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THE REAUTHORIZATION OF STELAR

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

OCTOBER 23, 2019

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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THE REAUTHORIZATION OF STELAR

WEDNESDAY, OCTOBER 23, 2019

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:01 a.m., in room SH–216, Hart Senate Office Building, Hon. Roger Wicker, Chairman of the Committee, presiding.

Present: Senators Wicker [presiding], Thune, Blunt, Fischer, Moran, Gardner, Blackburn, Lee, Johnson, Young, Scott, Cantwell, Blumenthal, Schatz, Markey, Peters, Baldwin, Tester, Sinema, and Rosen.

OPENING STATEMENT OF HON. ROGER WICKER, U.S. SENATOR FROM MISSISSIPPI

The CHAIRMAN. Good morning. If members could take their seats and guests and our distinguished panel, we will begin in a moment or two. Thank you all and good morning. Today the Committee convenes to discuss the reauthorization of STELAR, the Satellite Television Extension and Localism Act.

I am glad to convene this hearing with my colleague, Ranking Member Cantwell. I welcome this distinguished panel and thank them for appearing. We will hear from Ms. Emily Barr, President and Chief Executive Officer of the Graham Media Group and Chair of the Television Board at the National Association of Broadcasters.

Mr. Denny Law, Chief Executive Officer and General Manager of Golden West Telecommunications; Mr. Robert Thun, Senior Vice President of Content and Programming at AT&T; Mr. J.C. Watts, my former colleague, Chairman and Co-Founder of the Black News Channel; and Mr. Jonathan Schwantes, Senior Policy Counsel for Consumer Reports. Did I pronounce your name correctly, sir?

Mr. SCHWANTES. Yes, sir, you did.

The CHAIRMAN. Thank you. I got it right. In June, this Committee held a hearing on the state of the television and video marketplace. At that time, we heard from witnesses about how consumers are living in this great age of television. Today, Americans have more choices and access to video content and programming than ever before. Through expanded Internet connectivity and technological advancements, millions of households now subscribe to video-on-demand and over-the-top services.

Americans also consume more and more hours of mobile streaming and digital programming. Yet, despite these developments and the maturation of the digital video marketplace, hundreds of thousands of Americans still cannot receive traditional over-the-air broadcast television in their homes. For the past 30 years, STELAR and previous iterations of the law have provided a means for Americans living beyond the reach of a broadcast signal to receive local programming.

Families in rural parts of the country, in addition to those traveling or living in recreational vehicles, long-haul truckers, and tailgaters, have been particularly reliant on STELAR to access broadcast television. STELAR's distant signal license has provided communities that lack a major network affiliate, such as ABC, CBS, NBC or Fox, to receive broadcast programming from another market through their satellite video provider. This ensures that consumers can, at a minimum, access national news as well as other programming that is relevant to the public interest.

At the end of this year, absent congressional action, STELAR will expire, and many Americans could immediately lose access to broadcast television stations. STELAR's other significant requirement that broadcasters and cable operators negotiate retransmission consent agreements in good faith would also expire—absent action by the Congress. Although I recognize that some believe STELAR has largely outlived its original purpose and usefulness, it is my view that it remains a critical law for preserving access to video services for those that typically find themselves on the wrong side of the digital divide.

As the Committee prepares to reauthorize STELAR and work with our colleagues in the Judiciary committee to extend the Section 119 distant signal license, I hope witnesses will discuss the appropriate length of time for the law's renewal. In doing so, witnesses may want to address the unique needs of consumers in RVs and short markets as well as long-haul truckers and tailgaters.

In addition, I ask today's witnesses to discuss how to ensure that those individuals can maintain permanent access to broadcast programming. The Congress needs to know whether consumers will immediately lose access to certain television channels if STELAR expires. Witnesses should also address whether the expiration of STELAR would increase prices for consumers to access broadcast programming, and how ending the law would impact the bottom line for broadcasters, both local affiliates and networks, as well as satellite and cable television providers.

Today is also an opportunity for witnesses to discuss the effectiveness of the good faith requirement. I hope witnesses will address whether Congress should consider modifications to this requirement to further achieve its intended purpose in establishing fairness in retransmission consent negotiations. For example, earlier this year C Spire's video service in Mississippi was granted a market modification by the Federal Communications Commission. Under this market modification, C Spire is authorized to provide local programming to the City of Diamondhead in Hancock County, Mississippi. Diamondhead is a part of the New Orleans designated market area.

Since the market modification petition was granted, however, C Spire has filed a good faith complaint against a local broadcast affiliate in Mississippi for refusing to provide its signal to Diamondhead residents unless C Spire also carries the New Orleans local affiliate station. I understand this situation involves contracts between a broadcast network and affiliates, but I question whether requiring a video provider to carry two of the same affiliate stations following the approval of a market modification from the FCC embodies the spirit of the good faith requirement.

In addition to these issues, I look forward to hearing from witnesses about other targeted reforms this Committee might consider in reauthorizing STELAR to ensure that the next iteration of the law promotes competition, innovation, and consumer choice in the video marketplace. Thank you again to our witnesses and I thank my dear friend and Ranking Member, Senator Cantwell, and recognize her for whatever she might want to say in way of an opening statement.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for holding this hearing. The laws at the heart of STELAR were first developed 30 years ago with the distant signal laws in the eighties when the marketplace was far different than it is today, and most consumers watched over-the-air broadcasting. And those who wanted an alternative to broadcasting later in the nineties were not held with the same amount of competition that they got from cable, and we made changes to the law to bring in more competition.

So, it is no wonder that when the original STELAR law was necessary in order to inject essential competition for services, the idea was to help get these competitors off the ground and facilitate driving down costs to consumers. The STELAR law allowed those companies to provide consumers with distant broadcast TV stations with the expectation that these would help in providing competition to the marketplace. Thirty years later, consumers have a multitude of video options, that is for sure, but the two satellite television providers are mature competitors in a marketplace with millions of customers.

Whether Congress ends the distant signal STELAR laws now or in the future, we must be sure that consumers are not left in the lurch. Certainly, consumers will find a way to access content that they deserve, but the obligation should be on those who most strongly advocating for the end of STELAR to prove that they do have plans for what happens afterwards. These issues are so important, Mr. Chairman. I hope that we will ask important questions today about what are the changes of the video marketplace for the future that are really going to add value to the American consumer.

We know that Americans have many more choices, but in some instances more choices than they want or want to pay for. We want to make sure that there is true competition among these platforms and not just capturing consumers and charging them higher fees. A recent report suggested that big cable is engaging in questionable billing practices that add hundreds of dollars to consumers' bills each month. Consumers are rapidly losing the diversity and localism that often drives our interest in video.

The larger media conglomerates are buying up the competition, leaving little room in the market for new entrants with unique perspectives. And it is an open question whether these massive media conglomerates have the same commitment to the public interest on television that we had enjoyed before from our local broadcasters. So, these are important issues. I see with the FCC, they are perfectly happy to continue policies that I believe undercut national policies that support local broadcasters. Stations no longer have to maintain a local studio. But for the agency's resounding defeat in the Third Circuit, the FCC was perfectly happy to facilitate nearly unfettered consolidation among broadcast stations.

These structural changes that are happening in a very disruptive environment raise. I think, important questions that I hope our committee would deal with, which is what is the future of local journalism? I have had the pleasure of sitting down with dozens of Washington State broadcasters last August to talk to them about how they are charting this path forward. These stations are trying to chart a path through these various changes in technology while continuing delivering award-winning quality journalism, but they raised some important issues with me.

Ad sales at the stations are dropping due to competition with online platforms. Viewers are migrating away from traditional cable and satellite, preferring online options that do not always carry the broadcaster stations, and the shift is starting to drive down the revenue stations gain from their distributing partners. They are facing contentious carriage negotiations with ever-larger cable companies, and negotiations often result, as the Chairman just mentioned, in blackouts that can last for months.

Stations are having to pay license fees back to their network partners that then erode their gross revenue. And now broadcast networks are investing in their own direct-to-consumer online video platforms that may draw must-have content away from the local stations. I think all of this is important, Mr. Chairman, because I want to see continuation of local broadcasters. They are about our public interest, the journalism, the public service provided by these truly local broadcasters, and their commitments to our communities are important to the health of our democracy.

So, I hope as we look at today's hearing and hear from all those participating, we will be able to chart a path forward. We do want consumers to have more choice. We are glad that there is more content, but we here have to keep our eyes on these important issues of protecting the consumers and protecting local journalism. I thank you, and I look forward to hearing from the witnesses.

The CHAIRMAN. Thank you Senator Cantwell for your excellent statement. We will now begin with five minute summaries of your testimony. Witnesses are advised that your entire testimony will be submitted in full and made a part of the record. And we ask each of you to summarize your comments in five minutes. And we will begin with Ms. Emily Barr. Ma'am, you are recognized.

STATEMENT OF EMILY BARR, PRESIDENT AND CEO, GRAHAM MEDIA GROUP; AND TELEVISION BOARD CHAIR, NATIONAL ASSOCIATION OF BROADCASTERS

Ms. BARR. Thank you very much. Good morning, Chairman Wicker, Ranking Member Cantwell, and members of the Committee. My name is Emily Barr and I am the President and CEO of Graham Media Group. As the television Board Chair of the National Association of Broadcasters, I am testifying today on behalf of the free and local broadcast television stations serving our hometowns.

Local broadcasters continue to believe that STELAR should expire at the end of this year as Congress intended. Not only have its provisions become unnecessary and ineffective, but today STELAR affirmatively harms viewers who are being denied access to their local television stations as the result of its continued reauthorization. Your constituents turn to our local broadcast stations for crucial weather information, to learn how to help neighbors in need, and to watch trusted news anchors and reporters deliver unbiased accounts of what is happening in our hometowns.

Local broadcasting is the critical electronic glue that binds every community together, keeping them informed and safe. This is our industry's North Star. Unfortunately, STELAR denies some viewers these benefits. When enacted 30 years ago, STELAR's distant signal license successfully enabled the nascent satellite companies to better compete with cable's monopoly by giving them a temporary crutch, the ability to serve viewers with out-of-market network programming at a below market rate and without having to negotiate for it. At the time, the technology did not exist for those providers to otherwise serve viewers with their local broadcast stations. Today these satellite companies that Congress subsidized are now among the largest paid TV platforms and no technological impediment exists.

Any reauthorization of STELAR will further incentivize AT&T, Direct TV to continue to neglect rural markets and is simply not justified. Practically speaking, a STELAR renewal will mean that Direct TV subscribers in 12 rural markets, including Alpena, Helena, Glendive, Grand Junction, San Angelo, Victoria, Kirksville, Scottsbluff, and North Platte will continue to see news from New York City and Los Angeles rather than life-saving tornado coverage or wildfire updates.

This is a business decision that Direct TV is making as a result of this law, a choice that puts their profits ahead of service to rural consumers and the safety of our communities. Broadcasters and viewers thank the U.S. Copyright Office and Members of Congress who have highlighted this consumer harm and called for STELAR to end. Some have suggested that STELAR's expiration would somehow harm viewers in these rural markets because of the time it would take Direct TV to offer them local service. They ignore the fact that in 2010 it took Dish only one week from passage of this law to launch all of its remaining markets. Others have suggested that renewal of STELAR's expiring good faith requirement is itself a reason for reauthorization.

While well-intended, the expiring good faith requirement has provided no quantifiable benefit, in large part because both parties have every incentive to reach a deal without a Government backstop. As a broadcaster who is frequently outmatched in size and revenue by the pay TV companies with whom I negotiate, I can state with certainty that STELAR's expiration will have no impact on my ability to complete a retransmission consent deal. Most significantly, some pay TV companies seem to be manufacturing a blackout crisis, withholding broadcast signals from viewers to justify self-serving changes to the retransmission consent laws. This has no place in the STELAR debate.

Over the past five months alone as Congress has ramped up its consideration of STELAR, Direct TV has orchestrated 10 retransmission consent impasses with broadcast groups across the country, impacting more than 179 stations. By comparison during the same period last year, Direct TV was involved in only one impasse. Congress should reject these harmful tactics and end the STELAR cycle of perpetual five-year reauthorizations.

In conclusion, I have worked in all aspects of local broadcast television over nearly four decades, including as a news editor, a general manager, and now a CEO. I understand the business and financial costs of running a newsroom, investing in state-of-the-art equipment, and producing award-winning investigative journalism that makes broadcasters unique and indispensable to the communities we serve.

Broadcasters urge you to consider these enduring benefits when you are asked by pay TV companies to either limit your constituents' access to local broadcast stations or undermine broadcasters' ability to receive fair compensation for our programming.

Thank you again for the opportunity to testify today, and I look forward to your questions.

[The prepared statement of Ms. Barr follows:]

PREPARED STATEMENT OF EMILY BARR, PRESIDENT AND CEO, GRAHAM MEDIA GROUP; AND TELEVISION BOARD CHAIR, NATIONAL ASSOCIATION OF BROADCASTERS

Introduction

Good morning Chairman Wicker, Ranking Member Cantwell and members of the committee. My name is Emily Barr and I am the President and CEO of Graham Media Group, owner of seven local television stations across the United States—KPRC–Houston (NBC), WDIV–Detroit (NBC), WSLS–Roanoke (NBC), KSAT–San Antonio (ABC), WKMG–Orlando (CBS), WJXT–Jacksonville (fully local) and WCWJ–Jacksonville (CW). I appreciate the opportunity to testify on behalf of the National Association of Broadcasters, where I serve as the Television Board chair, and its more than 1,300 full-power, free and local broadcast television stations that provide uniquely valuable service to our hometowns.

Local broadcasters continue to believe that the Satellite Television Extension and Localism Act Reauthorization (STELAR) should be allowed to expire at the end of 2019—the date that Congress intentionally chose for this temporary law to sunset. Not only have its provisions become unnecessary and ineffective, but today STELAR affirmatively harms viewers who are being denied access to their local television stations as the result of its continued reauthorization.

Broadcasters: The Authentic, Local Voice Passionately Informing and Celebrating Our Communities

In today's hyper-competitive media landscape, broadcasters are *the* authentic, local voice passionately informing and celebrating our communities. Local broadcast television remains the most-watched source of news, entertainment programming, sports, emergency information and investigative journalism in communities across America. Your constituents turn to our local stations to get the weather report, learn how to help neighbors in need and watch trusted local news anchors and reporters deliver unbiased accounts of what is happening in their hometowns. Local broadcasting is the critical electronic glue that binds every community together, keeping them informed and safe. This is our industry's North Star.

At Graham Media Group, we are deeply committed to informing and improving our communities in a multitude of ways. Just this year, two of our local stations—KPRC 2 News in Houston and WDIV Local 4 in Detroit—were each recognized with Edward R. Murrow awards for exemplary public service and outstanding journalism. KPRC received this prestigious award for its team coverage of the May 2018 school shootings in Santa Fe, Texas. The KPRC news team worked to provide complete and compassionate coverage to its community in the immediate wake of these horrific events. WDIV received the award for its excellence in the use of sound in storytelling. I am enormously proud of our local broadcasters, who always go the extra mile to inform their communities.

In Florida, WKMG–TV in Orlando has received national accolades for its journalism, which has recently led to significant changes in state law. These include multi-year reporting efforts to update Florida law making texting and driving a primary offense and allowing workers' compensation for first-responders diagnosed with post-traumatic stress disorder (PTSD). We were particularly honored that then-Governor Rick Scott, now a member of this committee, recognized WKMG–TV's reporting on the Pulse Nightclub shooting and the resulting first-responders' struggles with PTSD when he signed the Workers' Compensation Benefits for First Responders Act into law. WKMG–TV's News 6 anchor Matt Austin who led the charge for additional safety—and is himself a victim of a serious texting and driving automobile accident—summarized broadcasters' unique role in their local communities: "You see a problem, and together with your neighbors, you work to solve it. When you can ultimately change laws that can save lives, well, that is what good journalism is all about. That is what being of service to your community is all about."

While local television broadcasters make significant investments and sacrifices to cover emergency situations of all kinds, it is our continuous coverage in the aftermath of these crises that connects us to the community. For example, beyond WJXT's recent wall-to-wall coverage of Hurricane Dorian which kept our viewers safe and out of harm's way, the station separately produced an hour-long documentary providing a raw, real and graphic look at the destruction in our neighboring Bahamas caused by this record storm. The WJXT team spent four days on the ground and in the air covering the disaster from the hardest-hit areas. The eye-opening film, "96 Hours of Anguish," aired on WJXT and features Bahamians who are struggling to survive as well as Florida-based volunteer operations delivering life-sustaining supplies into the hard-to-access islands. It is this focused investment on the unique issues of importance to our local communities that distinguishes broadcasting from other mediums.

I have worked in all aspects of local broadcast television for nearly four decades. I have held the position of news editor, creative services director, operations manager, general manager and am now a CEO. As a result, I am proud of the unique services broadcasters provide their local communities, but I also understand the business and financial costs of running a newsroom, investing in state-of-the-art equipment, producing award-winning investigative journalism and enabling our stations to go above-and-beyond when our neighbors need it most. To fulfill our unique and indispensable role in the communities we serve, broadcast television must have the ability to reach our local viewers on every platform and earn fair compensation for our programming. Broadcasters urge you to consider these enduring benefits when you are asked by pay-TV companies to support proposals that would either limit your constituents' access to their *local* broadcast signals or undermine broadcasters' ability to receive fair compensation for our programming during retransmission consent negotiations.

STELAR's Distant Signal License Harms Viewers by Denying Them Local Stations

When enacted 30 years ago, STELAR's distant signal license allowed nascent satellite television companies to better compete with big cable monopolies when the technology did not otherwise exist for those providers to carry local broadcast stations. On a temporary basis, Congress allowed the satellite companies to serve their subscribers with a broadcast station operating outside of the local community at a discounted rate in order to ensure that those households could receive their favorite network programming.

That law was wildly successful, yet the market and media landscape have fundamentally changed over the past three decades. Today, there is no technological impediment to delivering local station signals to all markets, and those satellite companies are now media behemoths who do not need a subsidy: AT&T–DIRECTV is a $280 billion company, and DISH is a $17 billion company. DISH is providing this local service in all 210 local markets today and has been for nearly a decade, yet AT&T–DIRECTV continues to offer only out-of-town signals to viewers in 12 markets simply because it is more profitable for the company.

As pointed out by the U.S. Copyright Office in calling for STELAR's distant signal expiration, the number of households being denied their local network channels is shrinking. Although only AT&T–DIRECTV and DISH have access to a detailed breakdown of the precise numbers—which they have refused to give to members of this committee, among others—NAB estimates that only 500,000 households were still served under STELAR's distant signal license in 2017. For those households, the impact is still significant, as they were denied access to their local ABC, CBS, FOX or NBC broadcast stations and instead received an imported signal from another market, primarily from New York City or Los Angeles.

The reason for this continued misuse of STELAR's distant signal license by these billion-dollar satellite companies is simple. Royalties under this outdated license are discounted substantially below the carriage fees for these stations negotiated in the market by other pay-TV providers. This below-market subsidy incentivizes the satellite companies to deny viewers local news, weather and lifesaving emergency information, while still charging their subscribers hefty fees each month for an out-of-market station.

Viewers will benefit from eliminating this outdated law, ensuring they receive the local content most relevant to them. In rare instances where a local broadcast channel is not available, private business arrangements between satellite TV providers and broadcasters can resolve these issues. Broadcasters applaud those members of Congress, many on this committee, who have stood up and raised concerns over their constituents' limited access to local broadcasting which this law incentivizes.

Pay-TV Companies Use the Recurring STELAR Reauthorization Process to Turn Viewers into Pawns

In an earlier reauthorization of STELAR, Congress added a requirement that broadcasters and pay-TV providers negotiate in good faith for carriage of local TV stations. While well intended, the expiring good faith requirements have provided no quantifiable benefit to broadcasters, pay-TV providers or American consumers. This is in large part because both parties have every incentive to reach a deal and serve consumers on their own accord. The countless agreements successfully completed outside this broadcast-only framework reveal that this well-intentioned provision simply does not justify STELAR's reauthorization.

Most significantly, however, this cycle of repeated reauthorizations now affirmatively causes great harm to consumers. During a time when broadcasters' trusted information is increasingly critical to local communities, some pay-TV companies seem to be manufacturing a "blackout" crisis, withholding broadcast signals from viewers simply to justify their proposed changes to the retransmission consent laws that aim to tilt the negotiating scales in their favor at the expense of local viewers. Over the past five months alone as Congress has debated STELAR, AT&T–DIRECTV has been involved in 10 retransmission consent impasses with broadcast groups across the country impacting more than 179 stations. (By comparison, during this same period last year, AT&T–DIRECTV was involved in only one impasse and it affected only a single station.) These anti-consumer negotiating tactics are encouraged every five years by STELAR's renewal.

The fact is, the good faith provisions have only been enforced once in their 20-year history—against a pay-TV provider that was found to have violated them. Broadcasters have every incentive to efficiently negotiate in good faith to allow the retransmission of their content to as many viewers as possible, while reinvesting those revenues in local news, journalism and entertainment programming. The harm posed to viewers by STELAR's cyclical five-year reauthorization simply does not justify the claimed consumer benefit.

Conclusion

Congress should allow STELAR to expire as it originally intended. There is no policy justification or technological reason to renew this outdated law, and any temporary reauthorization harms viewers.

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

The CHAIRMAN. Four, three, two, one. Very good.

[Laughter.]

The CHAIRMAN. You did much better than I did. That is right, these broadcasters know how to get in within the time.

[Laughter.]

The CHAIRMAN. Mr. Law on behalf of Golden West Telecommunications. You are recognized.

STATEMENT OF DENNY LAW, CHIEF EXECUTIVE OFFICER AND GENERAL MANAGER, GOLDEN WEST TELECOMMUNICATIONS

Mr. LAW. Thank you, Chairman Wicker, Ranking Member Cantwell, and members of the Committee. Thank you for this opportunity to testify regarding STELAR Act reauthorization. I am Denny Law. I am the CEO of Golden West Telecommunications Cooperative Inc. based in Wall, South Dakota. Golden West has operated in rural South Dakota for nearly a century. We began in the video distribution industry nearly 40 years ago and today we serve almost 10,000 video customers.

Our furthest systems are over 360 miles apart and our largest community has only 3,500 residents. Sixty-five percent of Golden West video subscribers cannot receive at least one of the four major broadcast networks via our offered signal and one-third of our customers cannot receive any of the four major networks off-air.

The significant advancement of broadband has driven changes in viewer consumption, no longer a simple choice between cable company and satellite TV for distribution. With streaming video and virtual distributors, consumers have more choices than ever before, and these are all good things to be sure but current law is holding back even greater innovation and consumer choice in the video marketplace.

This warrants more attention as Congress considers STELAR reauthorization. Specifically, the retransmission consent system in the 1992 Cable Act requires certain distributors to pay their broadcasters increasing sums for carrying local TV signals. This is a relic of a bygone era when distribution choices were limited, and many consumers could receive over-the-air signals. The one clear effect of the 1992 law today is that it makes consumers who want to access programming in a certain way through a local distributor like Golden West pay more to do so. If we want to let the marketplace work when it comes to video options, this regime is a clear barrier.

The staggering escalation in retransmission consent fees in recent years highlights how drastically the marketplace has changed to the detriment of consumers that have to pay that price. These fees are projected to grow to over $16 billion in 2024. And while the retransmission amounts collected by broadcasters nationally are staggering, the impact on local consumers is concerning. Since 2009, the local broadcast TV rates paid by Golden West customers have increased by more than 2,000 percent or by more than 30 percent compound annual growth rates. To provide perspective, that same growth rate would results in a 2009 cup of coffee costing $45.

In just the past five years since STELAR was renewed, the local broadcast TV rates for Golden West customers have increased by more than 350 percent. Meanwhile newer entrances into the video distribution marketplace are not bound by this legacy 1992 Act obligations. This outdated law therefore places an affirmative thumb on the scale by attaching ever escalating costs to only certain kinds of distributors like Golden West. The 1992 Act is not promoting an effective marketplace.

To the contrary, it is hindering the workings of such a marketplace. My filed testimony describes how this is a far cry from the rosy picture painted by broadcasters in the early 1990s. In addition, rather than these revenues being used to promote local broadcast content, they are being funneled instead to distant corporate ownership or national network partners. So, what should be done to make this marketplace work? In the absence of comprehensive reform, I would suggest five steps.

One, prohibit price discrimination within each designated market area. Each local broadcast affiliate is the only source of network programming in each DMA. That content is the same throughout the DMA for each distributor, and there is no rational basis for price discrimination.

Two, prohibit mandatory bundling or tying of non-network channels.

Despite retransmission consent being focused on local signals, broadcasters require distributors like Golden West to carry affiliated multicast or other channels. This increases the prices consumers must pay for content they do not want. Three, eliminate requirements that compel distributors to carry broadcast signals on their basic tiers and then mandates customers to purchase basic tiers. These provisions deny consumers' choice and hinder distributors from tailoring packages that consumers want. It is worth noting that newer distributors are not bound by such provisions.

Four, prohibit charging for broadcast channels that cannot be received over the air. Rural viewers should not have to pay for a broadcaster's failure to provide a signal throughout its licensed area, and distributors should not have to pay for the right to carry a broadcast signal that would not otherwise reach viewers. And five, strengthen the good faith requirement in the current law, Congress should expand on the types of conduct and negotiation practices that constitute per se bad faith practices rather than forcing small video distributors to pursue burdensome, case-by-case adjudication.

In closing, Congress should move promptly to reauthorize STELAR but in doing so it should tackle the retransmission consent regime that stands out as anti-competitive and an anti-consumer anachronism. Thank you for this opportunity to testify today, and I look forward to your questions.

[The prepared statement of Mr. Law follows:]

PREPARED STATEMENT OF DENNY LAW, CHIEF EXECUTIVE OFFICER, GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE, INC.

Chairman Wicker, Ranking Member Cantwell, and members of the Committee, thank you for the opportunity to testify regarding reauthorization of the STELA Reauthorization (STELAR) Act of 2014. I am Denny Law, Chief Executive Officer of Golden West Telecommunications Cooperative, Inc., in Wall, South Dakota.

Background on Golden West

For more than a century, Golden West Telecommunications and its subsidiaries have provided communications services to rural South Dakota, starting initially with stringing telephone lines along fence posts. Today, we have over 30,000 accounts, including more than 25,000 broadband subscribers and nearly 10,000 cable television customers.

Golden West began in the video distribution industry nearly 40 years ago. We built our first cable television systems in 1981 starting with a few small western South Dakota communities. Golden West has since built or purchased dozens of cable television operations, and we now operate 40 video distribution systems in rural South Dakota communities. Our video subscribers are spread across two Designated Market Areas (DMAs). The two furthest systems are over 360 miles apart—and our *largest* community has only 3,500 residents.

Golden West's initial objective in providing video service was to ensure that customers in rural and remote communities had access to news and entertainment options similar to customers in urban areas, even though in many cases our customers were located too far from the urban centers to receive over-the-air broadcast signals. Our systems helped the television broadcasters connect with viewers where their signals did not reach, and this continues to be the case. Today, 65 percent of Golden West's cable television subscribers are unable to receive at least one of the four major broadcast networks via an over-the-air signal, and one-third of our video customers are unable to receive *any* of the four major broadcast networks due to the broadcasters' failure to provide signals throughout their licensed areas.

Astounding Changes in the Video Marketplace—Except for the Decades-Old Retransmission Consent Regime

To provide context for what should come next as Congress considers reauthorizing the STELAR Act, it is important to understand where we are, how we got here, and how current law fails to reflect the current lay of the land in the video marketplace.

To say that it has been a "wild ride" in the video business over the past 40 years seems like an understatement. We have witnessed countless technology changes and upgrades. In 1981, our initial lineup had 14 channels, but today we offer over two hundred channels—nearly all of them in high definition (HD) format. Competition in the video distribution business began in the mid-1990s with the introduction of satellite-delivered consumer video service from DirecTV and soon after Dish Network.

From my perspective, however, the changes in the video distribution business from 1981 through 2010 pale in comparison to the changes we have seen over the last nine years and what we will likely witness in the next few years.

Certainly, the significant adoption of broadband connections by consumers and the availability of mobile data services have provided new options and driven changes in viewer consumption habits and consumer video preferences. As a result, the distribution of video services has changed dramatically as well. The days of consumers choosing solely between either cable or satellite Multichannel Video Programming Distributors (MVPD) for viewing of video content are over. The advent of broadband deployment now allows consumers to purchase similar video services from virtual Multichannel Video Programming Distributors (vMVPD) or Subscription Video on Demand (SVOD) service such as YouTube TV, Hulu, fuboTV, Sony PlayStation Vue, Philo, Sling TV and AT&T TV Now.

In addition to the vMVPD services that include live video content, consumers can also choose from a significant number of streaming services that provide large libraries of video content including Netflix and Amazon Prime Video, CBS All Access and HBO Now. According to public announcements, there will soon be more entrants including Disney+, Apple TV and Peacock.[1] Indeed, the availability and awareness of online pay-TV services is growing, and it is estimated that 70 percent of U.S. Broadband households subscribe to at least one SVOD service.[2] More than half of all U.S. households subscribe to two or more SVOD services.[3]

In short, consumers now have more video distribution choices than ever before, much of which is tailored to their viewing preferences through the development of "skinny bundles" or subsets of programming genres. These are all good things, to be sure—but there is one area where current law is holding back even greater innovation and consumer choice in the video marketplace because it is premised upon a decades-ago snapshot of what this marketplace once was.

Specifically, the current "retransmission consent" system regarding local broadcast stations is hindering the ability of MVPDs to compete in this otherwise dynamic marketplace and thereby harming consumers who would benefit from even greater choice but for this law from a bygone era. The notion of retransmission consent arises out of the Cable Television Consumer Protection and Competition Act of 1992 (the 1992 Act). Retransmission consent was adopted in response to the "*must carry*" rules that required cable operators to carry all significantly viewed local stations. Stations could either keep their must carry status, as many smaller independent stations did at first, or negotiate with cable operators. When this law was enacted and retransmission consent was first created, there were few options

[1] "New Streaming Video Services are Ready to Launch", Consumer Reports, September 19, 2019. (available at: *https://www.consumerreports.org/streaming-media-devices/new-streaming-video-services-to-check-out/#targetText=The%20new%20options%20will%20join,you%20cut%20the%20cable%20cord.*)

[2] "Market Snapshot: The Changing World of Pay TV," Parks Associates, August 2019. (available at: *http://newsroom.parksassociates.com/whitepapers/snapshot-paytv*)

[3] Leichtman Research Group, August 27, 2019. (available at: *https://www.leichtmanresearch.com/wp-content/uploads/2019/08/LRG-Press-Release-08-27-19.pdf*)

for video distribution and thus, there was relatively equal bargaining power between broadcasters and cable operators. Moreover, local broadcast channels were generally available over the air for free so that consumers could affordably access local news, weather, and sports. In that context, the law aimed to promote agreements on mutually beneficial terms between parties negotiating from relatively equal positions of strength.

As described earlier, however, the video marketplace of 1992 no longer exists. Retransmission consent negotiations transpire in a very different environment today. Changes in broadcast distribution shrunk the contours in which broadcast channels could be received over the air for free. And today, the pay-television distribution industry is competitive, including cable operators, satellite distributors, telephone companies and the long list of vMVPD and SVOD providers I listed earlier—with more undoubtedly to come.

Broadcasters will claim that the current marketplace is exactly what the 1992 Act envisioned, so the law is serving its purpose and should not be disturbed as Congress looks now at video marketplace issues in the context of STELAR Act reauthorization. But this is a false correlation. The dynamic changes in the video marketplace noted above have nothing to do with retransmission consent—they are driven by technology, not by a compensation structure dictated by a 1992 law. To the contrary, the one clear effect of the 1992 law today is to undermine consumer choice by making consumers who want to or must access local programming *in a certain way*—through an MVPD—pay increasingly more for that specific option. If you want to "let the marketplace work" when it comes to video options, a key step is to revisit a decades-old law that has no tether to what the marketplace actually is today.

In fact, the imbalance that has arisen in the video marketplace between broadcasters and MVPDs since 1992 could not be clearer. Even as MVPDs compete with all of various distribution options discussed earlier, broadcasters still retain government-granted local monopolies as well as other carriage benefits that impact negotiations, allowing broadcasters to pit competing distributors against each other and to use "retransmission consent" to foist increasing costs on certain distributors under the cover of a nearly 30-year-old law. When consumers are asked for the main reason they are cutting the proverbial cord from traditional MVPDs, rising rates are cited as the primary reason.[4] For Golden West video customers, the cost of retransmission consent is the primary and overwhelming driver of any such rate increases. Ultimately, consumers are the ones paying the price—both in terms of spiraling fee increases and disrupted local programming.

Before returning in more detail to those increases in consumer fees and related issues, it is important to discuss first the state of broadcast television today and why the broadcasters hold the market power they do.

As an initial matter, consolidation in the broadcast industry has been significant. Just last month, the Federal Communications Commission (FCC) approved the merger of Nexstar and Tribune, a combination that apparently "owns, operates, programs or provides sales and other services to 197 television stations (including partner stations) in 115 markets *or approximately 63 percent of all U.S. television households.*"[5] Other groups, like Sinclair and Gray, similarly have significant national presences. In addition, even beyond corporate consolidation, control of stations is increasingly concentrated. The American Television Alliance, for example, has highlighted that there are more than 100 identified instances of groups using multicast and low-power "loopholes" to control multiple network stations in the same local market.[6]

On the other hand, local MVPDs have not seen the same kind of consolidation and concentration. Moreover, as discussed above, we do not hold a monopoly in our markets any longer, as vMVPDs and SVODs provide consumers with multiple means of accessing much of the same content that we provide over our cable systems. In the end, this means that, in my case and many others, you have a local small business that serves very rural communities negotiating with nationwide groups that hold a monopoly on certain content *and* may even control multiple stations within the same market. In short, this is not the cable TV market of 1992.

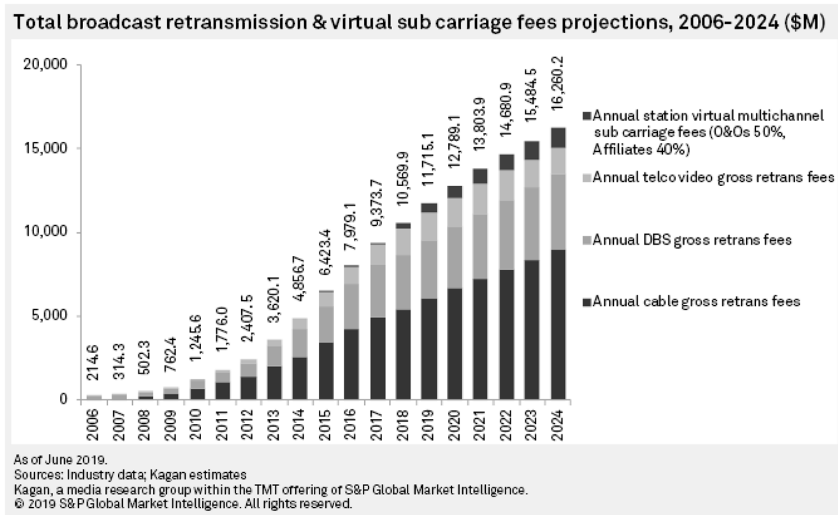
[4] "Cord Cutting Continues, Fueled by High Cable Pricing, Consumer Reports' Survey Finds," September 17, 2019. (available at: *https://www.consumerreports.org/telecom-services/cord-cutting-continues-high-cable-pricing/*)

[5] *See https://www.nexstar.tv/stations/* (emphasis added). It is unclear if this reflects the final count following the transaction and anticipated divestitures.

[6] *See https://www.americantelevisionalliance.org/wp-content/uploads/2019/04/2019-04-29-ATVA-Quadrennial-Comments-FINAL.pdf*

A Closer Look at Where We Are Now—The Implications of a 1992 Law in a 2019 "Marketplace"

The staggering escalation in retransmission consent fees in recent years highlights how drastically this "marketplace" has changed in recent years—to the detriment of consumers that ultimately pay the price. These fees are estimated to be nearly $12 billion in 2019 and are projected to grow to over $16 billion in 2024.[7]



And, to underscore the level of consolidation and concentration driving this dynamic, of the estimated $10.5 billion of retransmission consent revenues in 2018, only ten television station owner groups accounted for nearly 70 percent of that amount.[8]

While the retransmission amounts collected by broadcasters at a national level are staggering, the local impact on individual consumers is even more concerning. The broadcasters in the two DMAs in which Golden West operates first began requesting retransmission consent payments in 2009, and our monthly local broadcast TV rates just ten years ago were well below a dollar per subscriber per month in both the Rapid City and Sioux Falls DMAs.

Fast forward to present day, and Golden West customers now pay nearly $16 per month per subscriber in the Rapid City DMA and almost $17 in the Sioux Falls DMA for local broadcast TV. In both cases, this represents an increase of more than 2,000 percent in ten years, or more than 30 percent compound annual growth rates. To put these increases in perspective, the same growth rate would result in a 2009 cup of coffee now costing $44.40, a 2009 gallon of milk would cost $62.20, and a 2009 gallon of gas would be $47.00. Even if using a slightly shorter period, from just 2014 when Congress last renewed STELAR, the combined local broadcast TV rates for Golden West customers have increased by more than 450 percent in the Rapid City DMA and over 350 percent in the Sioux Falls DMA.

I do not believe these high fees or the growth in them to be an anomaly. My understanding is that other rural operators' local broadcast TV rates as reflected in customers' bills are in a similar range, if not higher—as one example, a 2018 industry survey reported that small *and* medium-sized cable operators were paying $11 on average per subscriber per month in 2017 for retransmission consent, with those rates projected to increase to $19 on average by next year.[9] Meanwhile published reports indicate that the local broadcast TV rates for two of the largest MVPDs in

[7] "Retrans Projections Update: Sub Rates Continue to Rise," S&P Global Market Intelligence, July 25, 2019. (available at: *https://www.spglobal.com/marketintelligence/en/news-insights/research/retrans-projections-update-sub-rates-continue-to-rise*)

[8] "Nexstar Is The Star of TV Station Groups," TVNewsCheck, May 29, 2019. (available at: *https://tvnewscheck.com/article/235386/nexstar-is-the-star-of-tv-station-groups/*)

[9] *See https://acaconnects.org/corporate-broadcasters-force-exorbitant-rate-increases-on-cable-customers/*

the country are considerably lower—but still relatively expensive—at $11.99 and $9.99 per month, respectively.[10]

Such figures are a far cry indeed from the rosy picture that the broadcasters painted when retransmission consent was first being considered. Back then, the president of the National Association of Broadcasters (NAB) claimed, "There is no reason to believe that cable consumers would see any increase in their monthly cable bills because of retransmission consent."[11] There may be no better depiction of how far we are from the marketplace surrounding the 1992 law than to consider this perspective in light of what we see today.

And, these developments are all the more galling when one considers that, for many rural consumers, *the broadcasters' signal would not reach the consumers without the help of MVPDs like Golden West.* As noted earlier, roughly two-thirds of Golden West's cable television subscribers cannot receive at least one of the four major broadcast networks via an over-the-air signal, and one-third of our video customers are unable to receive *any* of the four major broadcast networks. In other words, in addition to all of the network investments we need to make to carry those signals, Golden West and its customers are paying more and more simply for the "privilege" of delivering the broadcasters' content to consumers it would otherwise not reach—giving broadcasters more viewers in turn to sell to advertisers.

In response to such concerns, broadcasters tend to justify the current state of the marketplace and the fees they charge for retransmission consent by citing their role as the "most-watched" source of programming.[12] But this is a red herring, as the phrase "most-watched" does not mean what it once did. Viewership of broadcast television in primetime has fallen dramatically.[13] In fact, in comments filed with the U.S. Department of Justice to advocate for loosening current restrictions on the number of television stations broadcasters can own in a single market, the broadcasters' own words demonstrate that "most-watched" is not what it once was:

> "Broadcast television's share of prime time viewing (counting cable, broadcast and DBS) among the audience most coveted by advertisers fell from 46 percent in 2003 to just 31 percent in 2018. These figures overstate TV stations' share of all video viewing, because they do not take account of streaming or subscription video on demand (SVOD); if SVOD and streaming were included in total viewing, then broadcast's share would be smaller still."[14]

"The ratings of the most popular broadcast TV programs declined by over 67 percent from the 1985–1986 TV season to the 2017–2018 season."[15]

"The average 24-hour commercial rating + 3-day DVR viewing or 'C3' rating of broadcast TV programs for audiences aged 18–49 has declined 24 percent in the past two years. Only three general-entertainment programs on broadcast networks are averaging a C3 rating of 2.0 or better, and one of them aired its final episode in May 2019. Four years ago, 32 entertainment programs were averaging a C3 rating of 2.0 or better."[16]

"That is, among the average 30.5 million people ages 18–49 using TV during any given minute of prime time in 2018, an estimated 9.56 million were viewing broadcast stations—and these 9.56 million people represent just 7.4 percent of the estimated total 128.9 million people ages 18–49 in U.S. TV households. Similarly, the average 31.79 million people ages two and older who viewed broadcast TV during any given minute of prime time in 2018 represent only 10.4 percent of the estimated total 304.5 million people ages two and older in U.S. TV households."[17]

The decline in broadcast television viewership is not limited only to primetime shows; viewership for local broadcast network affiliate news has declined as well across all time periods from 10 to 20 percent in just the last three years.[18]

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[10] "Cable Firms Shrug Off Video Losses by Playing the Broadband Card," Investor's Business Daily, August 22, 2019. (available at: *https://www.investors.com/news/technology/comcast-stock-shrugs-off-video-losses-as-cable-firms-play-broadband-card/*)

[11] *See https://prodnet.www.neca.org/publicationsdocs/wwpdf/53111mediacom.pdf* at p. 43.

[12] Testimony of Gordon H. Smith, June 5, 2019. (available at: *https://www.commerce.senate.gov/services/files/21F22C87-FF31-4CB1-AE67-BAC7A2FA337E*)

[13] "Ratings Bombshell: In Two Years, Network TV Demos plummeted 27 percent," Ad Age, January 28, 2019. (available at: *https://adage.com/article/media/c3/316390*)

[14] Letter from Rick Kaplan, General Counsel and Executive Vice President, NAB, June 17, 2019, at p. 3. (available at: *https://www.nab.org/documents/filings/CommentsOnPublicWorkshopOnCompetitionInTelevisionandDigitalAdvertising(6-17-19).pdf*)

[15] Id., at p. 4

[16] Id., at p. 4

[17] Id., at p. 64.

[18] Local TV News Fact Sheet, Pew Research Center, June 25, 2019. (available at: *https://www.journalism.org/fact-sheet/local-tv-news/*)

Even the marquee events traditionally broadcast on local stations have seen viewing decreases. The Super Bowl has seen declining viewership in each of the last five years,[19] along with similar decreases in viewing the Academy Awards[20] and the Emmy Awards[21] as examples. All of these data points together therefore undercut the assertion that retransmission consent increases are justified based upon demands for the programming.

If the increases in retransmission consent cannot be justified based upon viewing numbers, another defense of retransmission consent has been and still is that these fees promote localism—that these fees sustain local stations and promote local content. Again, back in 1991, NAB asserted this framework was all about localism: "Retransmission is a right granted to local stations in their local areas. Networks are not involved in any negotiations."[22]

Of course, NAB's early 1990s claims that networks would not be involved with retransmission consent has proven false—again, the marketplace has moved. Instead, through what is known as "reverse comp," local broadcasters now split the retransmission consent fees they collect from distributors and video subscribers with their network partners. Reports indicated that the networks received over $3.8 billion in reverse comp in 2018 from their local broadcast affiliates,[23] and Wall Street analysts estimate that local affiliates split between 50 percent and 75 percent of their retransmission consent revenues with their network partners.[24]

And the networks are not done extracting fees from local affiliates, which will in turn increase the rates video consumers pay. In 2018, CBS received an estimated $1.7 billion in retransmission consent payments and reverse comp,[25] and in a recent earnings call with investors, CBS forecasted that amount to rise to $2.5 billion in 2020[26]—a nearly 50 percent increase in just two years.

This is not an isolated instance involving one network. In an investor presentation in June, FOX network's Chief Financial Officer stated plans to increase the national network's draw of retransmission consent fees by 60 percent in the next three years:

> "We've made it clear that sort of on a run rate rolling 12-month basis we're at about $1.650 billion in retrans revenue going into September just gone. We expect that to grow by another $1 billion by calendar year 2022."[27]

In a recent call with Wall Street analysts, the CEO of the Nation's largest broadcast group confirmed that networks are demanding more from local affiliates and that in turn, local affiliates are going to increase the costs to MVPDs and their consumers.

> "I mean long-term listen the networks negotiating and asking for more from us and we in turn are asking for more from the MVPDs and the revenue line is greater than the expense line. So if they move in tandem we actually increase our margins."[28]

In fact, broadcasters have taken to using retransmission consent revenues in ways that would be difficult to imagine for the authors of the 1992 Act. In one of the largest broadcast television acquisitions, Nexstar's recent acquisition of Tribune Media Company, Nexstar highlighted three "Year 1 Synergies" that benefited shareholders in this transaction. In addition to reductions in corporate overhead and other expenses as part of the transaction, the single largest "synergy" identified by Nexstar was an $85 million increase in the retransmission consent rates of the acquired

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[19] *See https://www.tvb.org/Portals/0/media/file/tracts/Super_Bowl.pdf*

[20] *See https://www.tvb.org/Portals/0/media/file/tracts/Academy_Awards.pdf*

[21] *See https://www.tvb.org/Portals/0/media/file/tracts/Emmy_Awards.pdf*

[22] *See https://prodnet.www.neca.org/publicationsdocs/wwpdf/53111mediacom.pdf* at p. 44.

[23] "Retrans Projections Update: Sub Rates Continue to Rise," S&P Global Market Intelligence, July 25, 2019. (available at; *https://www.spglobal.com/marketintelligence/en/news-insights/research/retrans-projections-update-sub-rates-continue-to-rise*)

[24] "Panel, Retrans Pie Will Grow," Multichannel News, September 27, 2018 (available at: *https://www.multichannel.com/news/panel-retrans-pie-will-grow*)

[25] "ViacomCBS Remarriage Fails to Impress Investors," Multichannel News, August 19, 2019. (available at: *https://www.multichannel.com/news/viacomcbs-remarriage-fails-to-impress-investors*)

[26] Statement of Chris Spade, CBS Chief Financial Officer, August 8, 2019. (available at: *https://seekingalpha.com/article/4283652-cbs-corporation-cbs-ceo-joe-ianniello-q2-2019-results-earnings-call-transcript?part=single)*

[27] Statement of Steve Tomsic, Credit Suisse 21st Annual Communications Conference, June 4, 2019, at p, 2. (available at: *https://investor.foxcorporation.com/static-files/a9861572-4693-44d0-a1d5-9bd9728cf806*)

[28] Statement of Perry Sook, CEO, Nexstar Media Group, August 7, 2019. (available at: *https://seekingalpha.com/article/4282813-nexstar-media-group-inc-nxst-ceo-perry-sook-q2–2019-results-earnings-call-transcript?part=single*)

Tribune Media Company viewers. In other words, MVPDs' and consumers' bills increased $85 million in year one and every year thereafter simply because Nexstar was apparently able to increase Tribune Media retransmission consent rates to the higher Nexstar rates.[29]

The practice of increasing retransmission consent rates as part of an acquisition is hardly new. In Gray Television's 2018 acquisition of Raycom, Gray identified four "synergies" as part of the Raycom transaction. The first item on the "synergy" list was a $15 million increase in net retransmission consent revenue comprised of a contracted step-up of Raycom subscribers to Gray's higher retransmission consent rates.[30]

It is clear that retransmission consent has gone far afield of its initial intent and purpose. In extolling the benefits of retransmission consent to their shareholders, broadcasters are quick to point out the positive impact that "profitable, predictable subscription revenues" have to their bottom line, and that broadcasters' retransmission consent revenues are "immune from secular or economic trends."[31] So confident are the broadcasters in their ability to control retransmission consent revenues, the Nation's second largest local broadcast group, Tegna, literally likens retransmission consent to an annuity:

"As we've discussed before, these sticky and high-margin subs produced annuity-like cash flows, which allows us strong forecasting ability."[32]

The broadcasters who assert localism as a defense of and justification for retransmission consent cannot hide that these revenues are flowing away from local markets—and that retransmission consent fees will increase to keep feeding the revenues upward.

Despite adding billions of dollars a year to their own (and the networks') coffers via retransmission consent, there is no evidence that broadcasters have invested these gains in enhancing or adding to their local news operations. From 2010 to 2018, total employment in local broadcast television newrooms was static, from 28,640 in 2010 to 28,670 in 2018—a change of less than 1/10th of 1 percent over eight years[33] despite collecting over $48 billion in retransmission consent fees during the same period.[34] Moreover, even while collecting ever more retransmission consent fees, the number of local television stations originating local television news since 2013 has actually declined.[35] So even if localism may have been the intended purpose in 1992, the reality in 2019 is that those funds are not going back into local news operations.

Finally, demonstrating how anachronistic retransmission consent fees are in 2019, one must consider the inequitable and technologically discriminatory way in which they apply. Although "traditional" MVPDs must pay these amounts—even where the broadcast signal would actually not reach the consumer *without* the MVPD—new entrants into the video distribution business that offer live television content such as YouTube TV, Hulu, Sling TV and AT&T TV Now are not bound by the same legacy 1992 Act obligations. Thus, the 1992 Act is actually "putting a thumb on the scale" and interfering in what is an otherwise dynamic marketplace, punishing only some distributors with inflated costs due to a decades-old law that has no tether to where things stand today.

What Can Be Done Now in the Context of STELAR Reauthorization?

To address all of these concerns, I would advocate first and foremost for a fundamental overhaul of the retransmission consent regime contemplated by the 1992 Act. The Modern Television Act of 2019 (H.R. 3994) introduced by Representatives Eshoo and Scalise could provide a helpful starting point for such discussions. This

[29] Completed Acquisition of Tribune Media Company, Nexstar Investor Presentation, September 20, 2019, at p 9. (available at: *https://www.nexstar.tv/wp-content/uploads/2019/09/Nexstar-Tribune-Investor-Closing-Deck-FINAL-9-20-19.pdf*)

[30] Gray to Combine with Raycom to Become the Third Largest TV Broadcast Group, Gray Television, Inc. Investor Presentation, June 25, 2018, at p. 7. (available at: *https://gray.tv/uploads/documents/presentations/GrayTelevisionInvestorPresentationJune.pdf*)

[31] TEGNA Investor Presentation, September 2019, at p. 8. (available at: *http://investors.tegna.com/static-files/2a4d41af-d245-4758-bea0-df54a27513cd*)

[32] Q4 2018 TEGNA Inc Earnings Call, March 1, 2019, Statement of Victoria Dux Harker, Executive VP and CFO, at p 5. (available at: *http://investors.tegna.com/static-files/f3183827-4740-4eba-a521-7d1178b27458*)

[33] Local TV News Fact Sheet, Pew Research Center, June 25, 2019. (available at: *https://www.journalism.org/fact-sheet/local-tv-news/*)

[34] "Retrans Projections Update: Sub Rates Continue to Rise," S&P Global Market Intelligence, July 25, 2019. (available at: *https://www.spglobal.com/marketintelligence/en/news-insights/research/retrans-projections-update-sub-rates-continue-to-rise*)

[35] 2018 Local News Research, Radio Television Digital News Association. (available at: *https://www.rtdna.org/uploads/files/2018%20Local%20News%20Research.pdf*)

being said, to the extent that STELAR reauthorization might not offer a platform itself for such comprehensive change, there are narrower, targeted changes that should be considered and made as part of STELAR renewal for the benefit of consumers. Specifically:

1.) Prohibit price discrimination within each DMA. Broadcasters are provided with government-sanctioned monopolies in 210 Designated Market Areas. While there now are multiple MVPDs and vMVPDs serving all or most DMAs, the local broadcast affiliate is the only source of network programming for each DMA. Broadcasters should not be able to discriminate in price among video distributors. This is particularly important for video distributors that are smaller or serve rural communities. Indeed, a report released late last year by the FCC indicates that small system operators, such as Golden West, pay 30 percent more in retransmission consent fees than larger systems.[36] There is no basis whatsoever for such pricing discrimination within a DMA since the broadcaster's content is the same throughout the DMA and as provided to each distributor.

2.) Prohibit broadcaster-imposed mandatory bundling or tying of additional non-network channels. The origins of retransmission consent were limited to the carriage of the major network (*i.e.,* ABC, CBS, FOX, NBC) channels. Yet, in connection with retransmission consent for the major network channels, broadcasters now require MVPDs to carry (and thus force subscribers to pay for) a whole litany of multicast or separate channels entirely unrelated to the major network. These additional channels are not requested by MVPD subscribers and needlessly force consumer rates higher. Examples of these channels include MeTV, Grit, Escape, Laff, Bounce, ThisTV, Charge!, Stadium, Comet, GetTV, Justice Network, MyTV, AntennaTV, Cozi, Movies!, Heros & Icons, BuzzR, Quest, TBDTV, StartTV, Decades, Retro and Circle. This list of typical "bundled" or "tied" channels is not all inclusive and it seems to grow nearly daily. Broadcasters should also be prohibited from including negotiations or contractual ties for Regional Sports Networks or any other non-broadcast content as part of the retransmission consent process.

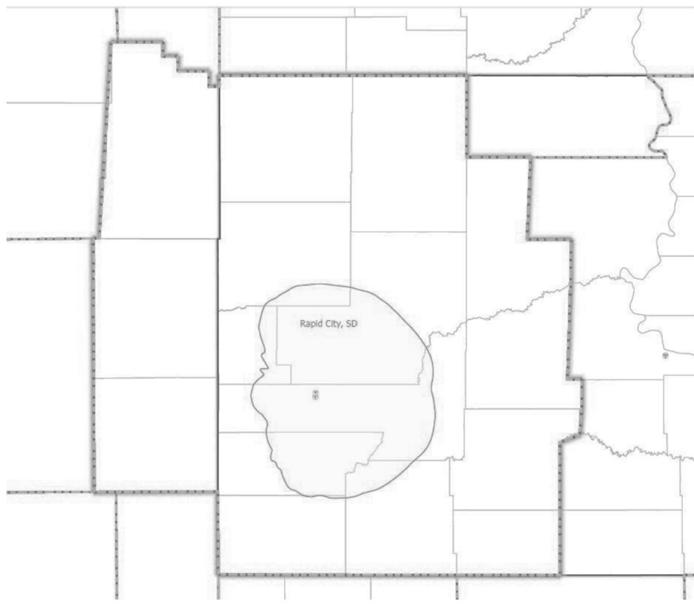
3.) Eliminate the 1992 Act requirements that compel: (a) cable operators/MVPDs to carry broadcast signals on their lowest service levels/basic tiers; and (b) cable customers to purchase these lowest service levels/basic tiers before they can purchase any other level of service.[37] These requirements unnecessarily compel all subscribers to purchase broadcast channels, regardless of what any given consumer actually wants. New entrants in the video marketplace, such as vMVPDs, are not bound by such an anti-consumer, anti-choice provision.

4.) Prohibit charging for broadcast channels that are unable to be received over the air. Many rural areas, and likely some urban areas as well, are unable to receive over-the-air broadcasts of one or more broadcast channels. Rural viewers should not have to pay for a broadcaster's failure to provide a signal throughout its licensed area, and MVPDs should not have to pay for the "right" to carry a broadcast signal that would not otherwise reach viewers.

Below is a graphic showing the coverage area of one of the "Big Four" broadcasters in the Rapid City DMA. The coverage by the broadcaster below represents only 14 percent of the geographic area within the DMA. Yet every video consumer outside of that small coverage is forced to pay for receipt of the broadcaster's signal over a MVPD system, despite having no option to receive that signal otherwise for "free" over the air.

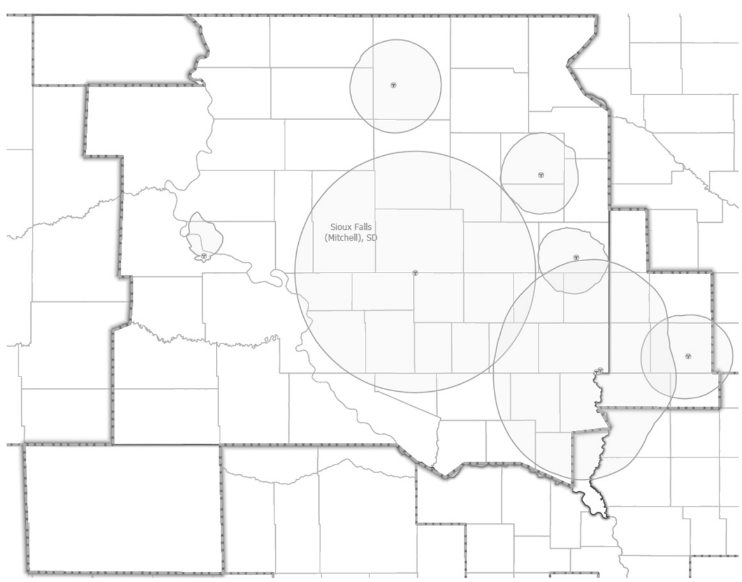
[36] FCC Communications Marketplace Report, December 26, 2018, Appendix B, at p. 20 (available at: *https://www.fcc.gov/document/fcc-adopts-first-consolidated-communications-marketplace-report-0*)

[37] 47 U.S.C. § 543(b)(7)



[38]

A similar situation arises in the Sioux Falls DMA, with the graphic below showing the coverage area of a different "Big Four" broadcaster. Even with the addition of several low power signals, this broadcaster only covers an estimated 38 percent of the DMA's geographic area.



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[38] *See https://www.fcc.gov/media/television/tv-query,* Nexstar Broadcasting, Inc. KCLO-TV

[39] *See https://www.fcc.gov/media/television/tv-query* Independent Communications, Inc., KTTW/KTTM

5.) Make the "Good Faith" requirement in current law more meaningful. Section 325 of the Communications Act grants broad authority to the FCC to implement a framework for promoting "good faith" dealing in retransmission consent negotiations. The FCC has implemented the "good faith" provision by adopting a two-part framework that includes a list of negotiating tactics that are considered *per se* violations of the obligation, as well as a "totality of the circumstances" standard that can be used to prove the absence of a sincere desire to reach a mutually acceptable agreement.[40]

Nothing in the STELAR Act limited this authority, and the only STELAR-related congressional committee report that addressed Section 325 called for the agency to address "whether certain substantive terms offered by a party may increase the likelihood of the negotiations breaking down" and to provide "additional specific guidance as to actions that, taken as a whole, evidence bad faith based on the totality of the circumstances."[41] Moreover, when passing STELAR, Congress was well aware of the FCC's efforts to implement Section 325, and legislatively affirmed a revised *per se* standard.[42] In considering reauthorization of STELAR now, I would encourage Congress to expand on the types of conduct and negotiation practices that constitute *per se* bad faith practices—such as several of those outlined above—rather than forcing smaller MVPDs in particular to pursue case-by-case adjudication that consumes substantial resources and leaves most MVPDs with no practical remedy to ensure continued carriage of content.

Conclusion

Congress should move promptly to reauthorize STELAR, but in doing so, should tackle the retransmission consent regime that stands out uniquely as an anti-competitive, anti-consumer anachronism in an otherwise dynamic marketplace. To the extent that STELAR may not provide an opportunity for comprehensive reform, I have identified several targeted changes that would help at least to improve conditions for consumers in rural areas served by smaller distributors. Golden West is committed to delivering the best possible services for its consumers in some of the most rural terrain to be found in the United States, and we look forward to working with members of this committee and others in Congress to ensure that this vision can be realized through laws that reflect and allow today's marketplace to operate effectively.

The CHAIRMAN. Thank you very much, Mr. Law. And now we turn to Mr. Robert Thun of AT&T.

STATEMENT OF ROBERT THUN, SENIOR VICE PRESIDENT—CONTENT AND PROGRAMMING, AT&T

Mr. THUN. Thank you, Chairman Wicker, Ranking Member Cantwell, and members of the Committee. My name is Robert Thun, Senior Vice President of Content and Programming for AT&T. In my current role, I am responsible for securing content rights for both the major networks and the local broadcast station groups for AT&T's television platforms. I am testifying to urge renewal of STELAR because without STELAR's distant signal license, 870,000 subscribers, your constituents, will lose access to the network television program they have relied on for years. These include hundreds of thousands of your constituents, mainly in rural areas, that cannot obtain free over-the-air signals from a local network broadcaster.

That point is worth repeating. We are able to offer distant signals to hundreds of thousands of your constituents only because the broadcasters have failed to provide these constituents with a

[40] *See, e.g., Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiations and Exclusivity,* First Report and Order, 15 FCC Rcd 5457, ¶44 (2000); *Amendment of the Commission's Rules Related to Retransmission Consent,* Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 10–71, ¶¶9 and 31 (2014).

[41] *See* S. Rep. No 113–322 at 13 (2014).

[42] *See* STELAR Act §103(a).

local signal over the air. Put simply, local broadcasters want Congress to pull distant signal from viewers that they have chosen not to serve. Of course, nothing prevents the local broadcasters from using their ever-increasing revenues they get from the broken retransmission consent regime to invest in their local communities and provide these consumers free over the air signals.

Instead of so doing, the local broadcasters have asked Congress to let STELAR expire and impose a permanent blackout on these consumers, denying them network TV, both over the air or through a distant signal. Congress avoided this consumer double whammy when it adopted the satellite and cable distant signal license decades ago and its logic in so doing remains just as sound today. STELAR also allows us to provide distant signals to recreational vehicles and commercial trucks, allowing long-haul truckers, RV and camping enthusiast, and tailgating sports fans access to network TV.

These are a unique set of subscribers with no other alternative to obtain network programming that Congress chose to protect. There is no reason for Congress to abandon them now. Recognizing the consumers will lose access to network programming without STELAR, consumer industry groups are lining up in favor of STELAR's renewal. These groups include the Free Press, Public Knowledge, Common Cause, Cal Innovates, CWA, IBEW, Consumer Action, Consumer Federation of America, Consumer Reports, Open Technology at New America, The Grange, The Hispanic Technology and Telecommunications Partnership, and a number of RV associations, including the RV Industry Association, National Association of RV Parks and Campgrounds, Escapees RV Club, RV Dealers Association, and The Family Motor Coach Association.

Congress should take this opportunity to make the satellite distant signal license permanent as it has done for cable, our largest competitor. AT&T also strongly supports the provisions in STELAR that require broadcasters and MVPDs to negotiate in good faith. This requirement serves as an important backstop that places guideposts around our negotiations. While we still have issues with stations refusing to negotiate or respond to offers, the good faith provision helps move our negotiations along. Without the good faith rules, there would certainly be even greater price increases and blackouts.

While the good faith rules continue to be necessary to help bring broadcasters to the negotiation table, the retransmission consent regime is in dire need of reform. We urge Congress to use STELAR's renewal as an opportunity to help fix this broken regime. Retransmission consent was first put in place last century when cable was the only pay TV offering in most areas. Under these rules if a local broadcaster withholds its programming, MVPDs cannot offer the subscribers with alternative network programming even on a temporary basis.

Now with consumers having a multitude of content options, these statutory protections are no longer necessary. And looking more deeply at this problem is important to look at the numbers. Since 2006, retrans fees have gone up from $250 million to $11.7 billion in 2019, an increase of over 5,300 percent. This is quantifiable evidence that local broadcasters shielded by their special statutory protections have a disproportionate bargaining position. To give more perspective, if the price of gas rose at the same rate during this period, a gallon of gas would cost $162 today.

And despite the staggering increases, broadcasters still respond to otherwise reasonable offers with blackouts. In just the first 10 months of 2019 they have set a record for the most TV blackouts in a single calendar year, taking down signals from cable and satellite customers 276 times. That is why AT&T has long supported legislative efforts to end the retransmission consent regime.

We applaud the efforts of Representatives Eshoo and Scalise to reform the system and end local broadcaster blackouts through the bipartisan Modern Television Act of 2019. AT&T thanks the Committee for holding this important hearing. We look forward to engaging with members on both sides of the aisle to renew STELAR and reform the badly broken retrans regime to benefit customers.

[The prepared statement of Mr. Thun follows:]

PREPARED STATEMENT OF ROBERT THUN, SENIOR VICE PRESIDENT—CONTENT AND PROGRAMMING, AT&T

Thank you, Chairman Wicker, Ranking Member Cantwell, and Members of the Committee.

I am Rob Thun, Senior Vice President of Content and Programming for AT&T. In my current role, I am responsible for securing content rights from the major networks and local broadcast station groups for AT&T. AT&T has invested $130 billion [1] in the United States over the last five years, more than any other public company. We employ 200,000 Americans, representing all 50 states. Without doubt, we are deeply invested in our country, our communities, our employees and our customers.

The Need to Renew the Satellite Television Extension and Localism Reauthorization Act (STELAR)

I am testifying in this hearing to protect our customers, your constituents, and join a growing list of consumer and industry groups supporting renewal of STELAR. These groups include Free Press, Public Knowledge, Common Cause, CWA, Consumer Action, Consumer Federation of America, Consumer Reports, Open Technology Institute at New America, the Hispanic Technology and Telecommunications Partnership, and a number of RV associations, among others.

These groups support STELAR because they know that it protects consumers. In particular, without STELAR's distant-signal-license, 870,000 satellite subscribers, your constituents, would lose access to the network television programming they have relied on for years.

In all cases, failure to renew STELAR would remove channels from people who legally receive them today—many of whom have done so for years—and who would not understand why those channels were taken away. While the number of customers receiving service through the distant signal license has declined over time, that does not mean that those 870,000 subscribers that continue to receive high-quality satellite network programming because of the license should now be left behind. For the same reasons it has for decades, Congress should continue to protect those subscribers' access to network programming.

These include hundreds of thousands of your constituents, mainly in rural areas, that cannot obtain a free over-the-air signal from a local network broadcaster. That point bears repeating: we are able to offer distant signals to hundreds of thousands of your constituents because the broadcasters have failed to provide these constituents with their local signal over-the-air.

Nothing prevents local broadcasters from investing in their local communities, extending the reach of their signals, and providing these customers free, over-the-air-signals. Indeed, the government provided local broadcasters access to free spectrum with the hope that they would do just that. Instead of doing so, local broadcasters

[1] Includes capital investment and acquisitions of spectrum and wireless operations.

choose to blame Congress, and take the easier (and certainly cheaper) path of opposing renewal of STELAR, thereby putting satellite subscribers at risk.

Local broadcasters cannot have it both ways. They cannot, on the one hand, fail to provide consumers access to free, over-the-air local network programming, while at the same time asking Congress to deny these same consumers access to network programming via the distant-signal-license. Congress rightly avoided this consumer "double whammy" when it adopted the satellite and cable distant signal license decades ago and its logic in doing so remains just as sound today.

STELAR also allows us to provide distant signals to mobile/recreational vehicles or commercial trucks, allowing long-haul trucks, RV and camping enthusiasts, and tailgating sports fans access to satellite network TV. These are a unique set of subscribers that Congress chose to protect, and there is no reason for Congress to abandon them now. A host of RV trade associations have come out in favor of renewing STELAR, including the RV Industry Association, National Association of RV Parks and Campgrounds, Escapees RV Club, RV Dealers Association, and the Family Motor Coach Association.

Renewal of STELAR is also important to keep satellite providers on equal competitive footing with their cable competitors. Cable providers, our competitors, have a permanent distant-signal-license. It makes no sense for Congress to provide cable operators a such a statutory competitive advantage over satellite providers. Congress should take this opportunity to make the satellite distant-signal-license permanent, as it is for cable.

AT&T also strongly supports the provisions in STELAR that require broadcasters and MVPDs to negotiate with one another in "good faith." This requirement serves as an important backstop that places guideposts around negotiations. We still have issues with stations refusing to negotiate or respond to an offer, and the good faith provision helps move those negotiations along. Without the protections the "good faith" rules offer, there would likely be even greater increases in prices and blackouts. As with the satellite distant-signal-license, Congress should make this provision permanent in STELAR.

The Need For Retransmission Consent Reform

While the good faith rules continue to be necessary to help bring broadcasters to the table, the retransmission consent regime is in dire need of reform. In every prior reauthorization, Congress has also enacted substantive reform apart from the expiring provisions. It should do the same here to fix the broken retransmission consent regime.

That regime was first put in place last century, to help small local broadcasters obtain carriage on cable platforms that were then the only pay-TV offering in most areas. Now, with consumers having a multitude of options to watch their content, those statutory protections are no longer necessary and only serve to harm consumers and competition. Since 2006, retrans fees have gone from about $215 million to $11.7 billion in 2019, an increase of 5,359 percent.[2] Local broadcasters, shielded by their special statutory protections, have a disproportionate bargaining position and reflexively respond to reasonable offers with blackouts. Indeed, these antiquated laws have unfairly penalized the nearly 90 million customers[3] that have chosen to keep their traditional pay-TV service.

That is why AT&T has long supported legislative efforts to end the retransmission consent regime, and we applaud the efforts of Representatives Anna Eshoo and Steve Scalise to reform the system and end local broadcaster blackouts and consumer harm through the bipartisan Modern Television Act of 2019.[4]

We are all aware of the enormous changes in the video marketplace since the last STELAR renewal, in 2014. Consumers are choosing to leave traditional pay TV services to obtain their programming through the growing number of direct-to-consumer options, including both subscription services (Netflix, Hulu, Amazon) and free services, like YouTube. There are now more than 180 million over-the-top subscrip-

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[2] "Broadcasters Try to Kill STELAR and Victimize 870,000 Viewers with Deceptive Political Ads," American Television Alliance, October 2019, *https://www.americantelevisionalliance.org/broadcasters-try-to-kill-stelar-and-victimize-870000-viewers-with-deceptive-political-ads/*

[3] "Major Pay-TV Providers Lost About 1,530,000 Subscribers in 2Q 2019," Leichtman Research Group, Inc., August 2019, *https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-1530000-subscribers-in-2q-2019/*

[4] Modern Television Act of 2019, H.R. 3994, 116th Congress (2019).

tions,[5] with Netflix having more subscribers[6] than DIRECTV and Comcast combined.[7] Major pay-TV providers lost more than 1.5 million subscribers in 2Q 2019—more than in any previous quarter.[8]

AT&T has embraced these trends, providing consumers the innovative and mobile video alternatives they desire. In 2016, we launched our live-streaming service AT&T TV NOW, providing consumers customized packages—allowing them to watch TV wherever they want on different devices. And, of course, AT&T continues to provide high-quality premium video service to over 20 million customers.

No doubt, consumers have unparalleled choice and competition for video content. Yet the laws that govern the video marketplace were first written in 1934, and the present legal framework dates back to 1992. Under these current laws, broadcasters can choose either: (1) retransmission consent, where cable (and later all MVPDs) must pay to carry broadcast programming (which broadcasters otherwise make free over-the-air), or (2) must-carry, where cable (and later all MVPDs) are required to devote capacity to carry the station. If a local broadcaster withholds its programming, MVPDs generally cannot offer their subscribers alternative, out-of-market network affiliate programming, even temporarily. These laws were written to protect local broadcasters at time when there was only one distributor, so cable and broadcasters were mutually dependent on each other, and customers had few options besides cable. Now, these laws stubbornly protect local broadcasters from the inexorable changes occurring in the video marketplace, and thus distort and stymie innovation and consumer choice.

As competition first came from satellite, and now from over-the-top providers, local broadcasters have relied on their special statutory protection to more effectively use the threat of blackouts to dramatically increase retransmission fees for stations also available for free, over-the-air. As a result, these broadcasters have dramatically raised retransmission fees, as detailed above. And, when MVPDs balk at local broadcasters' rate hikes, they have responded with blackouts. Local broadcasters shattered the record for the most TV blackouts in a single calendar year already in 2019, intentionally taking down signals from cable and satellite customers 276 times.[9] Because of existing law, consumers are harmed by these unwarranted and unnecessary blackouts.

We understand the desire to preserve local programming.[10] However, local content will always have value and no longer needs to be given special protections in the law. Scores of cable networks, including those operated by our WarnerMedia group, respond to competitive and economic forces by delivering—to consumers and distributors—high quality products and programming. An approach in which the overall effect would be "market-based" should be the model for modern local broadcasting, too. Continuing favoritism for some content over others is outdated and ultimately harmful to consumers. It is time for the law to catch up to the marketplace.

AT&T/DIRECTV Service in all 210 DMAs

I would like to take this opportunity to clear up some confusion over DIRECTV's service in all 210 DMAs. Today, DIRECTV serves 198 markets through our satellites and in 12 markets we offer local broadcast signals through an antenna. We then integrate that signal with our other offerings so that it looks exactly the same to the customer; the channel appears in the programming guide like all other channels, can be recorded with a DVR, and can be managed with our parental controls. And in the 12 markets where we harness the broadcaster's free, over-the-air signal, we offer consumers a $3 discount off of all DIRECTV packages. In addition to a lower price, consumers in those markets have never endured a local broadcaster blackout because local broadcasters cannot withhold their over the air signal. So in those markets—and this is the key point—if the local broadcast signal reaches you,

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[5] "Hulu and Amazon Prime Video Are Gaining on Netflix in the Streaming Wars," AdWeek, August 2019, *https://www.adweek.com/tv-video/hulu-and-amazon-prime-video-are-gaining-on-netflix-in-the-streaming-wars/*

[6] Netflix 3Q 2019 Earnings, *https://s22.q4cdn.com/959853165/files/doc_financials/quarterly_reports/2019/q3/FINAL-Q3-19-Shareholder-Letter.pdf*

[7] "Major Pay-TV Providers Lost About 1,530,000 Subscribers in 2Q 2019," Leichtman Research Group, Inc., August 2019, *https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-1530000-subscribers-in-2q-2019/*

[8] "Major Pay-TV Providers Lost About 1,530,000 Subscribers in 2Q 2019," Leichtman Research Group, Inc., August 2019, *https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-1530000-subscribers-in-2q-2019/*

[9] "Broadcasters Try to Kill STELAR and Victimize 870,000 Viewers with Deceptive Political Ads," American Television Alliance, October 2019, *https://www.americantelevisionalliance.org/broadcasters-try-to-kill-stelar-and-victimize-870000-viewers-with-deceptive-political-ads/*

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

you can get it on DIRECTV already. And if you cannot, it is due to the broadcaster's failure to provide that signal.

Moreover, the local broadcasters in these 12 DMAs have successfully evaded the FCC's "top four prohibition," which prohibits a single entity from controlling more than one "top four rated station" in a given DMA. In fact, in these DMAs, local broadcasters own two or three affiliates in eleven of them. A single broadcaster owns at least two network affiliates in six of these markets and three in the other five. They have accomplished this by using loopholes, such as carrying one of the network affiliates on a multicast stream or on low-power television stations, or both, to control multiple network feeds in a single DMA. These tactics only serve to exacerbate the problems with the retransmission consent regime. Giving broadcasters a pass on local ownership limits would all but guarantee more blackouts and higher prices for consumers in those DMAs. Given the competitive state of the market, and the plethora of consumer choices for video content, it is simply not a viable option for us to ask consumers in these markets to absorb these mounting prices and increased blackouts.

Finally, I want to stress that providing local satellite service in these 12 markets would not protect the 870,000 subscribers who are at risk of losing their network signals if STELAR were allowed to expire. We can provide distant signals to those consumers that cannot receive a local station's over-the-air signal. Where broadcasters in these 12 markets are providing their signal with the free spectrum they have received from the government, we are offering our customers a distant signal. Simply put, contrary to the deliberate confusion that broadcasters are trying to create, satellite local service is not a replacement for a distant signal. And, in fact, it actually puts these consumers at more risk of losing their signal through a broadcaster blackout. Put simply, broadcasters want Congress to pull distant-network signals from viewers that its member companies have chosen not to serve.

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AT&T thanks the Committee for holding this important hearing we look forward to engaging with Members on both sides of the aisle to renew STELAR and reform the badly broken retransmission consent regime to benefit consumers and competition.

The CHAIRMAN. Thank you very much. Representative Watts, you are recognized. Thanks for joining us.

STATEMENT OF J.C. WATTS, CHAIRMAN AND CO-FOUNDER, BLACK NEWS CHANNEL

Mr. WATTS. Thank you, Chairman Wicker, and Ranking Member Cantwell, and members of the Committee. I am J.C. Watts, former Member of Congress from Oklahoma. However, I am here today as the Chairman and Co-Founder of an exciting new business venture, the Black News Channel, or BNC. When BNC launches, it will become the Nation's very first 24/7 news network dedicated to covering the unique perspective of African American communities. It is a new voice that will represent African Americans in mainstream media, and help shed light on the unique social, economic, and political challenges facing urban communities.

In doing so, it will help close the image gap that exists today between the negative African American stereotypes found throughout mainstream news and media and our enterprising black communities. There are undoubtedly many reasons why it has taken so long for the first news channel dedicated to the African American community to emerge in this country. It is particularly difficult for BNC to obtain carriage from the two major satellite operators.

It is our understanding that satellite has relatively low penetration in urban cores due to line-of-sight issues and the difficulty of residents in those areas to place satellite dishes on multi-tenant dwellings. BNC's target audience, however, is more concentrated in urban cores than any other ethnic groups.

A higher percentage of African Americans live within urban areas than do other ethnic groups. Satellite providers have told us that due to these issues it is more difficult for them to justify traditional commercial carriage of a niche network like BNC. Over the past several years, we have tried various approaches that would make it easier for satellite providers to take a chance on a new network like BNC and part of that solution requires your help.

BNC supports the reauthorization of STELAR because we believe it is a critical component of preserving satellite as a viable competitive alternative to cable for traditional multi-channel video programming services, as well as new streaming services. We also believe Congress should use the opportunity of reauthorizing STELAR to make at least one modest change to the Communications Act, just as Congress has done in the past in deciding to reauthorize this important piece of legislation.

In the 1992 Cable Act, Congress enacted Section 335 of the Communications Act, which requires DBS providers to set aside a certain percentage of their channel capacity exclusively for non-commercial programming of an educational or informational nature. As implemented, however, Section 335, as well as other provisions of the Act, have failed to provide sufficient opportunities for independent programming of an educational or informational nature. And legislation to date has failed to create a true diversity of views and media voices as Congress intended.

Congress can address the lack of diverse programming by modestly revising Section 335 to allow DBS providers to use their set-aside channels not only for non-commercial programming but also for independently owned programming of an educational or informational nature. Specifically, Congress should expand the DBS set aside to include any network that is unaffiliated with any MVPD, broadcast network, or movie studio, provided such network produces and televises at least 8 hours of original educational or informational programming, including news programming, per day.

This modest expansion of the set aside that we propose would open the door for other types of educational and informational programming to compete for use of this space. This would lower the high entry barriers for entrepreneurial new networks like BNC, who seek to give an on-air voice and platform to an underserved community. It will, in short, fulfill the goals that Congress originally had in mind when it first adopted Section 335, and that are even more pressing today.

On behalf of BNC, I urge this Committee to adopt our suggested language in any proposed legislation for the reauthorization of STELAR. And I urge Congress to reauthorize STELAR, incorporate, and approve our proposed language, and fulfill its mission of achieving a more diverse media landscape. Chairman Wicker, Ranking Member Cantwell, thank you for this opportunity.

[The prepared statement of Mr. Watts follows:]

PREPARED STATEMENT OF J.C. WATTS, CHAIRMAN AND CO-FOUNDER, BLACK NEWS CHANNEL

Thank you Chairman Wicker, Ranking Member Cantwell, and Members of the Committee.

I am J.C. Watts, former member of Congress from Oklahoma. I am here today as the Chairman and Co-Founder of an exciting new business venture—the Black News Channel, or BNC. When BNC launches, it will become the Nation's very first 24/7 news network dedicated to covering the unique perspective of African American communities. It is a new voice that will represent African Americans in mainstream media, and help shed light on the unique social, economic, and political challenges facing urban communities. In doing so, it will help close the image gap that exists today between the negative African American stereotypes found throughout mainstream news and media, and our enterprising black communities.

There are undoubtedly many reasons why it has taken so long for the first news channel dedicated to the African American community to emerge in this country. It is very difficult for any new network to get off the ground. Traditionally, for a network to become commercially viable, it needs to convince cable TV companies and satellite operators to carry it. Despite the rapid growth of streaming, a majority of American households still obtain news and information from cable TV and satellite. That is particularly true with respect to older generations, which tend to be the largest consumers of news and informational programming.

It has been particularly difficult for BNC to obtain carriage from the two major satellite operators. It is our understanding that satellite has relatively low penetration in urban cores due to line-of-sight issues and the difficulty of residents in those areas to place satellite dishes on multi-tenant dwellings. BNC's target audience, however, is more concentrated in urban cores than other ethnic groups. Approximately a quarter of African Americans still live within urban cores, compared to only about 10 percent of whites, 20 percent of Asians, and 17 percent of Hispanics. Satellite providers have told us that due to these issues, it is more difficult for them to justify traditional commercial carriage of a niche network like BNC.

Over the past several years, we have tried various approaches that would make it easier for satellite providers to take a chance on a new network like BNC. And part of that solution requires your help.

BNC supports the reauthorization of STELAR because we believe it is a critical component of preserving satellite as a viable competitive alternative to cable for traditional multi-channel video programming services, as well as to new streaming services.

We also believe Congress should use the opportunity of reauthorizing STELAR to make at least one modest change to the Communications Act, just as Congress has done in the past in deciding to reauthorize this important piece of legislation.

In the 1992 Cable Act, Congress enacted Section 335 of the Communications Act (47 USC § 335), which requires DBS providers to set aside a certain percentage of their channel capacity "exclusively for non-commercial programming of an educational or informational nature." At the time, Congress found a "substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media." 1992 Cable Act § 2(a)(6). Congress has also expressed the goal of reducing "market entry barriers for entrepreneurs and other small businesses" in order to fulfill a "national policy" of "favoring diversity of media voices." 47 U.S.C. § 257.

As implemented, however, Section 335—as well as other provisions of the Act—have failed to provide sufficient opportunities for independent programming of an educational or informational nature. And legislation to date has failed to create a true diversity of views and media voices as Congress intended.

Congress can address the lack of diverse programming by modestly revising Section 335 to allow DBS providers to use their set-aside channels not only for non-commercial programming, but also for independently owned programming of an educational or informational nature. Specifically, Congress should expand the DBS set aside to include any network that is unaffiliated with any MVPD, broadcast network, or movie studio, provided such network produces and televises at least eight (8) hours of original educational or informational programming (including news programming) per day.

The modest expansion of the set aside that we propose would open the door for other types of educational and informational programming to compete for use of this space. This would lower the high entry barriers for entrepreneurial new networks like BNC, who seek to give an on-air voice and platform to an underserved community. It will, in short, fulfill the goals that Congress originally had in mind when it first adopted Section 335, and that are even more pressing today.

On behalf of BNC, I urge this Committee to adopt our suggested language in any proposed legislation for the reauthorization of STELAR. And I urge Congress to reauthorize STELAR, incorporate and approve our proposed language, and fulfill its mission of achieving a more diverse media landscape. Thank you.

APPENDIX: BNC'S PROPOSED MODIFICATION TO 47 U.S.C. § 335

To promote diverse programming, Congress should modestly revise Section 335 to allow DBS providers to use their set-aside channels not only for non-commercial programming, but also for independently owned programming of an educational or informational nature. Congress should add the following underlined language to 47 U.S.C. § 335(b)(1)(A):

> Except as provided in subparagraph (B), the Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature*, or for any network that is unaffiliated with any MVPD, broadcast network, or movie studio, provided such network produces and televises at least eight (8) hours of original educational or informational programming (including news programming) per day.*

The CHAIRMAN. Thank you, Mr. Watts. And Mr. Schwantes, you are recognized.

STATEMENT OF JONATHAN SCHWANTES, SENIOR POLICY COUNSEL, CONSUMER REPORTS

Mr. SHWANTES. Thank you, Chairman Wicker, Ranking Member Cantwell, and the members of the Senate Commerce Committee for inviting me to testify today on the reauthorization of STELAR. My name is Jonathan Schwantes and I am a Senior Policy Counsel at Consumer Reports. Before I begin my substantive remarks, I would like to say that it is good to be back in the Senate where I began my career as a young attorney on the Judiciary committee more than two decades ago.

Ironically enough, one of the first major pieces of legislation I worked on was the Satellite Home Viewer Improvements Act of 1999, an earlier version of STELAR. Little did I know that I would still be working on these very issues 20 years later. Consumer Reports endorses the reauthorization of STELAR and the extension of the consumer-friendly provisions of the law that are set to expire at the end of the year. STELAR in all of its earlier forms was and is a pro-consumer and pro competition law. Renewing its expiring provisions every 5 years has also provided Congress a chance to consider targeted reforms of the video marketplace. This year is no different.

A golden opportunity exists for lawmakers to enact straightforward policy changes that would directly and immediately help consumers. A new STELAR bill offers Congress a legislative vehicle to address an increasingly expensive problem experienced by consumers. And that is the spread of hidden company-imposed fees in pay TV bills. First, I would like to quickly address the current debate surrounding STELAR's reauthorization. Where consumers cannot receive their local broadcasters? channels over the air with an antenna, think of rural areas, they are considered unserved under the law.

A satellite operator is permitted to provide those relatively few unserved consumers broadcast programming from a market other than their local one, it is a distant signal, so long as the local channels are not being provided in that market by the satellite company. The Section 119 distant signal license is what makes this service possible, and the estimated number of consumers who receive distant signals today is 870,000. Should Congress receive some calls to let STELAR expire and along with it the Section 119 license, the only guaranteed outcome is that almost a million consumers would wake up on New Year's Day without the broadcast programming they received the day before. Consumers would likely blame Congress and not the broadcasters or the satellite companies for taking away their broadcast channels.

Another key STELAR provision scheduled to expire concerns the good faith requirements upon broadcasters and pay TV operators that apply to retransmission consent negotiations. The good faith rules can be improved. I have offered suggestions in my written testimony. And they should also be made permanent so long as the retransmission consent regime remains in place. This process created by the 1992 Cable Act, and subsequently applied to satellite companies, governs one method for how programming is obtained from broadcasters. Over time, this system has resulted in skyrocketing retransmission consent fees paid to broadcasters, the amount of which has been well documented by the pay TV industry.

However, what is lost amidst the finger-pointing between the broadcasters and the cable and the satellite companies is that consumers end up bearing the overwhelming cost of the current system because rising retransmission consent fees have directly led to the birth of company-imposed fees like the broadcast TV fee and others. Consumer Reports recently studied this issue in depth and our results were published earlier this month in a report that is available online. We discovered that in the past decade, cable companies have begun to impose new fees for services that were previously included in their advertised base rates.

Our analysis of hundreds of pay TV bills submitted to us by consumers shows that company-imposed fees, which to be clear these are separate and apart from charges related to Government-imposed fees and taxes, now add almost 25 percent of the base price to the typical monthly cable bill. On average, the cable industry generates close to $450 per year, per customer from company-imposed fees. And if we multiply that number by the total number of U.S. cable subscribers, cable companies might be making an estimated $28 billion a year from charging company-imposed fees that are often buried in the fine print. That is a staggering amount.

The good news is that Congress, beginning with the Commerce Committee, can begin to solve this problem. A bill introduced by Senator Markey earlier this year, The True Fees Act, would among other things simply require company-imposed fees to be included in the advertised price. A version of this common-sense fix was applied to the airline industry in 2011 in the form of the full fare advertising rule.

And applying it to the telecom industry would inject real transparency to cable billing practices in the same fashion. Consumer Reports recommends and supports the attachment of the True Fees Act to whatever STELAR reauthorization bill is drafted by this

Committee. Doing so would immediately bring relief to fee-exhausted consumers in the video marketplace and would also continue and reinvigorate STELAR's tradition as a pro-consumer measure. Thank you.

[The prepared statement of Mr. Schwantes follows:]

PREPARED STATEMENT OF JONATHAN SCHWANTES, SENIOR POLICY COUNSEL, CONSUMER REPORTS

Consumer Reports [1] (CR) thanks Chairman Wicker, Ranking Member Cantwell, and the Members of the Senate Commerce Committee for inviting me to testify on whether or not to reauthorize the STELAR Act, and to suggest other targeted video marketplace reforms Congress should consider as part of this work. A golden opportunity exists for lawmakers to enact straightforward policy changes that would directly and immediately help consumers in a STELAR reauthorization bill passed before the end of this year, a reauthorization that CR strongly supports.

At a time when consumers enjoy more and more choices in the video marketplace thanks to the increasing number of online video distributors, consumers also, almost paradoxically, find themselves with less power as huge tech companies control more and more of the choices that impact their everyday lives. As our Nation grows increasingly concerned over the out-sized influence of companies like Google, Amazon, Facebook and others, we must not lose sight of the challenges consumers continue to face in the more traditional video marketplace, where nearly 94 million Americans subscribe to pay-TV service from an MVPD (multichannel video programming distributor) be it a cable, satellite, or telephone operator that includes telecom giants like AT&T (which owns DIRECTV), Comcast, Verizon, Charter, and others.[2]

Indeed, STELAR in its earliest forms, from the Satellite Home Viewer Act (SHVA) to the Satellite Home Viewer Improvements Act (SHVIA) and subsequent versions, was a pro-consumer and pro-competition law.[3] By permitting direct broadcast satellite (DBS) companies to offer consumers broadcast programming, especially local broadcast networks, satellite operators like DIRECTV and Dish Network were better able to compete with the incumbent cable companies that otherwise faced little, if any, direct competition. Consumers wanted access to their local broadcast channels, and with the passage of SHVIA, DBS companies were finally able to legally provide them in a cost-effective manner.

Though the name changed every five years, from SHVIA to SHVERA to STELA, and finally to STELAR in 2014, the reauthorization of key provisions scheduled to sunset has permitted Congress to improve the law in ways that benefit competition and consumers alike.[4] Rather than revisiting this debate again in the future, expiring provisions in STELAR should be made permanent, namely the Section 119 "distant signal" license [5]—a compulsory copyright license that permits satellite companies to import an out-of-market broadcast channel into a market where the local channel is unavailable—and the "good faith" requirements [6] attached to retransmission consent negotiations which permit the Federal Communications Commission to adjudicate programming carriage disputes between broadcasters and MVPDs. The reauthorization legislation we are discussing today also provides Congress a legislative vehicle to address an increasingly expensive harm experienced by consumers in the video marketplace: the proliferation of company-imposed fees in pay-TV bills.

[1] Consumer Reports (CR) was founded as the Consumers Union of America in 1936 and became known by millions of Americans for our award-winning magazine *Consumer Reports.* In recent years, our overall organization transitioned to the name Consumer Reports. Consumer Reports is a non-profit organization with more than six million members that works for a fair, safe, and transparent marketplace, fueled by our trusted research, journalism, advocacy, and insights.

[2] Federal Communications Commission, *Consolidated Communications Marketplace Report,* Report, GN Docket No. 18–231, FCC 18–181 (Dec. 26, 2017) Available at *https://docs.fcc.gov/public/attachments/FCC-18-181A1.pdf.*

[3] Satellite Home Viewer Act of 1988, Pub. L. No. 100–667; Satellite Home Viewer Act of 1994, Pub. L. No. 103-369; and Satellite Home Viewer Improvement Act of 1999, Pub L. No. 106–113, App. I.

[4] *Id. See also* Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108–447; Satellite Television Extension and Localism Act of 2010, Pub L. No. 111–175; and STELA Reauthorization Act of 2014, Pub. L. No. 113–200.

[5] 17 U.S.C. Sec. 119.

[6] 47 C.F.R. § 76.65.

STELAR Protects Nearly a Million Unserved Americans

We must first consider the current debate surrounding STELAR's reauthorization in 2019. Even though this would lead to a sudden disruption of television service to hundreds of thousands of consumers, the National Association of Broadcasters (NAB) has urged Congress to let STELAR expire at the end of this year.[7] And despite broadcast channels being offered to consumers who are otherwise unable to receive them, NAB asserts that the distant signal license has provided satellite operators like DIRECTV a disincentive to provide local broadcast networks into all 210 local markets. To be sure, satellite companies were permitted by the 1999 version of STELAR (SHVIA) to provide local broadcast channels into their local markets (also known as "local-into-local" service) under the Section 122 compulsory copyright license.[8] But presumably in a few cases, it is less expensive to import one or two distant broadcast networks into some areas versus offering the full complement of local broadcast channels given the "carry one, carry all (local channels)" mandate placed upon DBS operators who offer local networks.

There are a dozen local markets where DIRECTV does not provide local programming via satellite.[9] And in those particular markets, where consumers cannot receive their local broadcast channels over the air, they are considered "unserved" under the law. When a household is considered unserved in this instance, a DBS operator is permitted to provide those consumers that broadcast programming from a market other than their local one—a distant signal—if no other local channels are being provided by that satellite company. The distant signal license is set to expire at the end of this year is what makes this service possible—not only for unserved consumers in rural areas, but also for recreational vehicle and commercial truck operators, who Congress decided years ago could be provided distant signals by their satellite company.

Recent estimates of the number of consumers who receive distant signals in this manner number 870,000.[10] Should Congress heed NAB's advice to simply let STELAR and the distant signal license expire, the only guaranteed outcome is that almost a million consumers will wake up on New Year's Day without the broadcast programming they received the day before, and have likely relied on for years. It is important to note that if DIRECTV wanted to provide local-into-local service into those markets, it could do so right now under current law, just as its DBS competitor, Dish Network, does. Nonetheless, what lawmakers and the broadcasters *cannot guarantee,* absent a change in current law, is that DIRECTV will fill that gap and choose to provide local networks to unserved consumers. Consumers would likely blame Congress—and not the NAB or their service providers—for taking away their broadcast channels. Consumers should not suffer restricted access to service without a guaranteed alternative.

Good Faith Requirements Should Be Stronger and Made Permanent

Other key provisions in STELAR that are set to expire this year concern good faith requirements upon broadcasters and MVPDs that apply to retransmission consent negotiations. Consumer Reports supports the strengthening of these requirements, starting with clearer guidance on what constitutes violative behavior. For example, broadcasters could be required to offer a local broadcast channel as a standalone offer, and not bundled with other channels, especially other broadcast network channels. Furthermore, the rising number of station blackouts—the consequence of an expired retransmission consent deal—could be mitigated if they were not allowed to occur right before must-see programming like the Super Bowl, or prohibited altogether when parties who cannot agree to new terms were instead subjected to binding arbitration.

The good faith rules can be improved along these lines and they should also be made permanent so long as the retransmission consent regime remains in place. This process, created by the 1992 Cable Act and subsequently applied to DBS operators, governs one method of how pay-TV operators obtain programming from broad-

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[7] *See* Statement of Gordon Smith, National Assn. of Broadcasters, *STELAR Review: Protecting Consumers in an Evolving Media Marketplace,* U.S. House of Representatives Energy and Commerce Committee Hearing, (June 4, 2019), *https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony_Smith.pdf.*

[8] 17 U.S.C. Sec. 122.

[9] John Eggerton, *Senators Press AT&T/DirecTV for Small-Market, Remote Area TV Signals,* Broadcasting and Cable (Mar. 14, 2019), *https://www.broadcastingcable.com/news/senators-press-at-t-directv-for-small-market-remote-area-tv-signals.*

[10] John Eggerton, *SCBA Pushes Permanent STELAR Renewal,* Broadcasting and Cable (Oct. 17, 2018), *https://www.broadcastingcable.com/news/sbca-pushes-permanent-stelar-renewal.*

casters.[11] This system has resulted in the skyrocketing of retransmission consent fees paid to broadcasters, the amount of which has been well-documented by the American Television Alliance (ATVA).[12]

However, what is lost in this furious debate and finger-pointing between broadcasters and MVPDs is that consumers end up bearing the overwhelming cost of the current system, where rising retransmission consent fees have directly led to the birth of company-imposed fees like the Broadcast TV Fee and others. These fees are the sole creation of the pay-TV industry, and cable operators plainly state that these fees are meant to help them recoup their rising programming costs. Although that explanation is straightforward enough, *the application of these fees is not,* and confused consumers are being made to pay increasingly expensive, non-optional fees because of a retransmission consent system that is broken.

Hidden Fees Should Be Eliminated

Consumer Reports recently examined this issue in depth, and the results of our work were published earlier this month in a report entitled, *How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service.* [13] Aside from assessing the cost of company-imposed fees in the video marketplace, the report also provides policy recommendations for Congress to consider for how best to mitigate the harm caused by these fees.

In the past decade, cable companies have begun to impose new fees for services previously included in the base rates that are typically quoted in advertisements. Consumer Reports' analysis of hundreds of pay-TV bills submitted to CR by consumers reveals that company-imposed charges—which, to be clear, are separate and apart from charges related to any government-imposed fees and taxes—now add almost 25 percent of the base price to the typical monthly cable bill. An analogy from the report helps illustrate the problem. Imagine your surprise if you were to learn in the supermarket check-out line that the box of cereal you wanted to buy was going to incur a Cardboard Box Surcharge and a Grain Refinery Fee, adding nearly 25 percent to the purchase price. It sounds absurd—but actually is not very different from what many consumers experience month-in, month-out, when they pay their cable bills.

Unsurprisingly, consumers get frustrated and angry when they discover these company-imposed fees on their bills. A recent CR nationally representative survey of 2,057 U.S. adults asked about add-on fees across many industries, and found that nearly seven in 10 (69 percent) Americans who have used a cable, internet, or phone service provider in the past two years reported encountering unexpected or hidden fees.[14] And nearly all—96 percent—of those who reported having encountered hidden or unexpected fees in an industry that we asked about said they find them annoying. Two-thirds—64 percent—called them "extremely" or "very" annoying.

The depth of that frustration reflects the insidious market effect of company-imposed fees: they enable cable companies to camouflage price increases, confounding consumer efforts to comparison shop and to maintain household budgets. This happens in at least two ways. First, the fees are often imposed or increased with little notice and are often listed among a dizzying array of other charges, including government-imposed fees and taxes. Second, by passing along additional costs as "fees" and not building them into the core package price, cable companies are able to continue advertising relatively lower base rates. Thus, they can generate more revenue each month with little pushback from their customers—including even those who are locked into fixed-price promotional offers.

The combined effect is stretching consumer pocketbooks to the breaking point. CR's survey found that the telecom industry was the worst budget-buster of the ones we asked about. Nearly six in 10 (59 percent) Americans who encountered unexpected or hidden fees while using telecom services in the past two years say the fees caused them to exceed their budgets.

Make no mistake, the cost of company-imposed fees is not insignificant. The report's analysis of nearly 800 cable bills collected from consumers across the country shows that:

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[11] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, 106 Stat. 1460, (1992)

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

[13] A full copy of the report can be found at *https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf.* (CR Cable Bill Report)

[14] *WTFee?! Survey, 2018 Nationally Representative Multi-Mode Survey,* Prepared by the Consumer Reports Survey Research Department (January 3, 2019) (*hereafter* CR WTF?! Survey) available at: *https://advocacy.consumerreports.org/research/wtfeesurvey/.*

- Company-imposed fees, from Broadcast TV and Regional Sports Fees to Set-Top Box Rental Fees, add what amounts to a 24 percent surcharge on top of the advertised price.
- On average, the cable industry generates close to $450 per year per customer from company-imposed fees.
- Based on the total number of U.S. cable subscribers and our findings, cable companies might be making an estimated $28 billion a year from charging company-imposed fees.[15]

The problem is growing worse and more expensive because the cost of company-imposed fees continues to escalate. For example, in 2015, the Nation's largest cable company, Comcast Corporation, charged consumers a $1-a-month Regional Sports Fee and $1.50-a-month Broadcast TV Fee, for a total of $2.50 per month. Those two fees combined now cost Comcast customers $18.25 a month.[16] That represents a more than 600 percent fee increase in four years. Similarly, Charter Communications raised the price of its Broadcast TV Surcharge three times in just the last year, meaning that particular company-imposed fee now costs consumers $13.50 a month, a 50 percent increase of what that fee cost a year ago—and far more than the $1 it was when first introduced in 2010.[17]

To make matters worse, new mandatory modem and router fees have also begun to saddle consumers with additional company-imposed fees. Many consumers have long been able to avoid monthly equipment rental fees by purchasing and using their own modems and routers. With rental fees costing up to $11 a month, they can often recoup their investment in less than a year.[18] But Frontier Communications recently began charging a leasing fee "for your Frontier router or modem—whether you use it or not," eliminating this money saving strategy.[19]

Finally, our report also uncovered new company-imposed fees being applied separately to Internet access service. Bills issued by Frontier during the time period we studied contained a $2 Internet Infrastructure Surcharge, and RCN bills included a $2 Network Access and Maintenance fee. Both are mandatory. Adding new company-imposed fees to the cost of Internet service is a disturbing new trend, and predicts a future where even internet-only consumers—including so-called cord-cutters, who generally look to save money by dropping cable TV service and relying only on Internet service for their video entertainment—will not be safe from the growing burden of add-on fees.

Paying for TV and Internet service in the 21st century should not be this fraught with frustration. But the problem is hardly confined to the cable industry. Airline passengers now routinely pay an extra fee to bring luggage on their trip, or to secure an assigned seat; hotel "resort fees" are proliferating, even at properties that offer little more than a place to sleep; and buying tickets to a cultural or sporting event is nearly always accompanied by a non-optional service fee. The common thread of these fees is a nominal attachment to services that, not long ago, were commonly included in the base price. And as in the pay-TV industry, this practice obscures the true price of goods and services, rendering comparison shopping and budgeting a challenge, and sometimes impossible.

The good news is that Congress, beginning with the Commerce Committee, can act to solve this problem—in the video marketplace and elsewhere. A bill introduced by Senator Markey earlier this year, the TRUE Fees Act, would, among other things, simply require company-imposed fees to be included in the advertised

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[15] *See* CR Cable Bill Report at p. 7 and FN 20.

[16] Jon Brodkin, *Comcast Raises Cable TV Bills Again—Even if You're Under Contract,* ArsTechnica (Nov. 26, 2018), *https://arstechnica.com/tech-policy/2018/11/comcasts-controversial-tv-and-sports-fees-rise-again-hit-18–25-a-month/.*

[17] Luke Bouma, *Spectrum is Raising its TV & Internet Pricing (The Third Price Hike on Broadcast TV in 12 Months),* Cord Cutter News (Sep. 7, 2019), *https://www.cordcuttersnews.com/spectrum-is-raising-its-tv-internet-pricing-including-the-3rd-price-hike-on-broadcast-tv-in-12-months/. See also* Karl Bode, Charter Starts Charging 'Broadcast TV Surcharge' So They Can Raise Rates, But Leave the Advertised Price the Same, DSLReports (Sep. 13, 2010), *http://www.dslreports.com/shownews/Charter-Starts-Charging-Broadcast-TV-Surcharge-110316.*

[18] Luke Bouma, *Comcast Is Raising Their Modem Rental Fee (The Good News Is You Don't Have to Pay It),* Cord Cutters News (Nov. 27, 2018), *https://www.cordcuttersnews.com/comcast-is-raising-their-modem-rental-fee-the-good-news-is-you-dont-have-to-pay-it/.*

[19] Jon Brodkin, *Frontier Customer Bought His Own Router—But Has to Pay $10 Rental Fee Anyway,* ArsTechnica (July 2, 2019), *https://arstechnica.com/information-technology/2019/07/frontier-customer-bought-his-own-router-but-has-to-pay-10-rental-fee-anyway/. See also https://frontier.com/helpcenter/categories/internet/installation-setup/compatible-routers-and-modems* for Frontier's explanation of its mandatory router fee: "Frontier charges you a monthly lease fee for your Frontier router or modem—whether you use it or not."

price.[20] A version of this common sense fix was applied to the airline industry in 2011 in the form of the Full Fare Advertising Rule, and applying it to the telecom industry would inject real transparency to cable billing practices in the same fashion.

Consumer Reports recommends and supports the attachment of the TRUE Fees Act to whatever STELAR reauthorization bill is drafted and considered by this committee. Doing so would immediately bring relief to fee-exhausted consumers in the video marketplace, and would also continue and reinvigorate STELAR's (and its many names) tradition of being a pro-consumer measure.

The CHAIRMAN. Well, thank you all and it is clear that this is an expert panel and I hope that we can further enlighten ourselves and the public with questions. So, let me begin with some questions that I outlined in my opening statement. Mr. Thun, according to satellite television providers approximately 870,000 subscribers make use of the Section 119 license. If STELAR expired at the end of this year, are there consumers who would immediately lose access to broadcast programming?

Mr. THUN. Absolutely.

The CHAIRMAN. And what is the likelihood that these subscribers would have to pay more to access broadcast programming at the beginning of 2020? And please explain.

Mr. THUN. Well, if it relates to the prior question, if it went away would they pay more? If it went away, I do not think they could get to it. We are providing distant signals that customers cannot get through broadcast station signals. Certainly, as you think about our technology as it applies to long-haul truckers or RVs, we are the only technology that can reach those particular customers. So, in the absence of the extent of the distant signal, whether they would not pay more fees, they would just lose access to networks all together. 870,000 customers would be left without any access to network television that they are used to getting today.

Mr. CHAIRMAN. OK. Mr. Law, if you would like to follow up on that, I would appreciate it. But also, on the good faith requirement, how is it important to you and how would the expiration of STELAR impact the cost of programming, and frankly, the bottom line of the various companies?

Mr. LAW. Thank you, Chairman. And as it relates to the good faith report requirements today. I do think the good faith requirements should be strengthened and at a minimum the good faith requirements that are contained in the nine steps outlined by the FCC at least provide some very wide, alternative white lines on the highway for the code of conduct between the two parties negotiating.

I think there needs to be a significant improvement in that language quite frankly because the code of conduct that is outlined in these nine steps really just deals with, you know, thou shalt return e-mails on a timely fashion and thou shalt let the other folks know what you are doing.

However, even in recent issues from the good-faith issues from the FCC in rulings, they make very clear that the good faith requirements, this is the FCC, reiterate our long-standing precedent that absent other factors disagreements over rates terms and con-

[20] Truth-in-Billing, Remedies, and User Empowerment over Fees Act of 2019 or the TRUE Fees Act of 2019, S.510, 116th Cong. (2019).

ditions of retransmission consent is not a lack of good faith. They go on to say in there that tying and bundling, and other services is found in a competitive market and is also not a sign of good faith.

I do think that that should be addressed. But at least at a minimum I think Congress should continue to support the level of good faith requirements that are there and I would recommend strengthening them.

The CHAIRMAN. You know, five minutes is such a short time to get into something like this but Ms. Barr, I bet you have a different take and perhaps Mr. Schwantes after you.

Ms. BARR. Thank you, Mr. Chairman. First of all, I would say, with respects to my colleague to my left, that is AT&T's choice not to provide local service if this were to expire. Dish was able to do it within one week when they did it. And so, they are a similar type of company. They provide local into local.

No matter what, I would say that what is imperative here is to provide local broadcasters the opportunity to reach their local constituents in the markets in which they live. That is the bedrock on which we are so based.

The CHAIRMAN. So, with Dish, if a subscriber subscribes to Dish, they are able to get the local programming in that locality?

Ms. BARR. That is correct.

The CHAIRMAN. OK. Mr. Schwantes.

Mr. SCHWANTES. Well in terms of consumer costs, I guess there is a theoretical world where if you get rid of the distant signal license, which is a compulsory copyright license and so it is an artificially low market rate, if you got rid of that and you got rid of the retransmission consent because right now distant signals brought to satellite companies do not need to obtain retransmission consent to bring those signals into market.

In theory you could still have that way of delivering program, but I think it would become much more expensive because as we have seen with retransmission consent negotiations, those fees paid by satellite and cable operators to broadcasters is going up. So, if you could I guess negotiate a distant signal coming into a market I would imagine that would be cost prohibitive and I cannot speak for AT&T or Dish but will make it very expensive to do so.

The CHAIRMAN. Thank you very much. And I understand Senator Cantwell wishes to defer to another member?

Senator CANTWELL. Mr. Chairman, if I could defer to my colleague from Montana who has I think a very, you know, impacted perspective on this that needs to be part of the debate. Senator Tester.

The CHAIRMAN. Senator Tester.

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you, Mr. Chairman, Madam Chair. Thank you everybody for testifying today. I appreciate your testimony. I want to touch on this to begin with two of the 12 media markets that cannot get local broadcasts are in Montana. They are not RVs. They are not local long-haul truckers. They are just regular folks. And the question is Mr. Thun, can you commit to providing service to those markets?

Mr. THUN. I think we do commit to providing service to those customers.

Senator TESTER. With local TV?

Mr. THUN. We do provide local television in all 210 markets. In the 12 markets that you are referring to, we do not deliver a satellite delivered local signal but we provide customers who request a receiver, they can get an antenna that picks up local air signals and those signals are integrated into their experience in a seamless way that allows them the ability to DVR their content.

Senator TESTER. So why not do it like you do it in my house? And by the way, my house is pretty damn remote, and I get my local TV. I live in Montana. Helena has got a lot more people. Glendive has got a lot more people. Why cannot you commit to doing the same thing for them that you do for me?

Mr. THUN. I think we do.

Senator TESTER. No, you do not. I mean I get mine right off the satellite.

Mr. THUN. Yes, we deliver an integrated solution. The failure to deliver the signals in the state of Montana is borne by the broadcasters. They do not deliver a clean signal everywhere across the state, and in those areas, that is where we need a distant signal. In the center of Helena, you can get a clean signal off the air and we provide an antenna that allows the customer to experience broadcast television.

Senator TESTER. So how can Dish do this with that same signal? They seem to be able to do it and Direct TV cannot.

Mr. THUN. We offer different solutions in providing that content.

Senator TESTER. But you just said the reason you cannot do it is because it is crappy signal. Dish deals with that same crappy signal.

Mr. THUN. No, in the remote areas of your State, the broadcasters fail to deliver the signal in areas due to the topography and they do not invest in their broadcast stations in order to deliver a broader signal. And our solution, which allows customers to get a clean signal, where the signal is available, they can get it, and we provide it to them free of charge for the antenna and we give them a discount in fact on their bills. So, we believe we do provide the service.

Senator TESTER. I just—there is a difference of opinion here and quite frankly Helena by Montana standards is far from remote. It is our State capital. And so, I think that there is a lack of desire, quite frankly, to provide it. I am not sure what the hell we can do about it on this panel, but maybe we can do something about it. And I hope we do. This is the World Series season. World Series is on TV. I watched it last night from where I live here in Washington, D.C.

I happen to be an old Expos fan and so consequently, I am an honest Nats fan. When I go home to my farm, that station is blacked out. I doubt we are going to be able to see any World Series TV. And by the way, my high-speed Internet is not good enough to get it on the iPad. As I referred before, Mr. Thun, I actually pay you guys a fair amount of money every month for that signal. Can you tell me why it is blacked out?

Mr. THUN. I am sorry, I am not sure——

Senator TESTER. Can you tell me why it is blacked out? Can you tell me why I do not have that signal for, well, I will even drop the name for the Fox network that is broadcasting the World Series games.

Mr. THUN. Well, if we are at an impasse with the station, it is the station's inability to negotiate a deal with us at a fair price.

Senator TESTER. That is good. So, let me ask you something. I am a farmer. AT&T isn't exactly small spuds. That equation is like me negotiating a price with General Mills, and I guarantee we do not negotiate prices with General Mills. It is you take this, or you leave it. How many times is that done where you walk in and say, here is the money? You guys, you know, a lot of these are family owned stations in Montana. They are not very big. And you just say here is the money, take it or go.

Mr. THUN. I differ with what actually happens in these negotiations. I am a party to those and what happens is actually the converse. The broadcasters come to us with a gun to our head telling us you are going to take this price and when we say that is too high, it is a ridiculous amount, they say, well thank you for your past business. That is actually an exact quote from one of the broadcasters. And they threaten to pull the signal away. In certain cases, they do.

Senator TESTER. Ms. Barr, would you like to give a different opinion?

Ms. BARR. Certainly. Thank you, Senator. I can tell you that from Graham Media's point of view, we have never experienced a blackout in any of our negotiations with anyone. We have always come to the table willing to get a deal done. It is in our best interest and it is in the industry's best interest to do a deal because we do not want to lose viewers for one hour, one day, or one year. We want to have access to our viewers no matter how they receive us, whether satellite or cable.

Senator TESTER. I am way out of time, but I got to ask is that the way it is with most stations? I mean, it seems my station is an exception and they want to be blacked out?

Ms. BARR. No, I do not think there is any television station that willingly wants to be blacked out. I think what we have to remember is that television stations are having their signals resold, if you will, by cable and satellite and they are looking for just a fair price for the programming that they produce. It costs money to produce news.

Senator TESTER. Yes, and I would just finish with one thing and that is, you are right. I do pay. I think when I first set this up, it was five bucks a month, but it has been a while since I looked at it for each station and I haven't had the station for a month. And so, do I get a refund?

Mr. THUN. I think it is part of our contract with our customers. We explain that sub-channel lineups are subject to change. We endure a lot of cost in these retransmission consent disputes. We lose customers because of that. And we have to provide, in a lot of cases, rebates. So, we do lose money in these things. This is not a winning proposition for us at all.

Senator TESTER. It might not be a winning proposition, but I am paying for something I am not getting. It kind of chaps my butt, OK. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. We will make note of that.

[Laughter.]

The CHAIRMAN. Senator Thune.

Senator TESTER. I could have said something else.

[Laughter.]

STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chairman, for holding today's hearing, and thank you to all of our witnesses for being here today. And it is great to have Mr. Denny Law, the CEO of Golden West Telecommunications in South Dakota before the Committee today.

Golden West was the first company to stretch telephone lines across the remote planes of Western South Dakota, and today under Denny's leadership Golden West serves some of the most remote rural parts of our state, including my hometown of Murdo, South Dakota.

And I appreciate his commitment to bringing affordable and reliable broadband services across many parts of South Dakota. Mr. Chairman, the investment, new technology, and talent required to produce high-quality news, sports, and entertainment content continues to increase in order to keep up with consumer demands. Broadcasters should have confidence in their ability to recoup those investments in the video marketplace.

At the same time, the marketplace is changing at an incredibly rapid pace and we need to make sure that as the market adapts, consumers are put first. During the last reauthorization in 2014 I put forth a proposal called Local Choice which sought to give consumers more options in the video marketplace while also recognizing the important service that local broadcasters provide.

And while I won't be offering that proposal this year, I do hope we can continue to work together and receive input from all stakeholders to advance pro-consumer solutions and promote local content in the changing video marketplace. I would direct this to all panelists, and I will start, Mr. Law, with you. But each of you has acknowledged that today's video marketplace has rapidly changed since the last reauthorization in 2014.

With that said, are there reforms to the 1992 Cable Act that we as policymakers should consider, as this Committee gives the reauthorization of STELAR, additional consideration?

Mr. LAW. Thank you, Senator. I think there are a couple of key points to look at with that. In addition to the changes as I specifically reflect around how the retransmission consent system works. I am not suggesting in my testimony that broadcasters should not be paid for their content. Nowhere in my testimony do I suggest that their content does not have value. It does. However, I would suggest that the scale is so tipped in advantage of the broadcasters that these are not negotiations in terms of the respect to the price, and quite frankly in my testimony I reference the fact that rural consumers or consumers that are served by small or rural cable systems pay 30 percent more for retransmission consent and off-air channels than those in urban markets. Yet the product is the same.

There is no additional cost to broadcasters to provide that product if they even offer an off-air signal in those areas. So why not level the playing field? Prohibit price discrimination in markets, prohibit broadcasters from adding additional channels, multicast channels as part of the agreements. In our agreements with various broadcasters, we are required to carry certainly the network content that we sought.

In addition, we get to carry such fine programming like antenna TV, this TV, that TV, cozy TV among others. Every time one of those channels is added, consumers pay more, and when you take that times four more broadcasters in a market, it adds $10 plus a month to their bill yet the consumer turns to me as their provider and says, why does my bill keep going up?

So, I think those are some simple perhaps looks that are more narrowly targeted and instead of a comprehensive reform that I think is overdue.

Senator THUNE. Yes. Others? Ms. Barr.

Ms. BARR. Thank you, Senator. I would just go back to the harm that is being caused by out of market signals coming into local markets. If I am living in Montana or in Presque Isle, Maine or wherever, I may not be able to get a local signal. And if there is a major event, whether it is a weather-related events, a political event, or some kind of event of local importance and I am a customer of satellite television, I cannot find that information locally on my TV.

And that can create real danger and harm for local constituents. So, I would just continue to emphasize that whatever happens with rule changes, the localism needs to be front and center.

Mr. THUNE. Does the current regulatory landscape create parity between broadcasters and MVPDs with respect to carriage negotiations, would you say?

Ms. BARR. I think we go to the table and we negotiate in good faith. I do not think there has ever been a broadcaster who has been accused of not doing that. And as I said earlier, my company has never had a blackout situation occur because we do not want one and we do not believe the people on the other side really want one. So, we try to come to the table looking for equity on both sides. We are trying to get paid fairly for the product that we put out there.

Senator THUNE. Mr. Law, carriage negotiations?

Mr. LAW. That has not been my experience, Senator. Our discussions as a small provider based primarily in South Dakota, based exclusively in South Dakota. My experience is we are presented with a list of demands from the broadcaster. The negotiations will likely include perhaps one minor move by that broadcaster to satisfy the good-faith requirements and then the negotiations are over. When I characterize it to colleagues and friends of what these negotiations are like, my comment is imagine you are going into a fight. The other side has bazookas and you have a plastic fork.

Senator THUNE [presiding]. All right. Senator Cantwell.

Senator CANTWELL. Thank you. Thank you to the witnesses for being here today. I know these are challenging issues. But to me, I look at again back to the consumer and localism and how do we protect those. And so Ms. Barr, I was concerned to hear from our broadcasters as I look at some of the statements that AT&T has made writ large about satellite or as I see how people are migrating to these partnerships, you know, whether that is Disney and ESPN or you know, I just see these big conglomerates trying to just control access to content, which worries me because then I think okay, we are just going to—a bunch of people are just going to chop up ways to charge more to the consumers.

But one thing I was concerned about, that broadcasters, even in the negotiations with their own networks are having challenges keeping their revenue as opposed to the network, then using that to compete against them. So, what do we do about that because we want the localism. We do not, as Senator Tester said, want to see a New York or LA broadcast if you are in Montana. You want to see local content.

So, how do we deal with this issue?

Ms. BARR. So, first of all, I agree that negotiating with networks can sometimes be challenging but I would point to the fact that many, many, many network affiliate relationships have been going on for decades, so they have come to a way of negotiating.

I won't pretend that it is easy, but I will tell you that in my own negotiations, which I do personally with four different networks, that our negotiations have been civil. They are tough, as they probably will be and should be. They are paying for a lot of programming. We are paying for a lot of local programming.

So, there is a give and take but we ultimately have come to our agreements. We work very well together. We support each other. So, I do not see that the problem exists between the networks and the affiliates in this same way.

Senator CANTWELL. Well, I see a problem if you do not have local revenue that you can count on and so I just want to make sure. I don't know, Mr. Schwantes, if you have a thought on this issue, but one of the reasons why I do not think a five-year reauthorization is a wise idea is because I have no idea what is going to happen in the next two years in this space, the level of consolidation and change.

What I want to get right is localism. What I want to get right is diversity. What I want to get right is driving down the cost to consumers if we can because that I think they deserve to have that level of competition. But what about this continued consolidation and how it is affecting this debate?

Mr. SCHWANTES. And that is a fair point, Senator Cantwell, and it is something we are concerned about. I mean one of the pillars of our work is consumer choice, which I do think is related to localism and diversity, things of those nature. And Mr. Law makes an interesting point about bundling. What we hear mostly from video customers is we want choices, we want à la carte cable programming, which I know causes the hair to rise on people's necks.

Senator CANTWELL. Well, I think that has been in this Committee, Senator Thune would attest along, that the Commerce

Committee has long heard this discussion and maybe it is, you know, getting closer to that moment.

Mr. SCHWANTES. I am well aware, the Local Choice Act. And I think it is a novel approach and it goes back to the 1992 Cable Act. There is no need to get into the details but basically the long and the short of it is cable companies are obligated to carry local broadcast networks, satellite companies are not.

I mean, they have the obligation of they go into a market and they carry one local channel, then they have to carry them all. But it is more of an à la carte offering of the whole suite of local channels in the satellite package verse the cable package. And then it has the problem, the double effect for consumers of well I have to take the local channels because Mr. Law has to carry them, but then we have to pay the fees for it.

And you could disrupt that by making those local channels à la carte. The problem with that is, and in my experience on these very difficult issues, it is like an old sweater. You pull the string, the whole thing comes apart. So, it is something that I think is well worth the Committee's time to look forward to in the future. I agree that we should not be doing this every five years. I think more comprehensive reform of—everything is on the table, the 1992 Cable Act, all of the various versions of STELAR, and let's do it.

Senator CANTWELL. Thank you. And to this—well, I am going to say. I feel that one thing that is missing and I get proprietary information, but there just should not really be this level of ambiguity about whether someone, as Senator Tester was referring to, could or could not get content. Like we should just be able to answer technically this question, and it should be clear to the Committee. So hopefully in our further discussions, will be able to get that information. Thank you, Chairman.

Senator THUNE. Thank you, Senator Cantwell. Senator Blunt.

STATEMENT OF HON. ROY BLUNT, U.S. SENATOR FROM MISSOURI

Senator BLUNT. Thank you, Chairman Thune. Let me first, I have an unanimous consent request just to submit for the record some written testimony from Pattie Boyers who is the Chairman of America's Communications Association. She and her husband Steve, good friends of mine, are small cable providers in Southeast, Missouri, and she testified before the House committee in June. She couldn't be here for this testimony and that is our loss because Pattie Boyers is if nothing else passionate about her business and colorful. It does not quite come through in this written testimony, but I would like to submit it for the record. Senator Thune: Without objection.

[The information referred to follows:]

RENEWING STELAR WILL HELP RURAL AMERICANS

By Patricia Jo Boyers, Chairman, ACA Connects—America's Communications Association

Smaller pay television providers are under assault from the excessive demands of local TV stations. Congress needs to step in and support legislative reforms that curb the undue price hikes and sudden signal blackouts designed to turn consumers against their traditional pay-TV providers.

As a small cable operator from Southeast Missouri, I was invited to testify before the House Energy and Commerce Committee in June to talk about how fees charged by broadcasters are leading to more and more TV blackouts.

In the four months since I testified, things have gotten much worse. Since my appearance on Capitol Hill, there have been *216 broadcaster blackouts, impacting 138 markets across 44 states.* That's 216 blackouts in the past 134 days alone! Additionally, a *new poll* shows that 1 in 3 television or streaming users has been the victim of one of these blackouts.

This week the Senate Commerce Committee will consider legislation that is designed to protect consumers from broadcaster abuses. The limited oversight provided to the Federal Communications Commission (FCC) known as "good faith" rules are included in the Satellite Television Extension and Localism Act Reauthorization Act of 2014 (STELAR), which Congress must reauthorize before the end of the year. Failure to do so will leave hundreds of small cable operators and millions of consumers without protections that have been in place for many years.

Small video providers who support STELAR's renewal face a big obstacle: The National Association of Broadcasters (NAB) and its members are lobbying Congress to let the program expire. It's not surprising why the NAB would want to pull the government's referee from this process. Even with the FCC's oversight in place, broadcasters have been able to collect billions of dollars in fees. Since 2006, retrans fees have gone from about *$215 million to $11.7 billion annually,* an increase of more than 5,300 percent. Meanwhile, broadcast TV ratings—the measurement used to determine popularity and thus advertising rates—*continue their downward trajectory.*

Out-of-control retransmission consent fees disproportionately harm smaller cable operators. According to a recent *FCC report,* small systems pay at least one-third more than large systems pay in retrans fees. Because cable operators pass these fees along to customers—*as much as $20 per month* – rural cable subscribers pay much more for nominally "free, over-the-air" broadcast programming than their urban counterparts. Small cable operators not only suffer from paying higher fees but are also forced into accepting onerous terms and conditions, like the forced bundling of various channels and carrying unpopular channels that our customers do not want.

Recent changes in the marketplace *are making this situation even worse.*

First, individual broadcasters now control multiple "top-four" network feeds in more than a hundred local markets—and sometimes control three or even four such feeds—despite FCC rules that are supposed to prevent this kind of anti-consumer consolidation.

Second, corporate broadcasters have gotten much bigger nationally, with behemoths like Sinclair and Nexstar controlling more than one hundred stations each across the country.

Third, broadcasters increasingly bundle other "marquee" programming networks with their signals—raising consumer prices for both. This means that broadcasters have more market power than ever before, and certainly more than Congress expected, and cable subscribers pay the price.

Under the current system, small cable operators like mine are facing tough choices. Recent headlines indicated that retransmission consent fees and other programming fee hikes have prompted some smaller cable operators to exit the business. This is especially bad for older Americans less likely to turn to streaming services, and especially those living in rural areas like those my company serves.

Congress must not just reauthorize the good faith rules. It's not enough. It must revisit its video laws and make meaningful reforms to protect consumers. Every five years since 1988 Congress has reauthorized STELAR, and each time it has used the opportunity to review other video laws along with it. It must do so again this year. For instance, I've urged Congress to extend the good faith rules to the buying groups of small and medium-sized cable operators in their negotiations with large stations groups. But let's be honest: Congress needs to update the Communications Act.

Big broadcasters shouldn't be allowed to bully companies like mine. Small cable operators and millions of rural Americans are counting on Congress to not only reauthorize STELAR before the end of the year, but also strengthen protections for TV viewers during retransmission consent negotiations.

Over the course of time, small cable operators and our customers have been able to rely on Congress for small, incremental safeguards in STELAR, such as the "Good Faith" rules. The sunsetting of these rules without any consideration will leave us out in the cold-without any protections at all.

Please don't allow our "horse" to die WITHOUT giving us a new horse on which to put our saddle!

Mrs. Boyers is Chairman of ACA Connects and President of BOYCOM Vision in Poplar Bluff, Mo.

Senator BLUNT. Let me just ask two or three points. Mr. Thun, I do not think I quite understand the significance of the people who are mobile as part of this discussion, the long-haul truckers or others. I mean the whole idea of local coverage, at least in my mind, would indicate that you were in one locale—you were in a place. So that may be an important group that you serve but I do not quite see how that relates to the discussion very directly of expecting local coverage if you are moving all the time as opposed to local coverage if you are in one place. Am I missing something there?

Mr. THUN. No, you are absolutely correct. They are moving around and the only way to give them access to the network programming is to deliver them a satellite delivered feed of a distant signal. We cannot authorize as they go through the country each station's DMA's. So, they are authorized to get one station or all the stations that they want on a distant signal basis, and that allows them——

Senator BLUNT. To keep up with where they want to keep up with?

Mr. THUN. Yes. They would not be authorized otherwise to receive the signal as they went through.

Senator BLUNT. All right, that is helpful. Both Mr. Law and you, Mr. Thun, both suggested that low-power television affiliates have been used as a way to drive up the price for local broadcasting. The FCC specifically has never come up with any rule that prohibited multiple ownership of low-power affiliates. What are you thinking there? Do you have any examples of where that is really been a specific problem? And then Ms. Barr, I am going to come to you next and ask about the importance of the ability to have the low-power affiliates. But any specific story you would like to share about why a low-power affiliate has been used in a way that you thought was unfair?

Mr. LAW. Thank you, Senator. I would address it from the perspective of, just to clarify my comments in my pre-filed testimony dealt more with the fact of a broadcaster controlling two network affiliates, two or more network affiliates, within a particular DMA, whether it be low power or not and the inordinate amount of power that gives that particular broadcaster when it comes to negotiating retransmission consent. It outstates the load considerably.

Senator BLUNT. As you know, the FCC specifically has looked at this and has never prohibited that joint ownership. I am going to run out of time but Ms. Barr, do you want to talk a little about the importance of having that low-power affiliate?

Ms. BARR. Sure. Thank you. I want to preface this by saying I do not own any low-power television stations. I am not a complete expert on this but what I would refer back to is that the ability to provide local information, local news, local critical information is absolutely paramount for any community. And if that is being done in certain markets by low-power television stations, and they in fact for economic reasons may own, you know, one or more affiliates, I see that as serving that local community. I do not see it in any other way.

Senator BLUNT. Thank you. Congressman Watts, good to see you here today. We served together, you and Senator Thune, and Senator Moran who was here a moment ago and I, and always good to have a chance to visit with you. But J.C. you mentioned the difficulty of getting the black news channel on satellite. Have you had a similar difficulty with cable, and do you want to talk about that a little more about the frustration or the difficulties you have had to try to make this alternative available to people?

Mr. WATTS. Well and thank you, Senator. On the cable side—we have been at this now for 10 years, and on the cable side, we have had success and we have gotten distribution through Charter and several other MVPDs. However, on the satellite side because of line of sight issues what we have gotten is that because of line of sight issues and, you know, the multi-dwelling units and having to have satellites on those facilities, how difficult it is to service the demographic that we are wanting to serve. We are before the Committee today asking for this modification to 335.

You know, it has been awfully difficult for an independent. The satellites told us that for a niche organization like ours it is difficult to carry us because of the issues that they run into and because of the demographics that they serve. However, if we can get this modification and we can get Section 335 modified in STELAR, then they will carry us in that DBS space, that set aside space.

And that gives us, you know, coast-to-coast coverage, gives us opportunity to support original news, which can be expensive, and it gives us advertising sales opportunities. And it also gives us access to a rural community of African Americans that would be very helpful for us. So, I appreciate you engaging me. I have kind of enjoyed the debate here.

Senator BLUNT. Thank you, J.C. Thank you, Chairman.

Senator THUNE. Thank you, Senator Blunt, and Congressman Watts, it is nice to have you back.

Mr. WATTS. Thank you.

Senator THUNE. Senator Schatz.

STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII

Senator SCHATZ. Thank you all for being here. I'll start with Ms. Barr. I want to talk a little bit about the relationship between broadcast consolidation and the decrease in news gathering, and I'll cite a couple of studies. One study from 2009 showed a decrease in local news coverage from 12 to 7 percent over a nine-year period. Another study showed that in four of the six markets studied where there was broadcast consolidation, local news coverage decreased. What do we do about the specific nexus between broadcast consolidation and the reduction of news gathering at the local level, and are there other factors impacting the reduction of news gathering at the local station level?

Ms. BARR. Thank you, Senator. So, first of all, we own seven television stations in six markets, so I am hardly one of these massive consolidators. And what I can tell you from personal experiences, we have done nothing but increase the amount of news we provide. What practically happens is that when stations do consolidate, sometimes they will be the same newscast on multiple stations in a market so that——

Senator SCHATZ. Sure, and we have a joint operating agreement in Hawaii and actually in my judgment, this is not deep analysis, but my observation is that the net impact locally has been more news gathering, more high-quality content.

That however is the exception to what is happening with Sinclair and others where you have got broadcast consolidation. It seems to crowd out local content gathering and that is what I am referring to.

Ms. BARR. Well, I can only refer back to what we do at Graham Media Group, which is that we are a very committed local broadcaster. We have increased by many hours the amount of news we provide locally in our markets, and the number of people who work for us in our news departments has grown exponentially.

Senator SCHATZ. OK. Mr. Schwantes, a couple of questions. First just generally speaking, why are the rates rising faster than inflation? Is it only because of these fees that they are tacking on? Are there other factors here? And then I want you to go into some detail about these fees and what we can do about it.

Mr. SCHWANTES. Sure. Thank you, Senator Schatz. I would say definitely a huge driver and to be fair to the cable industry, the retransmission consent fees, Mr. Law pointed it out, they are just astronomical increases and that goes back to what we do with the retransmission consent regime.

But what is interesting about those fees and so now that that has broken out as a separate line item and that number is increasing. Charter, for example, has raised their broadcast TV fee three times in just the last year. In 2010, that fee was $1 a month. Now, it is $13.50. So, they are off the charts and that is leading to increases that exceed——

Senator SCHATZ. And break that down for the public. That fee is not a Government fee—that is not a pass-through of some transaction. That is just, they are calling it—what are they calling it?

Mr. SCHWANTES. They are calling it a broadcast TV fee.

Senator SCHATZ. But they could call it whatever they want, it is just an extra charge.

Mr. SCHWANTES. It is kind of glass half-full, half-empty. I mean we see it as half empty. I mean, yes, there retrans costs are going up but this used to be—and you would think a cable operator one of the basic things that they do is provide local broadcast channels, clear high-quality signal to their consumers. And that used to be part of the base rate. And so now Charter can charge for example, $13.50 and point back to these retrans negotiations and say this is for the big four. Costs are going up. We have got to raise our rates too, and now consumers, look, you can see how much it is costing us. But the base rates are not going down.

Senator SCHATZ. But there is no transparency. Let's say it is $13.50. They cannot demonstrate that all that is actually a pass-through, can they?

Mr. SCHWANTES. They do not currently, and I think if something—I do not want to speak for Mr. Law, something we would agree with. If cable companies could actually say what they are actually paying to broadcasters for these retrans fees, that is transparency for consumers, and we are all for it. We think the problem is, is most consumers do not see it that way.

I mean if you imagine yourself at a supermarket and you are going to go get your favorite box of cereal and it is advertised for $5 you think great, maybe on the way to the checkout line you look at the fine print like fees might apply. But once you get to the checkout line and they said well, Senator Schatz, you have a grain refinery charge and this is a cardboard box surcharge and now box of cereal is $7, you are going to be pretty upset. And that is what consumers are facing in the video industry.

Senator SCHATZ. Oh you want that milk in a container, that will be a dollar. OK. So, what do we? Is this the purview of the Congress or would this be micromanaging the market for us to get in if we do reauthorize STELAR? Is there an appropriate place for us to weigh in to get either some transparency or some better fairness because clearly if it adds up to $450 per year for the average customer, and most of that is just additional profit, it does seem like Congress should get involved.

Mr. SCHWANTES. I think so. I mean we could kick it over to the FCC, but I think Congress is the better place to do it. And that is why I like Senator Markey's True Fees Act. We are on record supporting it because it does not eliminate these fees. You can still itemize your cost and your charges whatever that might be for. It gets to the front end of the problem. It puts the cart before the horse saying actually your bill is going to be $150 a month rather than that great teaser rate that you saw online. And I think that for most consumers would be a huge win.

Senator SCHATZ. Thank you.

Senator THUNE. Thank you, Senator Schatz. Next up is Senator Fischer.

STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM NEBRASKA

Senator FISCHER. Thank you, Senator Thune. Nebraska's orphan county situation makes it difficult for an entire region of our state to access local and State programming. There are 16 counties in Western Nebraska that are assigned to out-of-state markets. And today some of our witnesses have made suggestions that would improve their company's competitive positions in the marketplace.

However, I am interested in how we can improve access to Nebraska-based programming for everybody in my state. So, if we are going to consider reforms to help the bottom line of cable providers, satellite providers, broadcasters, news programmers, then we should consider ensuring the provision of in-state programming in counties that are assigned to out-of-state markets.

And I would ask you, Mr. Schwantes, do you think ensuring this access to such in-State programming would improve consumers' experience?

Mr. SCHWANTES. Senator, that is a great question. It brings up the tricky issue of orphan counties. We dealt with it 20 years ago and——

Senator FISCHER. And we are still facing it today?

Mr. SCHWANTES.—we are still facing it today. In my home state of Wisconsin, you know, we have got some great counties in Western Wisconsin that are in, God forbid, the Minneapolis DMA. But beyond them wanting their Packer games on Sunday, and it does affect civic engagement, for example. They are receiving all the news from St. Paul, but they are going to vote in elections either for Senator Johnson or Senator Baldwin and they want to know what is going on in Madison, in Washington.

And maybe it is for politics at the local level. Maybe the Federal level is not the best analogy, but I do believe orphan counties present a real problem. I do not even want to say there are anomalies because they are all across the country. There you are on the border and instead of being, in my case on the Wisconsin DMA, you are in the Minneapolis DMA.

I think there have been attempts to try to deal with this, petitions to the FCC for market modification. It is not perfect, but I think one was granted recently in Colorado so now that county in Southwestern Colorado can receive news from in State in Colorado versus, I think it was New Mexico. So that is something we do support and I think it is good for consumers. And this kind of goes beyond consumer choice, but more toward civic engagement.

Senator FISCHER. I would agree with you. We are talking about a fourth to a third of the State of Nebraska, the Western part of Nebraska. They are closer to Denver than they are to our State capital of Lincoln. We want all Nebraskans to be engaged in what is happening in our state. Obviously, property tax issues, every other issue affects them, and they need to know what is going on.

Mr. Law, based on your knowledge from providing communication services in South Dakota and you were very familiar with one of the counties in our State of Nebraska, it is an orphan county, Cherry County. What do you think we need to do to look at this?

Mr. LAW. Well, I think one of the options, Senator—yes, I am familiar with Cherry County. It is a wonderful territory. I think one of the options to consider is quite frankly part of a more comprehensive video reform discussion. What you do with DMAs and have DMAs to some degree necessarily lived out their usefulness as it relates to the provisioning of local broadcast content. I think I would suggest one thing you could perhaps look at is the Modern Television Act of 2019 that was introduced in the House by Representatives Scalise and Eshoo which would potentially open the markets up to allow consumers to access the content that they want as opposed to policymakers, and quite frankly cable providers and broadcasters and others dictating, here is what you are going to get. If you want to purchase and pay for programming from a different market, knock yourself out.

Senator FISCHER. OK. Mr. Thun, this brings up another issue we have in Nebraska when we look at Scotts Bluff and North Platte. They have not received a local broadcast signal on Direct TV who you represent. Last year Press Report said that Direct TV does not plan to launch any new satellites. Is that still the case?

Mr. THUN. I believe that is still the case.

Senator FISCHER. Is Direct TV unwilling to serve these markets with local broadcast content or is there some technological issue?

Mr. THUN. No, I think as I said previously, we believe we actually serve these customers. We are in all 210 DMAs. We provide customers in those particular areas the opportunity to get an antenna and pull over-the-air signals and integrate that broadcast signal into their Direct TV experience. So, we believe we are serving those customers and we are delivering those signals. Not in the way that the NAB perhaps would like us to deliver it but that is the way we are delivering it. There are other competitive options to go to other places if you do not like the way we do it.

Senator FISCHER. It may not be the way Nebraskans that live in those areas that are very rural would like you to do that either. Ms. Barr, if you could respond to this. As you know in the rural panhandle counties here in Nebraska, Nebraskans rely on satellite TV services and they are beyond the physical reach of an antenna signal and they do not have access to cable networks at all. And this is the very point I believe is to why launching local channels is so important.

A free antenna is not going to fix this. You know, we are looking at residents in rural areas who should really be able to expect to view local channels just as our metropolitan constituents do as well. Have the broadcasters chosen not to serve our rural constituents?

Ms. BARR. Absolutely not. We are licensed by the FCC. We have a certain amount of power that we are allowed to extend. We cannot just arbitrarily decide we are going to increase power and extend the signal beyond what we are licensed to do. If we could that would be great, but we are not allowed to do that and the solution here is really AT&T's choice.

Senator FISCHER. I mean you look at Cherry County, Mr. Chairman, my last comment. You look at Cherry County. Mr. Law knows where Cherry County is. You look at Cherry County, 6,000 square miles, less than one person per square mile. There is no way that there is going to be a reach of an over-the-air antenna that a free antenna is going to be able to be able to meet. Thank you.

The CHAIRMAN [presiding]. Thank you, Senator Fischer.

Senator Baldwin.

STATEMENT OF HON. TAMMY BALDWIN, U.S. SENATOR FROM WISCONSIN

Senator BALDWIN. Thank you, Mr. Chairman, and I want to thank all of our witnesses today. Mr. Schwantes, this is going to sound quite familiar because we both know what is happening in terms of Wisconsinites' access to local programming in certain counties. So, by my count there are 13 Wisconsin counties that are assigned to out-of-state media markets and the largest of those is the Minneapolis, St. Paul media market affecting about 400,000 people who live in that part of Western Wisconsin.

And they end up getting the weather, local news, and yes professional football games from Minneapolis rather than a Wisconsin city. I think one of the key differences perhaps between Nebraska's issue and Wisconsin's is that we do have a professional football team in the state that many like to enjoy watching. I have mused before as close to a political crisis as you could have in a state is when you hear angry calls from people who cannot get their favorite team on paid television.

Because of that, I have introduced The Go Pack Go Act which takes one approach to allowing these constituents from 13 Wisconsin counties to have the option to receive local programming from their cable and satellite providers. I am pleased to hear everyone acknowledges the importance of access to local programming, but I want a solution. I want to make sure that everybody in these orphan counties have the opportunity to say we want the networks, but we can have it from our state rather than the DMA to which they are assigned.

So, I hope that we will consider how we fix these issues since so many of us have raised this as a concern. But Mr. Schwantes, from your perspective representing consumers, how important is it to provide the option of more relevant local programming? And I am going to follow up with a question about consolidation. I want you to have that in the back of your mind as you are answering this question.

Mr. SCHWANTES. Thank you, Senator Baldwin, it is good to see you and the Packers are off to a great start this year, it has been a couple of years. But in particular this is a complicated issue and it is one, like I said to Senator Fischer, we have been wrestling with for years. But to your point, and I would like to look at the Go Pack Go Act and see if that is something we can support. And if it builds upon what we did in 2014's version of STELAR—the market modification process is imperfect, and I think sometimes it pits broadcasters against one another and I want to make sure that we represent consumers. I think it would be great if you are sitting there in Western Wisconsin and Hudson, and you can pull in, you know, stations from my hometown of Wausau and to watch your Packer games. I think that would be great for consumers.

I think Mr. Law pointed out something to legislation on the House side. If we can kind of throw this in more to a copyright regime, that would be a big, big change. But as far as we are concerned, options that give consumers more choices. We are for that and it is something we should definitely consider moving forward.

Senator BALDWIN. Thank you. In his testimony, Mr. Thun notes that in the markets where his company uses the distant signal license there has been significant ownership consolidation among the network affiliates in many of those markets.

Regardless of how that informs our discussion about reauthorizing those provisions of STELAR, it is part of a trend that could impact access to local programming and consumer prices. According to Pew Research as of 2016, the five largest companies in local television owned, operated, or serviced 443 broadcast stations or 37 percent of all stations and that is an increase from only 179 stations in 2004.

So, turning again to you, Mr. Schwantes, for the consumer perspective. What effect do you see on consumers from consolidation in broadcast television? And what about the broader video marketplace?

Mr. SCHWANTES. That is an excellent question, Senator. I think the short answer is this is why we at Consumer Reports opposed the Sinclair and Tribune merger in 2017. We feared that—we can get into FCC media ownership rules if we want but that is a different kind of rabbit hole, but it was something that at a real base level would give Sinclair, which would own multiple local broadcast stations, and not just ABC but you know multiple of the different big four networks, and it gives them increased leverage and retransmission consent negotiations where they have, you know, hundreds of different stations that they are negotiating on behalf of.

That is why we opposed that merger. We thought it would lead to increased retransmission consent rates, which we agree with our friends in the cable industry, that they are going up, we just do not like that consumers end up paying them. But then it was just a question of localism. It was something the Commission always considered as part of their media ownership rules and kind of took a beating in the courts in the 2000s and that is something, we do support. We think is important for consumers and we think it is important for local broadcasting, local news, weather, and sports.

Senator BALDWIN. Thank you.

The CHAIRMAN. Thank you, Senator Baldwin. Senator Markey, while you were out of the room Mr. Schwantes said you got a bill he likes.

[Laughter.]

Senator MARKEY. Thank you, Mr. Chairman.

The CHAIRMAN. You are recognized.

STATEMENT OF HON. EDWARD MARKEY, U.S. SENATOR FROM MASSACHUSETTS

Senator MARKEY. A preview of coming attractions. Thank you for this and I think there might be a couple he likes. I will just go first to follow up on what Senator Baldwin was just raising because I have a very similar concern that she does. And that is, out in Berkshire County they have lost access to local Massachusetts broadcast television, because their cable provider dropped the Springfield NBC station and the Boston ABC station from its channel lineup.

And because the Berkshires are technically part of Albany, New York designated market area, Western Massachusetts viewers can only access broadcast stations to focus on New York. And so, for people in the Berkshires, they get news about what is going on in the Albany State House, but they really care about the Massachusetts State House. That is their real concern in terms of how it will impact their lives.

And it is not just an annoyance to people who watch Massachusetts teams on game day, it is a threat to the informed citizenry that a healthy democracy requires. The public should know how their elected officials are representing them at the State House and that is why I introduced legislation along with Representative Neal to force the Berkshire Cable Provider Charter to engage in good faith negotiations with WWLP and WCBB to bring those stations back on the air in Berkshire County. And I am willing to work with any member of this committee.

I know that Senator Fischer raised a similar issue so that we can come together in this legislation to begin to find solutions to problems that really do bother people at the local level in our country.

So, I know that you have a concern about that Mr. Schwantes, so I will come back and I will ask a question that I think Senator Wicker was referring to and that is that ultimately the video marketplace must work for consumers. For too many Americans that is not the case today. A new study by Consumer Reports shows that every month consumers are surprised to find that the cable bill is much higher than the advertised price they signed up for. And the numbers are clear.

On average, cable companies generate close to $450 annually per customer from fees. The average cable bill includes more than a dozen added line item charges and these fees add nearly 25 percent of the base price to a consumer's monthly bill, not the advertised price, but these fees then come in in addition.

These charges are more than a nuisance, they are unanticipated costs that squeeze consumers and that is why I introduced the True Fees Act legislation that would put an end to cable, internet, and telephone advertising practices that only confuse consumers about the true cost. The True Fees Act requires providers to include all chargers in the prices they advertise for service, allow customers to end a contract without early termination fees if providers increase their fees, and provide clear and timely notice of price changes.

So, Mr. Schwantes, in your testimony you voice support for the True Fees Act. Can you explain the ways that increased transparency in cable billing will benefit consumers?

Mr. SCHWANTES. Thank you, Senator. And thank you for your leadership on this issue. I think just three things. If you had more transparent cable billing and you missed my cereal box analogy and I will not torture the panel with that again, but basically consumer frustration, if they actually knew what the cost they are going to pay each month was right up front, right on the advertised price, I think consumer frustration and blood pressure levels will go down.

I mean as part of our work we survey consumers and I want to say 96 percent of consumers were annoyed with hidden fees in all industries. This is not just unique to the cable industry. Almost two-thirds are extremely annoyed. So, I think that level of frustration would come down. I think it would also allow consumers to comparison shop. I mean, there are lots of I think a success story or the number of online streaming services that are out there for consumers to choose from. But as you are trying to add it up like well, what is my cable bill really going to be as I am paying for all these other services, that would help comparison shopping.

And finally, just a real basic, help households keep their budgets. I think for some families if an extra $50 to $200 a month and add-on fees can blow a hole in the budget. And in our survey work, I want to say 6 out of 10 of our consumers that we surveyed said yeah, it hurts our budgets.

Senator MARKEY. National Association of Broadcasters, how do you feel about the True Fees Bill?

Ms. BARR. We want to see fairness across the board, and we want to see local stations carried in their local markets.

Senator MARKEY. So, you do not want to see surprise fees?

Ms. BARR. No. I do not like to look at them either. I do agree that there are more options today so you can go to an over-the-top service. You can go to other services as well. We remain obviously—we are still free and over the air. We always will be, and so we want to see fairness on that as well.

Senator MARKEY. I agree with the National Association of Broadcasters and Consumer Reports. Thank you, Mr. Chairman, very much, and thank you for your support for my bill.

The CHAIRMAN. Thank you, Senator Markey.

Senator Blumenthal.

STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you all for being here today. I apologize that I was at a number of other hearings as I suspect many of my colleagues were, and I want to focus on an area that I think may not have received enough attention so far, blackouts. I am a big fan of local broadcasting. Connecticut has some of the best in the country. I am proud to say. And I appreciate firsthand that local news and localism is vital for democracy. I praise our broadcasters and our local press generally for providing the information that we need for democracy to work, truthful and accurate information.

Blackouts obviously are a plague for consumers. These blackouts are always unfair to consumers because they are on unable to watch the content for which they have paid. So, I have a simple question for all of you, but most especially for Ms. Barr, Mr. Thun, and Mr. Schwantes, is the failure to renew STELAR likely to lead to more or fewer blackouts of programming for satellite television subscribers?

Ms. BARR. Thank you, Senator. In my opinion, the expiration of STELAR will have no effect because it is in our best interest, it has always been in our best interest to negotiate in good faith. And I know for my company speaking strictly for mine, we have never had a blackout. We do not want a blackout. We work very, very hard not to. And we are negotiating as a relatively small company with AT&T, Dish, Charter, others, and we have managed to successfully get those deals done to our mutual satisfaction.

Senator BLUMENTHAL. Others? Mr. Thun?

Mr. THUN. Yes, I would disagree with that notion. We have good faith today and it provides the lowest standard of good faith. We currently face a sea of increases that I provided earlier. There was a 5,400 percent increase in 2006 to today. Those increases are unsustainable. And those increases I think demonstrate that while the broadcasters are pretending as if they are poor little Mom and Pops against big AT&T, the fact of the matter is that when they are at the negotiating table, they have supreme leverage, and they utilize it every chance. And so, the notion that we would take good faith away I think would only exacerbate the problem. It would lead to higher prices and more blackouts.

Senator BLUMENTHAL. Mr. Schwantes?

Mr. SCHWANTES. I agree with Mr. Thun on that, but I would also say you would have a very massive blackout on New Year's Day. I am a political realist. I do not believe that if we let STELAR expire that within a week—the Dish Network story is a little complicated but I do not think within a week Direct TV will suddenly be carrying these distant signals, and one of the provisions is a very obscure one, but right now 119 distant signal can be brought into a local market without retransmission consent. It is not required.

If that goes away, both the compulsory license, which I am more familiar with goes way. But also, the ability not to have to engage in these tents retransmission consent negotiations. Suddenly, they would be at the bargaining table on January 1 trying to figure this out without the benefit of a compulsory copyright license. So, you would have a very big blackout in January of next year.

Senator BLUMENTHAL. Well, I was an advocate for ending the sports blackout rule. When we fought to—and that rule the NFL warned that football would disappear over the air if the sports blackout went away. So maybe we have a lesson for future reform. Were there any negative effects stemming from the FCC repealing its sports blackout rule? Question for all of you. I see some heads being shaken. The record will then reflect they were side to side, not up and down.

Mr. WATTS. Senator, in Oklahoma we think it is communism to let football be blacked out.

Senator BLUMENTHAL. Well so far, the communists have not taken over.

Senator MARKEY. And J.C. Watts was the quarterback on two Oklahoma teams that won the Orange Bowl. So, you helped to make it a religion.

Senator BLUMENTHAL. This is a serious subject especially for dedicated football fans and we have many in Connecticut as well. But it is more than sports. It is a principle that is vital to our democracy. And so, I hope that we will make sure that blackouts are a thing of the past. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Markey, do you have follow up questions?

Senator MARKEY. No, I am fine.

The CHAIRMAN. OK. Who has thoughts on the five-year renewal or a different timeframe? Does anyone wish to talk about that?

Mr. THUN. I think we would definitely prefer that this was permanently enacted. Our cable partner, or our cable competitors have a permanent license. We are not sure why we would be treated any differently. We think that STELAR provides customers access to network television that they would not otherwise get and to be taking STELAR away would only harm those customers and they would not have another choice to get that content.

The CHAIRMAN. So, Ms. Barr, you want zero and Mr. Thune wants forever. What are your thoughts on what he said, why is he totally wrong?

Ms. BARR. I just go back to I think the five-year cycle has created more harm than anything else and I would say that we do not need it for five more minutes, never mind five more years. We need to be we need to be focused on what we do locally and the best way to do that is allow us to continue to do our local jobs, so I would not renew it at all.

I think the distant signals coming into these markets whether it is from New York or LA are not providing any real service other than they are giving you a network signal, but they are giving you nothing of the local. So again, as I said earlier if you have a wildfire going on in your State or you have a tornado or whatever and you are watching a station from New York, you are not getting any information that could literally be lifesaving.

The CHAIRMAN. Mr. Schwantes, is something between five and zero appropriate, do you have any thoughts on this?

Mr. SCHWANTES. I am always open to ideas. We are on record Senator of in favor of a permanent reauthorization for much of the same reasons Mr. Thun from AT&T has pointed out. Mostly for parity with cable. I think what is good for cable in this context should be good for satellite, and I think back when I worked on the 1999 version of this law, we were talking about millions of distant signal subscribers. Now that number is below a million.

I think it is not the problem that it used to be, but I think a five-year cycle gives us an opportunity to consider targeted marketplace reforms that can always be a good thing. It is the legislation that is moving. But I do think so many of the issues we discussed here today beg for a larger bill, a larger reform of the video marketplace. We haven't really done that mean that apart from these five-year cycles. We have not really done that since the 1996 Telecom Act, and I think all of us in this room know that the media marketplace is very, very different now in the Internet age than it was in the mid-90s.

The CHAIRMAN. Anybody else have thoughts on that?

Mr. LAW. Senator, I would echo Mr. Schwantes' comments in terms of years. While I may not have a specific number, I do think it is important that STELAR be renewed for a period throughout two to five years, at least somewhere in there if nothing else to keep the current system, flawed as it is, in place, but also as part of a larger video discussion. In my career, it seems that as part of a larger video discussion in the marketplace, this vehicle seems to be about the only time this comes up for discussion.

Mr. THUN. I think it is worth saying again that if STELAR goes away, 870,000 customers are going to lose access to TV broadcasting signals.

The CHAIRMAN. Ms. Barr, you say that is flatly incorrect. Now, how can two people of good will have such a disparity?

Ms. BARR. Because it is my understanding, sir, that AT&T is making a decision not to serve those markets with the local stations. That is a business decision. They are certainly entitled to make that decision, but it is not something they are incapable of doing. It is just something they choose not to do.

Mr. THUN. Can I clarify that?

The CHAIRMAN. Certainly.

Mr. THUN. Because I think there is some conflation going on here that is confusing people. In the markets where we take an over-the-air signal, we are not using the distant signal in the middle of Helena, Montana. In the middle of Helena, Montana the only vehicle for us to provide broadcast signals is through the antenna, which we provide to our customers for free and give a discount to our subscribers. It is only in the outskirts of the DMAs where the broadcasters fail to deliver a signal is where these distant signals come into play or in the case of the long-haul truckers and the recreational vehicle users. Those also come to play as well which are important constituents.

But the notion that taking STELAR down is going to then close a loophole where we provide broadcast signals in the middle of markets is patently untrue.

The CHAIRMAN. Mr. Thun, when you say the broadcasters fail to deliver a signal, Ms. Barr responds to that by saying they have a certain geographic area where they can broadcast their signal and beyond that they cannot do so. And so, what is the answer? And I would like both of you talk about that.

Mr. THUN. Well, I think if they put repeaters in the outskirts of the areas, I guess I am not familiar with the technology of what megahertz they are allowed to broadcast that, but I believe that there is technologies to put repeaters on the outskirts of these DMAs in order to afford customers access to the signals.

The CHAIRMAN. Is that expensive?

Mr. THUN. Well, I think they have got a windfall of money coming through the retrans fees that we pay, so they have got plenty of money to pay for it.

Ms. BARR. I think the use of the term fail is just—it is not correct. We are doing what the law allows us to do. We are broadcasting at maximum power and we are reaching as far as we can. That is that is what the FCC has licensed us to do and that is what we are doing. The fact is that we know that other companies, satellite companies, cable companies have technologically figured out a way to take our local signals and put them on their services.

And AT&T could do this. We know Dish is doing it. There are signals available on over-the-top platforms that they are able to receive from our local television stations. So, all of that is possible, it is just a question of having the will to do it. And I just do not think that AT&T at this moment has the will to do that.

The CHAIRMAN. Mr. Schwantes, help us once again understand what the expiration of STELAR would do to prices for consumers?

Mr. SCHWANTES. If you let it expire and we then we deal with this 119 license issue. That is the distance signal license. That is what AT&T and some instances Dish Network are using to deliver these distant signals into some markets. That would go away. The issue is a little more complicated in how they bring these in like in. In Helena, Montana, for example, we looked at that market—what Direct TV is doing and I would defer to Mr. Thun, is they are bringing in not a signal from New York or LA, they bring it in from a neighboring market, say from Butte, Montana and there are some rules that allow them to do that.

But in terms of how it makes it more expensive, right now those distant signals are not subject to retransmission consent negotiations. Direct TV or Dish Network, the other satellite providers do not need to sit down with the broadcasters and negotiate a fee for carriage.

The CHAIRMAN. They pay a fee to the copyright office, right?

Mr. SCHWANTES. Yes. It is a compulsory license. That is correct, Senator. And in general, that is lower than the market rate in my experience. But if that 119 license goes away and along with it the requirement, the privilege of not having to engage in retransmission consent, it throws that market off. I think I do agree with Mr. Thun. Some signals will go dark. And then AT&T and Dish Network, they also use the 119 license in some markets. They would then have to sit down with the broadcasters and cut a new deal. And if it is very low now, I can only imagine, and this is just a hazarding guess, it will be more than what it currently is. And I would hazard a second guess that it would be passed onto consumers.

Mr. WATTS. Mr. Chairman.

The CHAIRMAN. OK, please Mr. Watts, yes.

Mr. WATTS. Just one thing I want to add. Over the last hour and 46 minutes we have been talking about reauthorization of STELAR. For the last 10 years I have been trying to get an independent network up and going and the theme of what we have heard over the last hour and 45 minutes has been retransmission fees being escalated, consumer bills being escalated, blackouts. That has kind of been the theme of our conversation.

And the reason that we think modifying Section 335 is so critical, the independents get caught in the mix. In any one of those three issues, independence get squeezed or they get squeezed out. And so, there is nowhere on the TV dial that the African American community can go today to get information or education and see a very unique perspective concerning current affairs, history, you know, HBCUs, wellness, etc., etc., etc. So, I hope in this discussion we have seen why it is critically important to modify Section 335 for independent content providers like BNC.

The CHAIRMAN. Thank you very much. Well, let us do this. Each of you take a minute to summarize what the bottom line is and what you would like to say, anything that we have missed, and we will start with you, Ms. Barr, and go down and then that will be the end.

Ms. BARR. OK. Thank you very much, Senator. I would just like to reiterate that it is our belief that the harm caused to local markets by bringing in distant signals is something that needs to be addressed, and this is going to continue if STELAR is allowed to be reauthorized.

So, from my point of view and from the point of view of the NAB we feel strongly that local news, local television should be paramount. It is the bedrock of what we do. It is as I said earlier, the news we provide in these local markets is our North Star. We do not believe we need a regulation to govern good faith bargaining because it is in our best business interest to good faith bargain, and we do that now. And in large part, in large part, despite the publicized blackouts, we are getting these deals done.

It is interesting to me that with respect to AT&T in the last five months we have had a lot of blackouts but in a year ago at this time, we only had one so with respect to them, so I would just argue that if we allow STELAR to sunset, I think it accomplished everything it was supposed to do when it first was designed under its former name, but I think at this point we have we have moved on.

The CHAIRMAN. Thank you. Mr. Law.

Mr. LAW. Thank you, Mr. Chairman. I would simply state that I think that the Congress should take a serious look at how to reform certain applications on a targeted basis for video subscribers, including the nondiscriminatory practices in terms of retransmission consent prices, tying, bundling, and the requirement of purchasing a basic tier.

And in response to some of the questions today regarding the receipt of an off air signal, while I respect Ms. Barr's comment regarding broadcasting at full power, in South Dakota and in rural areas, there are significant areas within their licensed DMA and within their license for spectrum that broadcasters could distribute their signal and not require customers to purchase it from companies like mine, but the broadcasters have chosen not to broadcast in those areas.

The CHAIRMAN. The local stations?

Mr. LAW. The local stations. Local stations have chosen not to put transmitters in additional locations to cover their DMA. And as a matter of fact, one broadcaster in a certain DMA covers exactly 14 percent of the geography of the DMA and leaves the other 86 percent behind. I happen to live in that other 86 percent.

The CHAIRMAN. Thank you. Mr. Thun.

Mr. THUN. Yes, I would say that we are here to talk about the reauthorization of STELAR and we are losing sight of the fact that 870,000 customers rely on these distant signals to get network programming. All of the talk about we are not servicing the local communities is not true. We are servicing them through an antenna. And it will not change. The removal of STELAR will not change how we deliver the signals in that fashion. It has no bearing whatsoever.

What we are talking about here is the broadcasters' failure to deliver in certain markets. And for those customers who cannot receive an over-the-air signal, we are trying to give them a practical way to receive their network content that they are looking for and that they have relied on for years. So that notion that we are talking about all these different things, I think very straightforwardly we are talking about the renewal of STELAR and the customers that are being impacted.

I think it would be a tremendous disservice to those customers to take it down now and remove those things from them, as well as just the ancillary impacts of taking away good faith, which being on the frontline of these negotiations I can tell you good faith is not something that is adhered to at the highest levels. It is at the absolute minimum that broadcasters adhere to it and we have to remind them in certain cases you are not acting in good faith to whip them back into shape in certain cases.

So, to take that piece of STELAR away from us in those negotiations would be harmful. It would raise prices and create further blackouts. And further, blackouts are not in our interest. We do not do this as a vehicle to try to get STELAR reauthorized. It is absolutely crazy to think that we would lose hundreds of thousands of customers for this. That is not the case. I think it would be economically imprudent to do so.

The CHAIRMAN. Thank you. Mr. Watts, I heard you on television one time quoting someone else as saying we are all entitled to our own opinion just not to our own facts. It seems that somehow these people of good faith are entitled to their own facts. I am sure you cannot help me there but what would you say in a way of 60 seconds?

Mr. WATTS. Mr. Chairman, my closing comments were my previous comments. I am here at the table trying to, you know, create more opportunity for independent content providers and my proposal to amend section 335 is I think a way that we can do that. Dish Net and Direct TV both are supportive of that. So again——

The CHAIRMAN. This exploration negotiation gives you an opportunity for that negotiation to be successful.

Mr. WATTS. Correct.

The CHAIRMAN. Mr. Schwantes, wrap it up in 60 seconds.

Mr. SCHWANTES. Will do. Thank you, Senator. I will go back to what I said in my earlier remarks, which is STELAR in all its earlier forms was a pro-consumer and a pro competition law and it has done a lot of great things for consumers and competition. I think it is October 23. We immediately need to help these hundreds of thousands of consumers who face real anti-consumer result of not having their signals come New Year's Day.

So, I think we need to deal with the STELAR reauthorization, move past it, and then take on some of these bigger issues. And we need to because these bigger issues are causing the inflation and the rise of company-imposed fees and bills and that is largely because, I do agree with some of the panelists, a broken retransmission consent system.

So, let's take on those bigger issues. In the meantime, let us use it as a vehicle to help consumers bring some transparency to billing but really engage in the bigger issues and figure this out and lower prices and increase consumer choice. Thank you.

The CHAIRMAN. Well, I want to thank all of our witnesses. I think you have all been excellent and this has taken place in a spirit of openness and sort of debate that we welcome here in this country, and I really appreciate each and every one of you. I need to say that the hearing record will remain open for two weeks.

Senators are asked to submit any questions for the record during this time. And to our witnesses, upon receipt, can you submit your written responses as soon as possible, but no later than November 20, 2019.

Okay, we thank you and we conclude the hearing once again. And we are grateful to each and every one of you for your insights and for your participation. This hearing is now adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

A P P E N D I X

NATIONAL GRANGE
Washington, DC, September 23, 2019

Hon. ROGER WICKER,
Chairman,
Hon. MARIA CANTWELL,
Ranking Member,
Committee on Commerce, Science, and Transportation,
United States Senate.

Hon. LINDSEY GRAHAM,
Chairman,
Hon. DIANNE FEINSTEIN,
Ranking Member,
Committee on the Judiciary,
United States Senate.

Hon. FRANK PALLONE, JR.
Chairman,
Hon. GREG WALDEN,
Ranking Member,
Committee on Energy and Commerce,
United States House of Representatives.

Hon. JERROLD NADLER,
Chairman,
Hon. DOUG COLLINS,
Ranking Member,
Committee on the Judiciary,
United States House of Representatives.

Re: Support for STELAR Act reauthorization

Dear Chairmen Wicker, Graham, Pallone, Nadler and Ranking Members Cantwell, Feinstein, Walden, Collins:

When it comes to obtaining access to basic services, rural communities are prone to experiencing gaps or interruptions. Television content is unfortunately no different. Unless Congress moves quickly to reauthorize the of Satellite Television Extension and Localism Act Reauthorization (STELAR), over 870,000 satellite TV customers, *mostly in rural areas,* will lose basic protections that afford them access to basic broadcast network programming in places where over-the-air signals can't reach.

Rural residents should not be needlessly punished and their access to network entertainment should not be curtailed because they live in a less convenient area to service. Therefore, the National Grange urges your support for prompt STELAR reauthorization before it expires on December 31, 2019. This important legislation will help preserve the connectivity of hardworking, rural communities by providing them access to local news, sports, and other programming of their choice.

Technical limitations make it difficult for many residents in small towns and rural communities to watch broadcasting from one of the "big four" networks without STELAR reauthorization. STELAR contains a key provision that enables satellite and pay-TV providers to import broadcast signals to these communities *without interruption.*

Our members depend on STELAR not just to access network programming, but also to keep their service affordable because STELAR encourages good-faith negotiations between broadcasters and satellite providers. This law's importance cannot be overstated: its provisions serve as the single set of rules that help to protect consumers from programming "blackouts," which broadcasters deploy to extract retransmission fee increases from rural residents and small businesses.

Congress must take prompt action to ensure that STELAR's protections remain in place. This law's reauthorization has always had strong bipartisan support; when STELAR was last considered in 2014 it passed Congress unanimously. Reauthorization before the law expires at the end of this year will demonstrate that Congress is truly committed to preserving rural Americans' access to information and entertainment.

Sincerely,

BETSY E. HUBER,
President.

October 1, 2019

Committee Member,
Committee on Commerce, Science, and Transportation,
U.S. Senate,
512 Dirksen Senate Building,
Washington, DC.

Dear Senator,

On behalf of the undersigned organizations, we urge Senate Commerce, Science, and Transportation Committee to review the existing laws governing the video marketplace.

Since the Cable Act of 1992 was enacted, the way in which consumers view video has changed dramatically. Nearly everything can be watched anywhere. Movies, television shows, news, and sporting events are available through online platforms like Netflix, Pluto TV, Roku, and YouTube, through podcasts and direct subscriptions to movie services including HBO Now and Starz, as well as broadcast television and cable.

The laws surrounding video viewing have remained stagnant and are in need of review and modernization. We encourage the start of this effort and look forward to further engagement with you throughout the process.

Again, thank you for your consideration.

Sincerely,

THOMAS A. SCHATZ,
President,
Council for Citizens Against Government Waste.

JEFF MAZZELLA,
President,
Center for Individual Freedom.

ANDREW LANGER,
President,
Institute for Liberty.

BARTLETT CLELAND,
Executive Director,
Innovation Economy Institute.

DANIEL SCHNEIDER,
Executive Director,
American Conservative Union.

DAVID WILLIAMS,
President,
Taxpayers Protection Alliance.

PHIL KERPEN,
President,
American Commitment.

HISPANIC TECHNOLOGY & TELECOMMUNICATIONS PARTNERSHIP

October 11, 2019

Hon. JERROLD NADLER,
Rayburn House Office Building,
Washington, DC.

Dear Congressman Nadler,

We represent a diverse community of Hispanic entrepreneurs, creatives, and consumers who deserve to experience the full benefits of the revolution in content delivery. Technology and the way in which consumers access media has changed dramatically over the last decade. When you consider the advent of streaming and growing popularity of mobile viewership, it is almost unthinkable that the laws and regulations governing the video marketplace in the United States have not been updated since the 1990s. That is why we urge you to pass legislation to modernize the video marketplace and protect consumers' unfettered access to today's innovative digital media market.

One of the most important things Congress can do immediately is to renew the Satellite Television Extension and Localism Act Reauthorization (STELAR). This law helps ensure that more than 870,000 consumers can access network TV programming through the distant signal license provision. For rural Hispanic communities, this provision is especially important as it is makes it much easier for residents to access basic network content.

STELA Reauthorization ensures that Latino consumers have access to important content which is normally free over the air when they are within the broadcasters service area. Congress should ensure the rules it passes do not disadvantage them and make this programming more difficult or costly to view even for consumers outside the broadcasters service area.

If Congress fails to renew the STELAR Act—or permanently codify its most important provisions—communities in so-called "short markets," where content from one of the "Big Four" broadcasters is not available, will have no way to access the media they depend on. Particularly in rural parts of the country, cutting off network access can deprive rural, otherwise hard-to-reach Hispanic communities of valuable sources of local news, events, election updates, sporting events, and other important information.

Reauthorization also gives Congress an opportunity to codify a set of basic consumer access protections while addressing the outdated regulations that currently govern the video marketplace.

It is past time to protect consumers by updating these rules to reflect the realities of today's video content marketplace. Keeping our video marketplace laws stuck in the past unfairly disadvantages the Hispanic community for embracing new technology and seeking out Hispanic media representation and Spanish-language programming.

Congress must act quickly and thoughtfully to address the range of issues that our outdated rules and regulations for video distribution have created. We should no longer be relying on laws last updated in the early 1990s to govern the ever-evolving marketplace of content today.

Please work with your colleagues in the Senate and House of Representatives—and on both sides of the aisle—to help pass meaningful legislation that updates our video marketplace laws, while also working to renew the STELAR Act to help protect Hispanic consumers and all Americans from unfair and abusive practices.

Sincerely,

ALEJANDRO ROARK,
Executive Director,
HTTP.

About HTTP

Formed in 1996, Hispanic Technology & Telecommunications Partnership (HTTP) is the leading national Latino voice on technology and telecommunications policy. HTTP's coalition of nonpartisan national Latino civil rights organizations, work to ensure that the full array of technological and telecommunications advancements are available to all Latinos in the United States. Together and through their missions, each promote the social, political, and economic advancement of over 50 million Americans of Hispanic/Latino descent by facilitating access to high quality education, economic opportunity and effective health care through the use of technology tools and resources.

PUBLIC KNOWLEDGE
October 15, 2019

Hon. ROGER WICKER,
Chairman,
Committee on Commerce, Science, & Transportation,
United States Senate,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Committee on Commerce, Science, & Transportation
United States Senate,
Washington, DC.

Hon. LINDSEY GRAHAM,
Chairman,
Committee on the Judiciary,
United States Senate,
Washington DC.

Hon. DIANNE FEINSTEIN,
Ranking Member,
Committee on the Judiciary,
United States Senate,
Washington, DC.

Hon. FRANK PALLONE, JR.,
Chairman,
Committee on Energy & Commerce,
United States House of Representatives,
Washington, DC.

Hon. GREG WALDEN,
Ranking Member
Committee on Energy & Commerce,
United States House of Representatives,
Washington, DC.

Hon. JERROLD NADLER,
Chairman,
Committee on the Judiciary,
United States House of Representatives,
Washington, DC.

Hon. DOUG COLLINS,
Ranking Member,
Committee on the Judiciary,
United States House of Representatives,
Washington, DC.

Dear Chairmen Wicker, Graham, Pallone, and Nadler, Ranking Members Cantwell, Feinstein, Walden, and Collins,

In 2014, Congress unanimously voted in favor of the Satellite Television Extension and Localism Act Reauthorization (STELAR). Among other things, this law allows satellite TV subscribers who would not otherwise be able to access network programming at all to access these broadcast stations. Without these critical legal protections in place, more than 870,000 satellite television subscribers risk losing their ability to access news, sports and programming at a fair and competitive price. Many of the residents most likely to be impacted by a failure to renew STELAR are disproportionately rural or otherwise live in areas that put them at a considerable disadvantage for access to information compared to urban and suburban communities—for example, they may live in "short" markets that lack a national network presence or in households that cannot receive stations over the air. *Therefore, consumers across the country are counting on this Congress to reauthorize and reaffirm STELAR and its important consumer protections before they expire on December 31, 2019.*

The current situation in which hundreds of thousands of satellite television subscribers are held hostage to cyclical and frequent regulatory disputes is unsustainable. We believe that consumers deserve to be treated better, and that they should be entitled to fair access to a full range of national programming. STELAR's key provisions—including the distance signal license—ensure that satellite television companies can continue to provide broadcast stations to all their customers. Permanently reauthorizing STELAR will allow viewers living in underserved areas to continue receiving content without unnecessary disruption and lay the foundation for improved video marketplace competition.

Congress should take this opportunity to build on STELAR's foundational provisions and modernize the nearly 30-year-old rules governing TV and video transmission. The increasing numbers of "cord cutters" and "cord nevers" show that consumer habits are changing and that today's video audience wants to take advantage of their ever-growing viewing options.

Unfortunately, many of the rules from the 1992 Cable Act and its subsequent iterations are stifling today's modern and innovative video market. This outdated law does little to keep bills in check. The retransmission fees consumers pay to broadcasters has ballooned from about $200 million in 2006 to $11.7 billion this year. Even worse, MVPDs unload their increased costs onto consumers in the form non-optional, company-imposed fees, like the "broadcast TV fee" and others. Moreover, consumers usually don't have the option of a low-cost carrier with limited channel offerings that is less beholden to negotiating with broadcasters. The result is that since 2010, there have been more than 1,000 blackouts and this trend is only getting worse. In 2017, there were more than twice as many blackouts as in 2016. In 2019 alone, there have already been 230 blackouts.[1] Thousands of cable and satellite subscribers become bargaining chips whenever broadcasters and providers fail to reach an agreement.

Consumers are being taken advantage of and Congress can put a stop to it. In addition to provisions addressing satellite licenses, STELAR contains "good faith" provisions that, if properly enforced by the FCC, could reduce blackouts and lower consumer bills.

As Reps. Steve Scalise and Anna Eshoo have proposed in the Modern Television Act of 2019, Congress could fix things by shifting the video marketplace to a system based on privately negotiated copyright. Such a system would better fit consumers' ongoing transition to online, multi-platform viewing. While bold approaches of this are probably needed to fundamentally restructure the video marketplace to better fit the needs of consumers, allowing STELAR to expire in the interim would represent a step backward. Video marketplace reform does not need to come at the cost of harming 870,000 satellite subscribers.

The evidence for a permanent STELAR reauthorization is overwhelming. The video marketplace is in dire need of sweeping regulatory reform, but the artificial deadlines imposed by STELAR's expiration keep that from happening. *In the interest of consumers across the country, we call on Congress to reauthorize STELAR before it expires at the end of this year.*

Sincerely,

Common Cause
Consumer Action
Consumer Federation of America
Consumer Reports
Open Technology Institute at New America
Public Knowledge

[1] American Television Alliance, "Broadcasters Are to Blame for Skyrocketing Retrans Fees and Record Number of TV Blackouts," *https://www.americantelevisionalliance.org/broadcasters-are-to-blame-for-skyrocketing-retrans-fees-and-record-number-of-tv-blackouts-says-atva/* (July 24, 2019)

COMMUNICATIONS WORKERS OF AMERICA
Washington, DC, October 16, 2019

Hon. ROGER WICKER,
Chairman,
Committee on Commerce, Science, and Transportation,
U.S. Senate,
512 Dirksen Senate Office Building,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Committee on Commerce, Science, and Transportation,
U.S. Senate,
512 Dirksen Senate Office Building
Washington, DC.

Hon. LINDSEY GRAHAM,
Chairman,
Committee on the Judiciary,
U.S. Senate,
224 Dirksen Senate Office Building,
Washington, DC.

Hon. DIANNE FEINSTEIN,
Ranking Member,
Committee on the Judiciary,
U.S. Senate,
224 Dirksen Senate Office Building,
Washington, DC.

Dear Chairman Wicker, Ranking Member Cantwell, Chairman Graham and Ranking Member Feinstein:

On behalf of the officers and 700,000 members of the Communications Workers of America (CWA), I am writing to urge prompt passage of the Satellite Television Extension and Localism Act Reauthorization Act (STELAR). Failure to reauthorize STELAR means that more than 870,000 satellite subscribers, most of whom are rural customers, would lose access to network TV programming from the loss of the distant signal license.

The Satellite Television and Localism Act ensures that customers who live beyond the contours of local TV stations can receive network programming via satellite. The Satellite Act requires reauthorization every five years and thus sunsets on December 31, 2019 unless Congress acts now to reauthorize it.

Failure to reauthorize STELAR would mean that many rural Americans would not have access to broadcast network programming that the rest of the country receives and that these rural customers have paid for and continuously relied on.

Since the last time Congress reauthorized the Satellite Act, CWA has gained recognition of tens of thousands of DIRECTV employees whose union contract provides good wages, benefits, and working conditions. STELAR reauthorization will help protect these good jobs in communities across the United States.

Finally, I note a lack of parity in the treatment of out-of-market licensing for cable and satellite providers. The cable statutory license does not have an expiration date, whereas the satellite license must be renewed every five years. Satellite subscribers should not live with the possibility that their service could end every five years. Ideally, there should be a permanent STELAR reauthorization. But barring permanent reauthorization, Congress must once again extend the Satellite Act as it has done since 1988.

Thank you in advance for your consideration.

Sincerely,

SHANE LARSON,
Senior Director of Government Affairs and Policy,
Communications Workers of America (CWA).

Cc: Members of the Committees

AMERICAN TELEVISION ALLIANCE
October 22, 2019

Hon. ROGER WICKER,
Chairman,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Re: Hearing on the Reauthorization of STELAR

Dear Chairman Wicker and Ranking Member Cantwell:

I write on behalf of the American Television Alliance [1] to provide our perspective in advance of your hearing entitled The Reauthorization of STELAR.

When I wrote to you before your last hearing "The State of the Television and Video Marketplace," [2] I described the growing dysfunction in the retransmission consent regime and the need for Congress to address these issues in STELAR reauthorization.

In the four months since then, broadcasters have initiated 216 blackouts affecting tens of millions of consumers. This brings the total number of blackouts to 276 for 2019 and breaks the previous annual record of 213. Indeed, broadcasters initiated more blackouts in the last four months than they had caused *in any prior entire year*. And broadcasters continue to raise prices by double digits each and every year—more than five *thousand* percent since 2006.[3]

How bad have things gotten? A nonprofit, locally owned electric utility (called BELD) in Braintree, Massachusetts recently announced that it will "cut the cord"—that is, exit the video business entirely—this December.[4] It stated that its decision "was a direct result of ever-increasing, out-of-control fees that BELD must pay programmers for the privilege of carrying their channels" and added that, "[a]t this point, the fees have left us no choice but to leave the cable [TV] business." [5] It is not the first video provider to make this decision,[6] and it surely will not be the last.

In such circumstances, it should be unthinkable for Congress to eliminate the "good faith" rules by failing to reauthorize STELAR. These rules provide at least *some* expectation of legitimate negotiations and *some* recourse for those operating in manifest bad faith. Without the good faith rules, the harm to consumers we are seeing in the marketplace will only accelerate.

To the contrary, the facts on the ground show that Congress should *strengthen* consumer protections. As I stated in my correspondence on June 4, we believe that Congress should address issues such as broadcaster consolidation, blackouts, phantom subscribers, and the forced bundling of broadcast channels in any STELAR reauthorization. Without Congressional action, consumers can expect more blackouts, more price increases, less localism, and more video providers exiting the business in the coming years (and thus, lets competition).

We look forward to working with Congress in the coming weeks on this very important issue.

Sincerely,

/S/ MIKE CHAPPELL,
Chairman,
American Television Alliance.

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[1] ATVA seeks to be a voice for the American television viewer. Our members include cable and broadband operators, satellite carriers, phone companies, trade associations, independent programmers, consumer groups and others concerned about the state of the video marketplace. You can find out more information about us at *www.americantelevisionalliance.org.*

[2] Letter from Mike Chappell to the Hon. Roger Wicker and the Hon. Maria Cantwell (June 4, 2018), available at *https://www.americantelevisionalliance.org/wp-content/uploads/2019/10/ATVA-Letter-Senate-June-4-FINAL111.pdf.*

[3] News Release: *ATVA Applauds Senate Hearing on STELAR; Urges Committee to Address Retrans Reform* (Oct. 16, 2019) (citing numbers compiled by ATVA based on publicly available information).

[4] *https://www.lightreading.com/video/video-services/another-cable-operator-gives-pay-tv-the-heave-ho-/d/d-id/754319.*

[5] *Id.*

[6] *See id.* (noting that 3 Rivers Communications in Fairfield, Montana made a similar decision earlier this year).

October 23, 2019

Hon. ROGER WICKER,
Chairman,
Senate Committee on Commerce,
Science, and Transportation,
Dirksen Senate Office Building,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Senate Committee on Commerce,
Science, and Transportation,
Hart Senate Office Building,
Washington, DC.

Dear Senators Wicker and Cantwell,

We are writing to you on behalf of a community that spends some portion of their lives traveling around the country in recreational vehicles. Our associations represent the manufacturers, dealers and owners of RVs as well as the campgrounds they visit. It is unusual for us to be writing to Congress regarding video issues, but it has come to our attention that, absent congressional action, many RV consumers will lose their access to network television signals.

By way of introduction, The RV Industry Association is the national trade association representing approximately 400 RV manufacturers and component and aftermarket parts suppliers who together fuel an industry that has an overall economic impact to the U.S. economy of $114 billion; supporting nearly 600,000 jobs, contributing more than $32 billion in wages, and paying over $12 billion in federal, state, and local taxes. RVDA—the national RV Dealers Association—is dedicated to advancing RV retailers' interests through education and member services programs designed to enhance the RV travel experience. The National Association of RV Parks and Campgrounds (ARVC) is the only national association exclusively representing the interests of private RV parks and campgrounds in the U.S. FMCA is the world's largest not-for-profit association for recreation vehicle (RV) owners, with more than 150,000 members. Escapees RV Club is one of the largest recreational vehicle owners clubs serving approximately 70,000 RV enthusiasts.

As you may know, when RV families are on the road for weeks or months at a time, many of them receive multi-channel television service from satellite providers DIRECTV and Dish Network. Because they move from one local television market to another, it is not possible for them to receive the same local signals that satellite subscribers receive at home. Instead, they receive Distant Network Signals under the license granted in Section 119 of the Copyright Act. This allows them to access sports and entertainment programming as well as national news.

We are aware that the Section 119 license is set to expire at the end of the year unless Congress acts to reauthorize the Satellite Television Extension, Localism and Reauthorization (STELAR) Act, portions of which are in your committee's jurisdiction. Our associations generally would not insert themselves into a fight between large satellite television companies and large broadcasters; however, the loss of access to network signals would have a significant negative impact on the quality of life for many RV families. We would emphasize that most RVers have cable or satellite subscriptions at their fixed homes, and that they are already paying once for each of the four national networks; in accessing distant network signals, they pay an additional fee to the networks through the Section 119 license. We are simply asking that they continue to be allowed to do so.

Accordingly, we are writing to urge your committee to adopt legislation reauthorizing STELAR, so that the Section 119 license can be renewed, and, ideally, made permanent, at least for RV users. We look forward to your response, which we will share with our members.

Thank you for your consideration.

Sincerely,

JAY LANDERS,
Vice President, Government Affairs,
RV Industry Association.

PHIL INGRASSIA,
President,
RV Dealers Association.

PAUL BAMBEI,
President and CEO,
National Association of RV Parks and Campgrounds (ARVC).

JON WALKER,
National President,
FMCA.

SHAWN LORING,
CEO and Attorney,
Escapees RV Club.

Cc: Members, Senate Committee on Commerce, Science and Transportation

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. RICK SCOTT TO EMILY BARR

Question. Current STELAR language requires multichannel video programming distributors and broadcasters to negotiate in "good faith." Why do we need a government mandate to ensure industry partners negotiate in "good faith?"

Answer. While well intended, the expiring good faith requirement has provided no quantifiable benefit, in large part because both parties have every incentive to reach a deal without a government backstop. As a broadcaster who is frequently outmatched in size and revenue by the pay-TV companies with whom I negotiate, I can state with certainty that STELAR's expiration will have no impact on my ability to complete a retransmission consent deal.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO EMILY BARR

Question. Local broadcasting is an important part of life in Minnesota. More than 5 million Minnesotans watch live broadcasts, and we rely on local television broadcasters in our state for news, weather, entertainment, sports, music, and educational programming.

- Can you speak to the importance of local broadcasting for consumers in rural areas and how we can best ensure that these consumers can continue to access local broadcasts?

Answer. In many parts of rural America, including Minnesota, local broadcasters represent the glue that binds these communities together. Particularly during a time when small-town newspapers and other local media outlets are disappearing around the country, local broadcasters often provide rural viewers and listeners their only link to their communities. This link is provided by those who understand and reflect the very communities they live in and serve. Local broadcasters around the country also serve the critical function of "first informer," alerting viewers and listeners of severe weather and other emergencies. And as we have seen time and time again in communities around the country, when a community has been plagued by crisis or natural disaster, local broadcasters are first on the scene and the last to leave, helping to ensure the safety of viewers and listeners whose access to other forms of communication may be unavailable. Finally, many rural areas have been left behind or forgotten by modern media outlets, particularly in those communities that have little or no access to reliable broadband Internet connections. In these communities, local broadcasters provide not only a source of critical local information, they also serve as the primary source of quality entertainment and live sporting events.

We can best ensure that viewers and listeners can continue to access their local broadcasts by pursuing policies that are mindful of the unique challenges facing local broadcasters, which, in turn, often threaten their very survival. Particularly in light of the explosion of tech companies that are taking an ever-increasing share of overall advertising revenue from traditional advertisers such as broadcasters, magazines, and newspapers, one important policy choice is to ensure that there are no new restrictions on the content or type of advertisements that broadcasters can carry, as well as to protect the current deductibility of all types of advertising as a normal business expense. For local television broadcasters, another important source of revenue emanates from the so-called "retransmission consent" process, under which Federal law dictates that pay TV providers must reimburse local broadcasters for content that they repackage and sell to consumers for profit. Similarly, policies should be pursued that ensure that local broadcasters are fairly compensated when their content and stories are distributed over digital platforms.

In many ways, broadcasters are the last bastion of localism in our country, and their value is even more pronounced in rural America. In light of the intense competition from newer media sources, particularly online services, policymakers should remain vigilant and avoid policies that will further threaten broadcasters' ability to compete—and survive.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICK SCOTT TO ROBERT THUN

Question 1. During my eight years as Governor of Florida, I saw firsthand the destruction left behind by multiple devastating hurricanes—Michael, Irma, Hermine, Matthew.

During these times of crisis, it is critical that our emergency management leaders and law enforcement have the ability to share life-saving information with our communities before, during and after the storm.

If STELAR is not reauthorized, how would that impact the communication of this information to our communities, especially in our rural areas, in emergency situations?

Answer. Without STELAR, satellite customers will have less access to critical network news during times of emergency. For example, STELAR allows DIRECTV and DISH to import distant network signals to provide network programming, including news to customers in "short" markets. These are customers, usually in rural areas, left behind by local broadcasters and missing one, two or even all four major local broadcasters. As a result, the only way that these satellite customers can be provided satellite network programming and news during times of emergency is through the distant network signal.

We would also like to take this opportunity to restate AT&T/DIRECTV's commitment to providing customer's weather and emergency information during national disasters. That is why, during recent weather events, DIRECTV has added a dedicated Severe Weather Mix channel in affected areas. That channel provides national storm coverage from local broadcasters in the area, as well national news and weather channels (*e.g.,* the Weather Channel, Weather Nation, CNBC, Fox News, and CNN). The Severe Weather Mix switches local affiliates as a storm moves, to provide viewers with up-to-the-minute coverage.

Question 2. How can Congress streamline regulations to improve your ability to communicate with our communities, especially in times of natural disasters?

Answer. At AT&T, we are in the business of connecting and communicating with our communities each and every day. During periods of natural disaster, AT&T provides dedicated external-facing websites with essential information for affected communities, including current network status. Depending on the disaster and the communities affected, AT&T communicates with its customers through a variety of vehicles including websites, broadcast e-mails, individual e-mails or phone calls from AT&T representatives, and Interactive Voice Response systems. Methods of communication vary based on the severity and proliferation of an event.

Additionally, AT&T provides a webpage that describes to customers how we prepare for hurricanes and offers customer tips about how they should prepare for hurricanes, and makes its Business Continuity Preparedness Handbook available to its customers at all times. While AT&T has not encountered significant regulatory impediments to these communication efforts, Congress should consider making it clear that wireless carriers may use the location information of customer devices in any area affected by a natural disaster to send targeted communications to those devices related to the specific emergency.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JACKY ROSEN TO J.C. WATTS

MEDIA DIVERSITY: The media marketplace today looks vastly different from when STELAR was adopted more than 30 years ago. Today's consumers have a variety of ways to access an abundance of news and entertainment, from cable to satellite to countless new streaming services. Nonetheless, despite this increased consumer choice in programming, the companies providing our news and entertainment have become increasingly concentrated, with far too little diversity both on and off the air. For example, women own just under six-percent of the commercial television stations in the United States and fewer than 500 commercial stations overall. Latinos, who make up more than a quarter of the population in my home state of Nevada, own only 42 full-powered stations nationwide. And African Americans own just 18 stations. That is 18 out of approximately 7,800 television stations across the country.

If we are going to have real diversity—true economic diversity—then we need to have a media that better reflects us as a nation, a media that is more reflective and representative of the world on which it reports.

Congressman Watts, I understand it took you about ten years to get the Black News Channel up and running.

Question 1. Can you talk to the Committee about some of the obstacles and challenges you faced when launching the Black News Channel?

Answer. BNC is on the verge of launching to millions of Americans. It has taken more than a decade to get to this point. The challenges we have faced include some that are common to many start-up networks, such as creating a viable business model, demonstrating proof-of-concept, raising adequate funds, and obtaining carriage from cable and other distributors. Many of these challenges were particularly difficult for BNC because, unlike most other national news networks, we are independent—that is, we are not affiliated with an MVPD, broadcast network, or movie studio.

BNC has also faced challenges due to its unique mission. There has never been a full-time news channel dedicated to the viewpoint of African Americans. In making the case for such a channel to investors and distributors, BNC demonstrated both the need for such a channel as a cultural and social matter, as well as the viability of such a channel as an economic matter. This required many years of fact gathering, audience testing, and discussions and negotiations with the industry.

Question 2. Can you tell us how the sunset of STELAR's provisions can either help or hurt diversity in media ownership and programming?

Answer. Like every other national news network, BNC seeks the widest possible distribution, through a variety of platforms. Satellite providers like DISH and AT&T/DIRECTV remain important distribution platforms for millions of Americans, and BNC accordingly views these providers as important partners in the quest to create the Nation's first full-time news channel dedicated to the viewpoints of the African American community. Carriage on satellite providers such as DISH and AT&T/DIRECTV will further BNC's model of news gathering that is culturally specific to the African American community.

If STELAR was permitted to sunset, it could raise the costs of satellite providers, potentially making it more difficult for these providers to reach subscribers. That could threaten access to BNC's programming for millions of Americans, which would obviously harm diversity in media programming. That is why I testified that Congress should reauthorize STELAR.

But I also believe Congress can and should take this opportunity to go one step further in the name of diversity. In reauthorizing STELAR, Congress should also modestly amend the "DBS set-aside" provision of the Communications Act (47 U.S.C. § 335 (b)(1)(A)) so that it can be used for any network that is unaffiliated with any MVPD, broadcast network, or movie studio, where such network produces and televises at least eight (8) hours of original educational or informational programming (including news programming) per day. DISH and AT&T/DIRECTV have told us that this amendment would enable them to distribute BNC to an even wider audience, and that they support it.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO JONATHAN SCHWANTES

Question. Consumers deserve fair prices for cable packages, but despite competition from satellite and online video, cable prices have risen steadily at nearly three times the rate of inflation. In addition, Consumer Reports recently reviewed hundreds of consumer cable bills and found that cable customers pay an average of $450 per year in unexpected fees on TV service.

- In your view, why have cable prices continued to rise at this rate?

Answer. As pointed out in your question, cable prices—and by that I am referring to the advertised "base package" rate—have increased and outpaced the rate of inflation for many years. The introduction of company-imposed fees (*e.g.,* the Broadcast TV Fee) less than ten years ago by most major cable operators have made the cost of cable service even more expensive.

As highlighted in Consumer Reports white paper on cable fees published earlier this year (entitled *How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service*), cable companies have increased company-imposed fees at an alarming rate, and sometimes several times in a single year.[1] For example, Charter Communications (doing business as Spectrum) raised its Broadcast TV Surcharge three times in the last year. What used to be an already expensive, non-optional charge a year ago of $8.85 to receive their local channels now costs con-

[1] Jonathan Schwantes, *How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service,* Consumer Reports (October, 2019), available at *https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf.* (CR Cable Bill Report)

sumers $13.50 a month—a 50 percent increase of that fee and far more than the $1 it was when first introduced in 2010.[2] Similarly, Comcast announced a substantial hike of its Broadcast TV Fee for 2020, with one media report citing a 57 percent increase of that fee from $8.70 to $13.65 a month.[3]

The cable industry is quick to cite rising retransmission consent costs—which, to be clear, are a cost of doing business and used to be part of the base package price—as the primary reason for both the itemization of the Broadcast TV Fee and its dramatic increase. To be fair, we examine rising retransmission consent fees in our report, and suggest policy solutions to address this serious problem.[4]

However, what we have not seen is any evidence of a *decrease* in the package price offered by cable companies when these new company-imposed fees were first introduced and are now increased. Presumably, if a cable operator is breaking out an input cost—in this case, the money it spends to acquire broadcast channels via retransmission consent fees—we might see an offsetting decrease of the overall package price since this cost has been broken out as line-item fee. Yet, this has not been the case. Both package prices and company-imposed fees continue to increase, and we can only assume this is to maintain the cable industry's profit margins, even in the face of well-documented subscriber losses.

We encourage you to ask the cable industry this very question. Consumer Reports stands willing to work with you and your staff on this issue in order to ensure consumers are paying affordable prices for video content.

○

[2] CR Cable Bill Report at p. 3.

[3] Tamara Chuang, *Comcast Raising Local TV Fees 57 percent in January; Altitude Sports Missing from 2020 Lineup,* Colorado Sun (December 13, 2019) available at *https://coloradosun.com/2019/12/13/comcast-raising-local-tv-fees-57-in-january-altitude-sports-missing-from-2020-lineup/*.

[4] CR Cable Bill Report at pp. 19–20.