-has-come-way-down-has-it-1209741>.

⁸ See Comments of the National Association of Broadcasters, MB Docket No. 17-318 at 23-25 (filed Mar. 19, 2018).

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MVPDs have three choices in the face of such price increases. They can refuse to carry the programming, which is bad for subscribers and may cause them to look elsewhere because they have other ways to watch broadcast programming. They can accede to the outrageous demands and “eat” the cost increases themselves, though no business can swallow increased input costs forever without increasing retail prices. Or, as is almost always the case, they can try to pass these increases along to your constituents in the form of higher prices while hoping that the latest broadcaster-induced increase does not prompt subscribers to discontinue their pay-TV subscriptions.

Broadcast consolidation within local television markets. These retransmission price increases result, in part, from local consolidation among broadcasters. FCC rules nominally prohibit a single broadcaster from controlling, say, the CBS and ABC affiliates in any given television market. But broadcasters have increasingly used loopholes, like airing the second affiliate on a multicast channel or a low power station, to get around this restriction—and the FCC may soon loosen this restriction further. As the *Sinclair-Tribune* transaction demonstrated, moreover, broadcasters can also use “sidecar” agreements to violate this and other FCC restrictions. The result? “Duopolies” in more than a hundred local markets. Indeed, a single entity controls *all four* major network feeds in two markets, with a third possibly coming soon. Obviously, an MVPD negotiating with a combined CBS/ABC (much less a combined CBS/ABC/NBC or CBS/ABC/NBC/FOX) will pay more than an MVPD negotiating with four individually owned network affiliates.

Broadcast consolidation raises another issue: the threat to diverse voices in local markets. Regardless of one’s political persuasion, we should all be wary of any one entity controlling the commentary, comments and political activity that is available in the market. Without belaboring the point, members on both sides of the aisle can easily imagine scenarios in which their perspectives—or those of groups they support—could be suppressed by a broadcaster offering the only game in town.

Blackouts. Most of you probably know about “blackouts,” which is the term for when a broadcaster pulls its signal from an MVPD. By our count, broadcasters have blacked out your constituents more than *one thousand times* since 2010. If indeed broadcasters are an irreplaceable source of local news and information—as they say they are—this figure should be entirely unacceptable.

It gets worse. If you follow the industry closely, you probably also know that most blackouts take place at a particular time of the year—late December and early January. This isn’t because of the holidays, or the first snow of the year, or even the end of the calendar year. It’s because of football. College bowl games and the NFL Playoffs are among the most important programming in the viewing year. So, it’s no surprise that broadcasters like to have their contracts expire immediately prior to such events. This is when they have the greatest ability to charge the highest prices. Of course, football isn’t the only important programming on television, and so New Year’s isn’t the only time broadcasters try to black out programming. Some broadcasters like to black out before the Oscars or the World Series. Some broadcasters

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have even blacked out MVPDs as hurricanes approached.⁹ When such deliberately timed blackouts actually occur, your constituents are harmed. When they are even *threatened*, your constituents pay higher bills.

“Phantom subscribers.” Historically, stations charge MVPDs per subscriber, per month—meaning that the MVPD pays a certain amount each month, for all of the subscribers who get that station via the MVPD. Recently, however, broadcasters have sought to charge MVPDs for subscribers who do not even receive the broadcaster’s signals from the MVPD. So, in the end, consumers have to pay a higher price for programming. For example, a broadcaster might charge a satellite carrier for subscribers who have elected *not* to receive local stations from that satellite carrier and instead get their “free” broadcast signals over the air. Alternatively, a broadcaster might charge a cable operator for subscribers who only receive their broadband service from that operator and have chosen not to buy the video product. Or a broadcaster might require a “penetration rate” of 95 percent and charge the MVPD based on that rate, even if fewer subscribers actually receive the stations. In each case, your constituents pay for service that is not being “retransmitted” by the MVPD and therefore they do not even receive. Again, this artificially raises prices.

Forced bundling with broadcast stations. A retransmission consent agreement is supposed to be simple: it is a commercial contract permitting MVPDs to retransmit the signals of television stations so that customers can view the network programming they want. And yet, there is nothing simple about these agreements, and their complexity level only continues to grow. Many broadcasters—especially the largest ones—insist on “bundling” other programming as a condition of negotiating retransmission consent agreements. This leads to higher prices for consumers and carriage of undesirable stations that aren’t supported by market forces and diverts capacity that could be used to provide broadband services or new innovative video products.

* * *

This is clearly not a competitive marketplace. Indeed, it stands in stark contrast to all of the other parts of the video marketplace that you will be discussing at your hearing—in which innovation has led to lower prices and more choice.

What, then, should Congress do? Most important is that it does *something*. By no means should Congress miss the opportunity presented by this STELAR reauthorization to examine the *entire* video marketplace and consider updates to rules that no longer work. (We assume, of course, that Congress has no intention of accepting the broadcasters’ self-serving invitation to

⁹ Press Release, “ACA President & CEO Matthew M. Polka Condemns LIN TVs Retrans Blackout Threat As Hurricane Irene Bears Down On Eastern Seaboard,” ACA Connects (Aug. 26, 2011), <https://www.americancable.org/aca-president-ceo-matthew-m-polka-condemns-lin-tvs-retrans-blackout-threat-as-hurricane-irene-bears-down-on-eastern-seaboard/>; Press Release, “ACA Launches ‘TV Ransom’ To Highlight Broadcasters’ Abusive Behavior With Retransmission Consent Resulting In Consumer Harm,” ACA Connects (Oct. 4, 2017), <https://www.americancable.org/aca-launches-tv-ransom-to-highlight-broadcasters-abusive-behavior-with-retransmission-consent-resulting-in-consumer-harm/>.

June 3, 2019
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ignore STELAR entirely and thereby strip almost 900,000 satellite customers of programming they have grown to rely upon.)

We also continue to support an approach based on an idea presented during the last reauthorization in which each TV station could set whatever price it wanted, pay-TV subscribers would be free to take or leave it, and MVPDs would collect fees and remit them to the broadcast station. Broadcasters and viewers, in other words, would participate in the purest of marketplaces—transparent prices, empowered consumers, and choice. And MVPDs would give up the role of local-TV middleman once and for all. You would never see another broadcast blackout again.

Yet we are not limited to the above approach in solving the retransmission consent problem. There are plenty of other ideas that range in their level of disruptiveness to the current regime. We stand ready to provide any information we can in support of your work on these issues and thank you again for holding this important hearing today.

Sincerely,

/s/
Mike Chappell
Chairman
American Television Alliance



June 4, 2019

The Honorable Michael Doyle
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The Honorable Robert Latta
Ranking Member, Subcommittee on
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2322 Rayburn House Office Building
Washington, D.C. 20515

Re: June 4, 2019 Subcommittee on Communications and Technology (House Energy and Commerce Committee) Hearing, “STELAR Review: Protecting Consumers in an Evolving Media Marketplace.”

Dear Chairman Doyle and Ranking Member Latta:

Consumer Reports¹ appreciates the Subcommittee’s consideration of the many consumer interests implicated in the reauthorization of the STELAR Act (STELA Reauthorization Act of 2014). Important provisions of that law are set to expire at the end of this year, and Congress would be wise to not only extend, but improve the statute to better benefit consumers.

Dating back to the very first satellite television bill which permitted direct broadcast satellite (DBS) operators to offer “local-into-local” market channels to consumers, the Satellite Home Viewer Improvement Act of 1999,² and in every five-year reauthorization statute bearing a new acronym after that, Congress has attempted to deal with the problems

¹ Our advocacy work officially moved under the Consumer Reports (CR) banner starting last November. We were founded as the Consumers Union of America in 1936 and became known by millions of Americans for our award-winning magazine *Consumer Reports*. In recent years, our overall organization transitioned to the name Consumer Reports. Consumer Reports is an organization with more than six million members that advocates for a fair, safe, and transparent marketplace, fueled by our trusted research, journalism, and insights. We believe this integration of our advocacy work under the CR name will communicate the depth and breadth of our mission and values, and will help us make an even greater impact to advance the issues that matter to consumers and the world. We invite you to come see what we are doing at consumerreports.org/advocacy.

² Satellite Home Viewer Improvement Act of 1999, Pub L. No. 106-113, App. I.

consumers face in the video marketplace. Outside of those efforts, the several issues that plague consumers have not been addressed in a comprehensive manner since the 1992 Cable Act. That law introduced the retransmission consent regime and the basic tier buy-through requirement—where cable operators and consumers are more or less required to offer and purchase local broadcast channels, thus preventing any *à la carte* offering of those channels—both of which have been the source of so many consumer headaches.

Rather than engaging in another quinquennial patchwork effort to deal with these broken provisions, Congress should embark upon a serious, bipartisan effort to rewrite the laws that govern ALL video offerings, including traditional cable and DBS offerings along with services provided by online video distributors (OVDs). Consumer Reports is aware of the recent work undertaken by Representatives Anna Eshoo and Steve Scalise to introduce legislation to overhaul the rules underpinning the video marketplace, and we look forward to engaging with them and other Members of the Subcommittee to advance workable solutions that will benefit consumers far better than the current dysfunctional status quo. In the meantime, Consumer Reports supports the full reauthorization of the STELAR Act at a bare minimum—and there is plenty of room for improvement, even short of the more comprehensive reform that we recommend.

Consumers Reports is on record stating that the retransmission consent regime is broken. Though cable and DBS operators endure rising retransmission consent fees, it is consumers who ultimately pay for these increases in the form of the now ubiquitous “broadcast TV fee”—a fee that accounts for billions of dollars of extra revenue for cable companies. And the price tag for this and other company-imposed fees is rising dramatically. For example, Charter Communications increased its “broadcast TV fee” not once, but twice, since last November, from \$8, to \$9, and now \$12 per month.³ Consumers are rightly furious to find that the advertised rate for cable service does not clearly include these fees and others that can dramatically raise the price of service. Antiquated rules passed into law more than a

³ Jon Brodtkin, *Charter Raises Sneaky ‘Broadcast TV’ Fee for Second Time In Four Months*, ArsTechnica (Feb. 6, 2019),

quarter century ago have set the stage for this consumer nightmare, and they must be revisited and changed where necessary.

This is one of the many challenges facing consumers in today's video marketplace. We stand ready to work with you to craft viable and creative solutions—either as part of the STELAR Act reauthorization, the TRUE Fees Act (H.R. 1220), or new legislation—that level the playing field for consumers in an increasingly expensive market.

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'JS' followed by a stylized flourish.

Jonathan Schwantes
Senior Policy Counsel

cc. Members of the U.S. House Subcommittee on Communications and Technology,
Committee on Energy and Commerce



NABOB

National Association of
Black Owned Broadcasters

May 31, 2019

The Honorable Frank Pallone, Jr.
Chairman
House Energy & Commerce Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Roger F. Wicker
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Greg Walden
Ranking Member
House Energy & Commerce Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

Dear Chairmen Pallone and Wicker and Ranking Members Walden and Cantwell:

As your committees examine the media marketplace in the coming weeks and months, the National Association of Black Owned Broadcasters (NABOB) urges you to allow the Satellite Television Extension and Localism Act Reauthorization (STELAR) Act to expire as intended. Further, your committees should reject any suggestions that would diminish the ability of local broadcasters to continue to invest in what makes our medium truly unique and irreplaceable: our service to local communities.

NABOB is the first and only trade organization representing the interests of African-American owners of radio and television stations across the country. In an increasingly fragmented media marketplace, the connection that local broadcasting has with multicultural and African-American audiences remains vital. NABOB's diverse owners of local broadcast stations are proud to be the voices of our communities and take seriously our responsibility to keep audiences informed in an era of mischaracterization of facts and mean rhetoric.

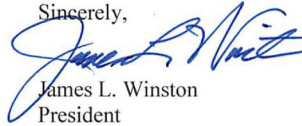
Your committees can ensure that local broadcasting continues to serve these multicultural and African-American audiences through the expiration of STELAR. STELAR's subsidy to encourage satellite competition with cable monopolies has succeeded. This law now merely incentivizes the neglect of viewers and denial of access to local broadcast stations. Congress should no longer facilitate the satellite industry's business decision to underserve local communities.

1201 Connecticut Avenue, N.W., Suite 200, Washington, DC 20036
Phone: (202) 463-8970 Fax: (202) 429-0657 E-mail: nabobinfo@nabob.org
Website: www.nabob.org

The Honorable Frank Pallone, Jr.
The Honorable Roger F. Wicker
The Honorable Greg Walden
The Honorable Maria Cantwell
May 31, 2019
Page 2 of 2

Finally, your committees should reject calls for changes to the media marketplace rules that would undermine investment in local broadcasting in favor of the bottom lines of our competitors. Proposals designed to enhance the negotiating leverage of the pay-TV industry – whether cloaked as well-intentioned consumer protections or mere modernization of outdated rules – should be given no consideration. For local broadcasting to continue to serve our communities, we must be able to seek fair compensation and compete in the marketplace. The success and growth of the next generation of diverse broadcast owners is counting on it.

Sincerely,

A handwritten signature in blue ink, appearing to read "James L. Winston", is written over a printed name and title.

James L. Winston
President

Washington Office
1223 Longworth House Office Building
Washington, D.C. 20515
Phone: (202) 225-6306
Fax: (202) 225-2943
www.golden.house.gov



Committee on Armed Services

Committee on Small Business
Chairman, Subcommittee on Contracting
and Infrastructure

Jared Golden
Congress of the United States
2nd District of Maine

May 10, 2019

The Honorable Frank Pallone, Jr.
Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Pallone and Nadler, and Ranking Members Walden and Collins:

As your Committees begin deliberation on whether or not the expiring provisions of the STELA Reauthorization Act of 2014 (P.L. 200-113, "STELAR") should be reauthorized or allowed to sunset as originally intended, I wanted to highlight how this law, and the distant signal license contained therein, impacts the availability of local news and information in my congressional district and across the country.

It has come to my attention that AT&T/DIRECTV subscribers in Northern Maine's Presque Isle media market do not have access to their local broadcast channels even though there is no technological limitation preventing AT&T/DIRECTV from delivering them. Instead, these subscribers receive distant network signals, thereby denying communities in my district from accessing critically important local news, weather, and emergency information.

When the distant signal license was first temporarily passed into law thirty years ago, it was not technologically possible to deliver local broadcast channels into all markets. However, over the past three decades, the satellite industry has grown into a viable competitor to cable television service.

It is clear that the distant signal license has outlived its usefulness and now disincentivizes AT&T/DIRECTV from offering local programming to viewers in Northern Maine. I ask that you weigh this impact on my constituents - along with viewers in other neglected markets across the country - as Congress weighs its decision to reauthorize STELAR.

Thank you for your attention to this important matter.

6 State Street, Suite 101
Bangor, ME 04101
Phone: (207) 249-7400

7 Hatch Drive, Suite 230
Caribou, ME 04736
Phone: (207) 492-6009

179 Lisbon Street
Lewiston, ME 04240
Phone: (207) 241-6767

—

Sincerely,

A handwritten signature in blue ink, appearing to read "Jared Golden", with a stylized flourish at the end.

JARED GOLDEN
Member of Congress



June 3, 2019

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

The Honorable Michael Doyle
Chairman
Subcommittee on Communications and
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert Latta
Ranking Member
Subcommittee on Communications and
Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Pallone and Doyle and Ranking Members Walden and Latta:

On behalf of RIDE TV and other unique and diverse voices on television, I write to inform you on the impact of retransmission consent on independent television networks. Without hesitation I can say that retransmission consent threatens independent voices.

Broadcasters already wield significant marketplace power. Some of their programming continues to be highly valued by video consumers, and they use their bargaining leverage to impose ever-higher retransmission consent costs on MVPDs, directly affecting consumers in the form of higher bills.

In recent years, broadcasters have used the threat of blackouts, or actual blackouts, as leverage in negotiations to extract increasing retransmission consent fees. In 2017 alone, broadcasters blacked out the Super Bowl, NFL and College Football post-season Games, NCAA Men's Basketball Tournament, the Grammys, and network TV premiers¹.

Predictably, retransmission fees have increased dramatically over the last twelve years. According to SNL Kagan, retransmission consent fees increased from \$215 million in 2006 to \$10.1 billion in 2018 – an increase of 4,950 percent. To put this increase in perspective, if federal spending rose as quickly as retransmission consent has over the last twelve years, Congress would be appropriating \$131.4 trillion per year.

¹ In 2017 alone, broadcasters blacked out the Super Bowl, NFL and College Football post-season Games, the Grammys, and network TV premiers. *Broadcasters Go Nuclear on Blackouts*, American Television Alliance, Apr. 3, 2017, <http://www.americantelevisionalliance.org/broadcasters-go-nuclear-on-blackouts>.



Unfortunately, there is no end in sight for retransmission consent fee increases. ACA Connects estimates that retransmission consent fees demanded of small cable providers will increase another 88 percent by 2020 and Dish Network believes that, by 2023, retransmission fees will reach \$12.82 billion.² These astronomical retransmission consent fee increases pose an existential threat to unique and diverse voices, particularly the rural-focused programming RIDE TV provides.

Due in large part to new competition from virtual MVPD and streaming video-on-demand services, the price elasticity of demand for traditional MVPD service is higher than ever.³ Increases in retransmission consent fees cannot continue to be passed on to consumers and must be offset with cuts to other programming and capital expenditures.

Independent programmers disproportionately bear the brunt of the more limited programming budgets that remain after higher payments for retransmission consent. Based on the current average monthly retransmission consent fee of \$1.78 to \$2.27 reported by SNL Kagan⁴, a 20 percent fee increase would result in additional programming costs of \$0.35 to \$0.45, or approximately five to six times the average monthly payment received by an independent programmer.⁵

Exorbitant retransmission consent fees harm unique and diverse voices not only on the linear feed, but on over the top and streaming platforms. A study conducted by ACA Connects concluded that raising retransmission consent fees threaten broadband deployment, particularly in rural areas. "Based on the current market trajectory, the business case for broadband deployment for all use cases would be expected to decline and eventually become unprofitable in

² FCC Petition to Deny of Dish Network Corporation, MB Docket No. 19-30 (Mar. 18, 2019) ("[R]ecent projections estimate that, by 2023, retransmission fees will increase to \$12.82 billion, or 5,880% of 2006 revenues"); Mike Farrell, *ACA Members Believe Retrans Fees Will Rise 88% by 2020*, Multichannel News (Feb. 16, 2018), <https://www.multichannel.com/news/aca-members-believe-retrans-fees-will-rise-88-2020-418199> ("Retransmission consent fees are expected to rise an average of 88% by 2020 for small cable operators").

³ See, e.g., *Applications of AT&T Inc. and DirecTV*, 30 FCC Rcd. 9131, ¶ 122 (2015) (finding that "figures suggest that demand for cable MVPD service has become more elastic in recent years. This trend is certainly plausible given a number of factors, including the entry of fiber-based competitors (especially Telcos since 2006), the launch of a new satellite by DISH in 2006, which expanded DISH's channel capacity significantly, and, probably to a lesser extent, the recent advent of online video distributors . . . and the resulting increase in so-called 'cord-cutting' . . . The first and third factors listed above also may account for an increase (which the above figures suggest) in the elasticity of demand for satellite-based MVPD service")

⁴ Fourth quarter retrans rates grew to an estimated \$1.78 per subscriber on a station/network basis and \$2.27 per subscriber on a market-level basis, per SNL Kagan's analysis of 12 publicly traded U.S. T.V. Station groups. Justin Nielson, *TV Stations Retrans Per-Sub Growth Ticks Up Despite Disruptions, Sub Losses* (Apr. 9, 2019), <https://www.snl.com/web/client?auth=inherit#news/article?id=50996253>.

⁵ Based on an average of approximately \$0.07-0.08 affiliate revenue per subscriber per month. See SNL Kagan TV Network Summary, Affiliate Revenue per Avg Sub/Month.



the coming decade. The Rural Expansion use case appears to be the most vulnerable due to the high cost of building out new broadband.”⁶

This is particularly harmful to independent programmers, like RIDE TV, that serve rural viewers. Quite simply, rising retransmission consent fees deny RIDE TV access to viewers on traditional linear platforms as well as hinder rural broadband expansion that would enable RIDE TV to reach subscribers over the top.

Allowing the Distant Signal License to Expire Would Exacerbate the Harm to Independent Voices

Advocacy materials circulated by the National Association of Broadcasters complain that “Royalties under [the Section 119 distant signal license] are discounted substantially below the carriage fees for these stations negotiated in the market by other pay-TV providers.”⁷

This is Washington speak for “copyright royalties haven’t increased at the same 4950 percent clip as retransmission consent rates.” And that’s a good thing, because retransmission consent fees are harming consumers and independent voices. In fact, if the distant signal license expires it is unclear exactly how expensive the combined cost of retransmission consent and copyright payments could be, if it is even possible to negotiate a solution for the hundreds of thousands of subscribers that rely on the distant signal.

For the long-haul trucker, horse enthusiast with an RV or the rural viewer in a short market, NAB offers no specifics on what it might cost that person to replace the network content they receive today if the distant signal license expires. These are the viewers that watch RIDE TV and if the cost of network content increases dramatically, these viewers are highly likely to cancel their satellite service or downgrade to a package that doesn’t include RIDE TV to offset the cost increase.

Even more concerning is NAB’s position that Congress should allow STELAR to expire so that the requirement that broadcasters and pay-TV providers negotiate in good faith for carriage of local TV stations expires, too.

Broadcasters already rely on blackouts of marquis events like the Super Bowl and the Grammys to inflate the value of retransmission consent. If the good faith rules are allowed to expire, broadcasters could demand single, unilateral proposals; delay the course of negotiations; or refuse to negotiate altogether. Allowing these rules to expire would unquestionably increase retransmission consent fees and further harm diverse and independent voices.

⁶ American Cable Association, *High and Increasing Video Programming Fees Threaten Broadband Deployment* (2015) available at <https://drive.google.com/file/d/0BxUDdYFi5gnEa2xJdnhwSThWUUE/view>

⁷ See e.g. National Association of Broadcasters, *Narrow Satellite Legislation Should Expire as Congress Intended* (2018) available at http://www.nab.org/documents/newsRoom/pdfs/NAB_STELAR_expiration.pdf



RIDE TV is not asking for a government hand out. We are ready and willing to compete in a free market. However, RIDE TV does not enjoy government benefits like free spectrum and must carry rules to reach viewers and build our audience. All we ask is that Congress does not continue to weaken the handful of safeguards that keep retransmission consent fees from exploding faster than they already have.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Morris", written over a horizontal line.

Craig Morris
Co-Founder and President
Ride Television Network, Inc.

June 3, 2019

Chairman Frank Pallone Jr.
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Ranking Member Greg Walden
Committee on Energy and Commerce
2185 Rayburn House Office Building
Washington, DC 20515

Chairman Roger Wicker
Committee on Commerce, Science, & Transportation
555 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Maria Cantwell
Committee on Commerce, Science, & Transportation
511 Hart Senate Office Building
Washington, DC 20510

Dear Chairmen Pallone and Wicker and Ranking Members Walden and Cantwell,

On behalf of the undersigned organizations representing interests across rural America, we write in opposition to any renewal of the Satellite Television Extension and Localism Act Reauthorization (STELAR). STELAR – which serves to enable and incentivize major satellite television providers to neglect some of America’s most rural communities – ought to be put out to pasture at the end of this year, as intended.

The policies of STELAR – first enacted before the rise of even the early Internet – have been surpassed by technological advances and now cause affirmative harm to our rural communities. Rural Americans rely on local broadcasting for critical information and news about our local communities and, especially when we are out in the field, up-to-the minute weather and emergency information. This is critical local information not only for the productivity of our lands, but also for the safety of our livestock and families. Yet, because of STELAR, major satellite television providers are carrying television stations from outside these rural areas rather than the local stations themselves.

Just as local broadcasting brings us together and provides a lifeline service when we need it most, our organizations applaud your Committees’ attention and work in crafting solutions to close the rural broadband divide. While we are all proud of our traditions and way of life in rural America, we also recognize that we live in an increasingly connected economy. Broadband connectivity is critical to our futures, but local broadcast television is part of our heartland’s past, present and future. As your Committees begin consideration of the video marketplace, we urge you not to extend this decades-old satellite law but instead to make closing the digital divide your top priority.

Sincerely,



American Agri-Women



American Dairy Coalition



Agricultural Retailers Association



National Association of Wheat Growers



National Black Growers Council



National Farmers Union



Rural & Agriculture Council of America



United States Cattlemen's Association



Women Involved in Farm Economics



Intertribal Agriculture Council

**Before the U.S. House of Representatives
Committee on Energy and Commerce**

Subcommittee on Communications and Technology

Hearing on:
“STELAR Review: Protecting Consumers
in an Evolving Media Marketplace”

June 4, 2019



Statement for the Record
Motion Picture Association of America, Inc.

Neil Fried
SVP & Senior Counsel
Motion Picture Association of America, Inc.
1301 K Street NW, Suite 900E
Washington, D.C. 20005
(202) 378-9100

Summary

Describing today's programming marketplace as embodying another Golden Age of television has become cliché because it's true: American viewers have never had as much compelling content to choose from. Nor have they had as many ways to view that content, whether on their televisions, computers, gaming systems, or personal devices. The MPAA's members—Walt Disney Studios, Netflix Studios, Paramount Pictures, Sony Pictures, Universal City Studios, and Warner Bros. Entertainment—work to provide audiences with television and movie content where, when, and how they want to watch it, including over broadcast, cable, satellite, wired or wireless telephony, and online services.

This vibrant content market benefits not only television and movie fans, but also the national and local economies. The investment and work that goes into producing shows and movies helps drive jobs, wages, and trade. What makes this all possible is the dual American values of respect for free speech and respect for copyright. Together, they enable content creators to tell their stories, to recoup their investments, and to reinvest in the next project. Negotiated licensing of content in the free market best ensures audiences have robust programming options. For that reason, the MPAA disfavors compulsory copyright licenses.

Despite the vitality of the television programming market, however, piracy remains a problem. Copyright infringement harms legitimate production and distribution, reducing proceeds to pour back into both businesses, stealing significant revenue from cast and crew that would otherwise fund their health plans and retirement funds, and making it harder to provide viewers a wider array of content. And just as legitimate distribution is moving toward streaming, so too is piracy, posing ever more problems for creators, as well a growing malware threat to consumers.

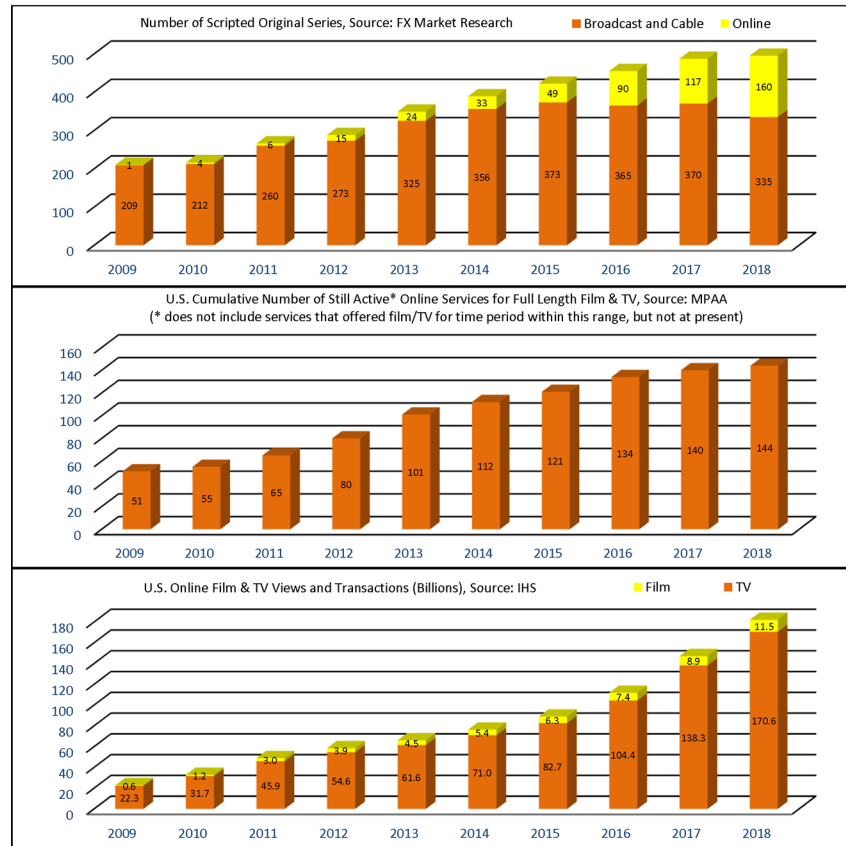
The MPAA has a three-pronged approach to combating digital piracy: 1) We look for voluntary initiatives by others in the online ecosystem to combat content thieves' illicit endeavors, and hope Congress will encourage such initiatives; 2) the MPAA's members, along with the Alliance for Creativity and Entertainment—our growing cross-industry coalition—bring civil actions against pirate enterprises; and 3) we refer cases to the DOJ for criminal enforcement against operations engaged in sufficiently significant infringement, something we hope members of the House and Senate will urge the government to pursue.

One development making the piracy fight even harder, however, is diminished access to WHOIS data, which contains basic contact details for holders of internet domain names. Domain name providers have begun restricting access to WHOIS data based on an overapplication of the European Union's General Data Protection Regulation. This is not only limiting the ability of content creators to track down pirates, but also hindering the efforts of others to thwart online lawlessness generally. The Internet Corporation for Assigned Names and Numbers has been trying to resolve the WHOIS problem for more than a year. If it fails to do so soon, Congress may need to legislate.

This industry is a success story of free expression, free markets, and intellectual property rights. Helping that success continue requires collaboration between and among private-sector actors and government to ensure the internet connects audiences with storytellers, not pirates.

The Vibrant Content Marketplace

Television viewers have more content choices than ever before. The number of scripted, original series available over traditional and online sources is up from 389 in 2014 to 495 in 2018, with the number of those series originating online growing from 33 to 160.¹ The industry makes that content available not only over broadcast, cable, satellite, and telephony services, but also through 144 lawful online services available to American audiences as of 2018, up from 112 in 2014.² American viewers used those online services to access 11.5 billion movies and 170.6 billion TV episodes in 2018, up from 5.4 billion and 71 billion in 2014.³



¹FX Networks Research (2018).

²MPAA database.

³IHS Markit. See www.IHS.com.

Technological protection measures—also known as digital rights management—facilitate all this by enabling creators and distributors to offer a variety of viewing options at different prices. Because of digital rights management, audiences can choose how to access programming, including by downloading content, streaming content on a pay-per-view basis, enjoying content as part of a subscription service, watching content over TV Everywhere applications in different places across different devices, and accessing full seasons of a television series, either to catch missed episodes or to watch them all at once when a content creator makes them available *en masse*. Without technological protection measures to ensure only authorized viewers gain access to the programming, and only as authorized, content creators could not offer these choices, resulting in one-size-and-price-fits-all offerings and fewer options for viewers.

Audiences are not the only beneficiaries of this vibrant film and programming marketplace. So, too, are the national and local economies. In the process of making content available online and off, the television and film industry supports 2.6 million jobs and \$177 billion in wages across all 50 states; enlists more than 93,000 businesses, 87 percent of which are small businesses employing fewer than 10 people; contributes \$229 billion in sales to U.S. GDP; generates \$17.2 billion in exports; and exports 2.5 times what it imports, yielding a positive balance of trade in every major market in the world and producing a \$10.3 billion trade surplus—larger than each of the surpluses in the telecommunications, transportation, mining, legal, insurance, information, and health-related services sectors.⁴ In addition, the industry pays \$44 billion to more than 250,000 local businesses each year.⁵ A major motion picture filming on location contributes on average \$250,000 per day to the local community, and a one-hour television episode contributes \$150,000 per day. Notably, the local community sees that up-front investment regardless of whether the film or TV show becomes a hit or a flop.

A Product of the First Amendment and Strong Copyright Policy

Underlying this vibrant content marketplace is America’s respect for two fundamental and complementary values: free speech and intellectual property. Under the First Amendment, the speaker and the audience acting in the marketplace—not the government—determine what is said and heard. And the Constitution’s Copyright Clause recognizes that honoring the right of creators to determine how to disseminate their works increases both the production and distribution of content, to the public benefit.⁶ The ability of content producers and distributors to decide what programming to create, disseminate, and license is what makes the online marketplace so dynamic.

This respect for the First Amendment and copyright law also enables companies to manage the economic risks in the ultra-competitive video marketplace, allowing them to continue investing and innovating to deliver high-quality and diverse content to viewers. Producing and distributing

⁴MPAA, THE ECONOMIC CONTRIBUTION OF THE MOTION PICTURE & TELEVISION INDUSTRY TO THE UNITED STATES (Nov. 2018), https://www.mpa.org/wp-content/uploads/2019/03/Economic_contribution_US_infographic_Final.pdf.

⁵*Id.*

⁶See U.S. CONST., art. I, § 8, cl. 8 (conferring upon the legislative branch the role “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”); *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985) (stating that “[b]y establishing a marketable right to the use of one’s expression, copyright supplies the economic incentive to create and disseminate ideas.”).

a major motion picture typically costs at least \$100 million, and six out of ten never recoup their initial investment. Major television productions now rival feature films not only in quality, but also in cost, sometimes reaching millions of dollars *per episode*. Yet according to one rule of thumb, 80 percent of scripts never become a pilot, 80 percent of pilots never become a series, and 80 percent of series never see a second season. Our nation's respect for the First Amendment and intellectual property rights are very significant contributors to making America the global leader in the creation of premium content enjoyed by audiences worldwide. The best way to ensure audiences have a robust, diverse array of programming—and that creators reap the fruits of their labors to continue investing in the next story—is through negotiated licensing of content in the free market. For that reason, when it comes to the licensing marketplace for video content, it is the MPAA's position that compulsory copyright licenses should be disfavored, and that its members are most fairly compensated through market-based negotiations consistent with copyright's exclusive rights, and without unnecessary government intervention.

Just as a commitment to strong copyright policy in our domestic law is necessary to promote this dynamic at home, such a commitment in trade agreements is necessary to continue our market leadership abroad and to preserve the positive balance of trade. That is why the MPAA supports the copyright and intellectual property enforcement provisions of the United States-Mexico-Canada Agreement. Although the agreement should not be held out as a model for other trade pacts, it significantly improves upon the intellectual property provisions of the North American Free Trade Agreement.

Piracy, However, Continues to Present Challenges

Although the motion picture and television industry has unquestionably embraced the internet as a powerful means of reaching audiences through lawful services, online piracy remains a problem. In 2017, an estimated 542 million pirated movies and TV shows were downloaded in the United States using peer-to-peer protocols alone.⁷ And just as the legitimate marketplace is moving toward streaming, so, too, is the illegitimate marketplace. Streaming piracy has now surpassed illicit downloading via peer-to-peer protocols, with streaming piracy sites representing 37 percent of visits to sites with unauthorized content, host sites representing 36 percent, and peer-to-peer representing 27 percent.⁸ Streaming device-based piracy, in particular, is a growing issue. The devices, often Android-based “set-top boxes,” are typically built around the Kodi open-source media software, but modified with illegal “add-ons.” The add-ons connect users to stored or “live” streams of pirated movies and television programming, and enable “plug and play” connection to a television. Six percent of North American broadband households—some 6.5 million homes—are accessing known subscription television piracy services, generating for pirate operations ill-gotten gains of \$840 million per year in North America, according to a report by Sandvine.⁹

⁷MarkMonitor. See www.markmonitor.com.

⁸Analysis of SimilarWeb data, based on sites with at least 10,000 copyright removal requests in 2017 according to the Google Transparency Report.

⁹SANDVINE, SPOTLIGHT: SUBSCRIPTION TELEVISION PIRACY 2 (Nov. 2017), <https://www.sandvine.com/hubs/downloads/archive/2017-global-internet-phenomena-spotlight-subscription-television-piracy.pdf>.

All this infringement harms a broad swath of the legitimate movie and television production and distribution sectors, including content creators, skilled craftspeople earning a middle-class living in the industry, movie and television studios large and small, sports leagues, broadcast and pay-TV networks and distributors, and over-the-top services. The illicit activity unlawfully competes with digital entrepreneurs and established players trying to grow lawful and innovative streaming content and distribution businesses to meet evolving consumer demands. To the extent streaming piracy diverts subscribers from legitimate services and siphons money otherwise available to re-invest, it harms competition and limits the ability of content creators and distributors to offer audiences choices in movies, television programming, and services.

Because many pirate sites disseminate malware, the spread of streaming piracy devices and applications into living rooms also presents a growing threat to consumers and a new vulnerability to cybersecurity. One-third of pirate sites expose users to malware, and pirate sites are 28 times more likely to infect users with malware than mainstream websites, according to the Digital Citizens Alliance.¹⁰ Making matters worse, when people use streaming piracy devices and applications, they typically place the devices on the other side of the router, past the firewall or other security measures.¹¹ This helps usher hackers beyond the defenses of the network the device is connected to, which can result in access to anything else connected to that network; the siphoning of massive amounts of data; theft and sale of user names, passwords, credentials for legitimate services, credit cards, and identities; remote, third-party control of devices and applications on the network; surreptitious use of the network by someone else, such as for mining crypto-currency; creation of a botnet; or other harms.¹² And any malware installed can continue to reside within the network even after the user removes the piracy device.¹³ Troublingly, 44 percent of individuals that have a piracy device in their home reported experiencing malware-related problems, as compared to 7 percent for individuals who did not have such a device installed.¹⁴

Combating Piracy

The MPAA has a three-pronged approach to combating online piracy that involves: 1) voluntary initiatives by private-sector participants in the internet ecosystem; 2) civil action; and 3) criminal referrals to law enforcement.

Voluntary Initiatives. One of the internet's strengths is its distributed, interconnected nature. Because no one entity controls the web, anyone across the globe can contribute to its architecture, as well as the services and content it carries. As a result, however, no one entity can address problems that arise. Consequently, the MPAA often looks for voluntary efforts by others in the online ecosystem to join in the fight against piracy, which poses a threat to consumers and

¹⁰DIGITAL CITIZENS ALLIANCE, DIGITAL BAIT 2 (Dec. 2015), <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/digitalbait.pdf>.

¹¹*Id.*, FISHING IN THE PIRACY STREAM: HOW THE DARK WEB OF ENTERTAINMENT IS EXPOSING CONSUMERS TO HARM 3, 8 (April 2019), https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/DCA_Fishing_in_the_Piracy_Stream_v6.pdf

¹²*Id.* at 3-5, 8, 15-20.

¹³*Id.* at 14.

¹⁴*Id.* at 4, 22.

legitimate commerce. Visa, MasterCard, and PayPal, for example, work to minimize the ability of pirate websites and sellers of streaming piracy devices to misuse those financial networks to collect subscription fees or other revenue from their unlawful pursuits. Advertisers, advertising agencies, and online ad networks have formed the Trustworthy Accountability Group to minimize the likelihood that household-name advertising inadvertently ends up on pirate websites, generating revenue for the pirates. Amazon, eBay, and Alibaba are taking steps to keep their digital marketplaces free from trafficking in streaming piracy devices. Donuts and Radix, operators of relatively new domain name extensions—such as “.movie” and “.online”—have each separately established “Trusted Notifier” programs to ensure that websites using domains registered to those companies are not engaged in large-scale piracy. Under the programs, the MPAA may refer such sites to the companies. If the companies determine that such a website is engaged in illegal activity in violation of the companies’ acceptable use and anti-abuse policies, the companies may act within their already established authority to put the infringing site on hold or suspend it.

Similar initiatives by other domain name providers would be welcome. So, too, would increased efforts by video hosting services to ensure third parties are not using their platforms and storage space to pedal stolen content. And while reverse proxy services helpfully fend off denial-of-service attacks by interposing themselves between the websites of legitimate businesses and would-be hackers, the proxy services could do a better job ensuring that pirates don’t use those services to mask their true IP addresses and impede efforts to stop their theft. The proxy services should also stop doing business with repeat infringers. Some social media platforms have taken productive steps to remove piracy-related links, but pro-active efforts to take down unauthorized live streams of content, as well as generic promotions of piracy pages, would also be helpful. Congressional encouragement of these and other voluntary initiatives could help put a dent in intellectual property theft.

Civil Action. The MPAA members, along with the Alliance for Creativity and Entertainment¹⁵—a growing coalition of content producers, distributors, and online services—file civil actions against illicit enterprises engaged in piracy. Just short of two years old, ACE counts Amazon, AMC Networks, CBS, Discovery and our six studios among its more than 30 members. The alliance has already brought lawsuits in the United States that have contributed to the shuttering of three large providers of streaming piracy devices and applications: Tickbox, Dragon Box, and Setvnow.

Short of litigation, ACE also conducts “knock and talks,” which involve significant forensic work to locate key individuals involved in substantial streaming piracy operations, presenting those individuals with evidence of their illegal activity, and agreeing not to take them to court if they cease their activities and help locate others higher up in their unlawful enterprises. ACE similarly works to disrupt central, back-end elements of the streaming piracy ecosystem—such as repositories for illicit streaming applications or purveyors of unauthorized streams—to disable multiple piracy services in one fell swoop.

Criminal Referrals. The MPAA and ACE also provide evidence packages to U.S. and foreign law enforcement agencies to help those agencies bring criminal actions against sufficiently significant piracy operations. Although the U.S. government does not take many such actions, those they do

¹⁵See <https://www.alliance4creativity.com/>

can have a greater deterrent effect than civil suits because criminal cases bring more attention, along with the possibility of jail time for convicted culprits. Indeed, a 2012 U.S. action against Megaupload—then the largest piracy “cyberlocker,” accounting for 4 percent of *all* internet traffic—increased lawful digital sales by 6.5 to 8.5 percent for three major studios in 12 countries.¹⁶ The MPAA has pending a number of criminal referrals to DOJ regarding streaming piracy operations, with the goal of replicating a comparable uptick in legitimate consumption. Our hope is that Congress will encourage DOJ to move forward with those cases.

Reduced WHOIS Access Is Hurting the Fight Against Piracy and Other Online Lawlessness

One development making the piracy fight even harder is diminished access to WHOIS data, which contains basic contact details for holders of internet domain names. WHOIS information has been publicly available since the founding of the commercial internet. Access to WHOIS data forms the basis of online transparency, security, and accountability, and is necessary to protect consumer privacy, ensure public safety, and promote lawful commerce. Indeed, a recent DOJ cyber report states that “[t]he first step in online reconnaissance often involves use of the Internet Corporation for Assigned Names and Numbers’ WHOIS database.”¹⁷

Domain name providers have begun restricting access to WHOIS data, however, based on an overapplication of the European Union’s General Data Protection Regulation. The GDPR does not apply at all to non-personal information;¹⁸ and even in the case of personal information, the regulation acknowledges disclosure is warranted for legitimate interests such as public safety, law enforcement and investigation, enforcement of rights or a contract, fulfillment of a legal obligation, cybersecurity, and preventing fraud.¹⁹ Moreover, the GDPR does not apply to American registrars and registries with respect to domain name registrations by U.S. registrants, or where domain name registrants and registrars are located outside the European Economic Area.²⁰ Furthermore, it applies only to information about “natural persons,” and so imposes no obligation to obfuscate information about domain name registrants that are companies, businesses, or other legal entities, irrespective of the nationality or principal place of business of such entities.²¹

Domain name providers’ overapplication of the GDPR is not only limiting the ability of content creators to combat piracy, but also hindering efforts by public interest groups, the private

¹⁶BRETT DANAHER AND MICHAEL D. SMITH, GONE IN 60 SECONDS: THE IMPACT OF THE MEGAUPLOAD SHUTDOWN ON MOVIE SALES 4 (Sept. 2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2229349.

¹⁷DOJ, REPORT OF THE ATTORNEY GENERAL’S CYBER DIGITAL TASK FORCE 35 (July 2018), <https://www.justice.gov/ag/page/file/1076696/download>.

¹⁸See GDPR, art. 1 (describing the subject matter and objectives of the regulation as relating to the processing and protection of personal data), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>.

¹⁹See *id.*, arts. 2(2)(d), 5(1)(b), 6, 23. See also ICANN, GOVERNMENTAL ADVISORY COMMITTEE, *Communiqué—San Juan, Puerto Rico* (Mar. 15, 2018) (stating that the GDPR allows for access to data for legitimate purposes), https://gac.icann.org/advice/communiques/20180315_icann61%20gac%20communiqu%C3%A9%20final.pdf.

²⁰See GDPR, arts. 2(2)(a), 3.

²¹See GDPR, art. 1 (describing the subject matter and objectives of the regulation as relating to the protection of natural persons). See also *GAC San Juan Communiqué* (stating that the GDPR applies only to the privacy of natural persons, not legal entities).

sector, cyber-security firms, federal agencies, and law enforcement authorities to thwart online-lawlessness generally—including identity theft, theft of intellectual property, fraud, cyber-attacks, election interference, illegal sale of opioids, and human trafficking. According to an analysis by two cybersecurity working groups of more than 300 survey responses, the restriction of WHOIS data is impeding attempts to investigate cyber-attacks.²² A survey of 55 global law enforcement agencies by ICANN’s Public Safety Working Group reveals that 98 percent found the WHOIS system aided their investigative needs before ICANN’s policy took effect, as compared to 33 percent after.²³ The U.S. Department of Commerce has also been outspoken about the value of WHOIS information to governments, businesses, intellectual property owners, and individual internet users across the globe, and has conveyed the concern of the United States about the lack of certainty around access to WHOIS data for legitimate purposes.²⁴

ICANN has been seeking to resolve the WHOIS problem for more than a year. If it fails to do so soon, Congress may need to legislate. Indeed, the Department of Commerce sent ICANN a letter April 4 stating that “[n]ow is the time to deliberately and *swiftly* create a system that allows for third parties with legitimate interests, like law enforcement, IP rights holders, and cybersecurity researchers to access non-public data critical to fulfilling their missions.”²⁵ The letter added that the U.S. government is expecting ICANN to “achieve substantial progress, if not completion, in advance of ICANN’s meeting in Montreal in November,” and observed that “[w]ithout clear and meaningful progress, alternative solutions such as calls for domestic legislation will only intensify and be considered.”²⁶ Senate Commerce Committee Chairman Roger Wicker echoed that sentiment in a May 6 letter to the Department of Commerce, stating that “[a]bsent a meaningful resolution to these issues, Federal legislation guaranteeing access to WHOIS data may be warranted.”²⁷ In keeping with this hearing’s title of “Protecting Consumers in an Evolving Media Marketplace,” restoring WHOIS access should be a priority.

Conclusion

The video content business is a success story of free expression, free markets, and intellectual property rights. Our community—the MPAA studios and the many thousands of people who work to create and make available great television shows and movies—is committed to investing and innovating to keep meeting audiences’ expectations. As the Committee considers the appropriate policies for the future of the video marketplace, we hope it will recognize that as wondrous as all the forms of distribution are, they rely on the production of content to deliver value

²²ANTI-PHISHING WORKING GROUP, ICANN’S TEMPORARY SPECIFICATION SURVEY (Oct. 18, 2018), (<https://apwg.org/apwg-news-center/icann-whois-access/temporarySpecSurvey>).

²³LAUREEN KAPIN, FTC COUNSEL FOR INTERNATIONAL CONSUMER PROTECTION & Co-CHAIR, ICANN PUBLIC SAFETY WORKING GROUP, ICANN63 GAC PLENARY MEETING 8 (Oct. 23, 2018), (<https://gac.icann.org/presentations/icann63%20pswg.pdf>).

²⁴See, e.g., Remarks of David J. Redl, Assistant Secretary of Commerce for Communications and Information, ICANN 61 (Mar. 12, 2018), (<https://www.ntia.doc.gov/speechtestimony/2018/remarks-assistant-secretary-redl-icann-61>).

²⁵Letter from David J. Redl, Assistant Secretary of Commerce for Communications and Information, to Cherine Chalaby, Chair, ICANN Board of Directors (April 4, 2019).

²⁶*Id.*

²⁷Letter from Sen. Roger Wicker, Chairman, U.S. Senate Committee on Commerce, Science, and Transportation, to David Redl, Assistant Secretary for Communications and Information, U.S. Department of Commerce (May 6, 2019).

to consumers. Producers and creators take financial risks to make that content available. As those producers and creators continue to explore ways to distribute content, respect for copyright is necessary to help safeguard their investments from theft and illicit distribution, especially as access to stolen content becomes easier over the internet. Helping to write future chapters of the great American success story that is the television and film industry will require collaboration between and among private-sector actors and government to ensure the internet connects audiences with storytellers, not pirates.

https://www.sportsfans.org/sports_fans_need_distant_network_signals



Sports fans need Distant Network Signals

This week, the House Energy & Commerce and Senate Commerce Committees will hold hearings on the Satellite Television Extension and Localism Act Reauthorization (STELAR), which allows Satellite TV companies to distribute out-of-market local broadcast TV signals in limited situations, such as where a small market lacks a network affiliate. So, if you live in a rural area without a local affiliate, you can still keep up with your sports by watching a neighboring market's station.

Congress must reauthorize STELAR every five years. This gives lawmakers the chance to re-examine the state of the video marketplace. Sports play a vital role in this conversation. As such, it is imperative that Congress protect the ability for fans to receive Distant Network Signals.

"Sports fans around the country rely on Distant Network Signals for their games," said Brian Hess, Executive Director of Sports Fans Coalition, "Thousands of fans who enjoy tailgating and watching the game using a portable satellite dish would lose that experience if Congress fails to reauthorize STELAR. From in-home TV, to TV at the tailgate, fans deserve access to their games. SFC is calling upon

https://www.sportsfans.org/sports_fans_need_distant_network_signals

Congress to reauthorize the Satellite Television Extension and Localism Act and protect these fans from losing the games they love.”



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Free Markets. Real Solutions.
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June 4, 2019

The Honorable Michael F. Doyle, Chairman
Subcommittee on Communications and Technology
Energy and Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Robert E. Latta, Ranking Member
Subcommittee on Communications and Technology
Energy and Commerce Committee
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

RE: Hearing on “STELAR Review: Protecting Consumers in an Evolving Media Marketplace”

Dear Chairman Doyle and Ranking Member Latta:

We at the R Street Institute (“R Street”) commend you and the Subcommittee for holding this hearing on “STELAR Review: Protecting Consumers in an Evolving Media Marketplace.”¹ Given the impending expiration of several key provisions that govern program carriage agreements and the broader shifts underway in the video marketplace, it is both appropriate and timely.

R Street’s mission is to engage in policy research and outreach to promote free markets and limited, effective government. As part of that mission, we have researched and commented upon multiple policy issues related to American media regulation, including some of the video competition rules currently in place at the Federal Communications Commission (“FCC”).² For the Subcommittee’s convenience, we would like to highlight the following specific recommendations:

¹ Hearing on ‘STELAR Review: Protecting Consumers in an Evolving Media Marketplace’ Before the House Committee on Energy & Commerce, 116th Cong. (June 4, 2019), <http://bit.ly/2wAZz62>.

² See, e.g., Tom Struble and Joe Kane, “Comments of R Street Institute,” *In the Matter of Modernization of Media Regulation*, MB Docket No. 17-105 (July 5, 2017), <http://bit.ly/2wAOjbK>.

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To ensure a level playing field, program carriage rules must be harmonized across distribution platforms.

The history of video competition and the regulatory framework that governs this market is long and complex. To account for new distribution platforms and business models, Congress and the FCC have updated these rules periodically but there remains a great deal of regulatory underbrush.³ Worse yet, these legacy regulations are uneven and tend to favor certain distribution platforms and business models over others, which ultimately distorts the market and harms competition. Set to expire at the end of this year, the STELA Reauthorization Act of 2014 is one example of such uneven regulation that distorts the video marketplace.

Originally with the Satellite Home Viewer Act in 1988 and periodically since then, Congress gave satellite television distributors certain rights that other multichannel video programming delivery (“MVPD”) services did not have, including a right to import distant broadcast signals into a local video market pursuant to a compulsory statutory license.⁴ This is similar to, but distinct from, the statutory license available to wireline MVPDs under Section 111(d) of the Copyright Act.⁵ When they were first developed, different carriage rules for these different distribution platforms made some sense as a way to encourage new competition from satellite MVPDs in local video markets. But the video marketplace has changed dramatically since then. Wireline and satellite MVPDs now compete head-to-head in most local markets, and both sets of MVPDs must grapple with ongoing technological shifts that are enabling new competitive viewing options for consumers and programmers—including broadcasters’ new ATSC 3.0 protocol and improved over-the-top video services enabled by the Internet Engineering Task Force’s (“IETF”) Real-time Transport Protocol (“RTP”). Accordingly, to promote fair and open competition among MVPDs, broadcasters and new entrants into the video marketplace, program carriage rules should be harmonized across distribution platforms as much as possible.

As competition grows, legacy rules should be relaxed or eliminated.

Open and fair competition can come only from a regulatory framework that levels the playing field and treats all video distribution platforms the same. One way to do that and to harmonize program carriage rules would be to regulate upward, imposing the rules that currently govern wireline MVPDs onto satellite MVPDs (and perhaps over-the-top video providers, as well). This could be done by making STELAR’s provisions permanent and harmonizing them with Section 111(d) or by simply incorporating satellite MVPDs into Section 111(d). However, new competition from satellite MVPDs and other video providers suggests that many of the legacy regulations that govern these markets could be relaxed or even eliminated, as market forces may be able to sufficiently constrain bad behavior and protect consumers. Doing so would achieve parity and harmonize program carriage rules across distribution platforms by regulating downward, such as by allowing STELAR to expire and then removing the compulsory license for wireline MVPDs in Section 111(d), too. The video marketplace has been governed

³ See Committee on Energy and Commerce Staff, “Memorandum Re: Hearing on ‘STELAR Review: Protecting Consumers in an Evolving Media Marketplace,’” (May 31, 2019), <http://bit.ly/2wzxfkD>.

⁴ 47 U.S.C. § 325(b)(2)(C); 17 U.S.C. § 119.

⁵ 17 U.S.C. § 111(d).

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by specific rules and regulations for decades, but general copyright, contracts and antitrust law could also be used in this area, perhaps to even greater effect. Such an approach would take more effort on the part of Congress, but it may ultimately lead to better outcomes in the video marketplace.

Incremental changes could be made now, but any major reforms should be gradual and phased in over time to minimize disruptions in the current video marketplace.

Regardless of the course of action Congress pursues here, lawmakers should carefully consider the impact that a sudden shift in the regulatory environment could have on the current video marketplace. Many consumers rely on video programming for vital news and weather alerts, so Congress should try to minimize disruptions to these consumers. Incremental reforms could be made now, but any major reforms to the video marketplace should be gradual and phased in over time. For example, in 1996, when Congress directed the FCC to oversee the shift from analog to digital broadcasts, they did not simply allow all analog signals to be turned off with no chance for consumers to plan for the changes.⁶ In fact, after several delays and efforts to help consumers adapt, it was not until 2009 that analog service was phased out completely, thirteen years after the passage of the Telecommunications Act.⁷ Any major and unexpected changes to the video marketplace now could similarly harm consumers and thus Congress should ensure that any major reforms to the video marketplace are phased in gradually with adequate notice to consumers before implementation.

* * *

Again, we commend you for your efforts to protect consumers in an evolving media marketplace. We also look forward to working with you and the rest of the Subcommittee as you consider potential legislation in this area.

Sincerely,

Tom Struble, Technology and Innovation Policy Manager
R Street Institute

Jeff Westling, Technology and Innovation Policy Fellow
R Street Institute

CC:

The Honorable Frank Pallone, Chairman
The Honorable Greg Walden, Ranking Member

⁶ See "Digital Television," *Federal Communications Commission* (last visited June 3, 2019), <https://bit.ly/2WmnwGQ>.

⁷ Ibid.

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**Subcommittee on Communications and Technology
Hearing on
“STELAR Review: Protecting Consumers in an Evolving Media Marketplace”
June 4, 2019**

Mrs. Patricia Jo Boyers, President and Vice Chairman of the Board, BOYCOM Vision

The Honorable Anna G. Eshoo (D-CA)

- 1. You stated that that your customers pay over \$12 for broadcast programming on their bills. How does this compare to other cable operators? Please provide a range, average, and median for this statistic for ACA Connects members, if such data is available.**

Response: Because broadcasters insist on contractual conditions forbidding disclosure of rates, I am unable to speak with any specificity on precisely what other system operators must pay. But I can share two data points with you.

First, based upon numerous conversations with small operators who have purchased systems from large cable operators, we know that the disparity in size between small operators and larger programming cartels results in us paying more for retransmission consent than larger cable systems. As I explained in my testimony, broadcasters consider the financial consequences for themselves of blacking out larger cable operators that serve a significant percentage of their viewing audiences. Because my system is so small the broadcasters consider the ramifications of withholding the signal as inconsequential to them, while a lethal threat for us. So, they simply charge more.

Second, in fact, we do have some empirical data that affirms this view. In the FCC’s first consolidated Communications Marketplace Report that was released on December 26, 2018, it found that smaller systems pay at least one third more than do larger ones.

This disparity is real. But it is also true that prices are going up for all systems—small and large alike. In a survey conducted in 2018, ACA Connects members reported that they will be forced to pay corporate broadcasters an average of 88% more in retransmission consent fees by 2020. Based on ACA Connects’ calculations, members were paying \$11.00 on average per subscriber per month in 2017, which will increase to an average of \$19.00 per subscriber per month by 2020. Nearly a quarter of those surveyed will see a drastic jump of at least 100% in fee increases in the next three years, and in one case that jump is expected to be 302%. For more information, you can visit this site: <https://acaconnects.org/corporate-broadcasters-force-exorbitant-rate-increases-on-cable-customers/>

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Attachment—Additional Questions for the Record

Mrs. Patricia Jo Boyers, President and Vice Chairman of the Board, BOYCOM Vision

The Honorable Billy Long (R-MO)

- 1. Ms. Boyers stated that she is paying 47% more for broadcaster content than her competitors – like DirecTV. Can you each explain to me why that is happening?**

Response: I arrived at this figure by comparing our actual retransmission consent fees paid in aggregate in 2016 with the FCC's first Communications Marketplace Report (adopted December 12, 2018) estimate of large system fees for 2016. Our fees today are much larger than then.

As for why this is happening, as I explained in my response to Rep. Eshoo's question for the record, broadcasters have even more leverage over smaller systems like mine than they do over larger ones and exercise this market power without constraint.

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Attachment—Additional Questions for the Record

Mrs. Patricia Jo Boyers, President and Vice Chairman of the Board, BOYCOM Vision

The Honorable Bill Flores (R-TX)

- 1. The video marketplace is decidedly different from when the 1992 Cable Act and the first Satellite Home Viewer Act of 1988 were signed into law. As we look to the landscape of the video marketplace of tomorrow, Congress needs to evaluate the appropriate government role in the marketplace to ensure consumers benefit from innovation.**
 - a. In today's marketplace, how much is the government involved in the retransmission consent process?**

Response: In truth, the retransmission consent process is not a true business market in any sense of the word, because the government created the “market” with all sorts of rules and is involved in the process in all sorts of ways. To begin with, the entire broadcast “marketplace” is based on a system in which the government granted free “beachfront” spectrum to broadcasters in exchange for promises of public service. Indeed, the government even goes so far as to provide special enforcement protections for network exclusivity, which compounds the distorted “market” that we operate within. Even today there is an extensive slate of rules that favor broadcasters over cable operators.

- The government forces cable operators to include all local broadcast networks in any bundle of programming sold to subscribers. Thus, cable subscribers must purchase access to all broadcast networks as a precondition of purchasing access to any other programming. While the buy through is a statutory provision, the FCC can clarify that it does not apply where there is effective competition, giving cable operators the right to legally carry higher-cost retransmission consent channels on tiers of service for those who want to pay for it and not on the basic level of service sold to all.
- The government mandates that cable operators and satellite operators offer all broadcast programming “without material degradation” and at the “same quality of signal processing and carriage” offered any other programming. Broadcasters have suggested that this rule requires carriage of the “entire bandwidth” of a signal without compression and may even prevent cable operators from converting ATSC 3.0 signals into a format cable viewers can receive. The FCC chose not to address this issue in its Order. The concept of “material degradation” is found in the statute, but here again the FCC can change its rules to clarify that it does not apply (1) to retransmission consent stations; (2) where effective competition applies; and/or (3) to prevent conversion of new technical formats to formats consumers can actually view.
- The government requires cable operators and satellite carriers to give special preferential treatment for broadcasters in channel placement.

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- The government imposes “network nonduplication” and “syndicated exclusivity” rules. Those rules enable stations to enforce exclusivity (monopoly) arrangements negotiated with networks and syndicators against satellite and cable operators who are not parties to those agreements.

These rules may be necessary in the context of must-carry for non-“Big 4” network stations. They are both unnecessary and inappropriate in the context of retransmission consent, which is supposed to be a free-market negotiation for carriage.

b. What should the government’s role be in the video marketplace to encourage future innovation?

Response: As I said in my testimony, I’m not one to ask for Congress to get involved in my market. I’m generally of the view that businesses should do their best to solve their own problems, and cable operators have sought to do this. But, as discussed above, Congress is already involved in my market, and, in fact, Congress created it. And, at this point, things have gotten so bad that I’m left with no choice but to encourage Congress to examine these issues now. Every time Congress has renewed the 1988 Satellite Home Viewer Act, it has considered issues about the video marketplace more generally and has often included such proposals in its updates. I can think of no good reason why it would not do the same here.

c. Is what we have today a pure free market?

Response: As describe above, the answer is an emphatic NO.

i. If not, what policy changes would help it achieve free market status?

Response: Let me start by saying that eliminating the special benefits for broadcasters described above would come closer to creating a free market. These changes would not, however, address broadcasters’ willingness to charge smaller cable system operators more than they charge larger ones. One free-market change that would help in this regard is suggested in my testimony: adjusting the “good faith” rules so they cover negotiations between large broadcast station groups and buying groups of small cable operators. Negotiations between broadcasters and buying groups resemble a “free market” negotiation far more than do negotiations between broadcasters and small cable system operators whom they do not care about.

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Subcommittee on Communications and Technology
Hearing on
“STELAR Review: Protecting Consumers in an Evolving Media Marketplace”
June 4, 2019

Mr. Robert D. Thun, Senior Vice President of Content and Programming, AT&T Mobility and Entertainment

The Honorable Anna G. Eshoo (D-CA)

1. You stated that your customers are paying more than the \$0.12 statistic that Senator Gordon Smith cited at the hearing. How much are your customers paying for broadcast programming? Please provide this figure as a dollar amount and percentage of customers’ bills.
 - a. If the amount fluctuates by market, please provide a median, average, and range for the statistics.
 - b. How have these numbers changed over time?
 - c. If you’re unable to share these numbers, do contractual provisions prohibit you from disclosing these numbers?

Response: AT&T’s video customers are paying much more for their local broadcast stations than the \$0.12 per month fee that Mr. Smith cited. In fact, Mr. Smith’s 12-cent estimate is closer to the average a customer pays *on a daily basis* for a *single* local broadcast station. We are not sure how Mr. Smith came up with his figures, but they are in no way reflective of the carriage fees of the broadcast stations that his organization represents. Based on publicly available estimates, local broadcast carriage fees are the largest and quickest growing portion of customers’ bills, and even NAB concedes this represents about 16% of an average pay-TV bill.¹

These fees have skyrocketed by an astounding 2,000% from 2008 to 2018. Local broadcasters demand these increases even though primetime audiences for their programming have fallen by more than half, according to independent analysts like Nielsen and SNL Kagan. This is not a sustainable trajectory.

As your questions anticipate, while we are happy to share industry numbers, our company-specific fee information is competitively sensitive and confidential, and our carriage agreements with local broadcasters require us to treat it as such.

¹ <https://www.multichannel.com/news/aca-members-believe-retrans-fees-will-rise-88-2020-418199>

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2. How are consumers impacted by good faith rules today? If Congress strengthened good faith rules, how would that impact consumers?

Response: Existing good-faith rules help keep pay-TV prices and blackouts down by providing an important backstop to these negotiations. We still have issues with stations refusing to negotiate fairly or even respond to offers in certain cases. That broadcasters oppose reauthorizing this provision is troubling and emblematic of the challenges we face under the current law. Just last month, AT&T filed a complaint with the FCC alleging that nine station groups affiliated with Sinclair were violating the FCC's good faith rules.

Strengthening the good-faith rules could encourage broadcasters to enter into more reasonable agreements and avoid blackouts. At a minimum, we think the rules should be retained and made permanent. We also believe they should be strengthened to prohibit clearly egregious behavior.

For example, we are increasingly finding that local broadcasters enter into joint service agreements to coordinate and collaborate in negotiation tactics, including pricing and blackouts. This growing practice has caused higher fees and blackouts for reasons that are often unrelated to the local broadcaster in a given area.

In addition, many broadcasters are asking for requirements that we pay on all our subscribers regardless of whether they receive their local broadcast programming from us. So, if one of our subscribers is receiving their broadcast stations free over-the-air through an antenna, that broadcaster still wants us to pay it for that subscriber. These broadcasters are demanding that we pay for something we don't provide, and it takes away one of the few constraints on the broadcaster's prices – the ability of the customer to get the programming over-the-air for free. This essentially locks out any choice and raises prices. This negotiation practice should be prohibited.

3. What are the average, median, and range of 'below-the-line' fees that your customers are charged on their bills?

Response: AT&T is committed to providing its customers transparent and an easy-to-understand fee structure. As an example, a complete list of additional fees a DIRECTV customer may incur can be found at:

https://www.att.com/legal/terms.dtv_feeSchedule.html.

Customers are made aware of and agree to these fees when signing up for service. Most of the fees, like late payment charges and service call fees, are one-time, nonrecurring fees. DIRECTV's recurring, monthly fees include: (1) a monthly \$7.00 fee for each receiver, and (2) depending on the customer's location and the package to which they subscribe, a regional sport network (RSN) fee to recover fees associated with carriage of RSNs. DIRECTV also assesses an annual fee (most recently, \$0.69) to recover its annual regulatory fees paid to the FCC.

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Attachment—Additional Questions for the Record

Mr. Robert D. Thun, Senior Vice President of Content and Programming, AT&T Mobility and Entertainment

The Honorable Adam Kinzinger (R-IL)

1. It is been a long time since the first Satellite Home Viewer Act was enacted in 1988; and it's safe to say the market has changed dramatically since then.

Consumer demand choices and control in how they watch video, where they watch it, when they watch it, the device they watch it on, how they pay for it and what they watch.

As we have these deliberations over STELAR, it seems equally important that we discuss what Congress need to do to ensure competition, innovation and new technologies are available for our constituents – regardless of the platform.

- a. **Having said that, Mr. Thun: How do companies like Hulu, Amazon, Sling, and others all exist in the marketplace without any help from government regulations such as “must-carry”, compulsory licenses, and the like? And what lessons can traditional cable and satellite companies learn from the rise of these “over-the-top” players?**

Response: You are right that we are in a time of significant change. Consumers are driving these changes – demanding high-quality content, when they want it and where they want it. As your question notes, we are seeing ever-increasing competition and a proliferation of the over-the-top (OTT) video offerings. As a result, consumers are much more price conscious, and many are seeking out lower-priced services to satisfy their needs, which is why you have seen traditional pay TV providers lose subscribers quarter after quarter.

While you are right that these OTT offerings operate in a free market, traditional pay-TV providers are laden with old regulations that give broadcasters significant advantages that are no longer necessary, including the must-carry requirements and the statutory prohibitions on MVPD carriage of local stations, either inside or outside the local designated market area (“DMA”), to obtain network programming.

Local broadcasters have used these advantages to demand higher transmission fees. The fees local broadcasters charge distributors to carry their signals have increased by 2,000% between 2008 to 2018. Acquiescing to local broadcaster rate hike demands in this highly competitive market is simply no longer a viable option.

We are interested in discussing and debating all ideas, but Congress can look first at the rules that provide unneeded benefits to broadcasters, like must-carry, exclusivity and channel

Mr. Robert D. Thun

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placement. Congress also should ensure that the rules in place that prevent a broadcaster from negotiating for more than one network affiliate in a market are strong and prevent evasion through loopholes.

2. Mr. Thun: Let's say that Congress allows STELAR to expire at the end of this year and local broadcasters then call you to negotiate carriage agreements in the remaining markets in which your company does not provide local channels.

a. Would you negotiate with these local broadcasters?

Response: We are always willing to negotiate. However, local broadcasters in these DMAs have successfully evaded the FCC's "top four prohibition," which prohibits a single entity from controlling more than one "top four rated station" in a given DMA. They have done so by using loopholes, such as carrying one of the network affiliates on a multicast stream or on low-power television stations, or both, to control two or three of the four top-four network feeds in a single DMA.

In fact, in the twelve DMAs where we do not offer local-market stations through satellite service, local broadcasters own two or three stations in eleven of them. A single broadcaster owns at least two stations in six of these markets and three stations in the other five. And there are multiple duopolies in three markets, meaning only two broadcasters own all four local stations in eight of these eleven markets. The result is a guarantee of even more blackouts and higher prices for consumers in these DMAs. Given the competitive state of the market, and the plethora of consumer choices for video content, it is simply not a viable option for us to ask our customers in these markets to absorb these mounting prices and increased blackouts.

However, AT&T and DIRECTV are committed to provide customers in these twelve markets alternative technology to access their local stations. AT&T and DIRECTV customers in these twelve DMAs may receive a Local Channel Connector and over-the-air antenna. With the connector, customers can access available local broadcast stations through the antenna that connects to a customer's set-top box via a USB cable. Once installed, the station is displayed in the channel guide. The connector includes DVR features, closed captioning, a talking guide, parental controls and the ability to watch or record two channels at once.

b. Is this not simply something the marketplace can handle, just as it does in the OTP video space?

Response: We could rely on the marketplace if it was a free marketplace. Traditional pay-TV providers are saddled with old regulations that give local broadcasters significant advantages that are no longer necessary. See response to question 1.

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Mr. Robert D. Thun, Senior Vice President of Content and Programming, AT&T Mobility and Entertainment

The Honorable Gus M. Bilirakis (R-FL)

1. **Mr. Thun – Year-over-year, the number of TV blackouts are growing, as well as the length of those blackouts.**

To what extent is this failure to successfully negotiate facilitating consumers to move to over-the-top services, and indeed hurting both the broadcasting as well as cable industries?

Response: The retransmission consent regime is broken. Everyone, including our customers, is hurt by the failure of current law to reflect market realities. Local broadcasters' ever-increasing fees have, no doubt, hastened consumer exit from traditional pay-TV services. Last year, seven million customers "voted with their wallet" and terminated their pay-TV. The trend continues this year, with 14,000 customers leaving traditional platforms each day.²

Local broadcasters, of course, can and are making their programming available to customers online. CBS, for example, makes its programming available through its CBS All Access product. Yet CBS and their CBS-affiliated stations prohibit MVPDs from selling CBS All Access directly to their own MVPD subscribers.

Local broadcast retransmission fees and the current law hamstringing the ability of MVPDs to offer their customers more competitive and innovative services. As competition first came from satellite, and now from over-the-top providers, local broadcasters have relied on their outdated, special statutory protections to more effectively use the threat of blackouts to dramatically increase retransmission fees. As a result, as you noted, when MVPDs balk at local broadcasters' rate hikes, local broadcasters have responded with record numbers of blackouts.

2. **Mr. Thun – TV consumers are innocent bystanders to the failures that lead to blackouts.**

When a user is subject to a blackout, through no fault of their own, do they receive any rebate or compensation for the services that they should have rightfully received? And what options are available to entitle the consumer to be part of the process of what programming enters their home?

Response: AT&T and DIRECTV are committed to providing our customers in blacked-out markets alternative technology to provide access to their local stations. Our customers in

² <https://bgr.com/2019/05/09/cord-cutting-statistics-2019/>

Mr. Robert D. Thun

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these markets may receive a free new Local Channel Connector and over-the-air antenna. With the connector, customers can access available local broadcast stations through the antenna. It connects to a customer's set-top box via a USB cable. Once installed, the station is displayed in the channel guide like before. The connector includes DVR features, closed captioning, a talking guide, parental controls and the ability to watch or record two channels at once. AT&T and DIRECTV work with their customers that request credits for blackouts of their local stations, and we have provided such customers credits on a case-by-case basis. Also, AT&T is supportive of "local choice" legislation, which, if enacted, will allow consumers to decide which local stations they want (and are willing to pay for). Under this legislation, broadcasters would set the per subscriber fee and pay-TV providers collect that fee from willing customers and remit the amount to the broadcasters.

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Attachment—Additional Questions for the Record

Mr. Robert D. Thun, Senior Vice President of Content and Programming, AT&T Mobility and Entertainment

The Honorable Bill Johnson (R-OH)

- 1. Mr. Thun, you stated that DirecTV cannot sustain the kind of price increases you are seeing in the retransmission consent regime. Can you explain what you mean by that? Are there consequences for consumers? For programming?**

Response: If we increased our rates to recover the entirety of the exorbitant fee increases local broadcasters are charging (and demanding), our rates would be over \$200 per month. We are therefore absorbing a large portion of the local broadcast carriage fee increases and we are hitting a competitive wall in terms of what our customers are willing to pay. We are in an extremely competitive space, with competition not only from other traditional pay-TV providers, but now over-the-top providers. For consumers, the immediate downside of the current retransmission consent regime is higher prices and more blackouts. That hurts the 90 million customers who choose to subscribe to traditional pay-TV services, as well as those who may value the service but have left because prices are too high.

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Attachment—Additional Questions for the Record

Mr. Robert D. Thun, Senior Vice President of Content and Programming, AT&T Mobility and Entertainment

The Honorable Billy Long (R-MO)

- 1. Ms. Boyers stated that she is paying 47% more for broadcaster content than her competitors – like DirecTV. Can you each explain to me why that is happening?**

Response: We are not privy to what Ms. Boyers' company is paying local broadcasters. However, what we know is that all MVPDs and their customers are paying too much for carriage of local broadcast channels. These fees have increased by 2,000% from 2008 to 2018. We are generally aware that smaller MVPDs have attempted to negotiate through national cooperatives, such as the National Cable Television Cooperative, though not all broadcasters are willing to negotiate with those buying cooperatives.

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Attachment—Additional Questions for the Record

Mr. Robert D. Thun, Senior Vice President of Content and Programming, AT&T Mobility and Entertainment

The Honorable Bill Flores (R-TX)

1. **AT&T/DirecTV made firm commitments in 2003 and again in 2008 to bring local broadcasting service to subscribers in all 210 Designated Market Areas (DMA's) in the United States. AT&T/DirecTV, however, has yet to deploy local broadcast content to 12 DMA's across the country. On the other hand, a competing satellite provider, DISH, is successfully delivering local content to all 210 DMA's in an HD format.**

Paying subscribers' access to local content is critical to public safety and community engagement; on the other hand, access to distant market programming in lieu of local content fails to serve in the public's interest.

- a. **When will AT&T/DirecTV honor its earlier pledges to provide local content to subscribers in all 210 DMA's?**

Response: DIRECTV is meeting its commitments. As we explained during the FCC's 2008 review of News Corp's sale of its controlling stake in DIRECTV to Liberty Media, DIRECTV committed to offer "two methods" for "providing seamless, integrated local channel package[s] in all 210 Designated Market Areas." In addition to satellite, DIRECTV explained that it also provides local content by "decoding digital terrestrial broadcast signals directly at the customer's premises" via an antenna, providing "all other functions" from a customer's perspective once the signal reaches the set-top-box.³

DIRECTV is delivering on this commitment. In the twelve markets in which we do not carry local broadcast channels over satellite, DIRECTV provides customers an alternative, seamless antenna technology, our Local Channel Connector, to access their local stations. With the connector, customers can access available local broadcast stations through an antenna. The antenna connects to a customer's set-top box and the station is displayed in the channel guide. This technology includes DVR features, closed captioning, a talking guide, parental controls and the ability to watch or record two channels at once.

- b. **If AT&T/DirecTV intends to breach its earlier commitments in this regard, what are the reasons for that breach?**

³ Letter from William M. Wiltshire on behalf of DIRECTV Group, Inc. to Marlene Dortch, Secretary, MD Docket No. 07-18 (filed January 30, 2008).

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Response: See response to question 1.a.

c. What are the reasons that DISH can successfully deliver local broadcasting content into all 210 DMA's, while AT&T/DirecTV will not or cannot?

Response: DISH did not voluntarily carry local broadcast stations in all 210 DMAs. In 2006, a U.S. District court permanently enjoined DISH from delivering distant network signals under section 119 of the Copyright Act. The court determined that DISH "willfully or repeatedly" violated the terms of the license by retransmitting programming from New York and Los Angeles stations to thousands of households that were considered served by local broadcast stations. The 2009 STELA renewal restored DISH's ability to retransmit distant network station signals to unserved households with the stipulation that it provide local-into-local service to all 210 DMAs in the United States under the section 122 license.

As Mr. Thun testified at the hearing, in the twelve DMAs that DIRECTV do not carry local broadcast stations via satellite service, local broadcasters have circumvented the FCC's rules to own two or three local stations in eleven of them. And in eight of these markets, only two broadcasters own all four "top four" local stations. The result is that local broadcasters in these areas use these duopolies and triopolies to threaten sweeping blackouts and demand even higher fees. This reality all but guarantees more blackouts and higher prices for consumers in those DMAs. Given the competitive state of the market, and the plethora of consumer choices for video content, it is simply not a viable option for us to ask our customers in these markets to absorb these higher prices and risk of increased blackouts.

2. DirecTV regularly down-converts High Definition (HD) signals to Standard Definition (SD) signals in several DMA's, even though customers are paying for HD service.

a. Please list all markets and stations where AT&T/DirecTV down-converts HD signals to SD.

Response: AT&T only "down-converts" HD signals to SD pursuant to the terms of contracts freely negotiated by local broadcasters. We do so in order to ensure we have sufficient capacity to carry as many local channels as possible. Local broadcasters have agreed to these arrangements, with only four being "big four" channels. In those four markets, the down-converted big-four station is duplicative of another broadcast station in the market, meaning consumers have access to DIRECTV-provided HD network programming.

b. Please lay out how and when AT&T/DirecTV plans to correct the situation and discontinue down-conversion of HD signals.

Mr. Robert D. Thun
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Response: DIRECTV will honor its current contracts and will entertain any request by local broadcasters to carry their programming in HD.

3. The video marketplace is decidedly different from when the 1992 Cable Act and the first Satellite Home Viewer Act of 1988 were signed into law. As we look to the landscape of the video marketplace of tomorrow, Congress needs to evaluate the appropriate government role in the marketplace to ensure consumers benefit from innovation.

a. In today's marketplace, how much is the government involved in the retransmission consent process?

Response: You are right that the current laws, dating back to 1992, were written to protect broadcasters at time when there was only one distributor, so cable and broadcasters were mutually dependent on each other, and customers had few options besides cable. Now, these laws stubbornly protect broadcasters from the inexorable changes occurring in the video marketplace, and thus distort and stymie innovation and consumer choice. The OTT market is innovative and giving customers more choices because it operates in a free market where distributors and their customers choose what content they desire. OTT distributors are not required to carry broadcast programming and devote capacity to carry specific stations.

If a local broadcaster withholds its programming, MVPDs generally cannot offer their subscribers alternative, out-of-market network affiliate programming, even temporarily. Instead of bringing more competition and lower prices to the traditional pay-TV world, competition has allowed local broadcasters to rely even more heavily on their decades-old special statutory protections to effectively use the threat of blackouts to dramatically increase retransmission fees.

b. What should the government's role be in the video marketplace to encourage future innovation?

Response: Minority Whip Scalise's bill from last Congress – the "Next Generation Television Marketplace Act" -- would eliminate almost all broadcast regulation, including provisions that negatively impact our customers, like must-carry, and provisions that benefit our customers, like the distant signal license. The idea of deregulation is to get rid of everything, both good and bad, and replace it with a new, free-market system. Of course, we would oppose legislation that only eliminated the few provisions that benefit our customers. Failing to reauthorize STELA will not, by itself, establish a free-market to replace today's failing retransmission consent regime. Instead, if that were to happen, we would have the same old regulatory system as today, minus the distant signal license relied on by hundreds of thousands of rural homes.

c. Is what we have today a pure free market?

Response: No. See response to question 3a and 3b.

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i. If not, what policy changes would help it achieve free market status?

Response: See response to question 3b.

Mr. Gordon H. Smith
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Subcommittee on Communications and Technology
Hearing on
“STELAR Review: Protecting Consumers in an Evolving Media Marketplace”
June 4, 2019

Mr. Gordon H. Smith, President and CEO, National Association of Broadcasters

The Honorable Anna G. Eshoo (D-CA)

- 1. You stated that broadcast programming represents just \$0.12 on an average cable bill. Please provide details on how you calculated this number, what's included in this calculation, and what's excluded from it. You also stated that the Association follows this number closely. Please also provide how this number has changed over time and include the equivalent statistic for each of the last ten years.**

Response: According to data obtained from SNL Kagan, a media and communications research firm, broadcast retransmission consent fees constituted 12.77 cents of every programming dollar on an average cable/satellite bill in 2016. This is the data on which my response before the Subcommittee relied. The total programming costs from which that percentage is derived include the fees paid to basic cable channels, regional sports networks, premium cable channels and broadcast channels. (Note: The figure is 13.89 cents of every programming dollar when calculated according to SNL Kagan's most current data.)

The fees paid for broadcast programming as a percentage of the overall cable bill dollar – as referenced in your question – would be substantially lower. An average cable bill includes rental fees for set top boxes, installation costs, taxes, and significant profit margins, all of which diminish the proportion of the bill attributable to retransmission consent fees. These costs were excluded from the 12.77 cents figure that I provided the committee.

Historically, broadcast industry retransmission consent revenues have increased over the last decade, however NAB itself does not track this number. That growth needs to be viewed in context. For more than 10 years after passage of the 1992 Cable Act, broadcasters received no monetary compensation for retransmission of our signals, even while less popular channels with far lower ratings were paid handsomely. So while, broadcaster retransmission consent fees have grown over the past decade, they were starting at a significant below market level. Even today, broadcasters are undercompensated for our programming relative to our pay-TV competitors on a per-viewer basis. Further, there is no correlation in the growth of retransmission consent fees relative to a consumer cable bill. Over the past 25 years, annual cable bill increases have exceeded the rate of inflation nearly three-fold, and those annual increases have remained consistent irrespective of any changes in broadcast retransmission consent fees.

Mr. Gordon H. Smith

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Retransmission consent revenues are vital to broadcasters' investment in locally-focused news, journalism, weather and emergency programming coupled with network entertainment and sports that remains the most watched. In today's hyper-competitive media environment, where consumers have more choices of what to watch and how to watch it, broadcasters compete with an increasing number of cable programmers and online video providers for the best content and talent, all of which drive up the cost to produce high quality programming. In spite of this competition, 95 of the top 100 shows aired on broadcast television in 2018.

2. What is the average, median, and range amount that broadcast networks charge their local broadcast affiliates (i.e., reverse retransmission consent fees)?

Response: NAB does not have visibility into the specific terms of these individually-negotiated private contractual agreements. The relationship between affiliate broadcast stations and their network partners is the bedrock of U.S. broadcast television and the envy of other countries. It is an effective and efficient delivery system for both national and local programming that hundreds of millions of Americans rely on for local news, weather, sports and entertainment programming. Like franchise agreements in other industries, the symbiotic relationship between national and local broadcast partners has led to a thriving local broadcast industry which continues to serve and inform viewers, even at a time when the pay-TV marketplace is undergoing massive change.

3. NAB is advocating for the expiration of good faith rules instituted in the *STELA Reauthorization Act of 2014*. How would consumers benefit from the expiration of good faith rules?

Response: In the nearly 20 years since Congress passed these provisions, the FCC has decided only seven good faith complaints – and has found a violation of the requirement on only one occasion. Though the same cannot be said of pay-TV, no broadcaster has ever been found to be in violation of these rules. While well intended, the expiring good faith requirements have provided no quantifiable benefit to either broadcasters or pay-TV providers. This is in large part because both parties have every incentive to reach a deal and serve consumers without a regulatory requirement.

This little used regulatory framework simply does not justify STELAR's reauthorization, which at its core harms local viewers by dis-incentivizing carriage of local broadcast stations in certain markets. STELAR's subsidy to billion dollar satellite providers – AT&T/DirecTV and DISH – through its distant signal license incentivizes carriage of out-of-market stations with no technological justification cannot be justified and should be sunset as Congress intended.

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Attachment—Additional Questions for the Record

Mr. Gordon H. Smith, President and CEO, National Association of Broadcasters

The Honorable Robert E. Latta (R-OH)

- 1. How can we ensure that constituents like mine, in rural areas, are not disproportionately impacted by either reforming or repealing STELAR?”**

Response: STELAR currently enables satellite providers to deny viewers in 12 mainly rural markets access to the local broadcast channels in their communities. Instead, AT&T/ DirecTV imports broadcast stations from New York City or Los Angeles because it can do so at a below-market rate pursuant to STELAR’s distant signal license. Extending this legislation by another five years, or even another five days, means that many rural viewers that are being neglected by the satellite companies will continue to be harmed. When the distant signal license expires, the marketplace will work to ensure that these viewers – as with every other market in the country – will continue to receive network programming, and that the programming is delivered through a local rather than out-of-market broadcaster.

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Attachment—Additional Questions for the Record

Mr. Gordon H. Smith, President and CEO, National Association of Broadcasters

The Honorable Adam Kinzinger (R-IL)

1. **Senator Smith: Five years ago, when Congress passed STELAR, broadcasters did not oppose that effort.**
 - a. **What about the video marketplace has changed in the last five years that makes you confident now that STELAR is no longer necessary and Congress can let it sunset?**

Response: Today, there are no technological barriers to the satellite companies carrying local stations in all local markets or competitive reasons to subsidize the mature satellite industry. Further, developments in the flourishing Over-The-Top (OTT) marketplace over the last five years demonstrate a successful mechanism for negotiating the carriage of broadcast (and many other types of) programming. All of this is done without STELAR-like compulsory copyright licenses that now unfairly benefit one type of service over others, while serving as an incentive for AT&T/ DirecTV to continue to harm viewers where it refuses to carry the local broadcast stations. The U.S. Copyright Office has recommended that STELAR should expire and broadcasters agree.

2. **Senator Smith: Currently, companies such as DirecTV-Now and Sling TV have the ability to enter into agreements with local broadcasters for carriage agreements.**
 - a. **Can you explain the differences between the current laws governing those carriage agreements and what the legal and business landscape would be like if STELAR were to expire?**

Response: If STELAR were to expire, the satellite companies would be incentivized to negotiate carriage of local broadcast channels. This is a clear win for consumers. In cases where they still desire to offer an out-of-market station, there would be no difference between the way the two satellite companies themselves contract for the carriage of broadcast programming on their OTT platforms. In each case, the marketplace would govern these carriage agreements and broadcasters have every incentive to be on as many platforms as possible, to reach our audiences, whenever, wherever they are watching.

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Attachment—Additional Questions for the Record

Mr. Gordon H. Smith, President and CEO, National Association of Broadcasters

The Honorable Gus M. Bilirakis (R-FL)

1. **Senator Smith – local broadcast stations play a critical role in my district, when it comes to keeping our communities safe and informed, particularly during Hurricane season.**

This is particularly true for our seniors, who may not use other technologies for information gathering.

STELAR enables satellite companies to import out-of-market broadcast programming rather than carrying the local stations.

How does this impact viewers ability to receive relevant information during times of emergency?

Response: STELAR incentivizes the satellite operators to import the distant signal of a New York City or Los Angeles broadcast television station to subscribers in markets like Bowling Green, Kentucky and Glendive, Montana rather than their local broadcast stations. As a result, subscribers in those markets are deprived the local news and emergency weather coverage on which they would otherwise rely.

At the law's outset, the technology simply did not exist for the nascent satellite industry to provide viewers their local broadcast stations. Fortunately, that is no longer the case and there is no technological justification for the multi-billion dollar satellite industry to avail themselves of this congressional subsidy instead of investing in the local carriage that will better serve their viewers.

STELAR is an outdated law whose main function now is to deprive local viewers in small, rural markets from receiving what is in some cases life-saving emergency and weather alerts, among a host of other valuable information and services that local broadcast stations offer their communities. For the benefit of viewer safety during a natural disaster or other emergency situation, especially vulnerable populations like seniors who rely on broadcast programming, Congress should allow STELAR to sunset at the end of this year as scheduled.

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Attachment—Additional Questions for the Record

Mr. Gordon H. Smith, President and CEO, National Association of Broadcasters

The Honorable Billy Long (R-MO)

- 1. Ms. Boyers stated that she is paying 47% more for broadcaster content than her competitors – like DirecTV. Can you each explain to me why that is happening?**

Response: I sympathize with Ms. Boyer's frustration. Just as there are large and small cable operators, I represent both large and small broadcasters. As a result, I hear similar concerns from small market broadcasters who are negotiating with titans such as AT&T and Charter. Yet rightfully the rates and terms that a local broadcaster and an MVPD agree on reflect the market for the content and signal of the broadcaster to the MVPD and its subscribers.

Regardless of the geographic market or size of the cable system, broadcasters remain the most-watched and most-relied upon video content available today. Unlike cable channels, which in some cases have been charging carriage fees to MVPDs for their channels since the early 1980's, the first broadcaster did not start receiving monetary considerations for the carriage of a local channel until 2003, and they were not a standard part of retransmission consent negotiations for the broadcast industry overall until years later. As a result, this marketplace is still evolving and the nature of these negotiations reflect it. But the bottom line is that broadcasters are incentivized to have our content watched by as many people as possible in whatever ways viewers find most convenient to receive our channels including through cable and satellite providers.

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Attachment—Additional Questions for the Record

Mr. Gordon H. Smith, President and CEO, National Association of Broadcasters

The Honorable Bill Flores (R-TX)

1. **The video marketplace is decidedly different from when the 1992 Cable Act and the first Satellite Home Viewer Act of 1988 were signed into law. As we look to the landscape of the video marketplace of tomorrow, Congress needs to evaluate the appropriate government role in the marketplace to ensure consumers benefit from innovation.**

- a. **In today's marketplace, how much is the government involved in the retransmission consent process?**

Response: There is rightfully limited government involvement in the marketplace negotiations for retransmission consent of broadcast programming. One exception is the authority of the statutory requirement that broadcasters and MVPDs negotiate for carriage in good faith. These provisions, set to expire at the end of this year as part of STELAR, apply only to the carriage of broadcast programming (not the other hundreds of non-broadcast stations on your cable dial) and are scarcely used. In the nearly 20 years since Congress passed these provisions, the FCC has decided only seven good faith complaints – and has found a violation of the requirement on only one occasion. Though the same cannot be said of pay-TV, no broadcaster has ever been found to be in violation of these rules.

While well intended, the expiring good faith requirements have provided no quantifiable benefit to either broadcasters or pay-TV providers. This is in large part because both parties have every incentive to reach a deal and serve consumers without a regulatory requirement. However, the ability of either party to appeal to the government for regulatory intervention has created the potential unintended consequence of diverting time and attention from resolving the negotiation in a timely fashion in favor of posturing.

- b. **What should the government's role be in the video marketplace to encourage future innovation?**

Response: The government can encourage future innovation by deregulating the video marketplace in the form of allowing STELAR to expire. This three decades old law was originally created to prop up a nascent satellite video industry (via government mandated terms and conditions for access to broadcast programming) and enable it to better compete with cable monopolies. Today, AT&T/ DirecTV and DISH are two of the largest pay-TV providers in the nation, yet continue to abuse the distant signal license in STELAR and deny many subscribers access to local broadcast programming on their systems. Allowing STELAR to expire would remove the below-market subsidy given to these satellite companies and require them to

Mr. Gordon H. Smith
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negotiate for carriage of broadcast programming in the marketplace, just as their cable and OTT competitors do.

c. Is what we have today a pure free market?

Response: Although retransmission consent rights themselves are negotiated freely between two private parties in marketplace, compulsory copyright licenses and exclusivity protections do exist to ensure that viewers are incentivized to receive their local broadcast television stations rather than an out-of-market substitute. The exception to this locally-focused regime is STELAR's distant signal license which distorts the free market while also discouraging local carriage.

i. If not, what policy changes would help it achieve free market status?

Response: Congress should allow the expiring provisions of STELAR to sunset as scheduled at the end of this year. Elimination of the distant signal satellite license and good faith regulations would move the system closer to free market status.

Mr. John Bergmayer
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Subcommittee on Communications and Technology
Hearing on
“STELAR Review: Protecting Consumers in an Evolving Media Marketplace”
June 4, 2019

Mr. John Bergmayer, Senior Counsel, Public Knowledge

The Honorable Billy Long (R-MO)

- 1. Ms. Boyers stated that she is paying 47% more for broadcaster content than her competitors – like DirecTV. Can you each explain to me why that is happening?**

Response: It boils down to bargaining imbalances. Companies with must-have content can demand ever-higher prices from all distributors, but they have the most leverage against smaller ones, who often end up paying much more than larger distributors on a per-customer basis. This is because, quite simply, large content providers can afford to walk away from smaller distributors, but the distributors cannot survive without the content. While large content providers also have leverage over large distributors, they also need to reach those distributor’s customers, which can balance things out. A similar dynamic is at play with respect to small programmers and large distributors, where the distributor has much more leverage than the programmer and thus can pay very low prices. An unfortunate effect of this dynamic is a drive toward consolidation in both content and distribution, which might help with some negotiations but typically does not work out well for the consumer.

Mr. John Bergmayer
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Attachment—Additional Questions for the Record

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The Honorable Bill Flores (R-TX)

- 1. The video marketplace is decidedly different from when the 1992 Cable Act and the first Satellite Home Viewer Act of 1988 were signed into law. As we look to the landscape of the video marketplace of tomorrow, Congress needs to evaluate the appropriate government role in the marketplace to ensure consumers benefit from innovation.**

- a. In today's marketplace, how much is the government involved in the retransmission consent process?**

Response: The government sets the rules of the road—retransmission consent itself is an artificial construct designed to serve certain public policy goals. It is appropriate for the government to reconsider its rules from time to time in light of those goals, and either change the rules or monitor the marketplace more closely to ensure that negotiations are occurring in good faith and without abuse.

- b. What should the government's role be in the video marketplace to encourage future innovation?**

Response: The government should ensure that competition and innovation are possible. New competitors should not be locked out of content, and should be able to access programming on fair terms. This model successfully promoted the DBS industry. New video distributors also should be able to reach customers, which means that they should not be blocked from competing from ISPs through policies such as unfair zero-rating or data caps that benefit an ISP's own video services, or those of its partners, over those available in the marketplace at large.

- c. Is what we have today a pure free market?**

Response: Market transactions occur in the framework set by Congress, and over rights that were granted to serve public interest goals. It is difficult to know what a "free market" in this space would look like absent government rules concerning intellectual property, antitrust, signal rights (i.e. retransmission consent), spectrum licenses, public interest and public safety obligations, contract enforcement, access to public rights-of-way, and any number of other baseline assumptions. Within this framework, Congress should ensure that markets are working effectively to promote public interest ends and, if not, revisit the rules under which the market operates.

- i. If not, what policy changes would help it achieve free market status?**

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Response: Markets can be designed well or designed poorly. The current video marketplace is designed poorly, and in many respects is simply too complex. Congress should consider eliminating the duplicative and unnecessary concept of retransmission consent altogether, and phase out the copyright compulsory licenses, allowing rights holders to negotiate for carriage with distributors in a more straightforward fashion that mirrors other content industries. While there can be no guarantee that any legal changes will necessarily lead to more competition or better consumer outcomes a change like this would be an important first step that “clears the decks” in a number of respects. Short of changes of this kind Congress should at least make STELAR permanent, or consider tying its expiration to the expiration of other video marketplace rules. Our written testimony has a variety of technical suggestions of rule changes that could improve the functioning of the marketplace in the short term.