STATE OF THE MEDIA MARKETPLACE

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

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C O N T E N T S

STATE OF THE MEDIA MARKETPLACE

THURSDAY, SEPTEMBER 27, 2018

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

The subcommittee met, pursuant to notice, at 3:02 p.m., in room 2123, Rayburn House Office Building, Hon. Gus M. Bilirakis presiding.

Members present: Representatives Bilirakis, Lance, Shimkus, Scalise, Latta, Guthrie, Johnson, Long, Walden (ex officio), Doyle, Welch, Clarke, Engel, McNerney, and Pallone (ex officio).

Staff present: Jon Adame, Policy Coordinator, Communications and Technology; Samantha Bopp, Staff Assistant; Karen Christian, General Counsel; Robin Colwell, Chief Counsel, Communications and Technology; Kristine Fargotstein, Detailee, Communications and Technology; Sean Farrell, Professional Staff Member, Communications and Technology; Margaret Tucker Fogarty, Staff Assistant; Adam Fromm, Director of Outreach and Coalitions; Elena Hernandez, Press Secretary; Tim Kurth, Deputy Chief Counsel, Communications and Technology; Lauren McCarty, Counsel, Communications and Technology; Brannon Rains, Staff Assistant; Austin Stonebraker, Press Assistant; Evan Viau, Legislative Clerk, Communications and Technology; Jeff Carroll, Minority Staff Director; Jennifer Epperson, Minority FCC Detailee; Alex Hoehn-Saric, Minority Chief Counsel, Communications and Technology; Jerry Leverich III, Minority Counsel; Jourdan Lewis, Minority Staff Assistant; Dan Miller, Minority Policy Analyst; Kaitlyn Peel, Minority Digital Director; and C.J. Young, Minority Press Secretary.

Mr. BILIRAKIS. The Subcommittee on Communications and Technology will now come to order.

I would like to thank all our witnesses for being here.

Before recognizing myself for an opening statement, I would like to ask unanimous consent to enter the following documents into the record, and they are a letter from the American Cable Association, a letter from the MPAA, an article by Scott Galloway in Esquire, a letter from the Consumers Union, a letter from Ride TV, and also a letter from the Recording Industry Association of America. Thank you.

There is no objection, so ordered.

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

OPENING STATEMENT OF HON. GUS M. BILIRAKIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BILIRAKIS. Good afternoon and welcome to today's hearing on modern media marketplace. The goal of today's hearing is to develop a factual record so we can be informed on the state of the dynamic media market. The ways the consumers interact with media and the types of content available have changed significantly in a relatively short amount of time.

As we have worked to bring broadband to more Americans, we have seen consumers increasingly use digital devices to enjoy unprecedented access to a variety of content. Not only has this resulted in more choices for consumers, but it also has led to innovation in the media market, specifically in the digital space.

Traditional media providers and new entrants alike have invested heavily in digital media platforms, offering new distribution channels to content creators. This innovation has also led to increased competition. This helps keep prices for content affordable for consumers. It is critical that the committee be informed on this important topic.

And with that, I welcome all of our witnesses here today, and I look forward to your testimony.

At this time, I yield 2 minutes to Mr. Scalise.

[The prepared statement of Mr. Bilirakis follows:]

PREPARED STATEMENT OF HON. GUS M. BILIRAKIS

Good afternoon and welcome to today's hearing on the modern media marketplace.

The goal of today's hearing is to develop a factual record for the committee so we can be informed on the state of the dynamic media market. The ways that consumers interact with media and the types of content available to them have changed significantly in a relatively short amount of time. As we have worked to bring broadband to more Americans, we have seen consumers increasingly use digital devices to enjoy unprecedented access to a variety of content.

Not only has this resulted in more choices for consumers, but it has also led to innovation in the media market—specifically in the digital space. Traditional media providers and new entrants alike have invested heavily in digital media platforms, offering new distribution channels to content creators. This innovation has also led to increased competition across the board, which helps keep prices for content affordable across a variety of platforms.

It is critical that the committee be informed on this important topic and with that I welcome all of our witnesses and I look forward to your testimony.

At this time, I yield 2 minutes to Mr. Scalise.

Mr. SCALISE. Thank you, Mr. Chairman.

Mr. BILIRAKIS. My pleasure.

Mr. SCALISE. I appreciate you yielding to me.

And I want to also thank Chair Blackburn for putting this hearing together on the video marketplace.

I also want to thank our panelists for being with us today.

While this hearing will cover the media landscape as a whole, I look forward to hearing from the panel about their viewpoints about the video marketplace. I don't think anyone here would disagree with the fact that the way American families watch television has changed. The question is, do our current laws and regulations match up with the modern marketplace? I would argue that they don't.

Much of the legacy paid TV industry that we use today is governed by the 1992 Cable Act when this was the smartphone. And I think if you look at this device, it might have worked as a smartphone back in 1992. I can't even get it to connect to a local provider today, because things have changed. In fact, if you compare your smartphone of 1992 when the current laws that we are operating under were written, this is the smartphone of today. This can do a lot more than an entire room of microprocessors could have done in 1992.

So what you have to look at is how are consumers getting their video. And the choices that they have have to be viewed against the regulations in the laws that are out there. An entirely new universe of choices for consumers has been unlocked thanks to advances in technology and agreements reached by companies through free-market negotiations.

So rather than continuing to settle for predetermined outcomes based on decades-old rules, I have introduced my legislation called the Next Generation Television Marketplace Act, which will empower consumers by enabling a truly free market approach to video content and leveling the playing field across the market instead of government picking winners and losers, which is what the case is today.

This hearing is a good starting point, Mr. Chairman, as the committee begins its work to reauthorize STELA, which expires at the end of next year. I will look forward to continuing my conversations with all the relevant stakeholders in support of a more free market and consumer-driven approach to the video marketplace.

I look forward to the questions later, and, Mr. Chairman, I yield back the balance of my time.

Mr. BILIRAKIS. I thank the gentleman from Louisiana.

And the Chair now recognizes Subcommittee Ranking Member Mr. Doyle for 5 minutes for his opening statement.

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

Mr. DOYLE. Thank you, Mr., Chairman for holding this hearing. And thank you to the witnesses for your testimony today.

Before I start, Mr. Chairman, I am concerned that more than a year and a half into this Congress we are just now talking about the state of media marketplace, and we are doing so with a very broad brush stroke.

I don't believe that this hearing or the panel before us will give our Members sufficient opportunity to address the multitude of changes that have occurred since the last time we held such a hearing. I sincerely hope that this hearing is just the beginning of a much broader and deeper investigation into these changes.

That issue aside, I have many concerns about the state of the media marketplace. It seems that the only constant in the media marketplace is change. In the video market this year, we have seen both vertical and horizontal consolidation in the forms of the AT&T-Time Warner, and Disney-21st Century Fox mergers.

We have also seen the continued trend of consumers cutting the cord on traditional paid TV options as they embrace the over-the-top options, such as Netflix, Amazon Prime, as well as virtual MVPD options, such as Sling TV, PlayStation Vue, and others. These new options often provide consumers with greater choice and lower prices.

Virtual MVPDs offer the added benefit of finally letting consumers provide their own set-top box, freeing consumers from hundreds of dollars a year in fees and eliminating a particularly annoying paying point for video subscribers.

However, the advances in this market are threatened by the FCC's repeal of net neutrality rules. ISP slowed over-the-top services such as Netflix in the run-up to the 2015 rules. And it was only due to the public outcry and the rules that were put in place under Chairman Wheeler that enabled Netflix and other streaming players to end the slowdowns they were experiencing.

These rules provided the regulatory certainty for other players, such as PlayStation Vue, to enter this market knowing full well they would be competing directly with MVPDs over their own broadband connections. Since Chairman Pai took over at the FCC, he has repealed the Commission's net neutrality rules and ended the investigation into anticompetitive zero rating practices by ISPs.

In the wake of these decisions, multiple ISPs have taken to zero rating their own video streaming products while forcing consumers to use data from their limited data plans. As Mr. Moffett points out in his testimony, many of these new players operate at a loss. These new entrants are then forced to compete against ISPs that are giving their own services an unfair advantage. These practices by ISPs do not incentivize innovation or competition, and they are not in the public interest.

While I am encouraged by this nascent market, I believe that Congress should be examining how these markets have been affected by the regulatory vacuum created by the FCC's actions in far more depth and with the affected stakeholders.

I would like to shift to the market for over-the-air television, including a slew of harmful regulatory changes by the FCC. From reinstating the UHF discount, to eliminating the main studio role, these changes undercut our commitment to localism and only serve to circumvent congressionally set broadcast ownership limits. I fear that despite Sinclair's failed merger that these changes will continue to negatively affect the broadcast market for years to come.

Now, the Commission is contemplating making changes to broadcasters' obligations under the Children's Television Act. These rules, otherwise known as Kid Vid, require broadcasters to air children's programming weekly. The Commission is claiming that these rules that have led to the creation of thousands of hours of high-quality, safe, educational programming can be tossed out the window without harmful consequences.

I am glad that we have Jeff Corwin here testifying regarding these proposed changes. It seems to me that the Commission's proposal could have a devastating affect on the creation of new children's television content and should be looked at with great skepticism. I believe that much more examination of these issues is warranted by this committee.

Mr. Chairman, I thank you and I look forward to the testimony of our witnesses. And I yield back.

[The prepared statement of Mr. Doyle follows:]

PREPARED STATEMENT OF HON. MICHAEL F. DOYLE

Thank you, Mr. Chairman, for holding this hearing, and thank you to the witnesses for your testimony today.

Before I start, Mr. Chairman, I'm concerned that more than a year and a half into this Congress we are just now talking about the state of the media marketplace, and we are doing so with a very broad brush stroke. I don't believe that this hearing or the panel before us will give our Members sufficient opportunity to address the multitude of changes that have occurred since the last time we held such a hearing. I sincerely hope that this hearing is just the beginning of a much broader and deeper investigation into these changes.

That issue aside, I have many concerns about the state of the media marketplace It seems that the only constant in the is change.

In the video market, this year we have seen both vertical and horizontal consolidation in the forms of the AT&T-Time Warner and Disney-21st Fox mergers. We have also seen a continued trend of consumers cutting the cord on traditional pay TV options as they embrace over the top options such as Netflix, Amazon Prime, as well as virtual MVPD options such as Sling TV, PlayStation Vue, and others.

These new options often provide consumers with greater choice and lower prices. Virtual MVPDs offer the added benefit of finally letting consumers provide their own set top box, freeing consumers from hundreds of dollars a year in fees, and eliminating a particularly annoying pain point for video subscribers.

However, the advances in this market are threatened by the FCC's repeal of Net Neutrality rules.

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These rules provided the regulatory certainty for other players, such as PlayStation Vue, to enter this market, knowing full well they would be competing directly with MVPDs over their own broadband connections.

Since Chairman Pai took over at the FCC, he has repealed the Commission's Net Neutrality rules and ended the investigation into anti-competitive zero-rating practices by ISPs. In the wake of these decisions multiple ISPs have taken to zero-rating their own video streaming products while forcing consumers to use data from their limited data plans.

As Mr. Moffet points out in his testimony, many of these new players operate at a loss. These new entrants are then forced to compete against ISPs that are giving their own services an unfair advantage. These practices by ISPs do not incentivize innovation or competition and are not in the public interest.

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I believe that much more examination of these issue is warranted by this committee.

Thank you and I look forward to the testimony of our witnesses.

Mr. BILIRAKIS. I thank the gentleman from Pennsylvania.

I now recognize the chairman of the full committee, Mr. Walden, for 5 minutes for his opening statement.

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

Mr. WALDEN. Well, thank you, Mr. Chairman. Thanks for having this hearing.

I want to welcome our witnesses as well to talk to us about the rapidly changing state of the media marketplace. It goes without saying, the consumers in 2018 have unprecedented access to high-quality media content. From the smartphones in their pockets Americans can watch hours of television programming and YouTube videos, stream millions of songs and podcasts, and pursue endless hours of content all over social media. My, how things have changed.

New platforms in variety and content have changed the way consumers spend their time and money, and the industry is responding to those consumers accordingly. The Energy and Commerce Committee has long conducted oversight on this topic, and a lot has changed over the years.

In fact, in 2007, this committee held a media marketplace hearing, and the topics of discussion were the DTV transition and traditional media platforms transitioning to access on the internet. I think we also talked about coupons then too, so you could buy that little box.

That same year Netflix announced the launch of a streaming service to compete with Blockbuster. That was the Nation's largest provider of video rentals at the time. Well, fast forward to 2018. More people watch Netflix than any other cable network, and Blockbuster has closed nearly every one of its stores.

I say nearly every one of its stores, because there is one remaining Blockbuster store in America, and it happens to be in my district in Bend, Oregon. But wait, it could be pure coincidence—I will defer to our expert witnesses—but this Blockbuster store also brews beer. So talk about a new business model in the video marketplace.

So and it is not just the video marketplace that has transformed. In the early 2000s, revenue from online music streaming was just a few million dollars. In 2017 Spotify alone reported almost $5 billion in revenue and on-demand audio streaming now accounts for 54 percent of total audio consumption.

Ten years ago smartphones were new to the market, and Americans largely used their mobile devices for calling and texting. I wasn't here, but you have still got your brick phone, right. It is kind of amazing Scalise still uses that and hasn't gone to one of these.

The deployment of modern wireless technology revolutionized the smartphone market, and today Americans spend on average about 3 hours a day on these mobile devices. Nearly every network, national newspaper, major radio station has an app, and consumers have access to content anywhere anytime.

Changes in how we interact with media have caused a ripple effect on other industries as well. For example, the rise of over-the-top video streaming services has resulted in dramatic increases in demand for both fixed and mobile high-speed broadband. Online video consumption made up 69 percent of global internet traffic in 2017, and that number is expected to increase to 80 percent by next year.

Changing consumer habits have also had a profound effect on the advertising industry. Ten years ago marketers used digital platforms to interact with potential customers, but advertising dollars were primarily spent on traditional platforms.

Today brands are investing more than a third of their advertising budgets in the digital space, while print and radio account for less than 10 percent of total ads spent. Much of this shift can be attributed to mobile and social media ads.

Nonexistent 15 years ago, combined advertising through these mediums are expected to reach $55 billion in 2019. Now, we have seen unprecedented concentration in this ad space. In 2017 Google and Facebook dominated the U.S. digital market, taking a combined 63 percent of total ad investment. In the U.S. no other digital ad platform has a market share above 5 percent. All signs indicate this duopoly will continue to dominate this market.

While the rise of digital platforms will threaten traditional business models, there is no denying that evolving consumer habits and new market entrants have fueled a fiercely competitive media market. The largest traditional TV networks invest up to 10 billion a year in nonsports programming, and billions of dollars of venture capital have been invested in content creation for online platforms. So it is an exciting time as a consumer. It can be an uncertain time if you are in the business. We have an excellent panel of witnesses, and I appreciate you being here.

You know, I was talking to some people the other day and they were asking about what time some show came on television. And for their kids, there is no such thing as a time something comes on. They just click on their iPad and there it is. And I remember going to a video conference, a video futures conference the NAB had back in 2004, I believe, and they talked about time shifting and how Walter Cronkite may not come on just at, you know, dinner time. You could get him anytime. And that was sort of out of the realm of possibility to our thinking then, and now we just get the news whenever we want it, on whatever platform we happen to have with us.

So lots has changed. Our job is to make sure that internet works and that people have connectivity, and we have done a lot in this committee to make that happen as well.

Mr. Chairman, thank you for having this hearing. I yield back.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Good afternoon, and thank you to our witnesses for joining us today to talk about the rapidly changing state of the media marketplace. It goes without saying that consumers in 2018 have unprecedented access to high-quality media content. From the smartphones in their pockets, Americans can watch hours of TV programming and YouTube videos, stream millions of songs and podcasts, and peruse endless hours of content on social media.

New platforms and variety in content have changed the way consumers spend their time and money, and the industry is responding accordingly.

The Energy and Commerce Committee has long conducted oversight on this topic, and a lot has changed over the years. In 2007, this committee held a media marketplace hearing and the topics of discussion were the DTV transition and traditional media platforms transitioning to access on the internet. That same year, Netflix announced the launch of its streaming service to compete with Blockbuster, the Nation's largest provider of video rentals at the time.

Fast forward to 2018, more people watch Netflix than any other cable network, and Blockbuster has closed nearly every one of its stores. I say nearly every one of its stores because there is one remaining Blockbuster in America and it happens to be in my district in Bend, OR. It could be pure coincidence, I'll defer to our expert witnesses, but this Blockbuster also brews its own beer. Talk about new business models in the video marketplace.

And it's not just the video market that has transformed. In the early 2000s, revenue from online music streaming was just a few million dollars. In 2017, Spotify alone reported almost $5 billion in revenue. On-demand audio streaming now accounts for 54 percent of total audio consumption.

Ten years ago, smartphones were new to the market and Americans largely used their mobile devices for calling and texting. The deployment of modern wireless technology revolutionized the smartphone market, and today Americans spend on average about 3 hours a day on their mobile devices. Nearly every network, national newspaper, and major radio station has an app, and consumers have access to content anywhere, anytime.

Changes in how we interact with media has caused a ripple effect that impacts other industries. For example, the rise of over-the-top video streaming services have resulted in dramatic increases in demand for both fixed and mobile high-speed broadband. Online video consumption made up 69 percent of global internet traffic in 2017, and that number is expected to increase to 80 percent by the end of 2019.

Changing consumer habits have also had a profound effect on the advertising industry. Ten years ago, marketers used digital platforms to interact with potential customers, but advertising dollars were primarily spent on traditional platforms. Today, brands are investing more than a third of their advertising budgets in the digital space, while print and radio account for less than 10 percent of total ad spend. Much of this shift can be attributed to mobile and social media ads. Nonexistent 15 years ago, combined advertising through these mediums are expected to reach $55 billion in 2019.

We have also seen unprecedented concentration in the ad space. In 2017, Google and Facebook dominated the U.S. digital market, taking in a combined 63 percent of total ad investment. In the U.S., no other digital ad platform has market share above 5 percent, and all signs indicate that this duopoly will continue to dominate the market.

While the rise of digital platforms have threatened traditional business models, there is no denying that evolving consumer habits and new market entrants have fueled a fiercely competitive media market. The largest traditional TV networks invest upwards of $10 billion per year in nonsports programming. And billions of dollars of venture capital have been invested in content creation for online platforms.

While this is an exciting time for consumers, it can be an uncertain time for traditional media. We have an excellent panel of witnesses today who have followed the media market for decades, and I look forward to hearing their testimony.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

And I will now recognize the ranking member of the full committee, Mr. Pallone, for 5 minutes for his opening statements.

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

Mr. PALLONE. Thank you, Mr. Chairman.

The way Americans consume media and the variety of content available to them has grown significantly over the past decade. In addition to traditional television and radio, consumers are using their phones, computers, smart speakers, and tablets to access a variety of programs, podcasts, and videos. And today anyone can become a producer of content. Over 400 hours of video are uploaded to YouTube every minute, and over 1 billion hours are viewed every day.

Last week a woman in DC posted on Twitter a short video of Marines running to help residents in an apartment fire a few blocks from here. News organizations quickly started using the clip in their on-air stories, and 2 days later the footage was used by the Marines in a tweet about the heroic efforts. And this is the dynamic world that we live in today.

But at the same time, it is important to remember that not everyone has equal access to the latest technology. It is too easy to focus on the benefits of broadband new media and multitude of cable and satellite TV channels and forget how many people lack access to such opportunities, and this includes lower-income families and seniors.

According to the FCC Commission's 2017 media industry report, 11 percent of television households relied exclusively on over-the-air broadcast service. That is 12.4 million households, 1 million more than the year before. According to the National Association of Broadcasters, over-the-air reliance is higher among low-income families, and for these families paying for cable may take a backseat to feeding their kids.

Meanwhile, broadband, which is necessary to access a growing wealth of educational, social, and entertainment content, also faces an economic and age divide. According to Pew Research Center, only 45 percent of people making less than $30,000 and 50 percent of people 65 and over are home broadband users. Even when you add mobile broadband users the significant device still exists both in adoption and the quality of the experience.

So as good as smartphones are, they don't provide the same functionality or experience as a large screen divide. The Communications Act focuses on certain timeless principles when it comes to media, and those are localism, diversity, and competition.

In the modern age, broadband access should be added to that list. Whether it is watching videos for school projects, taking educational courses at home, engaging with friends and family, applying for a job, or utilizing government resources, broadband is becoming a necessity for all Americans. And having broadband available in your neighborhood isn't enough. Consumers should be able to afford the cost of the service and equipment necessary to use the tools of the 21st century.

Unfortunately, the current FCC has been actively undermining these principles for Americans. Chairman Pai eliminated the FCC net neutrality rules which protected consumers, small businesses, and free speech. Net neutrality protected competition and access to the media content which is the focus of this hearing.

But those protections are gone now. Chairman Pai also proposed to roll back the Lifeline program in a way that could cut phone or internet service for approximately 8.3 million people. And Chairman Pai's actions are not the way to promote access, localism, diversity, and competition.

In the area of media ownership Chairman Pai sided with corporations over consumers and loosened TV ownership rules in ways that undermined competition. The changes encourage more consolidation and less local and diverse viewpoints. And I encourage the

FCC to change course and focus on what is important to consumers.

For example, the FCC should rethink its bizarre—and I say bizarre—proposal to unwind its safeguards designed to protect children watching broadcast television known as the Kid Vid rules. The rules require that broadcasters provide 3 hours of quality education program per week on their free over-the-air service. And 3 hours out of the 105 hours of core program in a week, I mean, is that too much to ask? Apparently Chairman Pai and Commissioner O'Rielly think so.

For the 12 million over-the-air households without access to cable programming, I don't think so. For the millions of low-income families without access to broadband alternatives, I don't think so. And I appreciate Jeff Corwin being here today to discuss his experience producing children's programming and the impact the elimination of the Kid Vid rules would have on broadcast children's programming.

And I also want to thank our other witnesses for appearing before us to discuss the changing media market.

And I yield back at this point, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

The way Americans consume media and the variety of content available to them has grown significantly over the past decade. In addition to traditional televisions and radios, consumers are using their phones, computers, smart speakers, and tablets to access a variety of programs, podcasts, and videos.

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Meanwhile, broadband, which is necessary to access a growing wealth of educational, social, and entertainment content, also faces an economic and age divide. According to Pew Research Center, only 45 percent of people making less than $30,000 and 50 percent of people 65 and over are home broadband users. Even when you add mobile broadband users, a significant divide still exists both in adoption and the quality of the experience.

As good as smartphones are, they don't provide the same functionality or experience as a large screen device.

The Communications Act focuses on certain timeless principles when it comes to media: localism, diversity and competition. In the modern age, broadband access should be added to that list. Whether it is watching videos for school projects, taking educational courses at home, engaging with friends and family, applying for a job, or utilizing government resources, broadband is becoming a necessity for all Americans. And having broadband available in your neighborhood isn't enough. Consumers should be able to afford the cost of the service and equipment necessary to use the tools of the 21st century.

Unfortunately, the current FCC has been actively undermining these principles for Americans.

Chairman Pai eliminated the FCC net neutrality rules, which protected consumers, small businesses and free speech. Net neutrality protected competition and access to the media content at the focus of this hearing. But those protections are gone now. Chairman Pai also proposed to rollback the Lifeline program in a way that could cut phone or internet service for approximately 8.3 million people. Chairman Pai's actions are not the way to promote access, localism, diversity, and competition.

In the area of media ownership, Chairman Pai sided with corporations over consumers and loosened television ownership rules in ways that undermine competition. The changes encourage more consolidation and less local and diverse viewpoints. I encourage the FCC to change course and focus on what is important to consumers.

For example, the FCC should rethink its bizarre proposal to unwind its safeguards designed to protect children watching broadcast television, known as the Kid Vid rules. The rules require that broadcasters provide three hours of quality, educational programming per week on their free, over-the-air service. Three hours out of the 105 hours of core programming in a week. Is that too much to ask? Apparently, Chairman Pai and Commissioner O'Rielly think it is.

For the 12 million over-the-air households without access to cable programming, I don't think so. For the millions of low-income families without access to broadband alternatives, I don't think so.

I appreciate Jeff Corwin being here today to discuss his experience producing children's programming and the impact the elimination of the Kid Vid rules would have on broadcast children's programming.

I also thank our other witnesses for appearing before us to discuss the changing media marketplace, and I yield back.

Mr. BILIRAKIS. The Chair thanks the ranking member.

That concludes Member opening statements.

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

So we want to thank all of our witnesses here today for being here. We appreciate you taking the time to testify before the subcommittee.

Today's witnesses will have the opportunity to give opening statements followed by a round of questioning from the Members.

Our panel for today's hearing will include Mr. Craig Moffett, who is the founder and senior research analyst at MoffettNathanson Research. Welcome, sir.

Next we have Mr. Ian Olgeirson, research director at Kagan, a media research group, within S&P Global Market Intelligence. Welcome, sir.

And next we have Mr. Jeff Corwin, wildlife biologist and executive producer of ABC's "Ocean Treks," here on behalf of Litton Entertainment. Welcome, sir.

We appreciate you all being here today and for preparing testimony for the committee.

We will begin with you, Mr. Moffett, and you are recognized for 5 minutes for purposes of an opening statement. Thank you.

STATEMENTS OF CRAIG MOFFETT, COFOUNDER AND SENIOR RESEARCH ANALYST, MOFFETTNATHANSON; IAN OLGEIRSON, RESEARCH DIRECTOR, S&P GLOBAL MARKET INTELLIGENCE; AND JEFF CORWIN, WILDLIFE BIOLOGIST, EXECUTIVE PRODUCER AND HOST OF ABC'S "OCEAN TREKS," ON BEHALF OF LITTON ENTERTAINMENT

STATEMENT OF CRAIG MOFFETT

Mr. MOFFETT. Thank you. And thank you, Chairwoman Blackburn and Ranking Member Doyle and members of the subcommittee, for the opportunity to appear today.

My name is Craig Moffett. I am the founder of MoffettNathanson. It is a media and telecommunications research firm. I want to emphasize, my personal focus is the physical distribution side of media, that is cable operators, satellite operators, and telephone companies that operate the physical infrastructure for media distribution. I have spent 30 years in those industries. I won't go through my bio, but it is appended.

One of the most popular aphorisms in media is that the media industry has seen more change in the past 5 years than it had in the previous 50. Never mind whether that is accurate, it is a call to action, and as a call to action it is a pretty good one. The argument being change or be left behind.

But before getting too breathless about how revolutionary all of this is, I want to focus my remarks on two of the most important trends: The emergence of so-called virtual MVPDs, and also the trend toward vertical integration like AT&T and Time Warner through a decidedly less revolutionary lens, and that is microeconomics.

I want to start with the emergence of the MVPDs. The appeal of cord cutting is simple: It is cheaper. And some might argue that it is also about greater consumer control or a step toward a la carte, but the real appeal is simpler than that. A bundle of cable networks from an MVPD with a handful of set-top—or from a traditional cable operator with a handful of set-top boxes can typically cost about $100 a month, and the most popular MVPD packages are typically about 40.

The problem here is that the programming itself doesn't cost any less to produce just because it is being delivered over the internet, nor is it any cheaper for the aggregator, in this case a virtual MVPD, to buy the content from the content creator. In fact, virtual MVPDs usually pay more for their content, nor is it any cheaper to deliver by virtue of being delivered over the internet instead of so-called linear cable.

Remember, the underlying infrastructure remains precisely the same. And in most cases it doesn't even avoid the need for a set-top box. It simply shifts the set-top box from the traditional provider to someone like Apple or Roku.

When there is no underlying technology or business model reason why the new service is cost advantage relative to an old one, it pays to be wary. But that said, services themselves are actually cheaper, so the obvious question is why. Partly it is because the packages are smaller, but mostly it is because these services are being sold to the consumer at zero or negative profit margin.

There is an old saying among economists that when something is unsustainable it will eventually stop, and I guess the real question as we observe this as economists is whether the practice of selling these services for a loss will actually turn out to be sustainable.

But it is clear that all of this is about keeping pace with Google and Facebook. Their modernization model for these new services is not to make money on selling video but to make money on selling advertising.

It suggests that we are likely to see one of two outcomes: Either Google and Facebook will come to dominate video distribution in a model that is based on highly targeted advertising, and that raises obvious questions about privacy; or the prices of virtual MVPDs will rise significantly to become self-sustaining, and in the process these distinctions between old and new won't look at significant.

A few remarks on the other trend that I mentioned shaking the media business, and that is vertical integration. There has been widespread speculation that we will see a wave of vertical integration to follow Comcast acquisition of NBCU in 2010, and that speculation has obviously only grown with AT&T's acquisition of DirecTV in 2015 and now, of course, Time Warner.

It is important to view the trend toward vertical integration through the lens of broader migration of what I would refer to as—to closed-media systems and consider where that is likely to take us. Closed systems dominate almost every important aspect of digital life today. Apple is a closed system once written off for dead versus PCs, but it is now an IOS universe. Facebook is a closed system, so is Uber and Google.

And what we are seeing in the media business is a migration toward closed systems where someone like Facebook produces—sorry, someone like Netflix produces all their own content and sells it to their own consumers and in the process requires enormous scale to advertise risk.

I would suggest that that appears to be where we are headed with the digital platforms. And the real question will become for the traditional media companies, are they forced to go in the same direction, and if so, these ideas where every cable network, for example, is made available to every distribution platform will be very difficult to sustain in the face of the emergence of these kind of very large closed systems like Netflix, like what could potentially be Amazon and others.

I will leave my remarks there given the time.

[The prepared statement of Mr. Moffett follows:]

MOFFETTNATHANSON
RESEARCH

Craig Moffett, Co-Founder and Senior Research Analyst

Testimony to the United States House of Representatives

Committee on Energy and Commerce; Subcommittee on Communications and Technology

September 27, 2018

Thank you, Chairwoman Blackburn, and members of the Subcommittee, for the opportunity to appear before your Subcommittee today.

My name is Craig Moffett, and I am the founder of MoffettNathanson LLC, a sell-side research firm with roots in the Media and Communications sector. My personal focus is on the physical distribution side of media – that is, the cable operators, satellite TV distributors, and telephone companies that operate the physical infrastructure over which media, especially television, is distributed. I've spent nearly thirty years in these industries, first as a management consultant, and, for the past eighteen years, as a Wall Street analyst.

One of the most popular aphorisms in Media is that the Media industry has seen more change in the past five years than it had in the previous fifty. Never mind whether that is precisely accurate. As a call to action – *any* action – it is a good one. Change or be left behind.

But before we get too breathless about how revolutionary all of this is, I thought I would focus my remarks on two of the most important trends today – the emergence of so-called virtual Multichannel Video Programming Distributors (vMVPDs, like Sling TV, YouTube TV, and DirecTV Now), and the trend towards vertical integration, as with AT&T's acquisition of Time Warner – through a decidedly un-revolutionary lens. Microeconomics.

Let's start with the emergence of vMVPDs. The phenomenon of cord-cutting is perhaps the most remarked-upon trend in modern media. The term isn't quite accurate, of course. The cord itself (that is, the physical infrastructure used to deliver video) remains the same, so what we're talking about here is merely switching video to a third-party provider that delivers the video stream over the public Internet. But the concept has captured the imagination of almost every business and technology journalist.

The appeal of cord-cutting is simple. It's cheaper. Some might argue that it is also about greater consumer control, and that it is a step closer to the much-discussed nirvana of a la carte, but the real appeal is simpler than that. A bundle of networks from a cable operator, with a handful of set-top boxes, costs an average of about $100 per month. The most popular vMVPD packages cost about $40 per month.

The problem here, of course, is that the programming itself doesn't cost any less to produce just because it is delivered over the Internet. Nor is it any cheaper for the aggregator – in this case, an vMVPD – to buy it from the content creator (in fact, the vMVPDs usually pay more for the same networks than do traditional cable and satellite operators, due to the fact they are generally smaller and have less negotiating clout). Nor is the video any cheaper to deliver by virtue of being delivered over the Internet instead of so-called linear cable; remember, the infrastructure underlying the delivery remains exactly the same. In most cases, it doesn't even avoid the need for a set top box; it's just that the set top box is provided by someone like Apple or Roku instead of a traditional set top box provider.

When there is no underlying technology or business model reason why a new service is cost-advantaged relative to an old one, one should be wary of over-promises.

But, all that being said, the vMVPDs are still cheaper for the consumer. *Why?*

Partly, it is because there are fewer networks included in the average vMVPD bundle. But the bigger reason is that the vMVPDs are currently selling the service at a zero or negative profit margin. The content in a $40 package from DirecTV Now or YouTube TV costs, by our estimate, around $40 at wholesale. After accounting for costs associated with things like billing, customer service, and marketing, the service is losing money.

There's an old saying among economists that when something is unsustainable, it will eventually stop. Selling a service for a loss isn't sustainable, even allowing for the fact that companies like Google (owners of YouTube TV) believe the path to monetizing video is not by selling the service to consumers for more than it costs but instead by trying to sell advertising against it.

It has been widely observed that many of the changes in Media are about trying to keep pace with Google and Facebook. It will be very hard for traditional distributors to compete with a service provider that is willing to lose money on selling the service. The question is... how long will even Google and Facebook tolerate losses? There's a limited amount of advertising inventory for them to sell, and the assumption that better targeting of advertising, based on all the information that companies like Google and Facebook know about you, will lead to higher advertising prices (in industry parlance, CPMs) may not prove to be correct.

Either way, one has to conclude that we very likely face one of two outcomes. Either Google and Facebook will come to dominate video distribution in a model that is based on highly targeted advertising – raising obvious questions about privacy – or the prices of vMVPDs will rise significantly to become self-sustaining, and in the process, the distinction between "new" and "old" models won't look so significant after all.

Here's another observation. It has been much remarked that there has been a flowering in top shelf content production in recent years. In a widely-cited statistic, there are now nearly 500 scripted series in production, a fifty percent increase in just the past few years. To state the obvious, viewership has not grown by anything like fifty percent. Indeed, viewership of traditional video is declining as traditional media increasingly competes with social media and non-traditional forms of digital video.

Massively increasing supply while demand is falling is no more sustainable than an aggregation model that doesn't make money.

It is hard not to conclude out of all of this that we are currently in something of a bubble. I don't necessarily mean by that that we are in a valuation bubble, although some so-called "new media" valuations do appear to me to be unjustified. Instead, what I mean is that we are in a bubble wherein we are not yet seeing the natural consequences of changing economics in media... but we will. Those changes are likely to lead to higher prices for vMVPDs services, and the production of less "top shelf" content going forward.

Now let's talk about the second trend shaking the media business. Vertical integration.

There had been widespread speculation that a wave of vertical integration would follow Comcast's acquisition of NBCU in 2011, and that speculation has only grown following AT&T's acquisition first of DirecTV in 2015 and then of Time Warner this year.

Whether these vertical integration deals make sense economically remains to be seen. Comcast arguably hasn't even tried to capitalize on being vertically integrated yet; they've been subject to consent decree conditions that have prevented any meaningful attempts to do so. And AT&T's acquisition is too new to judge.

Certainly, the capital markets have not judged either strategy favorably. Comcast shares have significantly underperformed those of Charter, which has *not* pursued a vertical integration strategy, and AT&T's shares have even more significantly underperformed those of Verizon, which has similarly eschewed vertical integration.

We are skeptical that this is the beginning of a broader trend among traditional media and telecom companies. That said, however, it is important to view the trend towards vertical integration in traditional media through the lens of a broader migration to what I would refer to as "closed media systems," and to consider where this is likely to take us (whether the traditional media companies vertically integrate or not).

Today, closed systems dominate almost every important aspect of digital life. Apple's closed system, once written off as all-but-dead in its competition with the open-PC platform, has grown into a closed iOS *universe*. Facebook is quintessentially closed. So is Uber. Google's supposedly open search engine is, in reality, a closed advertising platform.

At the very core of every closed system is the concept of exclusivity.

Exclusivity has been antithetical to the Pay TV industry, at least in the U.S. Each and every cable network has always been available to each and every distributor. This is at least as much a consequence of legal precedent as it is of microeconomics; it was almost thirty years ago, at the birth of the satellite TV industry, that vertically integrated cable operators were legally enjoined from withholding content from their satellite competitors. Since then, content exclusivity has been, for all intents and purposes, illegal. And not just in the TV business. Way back in 1948, the Supreme Court found that it was impermissible for movie studios to own movie theaters. In the decades since, the idea of "openness" has been so deeply ingrained in the American TV ecosystem that most people can't even imagine the alternative.

But the age of "open media" is almost over.

It is tempting to suggest that all this hangs in the balance in the upcoming appeal of AT&T's acquisition of Time Warner. But truth be told, the DOJ is litigating yesterday's war. The age of Closed Media is coming irrespective of what happens in the DOJ's appeal of Judge Leon's decision. Netflix, Amazon, and Hulu have already created their own closed systems. Disney has announced plans to go direct to consumers. HBO is already on the same path. All will be closed systems.

And now we have Comcast's acquisition of Sky in Europe. The very premise of the deal is content exclusivity, and the bid to create a closed system to rival Netflix. The rest of the world has never had the same blanket expectations of openness in Media as the U.S. Comcast's bid for Sky presumes a world, and not just in Europe, where content exclusivity isn't just permissible, but is commonplace.

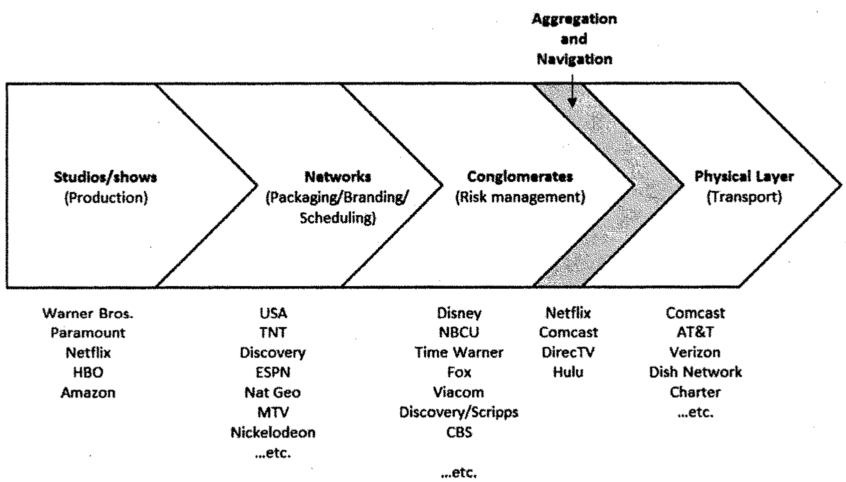
Before we go any further, it is important to be precise about the layers of the media value chain, and where closed systems are coming... and where they aren't.

The content production layer (TV studios, movie studios) has, since the end of Financial Interest and Syndication Rules in 1993, been integrated with the packaging/scheduling layer (this is indeed the principal economic function of networks), and networks have long been assembled into suites at the media conglomerates (providing a risk management function to which we will return shortly). Notwithstanding that the functions provided at each of these layers are quite distinct, today we think of all of these functions as simply "content."

But there has always been a bright line between "content" and the downstream layers. These layers have been broadly lumped together under the moniker "distribution." But just as is the case with "content," there are actually distinct functions being provided here.

For our purposes, the important distinction is between the aggregation and navigation layer and the physical (transport) layer. Historically, the aggregation and navigation function was provided by physical network providers, like Comcast or DirecTV. Customer ownership – and with it, functions such as billing – has historically been attached to this aggregation and navigation function.

Today, the aggregation and navigation function is being stripped away from physical distributors and is being captured instead by content owners… in closed systems.



In U.S. v. AT&T Inc., DirecTV Group Holdings, LLC, and Time Warner Inc. (i.e., the Time Warner case), the DOJ charged that AT&T could, in theory, use (abuse) the market power that comes with vertical integration by withholding, or at least threatening to withhold, its content from competitors. AT&T, predictably, responded that they have neither the intention nor even the incentive to withhold content from competitors, and, to underscore this point, they preemptively agreed to baseball-style binding arbitration in programming disputes, precisely to prevent such an outcome (for a period of seven years). The Court rejected the DOJ's argument and, as you know, the case has been appealed.

It would have been far more interesting if AT&T had argued... *"Yes, of course we plan to withhold content from competitors. So what? That's what everyone is doing."*

It is Google, Netflix, and Facebook – all closed systems – who are calling the tune here, not Comcast and AT&T.

In our analysis of Comcast's acquisition of Sky in Europe, we have argued that content exclusivity – i.e. the creation of a closed media system – is central to the strategy. Just as Netflix recognized early on that they had to move upstream from simply being a content aggregator to content creator, Sky's new owners will need to pull off the same pivot, and rather quickly. It seems only a matter of time before Disney, HBO, Showtime, and more pursue their own closed systems.

There are a number of conclusions that one can draw from the emergence of closed media systems. Perhaps the most interesting has to do with risk, and what that means for required scale.

What we are witnessing with the emergence of Closed Media is the re-allocation, and re-concentration, of risk. When Comcast and others euphemistically refer to "global scale," what they are really saying is that, in the future, massive scale will be required in order to underwrite the enormous risk of abject failure. Content production has always been a risky business; investors intuitively understand that hits are rare and failures frequent. In response, the media industry has become rather adept at syndicating risk. But the risks that are inherent in content production are dramatically amplified in the context of

Closed Media (that is, the edifice built upon the content production "engine" is orders of magnitude larger, and, by virtue of being direct-to-consumer rather than pre-sold to others, volatility will only rise.) All this makes the risks of failure dramatically higher.

Risk, in other words, is being dramatically re-concentrated. Yes, there are good reasons why the next generation of Closed Media won't be winner-takes-all like so many other digital platforms. After all, a customer might easily subscribe to both a Disney service and an HBO one, and they might still keep Netflix as well. But that *things-won't-be-all-that-different* view ignores the concentration of risk. A single bad slate or two, and even a behemoth in the direct-to-consumer future could be brought to its knees.

There is an important complicating factor here, of course. The elephant in the room is that AT&T (and Comcast) aren't just owners of the aggregation and navigation layer, and therefore of customer relationships. They are also owners of the physical layer. It is here, and only here, that the really complicated issues arise.

The potential for anti-competitive behavior is clear in cases where content is integrated with the physical layer. This is particularly true in the U.S. broadband market, where in many geographies there are but one, or at most two, competitors. It is arguably true as well in wireless, where even with four players are there are significant lock-in risks. These are precisely the issues that have always been grouped under the umbrella of "net neutrality." One might argue that we are currently particularly exposed to these anti-competitive risks now that the FCC has reversed the prior administration's Title II framework to enforce net neutrality rules. In truth, however, that is likely not the case. Instead, it merely means that the FTC will have to remain vigilant to ensure that any anti-competitive behavior is appropriately policed, as, indeed, it always has been.

With this caveat duly registered, however, the broader takeaway here is clear. We appear to be headed in the direction of a relatively small number of very large closed media systems, very likely operating on a global rather than national scale.

From a policy perspective, the central issues surrounding these entities will be precisely the ones that legislators are only now beginning to grapple with in Social Media. How can we ensure diversity of voices? How can we ensure a free and open press? How can we ensure privacy and appropriate treatment of customer data? And how can we protect the values and objectives of the United States when the companies we are overseeing are global in scale and subject to a myriad of jurisdictions with potentially very different goals?

Mr. BILIRAKIS. Thank you. I appreciate that very much. So thank you, Mr. Moffett.

And now I will recognize Mr. Ian Olgeirson for 5 minutes for your opening statement.

STATEMENT OF IAN OLGEIRSON

Mr. OLGEIRSON. Thank you.

Chairman Bilirakis and Ranking Member Doyle, thank you for inviting me to speak today. I am grateful for the opportunity to share information for this hearing. My name is Ian Olgeirson, and I am an industry analyst with Kagan, a media research group within S&P Global Market Intelligence. We provide market commentary, industry benchmarks, and analysis with a particular focus on the changing media landscape.

I have been analyzing the U.S. multichannel market for nearly 20 years. In that period we have seen online distribution fundamentally alter how consumers access content. Alternatives to legacy distribution for video and audio have clearly altered business models as well, and the corporate landscape is shifting in pursuit of increased scale.

A pair of recent events nicely illustrate the movement. Comcast's premium bid for Sky in the U.K. and Amazon's much more subtle enhancement of its Fire TV recast streaming media player in very different ways offer insight into the direction of media. Legacy providers like Comcast and AT&T are doubling down for increased scale on delivery and content, while innovators are giving consumers greater access and control of programming outside of those traditional subscription offers.

While the majority of U.S. households still maintain a traditional multichannel subscription through a cable, telco, or satellite service, often referred to as MVPDs, online alternatives have eroded the value of the classic, big subscription package driving declines in overall subscribers. Traditional multichannel subscriptions have fallen from their peak levels of nearly 102 million in 2012 to fewer than 94 million at the end of 2017. Those figures have continued to decline in the first half of 2018.

The percentage of occupied households with a traditional subscription have declined to less than 72 percent, down from a high point of 85 percent recorded in 2009. Virtual multichannel services, sometimes referred to as vMVPDs have risen considerably since 2015 offering a thinner package of channels. These services, including DirecTV Now, Sling TV, and Hulu with live TV blur the lines between online and traditional services. But it is clear that consumers looking for alternatives have never had more options.

At the fore is the programming muscle of Netflix and Amazon Prime video and the swelling investment in original and acquired content. The investment paves the way for consumers to find alternatives with increasingly fewer sacrifices.

However, the legacy providers do have substantial fortifications, including size and reach. There are significant interdependencies with networks and other content, including outright ownership. And in the case of wire line services, they own critical broadband infrastructure. As a result the video market is still in the early to mid stages of a complex process that shouldn't be over simplified.

Thank you for the opportunity to provide this statement. I welcome any questions you might have.

[The prepared statement of Mr. Olgeirson follows:]

U.S. House of Representatives Energy and Commerce Committee, Subcommittee on Communications and Technology

"State of the Media Marketplace"

Testimony of

Ian Olgeirson

Research Director

S&P Global Market Intelligence

September 27, 2018

S&P Global is a leading provider of ratings, benchmarks, analytics and data to the capital and commodities markets worldwide. S&P Global's insights and commitment to transparency, integrity, and superior analytics have been at the forefront of U.S. economic growth since the company's founding over 150 years ago. Two of our flagship products, the S&P 500® and the Dow Jones Industrial Average®, are widely accepted as the leading measures of U.S. equity market performance.

Kagan, a media research group within S&P Global Market Intelligence, provides market commentary, industry benchmarks and analysis, with a particular focus on the changing media landscape. S&P Global Market Intelligence integrates financial and industry data, research, and news into tools that help track performance, generate alpha, identify investment ideas, understand competitive and industry dynamics, perform valuation, and assess risk.

I have been analyzing the U.S. multichannel market for nearly 20 years. In that period, I have watched as online distribution has fundamentally altered how consumers access content. Broadband connections and mobile data services have introduced new options, fueling changes in consumption habits and preferences. Alternatives to legacy distribution for video and audio have clearly altered business models as well, and the corporate landscape is shifting in the pursuit of increased scale.

A pair of recent events nicely illustrate the impact. Comcast's premium bid for Sky in the U.K. and Amazon's enhancement of its Fire TV Recast streaming media player, in different ways, offer insight into the direction of media.

Legacy providers are doubling down for increased scale on delivery and content while innovators are giving consumers greater access and control of programming outside of a traditional subscription offer.

While the majority of U.S. households still maintain a traditional multichannel subscription through a cable, telco or satellite service, online alternatives have eroded the value proposition of the classic big subscription package, driving subsequent declines in overall subscribers.

The big channel bundle and its dual subscription and advertising revenue streams is under significant pressure as consumers augment and even replace their services with lower-cost online options.

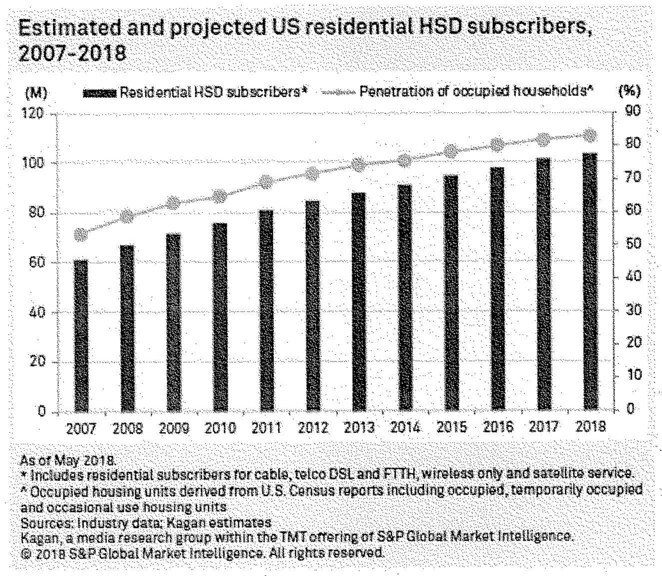
However, the industry has substantial fortifications, including notable scale, significant interdependencies with networks and content including ownership, and, in the case of wireline services, critical broadband infrastructure.

As a result, the video market is still in the early to mid-stages of a complex process that should not be over simplified with a rigid definition of cord cutting.

The audio market illustrates a much more advanced progression. The U.S. radio sector has been affected by secular trends in the advertising market, with competition from streaming audio players.

As more audio is being consumed on mobile devices and smart speakers, the majority of U.S. music industry revenue now derives from digital streaming and download services while radio station advertising revenue has been on the decline since its pre-2008 recession highs.

At the foundation of the disruption is broadband access. We estimate residential broadband subscriptions as a percentage of occupied households, or broadband penetration, will reach nearly 83% by the end of 2018. This is up from 59% 10 years ago and surpasses Kagan's 2018 forecast video penetrations of 69%.



Traditional multichannel video subscriptions

The fragmentation of U.S. video delivery is eroding the dominance of traditional multichannel services, sometimes labeled multichannel video programming distributors, or MVPDs.

Consumers are leaving what many traditionally think of as a "cable" subscription for online-only options, choosing to assemble a combination of subscription on-demand and free video sources for their entertainment.

However, the transition of subscribers is complicated by the emergence of virtual platforms, such as Sling TV or DIRECTV NOW, which offer similar but often so-called skinny bundles of live linear and on-demand content delivered over unmanaged broadband connections directly to consumer devices. They share several key components with their traditional predecessors.

Accordingly, the cord-cutting trend has not resulted in a simple mass exodus from subscription video models. Consumers are also moving to virtual platforms, a transition expected to keep the majority of U.S. households in packages of live linear and on-demand content for the foreseeable future, according to the latest outlook from Kagan research.

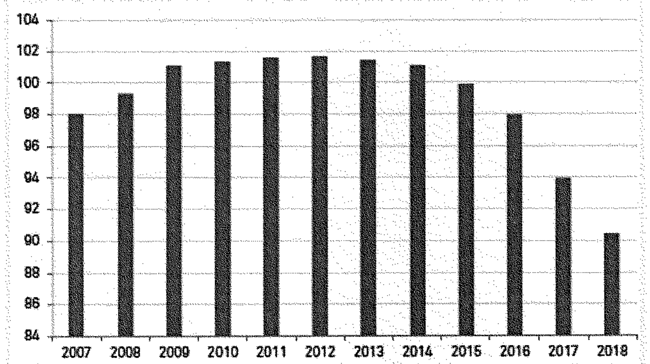
The overall appetite for multichannel product, nonetheless, is expected to contract even after the lift from virtual services. The reduction is the result of growth in online-only households as well as homes that rely on antennas for over-the-air (OTA) reception, neither of which is expected to subscribe to a bundle of live linear channels.

The competitive stresses on traditional multichannel services are increasingly evident. Traditional multichannel subscriptions have fallen from their peak levels of nearly 102 million in 2012 to fewer than 94 million at the end of 2017, according to Kagan estimates. The percentage of occupied households with a traditional subscription has declined to less than 72%, down from a high point of more than 85% recorded in 2009.

The cable, direct broadcast satellite and telco services shed total subscriptions at record levels in 2017. The number of traditional multichannel households, after removing duplicative overlap and commercial customers, dropped by nearly 3.4 million during the year. The decline continued in the first six months of 2018, with the cable, DBS and telco segments losing a combined 1.6 million residential customers, according to Kagan estimates.

The decline was tempered by increases to virtual platforms, but was still notable.

Historical US multichannel subscriptions*, 2007-2018 (M)

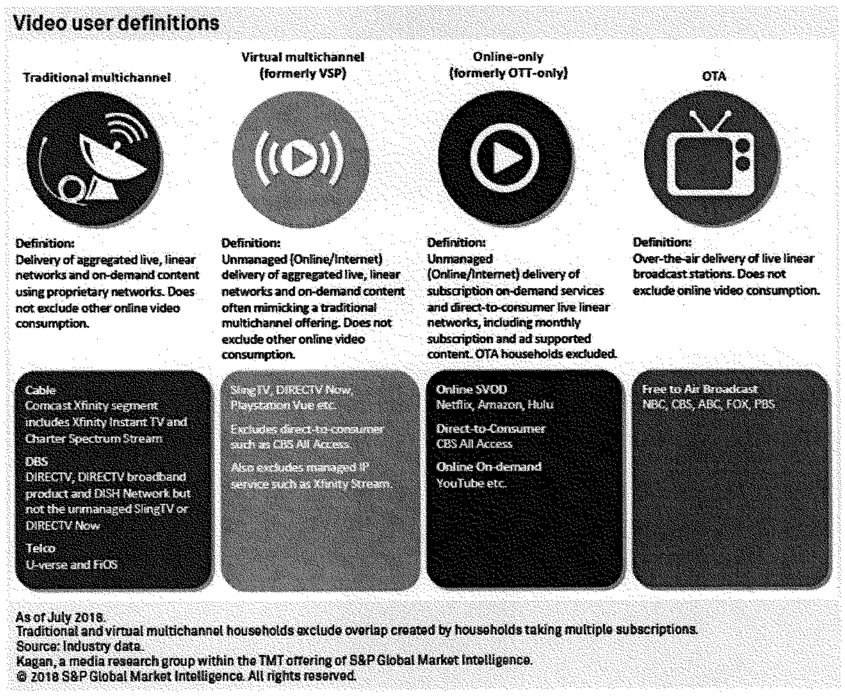


As of June 2018.
* Includes commercial and residential multichannel video subscriptions to cable, DBS, telco and other categories, not excluding overlap of households taking more than one subscription.
Sources: Industry data; Kagan estimates
Kagan, a media research group within the TMT offering of S&P Global Market Intelligence.

In 2018, we forecast that the traditional multichannel base will likely erode by 3.2 million households, moderating slightly from the record 2017 declines.

The five-year outlook features significant overall declines, but with annual losses curbed by anticipated strategic decisions from operators to better address consumers looking for skinny bundles as well as continuing to serve less price-sensitive customers seeking fewer restrictions on viewing.

While subscribers posted the first annual decline in 2013, estimated overall multichannel video subscription revenue did not register its first decline until 2016. The annual reductions have continued, and the video revenue from traditional cable, DBS and telco video services is expected to dip to an estimated $113.2 billion.



Virtual multichannel

Virtual multichannel services, sometimes labeled vMVPDs, have risen considerably since 2015, both in terms of new products as well as the number of subscribers flocking to those services. The last significant wave of entrants came in 2017 and brought YouTube TV, Hulu with Live TV and Philo to the market.

Sling TV and DIRECTV NOW, as well as relative newcomers such Hulu with Live TV, have produced notable growth. Virtual pay TV services provide new options from more rigid traditional multichannel products, including new and differentiated channel lineups, pricing schemes and commitment-free subscriptions. Additionally, for services with parent companies that have existing user bases in other consumer products, we see a ripe opportunity to target those bases for new subscribers.

We estimate that virtual multichannel subs were just shy of 5 million at the end of 2017 and forecast that in aggregate they will surpass 10% of occupied households while rising to more than 15 million in 2022.

The skinny bundle approach of most virtual subscription services produces significantly lower average revenue per subscriber than the traditional multichannel package. According to Kagan estimates, the average for a virtual service is expected to just exceed $31 a month in 2018 vs. more than $100 a month for a traditional package. Total revenue for virtual services is expected to reach $2.8 billion in 2018, a fraction of the traditional total.

Online video

Consumers looking for alternatives to traditional subscription packages have never had more options. At the fore is the programming muscle of Netflix and Amazon Prime Video and the swelling investment in original and acquired content. Online video options are also experimenting further with live sports, including Amazon's deal for a package of Thursday night NFL games and Facebook's agreement to stream NBA games.

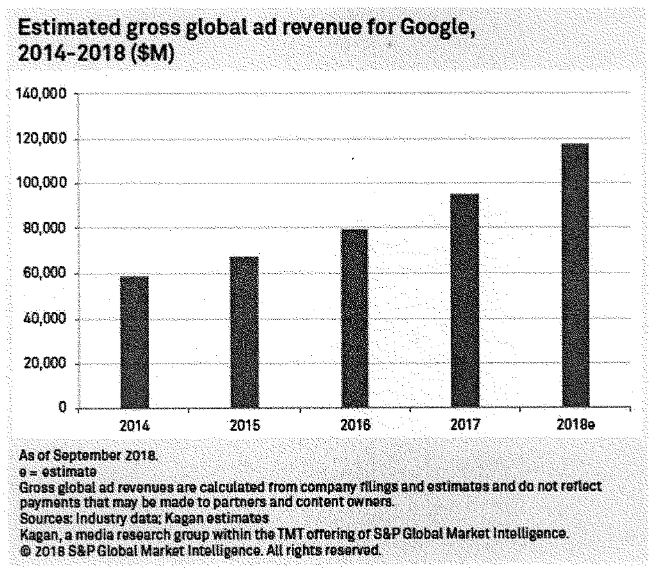
The long tail of niche content is being joined by mainstream direct-to-consumer offerings. Disney is anticipated to enter the space in 2019, contributing to a hybrid à la carte model that follows persistent consumer complaints of having to pay for content in their multichannel packages that they do not watch. The development of original programming combined with evolving content acquisition strategies paves the way for consumers to cut the cord with increasingly fewer sacrifices.

Worldwide spending on original and acquired content for Netflix is expected to swell to nearly $8 billion in 2018, followed by Amazon at more than $4 billion. Hulu is expected to spend $3 billion domestically on original and acquired content. Though the combined spending of the three online subscription services has nearly quadrupled since 2014, it remains a fraction of the more than $72 billion in estimated 2018 spending from broadcast, cable, premium and sports networks.

We anticipate that online-only households will grow moderately to more than 13 million and account for more than 10% of the occupied units in the U.S. by year-end 2018. Online video's growing stature shows no signs of abating, but the category of households that rely solely on online video is expected to be limited by the mounting number of options that fall into the other household segments. The five-year trajectory, tempered by consumer fragmentation, points to penetrations in the mid-teens and a segment total just above the 18 million mark.

While notable, the online-only category is not a complete reflection of the broader influence of the online video revolution. The aggregate subscriptions to services such as Netflix, Amazon Prime Video and Hulu reached nearly 145 million in 2017. The online subscription estimate is significantly larger than the multichannel base, but the aggregate revenue from the online services is relatively small. According to Kagan estimates, the total U.S. market for online video subscription services reached $13 billion in 2017 and is expected to grow to $15.8 billion in 2018.

In addition to subscription models, free, ad-support video has made huge inroads into viewing habits. YouTube has on its own created a seismic shift. YouTube has expanded from its modest 2005 launch to become the world's largest video platform, reaching more than 1.8 billion global viewers on a monthly basis including well over 200 million American viewers. YouTube's parent company, Alphabet, holds a similar hammerlock on the global digital ad market, with gross global ad revenue across Google, YouTube and its other digital properties likely to rise to just over $117 billion in 2018.



The installed base of connected devices is facilitating the swelling use. From purpose-built units like the popular streaming players from Roku, Apple TV and Amazon Fire, to multi-use devices such as tablets, PCs, smart TVs and smart phones, connected devices are multiplying. According to Kagan estimates, total connected devices in U.S. broadband homes topped 820 million in 2017 with an average of 8.5 devices per household. Amid the growth, manufacturers continue to make incremental adjustments, such as the Amazon Fire Recast's inclusion of a DVR to record over-the-air signals, increasing flexibility and enhancing the option for consumers outside of traditional multichannel subscriptions.

OTA

The segment of households that receive broadcast signals over-the-air has surged amid the hunt for multichannel alternatives. While the households that rely solely on an antenna for their entertainment are likely on the decline, OTA delivery to augment online video options is expected to propel the segment to 16.8 million households at the end 2018.

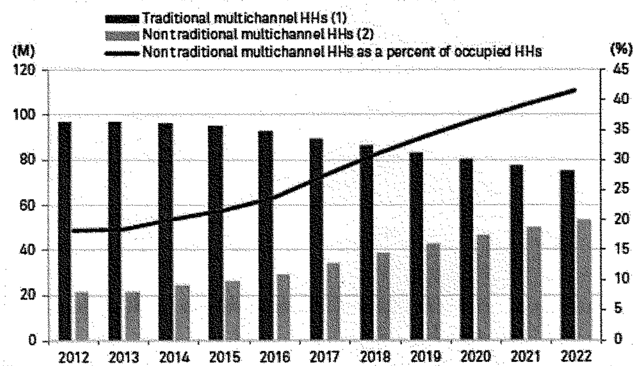
The total number of antennas installed in the U.S. surpasses our OTA household figures, because the figure does not include either virtual multichannel or traditional multichannel customers that may rely on an antenna for local broadcast signals to varying degrees. The count does include households that rely on over-the-air exclusively as well as households that blend broadcast signals with online video for entertainment.

The popularity of OTA is only expected to increase with the growing expense associated with retransmission fees and the expected improvements attached to ATSC 3.0. Even with the narrowed definition, the digital version of rabbit ears is expected to feed more than 19 million non-multichannel households by 2022, accounting for nearly 15% of occupied households.

Non-multichannel households

The result of the growing number of options is a long-term reduction in the absolute and relative number of U.S. households with a traditional multichannel package. When combined with the virtual multichannel and OTA categories, the subset of households beyond traditional cable, DBS and telco users establishes a more definitive path, accounting for nearly 42% of occupied units by 2022.

Estimated and projected US traditional multichannel vs. non traditional multichannel households



As of June 2018.
(1) Traditional multichannel household count excludes DBS overlap created by households taking multiple multichannel subscriptions. Includes cable, DBS, telco and other multichannel platforms. Excludes commercial subscribers and virtual multichannel subscribers. Includes households that also access online video (formerly OTT).
(2) Occupied HHs without a multichannel subscription. Historical figures revised.
Sources: Industry data; Kagan estimates
Kagan, a media research group within the TMT offering of S&P Global Market Intelligence.

Audio Overview

The U.S. radio station business has been impacted by losses of audience and ad share to streaming audio disruptors such as Apple Music, Amazon Music, Spotify, Pandora and others along with two of the top three radio owners, iHeartMedia and Cumulus Media, having to go through Chapter 11 bankruptcy reorganization.

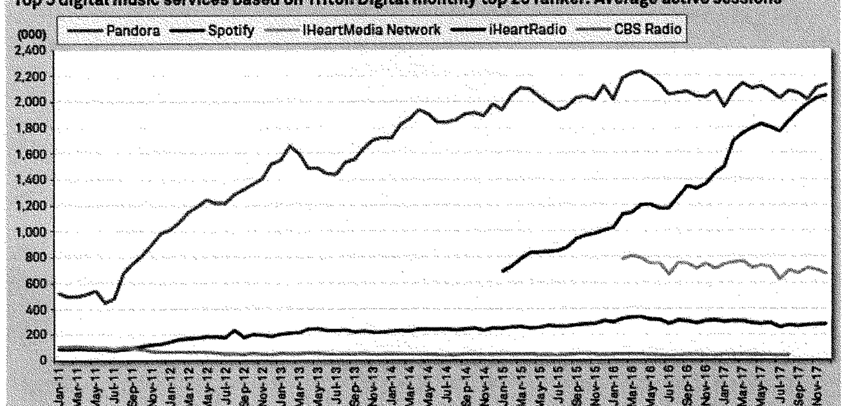
Including all sources, we estimate that U.S. radio station revenues ended 2017 down 0.4% as national and local ad spot revenue declined 3.0% and 2.5%, respectively. That was partially offset by a 0.5% rise in network revenue, 7.5% growth in digital and an 8.0% increase in off-air revenues, primarily from live events. U.S. radio station revenue of $17.6 billion in 2017 is down 19.7% from its high of $21.9 billion in 2006.

In 2017, streaming music contributed two-thirds of total U.S. music industry revenue. Paid subscriptions represented the biggest driver, growing 56.0% year over year from $2.24 billion to $3.50 billion. Total U.S. subscribers grew 55.5% from 22.7 million in 2016 to 35.3 million in 2017, according to the Recording Industry Association of America®. For the first time since 1999, U.S. music revenues grew materially for two years in a row, showing the importance of streaming to the industry.

The RIAA mid-year report released Sept. 21 revealed streaming accounts for a 75% share of the U.S. music industry. Streaming is driving overall success for the market, which reached revenues of $4.6 billion for the first half of 2018. That figure is up from $4.2 billion in the first half of 2017 and $3.5 billion in the first half of 2016. Streaming music revenue increased 28% to reach $3.4 billion for the period. Paid subscriptions generated the majority (75%) of that revenue total, increasing 33% to $2.5 billion. In 2012, streaming music accounted for just 15% of total U.S. music industry revenue.

A continued shift away from downloadable music to streaming services is in part due to growth in the use of mobile devices and advancements in wireless connectivity that allow for easy access to streaming services. Internet music and radio providers continue to build listenership as streaming services market and promote their platforms that include ad-supported and subscription options. According to Triton Digital's monthly Webcast Metrics Ranker, which measures domestic audience metrics for the top-performing digital audio stations, total average active sessions for the 20 services ranked grew 15.5% from 2017 to 2018, a key metric on the health of streaming music.

Top 5 digital music services based on Triton Digital monthly top 20 ranker: Average active sessions



Source: Triton Digital top 20 ranker, January 2011-December 2017. Spotify was added to the top 20 ranker in January 2015. iHeartMedia Network was added to the top 20 ranker in February 2016.
Domestic Average Active Sessions (AAS) for the Daypart 6:00am to 12:00am, Monday through Sunday.
Triton defines Active Session as: Number of sessions that were active, with a duration of at least one minute in total and any duration within the reported time period.
Kagan, a media research group within the TMT offering of S&P Global Market Intelligence.

Thank you for the opportunity to provide this statement at such an important time.

Mr. BILIRAKIS. Thank you very much, Mr. Olgeirson.

Now we will hear from Mr. Jeff Corwin. You are recognized for 5 minutes, sir, for your opening statement.

STATEMENT OF JEFF CORWIN

Mr. CORWIN. Thank you for having more. I truly appreciate it.

Millions of parents, educators, and children rely on the content protected by the Children's Television Act as their most trusted outlet for educational and informational programming. There is an effort underway to dismantle one of the most important public service obligations Congress placed on broadcasters as a condition for their license serving the needs of children.

I speak today not just as a biologist, as a conservationist, explorer, and a father, but also as one of those kids who has benefited from those programs. When I was growing up my dad worked as a printer by day, delivered Dunkin' Donuts at night, and took classes to become a Boston police officer, for which he served proudly for more than 35 years.

My mom worked as a registered nurse at Quincy City Hospital putting herself through school as well. So my sister and I, we spent a lot of our time in our triple decker with our black and white TV becoming a bit of a de facto babysitter. Shows like "Wild Kingdom" with Marlin Perkins had a powerful impact on introducing me to the natural world and influencing my own life's journey.

The TV programs that we make are loaded with that same inspiration germinating the next generation of innovators, educators, engineers, entrepreneurs, and leaders like yourselves.

I have had the good fortune to spend the last 20 years working on shows around the world for Disney, Discovery, Food Network, Animal Planet, CNN. But I am most proud of the work that I have done with CTA.

As we know, our children are naturally curious. They thirst for learning. And our mission is to feed that innate passion, thus inspiring these children to have rewarding and productive futures, which ultimately contributes to our society.

Litton's educational programs received more than 1.5 billion views just last year, and this motivates future leaders and visionaries, and many of these begin as children in rural America or in urban environments, often without access to internet technologies. Some of them are, of course, kids that are at-risk teens.

The CTA has spurred a virtual classroom filled with a credible teachers and experts that engage millions of children every week, and we do so with enthusiasm, compassion, humor, and this deepens the learning experience. We choose, we intend our mission is to produce television for teens. We believe providing teens and their families with safe, educational, and inspirational content is vital.

Today when social media and celebrity are often considered more valuable than education and innovation and when teens are only a single click away from the digital unknown, this programming is more critical than ever. We fear that if the Kid Vid NPRM is not rectified, stations will no longer dedicate time serving our children and shows like mine, "Ocean Treks" on ABC, will be replaced with infomercials such as My Pillow dot com.

However, we are confident that there is a way for the FCC to provide flexibility for broadcasters without diminishing the quality of programming and Congress'—your commitment to our children.

While we support efforts that lessen the burdens on television stations, we strongly oppose broadcasters move to take the EI programming multicast channel as our primary mode of distribution and rolling back the 3-hour rule. Multicast viewership is 95 percent less programming carried compared to the primary program stream. Without those viewers, we offer no value to our sponsors and to our advertisers.

For example, on the main screen primary format a commercial would sell for $2,500. On the multicast channel that commercial is reduced to $25. Congress charge broadcasters with offering educational content for children. In order to stay true to this mission, we must keep our program current. Simple, but if we move the educational program to multicast, original programming will come to an end. It will cease to exist. Our virtual classroom will be obsolete.

Broadcast television is uniquely powerful and can be a beacon for inspiration and enlightenment. I ask you just 2 percent of broadcast time. Is that too much to ask to provide for our children?

When Mr. Rogers was here 50 years ago, he discussed the impact that media is having on children, way back then in 1969. Imagine if he was here today what he would witness with the impact of media, which is why the program we deliver is so vitally important.

I thank you so much for your time today. And I look forward to your questions.

[The prepared statement of Mr. Corwin follows:]

WRITTEN STATEMENT

of

Jeff Corwin

On behalf of Litton Entertainment

before the

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

U.S. HOUSE OF REPRESENTATIVES ENERGY AND COMMERCE COMMITTEE

"STATE OF THE MEDIA MARKET PLACE"

September 27, 2018

Chairman Blackburn, Ranking Member Doyle, and members of the Subcommittee, my name is Jeff Corwin, and I am here on behalf of Litton Entertainment. Thank you for the opportunity to discuss children's programing and how important it is for the future of the media market place.

Introduction

The title of today's hearing is the *State of the Media Market Place*. I can't think of a better topic to discuss than the future of children's educational and informational (E/I) programming. How children access content is much different than it was 28 years ago when the Children's Television Act (CTA) was enacted - but the need for this Act couldn't be greater. Children are bombarded with violent and sexually inappropriate content every day, but parents and children can rely on over-the-air television as a safe haven of educational content. All parents need to do is look for the E/I bug on the screen and they can be comforted that their child is in a safe place. From their living room a family can be transported around the globe and learn about the natural beauty and wonders of our planet. Access to the world's most inspiring educational experts is the goal of the CTA. We need your help to ensure it continues to grow and thrive in the future.

When I was growing up, my dad worked as a printer by day, delivered donuts at night and took classes to become a police officer. My mom worked as a registered nurse. So I spent a lot of time in our city apartment by myself, and our television became a bit of a defacto babysitter. The shows I devoured back then - like *Animals Animals Animals* on ABC and the work of David Attenborough - made a significant impact on me. Not only did they teach me lessons about the natural world, they showed me men and women who were able to make science and zoology a career. They <u>inspired</u> me to become what I am today.

The television programs we create are loaded with that same inspiration - to become engineers, inventors, teachers, entrepreneurs, elected officials and creators of the next generation of scientific breakthroughs. I've had the good fortune to spend the last twenty years presenting shows from every continent for networks like Disney, Discovery, Animal Planet, CNN – but I'm most proud of the programs we create that fulfill the mandate of the CTA. Kids want to be curious. They have a thirst for learning. Address this curiosity and passion, and you'll start a conversation in the home that didn't exist before. You'll inspire kids for life.

Litton Entertainment Programming

I've partnered with Litton Entertainment because they produce the highest quality programming in the market. They now produce all the educational and informational programming for ABC, CBS, NBC, CW and Telemundo. Their partnerships with the networks and affiliates are the best in the business. They see their relationship with broadcasters truly as a partnership. Litton was formed in 1987 by Dave Morgan, looking to provide original syndicated television programming to television stations. Litton teamed with zoologist Jack Hanna to produce three one-hour specials, reminiscent of "Mutual of Omaha's Wild Kingdom with Marlin Perkins."[1] With the passage of the CTA, Litton began producing "Jack Hanna's Zoo Life" as a weekly half hour series that quickly became the number one Nielsen rated weekly show in America. In the early days of the CTA, Litton was up against large Hollywood studios which were putting out shows like "Beakman's World," produced by Columbia Pictures/Sony and "Bill Nye, the Science Guy," produced by Disney. A testament to their commitment to quality is shown in Litton's E/I series which have won 17 Emmy Awards – including my first Litton project as

[1] Appendix 1 Letter from Jack Hanna to Chairman Pai.

host and Executive Producer of *Ocean Mysteries* on ABC. Today I'm proud to host and produce Litton's *Ocean Treks* on ABC, now entering our third season.

Litton studied hard what Congress and the FCC said about production of quality E/I programming. Using sponsorship to help underwrite production costs, Litton has been able to offer its quality children's programming to stations free of charge – stations do not pay for the programming, but rather receive it in exchange for allowing Litton to sell limited, designated advertising within the programs.

When Litton began to produce E/I programming, it looked at the market and determined the largest demographic underserved with educational programming was teens (13-16 year olds). The success of "Jack Hanna's Zoo Life" emboldened Litton to produce additional content for teens. Beginning in 2011, Litton began producing a three-hour block (six half-hours) for ABC affiliates under the brand of "Litton's Weekend Adventure." That block of programs replaced mainly off-Disney cable channel programming, and within six months, ratings for those time slots increased by 73%. Litton works with award winning teachers, top child psychologists and pediatricians, broadcasters, and other experts to develop and review our programming to make sure that it meets their highest standards and the definition of core E/I programming. Over the past 30 years, Litton has gained valuable insight into what is impactful television and what doesn't work in delivering a positive educational message to children, and specifically to teens.

All of Litton's currently produced original programming is shot in high definition, is closed-captioned, and contains video description. Since 1990, Litton has produced approximately 3,340 original half-hours of E/I programming. In addition to the 17 Emmy Awards (and 50 nominations) Litton has been awarded 87 Parents' Choice Awards, 204 Telly Awards, and a variety of other accolades for its programming. They won these distinctions going head-to-head with all types of children's programming, not just E/I content.

More importantly, and contrary to the suggestions of some, Litton's programming ***is*** very popular. Last year, in total, Litton's programming alone has 1.5 ***billion*** views. Litton Network partners air 15 hours per week of E/I programming reaching an average of approximately 900,000 unique teens in the average month, nearly equaling the reach of PBS' 6-12 hours per day, seven days a week, nearly equaling the total reach of PBS' six to 12 hours of E/I programming per day. Litton's mission to reach at-risk teens is working:

- 50% of CBS viewers with children 12-17 earn a HHI of $40K or less. They are 19% more likely to earn a HHI of $40k or less.
- 56% of CW viewers with children 12-17 earn a HHI of $40K or less. They are 33% more likely to earn a HHI of $40k or less.
- 46% of NBC viewers with children 12-17 earn a HHI of $40K or less. They are 8% more likely to earn a HHI of $40k or less.
- 48% of ABC viewers with children 12-17 earn a HHI of $40K or less. They are 13% more likely to earn a HHI of $40k or less.

Equally as important, Litton has discovered its programming is also watched by parents with their teens and younger children ("co-viewing"). This co-viewing phenomenon gives parents a chance to open a dialog with their teens, strengthening family relationships and their children's futures. Many of these co-viewers are also educators:

- Women 18-49 viewers are 73% more likely to work in pre-school through high school education.
- Women 25-54 viewers are 51% more likely to work in pre-school through high school education.
- Adult 18-49 viewers are 69% more likely to work in pre-school through high school education.
- Adult 25-54 viewers are 28% more likely to work in pre-school through high school education.

Litton also provides its programming at no charge to the American Forces Network Broadcast Center ("AFN-BC") which is viewed by servicemen and their families in more than

170 territories and is included as part of the curriculum in Department of Defense Educational Administration ("DoDEA") classrooms.[2]

In short, no one understands the requirements of the CTA or the market for E/I programming better than Litton.

The Federal Communications Commission's KidVid NPRM

In July, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (*NPRM*) which aims to reform the children's programming rules. Litton supports a comprehensive review of the children's television rules and supports a number of proposals aimed at lessening burdens on television stations and providing them more programming flexibility. However, we are opposed to allowing broadcasters to move E/I programming to multicast channels and rolling back the three-hour rule.

Reforms Litton Could Support in NPRM

Litton supports many of the proposals contained in the *NPRM.* Outlined below are our perspectives on several of those proposals.

- Reducing paperwork burdens:[3] Removing the quarterly report filing requirement and replace it with an annual report, and eliminate the forward-looking reporting requirement;
- Expanding Core Programming Hours:[4] Litton supports expanding the current 7:00 a.m. to 10:00 p.m. time frame for airing E/I programming to provide broadcasters

[2] Appendix 2 Letter from American Forces Network to Chairman Pai.
[3] *Children's Television NPRM*, ¶ 29. Litton actually provides the substantive content for the Form 398 for all stations to which Litton provides programming.
[4] *Id.* at ¶ 22.

additional flexibility. Litton would support 6:00 a.m. to 11:00 p.m., or even 6:00 a.m. to midnight, even though doing so would mean fewer viewers are watching.

- Additional Flexibility Regarding Preemptions, Especially for West Coast Stations:[5] Litton is well aware of the problems many stations have, especially those on the West Coast, with preemptions for sporting events. The current "fixed second home" has proven to be unworkable for many stations, especially if they are airing "wall-to-wall" event programming such as Wimbledon, The Ryder Cup, or the Olympics every other year. For these mega events, the FCC should provide more flexibility for stations, possibly expanding the airing window beyond that contemplated above. Litton can't support allowing stations to move preempted programming to a multicast stream.
- Remove the Requirement to Air E/I Programming From Multicast Streams.[6] Even though Litton provides EI programming to a number of diginets that are broadcast on stations' multicast stream, since these streams are nearly bereft of any viewership, removing the requirement to provide three hours on each multicast stream would not harm children since so few actually watch programming on multicast streams.
- Remove the Requirement that All E/I Programming be a Minimum of 30 minutes in Length: Litton is willing to support this proposal if there is ample scientific evidence produced in the record that outweighs the substantial studies done prior to the 1996 Order demonstrating that short-form programming has as much or

[5] *Children's Television NPRM*, ¶ 57.

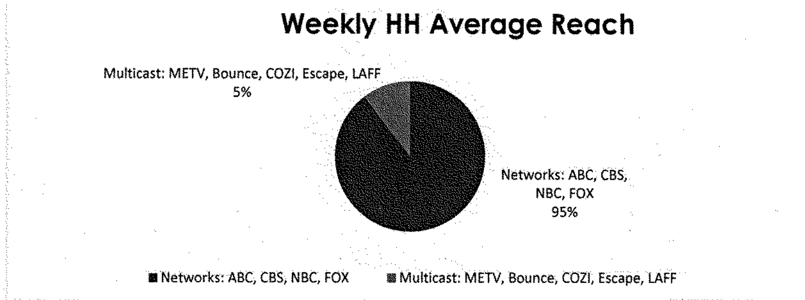
[6] *Children's Television NPRM*, ¶ 51.

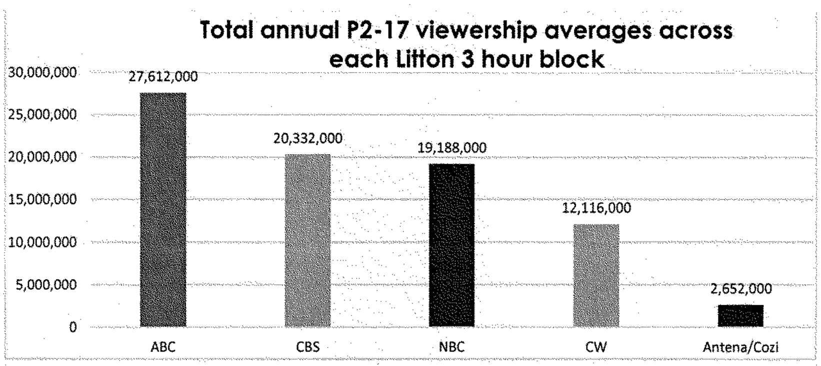
more educational impact as 30 minute programming. Having said that, Litton is unsure providing such flexibility will have any ultimate impact. The current television market will not support the return of interstitials like "Schoolhouse Rock" and "In the News," because there will be no relevant programming to place these into. In addition, stations create their schedules on a half-hour basis. It would be far more work (and far more burdensome) for stations to try and acquire a slate of 10, 15, or 20 minute programming to put together a grid that adds up to exactly three hours (in order to fit within the overall programming schedule), than it would for them to continue to acquire six half hour programming to meet their requirements under the CTA.

Litton Strongly Opposes Multicast Proposal

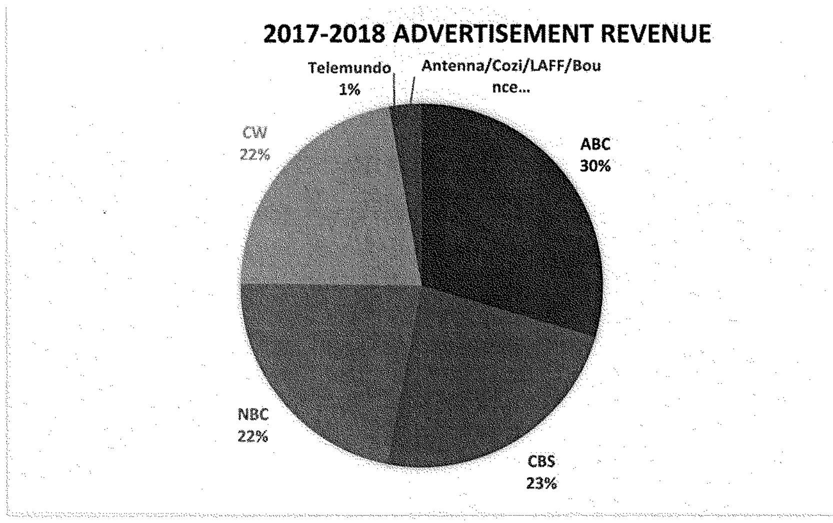
One of the proposals in the *NPRM* that Litton cannot support is permitting stations to relocate E/I programming from stations' main channel onto one of its multicast channels.[7] Such a move would negatively impact and perhaps destroy the market for new quality E/I programming. Litton supplies programming to two diginets (Antenna TV and Cozi) that air on stations' multicast streams. Viewership of that programming is 95% less than Litton's E/I programming carried on station's main channels.

[7] *Children's Television NPRM*, , ¶ 49-50.





Without viewers, both sponsorship and advertising revenues would dry up. Litton anticipates it would lose 98% of its advertising revenues from a program that is moved to a multicast stream. This observation is based on Litton's experience in providing E/I programming to multicast streams – this anticipation is not theoretical.



The reason for this is obvious: Multicast streams are not carried by many MVPDs. DBS providers do not carry multicast streams. The lack of DBS carriage alone represents an instant loss of 40 million television households. The cable systems which carry stations under the must-carry regime are not required to carry multicast streams. The bulk of Americans television households view children's E/I programming on over the facilities of MVPDs or DBS providers.

Allowing stations to satisfy their E/I obligations by moving programming to a multicast stream will destroy the economics of producing E/I programming, resulting in producers relying on reruns and stale programming to provide to stations. New E/I programming would likely disappear, and any newly produced programming would be of greatly inferior quality. Look at what stations are using to satisfy the current requirement that all multicast streams have three hours of programming – reruns of E/I programming produced decades ago. The MeTV network's current use of 1990s children's programs "Bill Nye the Science Guy" and "Beakman's World" illustrates the strategy, a strategy no doubt many stations will employ if they are allowed to meet their public service obligations by airing E/I programming on one of their multicast streams.

Finally, and importantly, E/I programming aired on a multicast channel will not be broadcast in full high definition. Stations air their main channel in HD, but multicast streams are almost all in Standard Definition. The ATSC transmission standard does not have the capacity to carry two full HD streams at the same time.

Without viewers, without advertising dollars, and without sponsors, producers could never cover the costs of creating new E/I programming. Viewers will be left with an ever-aging library of reruns. There would also be serious secondary effects caused by moving E/I programming to multicast. First, currently all Litton programming is closed captioned. Even if some producer could find a way to create new E/I programming for multicast streams, they certainly couldn't afford the costs of closed captioning. The same thing would happen with video description. Children with disabilities would lose access to these vital ancillary services in a multicast world.

Litton Opposes Changes to Three Hour Rule

If the FCC were to conclude three hours per week is too much and reduced the amount of programming to something less than that,[8] the overall quality of children's E/I programming would decrease. There is a reason why in 1996 President Clinton, broadcasters, and child advocacy groups coalesced around three hours as the right fit for each station to broadcast.[9]

[8] *See Children's Television NPRM*, ¶ 36.

[9] *See* https://www.c-span.org/video/?73980-1/childrens-television (CSPAN coverage of 1996 White House Conference on Children's Television). *See also 1996 Report and Order*, ¶ 22 where the FCC made clear that the CTA's obligations relate to each broadcast station, not to a broadcast market as a whole ("Congress sought to accomplish this objective by placing on each and every licensee an obligation to provide educational and informational programming, including programming specifically designed to educate and inform children, and by requiring the FCC to enforce that obligation"). Compare this interpretation of the CTA with that proposed in the *NPRM* where the Commission would look to the marketplace as a whole for children's E/I programming. *NPRM*, ¶ 42.

There is a real "sweet spot" at three hours that allows producers to exercise economies of scale and spread both individual show production costs and overall overhead over six half-hour programs, and as mentioned above, be able to cross-subsidize the production costs of its most expensive programming, especially the programming that requires deployment of film crews.

Conclusion

We must account for what children need as we investigate the future of media. How can we use the broadcasting medium to educate and protect children from the dangerous corners of the digital age? We believe broadcasting continues to play an important role in this future. Litton supports many of the proposed rule changes offered by the FCC aimed at lessening burdens on television stations and providing them more programming flexibility. However, Litton opposes allowing stations to move E/I programming off to unwatched and largely unavailable multicast streams, or reducing the number of hours (three) that stations are required to dedicate to children (less than two (2) percent of a station's programming schedule). Allowing stations to bury children's programming on multicast streams or reducing the number of hours dedicated to E/I programming will upend the existing market for E/I programming making the future production of this important content in doubt.

Appendix 1

Letter from Jack Hanna to Chairman Pai

JACK HANNA'S INTO THE WILD

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Chairman Pai,

As the Director Emeritus of the Columbus Zoo and Aquarium and Host of several educational television shows, I have devoted my life to educating children. Traveling the planet many times over, it has been an honor and pleasure to share my animal adventures with families across the country. This month I celebrate my 40th year living in Central Ohio and working for the Columbus Zoo. This once small zoo is now one of the top zoological organizations in the country. We're proud to welcome 2.3 million visitors a year, provide outreach programs throughout the region, and employ 295 full-time employees and over 1,200 seasonal employees.

My work at the Zoo led me to television - which is the world's largest classroom. It gives us a window into the homes of millions of children who have a thirst for the natural world. With more than 2 million viewers each week, *Jack Hanna's Wild Countdown* and *Jack Hanna's Into the Wild* are two of many great successes of the Children's Television Act (CTA). This important law gives us the opportunity to use TV programming to inspire children every day to be aspiring conservationists.

I am concerned that the Federal Communications Commission (FCC) may undo important rules that will harm both the reach of programs like mine and the economics which allow for the production of this programming. The FCC has circulated a Notice of Proposed Rulemaking (NPRM) that would dramatically change the CTA rules. These proposed rules would allow stations to move children's educational programming from a broadcaster's main channel (with the highest viewership) to one of its multicast streams which are difficult for over-the-air consumers to locate and unavailable to most who subscribe to cable or satellite. Multicast doesn't support high definition and has less programming that includes video description and closed captioning. Their proposed rules make the production of new high-quality content nearly impossible because multicast viewership is significantly smaller than a broadcaster's main channel. We are also concerned the FCC may rollback the current three-hour-a-week rule which would limit access to family-friendly educational programming.

While we are supportive of giving broadcasters greater flexibility to comply with the CTA, we believe the proposed rules go too far and will harm the current economics and visibility of children's educational and instructional programming. I've seen firsthand the power of inspirational and educational programming – I do what I do today because Marlin Perkins inspired me decades ago. If you have any questions, please call my office at (614) 645-3480 and thank you for your consideration.

Sincerely,

[redacted]

Jack Hanna
Host and Executive Producer
Jack Hanna's Into the Wild and Jack Hanna's Wild Countdown

Cc: The Honorable Michael O'Rielly
The Honorable Jessica Rosenworcel
The Honorable Brendan Carr

Appendix 2

Letter from American Forces Network to Chairman Pai

DEPARTMENT OF DEFENSE
DEFENSE MEDIA ACTIVITY
AMERICAN FORCES NETWORK – BROADCAST CENTER
23755 Z STREET
RIVERSIDE, CALIFORNIA 92518-2031

September 5, 2018

VIA ELECTRONIC MAIL

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12 Street S.W.
Washington, D.C. 20554

Dear Mr. Pai:

The American Forces Network Broadcast Center ("AFN-BC") would like to express its sincere appreciation and gratitude to Litton Entertainment for its collective continued support of active duty, uniformed women and men along with their families based overseas serving their nation in more than 170 territories around the globe as well on ships at sea. The quality television programming provided by this company and licensed under gratis terms is an invaluable cornerstone to our core programming on AFN's channels scheduled throughout the year. Educational / Informational ("E/I") content is a direct match with viewers of all ages and in particular, with our younger, school-aged children whom attend Department of Defense Educational Administration ("DoDEA") schools located abroad. This programming supports academic and cognitive learning efforts present in DoDEA classrooms. It would be unimaginable to think that one day this genre of television programming might not be available due to a change in F.C.C. broadcast regulations. Please use this letter as evidence that E/I television programming and Litton Entertainment programming in particular is both cherished and appreciated by thousands of expatriate adults and children attached to military and diplomatic missions who watch the AFN television service all year long.

Sincerely,

[redacted]

Andy Scott
Industry Liaison Officer
American Forces Network

Date: 9/4/18

cc: Mr. Peter Sniderman, Ms. Meg LaVigne, Litton Entertainment

Mr. BILIRAKIS. Thank you.

And I thank all the witnesses for their testimony today.

And before I begin questioning, I would like to ask unanimous consent to enter the following documents into the record for Mr. Scalise: a letter for the Center for Individual Freedom, Council for Citizens Against Government Waste, and a press release from the National Taxpayers Union.

Without objection, so ordered.

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

Mr. BILIRAKIS. Now I would like to begin my questioning. The first question will be for Mr. Olgeirson. It is very clear that consumers have many different options to get their video content. Can you talk a little bit about how the market is impacted by generational viewing habits? For example, my district is home to many seniors in retirement. Are there certain age groups that are deriving subscriber growth or subscriber losses? I know that the youth is probably number one, but if you can explain, I would appreciate it very much.

Mr. OLGEIRSON. Sure. So I think that it is difficult to ascribe a specific demographic to the people that are leaving the multichannel environment. The common wisdom is that it is younger people, and that part of the decline of multichannel has to do with younger people leaving a multichannel service and the other part has to do with the fact that they are not fueling new subscribers as older subscribers turn off.

We have seen certainly evidence, survey evidence of younger people embracing over-the-top video more frequently than older people. If we look at a recent survey, it shows that the seniors sort of over 72 years old tend to be more engaged with multichannel services. They tend to be less engaged with the subscriber VOD services like Netflix, and so we certainly have that evidence.

We have also seen that both younger generations like Gen Z and Millennials tend to be about the same—have the same satisfaction rate with their multichannel services as seniors, which is an interesting fact, an interesting finding. But seniors seem to find more value within those multichannel services. So we have seen a senior class that tends to stay closer to the multichannel services than their younger demographics.

Mr. BILIRAKIS. I thank you. A followup here, how are content creators and video providers adapting to these changes?

Mr. OLGEIRSON. Are they adapting to the changes?

Mr. BILIRAKIS. How are they adapting to these changes?

Mr. OLGEIRSON. Well, I think that we have certainly seen the multichannel service providers like Comcast, Charter integrating their own access to over-the-top features. We have seen them introduce on a limited basis their own skinny bundles. Comcast has its instant TV initiative, which is meant to look and feel similar to virtual service like a Hulu with live TV.

So we have seen that. They have invested in improved user interfaces to try to match some of the functionality that they get from Netflix. So we have seen a variety of different offerings from operators.

Mr. BILIRAKIS. Thank you.

My next question is for Mr. Moffett. You talked in your testimony about a transition to closed media with more and more content owners moving to a closed system like Netflix or Hulu. But consumers must have individual subscriptions with all of these providers—that is correct, right?—which leads to the question of subscription fatigue. Do you have any thoughts on this, how the industry can respond to the overload of subscriptions as we move to a closed system?

Mr. MOFFETT. Mr. Chairman, it is a fantastic question, and the answer is, I think the entire industry writ large is grappling with exactly that question. You know, Disney, for example, has talked about an expectation that they will increasingly be a direct-to-consumer company. HBO is increasingly or, in fact, arguably always has been to some degree a direct-to-consumer company as is to a degree Showtime.

But all of them are, in effect, aiming at becoming direct-to-consumer platforms that will increasingly look like closed systems, as, by the way, will Netflix where Netflix is licensing less content certainly as a share of its total business from others and producing more and more of it themselves.

So the question of what the future looks like, it is very hard for us to get our heads around the idea that we might have a model where at AT&T, for example, the only way you would be able to get CNN is if you were a subscriber to an AT&T platform and you ended up with an exclusivity platform like that.

Or the only way you could get NBC would be to be a subscriber to Comcast, and that if you had to choose between the two, it would mean I am either going to have one or the other, because adding them together may be rather unwieldy.

That is so different than the model that we have all grown up with that most people find it to be almost unimaginable. But, in effect, all of the competitors of the traditional companies are going in that direction, and so what the traditional companies are struggling with is are we going to be forced to go in that direction as well. And I don't think anybody has a good answer yet for what that looks like, how many subscriptions the average person is likely to be willing to bear. Those are all very, very open questions at this point.

Mr. BILIRAKIS. All right. Thank you very much. My time has expired.

Now I yield 5 minutes to the ranking member, Mr. Doyle.

Mr. DOYLE. Mr. Corwin, as I understand it, TV stations contract Litton, who you are testifying on behalf of, to provide them with children's television content to meet their Kid Vid obligations, right?

Mr. CORWIN. Correct.

Mr. DOYLE. And the way that Litton pays to produce new content is by selling advertisements during these broadcasts, right?

Mr. CORWIN. Yes.

Mr. DOYLE. So now one part of the FCC's proposal regarding Kid Vid is to allow broadcasters to meet that Kid Vid obligation by broadcasting this content on one of their multicast stations. Now, I have heard that there is a pretty significant difference in value between main station and multicast advertising revenue. Is that accurate, and if so, how big of a difference are we talking about?

Mr. CORWIN. Well, there is a tremendous challenge with trying to rely on multicast as a way to broadcast. But, you know, I could tell you, you know, from my personal experience I find that people are very excited to be engaged in this material. And I hope that none of your constituents are responding to you saying they are getting too much educational television.

Mr. DOYLE. Right. But what I am interested in what is the difference in the advertising revenues, whether they are broadcast or——

Mr. CORWIN. They are huge. The advertising revenue can be from $2,000 plus per commercial to $25. Why does that break down so much? Well, that is because you lose your audience. Multicast is not available in cable. It is not available in satellite. It is rarely broadcasted in HD. We lose 98 percent of the market. My own children, where I live in Massachusetts, would not be able to watch my television program.

Mr. DOYLE. So then my question is, do you think that you and other content producers could continue to make high-quality children's television content for broadcasters under Kid Vid if you were just working with ad revenue for multicast stations?

Mr. CORWIN. We could not. In fact, what we do is we actually generate our own income which the networks do not have to pay for. We are self-sustaining. But because we would no longer have the marketplace, we no longer have the viewership, we would no longer be competitive, and we wouldn't get those ad dollars. The reason why I get the money to make the TV shows that we do is by having a strong, robust, highly competitive viewing audience, and that goes away on multicast.

Mr. DOYLE. Well, representing the district where Fred Rogers lived, I will ask you, do you think there is value in children having access to safe, educational, original programming on free, over-the-air broadcast television?

Mr. CORWIN. I do. There are millions of children that get this information. I can tell you, Mr. Doyle, I was filming in Pennsylvania just a couple of weeks ago filming the hellbender, which is a remarkable species of salamander that tells us all about science, technology, and research, both in the ancient past of evolution and today in modern wildlife management. We get to tell that story in a compelling way through my TV show because we have the budget to be able to travel and invest in these stories. That goes away through multicast.

Mr. DOYLE. Yes, I agree. I think there is great benefit to having that kind of program over the air on free television. And I just close by saying I am glad the Pirates don't have to play the Red Sox this year.

So, Mr. Chairman, I know we have votes being called, so I will yield back.

Mr. BILIRAKIS. OK. We are going to get one more in. We will get the—I will recognize the full chairman of the committee, Mr. Walden, for 5 minutes, please.

Mr. WALDEN. Well, thank you, Mr. Chairman.

Again, thanks to our witnesses. This is part of a very vibrant discussion we are going to be having on this committee in the weeks and months and probably years ahead about the changing video marketplace and what it looks like, what it can look like, what it will look like, what we can envision it should be, and then what are the regulations in place today, do they make sense for today, do they make sense for tomorrow, who is covered, who is not. These are always the challenges in public policy we get confronted with.

I loved "Wild Kingdom" too. You know, it was on the air from I think it was 1963 to 1988, and we always watched it. And "Mutual of Omaha's Wild Kingdom." They had that little advertising plug in there every time. I think Kid Vid actually came in 1990, so the law that you reference actually was enacted in 1990.

And I guess as I look at this marketplace, gosh, there has never been more opportunities for all kinds of programming at your fingertips as long as you have connectivity and internet. So it is a pretty exciting time unless you are stuck on your brick phone. Yes. Yes.

So, Mr. Moffett, critics have been—yes, he is still paying for AOL too.

Mr. Moffett, critics of industry—could we have order here, Mr. Chairman.

Critics of industry consolidation have claimed that the combination of large firms who provide both content and distribution platforms is anticompetitive and puts too much power in the hands of a few. But we don't often talk about the impact that new entrants are having on the same marketplace.

Google's YouTube platform is the largest video network in the world, and it is enhanced by 2 billion Android phone devices that come pre-installed with the YouTube app. Amazon's Prime reaches two-thirds of American households now, and both of these companies have market caps several times larger than the biggest telecom media companies.

Can you comment on big tech's increasing presence in the video market and how this impacts competition?

Mr. MOFFETT. Yes. Thank you for the question. Look, it is very clear that the moves that you have seen from companies like AT&T and Comcast have been precisely to respond to the fact that the scale and market power of companies like Google and Facebook are, in fact, much greater than their own.

And what I described in my witness statement of a model that—or what an economist would call the modernization theory based on advertising and, you know, the old adage that if the product is free, you are the product——

Mr. WALDEN. Right. Right.

Mr. MOFFETT [continuing]. In fact, the consumer is the product that is being sold in most of these models.

Mr. WALDEN. Right, because it is data.

Mr. MOFFETT. They may not be entirely free, but all of the economic value is effectively predicated on the assumption that there will be a resale of the customer data, what you watch and what you do. That is extraordinarily difficult for the traditional companies to respond to.

And what you are seeing is a sort of a different model. The consolidation is more defensive than offensive among the large companies. They are trying to respond by doing the traditional things of getting bigger and cutting cost and hoping, in the case of AT&T, that there is a path for them to be truly competitive as an advertising platform. But it is very difficult for them as a competence to be as successful in the advertising business as the digital advertisers, Facebook and Google in particular, are.

Mr. WALDEN. And you have talked about the rise of virtual MVPDs and how they are becoming popular with consumers, but you said the service is losing money so it may not be sustainable. But yet it seems like Wall Street has supported business models that lose money as long as they keep growing their user base. I think about Amazon and Snapchat and the way they leverage their capital to keep garnering market share. It is phenomenal what they have done in so many respects.

Do you think Wall Street will give virtual MVPDs the same benefit, or does a different set of rules apply?

Mr. MOFFETT. Well, I think for now the—Wall Street is generally skeptical of the virtual MVPD model, at least the live version. That is distinct from the Netflix model. So the Netflix model, which is in Wall Street parlance an SVOD model, or subscription video on demand, particularly when they are producing their own content. It is a fixed cost being advertised across a larger and larger base.

Mr. WALDEN. Right.

Mr. MOFFETT. By contrast, the virtual MVPDs are essentially a variable cost. And so if you lose money on one customer, having 100 million customers is still going to lose money. You are losing money on every one——

Mr. WALDEN. You don't make it up in volume.

Mr. MOFFETT [continuing]. And so scale doesn't help. And so Wall Street is quite skeptical, I think, for the moment of any of the virtual MVPD models. In the context of a company like Google, YouTube TV is too small for anyone to spend much time on it.

But a big part of the reason, for example, that AT&T as an equity has performed so poorly since its DirecTV acquisition isn't just that DirecTV started to shrink right after they bought it but because they started to migrate customers into a virtual MVPD of their own, DirecTV Now, that was hemorrhaging money. And so the income statement looked frankly quite awful partly because of that acquisition. So Wall Street has not been willing to fund the expansion of the traditional companies into this business.

Mr. WALDEN. I have gone over my time.

Mr. MOFFETT. And it hasn't paid much attention to the digital companies doing it.

Mr. WALDEN. Thank you, Mr. Chairman. I yield back.

Mr. BILIRAKIS. Thank you, Mr. Chairman. Appreciate it.

And now we will recognize the ranking member 5 minutes for questions.

Mr. PALLONE. Thank you, Mr. Chairman.

I know that we have a vote on, so I am going to only use about half the time and I am going to limit my questions to Mr. Corwin. I want to thank you for your excellent programming that you provided to America's children over the years. And I agree with you that my concern that you share is that the FCC in considering rolling back protections that ensure kids have access to free, educational, informational TV program is a serious problem.

So let me just say, if educational children's program migrated online or to cable channel only, what groups of children would be the most affected?

Mr. CORWIN. Well, the people that would benefit children would be the ones that have access to—the people most affected are the ones that do not have access to the technology. And as we have discovered with the potential opportunities of multicast is that there is no opportunity for broadcast because we just wouldn't have our audience. So unless you are in a public library or you are in school, there are many children in our country that would not have access to this technology.

Mr. PALLONE. And what's the consequence of that? In other words, children from lower-income homes, as you say, have access to fewer resources and opportunities than wealthier families. So in your experience, you know, how does exposure to educational program mandated by Kid Vid rules actually benefit the children?

Mr. CORWIN. So how does it benefit children? OK. So the only thing I could say is, in my job I don't wear a suit. This is the first time I have worn a suit. I always say, you never want to see me in a suit because you are probably in a casket. But I needed a suit. I was filming overseas. My wife got a suit. I came home. It didn't fit. I found a tailer at the last minute. She was able to do it. I didn't think she knew who I was.

I got a text from her saying you can pick it up on the 26th in the afternoon. And she said, by the way, I don't know if this is inappropriate, but would you provide a correspondence to my nephew because he serves in special ops, and he wanted you to know that when he was a teenager he was going through some tough times and your programming and others inspired him to focus and he joined the military and now has a very productive career.

I mean, that is a personal story that I have encountered. I have met many children—I have met many—unfortunately now that I am aging, you meet adults that come up to you and say, I became a veterinarian or I became a scientist because of shows like yours that I have experienced. So on a personal note, I have met hundreds, if not thousands of people, that have been positively impacted.

When it comes to our natural resources, I will tell you this: You can't protect and you can't wisely use what you do not love. And if you don't love it—you will never love it if you never realize it or discover it. And that is what shows like mine do. We provide a vehicle, a safe, encouraging, rich environment for young children and young people to make discoveries that could perhaps set them on their careers of what they will do in the future.

Mr. PALLONE. I think that is so important. You know, the other thing we realize more and more—at least I do. I think most people do—is that when you talk about STEM, right, in other words, you know, science, engineering, the things that—that kind of education that is so important, you know, for the future in this sort of innovative technology world, what this committee deals with, that is where a lot of these kids—we know that, you know, STEM education is something that low-income kids often don't have the opportunity, they don't hear about, don't start, you know, wondering about science and nature and all that.

And so I think it has a particular impact there because I worry so much that, you know, if people from low-income backgrounds will never get into those fields. And the sort of discovery aspect that you are talking about I think is particularly important in that respect as well. So thank you very much.

Mr. CORWIN. Thank you.

Mr. PALLONE. Thank you, Mr. Chairman.

Mr. BILIRAKIS. Thank you for yielding back.

I will now recognize the gentleman from Pennsylvania—excuse me, Louisiana, my good friend, Mr. Scalise, 5 minutes, please.

Mr. SCALISE. Thanks again, Mr. Chairman.

I appreciate the testimony that you all have given and it really describes just how much things have changed since the brick was the cellphone. This was the last time our laws were written. These are the laws. We are literally operating under 1992 laws with this technology. And I show this to show the importance of why we need to update our laws.

And, you know, obviously I filed a bill, the Next Generation Television Marketplace, to start this conversation about how we get beyond these people that want to live in the dark ages. The number one song, by the way, when the 1992 Cable Act was written, ironically was "End of the Road" by Boyz II Men. It is the end of the road for the 1992 Cable Act, but we can't keep living under it because of those companies that are fighting that change.

Mr. Moffett, you said in your statement earlier, change or get left behind. And really that is fitting because it seems like some of the people that think that they are protected by the 1992 Cable Act that want to hide behind the 1992 Cable Act and fight to protect it, they are going to fight change while they are getting left behind because the change is happening.

The problem is you have very different sets of rules that everybody is playing by. Why is it—and I think, Mr. Olgeirson, you did some research to look at how many people are really cutting the cord, what kind of drop there is. And from what I saw, there is about a 9 percent drop, reduction in people that are staying within the old MVPD marketplace. In other words, the cutting of the cord is real and they are doing it, but they are not just stopping and watching things. They are transferring over to over the top.

And I think in your studies it was somewhere around 180 percent increase in the number of people going to over the top. And so there was a revenue study that was done by Convergence Research Group that showed a revenue change last year. A 1 percent increase in paid TV, the traditional MVPD, and a 41 percent increase in revenues by over the top.

The more alarming part of the traditional revenue, the traditional MVPD folks, you know, while they may seem to be saying, hey, you know, we had a 1 percent increase, that is a decrease in what they were getting before. But they are losing customers by a rapid, rapid rate.

And so, if you look at where we should be trying to go, we should be trying to go to a marketplace where everybody has the same set of rules. One of the reasons that those traditional MVPDs can't go find ways to get more customers that are getting better choices— I mean, customers do what they always do. They look for better choices and they look for lower costs, and they are finding both in the over-the-top, but they can't get it in the traditional MVPD because there are laws in the 1992 Cable Act, like must-carry, like basic tier. There are actual laws that prevent you from providing the services that customers are looking for.

So they are cutting the cord because they can go somewhere else. So, Mr. Moffett, what I want to ask you, is, as I have described that marketplace, explain to me, maybe, why you see some of these traditional MVPDs fighting change that—frankly the change, they are going to be Blockbuster. You know, Chairman Walden, I know he gave that example of Blockbuster. Blockbuster died for a reason, because they fought the change that was happening. It happened anyway. And so as people moved away, Blockbuster went away because they fought the change. If they maybe would have said, let's go be like Netflix then maybe they could be like Netflix today instead of being the dinosaur. So if you want to maybe touch on that, Mr. Moffett.

Mr. MOFFETT. Well, thank you for the question. I would say, in fact, part of the reason that the change has seemed—particularly to people in the tech community—has seemed a bit glacial for the traditionals is precisely as you say. There are very real limitations on their degrees of freedom, right? As a traditional MVPD, a Comcast or a charter or something, I might want to, for example, respond to the emergence of so-called skinny bundles among the OTT players, by saying, "Well, I have to have skinnier bundles of my own with fewer networks." Well, your contracts don't allow that, so you probably can't.

Mr. SCALISE. And maybe that worked when you were the monopoly. You know, again, in 1992, you didn't even have satellite, STELA didn't exist.

Mr. MOFFETT. That is right.

Mr. SCALISE. You surely didn't have Roku and Hulu and all those other services. You had one place to go. You were the only game in town, and so it was a great relationship with the networks. They were a monopoly, you were a monopoly, and everybody could only go to you. It doesn't exist anymore.

Mr. MOFFETT. And by the way, the negotiating leverage, as you can imagine, in those days, was quite different. One of the challenges for the traditional MVPDs in competing, is, as they think about the retrans rules, for example, you have a very clear asymmetry in the negotiating leverage. The media company, the local— I should say, the local broadcast affiliate, particularly in NFL markets where they have the rights to—to a local football game, is dealing with a product that—for which there is no substitute.

By law, there is no one else allowed to sell that NFL game, for example, in that market. And they are negotiating with a player on the—on the multichannel video side, a cable operator or satellite operator, for whom there are very obvious and identifiable substitutes. So that is quite different than the situation in 1992, and not surprisingly——

Mr. SCALISE. And I apologize, I know I am out of time, but just to say—to wrap it up, Mr. Chairman—let's get back to a free market where everybody is paid for their content. I mean let's go to pure copyright. We are not talking about somebody giving away their product for free, but let's not have the Government tell you that you have to provide content one way, but this other actor over here, that is going through the internet can operate in a completely different set of rules and environment and take your customers away, but you are trapped in the old system.

Let's have a free market for everybody, where you get fully compensated for your content, but update the laws, because, my gosh, why are we still operating under these laws? It is the end of the road.

Yield back.

Mr. BILIRAKIS. All right, thank you. Thank you, Mr. Scalise. And as you know, votes have been called, so we will take a slight recess. This subcommittee will recess for, well, a few minutes.

[Recess.]

Mr. GUTHRIE [presiding]. The subcommittee will reconvene. At this time I am going to recognize Mr. McNerney for 5 minutes for questions.

Mr. MCNERNEY. I want to thank the chairman, and I am glad to be back after votes here today. Mr. Corwin, about 21 percent of the households in my district have an annual income of less than $25,000 a year. What types of—why are the types of educational and informational programming that you describe in your testimony so important for kids in these households?

Mr. CORWIN. Well, I think why it is so important is because if you can provide anything for young people that are in a disenfranchised or disadvantaged situation where they may not have access to technology that allows them to be omnipresent in the digital universe, I think what we can do is provide those kids with a sense of hope, that we can inspire them with places around the world. These kids, when they watch my shows, I literally imagine in my brain, they are my sidekick companion, and we are on an adventure together. And we can show them places around the world. We can show them scientists that are doing ground-breaking stuff, not just your classic scientists, but scientists from all walks of life.

Many of them have had moments of adversity in their lives that are doing groundbreaking, life-changing things to not only advance science, but to wisely manage our natural resources. So I think, in the end, that is something we provide. We empower them with knowledge. We show people like them, who have made great successes of themselves and are contributing. We give them hope, and I figure the hope that I got, for example, when I watched David Attenborough, when I watched Marlin Perkins, but wanted to be Jim, you know, when I watched all that stuff, it inspired me, and I hope we can inspire them.

Mr. MCNERNEY. Thank you.

Well, more than 56,000 households in my district participate in the Lifeline program, which you must be aware of, and that enables low-income families to stay connected. The FCC Chairman is currently proposing the changes to the Lifeline program that will eliminate 70 percent of the households that participate in Lifeline. Do you think cutting off households from Lifeline will be harmful?

Mr. CORWIN. I think not only is it harmful, but it isolates children. It does not give them access to resources, pedological and educational and informational opportunities, that could ultimately be a stepping stone to inspire them to become engineers, explorers, or scientists. So they lose that conduit to another world, and they become isolated.

Mr. MCNERNEY. Thank you.

Mr. Olgeirson, in recent years, we have seen a number of vertical and horizontal mergers in the media marketplace. We know that most Americans still get their news from local sources, local broadcasting stations, local radio, and hometown newspapers, but increasingly many of these outlets are being consolidated by a handful of companies. Localism is still important in our Nation's communications policy. It produces more robust democracy.

Do you think that the FCC's decision to allow a single broadcaster to own more than one—one top-four stations in a market could result in less unique local voices in the market?

Mr. OLGEIRSON. I couldn't speak to the consolidation within the broadcast markets.

Mr. MCNERNEY. OK.

Mr. OLGEIRSON. I could offer you a data point on—to your last point, talking a little bit about where lower income households come in. We have certainly seen a significant increase in the average revenue per unit and the cost of a multichannel subscription, which puts a—which certainly puts a—the statistics you mentioned about the lower-income households in your district, would put them outside of the affordability of a multichannel service and being able to access that.

Mr. MCNERNEY. OK, thank you for that.

Mr. Moffett, privacy is an area of great concern for me and a lot of Americans, a lot of people around the world really. Americans increasingly feel they are losing control of the information they share online.

I understand the FTC has a general enforcement policy under Section 5 to go after unfair and deceptive practices. I also understand the Communications Act has certain privacy provisions that apply to cable and satellite operators. Do cable and satellite privacy protections in the Communications Act apply to online MVPDs?

Mr. MOFFETT. I think it is generally assumed by most of the carriers. I think a good example is Verizon. That they are subject to—to stricter privacy rules than are the edge providers, as they are referred to, the Googles and Facebooks. And that asymmetry is problematic. I wouldn't want to—it is a legislative question, rather than an analytical question, to say which model is the preferable model. That is, is it more appropriate—while it is more complicated than this, it boils down, in many ways, to an opt in versus opt out, but there are obviously many nuances beyond that.

I wouldn't suggest that—I would suggest that it is a legislative and—a legislative question to decide whether it is—whether one is preferable to the other. But there is certainly a strong economic argument for ensuring that everyone operates under the same set of rules.

And historically that has been solved to some extent in that now when the previous net neutrality rules were in place, it created some additional complexity because—because of the exemption of—that had come from almost a century ago, about net neutrality and jurisdiction of the Federal Trade Commission. At least that has been taken away, so that the Federal Trade Commission has jurisdiction over both, but the presumed rules are still different.

And, for example, Verizon is struggling with the acquisition of AOL and Yahoo, in part because their expectation is, we have to abide by privacy rules that are stricter than those rules that are adhered to by a Google or a Facebook.

You have another—one more obviously, you have another very big challenge, which is, especially the social media companies are global and are now being asked to respond to different rules in Europe and different rules in Asia, and in fact, individual countries in Asia. And it makes it extraordinarily difficult to think about all these different regimes.

Mr. MCNERNEY. Thank you for your opinion.

I yield back.

Mr. GUTHRIE. The gentleman's time has expired and he yields back. And I will recognize myself for 5 minutes for questions.

So, Mr. Olgeirson, this subcommittee has talked a lot in this country about the importance of winning the race to 5G. And Doris Matsui of California and I, with the Congressional Spectrum Caucus, have been looking at the spectrum—the block phone is coming back—the spectrum questions, which are central to 5G. And since we are talking about media today, one of the many uses that 5G will enable is an enhanced mobile broadband capability, vitally important to high-quality video, among other things.

I have been told about the incredible amount of bandwidth that online video consumes on all networks, including the mobile. My question is, since we are already seeing consumers transition towards mobile content consumption, do you think the deployment of 5G will accelerate this trend and, in particular, when it comes to video?

Mr. OLGEIRSON. Thank you for the question. I think that, first of all, when we think about the consumption of video, we still see the primary location in consumption of video being the home. So even though consumers may be technically using a mobile device, and they maybe experience a certain degree of mobility because they are not tethered to a wire, they are on the home Wi-Fi. And that is where the majority of usage for video is at the moment.

We have certainly seen different service providers targeting a true mobile service and looking to leverage that, and capacity would certainly increase their ability to put that out there. Under the current sort of 4G network's mobile video, in an uncongested 4G network's mobile video is not necessarily a gating factor. But bandwidth is not necessarily a gating factor to getting that video. But we do anticipate that a more robust mobile network would lead to, you know, more data usage, including video.

Mr. GUTHRIE. More demand for it.

Mr. Moffett, would you have any comments on that?

Mr. MOFFETT. No, I would agree with that answer, that the—I am not sure that video alone—there is obviously a tremendously—

a tremendously rapid growth in consumption of data, and, therefore, all the wireless operators are applying all different kinds of strategies to increase the capacity of their networks. And video is a very large driver of that growth. But I think it would be a little bit of a stretch to argue that video consumption will be the economic basis of 5G. I think there has to be something that is a separate and unique revenue stream associated with that business. Because video is already a revenue stream that the 4G network allows them to capture, as Mr. Olgeirson said, with reasonably good efficiency.

Mr. GUTHRIE. OK, thanks.

And this is Mr. Olgeirson's testimony, but anyone can answer this. I will go to Mr. Olgeirson first, but in today's testimony we heard about the significant shifts in media marketplace and how different the industry is now, compared to even 10 years ago. But you said that we are still in the early to mid stages of complex transition. If we are only in the early stages—put on your analyst hat here—and if you are only in the earliest stages now, what can we expect the marketplace to look like in the late stages?

Mr. OLGEIRSON. Well, I think that we see a continued progression of subscribers moving outside the umbrella of the big subscription package that is represented by cable, Telco, and satellite services that we know today. Those services—those subscribers will be in a position of self-aggregating their content through different services like a Netflix or a Hulu.

We will also see an increasing move toward direct-to-consumer delivery by video conglomerates who are looking to sort of move beyond having a distributor middle man in that section. So I think that we see a progression of subscribers outside of this big package. We see the traditional operators continue to have significant leverage within that discussion, because of their wireline networks, and in many cases, because of the wireless networks that they will develop on top of those wireline networks. But nonetheless, the video package migrates outside.

Mr. GUTHRIE. OK. I have a few seconds, do you want to comment, Mr. Moffett?

Mr. MOFFETT. You know, I can—I think the key thing to focus on is really what is happening to consumption trends, and while people are watching more and more video, they are watching less and less what we consider scripted video, and that sort of thing. So you have got this period where there is more scripted shows than ever but fewer and fewer people watching them. And that is not a sustainable model.

I think if you project out forward, you are likely to see that a lot of what we think of as linear television today just disappears, to be replaced with much more on demand, and with a much more limited offering of linear TV, linear news, and linear sports. But that it may not be—there may not be a need for any other linear channels. Everything else may eventually be sold in on-demand packages. And I think younger people are sort of scratching their head over why are we spending so much time thinking about linear television and the migration of linear television because——

One of the better quotes that I heard was from a young person, who when faced with a virtual MVPD, which is sort of pitched at people like that, said, why would I want a bunch of networks that only my father watches? That is not the way they consume television or consume video. And even the idea of consuming television is a bit anachronistic.

Mr. GUTHRIE. Well, thank you. My time has expired. I appreciate your answers.

Next up is my friend, the gentle lady from New York, Ms. Clarke.

Ms. CLARKE. Thank you very much, Chairman Guthrie, and to Ranking Member Doyle, for convening this important hearing on the media marketplace.

Viewpoint diversity is an important principle that has long informed communications policy in the United States. While online platforms provide new channels for voices to rise to the surface, it remains vital that our media outlets and the content they distribute reflect the diversity of voices and opinions that make up America. Minority media ownership remains abysmally low, and I worry that the current FCC's rollback of media ownership rules meant to promote diversity of voices will do nothing but make the problem worse.

So, Mr. Moffett and Mr. Olgeirson, does media consolidation have a negative effect on the number of minority-owned media outlets?

Mr. MOFFETT. My focus is not really on the broadcast side, which I think is, if I understand your question, to some degree where you are focusing, because those are the places where the media ownership rules are the most relevant. And so I am afraid it is outside of my area of expertise.

Mr. OLGEIRSON. It is also outside of my area of expertise. I would note that the—that the dynamics that have been described up here of sort of an increasingly on-demand delivery of content and sort of the erosion of that big subscription package have different impacts on people seeing diverse views. Because you are self-selecting the content, you are less likely to run into—into a view that might not be your own.

But at the same time, there is an easier path toward distributing those views, because you don't have the gatekeeper of a 60-channel lineup from a cable operator that you can't crack, because your network is really the 61st most popular one.

Ms. CLARKE. Yes, and I just think that with the diversity of ways in which people are accessing their video or their content, it still disadvantages those who are not in ownership positions. So I was wondering whether any of you can speak to that.

Mr. OLGEIRSON. I don't think so, but thank you.

Ms. CLARKE. Oh, OK, just thought I would ask. Maybe we should look into it.

Are you aware of any efforts to promote diversity or increase the number of minority-owned opportunities out there? Either—anyone?

Mr. OLGEIRSON. I am not, no.

Ms. CLARKE. OK.

Mr. Corwin, you are familiar with diversity in another sense, the diversity of wildlife inhabitants that populate our planet. I am interested in hearing from you why you think it is so important to bring the natural world to children and young people via television programming.

Mr. CORWIN. Well, that is a great question. There are a number of objectives that we are looking at. One is to not only inspire a sense of stewardship to make that natural connection, but ultimately by building that relationship of stewardship, we encourage the next generation of leaders, of users of resources to maybe learn from our mistakes, to ensure that we have a biologically rich and healthy planet.

And as we know today, we face tremendous challenges with endangered species, habitat loss, and climate change. In addition, we try to strive and reach out to above and beyond our audience. Recently we just received a letter from the Department of Defense and the American Forces Network. And the American Forces Network commended us in our ability to connect with our armed servicemembers and to try to be a resource for them.

So, for example, we reach more than a million soldiers and their families around the world, a success point so embraced that they are now using our TV shows in schools that our men and women who are fighting for our country can educate their children in a positive way.

We face tremendous challenges. We live in what is called the six extinction. We lose a species on our planet once every 20 minutes——

Ms. CLARKE. So let me ask you something. According to Nielsen, 45 percent of African Americans and 36 percent of Hispanic Americans don't own streaming devices. So the FCC has suggested that Kid Vid rules are not necessary because educational content for children is available online. How would this impact those communities?

Mr. CORWIN. Well, it will be impacted in a huge and an almost asteroid-like fashion. What the asteroid did to the natural history of our planet over 60 million years ago, we are doing that with communications. The multicast program basically removes more than 98 percent of our audience. Children and families that live in the inner cities will not be able to watch our shows because it is not on multicast, broadcast and cable, or satellites. Not even in HD. My own children, who I try to provide a nice life for, will not be able to watch my TV shows if this continued trend moves forward.

Ms. CLARKE. Very well. I thank you very much, gentlemen, for your feedback. It is a lot to think of and consider there.

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

Mr. GUTHRIE. Thank you. The gentle lady yields back.

The Chair recognizes Mr. Johnson of Ohio for 5 minutes for questions.

Mr. JOHNSON. Thank you, Mr. Chairman.

And this is indeed an important topic, and, Mr. Corwin, for the record, I enjoy your shows. So I am one of those kids that you are taking on those journeys in your mind, because I really enjoy them.

So thanks to all of you for being here today, because it is such an important topic, the current state of the media marketplace.

As everyone knows, the media landscape has changed significantly in the last two decades, even in the last few years. And I have faith that American innovation will continue to develop exciting new technologies and platforms that will continue to change and expand the media marketplace in the future. So it is important for us to take a look at the media marketplace more broadly, understand the new ways that people are listening to or viewing media content, and also the continued role of traditional over-the-air broadcasting.

This hearing is just the start of a needed conversation to examine these topics and ensure policy and regulations reflect the current marketplace and provide a fair playing field for all the industries involved.

With that as a backdrop, Mr. Moffett, for years, we have been hearing about a la carte offerings in which viewers could pay for the programming they want and not pay for programming they don't want. Yet the cable bundle lives on. Indeed it now appears that even new online products like Sling and Hulu are starting to recreate the familiar cable bundle. Why is this happening?

Mr. MOFFETT. Well, the first thing—thank you for the question. I guess the first thing I would say is, when we talk about a la carte and unbundling, it is important to be articulate about where in the value chain we are unbundling and what we are unbundling from what. So today shows are created by television studios. Those tend to be bundled together into linear networks. Linear networks are bundled together into media conglomerates. Media conglomerates are bundled together into the package that is sold to consumers. And in theory, unbundling could happen at any one of those levels.

Mr. JOHNSON. What effect does it have on prices and broadband offerings——

Mr. MOFFETT. So right now, the reason—and I think it is actually lost on many of your constituents, because when I talk to consumers, they often blame the distributor. But the reason that you can't do a la carte as a customer, and by most people, when they say a la carte, what they mean is unbundling cable networks from each other. Again it is not obvious. That should be what it means, but that is what most people assume.

The reason you can't do that is because the media conglomerates don't allow the distributors to buy individual networks. They require you to take all of them or none of them.

Mr. JOHNSON. What do you think we do about it?

Mr. MOFFETT. Well, it is a very difficult problem in some ways, because at least the legal question, as I understand it, has always been, on the one hand, anti-trust laws would suggest—would say that looks a lot like illegal tying. On the other hand, first amendment rights say that they are first amendment speakers and that you can no more tell Disney that they can't bundle their channels together than you can tell The Washington Post that they can't bundle the business section with the editorials. And so you have this tension between first amendment rights and antitrust rules.

Mr. JOHNSON. So what you are saying, it is not easy?

Mr. MOFFETT. It is not an easy problem to solve. The marketplace may eventually solve it but very, very slowly.

Mr. JOHNSON. OK. Well, earlier this year the FCC relaxed its local television ownership rule to permit broadcast television companies to own, within certain limits, two stations in a single television market. In its decision, the FCC pointed to the fact that consumers are increasingly watching video programming from cable and satellite operators and online content distributors.

Given the rise of these other mediums, do you believe that free, over-the-air TV broadcasters compete only against other TV broadcasters in the same geographic market for viewers and advertising dollars?

Mr. MOFFETT. Clearly not. And, in fact, I think that speaks to, while there are perfectly legitimate arguments to be made about diversity of voices and keeping two—the two-station rules being problematic in some way, the economic reality is that these companies are competing against social media and streaming——

Mr. JOHNSON. Sure.

Mr. MOFFETT [continuing]. Models, and so the question is, can they fund the news-gathering function with the economics available to them on a single station? Or do they need synergies? And those are really tough questions.

Mr. JOHNSON. Yes, we could talk for days about some of this. I know I have got very limited time, but I want to give each of you a chance to answer this question.

What suggestions do you have for this committee to ensure that the marketplace continues to evolve, to innovate, and provide robust competition?

Mr. OLGEIRSON. I think boiling it down to a single suggestion is a daunting task. I think that, you know, at this point, what we have seen is that consumers are essentially driving the market. They are making decisions about a la carte. They have asked for a la carte. Operators have told them that it is probably not in their best interest, and we look at the economic models and determine that a la carte is not in their best interest. And yet they are moving toward a la carte models already.

So I think that what we will see is—basically the market is answering those questions.

Mr. JOHNSON. Mr. Corwin, I know you got to go quickly, but do you have a response to that?

Mr. CORWIN. Well, I can just tell you this, making children's television programming isn't easy. We are very limited on the things we can express, the tools we can use because of the audience we are trying to reach. But if you give us the platform, we will succeed. We have this great ability to reach millions and millions of people, and we do so by providing a competitive, engaging, and entertaining, and informational product. And you give us that platform, we will continue to do what we do.

Mr. JOHNSON. OK. Mr. Chairman, I wish I had more time, but I yield back.

Thank you, gentlemen.

Mr. GUTHRIE. Thank you. The gentleman from Ohio yields back, and the Chair now recognizes Mr. Engel of New York, 5 minutes for the purpose of asking questions.

Mr. ENGEL. Thank you, Mr. Chairman and Ranking Member Doyle.

I know and hear regularly from my constituents who complain about poor cable service, high bills and being forced to pay for bundled programming that they don't really want. And with that in mind, I want to start by talking about television blackouts, which means not showing a particular channel or a particular show in a given market. It can be extremely frustrating to consumers who pay their bills and expect to be able to watch the programming of their choice, and yet we have seen more and more business disputes that result in a particular show, channel, or content provider being blacked out for consumers, sometimes for long periods of time. So let me ask Mr. Moffett and Mr. Olgeirson, in your opinion, are consumers likely to see more or fewer blackouts in the future?

Mr. MOFFETT. I think—and thank you for the question. My suspicion is that we will see more. And, in fact, not just more temporary blackouts, but we will start to see more permanent blackouts. That is, we will start to see more networks, particularly cable networks, being dropped entirely because the economic model for them to be distributed by an individual distributor just doesn't make sense anymore.

And that, again, speaks to the economic tensions are mounting. And when the economic tensions in a business system like this one mount, you tend to get more and more of these kind of extreme examples of dysfunctional economics.

Mr. ENGEL. Mr. Olgeirson, would you agree?

Mr. OLGEIRSON. Yes, I agree. I think the only—the only lever there that wasn't brought up is that consumers do have an increasing option to move away from—from that service and, therefore, have a solution to those blackouts.

Mr. ENGEL. We are seeing content producers, broadcasters, and multichannel video programming distributors consolidating, getting larger, the MVPDs. Do these consolidations impact the likelihood of blackouts? Either one of you—or both.

Mr. MOFFETT. In theory, they would, particularly, and in fact, that was the—if you think about the AT&T-Time Warner case, that was actually the most important theory put forth by the Department of Justice and, in fact, was why the DOJ appealed the case, was that they felt that Judge Leon in that case had failed to acknowledge that that was the likely outcome. I am slightly spinning that a little differently than they put it, but that was effectively the argument that they made.

Now, as it happens, in that particular case, for the time being, they are bound by a voluntary consent decree like commitment to make their content available and to—and not have blackouts. But in theory, yes, the economics of withholding content from a direct competitor are more attractive, or are more tenable, if, in fact, you will get some economics back by virtue of some of their customers leaving them and coming to you. That is the nature of the economic argument, and it seems to me, on its face, that it is correct, at least to some degree.

Mr. OLGEIRSON. I don't have anything to add to that.

Mr. ENGEL. OK, well, let me—I would like to address the cost of traditional cable and satellite service. So let me ask you again, either one of you who—or both who might want to answer, do you think that the subscription cost to a traditional cable or satellite service are likely to increase or decrease for consumers in the near future?

Mr. MOFFETT. I think the answer remains, as it has been for 30 years, that the—there are very strong inflationary pressures. One of the things that is unique about this model, I used to describe it as—because it is—the wholesale prices are delivered to the multichannel distributors by the content owners and are invisible to the consumer.

One of the few models that that looks like is the healthcare system. If we wonder, you know, why we have runaway healthcare costs, it is because the end user is not even aware of the wholesale cost of individual services. The only other model you can find that looks like that is the media business, where we have the same model.

And in particular, when you have this—what I described in response to an earlier question, you have this asymmetry of negotiating leverage between local broadcasters, in particular, that own the rights to sports, for which there is no substitute, and a negotiation with a multichannel provider for which there is an obvious substitute. That is a recipe for natural escalation in prices, and that has been the primary driver for the last, roughly, 10 years. The primary driver of escalating prices to end users has been that asymmetry.

Mr. ENGEL. Do you think that the new online streaming services, where people are watching more of the broadcast, will lead to lower costs?

Mr. MOFFETT. Temporarily, I think that it puts pressure on the multichannel distributors to try to respond to the fact that there are these low-cost options. But as I described in my opening remarks, there are very real reasons to be doubtful about whether the selling that service—those services without any margin will turn out to be a sustainable model.

It will depend on how successfully they can monetize advertising and how well they can exploit the customer data for a very targeted advertising. My suspicion is that that won't be sufficient to offset the cost of maintaining those services at no margin, and that you will start to see those prices start to escalate, and if anything, take some of the downward pressure off of the pricing of the traditional multichannel providers.

Mr. ENGEL. Thank you.

I have one final question I would like to address to Mr. Corwin. You touched on it before when the question was asked. In the FCC's repeal, if they were to repeal Kid Vid protections, if that is finalized, people say it is done because kids don't watch education programs anymore; they have so many other things to do. How do you answer that?

Mr. CORWIN. Well, we know that children and teenagers, which we target for our audience, do watch this programming. My ratings are very competitive, 1.6 shares watch, and Nielsen ratings, which allows us to get the revenue streams to make the shows we do.

But if we are crippled by the multicast broadcast situation, we will no longer have that audience, which means we will not get those resources, which means we can't make the shows that engage our audience, inspire them to a path forward in science and technology.

Mr. ENGEL. Thank you.

Thank you, Mr. Chairman.

Mr. GUTHRIE. Thank you. The gentleman's time is expired.

Seeing no other Members wishing to ask questions for the panel, I thank all of our witnesses for being here today. It has been very informative, and I appreciate it.

Pursuant to committee rules, I remind Members that they have 10 business days to submit additional questions for the record and ask that witnesses submit their responses within 10 business days upon receipt of the questions. Seeing no further business before the subcommittee today and without objection, the subcommittee is adjourned. Thank you.

[Whereupon, at 5:00 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

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September 26, 2018

The Hon. Marsha Blackburn
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Subcommittee on Communications
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UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515-6115

The Hon. Michael Doyle
Ranking Member
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515-6115

Re: Hearing on the State of the Media Marketplace

Dear Chairman Blackburn and Ranking Member Doyle:

In advance of your upcoming hearing on the state of the media marketplace, we wanted to provide you with the perspective of ACA's more than 700 small-to-medium sized cable and broadband providers. Nearly all ACA members provide service to America's small towns and rural areas—locations in which connectivity is vital but that are more difficult to serve. Others compete against some of the largest players in suburban and urban markets. As smaller operators, they face challenges unique in the industry. It may be, however, that some of the challenges ACA members face today are those that our larger competitors will face tomorrow. In any event, we think we have a valuable perspective to offer the Committee—both with respect to the improvements ACA members have made to their service and with respect to the challenges they face.

I. Innovation and Improved Service.

Let me start with the good news. All ACA members compete against larger, better-funded satellite carriers: AT&T's DirecTV and DISH. Some also compete against larger cable and telephone providers. ACA members also increasingly compete against a host of online video distributors, such as Netflix, Amazon Prime Video, Hulu, CBS All Access, and others. In order to survive, they must offer better customer service, and better and more innovative products, at competitive prices, than ever before. And in many ways, they are succeeding—and subscribers benefit. The following are a few examples.

In the last year, ACA members have begun offering an advanced, Internet-protocol version of their services that customers can access on a variety of devices, such as Roku devices,

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tablets, and smart phones. This new service, using technology developed by MobiTV, permits consumers to receive programming *without* leasing set-top boxes from their cable operator. More ACA members are expected to launch this service next year. This, of course, addresses one of the most contentious policy debates of the last decade involving video providers—the extent to which subscribers must lease set-top boxes from their cable operator. Even here, however, we would sound a note of caution. At least one of the largest program suppliers has to date declined to authorize some members to use this technology.

ACA members have sought to meet their subscribers' evolving needs in other ways as well. For example, a large and increasing number have entered into arrangements with online service providers—including PlayStation Vue, fubo TV, Philo, CuriosityStream, Cheddar, HBOGo, and Hulu—to make these services easy for their customers to access on their televisions. These arrangements allow cable subscribers to obtain whatever combination of traditional and online video service that serves their needs. It also allows them to more easily cut the cord entirely if they so desire.

II. Existing Challenges.

The innovations described above are real. They are, moreover, all the more remarkable in light of the unprecedented challenges ACA members face. Such challenges include:

- ***Expensive programming.*** It is no surprise to anybody that cable bills have gone up. Not all consumers understand, however, that the prices ACA members charge directly reflect the prices they themselves pay for programming. And those prices rise on an annual basis. The buying group used by many ACA members indicates that programming expenses generally rose nearly 10 percent *annually* over the last five years. It suggests that year-over-year increases at this level will continue through at least 2021 based on escalators in existing contracts.

  No prices, however, have increased more quickly than the "retransmission consent" fees charged by allegedly "free, over-the-air" television broadcasters. Retransmission consent fees have risen by double digits each year for the last decade.[1] In a survey conducted last year, ACA members reported that they will be forced to pay an average of 88 percent more by 2020 than they paid in 2017. Based on ACA's calculations, members were paying $11.00 on average per subscriber per month in 2017 in retransmission consent fees which would increase to an average of $19.00 per subscriber per month by 2020. Nearly a quarter of those surveyed would see a jump of

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[1] *See, e.g.*, Tom Wheeler, *Protecting Television Consumers By Protecting Competition*, Federal Communications Commission (Mar. 6, 2014), https://www.fcc.gov/news-events/blog/2014/03/06/protecting-television-consumers-protecting-competition (noting that the cost of retransmission consent agreements has "skyrocketed from $28 million in 2005 to $2.4 billion in 2012, a nearly 8,600 percent increase in seven years"); S&P Global Market Intelligence, *Kagan Releases Updated Retransmission Projects*, PR Newswire (June 19, 2017), https://www.prnewswire.com/news-releases/kagan-releases-updated-retransmission-projections-300475948.html (citing double-digit increases in recent years).

at least 100 percent in fee increases in the next three years, and in one case that jump is expected to be 302 percent.[2]

We are unaware of any other sector in the economy that has undergone such sustained price increases. Nor, for that matter, are we aware of any business that can absorb input price increases of this sort without it significantly affecting their customers. These price increases, moreover, cannot be ascribed to any increase in broadcast quality—broadcast ratings have *declined* in recent year.

- ***Forced bundling.*** Not only must ACA members pay high prices for programming, but large programmers invariably require them to carry (and pay for) multiple channels—channels that their subscribers do not want and which often feature shows they already carry on other channels. For example, as we explained to the FCC last year, a small cable operator that wants to get the most popular programming from nine of the largest media groups—Disney/ESPN, Fox, Comcast/NBCU, Turner, Viacom, AETN, AMC, Discovery, and Scripps—is forced to carry 65 channels at a minimum.[3]

  This eats up limited budgets, preventing ACA members from carrying independent programming that their subscribers would prefer. It also eats up limited capacity, preventing ACA members from optimizing the *broadband* services that have become the most important subscriber offering.

- ***Mandatory Tiering.*** Not only must ACA members *carry* unwanted programming, but programmers force them to do so on "basic" or "expanded basic" service tiers. Moreover, some construe a law from the 1990s to prohibit ACA members from offering cable programming to subscribers that do not first purchase broadcast programming.

  This explains why such tiers are often more bloated and expensive than subscribers would like. It also explains why ACA members sometimes can't provide the "skinny bundles" that subscribers would like to combine with online services.

III. New Challenges from Media Consolidation.

Exacerbating these problems is a new round of consolidation among large media corporations. When large programmers (like AT&T) merge with large distributors (like Turner), known as "vertical integration," selling their programming to other distributors (like ACA members) becomes less important to their business. This enables them to raise prices. Likewise, when large broadcasters merge with other large broadcasters, such as with the now-abandoned Sinclair/Tribune merger or the pending Gray/Raycom merger—especially when they combine forces *within* markets—they too can raise prices.

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[2] Press Release, *ACA Survey Reinforces Real-life Fallout of Contentious Retrans Negotiations*, American Cable Association (Feb. 16, 2017), http://www.americancable.org/corporate-broadcasters-force-exorbitant-rate-increases-on-cable-customers/.

[3] Joint Comments of the American Cable Association, MAVTV Motorsports Network, One America News Network and AWE, and Ride TV at 3, MB Docket No. 16-41 (filed Jan. 26, 2017) (discussing carriage through the National Cable Television Cooperative buying group).

Unfortunately, both kinds of mergers have become all too common lately. And conditions on the largest prior vertical merger—that between Comcast and NBC—have just expired. While those conditions were not perfect, they at least provided some minimal constraint on Comcast-NBCU's behavior, a constraint that no longer exists.

IV. Impact on Video Service and Rural Broadband Deployment.

The unfortunate fact is that, because of these challenges, ACA members find it increasingly difficult to maintain a viable video service. Over the past five years, ACA members collectively have lost roughly 14 percent of their video subscribers. During that time, moreover, some small cable system operators have shut down, and others have sold to larger companies. This means their customers either lose a competitive option in the marketplace or a provider that has close ties to the community.

Challenges in the *video* marketplace also threaten *broadband* deployment. Our members' networks provide multiple services: video, phone, and broadband. Our members can thus recoup network investments with margins from all three services. Because of the challenges described above, however, video service has become barely profitable—or even unprofitable—for many ACA members. This decreases the returns on any new network investments for those members, which in turn makes new broadband deployment less economically feasible.[4] For a Committee focused on promoting the universal availability of high-speed broadband service, this outcome should be totally unacceptable.

* * *

Is all lost for hometown cable operators? Of course not. ACA members continue to compete, providing high-qualityvideo and broadband services and enabling families and businesses to thrive in our communities. We welcome the challenges that building and running such a business presents. But we are under no illusions about the gravity of the challenges that face us. As you consider broader questions about the video marketplace, we hope you will understand the concerns we face as well.

Sincerely,

[redacted]

Matthew M. Polka
President and CEO
American Cable Association

Cc: Members, Subcommittee on Communications and Technology

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[4] *See, e.g.*, Reply Comments of the American Cable Association, GN Docket No. 14-126 (filed Apr. 6, 2015); American Cable Association, "High and Increasing Video Programming Fees Threaten Broadband Deployment" (Apr. 2015) (supported by analysis from Cartesian).

Before the U.S. House of Representatives
Committee on Energy and Commerce

Subcommittee on Communications and Technology

Hearing on "State of the Media Marketplace"

Sept. 27, 2018

Statement for the Record
Motion Picture Association of America, Inc.

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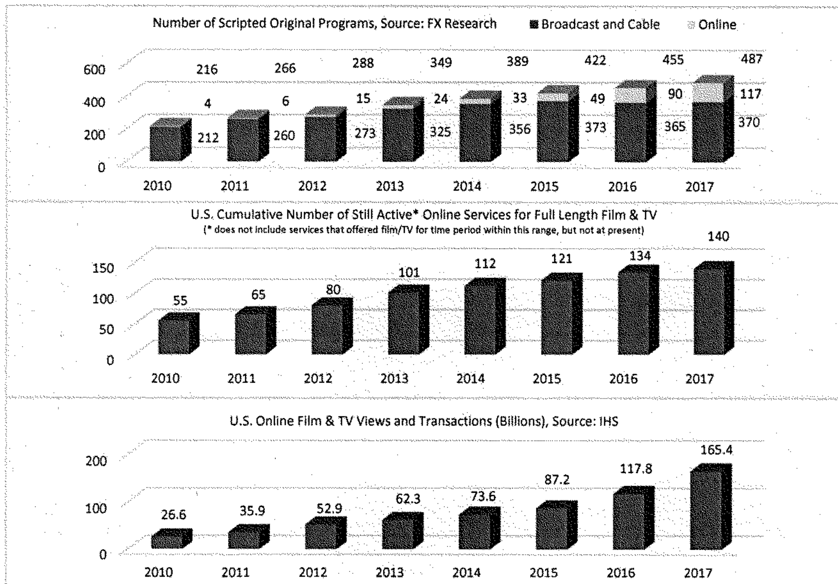
I. Americans Are Continuing to Enjoy Another Golden Age of Movies and Television

American viewers are benefitting from unprecedented competition in the motion picture and television marketplace. The members of the Motion Picture Association of America, Inc.,[1] and others in the U.S. film and TV industry now release more than 450 movies and nearly 500 scripted shows per year.[2] The number of scripted shows is up from 288 in 2012 to 487 in 2017, with 117 of those shows originating online, compared to 15 five years ago.[3] The industry makes that content available not only in theaters and over broadcast, cable, and satellite services, but also through 140 lawful online film and TV services available to American audiences as of 2017, up from 80 in 2012.[4] American viewers used those online services to access 6.9 billion movies and 158.5 billion TV episodes in 2017 alone, up from 3.9 billion and 48.9 billion in 2012.[5]



[1]The MPAA is the voice of the American motion picture, home entertainment, and television industries, and represents the six major U.S. studios: Walt Disney Studios Motion Pictures, Paramount Pictures Corp., Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corp., Universal City Studios L.L.C., and Warner Bros. Entertainment Inc.

[2]MPAA, 2017 THEATRICAL HOME ENTERTAINMENT MARKET ENVIRONMENT (THEME) REPORT (2018) (U.S. country of origin only), https://www.mpaa.org/research-docs/2017-theatrical-home-entertainment-market-environment-theme-report/; Joe Otterson, *487 Scripted Series Aired in 2017, FX Chief John Langford Says* VARIETY, Jan. 5, 2018, https://variety.com/2018/tv/news/2017-scripted-tv-series-fx-john-landgraf-1202653856/.

[3]FX Networks Research (2018).

[4]MPAA database.

[5]IHS Markit. *See* www.IHS.com.

Technological protection measures—also known as digital rights management—help make all this possible by enabling content creators and distributors to offer a wide variety of viewing options at different prices. Because of digital rights management, audiences can choose how to access programming, including by downloading content to a hard drive, streaming content for a limited time on a pay-per-view basis, enjoying content as part of a subscription service, watching content over TV Everywhere applications in different places across different devices, and accessing full seasons of a television series, either to catch up with past episodes or to watch them all at once when a content creator makes them available *en masse* from the start. Without technological protection measures to ensure only authorized viewers gain access to the programming, and only as authorized, content creators would not be able to offer these choices, resulting in one-size-and-price-fits-all offerings and fewer options for viewers. Laws such as 17 U.S.C. §1201 that protect against the circumvention of technological protection measures remain as vital as ever.

Audiences are not the only beneficiaries of this activity. So, too, are the national and local economies. In the process of making content available online and off, the television and film industry supports 2.1 million jobs and $139 billion in wages across all 50 states; enlists more than 93,000 businesses, 87 percent of which are small businesses employing fewer than 10 people; contributes $134 billion in sales; registers a positive balance of trade in nearly every country in the world, with a 4-to-1 export-to-import ratio; and generates a positive services trade surplus of $12.2 billion, larger than each of the surpluses in the advertising, mining, telecommunications, legal, information, and health related services sectors.[6] In addition, the industry pays $49 billion to 400,000 local businesses each year.[7] A major motion picture filming on location contributes on average $250,000 per day to the local community, and a one-hour television episode contributes $150,000 per day. Notably, the local community sees that up-front investment regardless of whether the film or TV show becomes a hit or a flop.

Underlying this activity is America's respect for two fundamental and complementary values: free speech and intellectual property. Under the First Amendment, the speaker and the audience acting in the marketplace—not the government—determines what is said and heard. And the Constitution's Copyright Clause recognizes that honoring the right of creators to determine how to disseminate their works increases both the production and distribution of content, to the ultimate public benefit.[8] The ability of content producers and distributors to decide what programming to create, disseminate, and license is what makes the online marketplace so dynamic.

This respect for the First Amendment and copyright law also enables companies to manage the economic risks in the ultra-competitive video marketplace, allowing them to continue investing

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[6]MPAA, THE ECONOMIC CONTRIBUTION OF THE MOTION PICTURE & TELEVISION INDUSTRY TO THE UNITED STATES (NOV. 2017), https://www.mpaa.org/wp-content/uploads/2018/03/MPAA-Industry-Economic-ContributionFactsheet_2016-FINAL-2.pdf.

[7]*Id.*

[8]*See* U.S. CONST., art. I, § 8, cl. 8 (conferring upon the legislative branch the role "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"); *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985) (stating that "[b]y establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas.").

and innovating to deliver high-quality and diverse content to viwers. Producing and distributing a major motion picture costs on average $100 million, and six out of ten never make back their initial investment. Major television productions now rival feature films not only in quality, but also cost, reaching millions of dollars *per episode*. Yet according to one rule of thumb, 80 percent of scripts never become a pilot, 80 percent of pilots never become a series, and 80 percent of series never see a second season. Our nation's respect for the First Amendment and intellectual property rights are very significant contributors to making America the global leader in the creation of premium content that is enjoyed by audiences worldwide.

II. Piracy, However, Continues to Present Challenges

While the motion picture and television industry has unquestionably embraced the internet as a powerful means of reaching audiences through lawful services, online piracy remains a problem. In 2017, an estimated 542 million pirated movies and TV shows were downloaded in the United States using peer-to-peer protocols alone.[9] Streaming piracy has now surpassed illicit downloading via peer-to-peer protocols, with streaming piracy sites representing 37 percent of visits to sites with unauthorized content, host sites representing 36 percent, and peer-to-peer representing 27 percent.[10] Streaming device-based piracy is a growing issue. The devices, often Android-based "set-top boxes," are typically built around the Kodi open-source media software, but are modified with illegal "add-ons." The add-ons connect users to stored or "live" streams of pirated movies and television programming, and enable "plug and play" connection to a television. Six percent of North American broadband households—some 6.5 million homes—are accessing known subscription television piracy services, according to one source.[11] One rough estimate by that same source suggests the streaming device piracy ecosystem may already be generating ill-gotten gains of $840 million per year in North America, a number that may well be understated.[12]

All this infringement harms a broad swath of the legitimate movie and television production and distribution sectors, including content creators, unions, large and independent movie and television studios, sports leagues, broadcast and pay-TV networks and distributors, and over-the-top services. The illicit activity unlawfully competes with digital entrepreneurs and established players trying to grow lawful and innovative streaming content and distribution businesses to meet evolving consumer demands. To the extent streaming piracy diverts subscribers from legitimate services and siphons money otherwise available to re-invest, it harms competition and limits the ability of content creators and distributors to offer audiences choices in movies, television programming, and services.

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[9] MarkMonitor. *See* www.markmonitor.com.

[10] Analysis of SimilarWeb data, based on sites with at least 10,000 copyright removal requests in 2017 according to the Google Transparency Report.

[11] SANDVINE, SPOTLIGHT: SUBSCRIPTION TELEVISION PIRACY 2 (Nov. 2017), https://www.sandvine.com/hubfs/downloads/archive/2017-global-internet-phenomena-spotlight-subscription-television-piracy.pdf.

[12] *Id.*

Because many pirate sites disseminate malware, the spread of streaming piracy devices and applications into living rooms presents a growing threat to consumers and a new vulnerability to cybersecurity. One-third of pirate sites expose users to malware,[13] pirate sites are 28 times more likely to infect users with malware than mainstream websites,[14] and video streaming "has become the number one method to propagate highly dangerous malware on the Internet."[15]

Further compounding matters is a lack of responsibility exhibited by some online platforms, stemming in part from liability limits enacted when the commercial internet was relatively nascent.[16] The presumption was that the platforms would take voluntary steps to curb abuses, but that has not happened to a sufficient degree. While online platforms play an active and crucial role in providing access to content, and seek to optimize user engagement, the relationship between the platforms, the consumer, and the content is often seen as less direct in light of certain platforms' predominately "user-generated content" business models. Providers of curated content, by contrast, are more closely associated with the content and service environment they offer, creating a greater sense of accountability on their own part as well as in the eyes of others. Both the lack of accountability and the indirect relationship of platforms are presenting significant risk of consumer harm and restraint on competition by unfairly forcing legitimate businesses to compete with material that is stolen and free, generally impairing the legitimate online marketplace with lawlessness, and reducing innovation and consumer choice, as people across the political spectrum are observing.[17]

Curbing clearly unlawful conduct (such as illicit sale of opioids and unauthorized dissemination of entire movies still in theaters) is entirely consistent with protecting free expression. Misplaced concerns over chilling speech should not be used as an excuse to avoid combating such behavior. Combating phishing and fraud, malware and botnets, identity theft, theft of entire movies and television shows, counterfeiting, cyber-espionage, and unlawful sale of drugs is no more a threat to free expression on the internet than it is in the physical world. In fact, curbing illicit activity online promotes free expression by fostering a safer environment where individuals

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[13]DIGITAL CITIZENS ALLIANCE, DIGITAL BAIT 2 (Dec. 2015), https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/digitalbait.pdf.

[14]*Id.*

[15]ASSOCIATION OF INTERNET SECURITY PROFESSIONALS, ILLEGAL STREAMING AND CYBER SECURITY RISKS (2014).

[16]*See* 47 U.S.C. § 230; 17 U.S.C. § 512.

[17]*See* Letter from 17 conservative organizations to Senate and House Judiciary and Commerce Committee Chairmen Chuck Grassley, Bob Goodlatte, John Thune, and Greg Walden (April 17, 2018) (stating that "many of the internet's problems result from a lack of accountability"), https://conservative.org/article/coalition-letter-expressing-support-for-recent-hearings-on-internet-platforms; Letter from 50 civil rights organizations to Senate and House Chairmen and Ranking Members John Thune, Bill Nelson, Greg Walden, and Frank Pallone (May 10, 2018) (stating that "[r]ecent events, from the 'fake news' crisis and attacks on our elections, to the widespread use of social media platforms by hate groups, have laid bare the extent of tech companies' inability—or unwillingness—to police their own platforms"), http://httponline.org/2018/05/http-joins-advocacy-groups-call-comprehensive-legislation-protect-americans-privacy-civil-rights/; Letter from 17 multicultural content organizations to Reps. Judy Chu, Mario Diaz-Balart, Michelle Lujan Grisham, and Cedric Richmond (Sept. 4, 2018) (stating that "the lack of accountability for dominant internet platforms causes serious harms and undermines trust online"), https://www.icontalks.com/wp-content/uploads/2018/09/Multicultural-Creators-Letter-9.4.18.pdf.

feel comfortable exchanging ideas, engaging in commerce, and lawfully accessing the content that MPAA members and others make available.

Our community—the MPAA studios and many thousands of others who create and make available great movies and television shows—is committed to innovating to keep meeting audiences' expectations. As the Committee considers the appropriate policies for the future of video, we hope it will recognize that as wondrous as the new forms of distribution are, they rely on the production of content to deliver value to consumers. Producers and creators take financial risks to make that content available. As they continue to explore ways to distribute content, protections are necessary to help safeguard those investments from theft and wholesale distribution in a lawless marketplace, especially as access to stolen content becomes easier.

Andrew Rae

SILICON VALLEY'S TAX-AVOIDING, JOB-KILLING, SOUL-SUCKING MACHINE

Four companies dominate our daily lives unlike any other in human history: Amazon, Apple, Facebook, and Google. We love our nifty phones and just-a-click-away services, but these behemoths enjoy unfettered economic domination and hoard riches on a scale not seen since the monopolies of the gilded age. The only logical conclusion? We must bust up big tech.

SCOTT GALLOWAY FEB 8, 2018

I've benefited enormously from big tech. Prophet, the consulting firm I cofounded in 1992, helped companies navigate a new landscape being reshaped by Google. Red Envelope, the upscale e-commerce company I cofounded in 1997, never would have made it out of the crib if Amazon hadn't ignited the market's interest in e-commerce. More recently, L2, which I founded in 2010, was born from the mobile and social waves as companies needed a way to benchmark their performance on new platforms.

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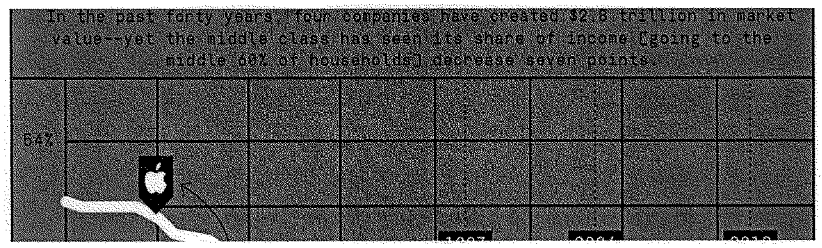
ROBBER BARONS IN HOODIES AND JEANS

The benefits of big tech have accrued for me on another level as well. In my investment portfolio, the appreciation of Amazon and Apple stock restored economic security to my household after being run over in the Great Recession. Finally, Amazon is now the largest recruiter of students from the brand-strategy and digital-marketing courses I teach at NYU Stern School of Business. These firms have been great partners, clients, investments, and recruiters. And the sum of two decades of experience with, and study of, these companies leads me to a singular conclusion: It's time to break up big tech.

Over the past decade, Amazon, Apple, Facebook, and Google—or, as I call them, "the Four"—have aggregated more economic value and influence than nearly any other commercial entity in history. Together, they have a market capitalization of $2.8 trillion

How big are they? Consider that Amazon, with a market cap of $591 billion, is worth more to the stock market than Walmart, Costco, T. J. Maxx, Target, Ross, Best Buy, Ulta, Kohl's, Nordstrom, Macy's, Bed Bath & Beyond, Saks/Lord & Taylor, Dillard's, JCPenney, and Sears combined.



Meanwhile, Facebook and Google (now known as Alphabet) are together worth $1.3 trillion. You could merge the world's top five advertising agencies (WPP, Omnicom, Publicis, IPG, and Dentsu) with five major media companies (Disney, Time Warner, 21st Century Fox, CBS, and Viacom) and still need to add five major communications companies (AT&T, Verizon, Comcast, Charter, and Dish) to get only 90 percent of what Google and Facebook are worth together.

And what of Apple? With a market cap of nearly $900 billion, Apple is the most valuable public company. Even more remarkable is that the company registers profit margins of 32 percent, closer to luxury brands Hermès (35 percent) and Ferrari (29 percent) than peers in electronics. In 2016, Apple brought in $46 billion in profits, a haul larger than that of any other American company, including JPMorgan Chase, Johnson & Johnson, and Wells Fargo. What's more, Apple's profits were greater than the revenues of either Coca- Cola or Facebook. This quarter, it will clock nearly twice the profits that Amazon has produced in its history.

The Four's wealth and influence are staggering. How did we get here?

As I wrote in my book, *The Four,* the only way to build a company with the dominance and mass influence of Google, Amazon, Facebook, and Apple is to appeal to a core human organ that makes adoption of the platform instinctive.

GOOGLE: MIND-ALTERING

to address that gap: We lift our gaze to the heavens, send up a question, and wait for a response from a more intelligent being. "Will my kid be all right?" "Who might attack us?"

As Western nations become wealthier, organized religion plays a smaller role in our lives. But the void between questions and answers remains, creating an opportunity. As more and more people become alienated from traditional religion, we look to Google as our immediate, all-knowing oracle of answers from trivial to profound. Google is our modern-day god. Google appeals to the brain, offering knowledge to everyone, regardless of background or education level. If you have a smartphone or an Internet connection, your prayers will always be answered: "Will my kid be all right?" "Symptoms and treatment of croup. . ." "Who might attack us?" "Nations with active nuclear-weapons programs . . ."

Think back on every fear, every hope, every desire you've confessed to Google's search box and then ask yourself: Is there any entity you've trusted more with your secrets? Does anybody know you better than Google?

FACEBOOK: THE HEART OF THE MATTER

delay was due not to poor nutrition, as suspected, but to lack of human affection. Yet one of the traits of our species is that we need to love nearly as much as we need to be loved. Susan Pinker, a developmental psychologist, studied the Italian island of Sardinia, where centenarians are six times as common as they are on mainland Italy and ten times as common as in North America. Pinker discovered that among genetic and lifestyle factors, the Sardinians' emphasis on close personal relationships and face-to-face interactions is the key to their superlongevity. Other studies have also found that the deciding factor in longevity isn't genetics but lifestyle, especially the strength of our social bonds.

Facebook gives its 2.1 billion monthly active users tools to fuel our need to love others. It's satisfying to rediscover someone we went to high school with. It's good to know we can keep in touch with friends who move away. It takes minutes, with a "like" on a baby pic or a brief comment on a friend's heartfelt post, to reinforce friendships and family relationships that are important to us.

AMAZON: ALWAYS CONSUMING

What sight is to the eyes and sound is to the ears, the feeling of more, of insatiety, is to the gut. We crave more stuff psychologically just as the stomach craves more sugar, more carbs, after an indulgent meal. Originally this instinct operated in the service of self-preservation: Having too little meant starvation and certain death, whereas too much was rare, a bloat or a hangover. But open your closets or your cupboards right now, and you'll probably find you have ten to a hundred times as much as you need. Rationally, we know this makes no sense, but society and our higher brain haven't caught up to the instinct of always feeling like we need more.

Amazon is the large intestine of the consumptive self. It stores nutrients and distributes them to the cardiovascular system of the 64 percent of American households who are Prime members. It has adopted the best strategy in the history of business—"more for less"—and deployed it more effectively and efficiently than any other firm in history.

The second-most-powerful instinct after survival is procreation. As sexual creatures, we want to signal how elegant, smart, and creative we are. We want to signal power. Sex is irrational, luxury is irrational, and Apple learned very early on that it could appeal to our need to be desirable—and in turn increase its profit margins—by placing print ads in *Vogue,* having supermodels at product launches, and building physical stores as glass temples to the brand.

A Dell computer may be powerful and fast, but it doesn't indicate membership in the innovation class as a MacBook Air does. Likewise, the iPhone is something more than a phone, or even a smartphone. Consumers aren't paying $1,000 for an iPhone X because they're passionate about facial recognition. They're signaling they make a good living, appreciate the arts, and have disposable income. It's a sign to others: If you mate with me, your kids are more likely to survive than if you mate with someone carrying an Android phone. After all, iPhone users on average earn 40 percent more than Android users. Mating with someone who is on the iOS platform is a shorter path to a better life. The brain, the heart, the large intestine, and the groin: By appealing to these four organs, the Four have entrenched their services, products, and operating systems deeply into our psyches. They've made us more discerning, more demanding consumers. And what's good for the consumer is good for society, right?

Well, yes and no. The Four have so much power over our lives that most of us would be rocked to the core if one or more of them were to disappear. Imagine not being able to have an iPhone, or having to use Yahoo or Bing for search, or losing years' worth of memories you've posted on Facebook. What if you could no longer order something with one click on the Amazon app and have it arrive tomorrow?

At the same time, we've handed over so much of our lives to a few Silicon Valley executives that we've started talking about the downsides of these firms. As the Four have become increasingly dominant, a murmur of concern—and even resentment—has begun to make itself heard. After years of hype, we've finally begun to consider the suggestion that the government, or someone, ought to put the brakes on.

Not all of the arguments are equally persuasive, but they're worth restating before we get to the real reason I believe we ought to break up big tech.

Big tech learned from the sins of the original gangster, Microsoft. The colossus at times appeared to feel it was above trafficking in PR campaigns and lobbyists to soften its image among the public and regulators. In contrast, the Four promote an image of youth and idealism, coupled with evangelizing the world-saving potential of technology.

The sentiment is sincere, but mostly canny. By appealing to something loftier than mere profit, the Four are able to satisfy a growing demand among employees for so-called purpose-driven firms. Big tech's tinkerer- in-the-garage mythology taps into an old American reverence for science and engineering, one that dates back to the Manhattan

Political progressives are generally viewed as well-meaning but weak, an image that offered the perfect cover for companies that were becoming hugely powerful.

Facebook's Sheryl Sandberg told women to "lean in" because she meant it, but she also had to register the irony of her message of female empowerment, set against a company that emerged from a site originally designed to rank the attractiveness of Harvard undergraduates, much less a firm destroying tens of thousands of jobs in an industry that hires a relatively high number of female employees: media and communications.

These public-relations efforts paid off handsomely but also set the companies up for a major fall. It's an enormous letdown to discover that the guy who seems like the perfect gentleman is in fact addicted to opioids and a jerk to his mother. It's even worse to learn that he only hung out with you because of your money (clicks).

In my experience as the founder of several early Internet firms, the people who work for the Four are no more or less evil than people at other successful companies. They're a bit more educated, a little smarter, and much luckier, but like their parents before them, most are just trying to find their way and make a living. Sure, many of them would be happy to help out humanity. But presented with the choice between the betterment of society or a Tesla, most would opt for the Tesla—and the Tesla dealerships in Palo Alto

Our government operates on an annual budget of approximately 21 percent of GDP, money that is used to keep our parks open and our military armed. Does big tech pay its fair share? Most would say no. Between 2007 and 2015, Amazon paid only 13 percent of its profits in taxes, Apple paid 17 percent, Google paid 16 percent, and Facebook paid just 4 percent. In contrast, the average tax rate for the S&P 500 was 27 percent.

So, yes, the Four do avoid taxes . . . and so do you. They're just better at it. Apple, for example, uses an accounting trick to move its profits to domains such as Ireland, which results in lower taxes for the most profitable firm in the world. As of September 2017, the company was holding $250 billion overseas, a hoard that is barely taxed and should

Apple is hardly alone. General Electric also engages in massive tax avoidance, but we're not as angry about it, as we aren't in love with GE. The fault here lies with us, and with our democratically elected government. We need to simplify the tax code—complex rules tend to favor those who can afford to take advantage of them—and we need to elect officials who will enforce it.

The destruction of jobs by the Four is significant, even frightening. Facebook and Google likely added $29 billion in revenue in 2017. To execute and service this additional business, they will create twenty thousand new, high-paying jobs.

The other side of the coin is less shiny. Advertising—whether digital or analog—is a low-growth (increasingly flat) business, meaning that the sector is largely zero-sum. Google doesn't earn an extra dollar by growing the market; it takes a dollar from another firm. If we use the five largest media-services firms (WPP, Omnicom, Publicis, IPG, and Dentsu) as a proxy for their industry, we can estimate that $29 billion in revenue would have required about 219,000 traditional advertising professionals to service. That translates to 199,000 creative directors, copywriters, and agency executives deciding to "spend more time with their families" each year—nearly four Yankee Stadiums filled with people dressed in black holding pink slips.

The economic success stories of yesterday employed many more people than the firms that dominate the headlines today. Procter & Gamble, after a run-up in its stock price in 2017, has a market capitalization of $233 billion and employs ninety-five thousand people, or $2.4 million per employee. Intel, a new-economy firm that could be more efficient with its capital, enjoys a market cap of $209 billion and employs 102,000 people, or $2.1 million per employee. Meanwhile, Facebook, which was founded fourteen years ago, boasts a $542 billion market cap and employs only twenty-three thousand people, or $23.4 million per employee—ten times that of P&G and Intel.

Granted, we've seen job destruction before. But we've never seen companies quite this good at it. Uber set a new (low) bar with $68 billion spread across only twelve thousand employees, or $5.7 million per employee. It's hardly obvious that a ride-share company—which requires actual drivers on the actual roads—would be the one to arbitrage the middle class with a Houdini move that would have Henry Ford spinning in his grave.

But Uber managed it by creating a two-class workforce, complete with a new classification: "driver-partners," in other words, contractors. Keeping them off the payroll means that Uber's investors and twelve thousand white-collar employees do not share any of the company's $68 billion in equity with its "partners." In addition, the firm is not inconvenienced with paying health or unemployment insurance and paid time off for any of its two-million-strong driver workforce.

Big tech's job destruction makes an even stronger case for getting these firms to pay their fair share of taxes, so that the government can soften the blow with retraining and social services. We should be careful, however, not to let job destruction be the lone catalyst for intervention. Job replacement and productivity improvements—from farmers to factory workers, and factory workers to service workers, and service workers to tech workers—are part of the story of American innovation. It's important to let our freaks of success fly their flag.

Getting warmer. Having your firm weaponized by foreign adversaries to undermine our democratic election process is bad . . . really bad. During the 2016 election, Russian troll pages on Facebook paid to promote approximately f

bipartisan approach to sowing chaos. Even after the election, the GRU has used Facebook, Google, and Twitter to foment racially motivated violence. The platforms invested little or no money or effort to prevent it. The GRU purchased Facebook ads in rubles: literally and figuratively a red flag.

If you're a country club with a beach or a pool, it's more profitable, in the short run, not to have lifeguards. There are risks to that business model, as there are to Facebook's dependence on mainly algorithmic moderation, but it saves a lot of money. The notion that we can expect big tech to allocate the requisite resources, of the companies' own will, for the social good is similar to the idea that Exxon will take a leadership position on global warming. It's not going to happen.

However, the alarm for trust busting, not just regulation, rang for me in November, when Senate Intelligence Committee chairman Richard Burr pleaded with the general counsels of Facebook, Google, and Twitter, "Don't let nation-states disrupt our future. You're the front line of defense for it." This represented a seminal moment in our history, when our elected officials handed over our national defense to firms whose business model is to nag you about the shoes you almost bought, and remind you of your friends' birthdays.

They should be our front line against our enemies?

Let's be clear, our front line of defense has been, and must continue to be, the Army, Navy, Air Force, and Marines. Not the Zuck.

I bid for Amazon's second headquarters, state and city officials in Chicago proposed to let Amazon keep $1.3 billion in employee payroll taxes and spend this money as the company sees fit. That's right: Chicago offered to transfer its tax authority to Amazon and trusts the Seattle firm to allocate taxes in a manner best for Chicago's residents.

The surrender of our government only gets worse from there. If you want to manufacture and sell a Popsicle to children, you must undergo numerous expensive FDA tests and provide thorough labeling that outlines the ingredients, calories, and sugar content of the treat. But what warning labels are included in Instagram's user agreement? We've now seen abundant research indicating that social- media platforms are making teens more depressed. Ask yourself: If ice cream were making teens more prone to suicide, would we shrug and seat the CEO of Dreyer's next to the president at dinners in Silicon Valley?

Anyone who doesn't believe these products are the delivery systems for tobacco- like addiction has never separated a seven- year-old from an iPad in exchange for a look that communicates a plot to kill you. If you don't believe in the addictive aspects of these platforms, ask yourself why American teenagers are spending an average of five hours a day glued to their Internet- connected screens. The variable rewards of social media keep us checking our notifications as though they were slot machines, and research has shown saying they don't give their kids access to these devices.

All of these are valid concerns. But none of them alone, or together, is enough to justify breaking up big tech. The following are reasons I believe the Four should be broken up.

The Purpose of an Economy

Ganesh Sitaraman, professor at Vanderbilt Law School, argues that the U. S. needs the middle class, that the Constitution was designed for a balanced share of wealth for our representative democracy to work. If the rich have too much power, it can lead to an oligarchy. If the poor have too much power, it can lead to a revolution. So the middle class needs to be the rudder that steers American democracy on an even keel.

I believe that the primary purpose of the economy, and one of its key agents, the firm, is to create and sustain the middle class. The U. S. middle class from 1941 to 2000 was one of the most ferocious sources of good in world history. The American middle class financed, fought, and won good wars; took care of the aged; funded a cure for polio; put men on the moon; and showed the rest of the world that self-interest, and the

The upward spiral of an economy depends on the circular flow between households and companies. Households offer resources and labor, and companies offer goods and jobs. Competition motivates the invention and distribution of better offerings (happy hour, rear-view camera, etc.), and the big wheel spins round and round. Big tech creates enormous stakeholder value. So why are we witnessing, for the first time in decades, other countries grow their middle class while ours is declining? If an economy is meant to sustain a middle class, and the social stability it fosters, then our economy is failing.

Without a doubt, there have been tremendous gains in productivity in the U. S. over the past thirty years. It would be hard to deny that the American consumer, at every level, has become the envy of the free world. Yet the productivity boost and the elevation of the consumer to modern-day nobility have created a dystopia in which we've traded well-paying jobs and economic security for powerful phones and coconut water delivered in under an hour.

How did that happen? Since the turn of the millennium, firms and investors have fallen in love with companies whose ability to replace humans with technology has enabled rapid growth and outsize profit margins. Those huge profits attract cheap capital and render the rest of the sector flaccid. Old-economy firms and fledgling start-ups have no shot.

The result is a winner-takes-all economy, both for companies and for people. Society is bifurcating into those who are part of the innovation economy (lords) and those who aren't (serfs). One great idea will make a twenty- something the darling of venture capital, while those who are average, or even just unlucky (most of us), have to work much harder to save for retirement.

It's never been easier to be a billionaire or harder to be a millionaire. It's painfully clear that the invisible hand, for the past three decades, has been screwing the middle class. For the first time since the Great Depression, a thirty-year-old is less well-off than his or her parents at thirty.

Should we care? What if these icons of innovation are the disrupters we need to keep our economy fit? Isn't there a chance we'll come through the other end of the tunnel with a stronger economy and higher wages? Already there's evidence that this isn't happening. In fact, the bifurcation effect seems to be gaining momentum. It's likely the biggest threat millionaires to producing one trillionaire. Alexa, is this a good thing?

Markets Are Failing, Everywhere

Right now we are in the midst of a dramatic market failure, one in which the government has been lulled by the public's fascination with big tech. Robust markets are efficient and powerful, yet just as football games don't work without referees who regularly step in, throw flags, and move one team backward or forward, unfettered capitalism gave us climate change, the mortgage crisis, and U. S. health care.

Monopolies themselves aren't always illegal, or even undesirable. Natural monopolies exist where it makes sense to have one firm achieve the requisite scale to invest and offer services at a reasonable price. But the tradeoff is heavy regulation. Florida Power & Light serves ten million people; its parent company, NextEra Energy, has a market cap of $72 billion. However, pricing and service standards are regulated by people who are fiduciaries for the public.

The Four, by contrast, have managed to preserve their monopoly-like powers without heavy regulation. I describe their power as "monopoly-like," since, with the possible exception of Apple, they have not used their power to do the one thing that most economists would describe as the whole point of assembling a monopoly, which is to raise prices for consumers.

Nevertheless, the Four's exploitation of our knee-jerk antipathy to big government has been so effective that it's led most of us to forget that competition—no less than private property, wage labor, voluntary exchange, and a price system—is one of the indispensable cylinders of the capitalist engine. Their massive size and unchecked power have throttled competitive markets and kept the economy from doing its job—namely, to promote a vibrant middle class.

Air Supply

(Windows) that becomes a portal to an entire sector—what we'd now call a platform. To sustain its growth, the company points the portal at its own products (Internet Explorer) and bullies its partners (Dell) to shut out the competition. Even though Netscape had the more popular browser, with over 90 percent market share, it couldn't compete with Microsoft's implicit subsidies for Internet Explorer.

It's happening everywhere across the Four, whether it's the slow takeover of the entire first page of search results that Google can better monetize, substandard products on your iPhone's home screen (like Apple Music), coordinating all assets of the firm (Facebook) to arrest and destroy a threat (Snap), or information-age steel dumping via fulfillment build-out and predatory pricing no other firm can access the capital to match (Amazon).

(Un)Natural Monopolies

Maybe the consumer is better off with these "natural" monopolies. The Department of Justice didn't think so. In 1998, the federal government filed suit against Microsoft, alleging anticompetitive practices. During the trial, one witness reported that Microsoft executives had said they wanted to "cut off Netscape's air supply" by giving away Internet Explorer for free.

In November 1999, a district court found that Microsoft had violated antitrust laws and subsequently ordered the company to be broken into two. (One company would sell Windows; the other would sell applications for Windows.) The breakup order was overruled by an appeals court, and ultimately Microsoft agreed to a settlement with the government that sought to curb the company's monopolistic practices by less stringent means.

The settlement was criticized by some for being too lenient, but it's worth asking whether Google—today worth $770 billion and the object of affection for any free-market would have leveraged its market dominance to favor Bing over Google, just as it had used Windows to euthanize Netscape.

Indeed, the DOJ's case against Microsoft may have been one of the most market-oxygenating acts in business history, one that unleashed trillions of dollars in shareholder value. The concentration of power achieved by the Four has created a market desperate for oxygen. I've sat in dozens of VC pitches by small firms. The narrative has become universal and static: "We don't compete directly with the Four but would be great acquisition candidates." Companies thread this needle or are denied the requisite oxygen (capital) to survive infancy. IPOs and the number of VC-funded firms have been in steady decline over the past few years.

Unlike Microsoft, which was typecast early on as the "Evil Empire," Google, Apple, Facebook, and Amazon have combined savvy public-relations efforts with sophisticated political lobbying operations—think Oprah Winfrey crossed with the Koch brothers—to make themselves nearly immune to the scrutiny endured by Microsoft.

The Four's unchecked power manifests most often as a restraint of competition. Consider: Amazon has become such a dominant force that it's now able to perform Jedi mind tricks and inflict pain on potential competitors before it enters the market. Consumer stocks used to trade on two key signals: the underlying performance of the firm (Pottery Barn's sales per square foot are up 10 percent) and the economic macro-climate (more housing starts). Now, however, private and public investors have added a third key signal: what Amazon may or may not do in the respective sector. Some recent examples:

The day Amazon announced it would enter the dental-supply business, dental-supply companies' stock fell 4 to 5 percent. When Amazon reported it would sell prescription drugs, pharmacy stocks fell 3 to 5 percent.

Within twenty-four hours of the Amazon– Whole Foods acquisition announcement, large national grocery stocks fell 5 to 9 percent.

When the subject of monopolistic behavior comes up, Amazon's public-relations team is quick to cite its favorite number: 4 percent—the share of U. S. retail (online and offline) Amazon controls, only half of Walmart's market share. It's a powerful defense against the call to break up the behemoth. But there are other numbers. Numbers you typically won't see in an Amazon press release: • 34 percent: Amazon's share of the worldwide cloud business

• **44 percent**: Amazon's share of U. S. online commerce

• **64 percent**: U. S. households with Amazon Prime

• **71 percent**: Amazon's share of in-home voice devices

• **$1.4 billion**: Amount of U. S. corporate taxes paid by Amazon since 2008, versus $64 billion for Walmart. (Amazon has added the entire value of Walmart to its market cap in the past twenty-four months.)

What about Facebook? Eighty-five percent of the time we spend on our phones is spent using an app. Four of the top five apps globally—Facebook, Instagram, WhatsApp, and Messenger—are owned by Facebook. And the top four have allied, under the command of the Zuck, to kill the fifth—Snap Inc. What this means is that our phones are no longer communications vehicles; they're delivery devices for Facebook, Inc.

traction with its users, so that the social network can either acquire the firm (as it did with Instagram and WhatsApp) or kill it by mimicking its features (as it's trying to do with Stories and Bonfire, which are aimed at Snapchat and Houseparty).

Google, for its part, now commands a 92 percent share of a market, Internet search, that is worth $92.4 billion worldwide. That's more than the entire

advertising market of any country except the U. S. Search is now a larger market than the following global industries:

• **paper and forest products**: $81 billion

• **construction and engineering**: $79 billion

• **real estate management and development**: $76 billion

• **gas utilities**: $58 billion

How would we feel if one company controlled 92 percent of the global construction and engineering trade? Or 92 percent of the world's paper and forest products? Would we worry that their power and influence had breached a reasonable threshold, or would we just think they were awesome innovators, as we do with Google? And then there's Apple, the most successful firm selling a low-cost product at a premium price. The total material cost for the iPhone 8 Plus is $288, a fraction of the $799 price tag.

Put another way, Apple has the profit margin of Ferrari with the production volume of Toyota. Apple's users are among the most loyal, too. It has a 92 percent retention rate among consumers, compared with just 77 percent for Samsung users. In February 2017, 79 percent of all active iOS users had updated to the most recent software, versus just 1.2 percent of all active Android devices.

Apple uses its privileged place in consumers' lives to instill monopoly-like powers in its approach to competitors like Spotify. In 2016, the firm denied an update to the iOS Spotify app, essentially blocking iPhone users' access to the latest version of the music-

Apple is not shy about using its popularity among consumers to its advantage. It was recently discovered that Apple has been purposely slowing down performance on outdated iPhone models, a strategy that is likely to entice users to upgrade sooner than they would have otherwise. This is the confidence of a monopoly.

In the late nineteenth century, the term *trust* came into use as a way to describe big businesses that controlled the majority of a particular market. Teddy Roosevelt gained a reputation as the original "trust buster" by breaking up the beef and railroad trusts, and filing forty more antitrust suits during his presidency. Fast-forward a hundred years, to 2016, and we find candidate Trump announcing that a Trump administration would not

So our presidents are still fighting the good fight, right? Well, let's break this down. AT&T has 139 million wireless subscribers, sixteen million Internet subscribers, and twenty-five million video subscribers, about twenty million of which were acquired from DirecTV. Time Warner owns content-producing brands such as HBO, Warner Bros., TNT, TBS, and CNN. A vertical merger between the two companies could, in theory, create a megacorporation capable of creating and distributing content across its network of millions of wireless-phone, Internet, and video subscribers.

Too much power in the hands of too few? Maybe. But if content-and-distribution heft is what we're worried about, then Teddy would have been knocking on Jeff's, Tim's, Larry's, and Mark's doors a decade ago. Already each of the Four has content and distribution that dwarfs a combined AT&T–Time Warner:

• Amazon spent $4.5 billion on original video in 2017, second only to Netflix's $6 billion. Prime Video has launched in more than two hundred countries and recently struck a $50 million deal with the NFL to stream ten Thursday-night games. Amazon controls a 71 percent share in voice technology and has an installed distribution base of 64 percent of American households through Prime. Name a cable company with a 64 percent market share—I'll wait. In addition, Amazon controls more of the market in cloud computing than the next five largest competitors combined. Alexa, does this foster innovation?

• Apple is set to spend $1 billion on original content this year. The company controls 2.2 million apps and set a record in 2013 when the number of songs it sold on iTunes hit twenty- five billion. Apple's library now includes forty million songs, which can be distributed across the company's one billion active iOS devices, and that's not even mentioning its television and video offerings. But AT&T needs to sell Cartoon Network?

• Facebook owns a torrent of content created by its 2.1 billion monthly active users. Through its site and its apps, the company reaches 66 percent of U. S. adults. Facebook

• Four hundred hours of video are uploaded to YouTube every minute, which means that Google has more video content than any other entity on earth. It also controls the operating system on two billion Android devices. But AT&T needs to divest Adult Swim?

Perhaps Trump is right that the merger of AT&T and Time Warner is unreasonable, but if so, then we should have broken up the Four ten years ago. Each of the Four, after all, wields a harmful monopolistic power that leverages market dominance to restrain trade. But where is the Department of Justice? Where are the furious Trump tweets? Convinced that the guys on the other side of the door are Christlike innovators, come to save humanity with technology, we've allowed our government to fall asleep at the wheel.

Margrethe Vestager, the EU commissioner for competition, is the only government official in a Western country whose testicles have descended—who is not afraid of, or infatuated with, big tech. Last May, she levied a $122 million fine against Facebook for lying to the EU about its ability to share data between Facebook and WhatsApp, and a month later she penalized Google $2.7 billion for anticompetitive practices.

This was a good start, but it's worth noting that those fines are mere mosquito bites on the backs of elephants. The Facebook fine represented 0.6 percent of the acquisition price of WhatsApp, and Google's amounted to just 3 percent of its cash on hand. We are issuing twenty-five-cent parking tickets for not feeding a meter that costs $100 every fifteen minutes. We are telling these companies that the smart, shareholder-friendly thing to do is obvious: Break the law, lie, do whatever it takes, and then pay a (relatively) anemic fine if you happen to get caught.

success, and we're inspired by billionaires and the incredible companies they founded. We also have a gag reflex when it comes to regulation, one that invites unattractive labels. Since I started suggesting that Amazon should be broken up, Stuart Varney of Fox News, a charming guy, has taken to introducing me on-air as a socialist. Any day now, I suspect he'll start calling me European.

There's no question that the markets sent a strong signal in 2017 that our economy is sated on regulation. But there's a difference between regulation and trust busting. What's missing from the story we tell ourselves about the economy is that trust busting is meant to protect the health of the market. It's the antidote to crude, ham-handed regulation. When markets fail, and they do, we need those referees on the field who will throw a yellow flag and restore order. We are so there.

The tremendous success of the Four—which alone accounted for 40 percent of the gains in the S&P 500 for the month of October—wallpapers over the fact that, as a whole, the markets in which they operate are not healthy. Late last year, Refinery29 and BuzzFeed, two promising digital-marketing fledglings, announced layoffs, while Criteo, an ad-tech firm, shed 50 percent of its market capitalization. Why? Because there is Facebook, there is Google, and then there is everyone else. And all of those other firms, including Snap Inc., are dead; they just don't know it yet.

Are we sure all these companies deserve to die? Or is it the case that our markets are failing and preventing the development of a healthy ecosystem with dozens of digital-marketing firms growing, hiring, and innovating?

Search...Your Feelings

Imagine two markets. One that includes the firms below:

Amazon | Apple | Facebook | Google

And another that includes these independent firms:

As Darth Vader urged his son, I want you to "search your feelings" and answer which market would:

Create more jobs and shareholder value.

While trust busting is typically bad for stocks in the short run, busting up Ma Bell unleashed a torrent of shareholder growth in telecommunications. Similarly, Microsoft, despite its run-in with the DOJ in the 1990s, just hit an all-time high. In addition, it's reasonable to believe that Amazon and Amazon Web Services may be worth more as separate firms than they are as one.

Inspire more investment.

There are half as many publicly traded U. S. firms than there were twenty-two years ago, and most firms in the innovation economy understand that their most likely—or only—path to exist is to be acquired by big tech. An absence of buyers makes for an economy in which the two options are to go big (become Google) or go home (go out of business). While home runs provide good theater, the doubles and triples of acquisitions by medium-sized firms are likely a stronger engine of growth.

Broaden the tax base.

The aggregation of power has resulted in firms that have so much political clout and resources that they can bring their effective tax rates well below what midsize companies pay, creating a regressive tax system.

Why should we break up big tech? Not because the Four are evil and we're good. It's because we understand that the only way to ensure competition is to sometimes cut the tops off trees, just as we did with railroads and Ma Bell. This isn't an indictment of the Four, or retribution, but recognition that a key part of a healthy economic cycle is pruning firms when they become invasive, cause premature death, and won't let other

ConsumersUnion®

THE ADVOCACY DIVISION OF CONSUMER REPORTS

September 26, 2018

The Honorable Marsha Blackburn
Chairman, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Michael Doyle
Ranking Member, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2322A Rayburn House Office Building
Washington, D.C. 20515

Re: September 27, 2018 "State of the Media Marketplace" Subcommittee on Communications and Technology Hearing (House Energy and Commerce Committee)

Dear Chairman Blackburn and Ranking Member Doyle:

Consumers Union, the advocacy division of Consumer Reports,[1] appreciates the Subcommittee's consideration of the evolving media marketplace and looks forward to the hearing on September 27, 2018. In advance of that hearing, we urge you to consider how changes in the media marketplace are affecting consumers, and to also examine the impact of laws and regulations upon the business practices of companies—practices that ultimately influence the prices consumer pay and the variety of choices they have to choose from to obtain media content.

The 1992 Cable Act established the means by which cable operators receive programming from broadcasters, either through a retransmission consent negotiation or a must-carry election. Today, most broadcasters opt for retransmission consent whereby they receive fees—the gross value of which was more than $9 billion in 2017—in exchange for permitting cable operators to carry their programming.[2] In less than a decade, retransmission consent fees have risen exponentially: the gross revenue for these fees was a little more than $750 million in 2009 and is estimated to top $10 billion in 2018.[3] What's worse is when broadcasters and cable operators cannot agree to a new deal to continue carriage, leading to station blackouts that result in the loss of broadcast programming for millions of consumers.

[1] Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and empowers consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumers Reports has over six million subscribers to its magazine, website, and other publications.

[2] Mary Collins, *Forecasting The Future For Retrans Revenue*, TVNewsCheck (May 11, 2018), *at* https://tvnewscheck.com/article/113507/forecasting-the-future-for-retrans-revenue/.

[3] *Id.*

In both cases, consumers lose when increased costs are passed onto them or when they miss days or weeks of programming that they have paid for and expect to receive. More than 25 years later, the retransmission consent regime is neither serving consumers well nor protecting their interests. Though broadcasters and cable operators point fingers at one another and cast blame, it is consumers who are ultimately left holding the bag of higher costs. The retransmission system is broken and in need of repair.

A direct consequence of the rise of retransmission consent fees is the presence and increase of new company-imposed fees, like the "broadcast TV surcharge" or "fee" charged by many cable operators today. More than seven years ago, Charter Communications began charging a "broadcast TV surcharge," purportedly to recoup the rising costs of retransmission consent fees discussed above. Other large MVPDs (multi-channel video program distributors)—e.g., Comcast, and Time Warner Cable (since purchased by Charter)—followed suit with their own "broadcast fee" in addition to other new charges, such as a "regional sports fee" for sports channels that some consumers never even watch. Some providers even add another "HD technology" fee. These fees are in addition to set-top box fees that MVPDs have been charging consumers for years.

All of these add-on fees are tacked on top of the rates advertised to consumers and are typically shown on the monthly bill near or with government-imposed taxes and fees, misleadingly suggesting that they are also required by law. Company-imposed fees cause consumer confusion, and more importantly, add up. What used to be a dollar or two "broadcast TV fee" just a few years ago is now more than seven or eight dollars in some instances. Taken in total, add-on fees can result in an additional 25 percent or more of extra costs piled onto the advertised package rate.[4] And with retransmission consent fees expected to keep increasing, we imagine consumers can expect to endure even higher company-imposed fees in the future.

To counter the rise of fees in the media marketplace among others, Consumer Reports—along with Consumers Union—launched the What The Fee?! (WTF?!) campaign earlier this year to cast a light on the rise of fees that have consumers feeling ripped off. We began the campaign by asking consumers to sign an online petition calling on cable operators to price services that include the full cost of service without hiding fees in the fine print. To date, more than 114,000 consumers have signed this petition.

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[4] A sample cable bill from December 2016 lists the bundled services rate of $119.99 for video programming and broadband internet. Additional fees, not including taxes or other government fees, include an "AnyRoom DVR" fee of $10, an "HD Technology Fee" of $9.95, a "Broadcast TV Fee" of $5, and a "Regional Sports Fee" of $3. The total of these company-imposed fees amounts to almost $28 added onto the advertised rate of $119.99—nearly a 25 percent surcharge above the advertised base rate. In 2018, the "Broadcast TV Fee" increased to $8 and the "Regional Sports Fee" to $6.50 charged by this provider (and according to its website) in the Washington, D.C. market.

The dysfunctional retransmission consent system coupled with anti-consumer add-on fees in cable bills are only two of many of the challenges facing the media marketplace. For example, continued consolidation poses a threat to consumer choice and competition in this market. Consumers Union remains skeptical that the AT&T-TimeWarner merger will deliver the many promised benefits to consumers, especially since the merged company is not bound by any behavioral conditions that may have protected consumers. Similarly, Comcast-NBC is no longer bound by the conditions of its merger since those measures expired within the last year.

Finally, the current absence of net neutrality rules—repealed by the Federal Communications Commission late last year—may lead to anti-competitive behavior whereby a large MVPD owns and controls the broadband service vital to competing services that stream live content online (e.g., Playstation Vue, Sling TV, and others). Will these new entrants succeed if their primary competitor, the incumbent cable company, decides to block, throttle, or charge prohibitive access charges to use its broadband network necessary to its competitor's survival? We fear such behavior would eliminate consumer choice and lead to even higher prices in the absence of competition.

We appreciate the Subcommittee for holding this important hearing reviewing the media marketplace, and would hope that the views of consumers are taken into account moving forward. Consumers benefit from dynamic markets that foster more choices and lower prices. To be sure, adopting the right policy choices is even more essential in a marketplace dominated by decades-old monopoly incumbents. We stand ready to work with you, your fellow Members on the Communications and Technology Subcommittee, and other stakeholders to address the issues we identified to help ensure all consumers have reliable access to affordable products and services and are empowered to participate fully in the modern media marketplace.

Respectfully submitted,

[redacted]

Jonathan Schwantes
Senior Policy Counsel

cc. Members of the U.S. House Subcommittee on Communications and Technology, Committee on Energy and Commerce

September 26, 2018

The Hon. Greg Walden Chairman Committee on Energy and Commerce UNITED STATES HOUSE OF REPRESENTATIVES Washington, D.C. 20515	The Hon. Frank Pallone, Jr. Ranking Member Committee on Energy and Commerce UNITED STATES HOUSE OF REPRESENTATIVES Washington, D.C. 20515
The Hon. Marsha Blackburn Chairman Committee on Energy and Commerce Subcommittee on Communications and Technology UNITED STATES HOUSE OF REPRESENTATIVES Washington, D.C. 20515	The Hon. Michael Doyle Ranking Member Committee on Energy and Commerce Subcommittee on Communications and Technology UNITED STATES HOUSE OF REPRESENTATIVES Washington, D.C. 20515

Re: Hearing on the Video Marketplace

Dear Chairman Walden, Ranking Member Pallone, Chairman Blackburn, and Ranking Member Doyle:

Each of our companies is an *independent* programmer. That is, we offer a wide range of innovative news, sports, and entertainment—and we do so without being affiliated with one of the conglomerates that dominate the media industry today. We each offer different programming. Yet collectively, we offer alternative perspectives to what often seems like an increasingly homogeneous culture. We believe the survival of independent programming is important not only for the sake of our individual companies, but to ensure that true alternatives remain available to the American people.

As smaller, independent programmers, we face many obvious threats to our survival. One serious threat, however, may seem less obvious: dysfunction in the retransmission consent market through which broadcast television stations obtain carriage on cable and satellite systems.

Problems in the retransmission consent market harm independent programmers in at least two separate ways. First, retransmission consent fees rise by double digits *each year*. SNL Kagan estimates that they will reach $12.8 billion by 2023. This is a rate far higher than inflation—and, indeed, far higher than can be found in any other sector of the economy. Indeed, as one satellite operator has explained, retransmission consent fee increases over the last decade *exceeded hyperinflation in Brazil and Argentina in the 1980s.*[1] Such fees represent by far the fastest growing component of programming costs for cable and satellite operators.

Additional funds spent on retransmission consent cannot be spent to purchase independent programming such as ours. And this is what cable and satellite operators increasingly tell us when we seek initial or renewed carriage on their systems: they simply lack the funds to carry our programming.

Retransmission consent has led to a second set of problems. Many of the largest broadcast groups—including all four of the major networks—also own cable programming. They invariably insist that cable and satellite operators carry *all* such programming as a condition of carrying their broadcast stations. For example, as some of us explained to the FCC last year, a small cable operator that wants to get the must-have programming from the largest media groups—Disney/ESPN, Fox, Comcast/NBCU, Turner, Viacom, AETN, AMC, and Scripps—must carry 65 channels at a minimum.[2]

Worse yet, each time they renew broadcast deals, they add new channels that cable and satellite operators have to carry—even if these new channels offer nothing more than reruns of programming already carried.[3] Here again, this leaves less room for independent programming. Independent programmers have lost their place on thousands of cable and satellite systems in recent years because of retransmission consent-related bundling. If you wonder why your cable lineup seems like hundreds of channels of the same thing, retransmission consent represents a significant part of the explanation.

Retransmission consent is, of course, by no means the only problem independent programmers face. Vertically integrated distributors and the largest programmers have each

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1 Petition to Deny of DISH Network, L.L.C., MB Docket No. 17-179 at 37 (filed Aug. 7, 2017), *available at* https://ecfsapi.fcc.gov/file/108071485102843/REDACTED--DISH%20PTD%20Combined%207Aug%20(final).pdf (comparing figures from SNL Kagan, Broadcast retransmission and Virtual Service Provider Carriage Fee Projections Through 2023 (July 2017) with Brazilian Hyperinflation, Encyclopedia of Money, http://encyclopedia-ofmoney.blogspot.com/2010/01/brazilian-hyperinflation.html and Hyperinflation in Argentina, Citéco https://www.citeco.fr/10000-years-historyeconomics/contemporary-world/hyperinflation-in-argentina).

2 Joint Comments of the American Cable Association, MAVTV Motorsports Network, One America News Network and AWE, and Ride TV, MB Docket No. 16-141 at 3 (filed Jan. 26, 2017), *available at* https://ecfsapi.fcc.gov/file/10126165331503/Joint%20Comments%20re%20Indy%20Programming%20NPRM%20--%20FINAL.pdf (discussing carriage through the National Cable Television Cooperative buying group).

3 For example, the American Cable Association reported that its members have been forced to carry MeTV, Heroes and Icons, and Decades, each of which consists primarily of reruns. Comments of the American Cable Association, MB Docket No. 16-141 16 (filed Mar. 30, 2016), *available at* https://ecfsapi.fcc.gov/file/60001565832.pdf.

engaged in a wide variety of conduct designed to shut out independent programming in order to protect their favored positions. We certainly would not want you to limit your examination of the marketplace to retransmission consent issues.

Yet if you believe, as we do, that today's media landscape needs *more* voices, you should be worried that existing regulation—including retransmission consent—can reduce the number of voices in an already concentrated market. We thus urge you to attend the upcoming hearing on the state of the video marketplace, and to ask questions about retransmission consent and independent programming. And, of course, we each stand ready to provide you with any additional information that might assist you.

Sincerely,

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CINÉMOI FILM.FASHION.LIFESTYLE

Dear Chairman Blackburn and Ranking Member Doyle:

We appreciate the written testimony of Mr. Olgeirson, Research Director, Kagan Media Research Group, S&P Global Market Intelligence, including his discussion of the music business. We would like to take this opportunity to add a few points to the discussion.

As Mr. Olgeirson has noted, referencing the RIAA 2018 Mid-Year Shipment & Revenue Statistics report, the recorded music business grew 10% in the first half of 2018. This is certainly positive news, and hopefully is indicative of a continued trajectory. But we must keep in mind that the music business is still well below levels prior to the digital piracy age. After the industry dropped more than 50 percent from 1999 until 2015, we still have a long way to go.

Of course, we will never completely eradicate piracy, and we have never expected to. While we have made great strides in abating it and allowing the music business to regain its footing, we still face new challenges such as stream ripping and other ever-evolving forms of digital piracy.

Much of the music business's rebound can be attributed to the growth of streaming, which makes it imperative that we protect and support it. Unfortunately, there remain serious impediments to growth, including lack of full value from user-uploaded services, piracy, and a lack of a full terrestrial performance right in the United States. Some user-uploaded services take advantage of safe harbors that were never intended to be used by services actively engaged in distributing, promoting, recommending, or curating content. The result has been a skewing of the marketplace and unfair competition between these services and those who cannot avail themselves of the safe harbor. In addition, artists and labels still do not receive any payment when their recordings are played over AM/FM radio. This is a nearly century-old loophole in our law that not only stands in the way of fair compensation for creators, but prevents an even playing field among music services, disadvantaging streaming services at just the time we need them to grow.

As we have noted, music and musicians help power the Internet and drive the world's most visited sites and services. They are a key element of the new digital world, and it is imperative that we properly protect and value them.

Thank you,

Mitch Glazier
President, RIAA

RECORDING INDUSTRY ASSOCIATION OF AMERICA
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MID-YEAR 2018 RIAA MUSIC REVENUES REPORT

MUSIC CONTINUES ITS COMEBACK STORY, POWERED BY GREAT NEW MUSIC, TALENTED ARTISTS AND A RE-INVENTED RECORD INDUSTRY. A BUSINESS GROWING AGAIN, DRIVEN BY A COMPETITIVE PAID STREAMING MARKET, MEANS NEW INVESTMENTS IN MORE ARTISTS AND MORE MUSIC. THAT IS FUNDAMENTALLY WHAT WE'RE ALL ABOUT.

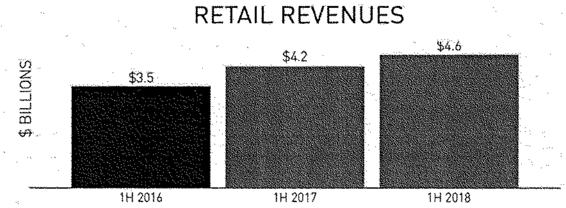
We are proud of the progress achieved so far and the integral role of record companies in helping foster a diverse streaming marketplace. The music streaming economy presents myriad new opportunities, but also its share of challenges too. According to Nielsen, more than 70,000 different albums were released by mid-year. Finding an audience amongst an extraordinary range of music choices, competing for the user's attention against other entertainment options on the ubiquitous smartphone, and being prominent on dozens of different digital platforms is not only critical for success, those are attributes that uniquely reside within today's record company.

We also recognize that the growth achieved so far is in spite of our music licensing system, not because of it. That's not how it should work. Fortunately, a bipartisan bill, the Music Modernization Act, is edging closer to final Congressional enactment. The elements included in that bill close some of the most glaring loopholes in our licensing laws, but it is not a comprehensive reform that ensures all artists earn fair market rates on all platforms. We still have much work to do.

What continues to sustain all of us is an unrelenting focus on the music. Gold or Platinum certified albums this year from Camila Cabello, Drake, Cardi B, Post Malone, Migos, Charlie Puth, Travis Scott and Jason Aldean are just a few of the standouts. We are proud advocates of music and its singular ability to drive commerce and culture. We look forward to more great songs and albums in the second half of the year.

-Mitch Glazier, President, RIAA

U.S. MUSIC INDUSTRY MID-YEAR RETAIL REVENUES

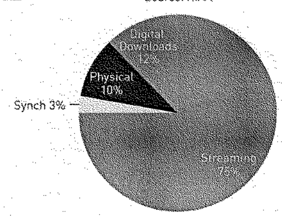


Overall market trends in the first half of 2018 continued to reflect the music industry's rapid transition from unit based physical and digital sales towards streaming music sources. Total revenues from recorded music in the United States grew 10% to $4.6 billion at retail in 1H 2018. Streaming music accounted for ¾ of industry revenues. At wholesale value, revenues rose 10% to $ 3.1 billion.

RIAA data analysis by **Joshua P. Friedlander**, Senior Vice President, and **Matthew Bass**, Associate

FIGURE 1

U.S. MUSIC INDUSTRY REVENUES 1H 2018
Source: RIAA

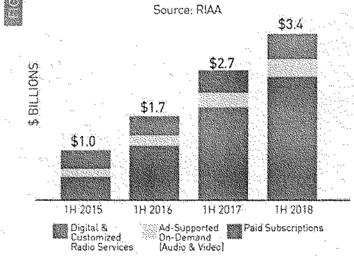


STREAMING

Revenues from streaming music grew 28% year-over-year to \$3.4 billion for the first half of 2018. This broad category includes revenues from subscription services (such as paid versions of Spotify, Apple Music, Amazon, TIDAL, and others), digital and customized radio services (like Pandora, SiriusXM, and other Internet radio), and ad-supported on-demand streaming services (such as YouTube, Vevo, and ad-supported Spotify). The overwhelming majority of the industry's revenue growth during the period came from streaming music.

FIGURE 2

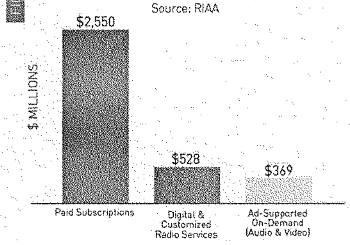
U.S. MUSIC INDUSTRY STREAMING REVENUES
Source: RIAA



Paid subscriptions have become the biggest format for music by revenue. Year-over-year growth of 33% brought total subscription revenues to \$2.5 billion. So ¾ of recording industry revenue came from streaming, and ¾ of that from paid subscriptions. Despite far few users, subscription streaming vastly out performed ad-supported revenues.

FIGURE 3

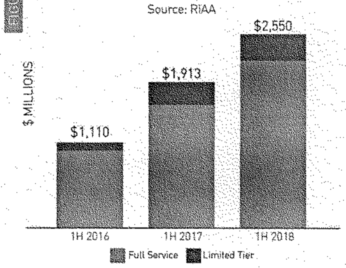
U.S. STREAMING MUSIC REVENUES 1H 2018
Source: RIAA



This category also includes \$354 million in revenues from "Limited Tier" paid subscriptions (services limited by factors such as mobile access, catalog availability, on-demand limitations, or device restrictions). Services like Amazon Prime, Pandora Plus, and other subscriptions are included in this category.

FIGURE 4

U.S. PAID MUSIC SUBSCRIPTION REVENUES
Source: RIAA

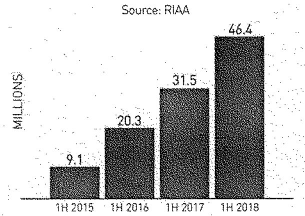


RIAA data analysis by **Joshua P. Friedlander**, Senior Vice President, and **Matthew Bass**, Associate

This growth in subscription revenues was driven by continued user adoption. The number of paid subscriptions to full on-demand services grew 48% to an average of 46.4 million for the first half of 2018 – a growth rate averaging an increase of more than 1 million subscriptions per month. (Note this figure does not include limited tier subscriptions)

FIGURE 5

U.S. PAID MUSIC SUBSCRIPTIONS (1H AVERAGE)
Source: RIAA

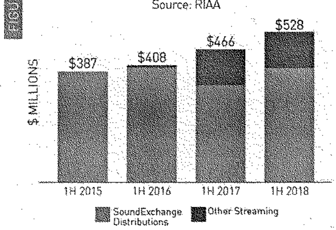


Advertising supported on-demand revenues for music from services like YouTube, Vevo, and the ad-supported version of Spotify grew 21% year-over-year to $369 million. While Nielsen has reported that these services streamed hundreds of billions of songs to fans in the U.S. in 1H 2018, revenues from ad-supported on-demand platforms make up only 11% of total streaming revenues.

Revenues from digital and customized radio services were $528 million in 1H 2018, up 13% versus the first half of the prior year. This category includes SoundExchange distributions for royalties from services like SiriusXM and internet radio stations, as well as direct deals for statutory services, included in this report as "other ad-supported streaming."

FIGURE 6

U.S. DIGITAL AND CUSTOMIZED RADIO
Source: RIAA

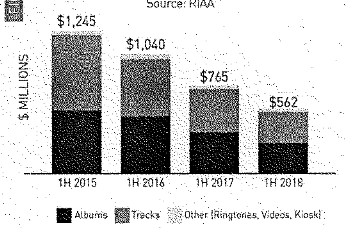


DIGITAL DOWNLOADS

While streaming revenues continue to increase, revenue gains were offset by declines in sales of digital and physical units. Revenues from digital downloads fell 27% in 1H 2018 to $562 million, the lowest level in more than a decade. Individual track sales revenues were down 28% year-over-year, and digital album revenues declined 26%. The category accounted for just 12% of total industry revenues in 1H 2018.

FIGURE 7

U.S. DIGITAL DOWNLOAD REVENUES
Source: RIAA



PHYSICAL PRODUCTS

Shipments of physical products decreased 25% to $462 million in 1H 2018, a higher rate of decline than in recent years. Revenues from CDs fell by 41% in the first half of the year, more than offsetting a 13% increase in revenues from sales of vinyl albums. Revenues from shipments of physical products made up 10% of the industry total in 1H 2018.

NOTE – Historical data for 2015-2017 has been updated, including revenue accounting standards starting in 2016. Formats with no retail value equivalent included at wholesale value. RIAA presents the most up-to-date information available in its industry revenue reports and online statistics database: https://www.riaa.com/u-s-sales-database

FOR NEWS MEDIA INQUIRIES, PLEASE CONTACT:
Jonathan Lamy
Cara Duckworth Weiblinger
Liz Kennedy
202-775-0101

MID-YEAR 2018
RIAA MUSIC REVENUE STATISTICS

For a list of authorized services see www.whymusicmatters.com

United States Estimated Retail Dollar Value (In Millions, net after returns)

DIGITAL SUBSCRIPTION & STREAMING

		1H 2017	1H 2018	% CHANGE 1H '17 to 1H '18
(Units) (Dollar Value)	**Paid Subscription**[1]	31.5 $1,608.5	46.4 $2,195.7	47.6% 36.5%
	Limited Tier Paid Subscription[2]	$304.4	$354.0	16.3%
	On-Demand Streaming (Ad-Supported)[3]	$303.8	$368.8	21.4%
	SoundExchange Distributions[4]	$339.5	$398.6	17.4%
	Other Ad-Supported Streaming[5]	$126.8	$129.0	1.8%
	Total Streaming Revenues	$2,683.0	$3,446.1	28.4%

DIGITAL PERMANENT DOWNLOAD

		1H 2017	1H 2018	% CHANGE 1H '17 to 1H '18
(Units) (Dollar Value)	**Download Single**	306.6 $373.7	221.5 $270.4	-27.8% -27.6%
	Download Album	35.8 $360.4	26.3 $265.2	-26.4% -26.4%
	Ringtones & Ringbacks	7.9 $19.6	5.1 $12.7	-35.3% -35.3%
	Other Digital[6]	1.4 $11.3	1.2 $13.9	-19.0% 23.6%
	Total Digital Download Revenues	$764.9	$562.2	-26.5%

	1H 2017	1H 2018	% CHANGE 1H '17 to 1H '18
TOTAL DIGITAL VALUE	$3,447.9	$4,008.2	16.3%
Synchronization Royalties[7]	$118.3	$131.0	10.8%

PHYSICAL

		1H 2017	1H 2018	% CHANGE 1H '17 to 1H '18
(Units Shipped) (Dollar Value)	**CD**	35.0 $420.0	18.6 $245.9	-46.9% -41.5%
	LP/EP	7.2 $176.1	8.1 $198.6	12.6% 12.8%
	Music Video	0.7 $13.6	0.7 $12.6	-4.9% -7.2%
	Other Physical[8]	0.3 $5.3	0.3 $4.6	-10.9% -14.5%
	Total Physical Units **Total Physical Value**	43.3 $615.0	27.7 $461.6	-36.0% -24.9%

TOTAL DIGITAL AND PHYSICAL

	1H 2017	1H 2018	% CHANGE 1H '17 to 1H '18
Total Units[9] **Total Value**	394.9 $4,181.2	281.7 $4,600.9	-28.7% 10.0%
% of Shipments[10]	**2016**	**2017**	
Physical	15%	10%	
Digital	85%	90%	

Retail Value is the value of shipments at recommended or estimated list price
Formats with no retail value equivalent included at wholesale value

Note: Historical data updated for 2016

[1] Streaming, tethered, and other paid subscription services not operating under statutory licenses
Subscription volume is annual average number of subscriptions, excludes limited tier

[2] Paid streaming services with interactivity limitations by availability, device restriction, catalog limitations, on demand access, or other factors

[3] Ad-supported audio and music video services not operating under statutory licenses

[4] Estimated payments to performers and copyright holders for digital and customized radio services under statutory licenses

[5] Revenues paid directly for statutory services that are not distributed by SoundExchange and not included in other streaming categories

[6] Includes Kiosks, music video downloads, and starting in 2016 other digital music licensing

[7] Includes fees and royalties from synchronization of sound recordings with other media

[8] Includes CD Singles, Cassettes, Vinyl Singles, DVD Audio, SACD

[9] Units total includes both albums and singles, and does not include subscriptions or royalties

[10] Synchronization Royalties excluded from calculation

CFIF
CENTER FOR INDIVIDUAL FREEDOM

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May 29, 2018

Douglas Rathbun
Competition Policy and Advocacy Section
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Ave., NW, Room 3413
Washington, DC 20530
CompReg3@usdoj.gov

Re: Roundtable on Anticompetitive Regulations

Dear Mr. Rathburn:

On behalf of the Center for Individual Freedom (hereinafter "CFIF") and over 300,000 supporters and activists across the nation, I write to draw your attention to a series of anti-competitive regulations governing "retransmission consent" negotiations for pay-TV carriage of broadcast television stations. Eliminating these regulations and instead permitting the marketplace to govern carriage terms of these broadcast stations would encourage innovation, better enable pay-TV providers meet the needs of their subscribers and very likely lower retail prices.

About the Center for Individual Freedom (CFIF)

Founded in 1998, CFIF is a constitutional and free-market advocacy organization. CFIF seeks to focus public, legislative and judicial attention on the rule of law as embodied in the federal and state constitutions, and on policies that advance free markets, private investment and greater innovation. In addition, the Center seeks to foster intellectual discourse by bringing together independent thinkers to examine broad-ranging issues of individual freedom in our global society.

Government Interference in Retransmission Consent Negotiations

The relationship between pay-TV providers and providers of video programming *except* for broadcast programming has always been governed by purely market-based transactions. Broadcast stations, however, are different. They, and only they, can choose between one of two different regulatory regimes for determining their carriage arrangements with pay TV providers.

Under the "must carry" regime, the relationship between pay-TV providers and broadcast stations is completely regulated and involves no market-based transactions of any sort. Pay-TV providers *must* carry the station in question, and the station cannot charge fees for such carriage.

Under the "retransmission consent" regime, by contrast, a pay-TV provider *cannot* carry the station without its permission. The station can, and invariably does, negotiate a fee known as a "retransmission consent payment."

Public television stations must choose must-carry, and most smaller and less-watched commercial stations do as well. Affiliates of the major networks, by contrast, almost always choose retransmission consent. They can often charge retransmission consent fees that are comparable or higher than the license fees charged by even the most popular cable networks.

While broadcasters claim that retransmission consent negotiations are purely "marketplace" negotiations, that is not correct. In reality, the carriage arrangements between local TV stations and pay-TV providers must satisfy a set of stringent conditions and regulations that have nothing to do with the "marketplace." For example:

- The government forces cable operators to include all local broadcast networks in any bundle of programming sold to subscribers. Thus, cable subscribers must purchase access to all broadcast networks as a precondition of purchasing access to any other programming. 47 U.S.C. § 543(b)(7).
- The government mandates that cable operators and satellite operators offer all broadcast programming "without material degradation" and at the "same quality of signal processing and carriage" offered any other programming. 47 C.F.R. § 76.62.
- The government requires cable operators and satellite carriers to give special preferential treatment for broadcasters in channel placement. 47 U.S.C. § 534(b)(3)(6); *id.* § 338(j).
- The government imposes "network nonduplication" and "syndicated exclusivity" rules. Those rules enable stations to enforce exclusivity arrangements negotiated with networks and syndicators against satellite and cable operators who are not parties to those agreements. 47 C.F.R. §§ 76.92-95 (cable network non-duplication rule); *id.* § 76.122 (satellite network non-duplication rule); *id.* §§ 76.101-110 (cable syndicated exclusivity); *id.* §§ 76.123-125 (satellite syndicated exclusivity).

Those regulations may make sense for *must-carry* stations. A local broadcast station elects must-carry when the pay-TV provider has no commercial interest in carrying the signal of the local TV station and is in a sense being "forced" to carry the signal. In such cases, it may be necessary for the government to specify a set of conditions and requirements that the carriage agreements must satisfy in order to guarantee that the local TV station does not receive "inferior" carriage terms.

If a station elects retransmission consent, however, the pay-TV provider is no longer being "forced" to carry the signal. Rather, Congress intended for the two parties to determine the terms and conditions of carriage. Thus, there is no more justification for regulating the carriage conditions in agreements between pay-TV providers and local TV stations that elect retransmission consent than there is to regulate the carriage conditions of agreements between pay-TV providers and other programmers. In the absence of any government interference, we would expect the parties to negotiate efficient carriage terms that maximized their joint gain and to then negotiate a license fee that splits the gains from that efficient relationship between them. No "push" from the government is necessary to achieve this result.

Effect of Government Interference in Retransmission Consent Negotiations

It is not only *unnecessary* for the government to interfere in retransmission consent negotiations, it is affirmatively *harmful* to the parties and consumers alike.

First, those rules inhibit innovation and restrict the ability of the parties to negotiate fully efficient relationships. That harms consumers, because it prevents parties from providing the products that consumers most want.

- The government now mandates that every pay-TV bundle of programming contain every broadcast station, which constitutes an obvious example of such a harmful and un-needed regulation. Yet online providers – who are *not* governed by those retransmission consent rules – increasingly offer smaller bundles of programming more narrowly tailored to subscribers' individual interests. Almost every observer views that as a positive development for consumers. Yet pay-TV operators cannot match those offerings, in part because they cannot, by law, omit broadcast stations from any of their service offerings.

- The government also requires that pay-TV providers offer broadcasters the same "signal processing and carriage" as offered to other programmers. In the near future, however, pay-TV operators will likely begin to experiment with offering some programming in ultra-HD or 4k resolution. It is likely that pay-TV providers will begin by offering only a limited number of networks at that higher resolution. Were the FCC to interpret this rule as requiring pay-TV operators to offer *all* broadcast stations at ultraHD or 4k once they begin to experiment at all with this new technology, it could slow or even halt the rollout of this new technology. Here again, the harm would flow to consumers.

- Similar issues also arise with respect to the government mandate to offer broadcasters preferential channel placement. Once again, those restrictions limit the ability of pay-TV providers to experiment with new and potentially more intuitive channel groupings that may appeal to consumers.

- Likewise, parties could negotiate their own versions of network non-duplication and syndicated exclusivity arrangements if the protections offered by those rules are efficient. Private parties, moreover, would be able to do a better job of negotiating agreements finely tuned to match their own particular circumstances, rather than being forced to adopt a "one-size-fits-all" arrangement mandated by government.

Second, all of the government intervention described above creates an entirely different form of harm because it favors one party to the negotiation (broadcasters) over the other party (pay TV providers) to the negotiation. Broadcasters receive those terms *by law* before the negotiation has even begun. They do not need to bargain for them by, for example, lowering the license fees that they charge. Thus, mandating those broadcaster-favorable terms instead of allowing them to be part of the negotiation essentially increases the bargaining power of broadcasters, and likely allows them to negotiate higher license fees than they would otherwise be able. Of course, a substantial share of those increases in license fees are ultimately passed on to consumers in the form of higher subscription fees.

Recommendation

We believe that, absent a demonstrated and uncorrectable market failure, the marketplace remains the best mechanism for allocating goods and services and directing economic activity. By distorting negotiations between the parties, the current retransmission consent regime limits the benefits that competitive markets can produce by artificially restricting parties to agree to regulatory conditions appropriate (if at all) only in the context of must carry. That harms consumers by limiting efficient and innovative arrangements between broadcasters and pay-TV carriers and by placing upward pressure on prices. Negotiations over the distribution of the signals of local broadcast stations electing retransmission consent should take place in the same free marketplace that today works perfectly well for all other types of programming.

Some of these requirements are found in the Communications Act, and thus require Congressional intervention to remedy. Others, however, can be fixed, or at least ameliorated, by the FCC. The FCC could, for example, eliminate the network nonduplication and syndicated rules. It could also clarify that the material degradation and buy-through rules apply only to must-carry stations. The Antitrust Division should urge it to do so.

Sincerely,

Timothy Lee
Senior Vice President of Legal and Public Affairs
Center for Individual Freedom

COUNCIL *for* CITIZENS AGAINST GOVERNMENT WASTE

Thomas A. Schatz, *President*
1100 Connecticut Ave., N.W., Suite 650
Washington, D.C. 20036
ccagw.org

September 27, 2018

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Communication and Technology
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman and Ranking Member,

On September 27, 2018, the House Energy and Commerce Subcommittee on Communications and Technology is scheduled to hold a hearing on the "State of the Media Marketplace." On behalf of the more than one million members and supporters of the Council for Citizens Against Government Waste (CCAGW), I urge you to include a discussion of outdated regulatory schemes, such as retransmission consent agreements and must-carry provisions of the Cable Act of 1992.

Congress passed the Cable Act of 1992 in response to cable television rate increases that resulted from deregulation, a lack of competition in the cable marketplace, and concerns that local stations would not be carried by cable companies. But, analog signals carrying only three major networks and one or two other channels over the airwaves have been replaced by a wide range of viewing options, ranging from cable and fiber optic networks on the ground, to satellite feeds and online distribution of programming.

The existing television regulatory regime reduces competition by undercutting smaller providers' ability to compete on price; increases costs to consumers due to higher retransmission fees; and frustrates millions of Americans from continued blackouts of popular programming during peak viewing periods, including access to events such as portions of the Oscars and sporting events. It is little wonder that viewers are increasingly seeking alternatives to existing multi-channel video programming distributors (MVPDs).

On July 23, 2018, Rep. Steve Scalise (R-La.) introduced H.R. 6465, the Next Generation Television Marketplace Act. This comprehensive reform legislation would repeal provisions of the Cable Act of 1992 that require MVPDs to set aside portions of their channel capacity for mandatory carriage of local commercial broadcast stations, and directs the FCC to repeal network non-duplication, along with other burdensome regulations including syndicated exclusivity and sports blackout rules. The bill also repeals media ownership caps, which limit the number of broadcast stations a single company can own in a given media market, and lifts the ban on broadcasters owning a newspaper in the same market. The legislation eliminates the compulsory copyright license, under which the government dictates the royalties MVPDs pay to broadcasters for their content, and would allow these royalties to be determined by a free market.

Government rules and regulations should drive businesses into the twenty-first century, not hold them back. In retransmission consent negotiations, consumers lose viewing time and pay increased costs. It is time to repeal the antiquated regulatory schemes that govern television and provide a new structure that reflects the current competitive marketplace.

We appreciate your consideration of our request to discuss these important issues during the hearing.

Sincerely,

[redacted]

September 27, 2018

NTU Press Releas

NATIONAL TAXPAYERS UNION National Taxpayers Union ◆ Contact: Kevin Glass, 703-29

National Taxpayers Union Supports Modern Updates to Television Regulations

With the House Energy and Commerce Committee holding a hearing today on the state of the media marketplace, reforming video regulation is likely to be at the center of deliberations. One framework worthy of committee consideration is the Next Generation Television Marketplace Act, which endeavors to bring television regulation into the 21st century. For too long, the video marketplace has had to operate under outdated 90s-era rules that don't benefit American taxpayers.

Andrew Moylan, director of the National Taxpayers Union's Interstate Commerce Initiative, issued the following statement in July on the Next Generation Television Marketplace Act, which was authored by Rep. Steve Scalise (R-LA):
Like many areas of our economy, the video marketplace is weighed down by burdensome and outdated regulations. The Next Generation Television Marketplace Act aims to improve that by revising carriage and licensing rules, as well as media ownership restrictions that distort outcomes and harm consumers.

The result would be a freer market that better serves the needs of both viewers and market negotiators, helping to bring the world of video programming into the 21st century.

NTU has been at the forefront of advocating for updated, 21st-century regulation while repealing arcane rules, and Rep. Scalise's legislation would be an important step in the right direction for the marketplace and for American taxpayers.

National Taxpayers Union, "The Voice of America's Taxpayers", is a nonpartisan, nonprofit organization working for lower taxes, smaller government, and economic freedom at all levels. More information on NTU's work is available at www.ntu.org.

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NATIONAL TAXPAYERS UNION

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122 C Street NW
Suite 650
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GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH 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

October 17, 2018

Mr. Craig Moffett
Founder and Senior Research Analyst
MoffettNathanson Research
600 Madison Avenue; 17th Floor
New York, NY 10022

Dear Mr. Moffett:

Thank you for appearing before the Subcommittee on Communications and Technology on Thursday, September 27, 2018, to testify at the hearing entitled "State of the Media Marketplace."

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. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, October 31, 2018. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

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

Sincerely,

Marsha Blackburn

Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member, Subcommittee on Communications and Technology

Attachment

Craig Moffett

Reply Comments Pursuant to "State of the Video Marketplace" Hearing on September 27, 2018

The Honorable John Shimkus

We regularly debate and renew the Satellite Home Viewer Act, yet while the issues are frequently debated, the 1992 Cable Act or the 1996 Telecom Act have never been reauthorized? In your view-as someone who observes market place trends-how often do you believe the laws governing the video marketplace should be reviewed and potentially reauthorized?

I'm afraid I don't have a clear answer. But I believe the two Acts are somewhat different. Much of the 1992 Act, in my view, is obsolete and now mostly unnecessary, as the Act largely pertains to video markets that would be judged highly competitive by almost any observer (excepting in circumstances where monopolies have been established or protected by the Act itself, as is the case for broadcasters and Retransmission Consent).

By contrast, the 1996 Act still has many critically important elements that relate to less robustly competitive infrastructure markets. Here, it is the particulars of the Act that are outdated and/or cry out for regulatory certainty, hence where regulatory action would be more productive. Unfortunately, there seems little appetite for a comprehensive rewrite of the 96 Act. My suspicion is that the issues here have become so large and so intertwined – it is almost impossible to treat issues like net neutrality and peering/interconnection, for example, without also dealing with privacy, antitrust, cybersecurity, cyber health, patents and intellectual property protections, etc. – that a re-write of the 1996 Act would come to encompass something like a third of the U.S. economy... and therefore would have almost no shot at getting done. My conclusion is that smaller, more targeted, legislative actions will be more valuable.

What would be the impact of more frequent reauthorizations of laws and regulations be with regard to current to marketplace changes, technology changes and consumer demands?

What would be most valuable at this point is regulatory certainty and stability, and that's obviously difficult in a period of rapid technological change. Greater *frequency* of revisiting these issues would therefore probably be counter-productive. On the other hand, there are issues – perhaps most notably, digital privacy – that require clarity.

The Honorable Adam Kinzinger

It was noted in our hearing how the media market is changing, especially with the emergence of the new Over-the-Top options. I do not want to prop up any industry, but I think it is safe to say we all prefer to avoid marketplace participants leaving the market, which would yield even fewer choices for our constituents - especially those in rural areas like my district in Illinois.

How do we strive to keep traditional multichannel video programming distributors competitive in the market so consumers have multiple choices?

Do you believe changes in the video marketplace are affecting rural broadband deployment? Please provide examples.

I believe your two questions are quite interrelated, so let me try to offer some thoughts on both at once.

I'm not sure it is either necessary to assume that the current group of multichannel video providers have to stay in the video business in order to ensure choice for rural consumers. Choice will increasingly come from OTT providers, not linear MVPDs. As such, maintaining video choice in the future will mean ensuring that rural consumers have a broadband connection. That, to me, is the more critical issue, as your second question implies.

I think the most important change we've seen for smaller MVPDs in recent years is that video no longer generates much, if any, incremental profit for most small, rural, cable operators. As a result, their broadband businesses are increasingly their *only* businesses. That isn't necessarily a problem, but it does affect deployment economics. It means that operators have to be able to earn an acceptable return on deploying broadband absent any contribution from video. And almost by definition, that means higher prices for broadband (assuming that video contributed anything more than zero to profits in the past,). If consumers can save money on video by getting it from OTT providers instead of their local MVPD, and today they clearly can, but pay more for broadband to ensure that the infrastructure can be economically viable, then their net welfare may still be well served. There is a danger, however, in attempting to suppress broadband pricing, since doing so will ultimately suppress broadband availability, and, in doing so, will effectively also suppress video choice.

The Honorable Frank Pallone

The GOP Tax Reform Act created big windfalls for large corporations, including many of the major media and internet access companies. According to Securities and Exchange Commission filings, the largest internet service providers (ISPs) recognized tens of billions of dollars in tax benefits. Have the companies you cover used the majority of their tax savings from the Tax Reform Act to invest in infrastructure or other capital investments?

Unfortunately, the data is very difficult to interpret. Capital programs in the telecommunications industry tend to be quite long, and include large components (like, say, acquiring wireless handsets for wireless operators, or set top boxes for cable and satellite operators) that have little or nothing to do with "infrastructure" per se. In the first year post tax reform, capital spending fell. But I don't believe it is possible to attribute that in any way to tax reform. This year, it is expected to rise, in part to support 5G. Again, I don't believe there is any way to attribute that to tax reform.

In theory, lower tax rates will mean that more projects will appear sufficiently profitable, on an after-tax basis, to be worth funding, and more projects will therefore get funded. But as a result, more capacity will be produced, and returns will therefore fall back to where they were before. So, in theory, it should create a short-term bump in spending, but over the long term, it shouldn't impact how much capital gets spent.

Over the years, we've heard the major ISPs that deliver much of the media content assert that the 2015 Open Internet Order would depress network infrastructure investment. Have you observed a significant cause and effect relationship between network infrastructure investment and the adoption of those 2015 open internet protections? For example, did you observe an increase in infrastructure investment because of the repeal of the 2015 rules? Or conversely, did you observe that the adoption of the 2015 Open Internet Order caused a decrease in infrastructure investment?

The same caveats apply here as in the case of tax reform. These are long-term projects, and, especially over the short term, the portion which is truly infrastructure (and would therefore be expected to be affected by the Open Internet Order) can easily be masked by additions or subtractions to capital spending from areas that are not infrastructure at all.

No, we have not seen any discernible impact on spending as a result of either the passage of, or the repeal of, the Open Internet Rules. But per the caveats above, I wouldn't necessarily have expected to, at least over the kinds of one and two year time frames we're working with here. These kinds of changes would take a decade or more to play in out ways that were clearly discernible.

The Honorable Yvette Clarke

Previous Members mentioned the challenges of the retransmission consent negotiations and stated how the leverage is all on one side of the equation.

How does this effect the market? Does it increase consumer costs?

Yes, the current Retransmission Consent regime unquestionably leads to higher consumer prices for video. Retransmission consent costs for broadcast programming have inarguably been the single largest source of rising video costs to consumers for the past decade or more.

If so, what can be done to restore some balance to these negotiations?

The simplest solution would be to eliminate the network non-duplication rules; that is, to allow cable MSOs to negotiate with alternative suppliers (from alternative, perhaps adjacent) markets for broadcast programming from the same network (NBC, for example, or CBS).

The *only* credible argument against doing so is that it would compromise the availability of local broadcast programming, both directly (since a signal could be substituted by one that is less immediately "local") and indirectly (since retransmission consent prices would fall, potentially leading to lower spending on local news).

I would like to follow-up on my question related to the diversity of voices in the media. Does the retransmission consent regime effect the diversity of voices in the market? We have heard from some independent programmers that it has a detrimental effect.

Do you agree with that view? And if so, why?

Per my previous answer, the current retransmission consent regime theoretically supports local news, but at the expense of consumer prices. If one believes that local broadcasters are the best, or only, source of local news, then perhaps that is a worthwhile trade-off. If one believes there are other credible sources of local news, then perhaps one would see the trade-off differently.

The broadcast TV sector is clearly consolidating. I'm not focused, here, on ownership limitations. Instead, I'm interested to hear from you what effect broadcast TV consolidation is having on the retransmission consent fees that consumers ultimately have to pay. Do larger group owners typically extract higher fees?

Our work over the years on this topic has clearly shown that scale drives negotiating leverage. That being the case, yes, broadcaster consolidation unquestionably leads to higher consumer prices, through the mechanism of their ability to demand higher retransmission consent fees from distributors.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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October 17, 2018

Mr. Ian Olgeirson
Research Director
S&P Global Market Intelligence
1200 G Street, N.W.; Suite 1000
Washington, DC 20005

Dear Mr. Olgeirson:

Thank you for appearing before the Subcommittee on Communications and Technology on Thursday, September 27, 2018, to testify at the hearing entitled "State of the Media Marketplace."

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. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, October 31, 2018. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

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

Sincerely,

Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member, Subcommittee on Communications and Technology

Attachment

Responses to Questions for the Record
Committee on Energy and Commerce
Hearing entitled, "State of the Media Marketplace."
Submitted by Ian Olgeirson

<u>The Honorable Yvette Clarke</u>

1. **Previous Members mentioned the challenges of the retransmission consent negotiations and stated how the leverage is all on one side of the equation.**
   a. **How does this affect the market?**
      i. *The factors affecting retransmission consent are complex, and characterizing negotiations as a one-sided equation risks oversimplification. It is clear that broadcast retransmission consent fees, irrespective of a negotiation imbalance, have risen significantly over the past five years. Based on our estimates the market increased from $2.41 billion in 2012 to $9.37 billion in 2017. However, multiple factors have driven that increase, including a historical undervaluing of the core networks in a repackaged multichannel lineup. The TV advertising market also fragmented during that time, with digital and social media disruptors taking a larger share of the market while retransmission consent became a larger share of the broadcast business, growing from 10% in 2012 to 31% in 2017. TV networks are also paying higher live-sports license fees and affiliate station owners are paying more in reverse compensation to cover the higher overall costs of network programming, which leads to higher retransmission consent fees.*
   b. **Does it increase consumer costs?**
      i. *Yes. Rising retransmission consent fees are one component of rising consumer costs. The average revenue per subscriber for traditional cable, satellite and telco video subscriptions increased from approximately $85 in 2012 to an estimated $101 at the end of 2017. A portion of this increase was driven by higher programming costs in general and a subset is directly attributable to retransmission fees. Operators commonly institute a broadcast-TV fee or surcharge to monthly bills. These fees have been on an upward trajectory. For example, Comcast's fee, based on a sample of consumer bills in the Denver market, increased from $1.50 in December 2014 to $7.85 by the end of 2017, a 423% increase over a four-year period.*
   c. **If so, what can be done to restore some balance to these negotiations?**
      i. *A complex web of interests on both sides affects the balance in retransmission negotiations. While broadcasters have successfully established retransmission fees for network carriage, the stations face growing market hurdles, including rising sports costs and licensing requirements of their own as well as consumers shifting away from linear-network viewing. Traditional cable, satellite and telco video services are de-emphasizing less profitable video services, and virtual multichannel service providers are approaching packaging with a mix of offers that do not automatically feature broadcast networks. Because of the reductions*

in demand, some multichannel operators have also been more apt to reject TV station groups' demands in retransmission consent negotiations, with the latest example being DISH's ongoing dispute with Univision. The result is market-driven balancing with the rise in skinny bundles and cheaper online video alternatives along with more consumers receiving their broadcast TV over-the-air.

d. **The broadcast TV sector is clearly consolidating. I'm not focused, here, on ownership limitations. Instead, I'm interested to hear from you what effect broadcast TV consolidation is having on the retransmission consent fees that consumers ultimately have to pay. Do larger group owners typically extract higher fees?**

   i. *It is difficult to say that consolidation is having a direct impact on retransmission consent fees. However, based on our analysis, the broadcast TV network owned-and-operated (Disney/ABC, CBS, Comcast/NBC, Fox and Univision) and publicly-traded major affiliate TV station groups have seen retransmission consent rates for ABC, CBS, NBC and FOX stations increase from around $1.50 per subscriber per month on average in the second quarter of 2017 to over $2.00 in the second quarter of 2018.*

GREG WALDEN, OREGON
CHAIRMAN

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October 17, 2018

Mr. Jeff Corwin
Wildlife Biologist and Executive Producer
ABC's *Ocean Treaks*
c/o Litton Entertainment
884 Allbritton Boulevard; #200
Mt. Pleasant, SC 29464

Dear Mr. Corwin:

Thank you for appearing before the Subcommittee on Communications and Technology on Thursday, September 27, 2018, to testify at the hearing entitled "State of the Media Marketplace."

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. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, October 31, 2018. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

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

Sincerely,

Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member, Subcommittee on Communications and Technology

Attachment

Additional Questions for the Record for Jeff Corwin on behalf of Litton Entertainment

The Honorable Yvette Clarke

1. Previous Members mentioned the challenges of the retransmission consent negotiations and stated how the leverage is all on one side of the equation.

    a. How does this effect the market? Does it increase consumer costs?

    b. If so, what can be done to restore some balance to these negotiations?

    c. The broadcast TV sector is clearly consolidating. I'm not focused, here, on ownership limitations. Instead, I'm interested to hear from you what effect broadcast TV consolidation is having on the retransmission consent fees that consumers ultimately have to pay. Do larger group owners typically extract higher fees?

RESPONSE: *Litton Entertainment produces content directly for networks and local broadcast affiliates. We do not negotiate retransmission consent deals and therefore have no insight into the construction of those contracts.*

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