REAUTHORIZATION OF THE SATELLITE TELEVISION EXTENSION AND LOCALISM ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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CONTENTS

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WEDNESDAY, MARCH 12, 2014

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

The subcommittee met, pursuant to call, at 10:39 a.m., in room 2123 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee] presiding.

Members present: Representatives Walden, Latta, Terry, Blackburn, Scalise, Lance, Guthrie, Gardner, Pompeo, Kinzinger, Long, Ellmers, Barton, Upton (ex officio), Eshoo, Doyle, Matsui, Braley, Welch, Lujan, Pallone, DeGette, Matheson, Butterfield, and Waxman (ex officio).

Staff present: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Matt Bravo, Professional Staff Member; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Grace Koh, Counsel, Telecom; Alexa Marrero, Deputy Staff Director; David Redl, Chief Counsel, Telecom; Charlotte Savercool, Legislative Coordinator; Tom Wilbur, Digital Media Advisor; Phil Barnett, Staff Director; Shawn Chang, Chief Counsel for Communications and Technology Subcommittee; Margaret McCarthy, Professional Staff Member; Kara van Stralen, Policy Analyst; and Patrick Donovan, FCC Detailee.

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

Mr. WALDEN. I will call to order the subcommittee on Communications and Technology, and welcome you all here this morning for our hearing. Today the subcommittee on Communications and Technology will consider draft legislation to reauthorize the Satellite Television Extension and Localism Act. That is the law that governs the provision of direct broadcast satellite service to millions of Americans.

Today's hearing follows several previous hearings on the subject, multiple hearings on the communications marketplace, a bipartisan roundtable debate on the issue of the integration ban, and an incredible number of meetings with stakeholders by members of this committee on both sides of the aisle. It has taken an enormous amount of work, but this draft has earned the support of cable, broadcast, and satellite competitors. I especially want to thank Vice-Chairman Bob Latta, and my Democratic colleague from

Texas, Gene Green, on their thoughtful bipartisan work on the integration ban repeal. It is important to note that this provision still requires cable companies to support Cards. It just gets an outdated, expensive, energy consuming provision of little or no value off the FCC's books. We believe in spurring innovation, not holding it back.

The draft legislation responds to the concerns of members of both sides of the aisle regarding the joint service agreements and sweeps week provisions that seem to put a thumb on the scale. I have listened to those concerns, and propose eliminating sweeps week prohibition, which keeps cable operators, and not other pay TV providers, from dropping broadcast signals during sweeps weeks, the weeks when Nielsen runs its rating analyses. Further, the draft contains a provision that would limit joint retransmission consent negotiation by two or more independent broadcasters in a shared service agreement, unless the pay TV provider agrees to negotiate jointly with those broadcasters. I have no complaints with provisions that support fair negotiating tactics for all parties to an agreement.

I am, however, very concerned by the FCC's recently announced plans to dump joint sales agreements into their local media ownership calculations, especially without first completing their statutorily required quadrennial review of the marketplace. Up in Fairbanks, Alaska, all four TV stations are operated from the same group of Quonset huts to share costs, and create efficiencies that allow the stations to provide a variety of news and entertainment to this city of a whopping 32,000 people. Absent a JSA, it is unlikely the community could support four television stations. I would also draw the committee's attention to a recent "Wall Street Journal" op-ed that includes the community served by the nation's only African-American owned full power broadcast station, and I will introduce that into the record at the end, and by local broadcasters, like Bob Singer, the general manager of several local television stations in my district. There is a positive role for consumers in joint service agreements.

Unfortunately, Chairman Wheeler is putting the JSA cart before the media ownership horse. The Federal Communications Commission is required by statute to review the entire set of media ownership laws every 4 years. It has consistently failed to follow the law. If a licensee of the FCC failed to follow the law, it would lose its license, or be subject to penalty. Chairman Wheeler is forging ahead to regulate JSAs, while leaving the commission's legal obligations for another day. This is why we have included in this draft a clear directive from the Congress to the FCC that it should do its job, and finish the quadrennial media ownership review before it tinkers with JSAs. But in the meantime, we bring fairness to the marketplace when it comes to the misuse of JSAs for retransmission consent negotiations. Our draft finds the right balance.

Our work here is set against the backdrop of our larger effort to update the Communications Act and bring our communications laws in line with the innovation and dynamism of the communications marketplace. We hope that many government, industry, and consumer stakeholders in this complex discussion will engage in the comprehensive discussion of the Comm Act update. This will be a time consuming process, however, and as my colleague Mr. Shimkus explained to "Politico" last week, the Telecomm rewrite is not for sissies.

The video marketplace is not a monolithic structure by any stretch of the imagination. Today's witnesses represent diverse parts of that ecosystem. The broadcasting, cable, direct broadcast, satellite, and retail set-top box industries are all well represented on our panel, as well as public interest community. I thank our witnesses being here today, I appreciate your counsel, and I yield the remaining time to the vice-chair of the committee, Mr. Latta.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

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The video marketplace is not a monolithic structure by any stretch of the imagination. Today's witnesses represent diverse parts of that ecosystem. The broadcasting, cable, direct broadcast satellite, and retail set-top box industries are all well represented by our panel, as well as the public interest community. I thank our witnesses for being here today and for their counsel.

Mr. LATTA. Well, I thank the Chairman, and I also appreciate you holding today's hearing, and I also thank our panel of witnesses for testifying. Thank you very much for being here. Today we take another opportunity to examine the video marketplace in the context of the Satellite Television Extension and Localism Act reauthorization. We can all agree that there has been a tremendous amount of innovation and technological advancement in the video marketplace since the Satellite Home Viewer Act, which was enacted in 1988.

Since the law was last reauthorized in 2010, we have been witness to an even greater innovation in modern developments. We have seen a proliferation of new entrants into the video market, which has spurred greater investment, job creation, increased competition among video distributors and content providers, and has offered consumers with greater choice and enhanced experiences that are closely aligned with their personal preferences and interests. It is incumbent upon this Congress, and this subcommittee in particular, to create and support policies that allow the video marketplace to continue to flourish and innovate, and empower market participants to the flexibility, and efficiently meet the ever evolving demands of consumers. To fully realize the promise and potential of this industry, we must be willing to remove outdated government regulations that are no longer justifiable, and will limit and stifle future progress and advancement if left in place.

I want to thank Chairman Upton and Walden for acknowledging the work we have done with Congressman Gene Green on H.R. 3196, including the proposal to eliminate the integration ban on set-top boxes as a provision in the first draft of the STELA reauthorization. This represents a positive forward step in updating policies to reflect today's competitive video marketplace, in eliminating a regulatory burden to innovation in consumer choice. I look forward to continuing to work with you, Mr. Chairman, Chairman Upton, Congressman Green, and other members of the subcommittee on moving this draft reauthorization package forward. I look forward to the testimony today, and I yield back.

Mr. WALDEN. I thank the gentleman. I seek unanimous consent to enter into the record statements from National Association of Broadcasters, the National Cable and Telecommunications Associations, and a joint statement from Dish Network and DirecTV in support of the discussion draft, as well as letters of support for repeal of the cable card integration ban from the National Black Chamber of Commerce, the Latinos in Information Sciences and Technology Association, citing the cost of the integration ban to low income families. Without objection, so ordered.

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

Mr. WALDEN. I now recognize my friend and colleague from California, Ms. Eshoo.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman, and welcome to all of the witnesses. We are pleased that you are here, and we know that we are going to learn a great deal from you.

Over the past year and a half, the message, I think, from industry and consumer advocates to our subcommittee has been pretty clear. Our video laws are outdated, and in some cases, they are even being abused. In 2010 there were just 12 broadcast television blackouts nationwide. In 2013, last year, there were 127. Similarly, re-trans fees are expected to more than double from $3.3 billion to $7 billion by 2018. I think that it is pretty clear who the losers are in all of this. It is consumers who will continue to see rising cable bills, and in most cases will not be compensated when their programming is blacked out.

Some say that this is simply a manufactured crisis, but I would ask that the following questions be considered. Why is a law that was intended to promote localism being used to block national cable programming or content that is available free on the Internet? Why does the law prohibit cable operators from taking down a broadcast signal during a Nielsen's sweeps week, yet there is no such prohibition for a broadcaster that pulls their signal during a re-trans dispute? And why, when a consumer simply wants HBO, does the law require that they also pay for re-trans stations that are available free over the air?

I think that these are some of the critical questions that led me to introduce the Video Choice Act in December, and a chorus of support, I might say strange political bedfellows, came together from constituents, to pay TV providers, to independent programmers, to think tanks, and to consumer groups, to undertake targeted video reforms, and do so as part of the re-authorization of STELA. I think we have to work together in a bipartisan way, just as Representative Scalise and I have done over the past several months.

Unfortunately, several of the provisions in the discussion draft do not embody the bipartisan values that have been the cornerstone of previous reauthorizations. We have to be forward-thinking, both in our approach to legislating, and when we are going to dismantle something, where there is a provision in the draft that does so that has helped to ensure that consumers can buy cable set-top boxes from someone other than their local cable company, we have to have an eye on the future. Before we dismantle, we have to establish a framework for the future. And I think that this is something that we all need to think long and hard about.

I am also concerned by a provision that would effectively bar the FCC from modifying its rules to close a loophole that broadcasters have been exploiting to circumvent the FCC's media ownership rules. I find it contradictory that while the draft bill appropriately recognizes the anti-competitive nature of joint retransmission consent negotiations, it also gives tacit approval for other forms of coordination among broadcasters, so long as it is not done at the expense of the cable and satellite operators. I think we can do better than this.

In closing, Mr. Chairman, you know that I have said before, and I will continue to say, that we work together, not only with me, but with all of my colleagues on this side of the aisle, to eliminate or re-draft the provisions I have highlighted to support consumers, competition, and innovation across the video marketplace. And with that, I would like to ask unanimous consent to place into the record two letters: one from CCIA, and the other from Free Press, Consumer Action, Public Knowledge, Writers' Guild of America West, Tech Company Alliance, et cetera. It is a lot of good people. So, with that, I don't think I have any time left——

Mr. WALDEN. Yes, you do.

Ms. ESHOO [continuing]. Do I?

Mr. WALDEN. Without objection, it will be entered into the record.

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

Ms. ESHOO. All right. I do have 35 seconds, if there is anyone that would like to use the remainder of my time. Doris? You want to wait for someone else? OK. I will yield back, Mr. Chairman.

Mr. WALDEN. Gentlelady——

Ms. ESHOO. Thank you.

Mr. WALDEN [continuing]. Yields back the balance of her time. I thank the gentlelady for her comments. I now recognize the Chairman of the full committee, the gentleman from Michigan, Mr. Upton.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman. I want to thank all of our witnesses for coming today to discuss this draft of this must pass legislation. More than a million and a half satellite TV subscribers rely on the provisions of STELA that expire at the end of the year, and the draft legislation that is subject of our hearing will ensure that these subscribers continue to receive the services that, in fact, they have come to rely on.

There has been a healthy debate, yes, there has, over what this reauthorization should and should not do, and we welcome continued input as the process moves forward. And we want to work to reauthorize STELA. It is important to remember that this is not the venue for comprehensive reform. As you know, the committee has embarked on a multi-year effort to update the Communications Act, and this process will be driven by a thorough and thoughtful review of all aspects of today's communications marketplace, with a goal of updating our laws to better reflect today's realities, while leaving the flexibility necessary to foster continued innovation and growth. And we hope and expect that you all will be very active participants in that process, as I know that you will want to do so. Thanks to the hard work of this subcommittee, and input from the public and industry stakeholders, Chairman Walden issued a discussion draft that offers practical and narrow reforms to the current video market, while properly leaving comprehensive reform to the #CommActUpdate.

I strongly support this draft, and encourage others to do so as well. In addition to extending the expiring satellite provisions, today's draft also makes several targeted pro-consumer reforms to video laws and regulations. It repeals costly FCC rules that require a cable card in set-top boxes leased by cable companies. It removes a government guarantee of sweeps week protection in retransmission disputes. And it takes action to ensure that the FCC meets its statutory obligation to review and deregulate media ownership rules before attempting to take additional regulatory actions against sharing agreements. The draft also helps to keep negotiations fair between broadcasters and pay TV providers for retransmission consent. So these are, I think, well considered deregulatory reforms, the type of intelligent reforms that the committee and this Congress should think about during the #CommActUpdate.

I yield the balance of my time, 1 minute each to Mr. Scalise, Barton, and Blackburn.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

I want to thank our witnesses for coming today to discuss our draft of this must pass legislation. More than 1.5 million satellite television subscribers rely on the provisions of STELA that expire at the end of this year. The draft legislation that is the subject of our hearing will ensure that those subscribers continue to receive the service they have come to rely on.

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These are well-considered, deregulatory reforms—the type of intelligent reforms that Congress should think about during the #CommActUpdate. We hope you'll join us over the next few years as we dig in to review the state of the law and the state of the communications industry. For now, let's not lose sight of the important goal today of reauthorizing STELA by the end of this year.

Mr. SCALISE. Thank you, Mr. Chairman. This very modest STELA draft we are reviewing today begins to address some of the outdated provisions shackling the video marketplace, but I think there is a lot more work to be tackled in this area before we can say that we got the public policy right, and that we leveled the playing field for our consumers back home.

I know many in this city, on all sides of these issues, are fearful of what a marketplace based predominantly on copyright law would look like. But as long as we have this government-manipulated market, with its compulsory licensing, carriage regulations, and consumer purchase mandates, it is completely reasonable to suggest, as Ranking Member Eshoo would also agree, that these outdated laws be updated over time. This is not a free market at work. It is a government creation. We should never stop championing the belief that consumers will stand to gain the most when we allow our nation's innovators, entrepreneurs, and risk takers to show Washington the way, not the other way around.

I look forward to continuing to embrace this unique opportunity that brings together members from both sides of the aisle, and hopefully both sides of the Capitol, as we collectively work to modernize the decades-old laws and regulations that foreclose on the possibility of freedom for all market participants, and greater consumer choice. I look forward to hearing from our panelists, and I yield back.

Mr. BARTON. Mr. Chairman, there is nothing like renewing old acquaintances for members of this subcommittee than scheduling a legislative hearing. And as I look out in the audience, I see a number of my old friends who have called me, or made an attempt to touch base, and since you scheduled this hearing, we have got two former Congressmen of the subcommittee, Mr. Bass of New Hampshire and Ms. Myrick of North Carolina. We are glad to see them.

I was here, Mr. Chairman, in 1988 when we passed the Satellite Home Viewer Act, and I have been here for all the reauthorizations. I think it is imperative that we reauthorize it again this year, since it expires at the end of December this year. And I think the discussion draft has received a lot of input, excuse me, and I think some of the changes that have resulted from that input are positive, and I look forward to the hearing with that.

Mrs. Blackburn is not here, so I will yield back to the Chairman, unless the Chairman wishes to yield to one of the other members.

Mr. WALDEN. Any other member want to use up the remaining 34 seconds? If not, gentleman yields back the balance of this time. We will now turn to the ranking Democrat on the committee, the gentleman from California, Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman. We are here today to discuss draft satellite television legislation released by Chairman Walden last week. I am not prepared to support the bill in its current version, but I am prepared to work with Chairman Walden, Chairman Upton, Ranking Member Eshoo to get a bill we could all stand behind. Last night the House unanimously passed the FCC Process Reform Act. It took work to get that bill in a shape that every member of the House could support. But if we were able to bridge differences in the FCC Process bill that were much bigger than we face today, I am hopeful that, with goodwill on both sides, we can reach the same result on this issue.

My initial preference was for a clean reauthorization of the expiring provisions of the Satellite Television Extension and Localism Act, or STELA. Previous authorizations may not have been clean, but the new provisions that had been added were part and parcel of the purpose of the law, giving satellite subscribers access to local and network broadcast programming. Today we are considering a different kind of bill. It would make changes to the way retransmission consent negotiations may occur by altering the bargaining power between programmers and distributors. It would also hamstring the FCC's ability to address broadcaster coordination that could undermine the diversity of voices, and lead to job losses. And we would repeal set-top box regulations that don't even apply to satellite companies.

Mr. Chairman, I can understand the draft bill prohibiting broadcasters coordination in retransmission consent with limited exemptions, while condoning similar coordination of broadcasters jointly sell ad time, or otherwise coordinate outside the retransmission consent process. That is what this bill would do, and I find the two approaches difficult to reconcile. I believe much of the bill passes the public interest test, but not every provision.

I support FCC's tightening its attribution rules to address joint sales agreements between television stations. I don't understand why the same standard wouldn't apply that we are applying to anti-competitive behavior among broadcasters that results in consumer harm in retransmission consent negotiations to also apply to joint agreements that have a well-documented history of increasing prices, reducing competition, and otherwise undermining the public interest.

The set-top box issue is also one we need to examine closely. Some energy experts believe the cable card requirement is preventing the design of more energy efficient set-top boxes. If that is a real concern, I would like to see it addressed. But at the same time, we need to make sure we are preserving competition and innovation in the market for set-top boxes.

I think that the bill has been handled well, it is a bill we could work with, and I am hopeful that we can reach a full agreement on all the provisions. I want to close by thanking Chairman Walden for his efforts, and for this hearing today. I hope we can work together to develop a truly bipartisan Satellite Reauthorization Bill. And I want to yield at this time to my colleague from California, Ms. Matsui.

Ms. MATSUI. Thank you very much, Ranking Member Waxman, for yielding me time. Mr. Chairman, thank you for holding today's hearing, and I would like to thank the witnesses for being here today.

I am pleased that we are beginning this legislative process to renew satellite television—and license. However, I am surprised that, unlike the past, our legislative starting point is not a bipartisan, narrowly tailored bill. Now that the bill has expanded, I do look forward to hearing more about the merits of the provisions relating to retransmission consent and set-top boxes. We know that technology is disrupting the video marketplace, with new and innovative ways to watch TV and stream movies and videos. As a result, we are seeing new players entering the marketplace, and we are seeing trends toward more consolidation.

However, one thing is certain. Americans are tired of being caught in the middle of retransmission disputes. That is why, since the STELA proposal has expanded, I believe we should look at this bill through a filter, and that is, will it put the consumers in a better place? It is my hope that we can definitively answer that question. Moving forward, it is my hope that this subcommittee can work in a bipartisan manner to improve the bill and produce a bipartisan product. And I yield back the balance of my time.

Mr. WALDEN. Gentlelady yields back the balance of her time. All time how now expired, and we will get on about hearing from our witnesses, and I want to thank them all for being here. And we are going to start with Mr. Mike Palkovic, did I say that right? Palkovic?

Mr. PALKOVIC. Yes, you did.

Mr. WALDEN. Executive Vice President, Services and Operations of DirecTV. Mr. Palkovic, thank you for being here today. We look forward to your testimony.

STATEMENTS OF MIKE PALKOVIC, EXECUTIVE VICE PRESIDENT, SERVICES AND OPERATIONS, DIRECTV; MARCI BURDICK, SENIOR VICE PRESIDENT OF BROADCASTING, SCHURZ COMMUNICATIONS; MICHAEL POWELL, PRESIDENT AND CEO, NATIONAL CABLE AND TELECOMMUNICATIONS ASSOCIATION; MATT ZINN, SENIOR VICE PRESIDENT, GENERAL COUNSEL AND CHIEF PRIVACY OFFICER, TIVO; AND MATT WOOD, POLICY DIRECTOR, FREE PRESS.

STATEMENT OF MIKE PALKOVIC

Mr. PALKOVIC. Thank you. Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. My name is Mike Palkovic, and I am the Executive Vice President of Operations at DirecTV. Thank you for inviting me back to testify on STELA reauthorization. STELA reauthorization is critical to millions of your constituents who depend upon DirecTV. Without congressional action, key provisions expire this December. The committee and its staff have put many hours to produce the first discussion draft of legislation that would reauthorize these provisions, so my first and most important message is simple, thank you. DirecTV and our subscribers appreciate your hard work, and your willingness to address STELA reauthorization. You may have heard from some companies telling you what you should or should not have done with the discussion draft. Some may even be telling you to do nothing, or to simply change the expiration date in a "clean" reauthorization, something Congress has never done before. This, however, is the Satellite Home Viewer Act. I am here on behalf of the nation's leading satellite provider to say that we agree with the committee's approach.

Does this discussion draft contain everything DirecTV thinks it should? Of course not, but it does two critically important things. First, it preserves service for millions of distant signal subscribers. With all of the other issues before this committee, it is sometimes easy to forget the key distant signal provisions are due to expire this December. Your constituents, however, have not forgotten about these provisions. More than a million and a half subscribers, many in the most rural areas of the country, receive at least one distant network signal from DirecTV or Dish. Were Congress to fail to reauthorize STELA, these subscribers would lose service that most Americans take for granted.

Second, the draft bill addresses one particularly egregious abuse of the FCC's rules that is raising prices for consumers. Reasonable people can differ on the broader policy questions that divide broadcasters and pay TV providers. For example, broadcasters think our subscribers don't pay them enough for their programming, and we wish broadcasters would pay us for delivering their signals to millions of our subscribers who would never be able to get them over the air. Whatever one's views, however, most people agree that you shouldn't be able to evade FCC rules. Yet this is exactly what broadcasters are doing today, and this is exactly what the discussion draft would stop.

Broadcasters increasingly negotiation retransmission consent jointly on behalf of two, three, or even four network affiliates in the same market. This leads to higher prices, as much as 161 percent higher, according to one estimate, and it leads to greater harm when blackouts occur. This is why the FCC appears poised to follow the advice of the Department of Justice, by restricting joint retransmission consent negotiations for non-commonly owned stations in the same market. The committee's discussion draft takes the same approach. We think is sensible and long overdue reform.

So, on behalf of DirecTV's more than 20 million subscribers, I would like to thank the committee for its diligence and hard work on STELA reauthorization, particularly Chairman Walden, Congressman Scalise, and Congresswoman Eshoo. We look forward to continuing to work with Republican and Democratic members of this committee as we move forward. I would be happy to answer any questions the committee might have. Thank you.

[The prepared statement of Mr. Palkovic follows:]

DIRECTV

Testimony of

Mike Palkovic
Executive Vice President, Services & Operations

On

"Reauthorization of the Satellite Television Extension and Localism Act"

Before the

House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

March 12, 2014

Written Testimony of
Mike Palkovic
Executive Vice President, Services & Operations
DIRECTV
Before the House Energy & Commerce
Subcommittee on Communications and Technology
March 12, 2014

Good Morning, Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. My name is Mike Palkovic and I am the Executive Vice President of Services and Operations of DIRECTV. Thank you for inviting me back to testify on reauthorization of the Satellite Television Extension and Localism Act of 2010 (or "STELA").

STELA reauthorization is critical to millions of your constituents who depend on DIRECTV for their television service. Without Congressional action, key provisions expire this December. The Energy and Commerce Committee and its staff have put in many hours to produce the first discussion draft of legislation that would reauthorize these provisions.

So my first and most important message is simple: Thank you. DIRECTV and its subscribers appreciate your hard work and your willingness to address STELA reauthorization.

I suspect you have already heard from dozens of media companies telling you what you should and should not have done with the discussion draft. Some may even be telling you to do nothing, or to simply change the date of expiration in a "clean" reauthorization—something Congress has never done before.[1]

This, however, is the *satellite* home viewer act. I am here on behalf of the nation's leading satellite provider to say that we agree with the Committee's approach.

Does the discussion draft contain everything DIRECTV thinks it should? Of course not. But it does two critically important things. It preserves service for millions of distant signal subscribers. And it addresses one particularly egregious abuse of the FCC's rules that is raising prices for consumers.

I'd like to talk about each of these topics in turn.

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1 Attached as Exhibit A to this testimony please find a brief overview the Satellite Home Viewer Act of 1988 and its progeny, listing the principal changes contained in each reauthorization.

I. The Discussion Draft Preserves Distant Signal Service

With all of the other issues before this Committee, it's sometimes easy to forget that key distant signal provisions are due to expire this December. Your constituents, however, have *not* forgotten about these provisions.

More than 1.5 million subscribers, many in the most rural areas of the country, receive at least one distant network signal from DIRECTV or DISH. I think we can all agree that these subscribers have as much right to receive network television as those in big cities. But only STELA permits them to receive that programming. In many cases, only STELA permits them to receive network television at all.

Were Congress to fail to reauthorize STELA, these subscribers would all lose service that most Americans take for granted.

I want to be absolutely clear on this point. Some have suggested from time to time that private licensing could take the place of STELA. That may be true for *local* programming. It may even be true under Congressman Scalise's approach, which would deregulate all programming entirely.

But nobody seriously contends that, if Congress were to eliminate STELA's *distant signal* provisions only, private licensing would replace them. Even NAB, which led the calls for eliminating distant signals, doesn't believe this.[2]

In other words, if Congress does not renew these provisions, distant network signals will disappear. So DIRECTV appreciates this Committee's work to ensure continuity of service to millions.

II. The Discussion Draft Addresses One Particularly Egregious Abuse of the FCC's Rules

This Committee has heard for months from all sides, including DIRECTV, regarding how the law should treat the relationship between broadcasters and pay-TV providers. As I said in my last testimony, we see two general approaches Congress could take in the long term. One is to jettison broadcast regulation altogether and create a truly free market in which broadcast programming is no longer treated differently than every other type of programming. The other is to make the laws smarter to reflect the 21st century video marketplace.

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[2] United States Copyright Office "Section 302" Report at 71-72 (2011), http://www.copyright.gov/docs/section302/ ("NAB concluded that given the overwhelming economic importance to the station of appealing to viewers in its own market as opposed to cable or satellite subscribers in some distant market, there is little likelihood that stations would adjust their existing licensing models for broadcast programming specifically to accommodate the programming preferences of a distant cable operator or satellite carrier. NAB also stated that there is no incentive for a broadcaster to undertake the additional cost and administrative burden of negotiating for additional rights in order to be able to sublicense all of its station's programs to cable operators or satellite carriers serving subscribers in distant markets.").

The discussion draft takes one step toward the second approach. It addresses one particular abuse of the FCC's broadcast ownership rules. It does so, moreover, *without* attempting to address the full range of policy questions surrounding retransmission consent. That, of course, will be a task for this Committee when it considers updating the Communications Act. DIRECTV looks forward to being an active participant in those efforts.

The draft bill's step-by-step approach has its advantages, because reasonable people can differ on the policy questions that divide broadcasters and pay-TV providers. For example, broadcasters think our subscribers don't pay them enough for their programming. We wish broadcasters would pay *us* for delivering their signals to millions upon millions of our subscribers who would never be able to get them over the air.

(Many of these subscribers would have been able to receive distant signals because of STELA's changes to the FCC's "rooftop antenna" standard for distant signal eligibility. Unfortunately, the FCC failed to implement these changes, leaving some subscribers without access to network programming altogether.[3])

Whatever one's views on these broader issues, however, most people agree that you shouldn't be able to evade FCC rules through legal tricks. Yet this is exactly what broadcasters are doing today—and this is exactly what the discussion draft would stop.

The FCC's media ownership rules generally prohibit ownership of more than one "big four" network affiliate in a market.[4] They also generally prohibit excessive concentration of broadcast ownership across markets.[5]

Broadcasters, however, increasingly evade these rules through the joint negotiation of retransmission consent. The American Cable Association identified 48 instances in which broadcasters used a single negotiator to conduct retransmission consent negotiations for non-commonly owned stations in a single market. DIRECTV's own internal records show that *in nearly half* of the markets in which we carry local signals, we must negotiate with a party representing multiple affiliates of the "Big Four" networks. This doesn't even count the increasing practice of networks insisting on negotiating retransmission consent on behalf of their allegedly independent affiliates.

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3 *Measurement Standards for Digital Television Signals Pursuant to the Satellite Home Viewer Extension & Reauthorization Act of 2004*, 25 FCC Rcd. 16471 (2010); *see also, e.g.*, Letter from Michael Nilsson to Marlene Dortch, MB Docket No. 10-148 (filed Sept. 22, 2010) (specifying changes to prior standard). We have attached a redline of the 2010 changes to the antenna standard as Appendix B to these comments.

4 47 C.F.R. § 73.3555(b).

5 47 C.F.R. § 73.3555(e).

DIRECTV carries more broadcasters than just about anyone. I assure you that these arrangements harm viewers. They lead to higher prices (as much as 161 percent higher, according to ACA). They by definition cause greater harm when blackouts occur.

This is why the FCC appears poised to prohibit joint negotiations between two or more stations in a single market, unless such stations are commonly owned.[6] The discussion draft likewise restricts the joint negotiation of retransmission consent for non-commonly owned stations in a single market.

We support this approach. If implemented, broadcasters will once and for all no longer be allowed to evade the FCC's rules. This is sensible and long-overdue reform.

* * *

This Committee may hear about what it failed to do in the discussion draft. But on behalf of DIRECTV's more than 20 million subscribers, I would like to thank the Committee for what it *did* do. While no legislation is perfect, the discussion draft preserves service for millions and addresses an egregious abuse of the Commission's rules. DIRECTV supports the Committee's work, and hopes to assist it and the entire Congress so that the renewal of STELA will improve the video experience for all consumers.

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6 Tom Wheeler, "Protecting Television Consumers By Protecting Competition," (posted Mar. 6, 2014), http://www.fcc.gov/blog/protecting-television-consumers-protecting-competition ("Wheeler Statement"); *Ex Parte* Submission of the United States Department of Justice, MB Docket Nos. 98-182, 07-294, and 04-256 (filed Feb. 20, 2014) (concluding that "failure to treat JSAs and similar arrangements as attributable interests could provide opportunities for parties to circumvent any competitive purposes of the multiple ownership limits").

Appendix A

A Brief History of the Satellite Home Viewer Act

1. **Satellite Home Viewer Act of 1988, Pub. L. No. 100-667 ("SHVA")**

- Created distant signal statutory license. (17 U.S.C. § 119)
- Limited distant signal service to "unserved" households—defined as households that, among other things, had not subscribed to a cable system within the previous 90 days.

2. **Satellite Home Viewer Act of 1994, Pub. L. No. 103-369 ("SHVA")**

- Created "challenge" procedures for networks to dispute eligibility of households, and measurement procedures for satellite carriers to demonstrate eligibility.
- Created "loser pays" formulation for signal measurement.

3. **Satellite Home Viewer Improvement Act of 1999, Pub L. No. 106-113, App. I. ("SHVIA")**

- Created new statutory license for local into local transmissions. (17 U.S.C. § 122)
- Created Communications Act "carry-one, carry-all" rules for satellite. (47 U.S.C. § 338)
- Subjected satellite local carriage to retransmission consent. (47 U.S.C. § 325)
- Created Communications Act distant signal rules. (47 U.S.C. § 339)
- Changed definition of "unserved household" in distant signal license to remove reference to cable subscription.
- Created waiver process by which local stations could permit distant signals to be delivered to houses otherwise ineligible.
- Created rules governing distant signal eligibility based on predictive model and measurement, replacing prior "challenge" procedure.
- Created "C-band" and "Grade B doughnut" exemptions permitting distant signal service to a limited number of longtime subscribers.
- Created RV and Truck eligibility.

- Permitted carriage of national PBS feed.

- Conditioned copyright license on compliance with FCC carriage rules.

- Subjected satellite carriage of distant signals to sports blackout rules.

- Subjected satellite carriage of nationally distributed superstations to syndicated exclusivity and network nonduplication rules.

- Created extensive complaint procedure for allegations of provisions of distant signals to ineligible subscribers.

4. Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447 ("SHVERA")

- Permitted satellite carriage of "significantly viewed" signals.

- Created "no-distant-where-local" formulation, including separate waiver provisions.

- Created license for limited local retransmission of low-power TV signals.

- Permitted carriage of non-network stations in commercial establishments.

- Created privacy rights for satellite subscribers corresponding to those that had applied to cable subscribers.

- Prohibited "two-dish" arrangement under which DISH required subscribers to obtain second satellite dish to see lesser-viewed local stations.

- Created special rules requiring carriage of all local signals in Alaska, and prohibiting out-of-state distant signals in Alaska.

- Provided for expedited DOJ consideration of voluntary agreements to provide local carriage in additional markets.

- Permitted carriage of distant and local digital signals, and created separate "digital white area."

- Created special exemptions for carriage of in-state signals in certain markets.

- Created "testing waivers" under which satellite could not deliver distant digital signals to stations experiencing problems completing the digital transition.

- Permitted satellite carriers to rely entirely on predictive modeling and to refuse to engage in on-site testing, other than at the subscriber's request and expense.

5. Satellite Television Extension and Localism Act of 2010, Pub L. No. 111-175 ("STELA")

- Reinstated distant signal license to DISH Network (which had lost the right to provide such service under the so-called "death penalty" provisions) upon verification of DISH's service of all 210 local markets.
- Eliminated "Grade B Bleed" by defining "unserved household" restriction based on off-air reception of *in market stations only.*
- Prohibited distant signal service to those who can receive local *multicast* signals off-air (with complex implementation phase-in).
- Harmonized "no-distant-where-local" rules to combine prior analog- and digital-specific rules.
- Prohibited discrimination in carriage of high definition public television stations.
- Required FCC to develop predictive model for digital signals.
- Increased statutory damages for distant signal violations tenfold.
- Permitted carriage of low-power stations throughout local market.
- Permitted distant signal carriage of networks of public stations.
- Modified cable statutory license to resolve several technical problems that had arisen over the years, including carriage of multicast streams.
- Directed Copyright Office to initiate filing fees.
- Directed Copyright Office to permit audits of statements of account.
- Directed FCC, Copyright office, GAO to issue six reports collectively.

Appendix B

Excerpt from Letter Regarding FCC Antenna Standard

Appendix
Redline of Key Provisions

17 U.S.C. § 119(d)

(10) Unserved household. The term "unserved household", with respect to a particular television network, means a household that--

(A) cannot receive, through the use of a**n**~~conventional, stationary, outdoor rooftop receiving~~ antenna, an over-the-air signal ~~of a~~**the** primary **stream, or on or after the qualifying date, the multicast stream, originating in that household's local market and** ~~network station~~ affiliated with that network of

(i) **if the signal originates as an analog signal,** Grade B intensity as defined by the Federal Communications Commission under section 73.683(a) of title 47**,**~~of the~~ Code of Federal Regulations, as in effect on January 1, 1999; **or**

(ii) **if the signal originates as a digital signal, intensity defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission (section 73.622(e) of title 47, Code of Federal Regulations), as such regulations may be amended from time to time;**

47 U.S.C. § 339(c)(3)

(A) Predictive model.—Within 180 days after the date of the enactment of the Satellite **Television Extension and Localism Act of 2010**~~Home Viewer Improvement Act of 1999 [enacted Nov. 29, 1999]~~, the Commission shall ~~take all actions necessary, including any reconsideration, to~~ develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations**, through the use of an antenna,** to receive signals in accordance with the signal intensity standard in **section 73.622(e)(1) of title 47, Code of Federal Regulations, or a successor regulation, including to account for the continuing operation of translator stations and low power television stations**~~effect under section 119(d)(10)(A) of title 17, United States Code~~. In prescribing such model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the ~~Federal Communications~~ Commission in **CS** Docket No. 98-201**, as previously revised with respect to analog signals, and as recommended by the Commission with respect to digital signals in its Report to Congress in ET Docket No. 05-182,**

<u>FCC 05-199 (released December 9, 2005).</u> **~~and ensure that such model takes into account terrain, building structures, and other land cover variations.~~** The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available.

<u>(B) On-location testing.—The Commission shall issue an order completing its rule-making proceeding in ET Docket No. 06-94 within 180 days after the date of enactment of the Satellite Television Extension and Localism Act of 2010. In conducting such rulemaking, the Commission shall seek ways to minimize consumer burdens associated with on-location testing.</u>

Mr. WALDEN. Mr. Palkovic, thank you very much for your testimony. We will now go to Marci Burdick, Senior Vice President of Broadcasting for Schurz Communications, Incorporated. Ms. Burdick, it is good to have you back before the subcommittee. We look forward to your testimony. You just need to turn that microphone on.

Ms. BURDICK. You would think the broadcaster could get the microphone. Thank you.

Mr. WALDEN. That is all right.

STATEMENT OF MARCI BURDICK

Ms. BURDICK. Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. I am Marci Burdick, Senior Vice President at Schurz Communications. I supervise radio, cable, and television stations in small and medium markets. I am testifying on behalf of the NAB, where I am the Television Board Chair, and pleased to be here this morning with the two Michaels and the two Matts.

The STELA legislation that the committee is considering is, at its core, a satellite bill. Passed in 1988, this law was supposed to be a temporary fix to help satellite carriers better compete with cable by giving them permission to provide distant broadcast channels. Twenty-six years later, satellite is providing local broadcast channels in nearly every market, and is a thriving competitive alternative to cable. So while NAB questions the need for the bill at all, we can support the draft produced by Chairman Upton and Chairman Walden.

Our primary interest in the legislation was to prevent the picking of marketplace winners and losers, which is why we have asked for a clean bill. We are happy to see that this STELA draft steers clear of these kind of provisions. While cable and satellite companies sought to use STELA to gain leverage over broadcasters in retransmission consent negotiations, we continue to believe that free market negotiations are the most appropriate place to establish price. As to any other broader changes to broadcasting rules, NAB firmly believes that those should be debated as part of the comprehensive Communications Act update recently launched by Chairman Upton and Walden.

As you know, broadcasters may only operate with a license granted to us by the FCC, and we are by far its most regulated industry. It can be hard to flip a switch without getting permission from your regulator. And while our competitors are often large national companies with no ownership restrictions, we may not own, in most cases, more than one TV station in most markets. While our competitors may show provocative, cutting edge content at any time of the day, broadcasters live by decency rules dictating what we may air. Broadcasters are saddled with innumerable regulations that are by far more onerous than our cable and satellite competitors.

For all of these regulations, there are some benefits that broadcasters receive because we do operate in the public interest. But if Congress opts to remove the benefits of being a broadcaster, then it should also remove the burdens. Deregulation should not be limited to one player in an industry. If your goal is regulatory parity between the various video platforms seated at this table, a comprehensive examination in the Communications Act update is the only way to achieve it.

I would like to spend the remainder of my time addressing joint sales agreements, known as JSAs. These are agreements among broadcasters in a market for the joint sale of advertising. While often mischaracterized, these agreements benefit the public, particularly in small and medium markets, where Schurz operates. They result in additional local news, improved public service, and enhanced transmission facilities. For example, our JSA in Wichita, Kansas supports the only Spanish local newscast in the State of Kansas. In Springfield, Missouri our JSA helped take a struggling station to one that is winning national award for local news coverage.

We strongly oppose the extraordinary regulatory path the FCC is taking to make JSAs attributable for the purpose of the broadcast ownership rules. The FCC's proposed rule will require broadcasters to unwind existing agreements, something unprecedented, and amazingly disruptive. This is yet another example of how broadcasters are forced to play by one set of rules, while the rest of the video industry plays by another.

And the real issue here is competition for local advertising dollars. Television stations fiercely compete not just with each other, but with cable, Internet, and mobile. Although the FCC and DOJ have said that broadcasters dominate local advertising, you can see in this chart that we have put on the wall that we are seeing, and expecting, big gains from our competitors. The chart proves that today's local advertising market is by far more than just local TV, but, unfortunately, we are being regulated like it is 1960. And, importantly, for all of those entities taking revenue out of a community, local broadcasters are the only ones putting it back in through local news and community service.

Strangely, the FCC apparently doesn't have the same sales concerns as it relates to cable. The same JSA-like agreements, called interconnects, are routine between cable, satellite, and telcos for the joint sale of advertising. What you have are cable companies selling local advertising for their direct competitors, yet they will continue unregulated.

In conclusion, we strongly support the bill's language that prevents the FCC from enforcing rules without first collecting empirical data studying the real world impact of JSAs. In reality, these agreements better serve the public interest. To ignore the market pressures facing broadcasting would doom us to the fate of newspapers, and I hope this committee will take an honest fact-based look at the importance of these agreements to localism. We appreciate the hard work of this committee, and I look forward to your questions. Thank you.

[The prepared statement of Ms. Burdick follows:]

NATIONAL ASSOCIATION OF BROADCASTERS

Hearing on "Reauthorization of the Satellite Television Extension and Localism Act"

United States House of Representatives
Committee on Energy & Commerce
Subcommittee on
Communications and Technology

March 12, 2014

Statement of Marci Burdick
Schurz Communications, Inc.
On behalf of the National Association of Broadcasters

Good morning, Chairman Walden, Ranking Member Eshoo and members of this Subcommittee. I'm Marci Burdick. I am Senior Vice President of the Electronic Division for Schurz Communications. I supervise 13 radio stations and three cable companies. We own eight television stations and have operating partnerships with two others. I am testifying on behalf of the NAB, where I am the Television Board Chair.

The STELA legislation that the Committee is considering is, at its core, a satellite bill. Passed in 1988, this law was supposed to be a *temporary* fix to help satellite carriers better compete with cable by giving them permission to provide distant broadcast channels. 26 years later, satellite is providing local broadcast channels in nearly every DMA and are a thriving competitive alternative to cable. So while NAB questions the need for the bill, the draft produced by Chairman Upton and Chairman Walden is a product NAB can support.

Our primary interest in this legislation was to prevent the picking of marketplace winners and losers which is why we have asked for a clean bill. We are happy to see that this STELA draft steers clear of these kind of provisions. While cable and satellite companies sought to use STELA to gain leverage over broadcasters in retransmission consent negotiations, we continue to believe that free market negotiations are the most appropriate place to establish prices. As to any other broader changes to broadcasting, NAB firmly believes those should be debated as part of the comprehensive Communications Act update, recently launched by Chairmen Upton and Walden. Let me tell you why.

As you know, broadcasters may only operate with a license granted to us by the FCC and are, by far, its most regulated industry. It can be hard to flip a switch without getting permission from our regulator. Let me give you some examples: while our competitors are often large, national companies with no nationwide ownership caps, we may not own more than one TV station in a market, and not more than 39% nationally. While our competitors may show provocative, cutting edge content at any time of the day, broadcasters live by decency rules that dictate what we may air. Broadcasters are saddled with innumerable regulations that are far more onerous than our cable and satellite competitors: public file requirements, children's programming rules, political advertising rules, and a slew of required reports and administrative filings.

For all of these onerous regulations, there are some benefits that broadcasters receive because we operate in the public interest. But if Congress opts to remove the benefits of being a broadcaster, then it should only be coupled with the removal of the burdens. Deregulation should not be limited to one player in an industry.

This is why we strongly urge this Committee to take full advantage of the Communications Act update. If your goal is regulatory parity between the various video platforms seated at this table, a comprehensive examination is the only way to achieve it. We welcome that debate.

I'd like to spend the remainder of my time addressing Joint Sales Agreements, known as JSAs. These are agreements among broadcasters in a market for the joint sale of advertising. While often misunderstood, in reality, these agreements benefit the public, particularly in small and medium-sized markets, through improved news-gathering capabilities, increased local news and enhanced transmission facilities.

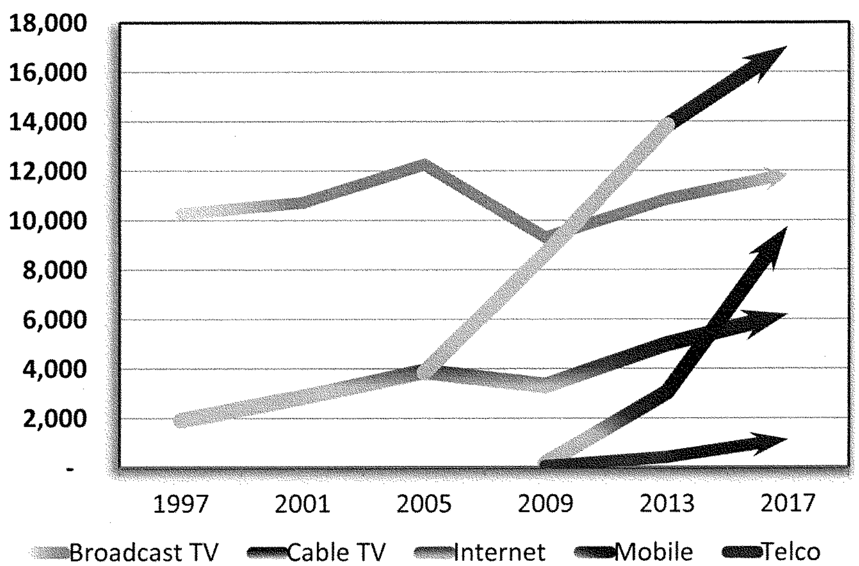
For instance, our JSA in Wichita provides the only Spanish language station in the state of Kansas. In Springfield, Missouri, our JSA helped take a struggling station to one that is winning awards for local news coverage.

What we do strongly oppose is the extraordinarily regulatory path the FCC is taking to make television JSAs attributable for purposes of the broadcast ownership rules. The FCC's proposed rule will require broadcasters to unwind existing agreements, something unprecedented and amazingly disruptive to our business. Moreover, this rule is yet another example of how broadcasters are forced to play by one set of rules, while the rest of the video industry plays by another, which ultimately undermines marketplace competition.

The issue here is local competition for advertising dollars. Television stations fiercely compete not just with each other, but with cable, satellite and the Internet.

Although the FCC and DOJ have said broadcasters dominate local advertising, you can see in this SNL Kagan chart that we are seeing and expecting *big* gains by cable, Internet and mobile in their share of local advertising revenue.

Local Advertising Revenue by Sector
($ millions)
Source: SNL Kagan



This chart proves that today's local advertising market is far more than just local TV, but unfortunately we're being regulated like its 1960. And, importantly, for all the entities taking revenue OUT of a community, local broadcasters are the only ones putting it back through news and public service.

Strangely, the FCC apparently doesn't have the same concerns as it relates to cable. The same JSA-like agreements – called "interconnects" – are routine between cable, satellite and telecos for the joint sale of advertising. What you have are cable companies selling local advertising for its direct competitors, like DIRECTV, DISH and FiOS, yet they will continue unregulated.

In conclusion, we strongly support the bill's language that prevents the FCC from enforcing rules without first collecting empirical data studying the *real world* impact of JSAs. In reality, these agreements better serve the public interest. To ignore the market pressures facing broadcasting is dooming us to the fate of newspapers, and I hope this Committee will take an honest, fact-based look at the importance of these agreements to localism.

We appreciate the work of this Committee and I am happy to answer any questions.

Mr. WALDEN. Ms. Burdick, pardon me, thank you for your presentation. We will now go to Mr. Michael Powell, President and CEO of the National Cable and Telecommunications Association. Mr. Powell, it is good to have you back before the committee. We look——

Mr. POWELL. Thank you——

Mr. WALDEN [continuing]. Forward to your testimony.

STATEMENT OF MICHAEL POWELL

Mr. POWELL. Thank you, Chairman Walden, and thank you, Ranking Member Eshoo, and other members of the subcommittee. It is always a distinct pleasure to have the opportunity to come and testify before you today. I am pleased, on behalf of the National Cable and Telecom Association, representing America's cable companies, to support reauthorization of STELA, including the very important requirement for companies to negotiate broadcast carriage agreements in good faith. We are also specifically pleased to support the carefully selected video reforms that have been included in the discussion draft. All these reforms can be appreciated as both, one, directly benefiting consumers, and, two, restoring a modicum of competitive balance among companies. Both of these themes should always be touchstones of communications policy.

Let me turn first to the question of the integration ban. Eliminating the integration ban, an effort led by Congressmen Latta and Green on a bipartisan basis, reverses an ill-conceived FCC policy, while clearly preserving the statute, and its commendable objective of promoting consumer choice, innovation in competition in set-top boxes, something long championed by Congresswoman Eshoo. To implement the law, the FCC had to overcome a simple obstacle, giving third party boxes access to encrypted signals. Industry worked together to create a separate security module, the cable card, so boxes could be sold unlocked at retail and work in any cable market by simply acquiring the card. Cable card is now a fully realized solution.

The FCC, however, stepped beyond the statute and imposed something called the integration ban. The ban forced cable companies to pry security functions out of their leased boxes, and rely instead on cable cards, despite there being no technical need to do so. The theory of the rules was behavioral, not technical, the belief that cable companies would now have an incentive to create, deploy, and support cable cards for third parties. The FCC also, in a bit of industrial engineering, hoped to push consumers toward third party boxes by eliminating a low cost choice from the cable company. This ill-fated policy should be reversed simply because its costs now clearly outweigh its speculative benefits.

For one, the integration ban eliminated a low cost consumer choice, costing consumers nearly $1 billion in unnecessary expenses. According to FCC data, the integration ban adds over $55 of additional costs per box, while adding no additional functionality. Secondly, the ban is quite wasteful of energy, imposing on consumers the cost of hundreds of millions of unnecessary kilowatt hours per year. Third, the policy unfairly tilts the competitive playing field. As was mentioned by Chairman Waxman, the integration ban apply only to cable companies, despite them representing only about 50 percent of the market today, down from over 90 percent when the provision was passed. DirecTV and Dish, able competitors, are the second and third largest providers, and are free to innovate and develop lower cost alternatives, since they are not subject to the rules. The same is true of telcos, like AT&T. This incongruous application of the law has no defensible rationale, and it is impossible to believe a policy applied to barely half of a national market will have much impact on a national market for set-top boxes.

And whatever the meritorious intentions of the integration ban were, the benefits are speculative at best. Today 44 million cable customers have chosen leased cable boxes that use cable cards. In stark contrast, only 600,000 cable cards have been requested for third party devices. The explosion of unimagined video devices and content sources from the likes of Roku, Apple TV, Xbox, Chromecast, and a wrath of Apple iOS and Android devices, is exciting, and likely explains lessening interest in cable set-top box alternative, and points squarely to a market developing solutions to meet consumer preferences.

Finally, a word about joint negotiations from broadcasters. We support the effort to rein in abuses of local broadcast stations that have intensified the use of so-called sidecar agreements to jointly negotiate carriage of their signals. Whatever the purported efficiencies of these arrangements are, and there may be some, they have no place invalidating the anti-competitive practice of competitors acting collectively to negotiate prices. As the Department of Justice has found, these practices harm consumers in the form of higher cable prices.

Thank you, Mr. Chairman, and I look forward to your questions.

[The prepared statement of Mr. Powell follows:]

TESTIMONY OF MICHAEL K. POWELL

PRESIDENT AND CEO

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

on

REAUTHORIZATION OF THE SATELLITE TELEVISION EXTENSION AND LOCALISM ACT

before the

Subcommittee on Communications and Technology

Committee on Energy and Commerce

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

March 12, 2014

Good morning, Mr. Chairman and Members of the Subcommittee. My name is Michael Powell and I am the President and Chief Executive Officer of the National Cable & Telecommunications Association. Thank you for inviting me today to offer our thoughts on "Reauthorization of the Satellite Television Extension and Localism Act."

Mr. Chairman, we support the Committee's effort to extend expiring provisions in the Communications Act and to make other reforms that update antiquated video regulations. As the draft bill reflects, a primary concern for Congress is the anticipated expiration of the current Communications Act provision that requires broadcasters and MVPDs to negotiate in good faith when conducting retransmission consent negotiations. By extending the "good faith" requirement for another five years, the Committee draft charts a responsible course and ensures that this bilateral legal obligation remains part of the retransmission consent regime.

In addition to extending the "good faith" requirement, the draft bill also proposes a few additional reform ideas that we believe are appropriate, and in fact, are overdue given the competitive realities of today's video marketplace. Among these provisions, NCTA particularly commends the Committee for its inclusion of two narrow, yet very important, reforms that will prune away outdated legal requirements, directly benefitting consumers and promoting a more level playing field among competing providers of multichannel video services.

One such provision would repeal the FCC's "integration ban" rule, which today forces cable operators – and cable operators alone – to include a separate video decryption component (*e.g.*, a CableCARD) in their leased set-top boxes, adding extra cost, consuming extra energy, and providing no added benefit to cable customers with leased set-top boxes.

Another such provision would prohibit broadcasters that are not commonly owned from insisting on joint negotiations with cable operators and other MVPDs for the price, terms and conditions of their retransmission consent. Through a variety of agreements to share services, such as Joint Sales Agreements ("JSAs") or Shared Services Agreements ("SSAs"), certain broadcasters have been increasing their leverage in the negotiations by banding together and acting as a single entity in the negotiations rather than acting appropriately as competitors. The Department of Justice and the FCC have raised significant concerns about these anticompetitive practices, and it is appropriate for Congress to address this issue as a complement to actions being considered by the FCC.

For these reasons, NCTA is pleased to support the reform approach outlined by the Committee. Its reforms will promote consumer expectations of increased choice and enhance competitive technological neutrality.

Congress Should Extend The Mutual Obligation To Negotiate Retransmission Consent In Good Faith.

NCTA supports the proposed five-year extension of the legal obligation to negotiate retransmission consent in good faith. Broadcast programming remains an important part of the cable service offering, and ensuring that negotiations for the carriage of broadcast programming on cable are conducted honestly, in a good faith attempt to reach a mutually beneficial carriage agreement, is essential. Continuing a duty of good faith works to constrain excessive demands for unreasonable terms and conditions and, when faithfully applied, limits the risk of blackouts or other actions that harm consumers. Accordingly, we support the extension of this requirement for 5 years, which helps to preserve consumer expectations and is consistent with the terms sought in prior efforts to extend expiring provisions.

The FCC's Integration Ban Imposes Needless Costs On Cable Customers And Is Not Needed To Promote Competition In Retail Video Device Availability.

NCTA commends the inclusion of legislative language, also present in bipartisan legislation (H.R. 3196) introduced by Congressmen Latta (R-OH) and Green (D-TX), that would repeal a technology mandate adopted by the FCC in 1998 that eliminated a low cost choice for consumers, wastes energy, slows innovation, violates principles of competitive neutrality, and is unnecessary to fulfill the stated statutory objective of promoting the competitive availability of retail navigation devices such as set-top boxes.

Congress intended as part of the 1996 Act to create the conditions for a *retail* market for set-top boxes and other navigation devices. The FCC was charged with making it possible for manufacturers to develop and sell devices that could be used, for example, with any cable provider anywhere in the country. Importantly, Congress did not impose any technical requirements on existing set-top boxes *leased* by cable operators to their own subscribers.

In carrying out Congress's 1996 directive to promote a new market where consumers could choose to buy set-top boxes and other navigation devices at retail rather than lease them from their provider, the FCC did two things. First, it required the cable industry – and only the cable industry – to develop a separate security device, now known as the CableCARD, for use in set-top boxes and other navigation devices that could be sold at retail and used on any cable system. If a customer moved, he could return the CableCARD to his former cable provider, and get a new CableCARD from his new cable provider. This "separate security" requirement fulfilled Congress's mandate of facilitating the creation of a *retail* market for set-top boxes and other navigation devices.

The FCC, however, took a second and unnecessary step, adopting the so-called "integration ban." It required cable operators to completely redesign their *own* leased set-top boxes to use CableCARDs, thereby prohibiting the integration of security (encryption) and navigation (channel-changing) functions in set-top boxes. This required operators to strip out security functions that had long been integrated in leased boxes. The idea behind this "integration ban" was that if operators had to rely on CableCARDs in their own boxes, they would have strong incentives to support CableCARDs in retail devices as well. Moreover, by eliminating a low cost leasing option, the FCC was attempting – through a little industrial engineering – to steer consumers to choose new third party options.

With the benefit of hindsight, we can now clearly see that while CableCARDs are a "fully realized solution" (to quote TiVo), the integration ban has not stimulated a consumer appetite for third party devices. Today, more than 45 million CableCARD-enabled set-top devices have been deployed by cable operators to their customers, but a mere 600,000 CableCARDs have been requested by cable customers for use in third-party devices purchased at retail. Very few televisions contain CableCARD slots. This is not for lack of cable industry support of CableCARDs, but because manufacturers have found that consumers are not interested in paying the higher price for TVs with built in set-top technology.

Consumers that freely elect leased boxes, however, are paying a penalty in unnecessary expense and energy costs. By one estimate cited by the FCC, CableCARD technology adds approximately $56 to the cost of an operator's box. We estimate that the costs attributable to the integration ban exceed $1 billion for the cable industry. Additionally, based on EPA figures, cable subscribers also collectively foot the bill for roughly 500 million kilowatt hours consumed by CableCARDs each year. By all measures, the costs of this misguided rule clearly outweigh its benefits.

Further evidence of the integration ban's incoherence is that these financial costs and energy burdens are borne only by cable subscribers and not video customers of satellite providers, like DirecTV and DISH, or of telco providers, like AT&T. Despite these providers being vigorous competitors, they have no CableCARD obligations, creating an un-level playing field. At the time the rule was adopted, cable had a very large market share, and there may have been an arguable case for a rule exclusively applied to cable. Today, however, that share has shrunk from roughly 85 percent to just over 50 percent. DirecTV and DISH are the second and third largest providers of multichannel video programming, and AT&T is the fifth largest MVPD. The integration ban hampers cable's ability to compete fairly in this dynamic marketplace, and there is no substantive justification for this disparate regulatory treatment. Furthermore, the goal of advancing a national market for third party devices is illusory when the ban is applied only to half of the market.

It is important to note that even if the FCC-created integration ban is repealed, cable operators will still be required to provide CableCARDs or other separate security for devices purchased at retail. Third party set-top box makers, like TiVo, will still be able to build boxes that use CableCARDs, and cable operators will be required to support those devices. Beyond a cable operator's continued legal obligation, it will have a strong incentive to continue to support CableCARDs, given that 45 million CableCARD-enabled set-top boxes are in customer homes and that at least seven domestic cable operators are using TiVo as a primary leased set-top box. Repeal of the integration ban simply gives cable customers more choices and lower costs.

Repeal of the integration ban also will not interfere with opportunities for innovation in retail set-top boxes. CableCARD technology is limited to decrypting video programming so that customers can view the channels to which they have subscribed. It does not prevent manufacturers from pursuing new retail products and services now or in the future. The innovative TiVo Roamio DVR is today much more advanced than prior TiVo boxes, yet the CableCARD is the same.

The fact is that the navigation device goals of the 1996 Act are being achieved. As the FCC noted in its recent Video Competition Report, "the CPE marketplace is more dynamic than it has ever been, offering consumers an unprecedented and growing list of choices to access video content." Cable operators have been key actors in facilitating these marketplace developments by making their services available on a broad and growing array of CE devices. Numerous cable operators are delivering cable services to iOS and Android tablets and smartphones, PCs and Macs, and game consoles and other video devices, and that trend is accelerating to meet consumer demand for these options. These devices that consumers want do not rely on CableCARDs. Today's competitive market is obviously providing plenty of incentives for cable operators to make their customers happy without needing cable to adopt the same technology solutions for their own set-top boxes.

Retail competition in navigation devices is a worthy goal, but it is now clear that this goal is best supported by embracing the innovations already occurring in today's retail marketplace and not by clinging to an outdated and costly FCC rule. The repeal of the integration ban will not change the path for innovation in the retail set-top box but will provide more opportunities for innovation in operator-supplied boxes, which will no longer have to be engineered around the CableCARD. We appreciate the inclusion of this important provision in the draft reauthorization bill.

Prohibiting Broadcast Stations From Coordinating Their Retransmission Consent Negotiations Unless Co-Owned Would Create A More Stable Carriage Environment For Consumers.

It is important that any reform seek to promote balance in retransmission consent negotiations. Congress originally created the retransmission consent provisions in an attempt to achieve a competitive balance between the cable and broadcast industries and believed that the retransmission consent negotiation process would provide incentives for both parties to come to mutually beneficial arrangements. Given government's substantial involvement in what would otherwise be a free market negotiation, government has an even greater responsibility to police anticompetitive attempts to gain undue market power.

In recent years, certain broadcaster practices have disrupted that competitive balance. One of the more troubling practices is that broadcasters are using a variety of sharing arrangements, such as JSAs, to coordinate the prices, terms, and conditions they agree to with MVPDs for their retransmission consent.

If multiple broadcast stations in a local market are not co-owned, then they should not be allowed to *act* as if they are co-owned in retransmission consent negotiations through a sharing arrangement. The Department of Justice has voiced concerns about broadcast stations that are not commonly owned jointly coordinating their retransmission consent negotiations. DOJ argues that broadcasters must exercise retransmission consent rights individually, because joint negotiations strengthen the broadcasters' negotiating positions against MVPDs, allowing the stations to obtain better deals, and because joint negotiations eliminate competitive rivalry between the stations. As a result, these joint negotiations result in higher prices and less choice for consumers. FCC Chairman Wheeler recently recognized this point, noting that "joint negotiations have been documented to increase prices to cable systems," which "ultimately are borne by the consumer in the form of higher cable or Direct Broadcast Satellite fees." The Chairman is proposing, justifiably, to eliminate these practices.

NCTA appreciates the inclusion of a provision that would prohibit broadcasters that are not commonly owned from engaging in joint retransmission consent negotiations. While we continue to believe that non-commonly owned broadcasters should not be allowed to coordinate their retransmission consent negotiations in any way – whether through directly or indirectly exchanging or sharing information regarding the terms of existing retransmission consent agreements, the potential terms of future retransmission consent agreements, or the status of on-going retransmission consent negotiations – prohibiting joint negotiations is an important step towards restoring competitive balance in retransmission consent negotiations.

In sum, NCTA is pleased to support the reforms suggested in the draft bill. We appreciate your continued efforts to support a vibrant and innovative video marketplace, and look forward to working further with the Subcommittee on these important issues.

Thank you again for the opportunity to appear today.

Mr. WALDEN. Mr. Powell, we appreciate your testimony, and we will now go to Mr. Matt Zinn, Senior Vice President, General Counsel, and Chief Privacy Officer for TiVo. Mr. Zinn, it is good to have you before the subcommittee. We look forward to your comments.

STATEMENT OF MATT ZINN

Mr. ZINN. Chairman Walden, Ranking Member Eshoo, members of the subcommittee, my name is Matthew Zinn. I am the Senior Vice President for TiVo. TiVo developed the first commercially available digital video recorder, and we have over four million subscribers worldwide, including a million retail subscribers in the United States. I appreciate the invitation to testify before you today.

Ordinarily TiVo would not be giving its opinion on legislation——

Mr. WALDEN. Mr. Zinn, I wonder if you could pull your microphone up just a little closer?

Mr. ZINN. Is this better?

Mr. WALDEN. Much. Thank you.

Mr. ZINN. Ordinarily TiVo would not be giving its opinion on legislation to reauthorize compulsory licenses governing the satellite industry. Our business has little to do with STELA. I am part of this panel only because of a completely unrelated provision that was attached to the STELA reauthorization legislation, pushed by a cable lobbying group to eliminate choice in how consumers watch cable programming. TiVo stands for consumers' choice. It is what we do. I am not here to criticize cable, but certain interests within the cable industry, like this guy, are trying to undermine competition and choice. The provision would appeal the pro-competitive requirement that operators use the same security standard in their boxes as they make available for retail.

That is what this is about, the same security standard. Common reliance on the same security standard is a principle the FCC has repeatedly found is a necessary component for a retail market for set-top boxes to emerge. Seeking its repeal is an aberration of cable's generally pro-competitive policy approach. Cable originally provided competition to broadcast networks. Cable has provided competition to telephone networks, and to data networks, and cable did not oppose the original STELA legislation that enabled satellite competition to cable. This provision is also an aberration in terms of how all comparable industries are treated. Consumers should be able to use whatever device they choose to access video programming, just like they can use whatever computer, telephone, cell phone they want to use to utilize Internet or wireless networks. Video is no different.

The Energy and Commerce Committee has been the catalyst for this competition no matter which party has been in control. In 1996 this committee had the wisdom to include, in the landmark Telecommunications Act, a bipartisan provision to unlock devices through which cable subscribers can get their channels. The concept was simple, consumers should have the ability to purchase a set-top box at retail, and not have to rely on renting a box from their cable provider. This provision was intended to do for the video device market what the car phone decision did 45 years ago for the telephone industry, and what Congress is doing right now for consumers with wireless devices. Allowing consumer choice to be undermined stands in opposition to what this committee has stood for, purely because a lobbying group has asked for a provision to be attached for legislation.

I am not here to defend the status quo, far from it. We share the cable industry's desire to move on to a new security standard, and we want to work with the industry to find the next generation answer. But passing legislation eliminating cable operators' incentive to support retail boxes without putting a replacement solution in place is the most twisted approach, given the heritage of the cable industry, and the heritage of this committee, in creating choice.

My fellow witness, who is representing the industry here today, called TiVo God's machine because of the choice and control it gave the consumer. It is ironic that he is now leading the charge to kill this type of consumer choice, simply because he is wearing a different hat. TiVo is in no position to advise the committee on the length of the satellite compulsory license, or on retransmission consent. Rather, I am here to say today that a provision that will undermine the retail market for set-top boxes and deprive consumers of choice has no place in a bill originally enacted to give consumers choice in video providers. The committee should be focused on fostering competition, rather than undermining competition and choice.

This committee has always stood for competition and choice, and for fostering free market solutions where those can suffice. This committee can play a strong role on this important pro-competition and consumer choice issue by supporting a process that puts in place a more efficient market solution worked out between the industries.

There are already companies who have indicated they have a desire to work with us to do just that, but the 629 amendment will kill that process by taking away the incentive for the industry to work out that next generation solution. Such an amendment stands the very heritage of this committee on its head because of the lobbying efforts of a contingent of the cable industry, an industry that has also traditionally stood for competition and consumer choice, an industry that TiVo is helping lead the way to the next generation of television, and an industry now led by a man who, when he was the FCC chairman, made very clear how important TiVo was to the future of the video marketplace.

I respectfully urge you to support innovation and consumer choice, and remove the amendment to Section 629 from the STELA reauthorization bill. Thank you very much.

[The prepared statement of Mr. Zinn follows:]

Testimony of Matthew Zinn

Senior Vice President, General Counsel, Secretary, and Chief Privacy Officer

TiVo Inc.

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

Hearing On: "Reauthorization of the Satellite Television Extension and Localism Act"

Washington, DC March 5 2014

Good morning Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. Thank you for the opportunity to participate in today's hearing. My name is Matthew Zinn and I am the Senior Vice President, General Counsel, Secretary, and Chief Privacy Officer for TiVo Inc. TiVo developed the first commercially available DVR and is the leading provider of competitive retail STBs with over 4 million subscribers worldwide, including approximately 1 million US retail subscribers.

I appreciate the invitation to testify before you today. Ordinarily TiVo would not be giving its opinion on legislation to authorize the regulatory structure and compulsory licenses governing the satellite industry. Our business has little to do with STELA. I am part of this panel only because of a completely unrelated provision that was slipped in to the STELA reauthorization legislation pushed by a cable lobbying group to eliminate choice in how consumers watch cable programming.

I am not here to criticize cable but certain interests within the cable industry are trying to undermine competition and choice. The provision slipped into STELA would repeal the pro-competitive requirement that operators use the same security standard in their boxes as they make available for retail. Common reliance on the same security standard is a principle that the Federal Communications Commission has repeatedly found is a necessary component for a retail market for set-top boxes to emerge. Seeking its repeal is at odds with cable's generally pro-competitive policy approach. Cable originally provided competition to broadcast networks, cable then provided competition to data and telephone networks, and cable did not oppose the original STELA legislation that enabled satellite competition to cable.

This provision is also an aberration in terms of how all comparable industries are treated. Consumers should be able to use whatever device they choose to access video programming just like they can use whatever computer, telephone or cell phone they want to utilize the Internet or wireless networks.

In 1996 this Committee had the wisdom to include in the landmark Telecommunications Act a provision to unlock the devices through which cable subscribers get their channels. The concept was simple. Consumers should have the ability to purchase a navigation device or set top box at retail and not have to rely on renting a box from their cable provider. This provision was intended to do for the multichannel video device market what the Carterfone decision 45 years ago did for the telephone industry and what the Congress is currently doing for consumers with wireless devices. Consumers should be able to use whatever device they choose to access multichannel video programming just like they can use whatever computer, telephone or cell phone they want to utilize the Internet or wireless networks.

To implement this section, Section 629 of the 1996 Act, the FCC urged cable operators to reach agreement with the consumer electronics industry. Cable operators came forward with a standard CableCARD interface for national access by competitive entrant devices but did not promise to rely on this technology in their own devices. The FCC accepted this offer *provided* that cable operators (1) make CableCARDs available by July 1, 2000, and (2) rely on the CableCARD interface in their own newly fielded devices by January 1, 2005. The FCC determined that only by requiring "common reliance" by retail devices and operator-leased devices on the same security technology would retail devices receive the support necessary to attain the goals of Section 629.

The first CableCARD-reliant products – televisions with CableCARD slots – came to market in 2003 – 2004 but in the absence of common reliance received poor or nonexistent support from cable operators as documented in FCC and court decisions.[1] That lack of support finally led the FCC to implement common reliance on the same security technology (also known as the "integration ban") as of July 1, 2007. By this time, CableCARD televisions were disappearing from the market due to lack of cable operator support. But the emergence of High Definition Television and the impending digital transition encouraged TiVo and others to begin selling HD CableCARD DVRs.

Because retail CableCARD devices were still being disadvantaged by cable operators,[2] the FCC in 2010 adopted rules to strengthen its CableCARD regulations to deal directly with certain cable operators' evasion of CableCARD requirements, by providing for consumer self-installation of CableCARDs, access to switched digital programming, and ending economic discrimination against competitive products.[3] While CableCARD success has been hobbled

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[1] *See, e.g., Charter Communications v. FCC,* 440 F.3d 31, 40-44 & n.10 (D.C. Cir. 2006); *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Second Report and Order ¶ 39 & n.162 (Mar. 17, 2005)

[2] *See, e.g.,* Federal Communications Commission, Connecting America: The National Broadband Plan ("National Broadband Plan") § 4.2 at 52 ("[C]onsumers who buy retail set-top boxes can encounter more installation and support costs and hassles than those who lease set-top boxes from their cable operators.")

[3] *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Report and Order and Order on Reconsideration*, 25 FCC Rcd 14657 ¶ 5, 27 (2010) .

by a lack of support from certain cable providers and a refusal to allow retail devices to have access to two-way services like Video On Demand, CableCARD is a fully realized solution that provides consumers today with a choice of using a better alternative to an operator-supplied box.

Just as consumers are finally enjoying TiVo Roamio, a competitive retail product that critics are calling "the best TV viewing experience that money can buy,"[4] the National Cable & Telecommunications Association is seeking to freeze out retail competition. The provision inserted into STELA would repeal the requirement that cable operators use the same security standard in their boxes as they make available for retail boxes and allow operators to lock out competitive devices, by – as they did before the "integration ban" became effective – offering superior access to programming and functions to their own devices, and inferior and faulty access to competitive devices. This can include not only renewed discrimination against existing CableCARD-reliant devices, but also unequal implementation of new, IP-based technologies.

The NCTA has been characterizing the repeal of the integration ban as a minor change and claiming that they still have to support retail CableCARD products.[5] The reality is much different. **The NCTA and some of its members are simultaneously taking the position at the FCC that there are no rules requiring them to provide or support CableCARDs to retail devices** (and the FCC should not reinstate any rules unintentionally vacated by the DC Circuit Court of Appeals in a decision, *EchoStar v. FCC,* that did not even address the CableCARD rules.)[6]

This means that if the integration ban is eliminated, and if the FCC agrees with NCTA's position, there will be **no requirement** for cable operators use CableCARDs themselves and **no requirement** to supply CableCARDs to new retail devices. Indeed, **no requirement** for

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[4] http://venturebeat.com/2013/08/20/three-thumbs-up-for-the-new-tivo-roamio-dvrs/

[5] See Letter to The Honorable Greg Walden, Chairman, and The Honorable Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology from James Assey, Executive Vice President, National Cable & Telecommunications Association dated September 18, 2013 at 2 ("repealing the integration ban will not affect the separate requirement for cable operators to make CableCARDs available to cable customers who buy a retail set top box from TiVo or others.")

[6] Opposition of Charter Communications, Inc. To Petition For Reconsideration, CSR-8740-Z, MB Docket No. 12-328 (June 3, 2013) at 3 n.6 ("*EchoStar* does not address downloadable security; what it changes is that CableCARD support is no longer required, and thus cable operators are free to rely solely on other compliant technologies…"); Comments of the National Cable & Telecommunications Association on TiVo Inc.'s Petition for Clarification or Waiver, CS Docket No. 97-80 (February 14, 2014); Comments of the National Cable & Telecommunications Association on TiVo Inc.'s Petition for Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67 (September 16, 2013).

cable operators to even support existing retail CableCARD devices. Cable operators would be free to use new security technology but leave retail devices using legacy technology that they will have little incentive to support, keep current with new technology developments, or control costs. Would anyone reasonably expect any consumer to spend $200, $400, or $600 to purchase a retail set top box for the express purpose of replacing their cable-supplied set-top box if there was no assurance that their cable operator would actually support that retail box?

Until common reliance became the rule and cable operators began relying on CableCARDs themselves, the technology defied Moore's Law – it remained needlessly expensive, while similar technologies became cheaper, faster, and more reliable. Only common reliance has brought the cost down and brought a moderate level of support for retail devices. An end to common reliance would freeze this progress on CableCARDs, allow cable operators to exclude CableCARDs from future product plans, increase costs for consumers using retail devices, and eliminate any incentive for the industry to help develop a successor solution for retail devices.[7]

History has shown time and again that when devices are untethered from the network, innovation is unleashed. We need no better examples of this than the smart phone, the tablet, the laptop, and smart televisions, to name just a few of today's innovations. The one place where innovation has been painfully slow is in the multichannel video sector. Ninety-nine percent of multichannel video provider customers use operator-supplied STB equipment. The Committee should be focused on increasing competition and choice for consumers in this market, not undermining the limited choice they have today.

I am not here to defend the status quo. Far from it. The legislation that Congress enacted in 1996 has not achieved the results Congress intended. But poor implementation and enforcement at the FCC and lack of cooperation from certain cable operators are the culprits. That is old news. We need to look forward and figure out the best way to implement Congress' great idea today. Removing cable operators' incentive to support retail boxes through common reliance on the same security standard without putting a replacement solution in place for retail devices is not the answer and would deprive consumers of the limited choice they have today.

The NCTA has tried to portray cable apps on Xbox or Roku as evidence of the emergence of a retail set top box market. While there has been some experimentation with apps on third party devices in the last couple of years, these experiments only serve to confirm that a successor security standard is essential. None of these apps guarantee that a consumer can purchase a retail device to (a) receive all of the cable programming they are paying for; (b) record that programming for later viewing; (c) incorporate Internet-delivered content; (d) frame the

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[7] Indeed, operator-vendors may cease making new CableCARDs altogether since operators would no longer need to purchase them for their own products. Putting retail boxes at a cost and technology disadvantage certainly will not fulfill the goal of Section 629 of assuring a retail market.

experience in a user interface better and more innovative than the lowest-common denominator approach supplied by their cable provider; and (e) work with more than one provider.[8] CableCARD does this for scheduled programming but it is clear that core MVPD services are moving on to IP technologies instead. Real device competition requires a successor solution in which consumers can have confidence that any retail devices they purchase for the purpose of receiving the cable programming to which they subscribe will be supported and will deliver their cable programming channels.

The removal of the AT&T U-Verse app on X-Box last December confirms that apps provide no such assurance to consumers. AT&T U-verse had advertised its app on X-Box as an inducement for customers to sign-up for its service.[9] Then it abruptly announced that it would terminate support for its app on the Xbox 360 service.[10] The point is, these apps and other solutions come and go, and are not a reliable alternative to what is available on a competitive set-top box where consumers are <u>guaranteed</u> access to all of their cable programming.

Successor technologies that can enable retail choice are available. Congress does not need to legislate. In fact, if the provision repealing the integration ban passes it will actually undermine the choice and innovation that exists today and lock consumers into accessing their cable content <u>only</u> from a box or app supplied by their multichannel video provider. This would be a step backwards for consumer choice in the multichannel video sector.

As a company whose business depends on providing consumers with superior technology, TiVo has been a leader in innovation in video devices. TiVo not only was the first company to introduce the Digital Video Recorder, it was the first to make services like Amazon video rentals available on the television. TiVo also pioneered the ability to transfer cable television shows from a DVR to computers and mobile devices, and the integration of traditional television and over-the-top content into a seamless integrated user interface. TiVo's latest set-top box, called Roamio, has been heralded in the press as "the Holy Grail of Set-Top Boxes" (Wall Street Journal), "a big step up for cable TV subscribers" (TechHive), and "the ultimate cable box."[11] No STB (other than TiVo) is listed in CNET's top 20 most innovative

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[8] Imagine buying an iPhone and then learning if you move to another community it no longer works because your local service provider won't support it. It's the same with these app experiments. They don't work across operators. Why would someone buy a Samsung TV that works today with Charter in Los Angeles knowing that if they move to Atlanta Cox won't support it? Retail choice requires national portability. CableCARD does this today and any successor standard must likewise be nationally portable.

[9] http://www.prnewswire.com/news-releases/att-extends-tv-watching-to-more-devices-with-launch-of-u-verse-tv-on-xbox-360-104699739.html

[10] http://www.multichannel.com/distribution/att-u-verse-tv-drop-support-xbox-360-december-31/146904

[11] http://www.theverge.com/2013/8/20/4638390/tivo-roamio-pro-review

consumer electronic products of the decade.[12] Nobody proclaims their love of their cable box. But they often do for TiVo.

TiVo is in no position to advise the Committee on whether the Satellite compulsory license should be 5 years or permanent or whether retransmission consent provisions should be modified. Rather, I am here today to say that a provision that will undermine the retail market for set top boxes and deprive consumers of choice has no place in a STELA reauthorization bill.

This Committee has always stood for competition and choice, and for fostering free market solutions where those can suffice. This Committee can play a strong role on this important pro-competition and consumer choice issue by supporting a process that puts in place a more efficient market solution worked out between the industries. There are already companies who have indicated they have a desire to work with us to do just that. The amendment to Section 629 in the STELA reauthorization bill will undermine that process by taking away the incentive for the industry to work out that next generation solution. Such an amendment stands the very heritage of this Committee on its head because of the lobbying efforts of a contingent of the cable industry - an industry that has also traditionally stood for competition and consumer choice, and an industry that TiVo is helping lead the way to the next generation of television.

I respectfully urge you to support innovation and consumer choice and remove the amendment to Section 629 from the STELA reauthorization bill.

[12] http://reviews.cnet.com/8301-18438_7-10413195-82.html

Mr. WALDEN. Thank you for your testimony, Mr. Zinn. I assume you are opposed to that amendment. Mr. Wood, Mr. Matt Wood, Policy Director at Free Press, we are delighted to have you back before the committee. Please go ahead with your testimony.

STATEMENT OF MATT WOOD

Mr. WOOD. Thank you, Chairman Walden, and Ranking Member Eshoo, and esteemed members of the subcommittee, and thank you for inviting me to testify today. My name is Matt Wood, and I am the policy director for Free Press, which is a non-partisan organization with more than 700,000 members across the country.

Free Press works for policies that promote competing sources of news and journalism because they are so important for informing our Nation's democracy and powering our economy. Unfortunately, the discussion draft could contribute to the ongoing loss of such competition. My testimony focuses on Section 4 of that draft, which would keep the FCC from addressing undue media concentration, and removing entry barriers for broadcast businesses. I will also talk briefly about Section 6, which would keep the agency from following Congress's direction to increase the choices that people have for set-top boxes and other video devices.

Our media should reflect the full range of experiences and ideas this country has to offer. It is essential to see different viewpoints and hear different voices on the dial, even if they disagree, or rather because they disagree, because robust debate and in-depth coverage keep our republic strong and free. This applies at the national level, and at the local level too, where broadcasting remains a vital source of information about our government and our culture.

Television remains the dominant way that Americans get news. Seven in 10 people in the U.S. watch local TV news, almost double the number that watch cable news, or get news online. But the question is, what kind of news are they getting? The answer for too many Americans is they get two or more broadcasts produced by the same company. Sometimes this outsourced news comes from separate news teams, and more often stations have the same reporters air the same stories, and use the same scripts, on two or more channels. In either case, it is the same owner calling the shots.

Some broadcasters say this type of sharing keeps multiple newscasts on the air. They claim, oddly enough, that they only way to have competing news is for stations to stop competing. Let us be clear, when you hear about synergies that make news more attractive to produce, there are just two ways to save money, cutting overhead, and cutting jobs, so one person's efficiency can be another's unemployment. And that is a hardship that affects us all when people losing their jobs are journalists we depend on to dig into the facts.

Slashing newsroom jobs can happen slowly, as a broadcaster like Sinclair reduced its average number of employees per station by more than 20 percent. That was 55 per station in 2001, down to just 43 today. Or it can be tonight's top story, in late 2010 the anchor at KMSB in Tucson took to the air to report the layoffs that hit him, and 50 of his colleagues. What makes it worse is this runaway consolidation happened right in front of the FCC for years, clearly violating its ownership limits.

Section 4 of the draft refers to the local television multiple ownership rule, which permits direct or indirect control of more than one station per market only under certain circumstances. Yet in more than 100 markets, almost half of the TV markets in the whole country, broadcasters use these outsourcing arrangements to violate the letter and the spirit of this FCC safeguard. They do this with joint sales agreements, or JSAs, shared services agreements, and a litany of others. Combined, these management agreements often transfer control, and the bulk of the affected station's revenues, away from the supposed licensee.

These outsourcing deals often prop up shell companies that take away opportunities for competing businesses. As a rule, the FCC shouldn't stand for them. Last month the Department of Justice told the FCC that such covert consolidation can harm competition. Last week FCC Chairman Tom Wheeler called for a vote to treat JSAs above a certain threshold as what they are, signs of ownership by the broadcasters who really run these stations. That would align the FCC with the Securities and Exchange Commission, which doesn't fall for the fiction that these are independent owners. Investors get the truth, and operating stations must treat their so-called sidecar companies as subsidiaries. Even that nickname, sidecar company, shows how much they are driven by conglomerates by NexStar, Raycom, Sinclair, and Tribune. Section 4 could keep the FCC from moving ahead with its plans to clean up this practice, and prevent unlawful transfers of control.

Just a quick word on Section 6 as well, and I won't point to this guy, but I agree with much of what he said. Section 6 could also reduce choices for viewers, and, as Mr. Zinn explained, the integration ban promotes competition for set-top boxes, which incumbents now charge you up to $20 a month just to rent. Cable customers, of course, should be free to take them up on that offer, but they should have other options too. And they shouldn't believe cable claims that blocking innovation by others is itself a form of innovation.

Thank you very much, and I look forward to your questions.

[The prepared statement of Mr. Wood follows:]

Written Testimony of

Matthew F. Wood
Policy Director
Free Press and the **Free Press Action Fund**

before the

Congress of the United States
House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

regarding

"Reauthorization of the Satellite Television Extension and Localism Act"

March 12, 2014

SUMMARY

Section 4 of the Discussion Draft for Reauthorization of the Satellite Television Extension and Localism Act would prohibit the Federal Communications Commission from preventing serious and ongoing violations of its local television multiple ownership rule.

These violations harm competing businesses and diminish the number of competing viewpoints on our nation's airwaves. They cause job losses, as broadcasters outsource the news and consolidate newsrooms. And they diminish the number of competing local newscasts, because stations subject to outsourcing agreements and *de facto* control by another broadcaster simply do not gather or air their own news.

The FCC moved on Thursday, March 6th, to begin addressing these rule violations, and the harms that media concentration cause. The current wave of consolidation has been fueled by outsourcing agreements that violate the letter and the spirit of the FCC's rules.

No one other than the FCC treats so-called "sidecar" companies of large broadcasters as separate entities from the controlling stations. In fact, the Securities and Exchange Commission treats these shell companies as what they are: subsidiaries and assets of the operating broadcaster. The agency in charge of making sure investors know the truth doesn't allow companies to play these shell games, and neither should the FCC.

Section 3 of the Discussion Draft could in theory prevent some of the harms caused by outsourcing agreements, looking as that section does to joint retransmission consent negotiations. But even if Section 3 could be enforced to prevent some such coordination, it would not address the other harms to competition, localism and viewpoint diversity that such agreements cause.

Section 6 of the Discussion Draft would repeal the FCC's navigation devices "integration ban," thus preventing the FCC's ability to promote a competitive market for such devices.

INTRODUCTION

Chairman Walden, Ranking Member Eshoo, and esteemed members of the Subcommittee, thank you for inviting me to testify on the "Reauthorization of the Satellite Television Extension and Localism Act."

My name is Matt Wood, and I am the Policy Director for Free Press and the Free Press Action Fund. Free Press is a nationwide, nonpartisan and nonprofit organization with more than 700,000 members. We promote public interest media and technology policies, working to strengthen democracy by strengthening the tools we use for free expression and economic activity. We advocate for diverse media ownership and quality journalism. And we focus especially on promoting the greatest number of diverse and antagonistic voices so that the nation's media reflects the range of backgrounds and viewpoints this country has to offer.

Our testimony concentrates on Section 4 of the Discussion Draft. In the main, the bill would extend expiring provisions in the Satellite Television Extension and Localism Act of 2010 ("STELA") relating to the retransmission of signals of television broadcast stations. Section 4, however, would prohibit the Federal Communications Commission ("FCC" or "Commission") from "modify[ing] its rules to treat any shared service agreement, local news service agreement, local marketing agreement, or joint sales agreement…as resulting in the attribution of a cognizable interest in, or ownership, operation, or control of, a television broadcast station for purposes of the Commission's local television multiple ownership rule." This prohibition would stand until the Commission issues a "single order" on its media ownership rules and closes its 2010 Quadrennial Review proceeding. Thus, while the Commission ultimately must fulfill its Quadrennial Review obligations, Section 4 would prevent it from addressing ongoing and serious violations of its local television multiple ownership rule.

That provision, in Section 73.3555(b) of the FCC's rules, permits the direct or indirect operation or control of more than one television station in a market only under carefully delineated circumstances. Stations effectively controlled by the same owner pool their resources rather than competing vigorously for viewers, for news stories, advertising dollars or retransmission rights. They do not provide the same level of competition and number of viewpoints that would flow from keeping licenses in multiple owners' hands, especially when these jointly controlled stations combine newsroom operations. As a result, they do not adequately serve the local communities to which they are licensed.

This is a serious problem because it deprives people of news and information about their government, their communities, and their culture. Local television news "remains a top news source for Americans," watched by 71 percent of adults according to an October 2013 study.[1] As any member of Congress running for election every two years likely can attest, local television stations remain an important source of news about campaigns and an important outlet for candidates' messages.[2] The prospect of consolidated control over two, three or more television stations per market should concern anyone who cares about representative democracy, and about the civic discourse and debate required to keep that democracy alive.

Local television multiple ownership and *de facto* control in violation of the Commission's rules also drastically reduces the number of licenses available to independent and diverse owners. The resulting consolidation reduces the number of licenses available to new entrants and small businesses.

[1] Katerina Eva Matsa, Pew Research Center, "Local TV audiences bounce back," Jan. 28, 2014, http://www.pewresearch.org/fact-tank/2014/01/28/local-tv-audiences-bounce-back/; *see also* Kenneth Olmstead *et al.*, Pew Research Journalism Project, "How Americans Get TV News at Home," Oct. 11, 2013, http://www.journalism.org/2013/10/11/how-americans-get-tv-news-at-home/.

[2] *See* TVB, "Politics 2014: Local Market TV and the next Political Cycle," http://www.tvb.org/media/file/Political_Cycle_2014_pc.pdf (last visited Mar. 9, 2014) ("[T]he highest density of voters is still found in News dayparts.").

This consolidation also decreases the number of independent TV newscasts in local markets, and the number of newsroom jobs too. Free Press research shows that Sinclair – the clear leader when it comes to using and abusing outsourcing and management agreements – reduced the average number of employees at its stations from 55.6 jobs per station in 2001 to 43 jobs by February 2014. Meanwhile, stations effectively controlled by another "operating" station under such agreements only air news produced and programmed by that other station, not by the licensee itself – if they air any news at all. The Securities and Exchange Commission ("SEC") does not recognize the fiction of separate control under these outsourcing agreements, while the Department of Justice has recognized the harm they cause to competition, localism and diversity.

Section 3 of the Discussion Draft appears to recognize one of the many harms that such agreements cause, speaking to joint negotiation of retransmission consent by stations considered to be separately operated under the FCC's rules. But rather than addressing only one of the harms posed by outsourcing agreements and shared control – and directing the FCC to promulgate new behavioral rules in the bargain – Congress should instead allow the Commission to clarify and enforce the structural local television multiple ownership rule it maintains today.

Finally, Section 6 of the Discussion Draft proposes repeal of the "integration ban" adopted by the Commission to implement Congress's directives in Section 629(a) of the Communications Act, 47 U.S.C. § 549(a). Repeal of the integration ban, however, would thwart a competitive market in set-top boxes and other devices capable of receiving multichannel video programming. For this reason, Free Press Action Fund this week joined several other consumer groups, along with the AllVid Tech Company Alliance and Writers Guild of America, West, in urging the Subcommittee to reject the inclusion of any such measure in this STELA reauthorization legislation.

DISCUSSION DRAFT SECTION 4 AND BROADCAST CONCENTRATION

On Thursday, March 6, 2014, the FCC announced it would take a first step to combat the increasing use of unlawful, covert consolidation tactics in the broadcast television industry. FCC Chairman Wheeler said the Commission will vote at its March 2014 meeting on rules requiring attribution of "joint sales agreements" ("JSAs"), under which one TV station sells 15 percent or more of the advertising time for another broadcast television outlet in the same market.[3]

The agency also reportedly will seek comment on a wide variety of management agreements. These could include sharing agreements of the type listed in the Discussion Draft, styled as "shared services agreements" ("SSAs") and local news service ("LNS") agreements, as well as other outsourcing agreements not presently attributable under FCC rules. These various outsourcing agreements, when combined with JSAs and other financial arrangements, typically result in consolidated newsrooms with carbon-copy newscasts airing on multiple stations.

The Commission also proposed to prohibit putatively independent stations from conducting joint negotiations for carriage of their signals on cable and satellite (as Section 3 of the Discussion Draft would, although the FCC's proposal allows more flexibility for stations not affiliated with ABC, CBS, Fox and NBC). This type of joint retransmission consent negotiation is one harm that stems from broadcaster outsourcing agreements, but by no means the only one.

These announcements follow a Department of Justice ("DOJ") letter to the FCC,[4] noting that broadcast television outsourcing agreements harm competition and deserve a far closer degree of scrutiny. The DOJ filing reiterates what the SEC has long recognized: these

[3] Chairman Tom Wheeler, "Protecting Television Consumers By Protecting Competition," FCC Blog, Mar. 6, 2014, http://www.fcc.gov/blog/protecting-television-consumers-protecting-competition ("Chairman Wheeler JSA Blog"); *see also* Phil Verveer, "How The Sidecar Business Model Works," FCC Blog, Mar. 6, 2014, http://www.fcc.gov/blog/how-sidecar-business-model-works.

[4] *Ex Parte* Submission of the United States Department of Justice, MB Docket Nos. 09-182, 07-294, 04-256 (filed Feb. 20, 2014) ("DOJ *Ex Parte*").

outsourcing and sharing agreements on which broadcasters increasingly rely are often nothing more than a legal fiction, used to evade the FCC's rules by transferring *de facto* control of broadcast licenses in violation of the FCC's local television multiple ownership rule. These impermissible outsourcing agreements undermine competition, localism and diversity in local media markets, each of which the Commission is obligated to protect. When power is concentrated in the hands of just a few owners, it is impossible to promote any of these goals. Thus, the Commission was wise to act to prevent further exploitation of loopholes in its rules and Bureau-level decisions that had sanctioned such outsourcing.

The recent wave of consolidation has been fueled not only by traditional mergers and acquisitions, but by outsourcing agreements used to evade the FCC's local broadcast ownership rules. Prior to the Commission's announcement last week, the agency had turned a blind eye to outsourcing agreement abuses – too often rubber-stamping deals without careful attention to whether *de facto* transfers of control had occurred. In turn, the agency's signal to the market that it had no intention of scrutinizing covert consolidation agreements spurred a dramatic uptick in the use of sharing arrangements and runaway consolidation.

A Brief History Of Local TV Consolidation

At more than $11 billion in deal value, 2013 was the fourth-largest year for local TV deals in the past three decades. A total of 286 full-power broadcast television stations were sold, making last year the biggest year for television consolidation since the turn of the century.[5] These 2013 deals mostly involved existing owners expanding their holdings in new markets and in markets where they already owned stations.

[5] Volker Moerbitz, "Broadcast deal market December: A dynamic end to a dynamic year," *SNL Kagan*, Jan. 13, 2014.

That's a contrast with the only three years in the past thirty that saw more money change hands, each of which featured blockbuster deals involving major network owned-and-operated ("O&O") stations in some of the nation's largest markets.[6] Since the passage of the Telecommunications Act of 1996 and the FCC's relaxation of its local ownership rules in 1999, there have been a number of notable deals. News Corp made several acquisitions that brought it up to and beyond the FCC's national ownership cap[7] (which now stands at 39 percent of households).[8] Sinclair grew substantially in the late 1990s from two major deals: its 1996 acquisition of 10 stations from River City Broadcasting, and its 1998 deal for 14 stations from Sullivan Broadcasting. (Each transaction was valued at approximately $1 billion; many of these stations were initially held by Sinclair's shell company, Cunningham Broadcasting, until the FCC relaxed its multiple ownership rules in 1999.) Yet the amount and type of consolidation occurring at present, however, is unlike the other three high-water marks in deal value for the past three decades, because it has not been attributable to the purchase of network O&O stations.

[6] In 1985, Capital Cities merged with ABC in a deal valued at $3.5 billion. *See* N.R. Kleinfield, "ABC Is Being Sold for $3.5 Billion; 1st Network Sale," *New York Times*, March 19, 1985. Of that total, $1.6 billion was attributed to ABC's five owned-and-operated ("O&O") local broadcast TV stations. *See* "TV Station Deals Databook: 2013 Edition," SNL Kagan, July 3, 2013 ("SNL Kagan 2013 Databook"). That same year, News Corp entered the U.S. broadcasting market through its acquisition of seven local TV stations from Metromedia in a deal valued at $2 billion, and General Electric acquired RCA in a deal that included five NBC O&O stations valued at $1.8 billion. *Id.* Similarly, 1995's then-record-breaking year included some transactions in anticipation of Congress's pending deregulation of the broadcast industry. However, nearly 70 percent of the $12.8 billion in deal value that year came from the combination of Disney's purchase of ABC (10 stations valued at $6.4 billion) and Westinghouse's takeover of CBS (7 stations valued at $2.4 billion). *See* Geraldine Fabrikant, "The Media Business: The Merger; Walt Disney to Acquire ABC in $19 Billion Deal to Build a Giant for Entertainment," *New York Times*, Aug. 1, 1995; *see* also Geraldine Fabrikant, "CBS Accepts Bid by Westinghouse; $5.4 Billion Deal," *New York Times*, Aug. 2, 1995; *SNL Kagan 2013 Databook*. Likewise, more than 60 percent of the $14.4 billion in deals in 1999 was due to Viacom's acquisition of CBS (17 stations valued at $8.8 billion). *See* Lawrie Mifflin, "Making a Media Giant: The Overview; Viacom to Buy CBS, Forming Second-Largest Media Company," *New York Times*, Sept. 8, 1999; *see also SNL Kagan 2013 Databook*.

[7] News Corp's 1996 acquisition of New World Radio's 10 TV stations was valued at $2.9 billion, and its 2000 acquisition of Chris Craft Industries' 10 TV stations was valued at $3.7 billion. The latter put News Corp above the national ownership cap (which then stood at 35 percent), requiring the company to divest a number of stations. However, the FCC gave News Corp a temporary reprieve while the courts sorted out challenges to the FCC's 2002 order that had increased the cap to 44 percent. In late 2003, Congress stepped in and set the national cap at 39 percent, just above News Corp's UHF-adjusted national reach at the time.

[8] Consolidated Appropriations Act, 2004, Public Law 108-199, section 629, 118 Stat. 3 (2004).

To better understand the current wave of consolidation in local TV, we need only look to the industry's largest players. After examining the holdings, revenues and population reach of all local commercial TV broadcast station owners (assuming FCC approval of pending transactions, and attributing stations operated under outsourcing agreements to the operating firm), one can identify a "Big 20" group of firms that includes well-known companies like CBS and Comcast-NBCUniversal, as well as mid-market giants like Nexstar and Sinclair.

Furthermore, to understand the impact of this consolidation on viewpoint diversity, it's necessary to understand the relationship between affiliation and local news content. Just 13 companies control 85 percent of the ABC, CBS, FOX and NBC stations in the top 25 markets, which serve half of all Americans. In the top 100 markets (accounting for 86 percent of the population), 18 companies control 77 percent of these "Big Four" network affiliates – which also happen to be the stations that produce most of the English-language local TV news content in the United States. (Just three companies – Comcast/NBCU, Entravision and Univision – produce most of the Spanish-language local TV news aired in the U.S.)

The Big 20: Control of Major Network Affiliates

Media Markets	Percent of All U.S. TV Households	Percent of "Big Four" Affiliates the Big 20 Companies Control	Percent of "Big Six" Affiliates the Big 20 Companies Control	Percent of "Big Eight" Affiliates the Big 20 Companies Control
Top 25 DMAs	50%	85% (by 13 companies)	87% (by 13 companies)	86% (by 15 companies)
Top 50 DMAs	67%	84% (by 15 companies)	85% (by 15 companies)	83% (by 17 companies)
Top 100 DMAs	86%	77% (by 18 companies)	76% (by 18 companies)	74% (by 19 companies)

Sources: SNL Kagan and Free Press research. "DMA" stands for Designated Market Area. Values include all owned stations as well as all stations operated under outsourcing agreements. Ownership data reflect stations owned or operated as of Sept. 25, 2013, as well as all stations in pending deals as of that date.

That's a great deal of control over *all* local television news across the nation, concentrated in the hands of the Big 20 companies. What is more, in consolidated markets, small and single station owners are not able to compete against large conglomerates. Small owners typically lack the financial leverage to negotiate programming, maintain staff, and add assets to their portfolios. As a result, market concentration crowds out existing owners and raises barriers to entry even higher. This helps to explain the appallingly low number of full-power broadcast television licenses held by women and people of color.

The very few diverse owners that remain tend to own single stations or very small station groups. Combined with lack of access to capital and other historical disparities, diverse would-be television licensees have difficulty competing against the Big 20 and other larger conglomerates simply because it is difficult for *any* small station group or single station owner to hold her own against a consolidated giant. The economies of scale that consolidated broadcasters enjoy are exacerbated by the lax enforcement of local and national limits designed to preserve localism and diversity. This is evidenced by what transpired between 2006 and 2012, when 26 full-power stations owned by racial or ethnic minorities were transferred to non-minority owners.[9]

Women and people of color have always held broadcast licenses in embarrassingly low numbers, but those bad numbers are getting even worse in the face of increasing market concentration. At the time of the Commission's last summary report in December 2012, racial and ethnic minorities held just 3 percent of full-power TV licenses.[10] At that time, African-Americans owned 5 full-power broadcast television stations. That number was down from 18 stations just 6 years prior. Today the number of black-owned *and* operated stations is 1 at most.[11]

[9] *See* Comments of Free Press, MB Docket Nos. 09-182, 07-294, at 17 (filed Dec. 21, 2012).
[10] *Id.* at 3.
[11] *See* Joseph Torres, S. Derek Turner, "A Sorry Moment in the History of American Media," Free Press Blog, Dec. 20, 2013.

Much of the recent growth by the Big 20 companies involved expansion in markets where the FCC rules would prohibit them from acquiring new stations. Gannett, Nexstar, Raycom, Sinclair, Tribune and others are using outsourcing agreements to skirt the FCC's rules and establish near-monopolies over local TV news production in markets across the country. Such covert consolidation is a significant tool for several of these Big 20 companies.

The Big 20: Covert Consolidation

Company	Direct Owned and Operated Stations	Stations Operated via Marketing, Services, Sales and/or Operating Agreements	Notes
Sinclair Broadcast Group	115	47	41 of the 47 outsourced stations are licensed to companies that do not operate any of their stations (and all of these companies exclusively outsource to Sinclair)
Nexstar Broadcasting Group	65	35	33 of the 35 outsourced stations are licensed to two companies that do not operate any of their stations (and both of these companies exclusively outsource to Nexstar)
Raycom Media	43	13	11 of the 13 outsourced stations are licensed to two companies that do not operate any of their stations (and both of these companies exclusively outsource to Raycom)
LIN Media	42	9	All 9 of the outsourced stations are licensed to three companies that do not operate any of their stations (and all three companies exclusively outsource to LIN TV)
Entravision Communications	46	8	Six of the eight LMA/SSA stations are owned by Univision Communications
Gannett Company	41	2	Outsourced stations are in markets where Gannett owns a newspaper (Portland, Ore., and Louisville, Ky.)
Media General	32	4	ABC-FOX virtual duopoly in Albany, N.Y.; CBS-ABC-MyNetworkTV virtual triopoly in Lansing, Mich.; ABC-NBC virtual duopoly in Augusta, Ga.
Tribune Company	41	3	Outsourced stations are in markets where Tribune already owns daily newspapers (*Daily Press* in Newport News, Va.; *The Morning Call* in Allentown, Penn.)
Gray Television	52	7	Outsourced stationa are licensed to a former Gray Television executive; this arrangment allows Gray to control two top 4 stations in five markets

Sources: Company 10-K SEC filings, FCC Consolidated Database System and Free Press research. Values include all owned and operated stations as well as all stations operated under outsourcing agreements. Ownership data reflect stations owned or operated as of Mar. 10, 2014, as well as all stations in pending deals.

The Impact of Covert Consolidation on the U.S. Broadcast Television Industry

This wave of consolidation is leaving in its wake shuttered newsrooms and jobless journalists in communities all across the country. Absent FCC intervention, there is likely much more of this to come. That is why Section 4 of the Discussion Draft could not come at a worse time, as new leadership at the FCC finally moves to enforce agency rules designed to promote the bedrock goals of broadcast competition, diversity, and localism.

Local broadcast journalism is already suffering from two decades of rampant media consolidation. Absentee owners long ago pushed out most station owners with ties to their communities. Too often prioritizing profit above public service, these corporations replaced political reporters with political ads. Cross-promotions for *American Idol* displaced important news stories. Cheap-to-produce traffic, weather and sports updates now comprise nearly half of all local news programming.

And in many communities, the same company owns multiple media outlets: changing the channel brings the same content from the same newsroom, packaged with slightly altered graphics. The FCC – the agency tasked with ensuring that the public airwaves serve the public interest – has been a willing accomplice to this destruction of much local journalism. Indeed, the FCC's decision to allow covert consolidation was a major factor driving the latest wave of deals. A handful of companies propelled it by using outsourcing agreements to exercise control of stations in direct violation of the Commission's local television multiple ownership rule and other cross-ownership rules.[12]

Outsourcing agreements come in a variety of forms. At one end of the spectrum there are outsourcing arrangements that involve a licensee producing the local news broadcasts for one or

[12] *See* 47 C.F.R. § 73.3555(d)(1) (Newspaper-Broadcast cross-ownership).

more competing in-market stations, where the licensee retains operational control over the station. At the other end of the spectrum are arrangements that involve one owner *exclusively* controlling every aspect of another licensee's operations. JSAs are merely a type of financial arrangement that parties to outsourcing agreements often enter into, in order to transfer control and a portion of advertising revenues to the operating station from the shell company that nominally holds the "serviced station" license.

On the whole, there are 118 Designated Market Areas ("DMAs") where one company operates another licensee's station pursuant to some combination of outsourcing agreements and related financial arrangements.[13] Of these 118 markets, there are 97 in which outsourcing agreements are used to evade the Commission's multiple ownership rules based on the so-called "8 voices test."[14] There are 80 markets where outsourcing agreements are used to evade the Commission's multiple ownership rules concerning co-ownership of two or more top-four ranked stations.[15] Finally, there are five markets where outsourcing agreements are used to evade the Commission's newspaper broadcast cross-ownership rule.[16] In total, there are 103 markets where outsourcing agreements are used to evade one or more of the Commission's broadcast ownership rules, equating to nearly half of the 210 U.S. media markets.

Case Studies in Covert Consolidation Using JSAs, SSAs, and Outsourcing Agreements

Sinclair Broadcast Group: Leading the Wave of Consolidation

CBS, Disney, NBC and News Corp remain giants among their broadcast industry peers. These firms have not grown in recent years, though they have room to do so under the national ownership cap. At present, however, these companies appear content to sit back and reap the

[13] *See* tables appended to the end of this testimony.
[14] 47 C.F.R. § 73.3555(b)(1)(ii).
[15] *Id.* § 73.3555(b)(1)(i).
[16] *Id.* § 73.3555(d).

high advertising and retransmission revenues from their O&O stations in the largest markets, while also collecting a majority of the retransmission revenues their affiliates bring in throughout the rest of the country through what is sometimes labeled as "reverse retrans" payments.[17] For these national network owners, the industry's new economics are a blessing.

While the fiscal outlook for those who own and operate local stations is good, the profit margins the national networks can earn for simply licensing existing content are far better. Thus, the changing media economics means a changing face of media consolidation. The national network owners that dominated prior periods of local TV market consolidation have given way to a number of smaller companies that have spent the past several years building the foundations of new media empires. Sitting atop the largest such empire and leading this consolidation wave is Sinclair Broadcast Group.

In 1991, Sinclair owned three stations and operated a fourth under a Local Marketing Agreement (LMA). By the end of 1996, Sinclair owned 13 stations and controlled another 15 via LMAs. Prompted by the FCC's weakening of media ownership limits, Sinclair spent the next six years on a buying spree. In 2000, Sinclair owned 37 stations and used LMAs to control another 26. It subsequently purchased half of those LMA stations.

From 2002–2010, Sinclair's holdings remained flat (it had 62 owned or controlled stations in 2002, down to 58 at the end of 2010). But once the FCC made it clear that it would do nothing about covert consolidation, Sinclair once again started snapping up properties. Over the past two years, Sinclair has announced or closed on deals increasing its holdings from 58 to 161 owned or operated stations. Sinclair relied on SSAs to secure many of these stations. At the end

[17] *See, e.g.*, "Retrans Rev Projected To Hit $7.6B By 2019," *TVNewsCheck*, Nov. 22, 2013, http://www.tvnewscheck.com/article/72202/retrans-rev-projected-to-hit-76b-by-2019 ("[P]rojections show that the affiliate reverse retrans funds flow back to the networks could increase from $1.02 billion in 2014 to $2.25 billion in 2019.").

of 2011, Sinclair used SSAs to control just two stations. That number now stands at 32 (plus another 14 stations operated under Local Marketing Agreements). As a result, Sinclair has increased its nationwide presence from 35 media markets to 78. This corresponds to a jump in its national reach from 22 percent of U.S. TV households to 38.8 percent. This is just under the national cap of 39 percent.[18]

The 15 Percent Programming Fiction

The main purpose of the FCC's ownership limits is to facilitate competition and viewpoint diversity. But in reality a broadcaster cannot compete with its shell companies and so-called "sidecars" – a euphemism often applied to entities that hold licenses which the servicing station cannot lawfully control under the FCC's local ownership rules.

For instance, Sinclair cannot compete against Cunningham when Sinclair controls every aspect of Cunningham's day-to-day operations. Howard Stirk Holdings cannot be considered independent of Sinclair if Sinclair finances Howard Stirk's station purchases and is ultimately responsible for these loans. The FCC cannot consider Deerfield the actual owner of its stations when Deerfield sends to Sinclair all of its revenues and profits. The FCC cannot believe that Mission Broadcasting controls its FCC licenses when Nexstar lists these licenses as its own assets in Nexstar filings with securities regulators.

Yet, until last week, the FCC has chosen to believe just that – that the license holders are in charge of programming the majority of airtime on these stations. And even now it has only begun to act on JSAs, which are just one part of these outsourcing entanglements. Under the FCC's current rules, it doesn't matter if one owner controls all physical assets of another in-market station, or every aspect of that station's day-to-day operations. So long as the operating

[18] Under the UHF discount, the FCC considers Sinclair's national reach to be just 25 percent. However, the Commission has recently proposed eliminating the outdated provision.

station programs less than 15 percent of the second station's airtime, the FCC will consider the two entities to be separate, competing companies.[19]

So how did the FCC come up with the figure of 15 percent? Before it adopted the LMA attribution rules in 1999, the FCC used the 15 percent figure to identify attributable interests in the local radio market. For a variety of reasons, the Commission was concerned that a level higher than 15 percent might sweep in some syndicators or even the networks themselves.[20] Having a national network control a minority equity stake in a license while also supplying the station's primetime programming is certainly an indicator of outsized influence. But while that situation should raise concern, so too should a situation where a station's *entire* daily news schedule is programmed by a major in-market competitor. Yet under the FCC's current rules, the latter scenario is perfectly acceptable: most stations air less than 25 hours of local news each week, and 25 hours is just under 15 percent of a 168-hour week.[21]

The FCC's in-market attribution rules ignore the economic realities of local TV broadcasting. They also disregard the need to foster diverse viewpoints — ostensibly the very purpose of the ownership rules. To generate enough ad revenues to profit in today's consolidated media market, commercial broadcast TV stations generally air:

- Local news programing. With the exception of the network's primetime schedule, local news is by far the most popular content that stations air and produces most of a station's ad revenues, especially during election years.

[19] *See* 47 C.F.R. 73.5555, Note 2(j)(2). ("Where two television stations are both located in the same market, as defined in the local television ownership rule contained in paragraph (b) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (b), (c), (d) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.")

[20] *See* Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, *Report and Order*, 14 FCC Rcd 12559, ¶¶ 56, 60 (1999).

[21] For example, Sinclair programs all of the news content on WTTE, the Cunningham-owned Columbus, Ohio, FOX affiliate. But this programming, which consists of a multi-hour morning and nightly one-hour newscast, falls just under the weekly 25.2-hour attribution threshold.

- An affiliated network's primetime, midday and morning programming blocks. Network programming is very popular (e.g., the *Today Show* in the morning hours, *American Idol* in primetime) and generates good local spot revenues for the broadcast station owner. And primetime provides a strong lead-in audience for the late local news programming.

- Syndicated fare (e.g., *Judge Judy* or reruns of *The Big Bang Theory*). This content, which fills out the midday, early evening and weekend schedules, is somewhat popular (depending on the content) and remains a safe revenue generator for local station owners.

- Paid programming (i.e., infomercials). This content generates revenue during the otherwise dead overnight hours.

- Public affairs programming. While few broadcasters bother with public affairs content (syndicated fare is relatively cheaper, certainly for the large chains), if done correctly it can both attract an audience and fulfill a broadcaster's public interest obligations.

In every case where a station that airs local news is operated under an outsourcing agreement that grants the operating station *de facto* control over the sidecar company, this nominal owner does not produce the local news content. Sinclair and the other covert consolidators are producing and programming the most popular and most profitable parts of the schedule – and the *only* part of the schedule that matters in terms of local viewpoint diversity.[22]

In the FCC's eyes, there is no undue influence so long as the nominal owner is the one *ultimately* responsible for programming decisions involving the approximate 12 hours of daily airtime not otherwise filled by the network's morning, primetime and late-night content, or the local news dayparts programmed by the in-market competitor. So long as the nominal owner spends a few minutes each year deciding between *Dr. Oz* and *Dr. Phil*, the FCC considers that person an independent owner. Indeed, under the FCC's rules, the FCC considers the nominal owner a fully independent, competing voice in the local TV market even if that individual delegates programming decisions to the outsourcing partner (in effect, allowing the partner to

[22] Of course, many of the non-Big Four network-affiliated stations air no local content whatsoever.

program 100 percent of the schedule). All that matters is that on paper, the license holder is ultimately responsible for these programming decisions.

The economics of outsourcing agreements and the FCC's utter failure to enforce its rules created the latest wave of consolidation. Sinclair might have discovered this legal loophole, but other companies are now using covert consolidation to grow their media empires at the expense of competition, local service and viewpoint diversity.

Raycom Hawaii and the Rise of the "Triopoly"

In 1999, Raycom Media purchased KHNL, Hawaii's NBC affiliate, along with the LMA rights to KFVE, Hawaii's UPN affiliate.[23] Raycom purchased KFVE outright shortly after the FCC relaxed its ownership rules in late 1999 and permitted duopolies between two stations so long as one station is outside the top four.[24] But a permissible duopoly wasn't good enough for Raycom. In August 2009, it entered into an SSA with MGC Capital Corporation, owner of Hawaii's CBS affiliate, KGMB. As is the case with most SSAs, Raycom consolidated all three stations under one roof. It also fired more than 60 people.[25]

And this semi-covert union of three stations *still* wasn't good enough for Raycom. As soon as it entered into the SSA with MGC, Raycom and MGC swapped call signs and station affiliations. Raycom was now the official owner of Hawaii's NBC and CBS affiliates, in seeming violation of the FCC's duopoly rule, as well as the operator of the local MyNetworkTV station.
But after local activists challenged Raycom's takeover of the Hawaii market, the FCC's Media Bureau inexplicably acquiesced in this set of deals and affiliation swaps, writing that "the local television ownership rule specifically refers to [the affiliation] 'at the time of application.'" The

[23] *See* FCC Application #BALCT-19990709RA.
[24] *See* FCC Application #BALCT-19991116AAA.
[25] *See* Rick Daysog, "Watchdog Asks FCC to Revoke Licenses of KGMB, KHNL, K5 TV Stations," *Honolulu Advertiser*, May 20, 2010.

Bureau nonetheless agreed those activists "that the net effect of the transactions in this case – an extensive exchange of critical programming and branding assets with an existing in-market, top-four network affiliate – is clearly at odds with the purpose and intent of the duopoly rule."[26]

In the end, Raycom had managed to buy the call sign and top-rated CBS network affiliation of one of its major competitors, and make it all appear legal under the FCC's rules with a combination of outsourcing agreements. The Media Bureau's decision in the case sent a strong message to the broadcast industry: The FCC's rules are meant to be broken. And the industry responded. In the two years that followed that November 2011 decision, the Big 20 companies entered into 61 new outsourcing agreements, doubling their number of such agreements. Sinclair alone went from two SSA stations to 27.

The FCC Must Act to Preserve the Rule of Law, Prevent Job Loss, and Save Local News

The SEC Doesn't Play Shell Games

Other than the FCC, no one — not the SEC, not Sinclair's business partners,[27] not even Sinclair itself (unless it's speaking to the FCC) bothers to pretend that these LMA and SSA stations are free from Sinclair's *de facto* control. In all of its filings with the SEC, Sinclair refers to the Cunningham stations (and all other stations it runs pursuant to LMAs and SSAs) as "*our* stations."[28] In the case of Cunningham (named owner of 13 Sinclair-operated stations), Deerfield

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[26] *See* In the Matter of KHNL/KGMB License Subsidiary, LLC, and HITV License Subsidiary, Inc, Fac. ID Nos. 34867 and 34445, *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, 26 FCC Rcd 16087 (2011).

[27] For example, Nexstar Broadcasting Group operates WYZZ, the Cunningham-owned FOX affiliate in Peoria, Ill., pursuant to an SSA. But in Nexstar's official SEC filings, it describes WYZZ as a station "owned by Sinclair Broadcast Group, Inc." There is no mention of Cunningham at all. *See* Nexstar Broadcasting Group, Inc., Annual Report Pursuant to Section 13 or 15(D) of the Securities Exchange Act of 1934, for the fiscal year ended Dec. 31, 2012, Commission file number: 000-50478, Mar. 15, 2013.

[28] *See, e.g.,* Sinclair Broadcast Group, Inc., Annual Report Pursuant to Section 13 or 15(D) of the Securities Exchange Act of 1934, for the fiscal year ended Dec. 31, 2002, Commission file number: 000-26076, Feb. 28, 2003 ("We currently own, provide programming and operating services pursuant to LMAs or provide sales services to 62 television stations in 39 markets and for purposes of this report, these 62 stations are referred to as "our" stations or are similarly designated.").

(named owner of 13 Sinclair-operated stations), and Howard Stirk Holdings (named owner of three Sinclair-operated stations), Sinclair refers to these firms as its "sidecar companies."[29]

This is not simply shorthand language used to simplify the discussion of Sinclair's business dealings. Under Generally Accepted Accounting Principles and SEC rules, there is no difference between Sinclair, Cunningham, Deerfield, Howard Stirk, or most other companies that are named owners of Sinclair-operated stations: the law considers them to be one company. The SEC considers these companies to be Variable Interest Entities ("VIEs"), because Sinclair has the power to direct the sidecars' activities that most significantly impact their economic performance, and Sinclair absorbs their significant losses and receives their profits.[30]

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[29] *See, e.g.,* Comments of David B. Amy, CFO, executive VP and head of investor relations, Sinclair Broadcast Group, Inc. (SBGI) Acquisition of Barrington Broadcasting Group, LLC by Sinclair Broadcast Group, Inc. Call, March 1, 2013. ("In addition, license assets of five stations will be purchased by our sidecar companies: Deerfield Media, Cunningham Broadcasting, and a newly formed minority-controlled entity owned by nationally known commentator Armstrong Williams.").

[30] *See* Sinclair Broadcast Group, Inc., Annual Report Pursuant to Section 13 or 15(D) of the Securities Exchange Act of 1934, for the fiscal year ended Dec. 31, 2012, Commission file number: 000-26076, March 12, 2013.

> In determining whether we are the primary beneficiary of a VIE for financial reporting purposes, we consider whether we have the power to direct the activities of the VIE that most significantly impact the economic performance of the VIE and whether we have the obligation to absorb losses or the right to receive returns that would be significant to the VIE. We consolidate VIEs when we are the primary beneficiary.... All the liabilities, including debt held by our VIEs, are non-recourse to us except for Deerfield Media, Inc.'s (Deerfield) debt which we guarantee.... We own the majority of the non-license assets of the Cunningham stations and our Bank Credit Agreement contains certain default provisions whereby insolvency of Cunningham would cause an event of default under our Bank Credit Agreement. We have determined that the Cunningham stations are VIEs and that based on the terms of the agreements, the significance of our investment in the stations and the cross-default provisions with our Bank Credit Agreement, we are the primary beneficiary of the variable interests because, subject to the ultimate control of the licensees, we have the power to direct the activities which significantly impact the economic performance of the VIEs through the sales and managerial services we provide and we absorb losses and returns that would be considered significant to Cunningham.... We own the majority of the non-license assets of the Deerfield stations and we have also guaranteed the debt of Deerfield. Additionally, there is a lease in place whereby Deerfield leases assets owned by us in order to perform its duties under FCC rules. We have determined that the Deerfield stations are VIEs and that based on the terms of the agreements, the significance of our investment in the stations and our guarantee of Deerfield's debt, we are the primary beneficiary of the variable interests because, subject to the ultimate control of the licensees, we have the power to direct the activities which significantly impact the economic performance of the VIEs through the sales and managerial services we provide and we absorb losses and returns that would be considered significant to Deerfield.... We have outsourcing agreements with certain other license owners, under which we provide certain non-programming-related sales, operational and administrative services. We pay a fee to the license owners based on a percentage of broadcast cash flow and we reimburse all operating expenses. We also have a purchase option to buy the License Assets. We have determined that the License Assets of these stations are VIEs.

So while we have one set of rules for the FCC and another set of rules for the SEC, it is clear that the SEC's attribution rules reflect reality, while the FCC's approach – till now, perhaps – reflected anything but.

It shouldn't take a lawyer or five FCC commissioners to recognize the problem. Sinclair owns all the non-license assets of the stations it runs under LMAs and SSAs. Sinclair houses the operations of these stations in its own facilities (and Cunningham's "corporate headquarters" are located in a Sinclair-owned station). Sinclair sells all the ad time for these stations. Sinclair is paid the overwhelming majority of revenues these stations earn. Sinclair produces all local content these stations air. These owners in name all have agreements that ensure only Sinclair can purchase these stations.

Yet in the FCC's eyes, these firms – which have no business relationships with any broadcasters other than Sinclair – have been considered till now completely independent companies that compete against Sinclair, and are good stewards of the public airwaves to boot. Sinclair benefits from the FCC's apathy. In 2013 alone, Sinclair announced deals to acquire 74 new stations, with 24 of these going to its shell companies in markets where the FCC rules would otherwise prohibit Sinclair from owning two or more stations.

Free Press has challenged a number of these deals, primarily on the basis that the use of shell companies violates the FCC's local ownership rules. Free Press petitioned to deny several deals last year, including Sinclair's acquisition of three Allbritton stations in markets where Sinclair was already present. That deal's terms illustrate the legal fiction that pervades most sharing arrangements, and is still pending at the FCC. In our petition to deny, we noted that Sinclair will likely retain most, if not all, of the profits generated by the nominal license holder's stations. We reached this conclusion by comparing the fee Sinclair would collect from its shell companies with past revenues of the respective stations.[31] Taking into account Sinclair's fee, share of ad revenues, and likely performance bonuses, as well as the fact that the shell licensees are responsible for using station revenues to cover expenses such as utilities, salaries, and taxes, it is unlikely that these license holders would be left with the capital to purchase or produce programming. The outcome is exactly as it would be if Sinclair owned these stations outright.

These deals are bad for competition and localism. Indeed, Sinclair admitted that driving small local owners out of the market is a likely result. When it announced its deal with Barrington Broadcasting, Sinclair's CEO made it clear that consolidation will render the small local broadcast owner extinct. "When you look at a company of our scale," David D. Smith said, "when it comes to buying programming and doing things of that nature, I think we clearly have an advantage in terms of any market that we're in, and I think that gives us an advantage from the standpoint of looking at one-off operators or two-off or three-off, generally small operators. And my sense is that over the long term it's going to be somewhat difficult for small broadcasters to keep up given the competitive landscape out there ... *and I think that's the precise point*."[32]

Outsourcing Agreements Are Job Killers

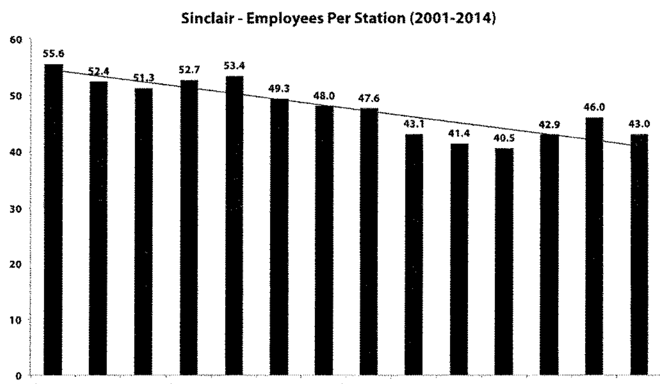
In general, the main point of outsourcing agreements in the broadcasting industry, as in others, is to reduce overhead. These arrangements often involve one station's entire operation being housed in the facilities of the parent station. Because so many of the functions are co-located and performed by the parent station, the arrangement drastically reduces the number of employees needed compared to the staff that would be needed for two truly independent stations.

[31] *See* Petition to Deny of Free Press and Put People First! PA, MB Docket No. 13-203, at 8 (filed Sept. 13, 2013) ("The WHP-TV SSA requires Deerfield to pay Sinclair $11.6 million over the course of the first year, plus an undefined performance bonus, for a station [estimated to have] earned a mere $12.6 million in advertising revenues in 2012.").

[32] *See* Comments of Chairman, President and Chief Executive Officer David D. Smith, Sinclair Broadcast Group, Inc. (SBGI), Acquisition of Barrington Broadcasting Group, LLC by Sinclair Broadcast Group, Inc. Call, Mar. 1, 2013 (emphasis added).

Therefore, any suggestion that these arrangements somehow result in more jobs is simply not genuine and not supported by any data. Because the entire purpose of these agreements is to eliminate independent outlets, they not only result in fewer independent voices, but also reduce the number of broadcast employees that would have been employed absent these arrangements.

Indeed, Sinclair provides an illustrative case of how outsourcing arrangements reduce jobs. One only need look to Sinclair's employment levels over the past decade to see that the company has a long track record of laying off workers and reducing the number of staff at each of its stations. In early 2001, Sinclair employed 3,500 workers at its 63 owned or operated stations, for an average of 55.6 jobs per station. By the end of February 2014, that number had declined to 43 workers per station. Even this most recent figure is likely artificially high, as Sinclair generally steps in to thin the ranks at its recently acquired properties, and may not yet have completed reductions at the many stations for which it acquired control in 2013.



Source: Sinclair SEC Filings; Free Press Research

While this data itself is illuminating, Sinclair's own words put any doubt on this issue to rest. The Company recently made statements that the Commission's pending change to the JSA attribution rule *will actually cause Sinclair to hire more workers*. In its 2013 annual report, Sinclair noted that if "the FCC requires us to modify or terminate existing arrangements, our cost structure would increase as we would potentially lose significant operating synergies *and we may also need to add new employees.*"[33]

These arrangements are primarily used by giant broadcasters to evade the FCC's rules and frustrate the goals of the Act. They certainly aren't used to increase costs and hire more workers. Congress should reject these self-serving attempts to paint the use of outsourcing by the industry's leading companies as pro-job measures, and allow the FCC to move forward and close the outsourcing loopholes.

No News is Bad News

Free Press research indicates that 946 of the 1,355 current full-power television stations air local news or public affairs programming. There are 229 stations currently party to a JSA, SSA, LMA, or some combination of these outsourcing agreements. Of those 229, *none* air any of their own news. Some 165 of them – or 72 percent – simply repeat or re-broadcast news produced and programmed by the operating station and not by the "sidecar" company licensee. The other 28 percent appear to air *no* news or public affairs programming.

A handful of television stations, numbering 39 in our count, are party to some other kind of news resource sharing arrangement that allows each station to program its own news. These 39 stations are *not* subject to the *de facto* control that the full suite of outsourcing agreements entails. But these limited (and potentially beneficial) resource sharing situations are outnumbered by consolidated newsrooms and copycat newscasts, by a factor of more than 4 to 1.

[33] *Id.* at 35.

Free Press has illustrated the impact of such news "sharing arrangements," which often result in the same exact newscasts airing in duplicate and triplicate on multiple stations in the same community. Far from increasing the amount or quality of local news, these arrangements lead only to an increase in repeated, monotone news segments. Anchors and reporters read the same stories and offer the same viewpoints on two or three stations at a time. Free Press has produced several videos on the topic, compiling examples of identical on-air segments and news websites for putative competitors that simply echo one another – in markets from South Carolina to Hawaii, and everywhere in between.[34]

DISCUSSION DRAFT SECTION 3 AND JOINT RETRANSMISSION CONSENT

Section 3 of the Discussion Draft appears to recognize one of the many harms that outsourcing agreements cause, through joint negotiation of retransmission consent by stations considered to be separately controlled under the FCC's current interpretation. But rather than addressing only one of these harms – and directing the FCC to promulgate new behavioral rules – Congress should allow the FCC to enforce the local television multiple ownership rule it maintains today. Preventing unlawful *de facto* control of TV stations would curtail not only joint retrans negotiations, but also the loss of independent news and newsroom jobs detailed above.

A prohibition of joint retransmission consent negotiation by stations located in the same market also could prove difficult to enforce if the FCC were to allow those stations to remain under *de facto* common control. Such stations could – and would – coordinate their negotiating efforts even if they were barred from expressly negotiating consent together.

[34] *See* Free Press, "Change the Channels" campaign website and shared services agreements map, http://www.freepress.net/changethechannels; *see also* "Change the Channels" video (demonstrating duplicative and identical news coverage airing simultaneously on putatively competing local broadcast stations), *at* https://www.youtube.com/watch?v=E9blgcrWd1o; "Covert Consolidation in Charleston, SC," *at* https://www.youtube.com/watch?v=0ZXqAl-acic; "Different Channels, Same Election Coverage," *at* https://www.youtube.com/watch?v=7M_0jo-XR_A.

Joint retransmission consent negotiations do increase the fees passed through to cable and satellite subscribers. For instance, American Cable Association members have shown the increase in retransmission consent fees paid in markets in which stations employ SSAs and other joint negotiating mechanisms. The use of non-disclosure clauses in retransmission consent agreements limits the amount of publicly available evidence on the magnitude of these fees, but all available evidence suggests this is a serious problem. These American Cable Association members documented four instances in which the average impacts of joint negotiations on their own retransmission consent prices were increases ranging from 21.6 percent to 161 percent.[35] Various providers also have found more than 40 instances (or more than 20 percent of TV markets) in which a single broadcaster negotiates retransmission consent for more than one "big four" network affiliate – a number that will only grow.[36]

DISCUSSION DRAFT SECTION 6 AND THE INTEGRATION BAN

Finally, Section 6 of the Discussion Draft proposes repeal of the "integration ban" adopted by the Commission to implement Congress's directives in Section 629(a) of the Communications Act, 47 U.S.C. § 549(a). That statute and the Commission's rules promulgated under it are intended to promote the competitive availability of multichannel video programming "navigation devices," such as set-top boxes and other devices capable of receiving encrypted video signals.

[35] *See, e.g.*, *Ex Parte* Comments of SuddenLink Communications in Support of Mediacom Communications Corporation's Retransmission Consent Complaint, CSR Nos. 8233-C, 8234-M, at 5-6 (filed Dec. 14, 2009) (showing 21.6 percent increases); USA Companies Letter to Ms. Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-71 (filed May 28, 2010) (showing 133 percent increases); Cable America Letter to Ms. Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-71 (filed May 28, 2010) (showing 161 percent increases); Pioneer Long Distance Letter to Ms. Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-71 (filed June 4, 2010) (showing 30 percent increases).

[36] *See, e.g.*, Notice of *Ex Parte* Communication of American Cable Association, MB Docket Nos. 10-71, 09-182, at 2 (filed June 24, 2013).

Repeal of the integration ban would prevent attainment of Congress's goal of competitive availability – keeping consumers tethered instead to expensive leasing arrangements reminiscent of nothing so much as the forced rental of rotary telephones from Bell Telephone. These charges can amount today to as much $240 *per year*,[37] when comparable devices might be purchased outright rather than leased for as little as $200 or $300 total. For these reasons, Free Press Action Fund joined last week in a letter sent on Friday, March 7th, to Chairman Walden and Ranking Member Eshoo, urging the Subcommittee not to move forward with the repeal of the integration ban proposed by Section 6 of the Discussion Draft.[38]

CONCLUSION

For the foregoing reasons, the Subcommittee should not move forward with Sections 4 and 6 of the Discussion Draft circulated prior to today's hearing. Congress should extend the authorization for satellite retransmission of certain broadcast signals, but these other provisions would decrease competition, localism and diversity in local broadcasting, maintain high barriers for small businesses and new entry, and slow the pace of competition and innovation in the market for set-top boxes and other video devices.

[37] *See* Letter from Consumer Action, Consumers Union, Free Press, National Consumers League, Open Technology Institute, and Public Knowledge, to Hon. Greg Walden, Chairman, Subcommittee on Communications and Technology, Dec. 5, 2013, http://www.publicknowledge.org/files/Consumer%20Groups%20Latta%20Bill%20letter%20FINAL.pdf.

[38] *See* Letter from Public Knowledge, National Consumers League, Free Press Action Fund, Consumer Action, Writers Guild of America, West, and AllVid Tech Company Alliance, to Hon. Greg Walden, Chairman, and Hon. Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology, Mar. 7, 2014.

APPENDIX

Markets with one or more operational outsourcing agreements (DMA 1 to 50)

Market Rank	Market	Markets Where OSA is Used to Evade Multiple Ownership Rule (8 voices test)	Markets Where OSA is Used to Evade Multiple Ownership Rule (Top-4 Ranked)	Market Where OSA is Used to Evade Newspaper-Broadcast Cross-Ownership Rule
1	New York, NY			
2	Los Angeles, CA			
4	Philadelphia, PA			
6	San Francisco-Oakland-San Jose, CA			
7	Boston, MA (Manchester, NH)			
8	Washington, DC (Hagerstown, MD)			
9	Atlanta, GA			
10	Houston, TX			
13	Phoenix (Prescott), AZ			✓
14	Tampa-St. Petersburg (Sarasota), FL			
17	Denver, CO			
19	Orlando-Daytona Beach-Melbourne, FL			
21	St. Louis, MO	✓	✓	
22	Portland, OR	✓		
27	Baltimore, MD	✓		
29	Nashville, TN			
32	Columbus, OH	✓	✓	
33	Salt Lake City, UT			
35	Cincinnati, OH	✓		
36	San Antonio, TX		✓	
37	Greenville-Spartanburg, SC-Asheville, NC-Anderson, SC	✓		
38	West Palm Beach-Ft. Pierce, FL	✓		
40	Las Vegas, NV			
42	Birmingham (Anniston and Tuscaloosa), AL	✓		
43	Harrisburg-Lancaster-Lebanon-York, PA	✓	✓	
44	Norfolk-Portsmouth-Newport News, VA			✓
45	Austin, TX	✓		
47	Albuquerque-Santa Fe, NM			
48	Louisville, KY	✓		✓
50	Jacksonville, FL	✓	✓	

[CONTINUES ON NEXT PAGE]

Markets with one or more operational outsourcing agreements (DMA 51 to 100)

Market Rank	Market	Markets Where OSA is Used to Evade Multiple Ownership Rule (8 voices test)	Markets Where OSA is Used to Evade Multiple Ownership Rule (Top-4 Ranked)	Market Where OSA is Used to Evade Newspaper-Broadcast Cross-Ownership Rule
53	Providence, RI-New Bedford, MA	✓	✓	
54	Wilkes Barre-Scranton-Hazleton, PA	✓	✓	✓
55	Fresno-Visalia, CA	✓	✓	
56	Little Rock-Pine Bluff, AR	✓	✓	
57	Richmond-Petersburg, VA	✓		
58	Albany-Schenectady-Troy, NY	✓	✓	
60	Mobile, AL-Pensacola (Ft. Walton Beach), FL		✓	
62	Ft. Myers-Naples, FL	✓	✓	
63	Dayton, OH	✓	✓	
65	Charleston-Huntington, WV	✓	✓	
66	Wichita-Hutchinson, KS Plus	✓		
67	Flint-Saginaw-Bay City, MI	✓	✓	
70	Tucson (Sierra Vista), AZ	✓	✓	✓
71	Honolulu, HI		✓	
74	Springfield, MO	✓	✓	
75	Omaha, NE	✓		
76	Toledo, OH	✓	✓	
78	Rochester, NY	✓	✓	
80	Portland-Auburn, ME	✓	✓	
81	Paducah, KY-Cape Girardeau, MO-Harrisburg, IL	✓		
82	Shreveport, LA	✓	✓	
83	Champaign & Springfield-Decatur, IL	✓	✓	
84	Syracuse, NY	✓		
87	Chattanooga, TN	✓		
90	Cedar Rapids-Waterloo-Iowa City & Dubuque, IA		✓	
92	Savannah, GA	✓	✓	
93	Jackson, MS	✓	✓	
94	Baton Rouge, LA	✓	✓	
96	Tri-Cities, TN-VA	✓	✓	
97	Burlington, VT-Plattsburgh, NY	✓	✓	
98	Charleston, SC	✓	✓	
100	Greenville-New Bern-Washington, NC	✓	✓	

[CONTINUES ON NEXT PAGE]

Markets with one or more operational outsourcing agreements (DMA 101 to 150)

Market Rank	Market	Markets Where OSA is Used to Evade Multiple Ownership Rule (8 voices test)	Markets Where OSA is Used to Evade Multiple Ownership Rule (Top-4 Ranked)	Market Where OSA is Used to Evade Newspaper-Broadcast Cross-Ownership Rule
101	Ft. Smith-Fayetteville-Springdale-Rogers, AR	✓	✓	
102	Johnstown-Altoona-State College, PA	✓	✓	
103	Myrtle Beach-Florence, SC	✓	✓	
104	Evansville, IN	✓	✓	
105	Lincoln & Hastings-Kearney, NE	✓	✓	
106	Tallahassee, FL-Thomasville, GA	✓	✓	
107	Tyler-Longview(Lufkin & Nacogdoches), TX	✓	✓	
108	Reno, NV	✓	✓	
109	Ft. Wayne, IN	✓	✓	
110	Youngstown, OH	✓	✓	
113	Augusta, GA-Aiken, SC	✓	✓	
115	Lansing, MI	✓		
116	Peoria-Bloomington, IL	✓	✓	
117	Fargo-Valley City, ND	✓	✓	
118	Montgomery-Selma, AL	✓	✓	
119	Traverse City-Cadillac, MI	✓	✓	
121	Eugene, OR	✓	✓	
122	Santa Barbara-Santa Maria-San Luis Obispo, CA	✓	✓	
125	Monterey-Salinas, CA	✓		
127	Columbus, GA (Opelika, AL)	✓	✓	
129	Corpus Christi, TX	✓		
130	Amarillo, TX	✓	✓	
131	Chico-Redding, CA	✓	✓	
132	Wilmington, NC	✓	✓	
133	Columbus-Tupelo-West Point-Houston, MS	✓	✓	
135	Rockford, IL	✓	✓	
136	Topeka, KS	✓	✓	
137	Monroe, LA-El Dorado, AR	✓	✓	
139	Duluth, MN-Superior, WI	✓	✓	
140	Medford-Klamath Falls, OR	✓	✓	
141	Beaumont-Port Arthur, TX	✓	✓	
142	Lubbock, TX	✓	✓	
143	Wichita Falls, TX & Lawton, OK	✓	✓	
145	Anchorage, AK	✓	✓	
146	Erie, PA	✓	✓	
147	Sioux City, IA	✓	✓	
149	Joplin, MO-Pittsburg, KS	✓	✓	

[CONTINUES ON NEXT PAGE]

Markets with one or more operational outsourcing agreements (DMA 151 to 210)

Market Rank	Market	Markets Where OSA is Used to Evade Multiple Ownership Rule (8 voices test)	Markets Where OSA is Used to Evade Multiple Ownership Rule (Top-4 Ranked)	Market Where OSA is Used to Evade Newspaper-Broadcast Cross-Ownership Rule
151	Minot-Bismarck-Dickinson (Williston), ND	✓		
152	Odessa-Midland, TX	✓	✓	
153	Rochester, MN-Mason City, IA-Austin, MN	✓	✓	
154	Terre Haute, IN	✓	✓	
157	Binghamton, NY	✓	✓	
162	Idaho Falls-Pocatello, ID (Jackson, WY)	✓	✓	
163	Gainesville, FL	✓	✓	
164	Abilene-Sweetwater, TX	✓	✓	
165	Yuma, AZ-El Centro, CA	✓		
168	Billings, MT	✓	✓	
172	Utica, NY	✓	✓	
185	Grand Junction-Montrose, CO	✓	✓	
188	Greenwood-Greenville, MS	✓	✓	
194	Eureka, CA	✓	✓	
196	San Angelo, TX	✓	✓	
200	Ottumwa, IA-Kirksville, MO	✓		
202	Fairbanks, AK	✓	✓	
204	Victoria, TX	✓	✓	
206	Helena, MT	✓		

Mr. WALDEN. Mr. Wood, thank you for your testimony. I will make a couple of comments, and then I have got some questions. I would just say, having been, no secret, in the broadcast business, having had a JSA, they can also be positive in the market too. We actually, as a result of one, in a purchase, were able to restore news. And I am trying to figure out how JSAs have gutted newspapers.

There is something going on out in the marketplace out there with newspapers, they are not in a JSA situation, and newsroom after newsroom in the printed press is being gutted. And I am really frustrated with the Federal Communications Commission, and the fact that they don't step up and do their job, as required by statute, by the law, to do their ownership review, look at cross-ownership so we have a strengthened voice out there of First Amendment writers. And so it is just really frustrating, because you can cite all these statistics, but on the ground, when you are meeting a payroll, when you are trying to make things work, there are a lot of other things that come into play.

So, Mr. Powell, this draft will relieve cable and their consumers of a significant cost burden, the cost of making leased set-top boxes compliant with the integration ban. There has been a little bit of opposition to this voiced by your colleagues to your left, and I am aware of that. That was a little understatement there. I want you to explain again, and answer their criticisms of what they raise. They say it is not going to help consumers, and it is going to hurt innovation. How do you answer that?

Mr. POWELL. Sure. Well, thank you. So this guy was a commissioner on the Federal Communications Commission when I said that TiVo was God's machine. That same guy, in that same year, dissented from the FCC's decision to impose an integration ban for two simple reasons. One, it was clearly not compelled by the statute in any way, and shape, or form. What was compelled by the statute was to make sure that third party boxes could get access to the signal by descrambling that signal through a separate security requirement. That I wholeheartedly endorsed then, I continue to wholeheartedly endorse now.

The second part was problematic. My belief then, and my belief now, was it took away an innovative third option for consumers, which is a lower cost box with integrated security that would buy FCC data, costs $50 per box less, costs consumers less, and be substantially more energy efficient. Many cable companies have been forced to attempt to seek waivers in order to deploy new and innovative boxes, including new software-centric systems. Those waivers have often taken up to two years.

Mr. WALDEN. Ms. Burdick, it is expensive to run a TV station or a newspaper in this day and age. I think it would be difficult to make it work, but successful companies with proven track records continue to do so, and do it well. Doesn't it make sense to allow good companies with good resources to put their expertise to work in failing stations or newspapers? Talking about cross-ownership here. We are talking about JSAs used appropriately. Not inappropriately, but appropriately, for the management.

Ms. BURDICK. Thank you, Mr. Chairman. You touched on a key point earlier, and you have echoed it again, is that the ownership regulations have not kept up for the changing broadcast marketplace. To put it in perspective, in the small and medium markets in which we operate, we are governed basically under ownership regs that were enacted in 1970. And I don't know about the members of this committee, but in 1970 I was starting middle school, and listening to Bridge Over Troubled Water on AM radio. The world has changed.

In 1970, most broadcasters were being paid by their networks to distribute the product, and in small and medium markets, that was basically their profit. That has gone away. And so, as that world has changed, and the economics have changed, as I mentioned earlier, with people competing with us for advertising dollars, which supports 90 percent of our costs, 90 percent of our revenue in local broadcasting comes from advertising, as that pie is sliced even thinner, the rules have not kept up. And so, in fact, broadcasters, like Schurz, have entered into some of these agreements, ours approved by the FCC, by the way, to create more news, more jobs, and more public service in the communities that we serve.

Mr. WALDEN. I appreciate that. And clearly, in the developing Internet world, you have got stations probably that have to compete against Internet, cable, everything else. And it just seems like these ownership rules are outdated when Jeff Bezos can pick up the "Washington Post" for 250 million, or the owner of the Red Sox can pick up the "Boston Globe". I am trying to figure out why somebody that is actually in the journalism business can't engage in that cross-ownership too.

Ms. BURDICK. Because the rules say we can't.

Mr. WALDEN. And that is why the FCC should do its job, and follow the law. With that, I will turn over to the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. I love hearings, and I love the mix that is here. Although I wouldn't refer to former Chairman Powell as that guy, I would say great guy, but here it comes. Here it comes. I have two quick questions for you.

The first one, Mr. Powell, I think it is a yes or no question. On this whole issue of the integration ban, you had written to me last year and said that it cost consumers roughly a billion dollars. My question is, would Cable companies commit to lowering the monthly cost for consumers that pay to lease the set-top box, particularly those with advanced functionality, and print this on your customers' monthly bill if the integration ban is repealed? I mean, you know, so much of this is about money, we all know that, so you don't want this anymore, you have stated your case. Are you willing to reduce the price, print it on the bill so consumers know that there is a savings to them?

Mr. POWELL. I think what we are willing to do is commit that that money gets invested into the network in a manner that is beneficial to consumers. When we had the roundtable, which you were generous——

Ms. ESHOO. Right.

Mr. POWELL [continuing]. Host, you will remember ACA, a representative of small cable companies, made the very compelling point that those additional expenses are expenses that could not be used by small cable companies attempting to provide faster broadband speeds, an important, and I think significant point. So, no, I am not the representative of the business judgments of exactly how the savings would be returned, but I do believe it is fair to say——

Ms. ESHOO. You know what, I really do think some thought needs to be given to that.

Mr. POWELL. Sure.

Ms. ESHOO. I do. I mean, if, in fact, your stand on behalf of cable operators in the country is what it is. I mean, everyone is entitled to their view, and what they want, and what is going to work well for them. People that are here are obviously speaking to their interests, which is really fair. We have to protect the public interest in all of this, try to, anyway. So if it costs consumers, as you said to me in your letter last year, one billion, maybe there can be a reduction of one billion somehow.

Now, you described the repeal of the FCC's integration ban as a narrow fix that will not change cable operators' requirement to provide the cable cards. But last year, in your comments before the FCC, NCTA, and at least one of your member companies, argued that because of the EchoStar case, cable operators are no longer required to provide or support cable cards to retail devices. So my question is, which is it?

Mr. POWELL. I——

Ms. ESHOO. Because those are two distinctly different arguments.

Mr. POWELL. I would argue our position is consistent. One of——

Ms. ESHOO. I know you would say that, but——

Mr. POWELL. I thought you might.

Ms. ESHOO [continuing]. They are not, though.

Mr. POWELL. I thought you might.

Ms. ESHOO. Not. I mean, you said something else to——

Mr. POWELL. Well——

Ms. ESHOO [continuing]. The FCC, and, you know——

Mr. POWELL. It is important to note that what the court found offensive about the FCC rules was it didn't believe it had the authority to apply them to satellite companies. Cable companies had actually, through an MOU, developed the rules. We were the only industry segment, including this guy, who——

Ms. ESHOO. There you go.

Mr. POWELL [continuing]. Intervened to defend the rules in court. When the rules were overturned because the court said the commission didn't have the ability to apply them fairly to both satellite and cable——

Ms. ESHOO. Yes.

Mr. POWELL [continuing]. TiVo and other companies filed, asking them to be applied just to cable.

Ms. ESHOO. Yes. Now I want to go to, thank you very much, to Mr. Zinn and to Mr. Wood. Thank you for being here, and for your testimony.

Last month most members of this subcommittee voted for legislation that permits consumers to unlock their wireless phones so they can be used on any carrier's network. My question to both of you is, isn't this what Section 629, and the integration ban, is trying to do? I mean, obviously it is a softball question, but I think members need to do some integrating here, in terms of how they have voted on the floor. And doesn't this unlock the cable set-top box? Is there a reason to treat video devices differently from wireless devices?

Mr. ZINN. No. I mean, that is a very astute point. I would first like to thank you for your unwavering support for consumer choice in set-top boxes, and your leadership on this issue since 1996. It is very important to consumers, and there are a lot of consumers who thank you every day because they love the choice that they have by having access to TiVo.

What Congress is trying to do, in terms of unlocking cell phone, is to give consumers a choice of providers to use with their phone, and Section 629 is seeking the same result, give consumers a choice of both equipment and networks, rather than having to take the lowest common denominator set-top box that your provider wants to lease you. So I would say there is no difference.

Mr. WOOD. Yes, thank you very much. Just very quickly, I would say they are very much the same principles, and creating choices for people, rather than restricting them to what their provider offers, so there are some technical and legal distinctions, of course. I think the important thing to note too, at the outset, is about the cost. I would say that was a no. Obviously, Mr. Powell is not in a position to promise that companies that are his members will lower their prices, but we heard that that would not necessarily lead to lower prices.

And I think that that estimate of a billion dollars a year too, of the cost of a cable card, is actually based on 2008 data, if I am not mistaken on that. So I think the costs are also in dispute here, let alone whether those savings would be passed on to actual cable customers.

Ms. ESHOO. Yes.

Mr. ZINN. And keep in mind that, if the cable industry has spent a billion dollars on cable card, which, as Matt said, is based on 2008 data, before the integration ban really went into effect, and there was mass production, I mean, it is hard to believe that this card, this little hunk of metal, unless it is made of gold, costs $56. But the bigger point is, over the past 7 years, cable operators have billed consumers $50 billion to lease set-top box equipment, OK? Seven billion dollars a year for 7 years.

Mr. WALDEN. The gentlelady's time has expired.

Ms. ESHOO. Yes. Mr. Chairman, I just want to say that I will submit my questions to both Mr. Palkovic and Ms. Burdick in writing, and I thank you.

Mr. WALDEN. Perfect.

Ms. ESHOO. Thank you for testifying. Thank you to all of you.

Mr. WALDEN. Thank the gentlelady. We will now recognize the gentlelady from Tennessee, the Vice Chair of the full committee, Ms. Blackburn, for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman, and thank you to all of our witnesses.

Ms. Burdick, I want to come to you. Now, your company is called Schurz, right?

Ms. BURDICK. Yes.

Mrs. BLACKBURN. OK, great. And you own broadcast TV stations?

Ms. BURDICK. Yes.

Mrs. BLACKBURN. And radio stations?

Ms. BURDICK. Yes.

Mrs. BLACKBURN. OK. Do you require compensation for the re-trans of your broadcast TV stations?

Ms. BURDICK. Yes.

Mrs. BLACKBURN. OK. And compensation for the copyright of original content that you produce?

Ms. BURDICK. Yes.

Mrs. BLACKBURN. Yes, OK. Does Schurz compensate the copyright holders of content it uses for its broadcast TV stations?

Ms. BURDICK. I think you are asking, as you did last time I was here, about radio, and the compensation of radio——

Mrs. BLACKBURN. I am asking for a yes or no.

Ms. BURDICK. Yes. Ask the question again, if you wouldn't mind?

Mrs. BLACKBURN. Do you compensate the copyright holders of content it uses for broadcast——

Ms. BURDICK. Yes.

Mrs. BLACKBURN [continuing]. On your TV stations? OK. Do you pay a performance right for the music that you broadcast over your radio stations?

Ms. BURDICK. We pay ASCAP and BMI, and SESAC.

Mrs. BLACKBURN. That is not the question that I asked you. The answer is no.

Ms. BURDICK. Yes.

Mrs. BLACKBURN. Ms. Burdick——

Ms. BURDICK. That is correct.

Mrs. BLACKBURN. That is correct, you are right.

Ms. BURDICK. Yes, the——

Mrs. BLACKBURN. The answer——

Ms. BURDICK [continuing]. Answer is no——

Mrs. BLACKBURN [continuing]. Is no.

Ms. BURDICK [continuing]. That is correct. You are right.

Mrs. BLACKBURN. And if you can provide a Constitutional justification for that inconsistency, God bless your heart, because, I have to tell you, there is not one. And it is intellectually inconsistent, and I think that you are fully aware of that.

OK. In your testimony you state that re-trans consent negotiations are free market negotiations, and that the major network broadcast content is the most sought after and valuable content today. You then go on to advocate for our nation's 22-year-old regulatory structure dictating the terms of these negotiations. So how is it possible that, in fact, free market negotiations, as you say, if we live under a regulatory structure that dictates to one party details like where your stations must appear on the cable lineup?

Ms. BURDICK. Yes. Thank you for the questions. I appreciate your passion on some of these issues. I guess I would look back, in researching this, and I went back into history. The first report and order of the FCC on what was then cable antenna television said one important thing that has carried through, and Congress has supported in every iteration of its action, and that is that CATV should carry local stations because it supplements, not replaces, local stations, and non-carriage is inherently contrary to the public interest. For all of the things that we have talked about, the floods in your district this year, Internet didn't make up for the service that local broadcaster provide. We provide an inherent and important public service that is not replicated anywhere.

Mrs. BLACKBURN. Yes. Well, no one is arguing about the public service. What I am asking you is about free market negotiations, and you say you own the most valuable and sought after content. Then why do you need this archaic regulatory structure? Wouldn't a pay TV provider negotiate to place your content on their basic tier if it is indeed the most sought after programming?

Ms. BURDICK. Yes, and I guess I didn't make my point clearly, but the point is that when the basic tier requirement was enacted, it was because Congress thought it important to preserve the values of localism, and to require that local televisions be seen by all consumers, and placed on that basic tier, and we believe that today.

Mrs. BLACKBURN. Well, I admire that you are desiring to move to parity and deregulation, and work toward that, and I know you are going to continue along that vein. Let me ask you this. In your opinion, would true regulatory parity in the video marketplace allow you the freedom to negotiate like non-broadcast owners?

Ms. BURDICK. You know, we have said in the context of this bill that we would embrace a wholesale view of the ownership and the regulatory versus deregulatory issues that affect the video marketplace. Unfortunately, most of the things that we have been discussing only benefit one side of the table, not the other. And so that is why we support a holistic review of the ownership rules, and the rules under which we operate today.

Mrs. BLACKBURN. Can you envision a world in which you are treated like a cable company?

Ms. BURDICK. You know, I guess I will go to Jay Carney's line of the last couple of days, I am always hesitant to predict the future.

Mrs. BLACKBURN. All right, fair enough. I yield back.

Mr. WALDEN. Thank you very much. The gentlelady yields back, and the Chair now recognizes for 5 minutes the gentleman from Pennsylvania.

Mr. DOYLE. Thank you, Mr. Chairman. Thank you to the witnesses for your testimony. I am glad to see the provisions included in this draft bill that address joint negotiations of the retransmission consent. I believe these negotiations can cause anti-competitive behavior, and can lead to increased prices paid by consumers, so I am glad to see that the issue is at least being addressed in the draft bill, and is being addressed by Chairman Wheeler at the FCC.

Mr. Powell, let me ask you, do you think the exemptions in Section 3 of the draft bill, that allows for joint retransmission consent, are necessary, or do you think they detract from the goal of this provision?

Mr. POWELL. I think our view is the practice of joint negotiations is of great concern. The exception attempts to exempt companies that are genuinely owned. The practical challenge there is if somebody literally owns both stations, hard to imagine they are not privy to all the same information. As a joint negotiator, though, we would be more than happy for those not to be permitted either. I do think the companion efforts by Chairman Wheeler, in the context of good faith, to address undue power among top four stations is a valuable complement to the statute.

Mr. DOYLE. Mr. Wood, how about you?

Mr. WOOD. I think that is right. I think that, as Mr. Powell said, that you can have a situation where, even if you prohibit explicit joint negotiations at the table, if you have a single entity that has the books, and has the power to control the activities of both stations, it will have much more leverage, and much more view into what the two agreements say. So we certainly think that there are some competitive harms that aren't necessarily addressed completely by Section 3, and that is why we are looking also to the FCC to look further into the practice.

Mr. DOYLE. Mr. Wood, let me ask you, you and others point out in your testimony that the FCC will consider changing the way it attributes ownership of broadcast stations, based on general operation and service agreements. Section 4 of the draft bill would force the FCC to complete its quadrennial review in advance of modifying these types of rules. What do you think the effect of this provision would be on the FCC's ability to make rules in this area?

Mr. WOOD. Well, we think it would be harmful, and I don't disagree with Chairman Walden's statement that, of course, the FCC should complete its quadrennial review. It has that obligation, and we have called on it to do that in a data-driven fashion several times. Not only to look at the changing business models over time, but the harms of media consolidation, and of undue concentration at the local level. However, we see Section 4 as prohibiting the FCC from enforcing its rules today, and going after violations of its multiple ownership rules.

Chairman Walden also talked about the appropriate use of these agreements. There can be some synergies and some savings if back office operations are combined for sure, but what we are most concerned about are operational control, de facto transfer of control, where you have one station that is not only calling all the shots for the other, but producing the news, has every right to buy the station, it really has full control over its partner and its sidecar company, as they are sometimes called.

Mr. DOYLE. Thank you. I want to give Ms. Burdick a chance to also comment on that. I take it you might not agree.

Ms. BURDICK. Thank you, Mr. Doyle. Two points. First of all, on the joint negotiation, you are talking about one side of the negotiation equation, and not the other. Cable companies also link their negotiation strategies through consultants, or the ACA basically advises its members to employ the same law firm, that has access to all the data. So let us be fair in our approach when we talk about the negotiations, number one. But number two, on the JSA/SSA issue, Free Press particularly will often repeat fiction as fact. It doesn't make it so. And, in fact, many of these operations extend local news and public service that would not exist.

Very quickly, in 2009 Schurz had a station, the only one we own that is not number one in its market, that lost money for 12 years after launching a full complement of news. We could no longer, in the recession years, support it through our other operations. We had two choices, go out of business in news, and just become an entertainment provider, or enter into an agreement that preserved and added news with another entity, which is what we did.

Mr. DOYLE. Thank you very much. And my last question, Mr. Zinn, TiVo provides a competitive set-top box product that competes with set-top boxes provided by the MPVDs. From your perspective, what has been the value of competition to consumers in the set-top box marketplace, and how has cable card failed to deliver that experience, and what reforms do you think need to be made to the program?

Mr. ZINN. There is a lot in those three questions. The value of competition in the set-top box marketplace is a very good question. Of course, you can't quantify exactly what the value would be, but if you look at other markets in the United States, you look at phone, wireless, personal computing, you can get a sense of what competition brings, and that is innovation, choice, jobs, and lower costs for consumers.

In the set-top box market you can just look at what TiVo, one little company, has been able to accomplish. We invented the DVR. We were the first to bring Amazon over the top services to the television. We were the first integrate Internet services with cable services in one user interface. We were the first to allow you to move content from your television to your computer and mobile devices. And we are on the cusp of an IP transition in video, and all the innovation that that can release.

And, really what we are looking for here, if cable wants to move on from cable card, and it is not energy efficient, and it is too expensive, we say, great. Just give us another solution that we can use to provide competition to consumers. Obviously, if the cable industry wants to get away from cable card, they have got something in mind, so just share it. And so my point is, will you share the solution? Will you do that?

You know, in terms of the current regime, there have been multiple failures. First of all, there was a failure of the FCC not to ensure that retail boxes out of the gate had access to all cable content. So, right at the gate, retail boxes were put at a competitive disadvantage. Then there was a failure by the FCC that the cable card standard was not competently supported by cable operators. And the integration ban, which is really a light regulatory touch, designed to just make sure if the cable industry is using the same security standard as retail, they are going to support it, right? Otherwise they have no incentive to support it, and we have 10 years of evidence on that. Mr. Powell can dispute that, but the evidence is in the record. And then the third failure——

Mr. WALDEN. I am sorry, the gentleman's time has expired.

Mr. DOYLE. Mr. Chairman, thanks for your indulgence.

Mr. WALDEN. Thanks very much. Gentleman yields back. And at this time the Chair recognizes himself for 5 minutes. And, interestingly enough, Mr. Powell, I think I will start with you. But, again, thank you very much for testifying today. And, you know, one of the things that has been out there, if the integration ban is eliminated for loose-top boxes, is the cable industry still going to support cable cards?

Mr. POWELL. Absolutely. A couple quick things to say. First of all, it is important to remember that, even if Congress passed this provision eliminating the integration ban, we would have absolute legal obligation to continue to provide separate security and cable cards. Unless you believe we just completely flaunt the law, with no consequences at the commission, that will continue to be the case.

Secondly, we have 44 million subscribers of our own who use cable cards. Failure to support them, and failure to support those consumers, will have dire competitive consequences, particularly since our principal competitors are collected in industries that have none of those requirements, and are able to offer competitive alternatives if we fail to deliver an adequate experience.

The third thing I think is important for the committee to understand is the majority of revenue today that TiVo derives, and as their CEO has noted, they have deals with 10 of the top 20 cable companies. The majority of what they are doing is providing cable boxes through cable companies. Those deals with small companies, like Suddenlink, and others, meant that they have to continue to support that as their principle cable equipment. So we think the incentives remain strong to comply with the law that we have a duty to abide by.

Mr. WALDEN. So with the language in the draft right now, is Section 629 repealed, with the language from my section dealing with the integration ban?

Mr. POWELL. Absolutely not. I think, as I mentioned earlier, I had the privilege of sitting on the commission during implementation of Section 629. I think the thing that trouble us at the time, that troubles us today, is that this was not in any way a requirement of the statutory provision. An elimination of an FCC rule in this context does not in any way affect the other provisions of the statute.

Mr. WALDEN. Thank you. Going on, how is the cell phone unlocking different from Section 629?

Mr. POWELL. Well, I giggle a little bit, because the analogy is completely inept. The third party box——

Ms. BURDICK. Thanks.

Mr. POWELL. It was from this guy. I mean, with all respect, here is the difference. It is not an accurate analogy because the third party set-top box, in essence, comes unlocked. Nothing locked about it. The cable card is what allows you to put it into the box and have it work. It is important to remember cable boxes in cable systems have no reason. They can't work on any other system. A Comcast box does not work in a Time-Warner cable system. They are unlike the portability of cell phones, or the portability of other devices that are trying to change networks. Leased boxes never change networks. The boxes that do change networks are third party boxes, and they are unlocked, and that is what the cable card provides.

Mr. WALDEN. And let me just continue on. Some have raised concerns that the elimination of the integration ban will greatly harm consumer choice, thwart competition, and seriously damage the retail market for set-top boxes, and remove incentive for cable to develop a new generation solution or IP standard that is compatible with competitive navigation devices. How would you address those claims?

Mr. POWELL. I think the one thing we have to take real cognizance of is there has been an explosion of video devices and new content sources that were hardly imagined in 1996, or 1998, when these provisions were implemented. The list is legion. Roku, Apple TV, Xbox, Vuda services, Netflix services, all the iOS devices, all the Android devices, all of which are platforms today for distributing video content, including cable content. That market is being developed by the marketplace at an extraordinarily fast clip.

Our view is that market innovation is moving to meet demand, is moving to make consumer preferences, and doesn't need an additional intervention in order to make it succeed.

Mr. WALDEN. You know, when you talk about things moving quickly over the last several years, you know, if you go back just 10 years to where we are today, what would you say, on the innovation side, has really transpired in that period of time, and where do you think in the next maybe 5 to 10 years we are going to be?

Mr. POWELL. I think it is completely unimaginable. My opinion is, we are only in the third or fourth inning of the transformational power of the Internet. And I think the ability to reduce video content to bits of zeroes and ones, and distribute them over any existing data infrastructure, or any existing data capable devices means our old fashioned ways of looking at things, and stovepipe ways, are going to be eliminated. And the consumers are going to be, I think, the great winner, even if it is a stress for many of our companies.

Mr. WALDEN. Well, thank you very much, and my time has expired, and I yield back. And the chair now recognizes Mr. Welch.

Mr. WELCH. Thank you very much. I appreciate the hearing, and appreciate all the witnesses. You know, there are a lot of good things that are happening. The programming has never been better. That is what most people say, and a lot of my constituents say. The choices have never been wider, but the cost has never been higher. That is the real challenge. And that is what I am hearing about from a lot of folks in Vermont, and I know that is true for all of us here, and the consumer just doesn't have much control, other than to just pull the plug, which is not what we want them to face. And I am wondering, just quickly, is there anything in the Satellite Reauthorization bill that is going to start addressing the cost, which, according to the FCC statistics, is going up about twice the rate of inflation every year? Just quickly, is there anything? Each of you can answer that. And briefly, because I don't want to take up all my time on this. Mr. Palkovic?

Mr. PALKOVIC. Sure. On behalf of DirecTV, there is a very important change here, and that is dealing with the joint negotiation of stations that are not commonly owned——

Mr. WELCH. OK.

Mr. PALKOVIC [continuing]. To negotiation retransmission——

Mr. WELCH. Ms. Burdick?

Mr. PALKOVIC [continuing]. Access greatly.

Ms. BURDICK. We remain free and over the air at all times, so the consumers have always had the choice to get us for free.

Mr. WELCH. Well, wait a minute, but you get involved in the retransmission too, and that adds to the cost to the consumer, right?

Ms. BURDICK. All broadcasters in a market combined don't earn what ESPN alone earns.

Mr. WELCH. Well, that isn't exactly responsive.

Ms. BURDICK. We——

Mr. WELCH. I mean, eBay makes more than some broadcasters.

Ms. BURDICK. eBay makes more——

Mr. WELCH. My point is——

Ms. BURDICK. True, and they are not——

Mr. WELCH [continuing]. That your answer——

Ms. BURDICK [continuing]. Creating local——

Mr. WELCH [continuing]. Was not an answer.

Ms. BURDICK [continuing]. Content either. Yes.

Mr. WELCH. It was a good answer——

Ms. BURDICK. Thank you.

Mr. WELCH [continuing]. But not a responsive answer.

Ms. BURDICK. Yes. We have an opportunity to negotiate the value in the free marketplace with cable and satellite providers that are much bigger than we are. We don't earn——

Mr. WELCH. OK.

Ms. BURDICK [continuing]. What the viewership would suggest we share.

Mr. WELCH. I don't have much time, so let me go on. Mr. Powell, anything——

Mr. POWELL. I would just agree with Mr. Palkovic on the JSAs. I do think the Department of Justice has explicitly found that these practices result in higher prices for consumers. And I won't repeat my comments, but my belief——

Mr. WELCH. OK.

Mr. POWELL [continuing]. That the integration ban has that virtue as well.

Mr. WELCH. Thank you. Mr. Zinn?

Mr. ZINN. I think Mr. Powell clearly stated that consumers aren't going to see any benefit, monetarily, from an integration ban repeal.

Mr. WELCH. OK. Mr. Wood?

Mr. WOOD. I would agree with Mr. Palkovic and Mr. Powell that the JSA ban, if implemented correctly, I am sorry, the joint negotiation ban could reduce——

Mr. WELCH. OK.

Mr. WOOD [continuing]. Costs. I do think, though, giving people choice over which channels they pay for would do even more to do that, and that is why we supported Ms. Eshoo's bill and Ms. Lofgren's bill on that subject.

Mr. WELCH. OK. Thank you. By the way, I understand that this bill is not all around that. It is really just trying to maintain a status quo and level playing field, with some modest changes.

One of the other questions I have is this, to Mr. Powell. I understand the NCTA supports the eliminating the retransmission consent stations from the basic must-buy tier, and I know there is a dispute on that. And I just want you to speak to that, and then perhaps Ms. Burdick.

Mr. POWELL. Just briefly, it is the position of NCTA that must-buy has outlived its usefulness, and is a provision ripe for repeal for the reasons that I think we have heard expressed here by the committee today.

Mr. WELCH. OK. Ms. Burdick?

Ms. BURDICK. I find it interesting that cable likes to talk about tiering only when it is with broadcast stations, and not other programming.

Mr. WELCH. You, I think, quite accurately pointed out how things are totally different now, but most people used to get the big network broadcast for free. And now, Vermonters get all of their signals through satellite or cable, and then what they could still get for free with an antenna, they don't get for free if that gets bundled up. I think that is the point you are making, isn't it, Mr. Powell?

Mr. POWELL. Yes. We have to be candid that this is the only class of program to which the government, by law, requires an American consumer to purchase as a predicate to anything else the consumer might want. That just is a difference of substantial magnitude to any other——

Mr. WELCH. Right.

Mr. POWELL [continuing]. Kind of commercially negotiated——

Mr. WELCH. And that was actually, as I heard Ms. Blackburn's question, the tone of her question. She was kind of getting to that situation. But I just want to say, I appreciate you all coming in. I mean, this is so important to the economy and to consumers, and we are not going to be able to deal with this now.

The changes that you have described that have occurred are enormous. The programming, everyone is saying, has never been better, and obviously there is got to be a financing mechanism that is going to support the infrastructure and the creative content. But, bottom line, we have got to have some provisions in here that address the consumer, and their inability to be at the table, by and large, when these very important negotiations with very legitimate competing interest are taking place.

So, going forward, I just implore all of you to remember that, even as you make compelling arguments for the interests that you represent, that are important to consumers, that the outcome here be something that is going slow this rate of growth that is going at twice the rate of inflation. And I yield back.

Mr. WALDEN. Thank you very much. The gentleman yields back, and the chair now recognizes for 5 minutes the gentleman from Louisiana.

Mr. SCALISE. All right. Thank you, Mr. Chairman. I want to start with Ms. Burdick. And let me first say I have always felt that broadcasters should be compensated for their content, for the programming that you provide. Where we probably disagree is I don't believe every single cable subscriber should be mandated by the Federal Government to buy what anyone else might be selling. That is something that two parties should be negotiating, not the Federal Government coming in and say, you have to do this this way. Let the parties get in a room, and you all have negotiations. But I guess where my issue has been has that, in many cases, there are federal mandates that set the stage for how those negotiations even begin.

And so, with that, my question would be, do you think it is fair that the Federal Government mandates that cable subscribers, in my district the average household income is around $45,000. And so, should those people be required by law to buy broadcast programming, as well as the other programming that, maybe three or four or five other stations along with it, rather than just letting it be a free market negotiation between two parties?

Ms. BURDICK. You know, I think we have always expressed a willingness to enter and be engaged in those discussions. But, as I said in my testimony, broadcasters have regulations that other people don't, and some with that, and some public service obligations, came some benefits. That was one of the benefits. And in every——

Mr. SCALISE. Invaluable spectrum that goes along with it. I know you have mandates there——

Ms. BURDICK. Well, I have paid for my——

Mr. SCALISE [continuing]. But you have——

Ms. BURDICK [continuing]. Spectrum. Satellite got theirs for free too. So, I think you can have an intellectual argument, but you need to take a wholesale look, and not just pieces that are in this bill.

Mr. SCALISE. Right, and I would agree. That is why I do think we need to take that wholesale view of this. And we are starting that conversation in this STELA reauth, which we will get into maybe later. There has never been a clean STELA bill, so clearly we are starting to have some of those conversations, and trying to start levelling that scale, but clearly we have got a long way to go to get to a true level negotiation. And now the broader discussion will occur after we are removed with this conversation. And I think the chairman of both the full and subcommittee agree that we have to have a broader discussion on that.

I guess that brings me to you, Mr. Powell. It is one thing for both parties in a negotiation to arrive at a tiering plan, or channel packaging, and that is something, I sure think that should be a negotiation that you all enter into. But right now it is a different dynamic, where the government is mandating that is how you have to walk out of the room if you have that negotiation.

And one of the things that we have been starting to highlight is, when you look at the '92 Cable Act, and some of the things your companies have to deal with, I love this brick phone, because it underscores just the point that the law was written at a time when this was your smartphone. This was the main telecommunications device.

And so, when we think about these laws, I think it is always important to go back and say, these laws were written when this was the smartphone of the day. This was the most telecommunications power you could put in. And now, of course, the things you could put into this little device, you can actually stream video, you can pull up programs that were on TV last night. I still have not——

Mr. WALDEN. Do you still use that? Is that still——

Mr. SCALISE. I have tried to get an arrangement where I could at least get some kind of a signal on this thing, and for some reason it doesn't work, but, unfortunately, the laws don't work either. They have updated this device, by the way, and you can go through about 50 different iterations to this device, yet we don't have any iterations of updating of the laws that still govern how things operate.

So I want to ask you, Mr. Powell, how do your companies deal with a legal environment that was written, and still functions today, under laws that were based on this technology, when today you are competing in a world with this technology?

Mr. POWELL. Yes. Just in short, I think it is challenging because the market reality, the facts of not only the products, but the market structures, who are your competitors, what are your innovative choices, all are things that, when layered over the statute, which is, at best, ambiguous, because it is not clearly applicable or appreciable compared to what is really happening. And it leads to a lot of delay. The one thing that I would argue that it does, quite aggressively, is create uncertainty and delay. Things that should be done quickly in Internet time now take years sometimes of resolution at the commission just because of a statute that doesn't imagine the changed technical circumstances of the market.

So it is challenging. They do their best to work around those ambiguities. And I don't think we are even here to say that deregulation for its own sake is even the answer. But law should at least honestly and accurately reflect the reality of the marketplace it is purporting to oversee. And when that is as badly out of alignment as some of these rules are, I think it is certainly time to re-evaluate their——

Mr. SCALISE. Yes, I think it is pretty clear that the time for re-evaluation is long past. Again, I have been through, fortunately, multiple different phones. I actually couldn't afford one of these when I was a college student, but a lot of college students, and, in fact, my 6-year-old daughter has one of these, and she knows how to use it probably better than me. But if you look at the iterations of growth and innovation between these two devices, it just shows you how outdated the current laws are. That Congress hasn't gone and revised and updated those laws since this was the device, long past time that we do it.

I am glad we are at least starting that conversation, putting a little bit of those concepts in STELA, but knowing that, longer term, the bigger issues have to be confronted. And they have got to be confronted soon if we are going to benefit consumers, who are the people that we represent. It is the people that all of you service in your lines of business. So I look forward to that broader discussion as we get through this. And I appreciate the Chairman——

Mr. WALDEN. Thank you.

Mr. SCALISE [continuing]. And Ms. Eshoo's——

Ms. ESHOO. Thank you.

Mr. SCALISE [continuing]. Efforts as well, and we will continue working forward to get to that goal. Yield back the balance of my time.

Mr. WALDEN. We appreciate you bringing that black and white TV with you.

Ms. ESHOO. Yes.

Mr. WALDEN. We will now turn to gentlelady from Colorado, Ms. DeGette, for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman. I was going to suggest that, given the topic of this bill, maybe Mr. Scalise would like to bring in his TV from that era the next time he comes. Yes. I want to add my thanks to the Chairman for issuing a discussion draft, and trying to work in a bipartisan way on this bill. It has always been a bipartisan bill. And, while we have some concerns about it, I think we can all work together to bring it to a markup.

There are a couple of issues that I want to talk about today. The first one is blackouts, because we have all been talking about how our consumers feel, and a lot of Americans don't really understand what STELA is, or retransmission consent, but they can clearly see what happens when negotiations break down, and there is a blackout. And I will tell you, if the Bronco games got blacked out, I would hear universally from all of my constituents in Denver and the surrounding vicinity.

We have heard from witnesses representing all parts of the video marketplace that blackouts are unfair to consumers, and on behalf of the consumers, I agree. I think we need to talk, as we look at reauthorization, and I am happy to see the diversity of opinions today, about what we can do, as we look at the reauthorization, to consider the impact on that growing problem.

So I want to start with you, Mr. Powell, and ask you if you think Section 3 of the draft legislation would make blackouts more or less common for consumers?

Mr. POWELL. I personally believe it is a useful step to making them less of a problem for consumers.

Ms. DEGETTE. Ms. Burdick, what is your view on that?

Ms. BURDICK. I said, when I was here last time that we have agreed to support the draft because I think, frankly, it is kind of a stocking horse. We do 100 agreements every cycle. In one time in 10 years has an MVPD asked for separate negotiation. And when asked again the next time, they said it is more efficient to do it together. We have said all along, if they want to do them separately, they can.

Ms. DEGETTE. So you——

Ms. BURDICK. It will add cost, it will add time, particularly to smaller broadcasters. And that——

Ms. DEGETTE. But——

Ms. BURDICK [continuing]. Those costs will have to be passed on.

Ms. DEGETTE [continuing]. To reiterate my question, do you think Section 3 would make blackouts more or less common for consumers? I appreciate your being part of the time, but——

Ms. BURDICK. I think the negotiations are still going to be tough, particularly when you are the small guy——

Ms. DEGETTE. Do you think blackouts will be more or less common, Ms. Burdick?

Ms. BURDICK. I have no way to gauge it.

Ms. DEGETTE. OK. Mr. Palkovic?

Mr. PALKOVIC. They will be less, significantly less. There is no question about it.

Ms. DEGETTE. OK. I think I will leave it at that. I want to talk for a minute about shared service agreements. I am pleased that the draft bill is recognizing that we should not permit broadcaster coordination for retransmission consent, but shared service agreements also have an impact on jobs and local news. And so, if we can all agree that broadcaster cooperation can harm competition, it seems inconsistent that then, in the bill, we would tie the FCC's hands and prevent the agency from addressing these harms outside the retransmission consent product.

So, Ms. Burdick, I want to ask you, the National Association of Black Journalists recently wrote the FCC, supporting Chairman Wheeler's proposal on shared service agreements. They said many of the stations that are now part of a shared service agreement had working news departments with journalists who covered local news. Those news departments were closed for various reasons, disrupting the lives and careers of the affected journalists. How do you respond to that allegation by the National Association of Black Journalists?

Ms. BURDICK. Yes. I think they have changed their position, because they have since sent a letter indicating that they have come around the bend on that issue, because they have seen the fact that minority ownership is ending. I can speak for our company's experience, and I mentioned the Augusta experience, where our choice was only going out of the local news business, or entering into agreement.

We have two others, one in Kansas, represented by people here today, where we began news in Spanish with a JSA with Univision. It is the only local newscast in Spanish, does emergency alerts and weather warnings, in the State of Kansas. The second is in Springfield, Missouri, where we took a number four, failing by almost any measure station. That DTV transition solution was a 15 watt transmitter, 15 watt. With a local businessman, we entered into a JSA. That station is now competitive for number two, and won the national Edward R. Murrow Award for best local newscast last year.

Ms. DEGETTE. Thank you.

Mr. Wood, how would you respond to this, so we can get your opinion on the record as well?

Mr. WOOD. Well, more than one witness has used the word fiction, and I think there have been a lot of stories told in both directions. I think the problem we have had until now is that JSAs are just one tactic that broadcasters use to coordinate. And, as Chairman Walden said, when it is inappropriately done, when it actually harms competition, and that is both in terms of retransmission, and also in terms of the newscasts that we see, and other diversity of viewpoints, and competing viewpoints, that we need, that is when we are concerned.

When there is a de facto transfer of control, and you actually have one station airing the same news on two, or three, or four channels in a market, we have documented several examples of that, and we think the Federal Communications Commission needs to look into that practice to see when there is actually a transfer of control happening, and shared news, rather than just shared advertising.

Ms. DEGETTE. Thank you very much. Mr. Chairman, I have this letter from the Association of Black Journalists. It is dated March 10——

Ms. BURDICK. Could I correct myself? You are right, I am wrong.

Ms. DEGETTE. OK.

Ms. BURDICK. It was the——

Ms. DEGETTE. Thank you.

Ms. BURDICK [continuing]. Black Owned Broadcasters——

Ms. DEGETTE. OK.

Ms. BURDICK [continuing]. Association.

Ms. DEGETTE. I would like unanimous consent to put the March 10 letter into the record to——

Mr. WALDEN. Without objection.

Ms. DEGETTE [continuing]. Clear up any confusion. Thank you very much.

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

Mr. WALDEN. Gentlelady's time has expired. We will now go to the gentleman from Missouri, I believe is next, Mr. Long, for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman. Thank you all for being here today, and for your testimony. Ms. Burdick, you discussed earlier today the competition in the local markets for advertising. You had a chart you put up on the wall. I know the Department of Justice recently put together a paper for the Federal Communication Commission detailing the leverage that broadcasters have in local markets. And how does your analysis stack up against what Department of Justice recently found in their findings?

Ms. BURDICK. Yes. And thank you for the question, Congressman Long. I think there are three key points in that DOJ filing. First of all, large sections of it were lifted from 1997, dealing with the radio JSAs. They were out of date, and they were inaccurate. Number two, it never mentioned cable in the document at all, as if cable did not compete with local broadcasting for advertising. And I think this committee's own data suggests that one cable system in a market is the equivalent to about a number two or a number three television station. It didn't even mention the word cable, much less Internet, or any of the new advertising sources.

And probably most disingenuous, as far as I am concerned, is in its footnote the DOJ noted that it itself had reviewed several complaints of alleged anti-competitive activity, and found that not to be the case, and encouraged a case by case review. But then, in its conclusion, basically came up with a bright line, ban all JSAs. I thought it was sloppy, I thought it was disingenuous, and I don't think it should be relied on as a document of fact.

Mr. LONG. OK. Thank you. Also for your, Ms. Burdick, in the draft STELA bill, it contained a provision eliminating the sweeps rule. And can you explain to me exactly how that rule works, and what the potential impact on smaller stations and smaller markets would be?

Ms. BURDICK. Well, I think you have rightly hit on a point that most people have not recognized, and that is the impact on smaller markets. Many of our members of NAB don't like it. We have said we could support, and could live with, the compromise in this legislation. But the distinction is that larger markets, usually markets 60 and above, are always in sweeps. They are metered markets. Diary markets, 60 and below, are rated four times a year, and basically their advertising and their economics are set three times a year.

And this was enacted because of documented mischief from the cable side in history, where they were pre-emptively taking broadcasters off the air during sweeps, so their rates and their advertising economics would be negatively impacted. But we have said we can live with it, and we would support that change in the bill. But there is a distinction of local markets, and I appreciate you raising it, small markets.

Mr. LONG. OK. Thank you. And I have got to say, earlier, when Mr. Zinn was making reference to Mr. Powell next to him, and said, this guy, and then Mr. Powell reached over and picked up his cup, I thought we were going to have a Jerry Springer moment for a minute. But thankfully he was just going for a drink of water. I yield back, Mr. Chairman.

Mr. WALDEN. Gentleman yields back the balance of his time. We turn to the gentleman from Iowa, Mr. Braley.

Mr. BRALEY. Thank you, Mr. Chairman. I hope we don't have a Jerry Springer moment here. I don't think that the committee could handle that.

Ms. Burdick, I once tried a case in the Quentin Burdick Courthouse in Fargo, North Dakota. Are you at all related to Senator Burdick?

Ms. BURDICK. You know, I asked my husband that.

Mr. BRALEY. Yes.

Ms. BURDICK. As far as I know, although that family is from that North Dakota-South Dakota border, we don't think so.

Mr. BRALEY. Well, it is a lovely courthouse. If you ever get to——

Ms. BURDICK. Yes.

Mr. BRALEY [continuing]. Fargo——

Ms. BURDICK. And there is a Burdick Highway.

Mr. BRALEY. It is. I am glad that the committee is moving forward on a reauthorization of STELA, and I want to be open to all the stakeholders who have an interest in this reauthorization, and so I have a very simple question for each one of you. I know it has been a long hearing, but I want to ask each of you, if there was one thing you could change about the discussion draft to improve it, what would it be? And I will start with you, Mr. Wood, and we will just work our way down the table.

Mr. WOOD. I would simply remove Section 4 and give the FCC the power to look into these agreements so that they can make the data driven rules that we all know they need to have in this day and age.

Mr. BRALEY. Thank you. Mr. Zinn?

Mr. ZINN. I would eliminate the 629 amendment. If you step back, this is STELA legislation designed to provide distant signals to 1.5 million unserved satellite customers, but it has been hijacked to disenfranchise a million people who are using retail devices. And this committee is not one to pick winners and losers, and I would take that out.

Mr. BRALEY. Mr. Powell?

Mr. POWELL. I think we would just continue to work with the committee to make sure that the JSA provisions are sufficiently tight, that they don't undermine the ability for the commission to look at this issue in the narrow area of retransmission consent.

Mr. BRALEY. Thank you. Ms. Burdick?

Ms. BURDICK. Yes, thank you for the question. My change would be, if there are going to be requirements that govern how one side of the table, broadcasters, can negotiate retransmission consent, that similar agreements on the MVPD side also be looked at.

Mr. BRALEY. OK. Thank you. Mr. Palkovic?

Mr. PALKOVIC. Yes, we are very happy with the way the bill is drafted today. If we were going to change anything, we probably want to be a little bit stronger on the blackout issue, so there is no way that people can black out channels.

Mr. BRALEY. Well, I appreciate all of your succinct answers, and I will treat you with a similar courtesy, and yield back the balance of my time. Thank you.

Mr. WALDEN. Thank the gentleman for yielding back. I am going to yield, before I go to Mrs. Ellmers, to the ranking Democrat here.

Ms. ESHOO. Thank you. Mr. Chairman, I just want to ask for a unanimous consent request to place in the record the Pew Research Center's Project for Excellence in Journalism, which demonstrates the amount of healthy revenues that are reported relative to local broadcast TV advertising revenue and its growth. Thank you.

Mr. WALDEN. Thank the gentlelady. And before I yield to Mrs. Ellmers, I am just curious if, Ms. Burdick and Mr. Powell, on this issue of the sweeps, and the market size, we are not trying to do violence to somebody. Is that an issue, Mr. Powell, that you think there is common ground, maybe, between these that are metered and those that are di-read?

Mr. POWELL. I think——

Mr. WALDEN. Or is that something——

Mr. POWELL [continuing]. We fully support the provision as it is currently drafted.

Mr. WALDEN. Currently drafted, OK. We will go now to Mrs. Ellmers for 5 minutes.

Mrs. ELLMERS. Thank you, Mr. Chairman, and thank you to our panel for being here today on this very important issue, as we take the steps forward to deal with STELA. I do have some questions for Mr. Palkovic that are a little more specific to North Carolina, my region of the country, and having to do with Inspiration Network, one of the independent networks.

It has come to my attention, Mr. Palkovic, that there have been some negotiations, and that DirecTV is no longer carrying Inspiration TV. And I am coming at this approach not only as a member of this committee, a member of Congress, but also as a mom, and, actually, one of your customers. I am concerned about this, because there seems to be a little bit of unfair dealing with how we deal with the independent networks.

And I just was wondering if you could discuss that with me, and then if you would be so kind as to commit to work with my office, this committee, and others within the independent networks as well.

Mr. PALKOVIC. Sure. We are always happy to work with people on these kind of issues. We have, as you can imagine, a lot of programming agreements. And some of the agreements, we are paying for content, some of the agreement the content providers pay us to be carried. And——

Mrs. ELLMERS. Yes.

Mr. PALKOVIC [continuing]. As you can probably appreciate, we don't disclose individual terms and conditions.

Mrs. ELLMERS. Sure.

Mr. PALKOVIC. We are not allowed to, contractually. In this particular case, we had a relationship with the Inspiration Network they did not want to continue along the——

Mrs. ELLMERS. Yes.

Mr. PALKOVIC [continuing]. Same lines, or even similar lines, as their previous agreement, so they chose to take their channel down.

Mrs. ELLMERS. Yes.

Mr. PALKOVIC. Sometimes we are forced to take a channel down. We don't like to do it. It is not in any way, shape, or form what we strive for. In this case, it happened to be their decision.

Mrs. ELLMERS. Yes. And that is——

Mr. PALKOVIC. Our door is always open for them if they want to come back.

Mrs. ELLMERS. And that is my understanding as well, and our purpose is not to interfere with negotiations. This, for me, again, is an issue of fairness, one that I believe is very important in dealing with these types of issues, especially with the appearance that it takes. You know, being that this particular network deals with family, wholesome, faith-based programming, I see them as possibly being discriminated against.

And it is my understanding, and there again you don't have to go into details, but that, actually, they were paying a significant amount of money to be carried by DirecTV, that cost was going to have to go up. And then, within the negotiations they said, look, we simply can't afford that, and, by the way, we know that you actually carry other networks for free, and can't we negotiate that kind of a deal? And, as you can imagine, the appearance is that they are being dealt with unfairly.

Mr. PALKOVIC. Well, I can assure you, our track record as a company is just the opposite of that. We do deal with people fairly. And I won't get into the details——

Mrs. ELLMERS. Yes.

Mr. PALKOVIC [continuing]. Of that particular relationship, but obviously we had a deal with them on acceptable terms.

Mrs. ELLMERS. Yes.

Mr. PALKOVIC. And, as I said, there was discussions about continuing under similar conditions, different than what you characterized, through what you have been told, and they chose not to.

Mrs. ELLMERS. Yes.

Mr. PALKOVIC. So if, for some reason, they want to continue discussions, again——

Mrs. ELLMERS. Yes.

Mr. PALKOVIC [continuing]. We talk to everybody. And, you know your comment on programming that is targeted at the family program, we are a huge proponent of family programming. We have a lot of examples of that on our platform. Just so I can get it on the record, we are a big proponent of——

Mrs. ELLMERS. Yes.

Mr. PALKOVIC [continuing]. Family programming at DirecTV.

Mrs. ELLMERS. Well, thank you. And will you commit to me today that we can work together on this, and then bring others together so that we can solve this problem?

Mr. PALKOVIC. Sure.

Ms. ESHOO. Would the gentleman——

Mrs. ELLMERS. Thank you so much.

Ms. ESHOO [continuing]. Gentlewoman yield just for——

Mrs. ELLMERS. Sure.

Ms. ESHOO [continuing]. Five seconds?

Mrs. ELLMERS. I have 37 seconds.

Ms. ESHOO. Yes. I just want to say that I would be happy to work with you on this, and——

Mrs. ELLMERS. Wonderful.

Ms. ESHOO [continuing]. It is not negotiations, it is suggestions, and we are happy that you are open to what the gentlewoman spoke to. So I would be happy to——

Mrs. ELLMERS. Thank you.

Ms. ESHOO [continuing]. Work with you.

Mrs. ELLMERS. Thank you to the ranking member, and I am looking forward to being able to work together on this. Thank you very much, and I yield back the remainder of my time.

Mr. WALDEN. Gentlelady yields back. And that is obviously an issue a number of us have heard about, so appreciate you raising that. Turn now to the gentleman from Nebraska, Mr. Terry.

Mr. TERRY. Appreciate you calling to say you wanted me to come back to extend this hearing by another 5 minutes. Actually, I had a quick meeting I had to take, so I am glad it was still going on when I got back.

Mr. Powell, I am interested in learning a little bit more about the interconnects that Ms. Burdick referred to in her testimony, and how that works, but do you have any additional information on joint sales of local advertising between cable, satellite, and telcos? What is your viewand——

Mr. POWELL. You know, I think——

Mr. TERRY [continuing]. Perception?

Mr. POWELL [continuing]. I would say, for purposes of this bill, the joint use of agreements for advertising has absolutely nothing to do with what we are here making support for. We are having a concern with the use of joint agreements as a basis for validating collective negotiation of retransmission consent, not advertising. I don't have an opinion on whether their advertising models are efficient or not efficient in the sales of local advertising.

What I do think is, beyond efficiency, and treads into the territory of anti-competitive conduct, is collusively negotiating prices for re-trans consent. And I don't think that bears on at all whatever the virtues, or lack of them, on local advertising markets are.

Mr. TERRY. Ms. Burdick?

Ms. BURDICK. Thank you. The fact of the matter is that the cable industry itself, in an ex parte filed by NexStar in the last couple of days, they cite some specific examples where non-co-owned cable companies have linked together their negotiations with the same consultants. And I am not here to speak badly of cable. We own cable companies as well. But we have personal experience with ACA members in which they will tell us in a negotiation that they will have to run this by ACA, or the ACA attorneys, before they can get back to us on the acceptance of a deal.

So my only point was, if you are going to look at how those negotiations happen, look at it not just on the broadcast side, but on the other side as well. And I may be the only one in the room who finds it a little ironic that Comcast and Time-Warner can merge, but two little stations in August, Georgia can't talk to them about their retransmission agreements, but——

Mr. TERRY. Fair point.

Ms. BURDICK [continuing]. I would encourage you to look at both sides.

Mr. TERRY. So in regard to JSAs, in calculating ownership, which I think is a creative thing, do you think that many broadcasters would have to unwind JSAs in order to remain compliant with local ownership caps?

Ms. BURDICK. The proposal that has come out from the FCC suggests that there would have to be a hard unwind. There are rules yet to be written. In our particular case, our agreement was reviewed and approved by the FCC in 2008, I think it was. So if now, a few years later, after investing $11 million in equipment, and expanding news and public service, I have to unwind, I would suggest that is a harmful thing. So the rules have yet to come out, but the suggestion is yes, there would have to be an unwind that would lead to less news, less local news, and less public service.

Mr. TERRY. OK. Mr. Wood, is there any scenario for JSAs to be not anti-competitive? If you can use two negatives.

Mr. WOOD. You can. I don't know if I can. As we have said, JSAs are really just the tip of the iceberg here. The FCC has a long record on them, and has been studying them for a while. They have applied this rule in the radio context for several years.

I want to be clear again that when we talk about synergies, and eliminating back office expenses, that is jobs too. The same NexStar letter that was referred to by Ms. Burdick said that some of our figures were wrong. And they said of our 30 layoffs, only three of those were on-air personalities. So the other 27 people still lost jobs as well. I would say that perhaps there is some efficiency to be gained from combining back office operations.

However, we are talking more about total management and control of one station by another, especially when the sidecar companies, or shell companies, are doing nothing but holding the license for the purpose of evading FCC rules, and not necessarily situations where you do actually have separate news teams, and separate broadcasters, but where the owner, for FCC purposes of the license, is doing nothing but that. Has no office, no personnel, no control over programming, no control over leasing, or any right to sell the station to anyone but the operating broadcaster.

Mr. TERRY. Let me ask you about this scenario, then. What about JSAs just for, as Mr. Powell was discussing, negotiations for retransmission on either side, the cable side or the network sides?

Mr. POWELL. Yes. We——

Mr. TERRY. Or the station owner sides?

Mr. POWELL. Yes. I am sorry. We have said in our filings that we want the FCC to take a look at the totality of the circumstances here. JSAs are one indicator of common control. I wouldn't say that they necessarily transferred control all by themselves. And so there could be a role for some negotiations, and some sharing of resources.

Another example that is commonly cited is the same two stations using a radar system, or sharing the same news helicopter, or something like that, that is a physical asset. Our hackles are raised when they are sharing people, and sharing news, and sharing the same stories on two supposedly competing stations.

Ms. BURDICK. May I answer that one quickly?

Mr. TERRY. Certainly. Go ahead.

Ms. BURDICK. Mr. Chairman, Free Press starts with a false assumption, that if there wasn't this sharing, that there would be a robust separate——

Mr. TERRY. Right.

Ms. BURDICK [continuing]. Newsroom, and that is simply not true.

Mr. WALDEN. Thank the gentlelady. Mr. Latta, I believe you have something for the record?

Mr. LATTA. Thank you very much, Mr. Chairman. I would like to enter a letter of support from my language regarding an integration ban from the League of Rural Voters.

Mr. WALDEN. Without objection, so ordered.

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

Mr. WALDEN. And I have an item from the "Wall Street Journal" from Juan Williams I referenced in my testimony I would like to put in the record. Without objection, so ordered.

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

Mr. WALDEN. And I want to thank the witnesses, and all of the participants in this hearing, our members. This is obviously an important subject, a complicated one, and we are going to continue to move forward. We thank you. We will probably have some questions for the record to clarify some issues going forward, but thanks for your participation. And with that, we stand adjourned.

[Whereupon, at 12:34 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

FOR IMMEDIATE RELEASE
March 6, 2014

CONTACT
Dennis Wharton
202-429-5350
follow me

NAB Statement on STELA Draft Legislation

WASHINGTON, D.C. -- In response to House Communications and Technology Subcommittee Chairman Greg Walden releasing a **discussion draft of legislation** to reauthorize the Satellite Television Extension and Localism Act (STELA), the following statement can be attributed to NAB President and CEO Gordon Smith:

"NAB is extremely encouraged by the discussion draft circulated today by House Republicans under the leadership of Chairmen Upton and Walden. Although we were hopeful for a clean bill from the Committee, the product put out today is legislation NAB is pleased to support.

"NAB appreciates lawmakers' recognition that the FCC should look at broadcaster sharing agreements in the context of a holistic review of media ownership rules before taking any action on the issue. We look forward to continuing to work with both Republicans and Democrats in the House and Senate as reauthorization of STELA is considered."

About NAB
The National Association of Broadcasters is the premier advocacy association for America's broadcasters. NAB advances radio and television interests in legislative, regulatory and public affairs. Through advocacy, education and innovation, NAB enables broadcasters to best serve their communities, strengthen their businesses and seize new opportunities in the digital age. Learn more at **www.nab.org**.

Return to Top

ncta

PRESS RELEASES

March 10, 2014

STATEMENT OF NCTA REGARDING ENERGY & COMMERCE COMMITTEE DISCUSSION DRAFT OF THE REAUTHORIZATION OF THE SATELLITE TELEVISION EXTENSION AND LOCALISM ACT

"We support legislation offered by Chairmen Upton and Walden reauthorizing STELA, and proposing narrowly targeted video reforms. We particularly support eliminating the FCC's integration ban rule - a rule that applies only to cable operators among MVPD competitors and that forces consumers to bear needless costs. And we support efforts to address anticompetitive concerns that consumers are harmed by local broadcasters jointly negotiating signal carriage agreements. We look forward to participating in Wednesday's hearing and to working with members of the committee as legislation on these issues is considered."

Contact: Brian Dietz/Joy Sims (202) 222-2350

DIRECTV

dish®

Contact: Andrew Reinsdorf
DIRECTV
(202) 383-6340
areinsdorf@directv.com

Jeff Blum
DISH Network
(202) 293-0038
Jeffrey.blum@dishnetwork.com

DIRECTV and DISH Applaud Draft Satellite Bill

EL SEGUNDO, Calif. and ENGLEWOOD, Colo., March 7, 2014 – DIRECTV and DISH thank Chairman Walden of the House Communications and Technology Subcommittee for releasing the first STELA reauthorization discussion draft.

We support this draft as an important first step in the reauthorization of STELA. Significantly, it ensures continuity of service to more than 1.5 million distant signal customers who would, otherwise, lose service in December. It also addresses one of the most egregious forms of retransmission consent abuse – joint negotiating agreements among broadcasters.

We and our 34 million combined customers appreciate the hard work of the Subcommittee, and we look forward to working with Republican and Democratic members of Congress as this legislation moves forward.

About DIRECTV: DIRECTV (NASDAQ: DTV) is one of the world's leading providers of digital television entertainment services delivering a premium video experience through state-of-the-art technology, unmatched programming and industry leading customer service to more than 37 million customers in the U.S. and Latin America. In the U.S., DIRECTV offers its 20 million customers access to more than 190 HD channels and Dolby-Digital® 5.1 theater-quality sound, access to exclusive sports programming such as NFL SUNDAY TICKET™, Emmy-award winning technology and higher customer satisfaction than the leading cable companies for 13 years running. DIRECTV Latin America, through its subsidiaries and affiliated companies in Brazil, Mexico, Argentina, Venezuela, Colombia, and other Latin American countries, leads the pay TV category in technology, programming and service, delivering an unrivaled digital television experience to more than 17 million customers. DIRECTV sports and entertainment properties include two Regional Sports Networks (Rocky Mountain and Pittsburgh), and minority ownership interests in Root Sports Northwest and Game Show Network. For the most up-to-date information on DIRECTV, please visit www.directv.com.

About DISH: DISH Network Corporation (NASDAQ:DISH), through its subsidiary DISH Network L.L.C., provides approximately 14.057 million satellite TV customers, as of Dec. 31, 2013, with the highest quality programming and technology with the most choices at the best value. Subscribers enjoy a high definition line-up with more than 200 national HD channels, the most international channels, and award-winning HD and DVR technology. DISH Network Corporation is a Fortune 200 company. Visit www.dish.com.

NBCC | National Black Chamber of Commerce ®

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March 11, 2014

The Honorable Greg Walden
Chairman

The Honorable Anna Eshoo
Ranking Member

House Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

On behalf of its 100,000 affiliated Black-owned businesses, the National Black Chamber of Commerce endorses provisions in the Satellite Television Extension and Localism Act (STELA) that promote low-cost cable TV box rentals.

Since 2006, NBCC has maintained that the FCC's "integration ban" rule has held back advancements in technology and kept consumers who choose to rent – rather than own – a cable box reliant upon expensive and out-of-date technologies. The rule and the marketplace it was designed to create have been overcome by events, and Congress is right to repeal it.

I thank you and your colleagues for taking leadership on this long-overdue matter.

Sincerely,

Harry C. Alford

Harry C. Alford
President & CEO

LISTA Latinos in Information Sciences and Technology Association

March 12, 2014

Representative Greg Walden, Chairman
Representative Anna G. Eshoo, Ranking Member
House Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

Latinos in Information Sciences and Technology Association (LISTA) supports the Satellite Television Extension and Localism Act of 2014 (STELA). We are particularly heartened by language in the bill intended to eliminate the costly and unnecessary cable box rules that no longer make sense in this era of multiple online video services and devices.

We believe that banning the so-called "integration ban" will save Latino cable customers – who constitute an increasing part of the cable TV audience – millions of dollars a year and will enable providers to finally make lower-cost cable boxes available for rental for those families most in need. Meanwhile, those consumers who choose to buy their own devices can continue to take advantage of the growing number of options available to them.

Thank you both – and the subcommittee – for considering this issue.

Sincerely,

Jose A. Marquez-Leon
National President & CEO

CCIA Supports STELA, But Not Anti-competitive Amendment On TV Set Top Boxes

Washington – The House Energy & Commerce Communications subcommittee will hold a hearing today to consider legislation from its chairman, Rep. Greg Walden, R-Ore., that would reauthorize a law setting the rules for satellite subscribers to access broadcast television. The Satellite Television Extension and Localism Act expires at the end of this year. While there is agreement in general on extending it, there is controversy over added anticompetitive provisions that would protect the cable industry from independent providers of TV set top boxes.

The Computer & Communications Industry Association supports renewal of STELA, but without unrelated anticompetitive amendments. The following can be attributed to CCIA President & CEO Ed Black:

"The goal of this legislation is to renew a law so that more than a million people can continue to use a service that offers more choices for watching the TV programs they want. Whenever equipment is untethered from the network, innovation flourishes. We've seen this with telephone handsets and personal computers, laptops and tablets. HD CableCARD DVRs are now available, but unsupported by certain cable operators, so the FCC has required cable operators to allow consumer self-installation of these devices, which facilitate two-way Video on Demand.

"Adding an unrelated provision aimed at protecting incumbent companies goes against Congress's usual goal to avoid picking winners and losers when writing technology bills. Even worse, it undermines the very reason for this piece of legislation --to give customers more TV choices – not fewer.

The following can be attributed to CCIA Vice President Cathy Sloan:

"This amendment would invalidate pro-competitive FCC rules requiring cable operators to use the same security standard that they make available for the retail device market. This would then allow cable operators to rely on IP security standards that are incompatible with devices other than their own set-top boxes. Such a move waters down Section 629 of the Communications Act, which was intended to facilitate the introduction of independent commercial products for consumers to use when accessing multichannel video programming from distributors. The competitive device market should not become a casualty of the transition to IP networks.

"Congress should not support an amendment to STELA that would invalidate the FCC's consumer protection mandates in this area. So we join with the AllVid Tech Company Alliance and numerous public interest and consumer groups in opposition to any amendment that would weaken Section 629 of the Communications Act."

About CCIA:

CCIA is an international, nonprofit association representing a broad cross section of computer, communications and Internet industry firms. CCIA remains dedicated, as it has for over 40 years, to promoting innovation and preserving full, fair and open competition throughout our industry. Our members employ more than 600,000 workers and generate annual revenues in excess of $200 billion. For more, please go to: www.ccianet.org

March 7, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
2182 Rayburn Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and Technology
241 Cannon Building
Washington, DC 20515

Re: STELA Re-Authorization Legislation

Dear Chairman Walden and Ranking Member Eshoo:

The undersigned entities write to urge the Committee to reject any proposals to weaken Section 629 of the Communications Act[1] in its STELA[2] reauthorization process. Rather, Congress and the FCC should maintain and strengthen, not eviscerate, the law's requirement for equal treatment of consumers who purchase competitive commercial devices.

Section 629, which was conceived in this Subcommittee, requires the FCC to assure in its regulations that standards-based technologies support independently procured commercial products in rendering multichannel video programming distributors' ("MVPD") programming and services to consumers. FCC and court records demonstrate that in the absence of a requirement to rely on the same technologies made available to competitive entrants, cable operator support for competitive device entry was grossly inadequate.[3] Now, in a crucial transition to "IP"-based technologies, we urge the

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[1] 47 U.S.C. § 549.

[2] Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, 124 Stat. 1218 (2010).

[3] *Charter Communications v. FCC,* 440 F.3d 31, 40-44 & n.10 (D.C. Cir. 2006); *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd. 6794 ¶ 39 & n.162 (Mar. 17, 2005); Comments of the CEA on NCTA Downloadable Security Report in FCC CS Dkt. No. 97-80 (Jan. 20, 2006); Letter from Julie M. Kearney, Sr. Dir. and Reg. Counsel, CEA, to Marlene H. Dortch, Sec., FCC, in FCC CS Dkt. No. 97-80 (Mar. 23, 2006); Letter from Robert S. Schwartz, Constantine Cannon LLP, Counsel, to CEA to Marlene H. Dortch, Sec., FCC, in FCC CS Dkt. No. 97-80 (Mar. 24, 2006); Letter from

Subcommittee not to forestall competition through an amendment to STELA such as the language of HR 3196. This provision would allow cable operators to rely on IP technologies that are incompatible with competitive devices and user interfaces.

This is the wrong time to step backward. Cable operators are moving to IP distribution, but the industry has not committed to a standards-based approach to support retail devices as required by Section 629.[4] Instead, operators have licensed select devices only for partial and proprietary access. This is not the consumer choice that Section 629 was intended to foster. Common reliance on standards-based technologies is essential to assure that competitive commercial products are available as a real alternative to the set-top boxes leased by system operators, and therefore that innovation in set-top devices and user interfaces can flourish.[5]

The FCC has conducted an Inquiry about a successor to CableCARD that would be based on a standards-based IP gateway concept of supporting competitive devices. We ask this Subcommittee not to block a decision-making process that could allow manufacturers, retailers, and consumers to realize the benefits of a healthy set-top device market, free from cable industry control and akin to the market that has developed for competitively provisioned viewing devices like smartphones and tablets.

Respectfully submitted,

Public Knowledge
National Consumers League
Free Press Action Fund
Consumer Action
Writers Guild of America, West
AllVid Tech Company Alliance

Julie M. Kearney, Sr. Dir. and Reg. Counsel, CEA, to Marlene H. Dortch, Sec., FCC, in FCC CS Dkt. No. 97-80 (Aug. 7, 2006); Letter from Todd G. Hartman, Vice President, Associate General Counsel and Chief Compliance Officer, Best Buy Co., Inc., to Marlene H. Dortch, Sec., FCC, in GN Dkt. No. 09-47, 09-51,09-137, and CS Dkt. No. 97-80 (Jan. 27, 2010).

[4] *See., e.g.*, Fierce Cable, *Time Warner Cable moving to all-IP over 'some number of years,' CEO Britt says,* http://www.fierceiptv.com/story/time-warner-cable-moving-all-ip-over-some-number-years-ceo-britt-says/2012-08-02 (Aug. 2, 2012); FierceCable, *Gateways obviate the boxed-in feeling for an entertained home*, http://www.fierceiptv.com/story/gateways-obviate-boxed-feeling-entertained-home/2012-07-10 (July 10, 2012); FierceCable, *Humax could challenge Cisco, Motorola, Pace, Arris gateways with MMC Technology acquisition*, http://www.fiercecable.com/story/humax-could-challenge-cisco-motorola-pace-arris-gateways-mmc-technology-acq/2012-07-09 (July 9, 2012); GIGAOM, *Did The Cloud Just Kill The Set-Top Box?*, http://gigaom.com/video/cloud-set-top-box/ (June 16, 2011).

[5] *See* letter of Feb. 16, 2011, MB Docket No. 10-91; CS Docket No. 97-80; PP Docket No. 00-67, from the AllVid Tech Company Alliance to Julius Genachowski, Chairman of the FCC, at 4 – 6, describing the need for and benefits to competition of such a standard IP interface.

Mr. Thomas Wheeler
Chairman, Federal Communications Commission
445 12th Street NW
Washington, D.C 20554

March 10, 2014

Dear Chairman Wheeler,

I was pleased to read that you oppose further consolidation in the broadcast industry and made it clear you would like to cut back on the so-called "shared services" agreements or "SSA's," which allow a station owned by one company to provide news for a competing company in the same market.

In your statement you said, "...motivated by evidence that our rules protecting competition, diversity and localism have been circumvented, we will consider some changes to other Commission Rules to enforce existing rules."

I could not agree more. Many of the stations that are now part of a shared service agreement had working news departments with journalists who covered local news. Those news departments were closed for various reasons, disrupting the lives and careers of the affected journalists.

I have personally talked to four of these journalists since your announcement was released on March 6. In some cases they were hired by the new station or were forced to move for a new opportunity. Sometimes they remained unemployed for a length of time or left the media industry altogether.

There are many more people who have been affected by these newsroom "mergers" but cannot talk about it publicly because they could get in trouble, especially if they currently work in the industry.

When there are fewer newsrooms, there are fewer opportunities for all journalists to find work. Viewers of the different stations get the same news delivered by the same people, limiting the opportunity to hear different viewpoints. For those who work in these newly "shared" newsrooms, there is more work and less time for in-depth or investigative reporting.

There are also fewer management jobs, leading to less diversity among those who make decisions on news coverage and hiring.

Research shows that the demographic representation of newsroom management significantly trails that of the country. The National Association of Black Journalists Association 2012 Television Newsroom Management Diversity census found that, while people of color represented approximately 35% of the nation's population, the diversity for television station newsroom managers was 12%.

You have indicated you do not want to completely eliminate the practice of Shared Services Agreements. I think that is appropriate because there may be limited cases where these agreements make sense. But, given the number of journalists who have been displaced by them, I'm glad to see the FCC take a closer look at how the SSA's are being used.

Bob Butler

Bob Butler
President
National Association of Black Journalists

LEAGUE of RURAL VOTERS
Many voices. One voice.

LeagueOfRuralVoters.org
phone 612-879-7578
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office 2104 Stevens Ave. S.
Minneapolis MN 55404
mail P.O. Box 80259
Minneapolis MN 55408

March 12, 2014

The Honorable Greg Walden, Chairman
House Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden:

On behalf of the League of Rural Voters, a national non-profit organization dedicated to increasing the representation of rural people in the policy making process, I write to urge the committee to adopt the Satellite Television Extension and Localism Act of 2014 with provisions eliminating the FCC's ban on making cable set-top boxes with integrated "descrambling" technology available for rental.

The FCC's integration ban has prevented low- and middle-income rural families from having the option of a low-cost cable box and has imposed a billion dollars in excessive costs to consumers nationwide. The League has consistently called for the elimination of this costly and unnecessary rule, and we support the bill's approach, which achieves this goal while preserving choice in devices for consumers.

The League of Rural Voters appreciates your leadership on this matter and I look forward to working with you.

Sincerely,

Niel Ritchie
Executive Director

Copy: file

THE WALL STREET JOURNAL.

OPINION

The Feds Target a Black TV Station Owner

In the name of diversity, Washington regulators are trying to reduce it.

By JUAN WILLIAMS

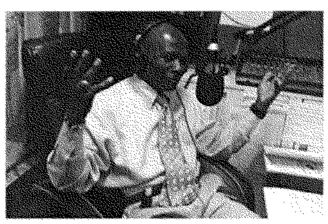
March 9, 2014 6:31 p.m. ET

How many black people own a broadcast television station in the United States? The answer is one: Armstrong Williams. I know this because he's a friend.

So imagine my surprise when I heard that the Federal Communications Commission is currently considering pulling the financial rug from under him by changing its regulations to—get this—promote diversity.

The reason for the proposed rules shift is that Mr. Williams's two television stations operate under a so-called sidecar agreement with a larger broadcast company. Sinclair Broadcasting, the larger, white-owned firm, leverages its clout in the market to get better deals from advertisers for the two stations in return for a percentage of Mr. Williams' revenues.

This arrangement is not a token deal. Similar agreements are common in the television industry. The difference is that typically all the players are white. Nevertheless, the FCC is proposing new restrictions that would make it harder for broadcast companies to control two stations operating in the same market.



Armstrong Williams *Armstrong Williams*

The government is concerned that the large broadcast companies are using these sales and services agreements with smaller owners to circumvent current rules intended to create diversity of broadcast property ownership. But without these agreements, there would be no black owners because of "the realities of the current marketplace," says Jane Mago, general counsel of the National Association of Broadcasters.

The black-owned stations simply lack the economic scale to get adequate advertising rates to pay their bills or even buy the station. For example, the bank that lent Mr. Williams $50 million to buy his stations did so with the understanding that he had the agreement with Sinclair, the much bigger firm.

In the last 10 years, the number of black-owned commercial television outlets licensed to black-owned companies has dropped to three from 21, the result of general market consolidation and some bankruptcies. Of the three remaining, Mr. Williams owns two and the third belongs to Tougaloo College, a historically black institution in Jackson, Miss.

A change in FCC rules would do more than damage Mr. Williams. His stations serve the areas of Flint, Mich., and Myrtle Beach, S.C., both of which have large minority populations. For many years Mr. Williams, a well-known media personality, has been actively involved in shaping local public-affairs programs that speak to minority concerns as a way to boost his own audience. Losing his TV stations means the communities also will lose broadcast content that reflects a minority perspective.

Similarly, Pervis Parker, the general manager of the station purchased by Tougaloo in 2012 under a sidecar deal with American Spirit Media, recently told an FCC commissioner that the joint operation has provided the financing to "reinvigorate this station and expand its local services" to a heavily black market in Jackson.

David Smith, the owner of Sinclair Broadcasting—currently the largest owner of independent broadcast stations in the U.S.—makes no apologies for his deal with Mr. Williams. "We are in this to make money," he told me. Sinclair draws some profit from the smaller, minority-owned stations, but 70% of the revenue goes to the smaller stations. The fact that Sinclair sold properties to Armstrong Williams, a successful, politically conservative media personality, should be a plus—a rare gesture of racial inclusion.

The National Association of Black Owned Broadcasters once opposed joint sales and services deals. As the association's executive director James L. Winston recently wrote the FCC, "they appeared to be mere gimmicks for group licensees to avoid the intent of the local ownership rules." But he told the FCC that the group changed its position because of "the precipitous fall-off of African-American television ownership in the past few years." Instead of calling for an end to joint operation agreements, the association proposes to let these deals remain in place with annual reports on progress the smaller station is making on efforts to take control of advertising sales.

My suspicion is that liberals at the FCC who claim to be interested in promoting diverse broadcast ownership lose interest if the owner is a conservative like Armstrong Williams. They want diversity—but not of the political kind.

Mr. Williams is a political analyst for Fox News and a columnist for the Hill.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

June 24, 2014

Mr. Mike Palkovic
Executive Vice President, Services and Operations
DIRECTV
901 F Street, N.W., Suite 600
Washington, D.C. 20004

Dear Mr. Palkovic:

Thank you for appearing before the Subcommittee on Communications and Technology on March 5, 2014, to testify at the hearing entitled "Reauthorization of the Satellite Television Extension and Localism Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on July 9, 2014. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

G Walden

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Questions to Mr. Michael Palkovic following the hearing entitled "Reauthorization of the Satellite Television Extension and Localism Act"

The Honorable Greg Walden

Please describe the difference, if any, between the operation and impact of MVPD "interconnects" mentioned in your testimony and broadcaster JSAs. Please detail both the impact on buyers of local advertising as well as the impact on competitors in the sale of local advertising.

DIRECTV is a very small player in the local advertising market. Local-level advertising is a very small portion of DIRECTV's revenue, and DIRECTV's local advertising revenue is a small fraction of 1% of the total market for such advertising. Nonetheless, we understand the value of local advertising to communities and consumers, and we want to provide it. Through interconnects, we essentially outsource the marketing of local ads to entities that market such ads on behalf of us and other MVPDs. Given its size, though, we don't believe that this sale of local ads has any material impact on competition for either the purchase or sale of local advertising.

The Honorable Anna Eshoo

I hear from my constituents regularly about their frustrations with the seemingly ever higher rates they pay for their video programming. In 1992, the monthly cost of cable was only around $20, and since then consumer's monthly bills have increased to well over $90. Will any of the proposals in the discussion draft reduce the monthly cost of service or give consumers greater flexibility to choose a programming package that bests meets their needs?

We share your frustration with rising pay-TV bills. In recent years our programming costs, which are by far our largest cost, are growing at 8%-10% a year. Because we are in such a fiercely competitive market, we do all we can to avoid passing that cost along to our consumers – we seek every efficiency to keep costs down – but nonetheless, we had to raise our prices by 4% this year. The largest driver of these cost increases is retransmission consent, and we are grateful for your efforts to reform that regime.

One provision of the draft, if enacted, would provide some measure of incremental relief. The provision that prohibits broadcasters, in the same designated market area, from jointly negotiating retransmission consent agreements will provide some modest relief with respect to the upward pressure on programming costs.

We hope that, in the near future, Congress will enact more sweeping reform of retransmission consent. Your legislation, the Video CHOICE Act, would provide more comprehensive relief by, among other things, preventing blackouts and giving customers more control over the programming that they purchase. If enacted, the Video CHOICE Act would have a meaningful and positive impact on the broken and outdated retransmission consent regime. We support that legislation, and we thank you for your leadership.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

June 24, 2014

Ms. Marci Burdick
Senior Vice President of Broadcasting
Schurz Communications, Inc.
1301 E. Douglas Road
Mishawaka, IN 46545

Dear Ms. Burdick:

Thank you for appearing before the Subcommittee on Communications and Technology on March 5, 2014, to testify at the hearing entitled "Reauthorization of the Satellite Television Extension and Localism Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on July 9, 2014. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

G Walden

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Responses from Marci Burdick to questions submitted subsequent to the March 12, 2014 hearing entitled, "Reauthorization of the Satellite Television Extension and Localism Act"

To the Honorable Greg Walden

Please describe the difference, if any, between the operation and impact of MVPD "interconnects" mentioned in your testimony and broadcaster JSAs. Please detail both the impact on buyers of local advertising as well as the impact on competitors in the sale of local advertising.

As stressed in my testimony, broadcasters are concerned about the vastly different regulatory treatment of "interconnects" among MVPDs, including the largest cable, telco and satellite providers, and joint sales agreements (JSAs) between two local broadcast TV stations. Earlier this year, the Federal Communications Commission (FCC) determined to essentially prohibit agreements between two TV stations in the same market for the joint sale of advertising time, but did not similarly prevent – or restrict in any way – agreements between multiple MVPDs for the joint sale of advertising time in local markets.

While ignoring MVPD interconnects, the FCC prohibited virtually all future – and required the "unwinding" of long-established – TV station JSAs based on out-of-date and unproven assumptions about competition in local video markets. In fact, a recent study submitted to the FCC by Drs. Hal J. Singer and Kevin W. Caves of Economists Incorporated found *no* empirical evidence that local TV broadcasters charge higher advertising prices in markets where there are joint arrangements or common ownership of TV stations. In fact, they found some evidence that markets with joint arrangements have advertising prices some 16 percent lower than other markets, suggesting that these arrangements benefit advertisers and consumers.

The Honorable Anna Eshoo

A vibrant democracy requires many voices speaking to the many. In your testimony, you justify Joint Sales Agreements by saving that they're used to put increased ad revenue back into the local community. How do you respond to Mr. Wood's testimony that there are 229 stations participating in JSAs that air none of their own news programming and 28 percent of those stations air no news or public affairs programming at all?

As an initial matter, NAB is not aware of the source of Mr. Wood's information and cannot confirm the data cited in his testimony. We also generally observe that the airing of local news – or any other one type of programming – is not the only way for stations to serve their communities. Other types of programming, including, for example, foreign language and other minority-focused programming, religious programming, local college or high school sports, or other community-focused programming clearly serve viewers as well. Consumers today in local markets are best served by broadcast stations offering a wide variety of national and local programming that interest a range of viewers.

More specifically, NAB has shown, in numerous submissions to the FCC, the high level of resources needed for TV stations to establish and maintain local news operations and the financial struggles faced by many stations in medium and small markets, which have much more restricted revenue opportunities. This data and evidence show that prohibiting joint arrangements by local stations will in fact hurt local news production by making it economically unviable for many stations, especially in smaller markets, which, as the FCC has recognized, are less able to support multiple local TV news operations.

Indeed, a number of TV stations in smaller markets ranging from Eureka, CA to Burlington, VT, were financially unable to air local news until they formed a joint arrangement with another local station. NAB additionally notes that, while some continue to criticize TV stations in JSAs for not airing their "own" news programming, they ignore the fact that, in many cases, at least one (and sometimes both) of the stations in these joint arrangements did not air any local news programming at all before entering into the joint arrangement, due to their lack of resources and inability to take advantage of economies of scale.

In other markets, JSA/SSA arrangements have strengthened news programming. A good example is the JSA/SSA between Schurz' station KYTV, Springfield, Missouri, and KSPR-TV in the same market, licensed to Perkin Media. Before we entered into the agreement with KSPR, its news operations were hampered by inadequate resources and its news programs had little if any measurable audience. KSPR's news in now produced in a separate, state-of-the-art newsroom. KSPR and KYTV not only have two separate newsrooms; there are two independent news directors as well. KSPR's improved news programs now attract a large audience in the market. The station has won major news awards, and its closed captioning was the model that the FCC recently adopted when it updated its captioning rules.

In Augusta, Georgia, where Schurz owned a market-trailing NBC affiliate, we were forced to contemplate giving up local news altogether. Instead, we entered into a JSA/SSA with Media General, which resulted in construction of a new studio facility and the news on Schurz' WAGT has not only continued; it is much improved in quality. In Wichita, Kansas, Schurz station KWCH-DT has a JSA/SSA with Entravision's KDCU-DT. Schurz produces for broadcast on Univision affiliate KDCU a weekday hour-long Spanish-language local newscast. It is the only local Spanish-language newscast in the State of Kansas. Entravision has stated to the FCC that, without the JSA/SSA with Schurz, it would be impossible for it to provide local news on this station.

Although not every JSA/SSA arrangement may have produced the same level of improved news programming, we think that the impact of these arrangements in general has strengthened news in multiple markets across the country, adding to the diversity of information available to the public.

The Honorable Henry Waxman

Chairman Walden's discussion draft includes a provision that would allow pay TV providers to choose to negotiate jointly with multiple broadcasters for retransmission consent. My staff has spoken to numerous pay TV companies both large and small and we have yet to identify a distributor that says they want to do business this way. Have you engaged in voluntary joint retransmission consent negotiations on behalf of more than one broadcast station? Have you negotiated with distributors who tell you they prefer to do retransmission consent deals this way?

Schurz Communications' KYTV in Springfield, Missouri, has a joint sales agreement and shared services agreement with KSPR-TV, the ABC affiliate in Springfield, Missouri, which is owned by Perkin Media, LLC. Under those agreements, KYTV has assisted KSPR-TV in its negotiation of retransmission consent with many multi-channel video programming distributors (MVPDs), including both local companies and satellite distributors. In several instances, we have asked MVPDs if they would prefer to include the rights to distribute KSPR-TV in their negotiations with KYTV or Schurz, and with the one exception described below, they have invariably responded that they would prefer to negotiate for both stations.

In 2008, shortly after the relationship with Perkin Media was formed, one cable company objected to negotiating with KYTV for both stations. We immediately asked Perkin Media to contact that cable operator directly to negotiate a separate retransmission consent agreement. In 2011, when KYTV contacted the cable operator – which is one of the most vociferous of the MVPDs complaining to Congress and the FCC about joint negotiation of retransmission consent agreements – about a new agreement, KYTV told the cable operator that Perkin Media would contact it directly about an agreement for KSPR-TV. The cable operator asked if KYTV could negotiate for both stations since, in its view, doing it the other way would be inefficient.

Schurz' station WAGT, Augusta, Georgia, obtains services from Media General's WJBF-TV in Augusta. Media General has negotiated several retransmission consent agreements for both stations. To our knowledge, no MVPD has objected to joint negotiations or requested separate negotiations.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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June 24, 2014

Mr. Michael Powell
President and CEO
National Cable and Telecommunications Association
25 Massachusetts Avenue, N.W., Suite 100
Washington, D.C. 20001

Dear Mr. Powell:

Thank you for appearing before the Subcommittee on Communications and Technology on March 5, 2014, to testify at the hearing entitled "Reauthorization of the Satellite Television Extension and Localism Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Sincerely,

Greg Walden

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Subcommittee on Communications and Technology
House Committee on Energy and Commerce
"Reauthorization of the Satellite Television Extension and Localism Act" – March 5, 2014

Responses of Michael K. Powell, National Cable & Telecommunications Association
To Additional Questions for the Record

Response to Question From The Honorable Greg Walden

1. **Please describe the difference, if any, between the operation and impact of MVPD "interconnects" mentioned in your testimony and broadcaster JSAs. Please detail both the impact on buyers of local advertising as well as the impact on competitors in the sale of local advertising?**

In the marketplace for local advertising, there are significant differences between broadcast JSAs and MVPD interconnects.

An MVPD advertising interconnect is a vehicle for advertisers to purchase advertising that reaches viewers of multiple distributors across the local market through a single phone call. While local broadcasters reach 100 percent of viewers in a local television market – multiple times, because they transmit over the air and are carried on every MVPD – in today's highly competitive video marketplace, no single MVPD's subscribers comprise all, or even the majority of, the viewers in a local market. An individual MVPD's subscribership rarely adds up to more than 40-45 percent of TV households in a local television market. As a result, advertisers cannot reach the entire market by purchasing time from a single MVPD.

Advertising interconnects enable MVPDs to offer such comparable access. Without MVPD interconnects, advertisers that seek to reach an entire local market efficiently would be limited to purchasing advertising on a broadcast station. When MVPDs in a local market pool their limited local advertising inventory and offer advertisers the chance to buy advertising across all of their systems in the local market, they introduce a new competitive alternative to the broadcast purchase.

By introducing a new product to the marketplace that would not exist without the joint activity, the advertising interconnect enhances competition. And there is no corresponding reduction in competition, because participating MVPDs generally sell advertising on their own as well. The advertising interconnect simply increases competitive choices.

Because MVPD advertising interconnects introduce competitive alternatives and efficiencies to the market that otherwise would not exist, this type of joint marketing activity has long been deemed *pro-competitive*. In stark comparison, the Department of Justice has determined that broadcast JSAs are *anticompetitive* because broadcasters that could and should act individually cease acting as competitors, *reducing* competitive options for advertisers and artificially raising prices.

Moreover, there is no negative impact on competition in the market for the sale of local advertising caused by MVPD interconnects. Even in markets with MVPD advertising interconnects, broadcasters dominate local TV advertising. Because a broadcaster *individually* reaches more TV households than distributors do *collectively*, local broadcasters that sell advertising together through JSAs control *significantly* more gross ratings points in the market (the basis for purchasing local advertising). MVPD joint activities comply with settled antitrust principles and capture only a small fraction – about 10%-15% – of the advertising ratings points available in the market. The rest of those ratings points are captured by broadcasters.

Response to Question From The Honorable Anna Eshoo

1. **I hear from my constituents regularly about their frustrations with the seemingly ever higher rates they pay for video programming. In 1992, the monthly cost of cable was only around $20, and since then consumer's monthly bills have increased to well over $90. Will any of the proposals in the discussion draft reduce the monthly cost of service or give consumers greater flexibility to choose a programming package that best meets their needs?**

The cable industry is strongly committed to ensuring that its services are affordable and offer a good value proposition. The price of watching cable television per viewing hour is $0.23 – far cheaper than any other viewing entertainment option. The hourly cost to watch an HD movie from iTunes, for example, is $2.50 – over ten times as much. And while average cable bills have risen over the years, consumers today receive far more as part of their typical cable package, including hundreds of digital channels, easy access cable content both at home and "on the go" on tablets and personal devices, digital music services, foreign language networks, hundreds of video-on-demand choices, and DVR options. Importantly, every cable operator offers a range of service options, including, in most cases, a low-priced entry level tier, so subscribers can customize their package to their individual needs and interests. Most consumers choose the larger packages because they recognize the high value they are getting for their dollar.

The industry recognizes, however, that viewers are concerned about keeping costs as low as possible. There are several targeted reforms in the discussion draft that Congress could implement to promote greater affordability and fair competition.

First, NCTA members support the discussion draft's proposal to eliminate the FCC's "integration ban" rule. As a part of the current regulatory regime, the rule forces cable operators to include a separate, unnecessary video decryption component in their leased set-top boxes, adding extra cost – from $40 to $50 – and providing no added benefit to cable customers with leased set-top boxes. Repealing the integration ban would allow cable operators to offer consumers new and innovative products while removing the cost (and energy consumption) of the CableCARD and associated hardware from the leased set-top box.

Second, NCTA members support the provision of the discussion draft that would prohibit television broadcast stations in the same local market from negotiating jointly for retransmission consent unless the stations are co-owned. One of the more troubling practices arising in retransmission consent arrangements is that certain broadcast stations that are not commonly owned may utilize a variety of agreements in ways that permit separately owned local stations to coordinate the prices, terms and conditions of their retransmission consent arrangements with MVPDs.

The proliferation of video competition from DBS and telephone company providers already has resulted in increased leverage for broadcasters, because broadcasters can withdraw their programming from one MVPD and still reach consumers through multiple other MVPDs in the market. Joint retransmission consent negotiations between broadcasters that are not co-owned give broadcasters even more power in retransmission consent negotiations, putting consumers at greater risk of losing broadcast programming.

As the United States Department of Justice has stated, when broadcasters are not commonly owned, the increased leverage gained through joint negotiations has "the purpose and effect of raising the price of retransmission rights in the [local market area]," because "broadcasters' collusion succeed[s] in extracting more favorable terms ... than they would have otherwise obtained." DOJ believes that retransmission consent rights must be "exercised individually and independently by broadcasters," because "when competitors in a market coordinate their negotiations so as to strengthen their negotiating positions against third parties," their conduct unlawfully restrains competition among broadcasters. FCC Chairman Wheeler recently recognized this point, noting that "joint negotiations have been documented to increase prices to cable systems," which "ultimately are borne by the consumer in the form of higher cable or Direct Broadcast Satellite fees." Banning the use of such agreements would remove this anticompetitive impact on consumer bills.

In addition, Congress should consider adding other targeted reforms to the discussion draft. Repealing the so-called "must buy" provisions – another cable-specific requirement that forces cable subscribers to purchase the "broadcast basic" tier of service as a prerequisite to buying any other tier of service – would eliminate an outdated requirement that needlessly limits programming flexibility, would reduce pressure on cable bills, and would enhance consumer choice.

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