

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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July 24, 2013

Ms. Amy Tykeson
President and CEO
BendBroadband
63090 Sherman Road
Bend, OR 97701

Dear Ms. Tykeson:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, June 12, 2013, to testify at the hearing entitled "The Satellite Television Law: Repeal, Reauthorize, or Revise?"

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

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Wednesday, August 7, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Charlotte.savercool@mail.house.gov and mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

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

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

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

Attachment

Additional Questions for the Record

The Honorable Henry Waxman

1. What is your perspective on access to sports programming?
2. Are the costs associated with these must-have events affecting the prices you charge your customers?

The Honorable Mike Doyle

1. What are the technical or legal limitations that prevent video providers in the United States from offering DVR services that automatically record live events from beginning to end regardless of whether the event is extended due delays or overtime?
2. During the NHL playoffs, games went into single, double, and triple overtime. Viewers that time shifted these games largely had to guess when they would end. I understand that video providers in Europe receive real-time flagging information from content providers that alert DVR systems to the start and end of programming, what impediments prevent a similar system from being widely deployed in the United States?
3. What can Congress or the FCC do to help enable this functionality?

The Honorable Jim Matheson

1. You mentioned in your testimony that retransmission consent fees have increased the last few years. Roughly, what percentage of an average customer's cable bill is spent on video programming costs?
2. What percentage of those programming costs are attributable to broadcast programming?

Additional Questions for the Record

The Honorable Henry Waxman

1. What is your perspective on access to sports programming?
2. Are the costs associated with these must-have events affecting the prices you charge your customers?

Combined response to questions 1 and 2:

Consumers have access to more televised sports programming than ever before. However, this increased access comes at a cost to consumers, particularly those that are not interested in sports.

BendBroadband currently offers 26 channels (20 in high definition) that are oriented on a full-time basis towards competitive and/or recreational sports. We also offer a number of channels that feature sports on a part-time basis, including the four major broadcast television networks, TNT, and TBS. Sports programming is among the most expensive programming that we carry and while we have a robust optional “sports tier,” more than half of the full-time sports channels that we carry must be included on our most widely-penetrated tiers – because of requirements by the programmers. This means that many subscribers who have little or no interest in sports are bearing a portion of the system’s sports programming costs.

In addition, sports programming that historically was available on broadcast television stations continues to migrate to cable networks. Examples include Monday Night Football, the US Open Tennis Tournament, the British Open Golf Tournament, Big Ten college football and basketball, and certain Major League Baseball playoff games. The finals of the NCAA Men’s’ Basketball Tournament and most of the major NCAA post-season bowl games have moved or will be moving from broadcast to cable networks as well. The migration of this sports programming drives up the cost of those networks to MVPD’s like BendBroadband and their customers. Moreover, the broadcast channels that have lost this expensive programming have not responded by lowering their demands for retransmission consent fees. To the contrary, the demands for retransmission consent increases are doubling and tripling while the high priced sports programming is moving to cable networks. As a result, our customers are hit with a double whammy. The cost of all programming -- and sports in particular--is increasing faster than at any other time in my 30 year career. Customers are stuck paying for channels they don’t want. Onerous terms by programmers require MVPDs to take all their channels and package them to maximize their bottom line instead of advancing consumer preferences.

The Honorable Mike Doyle

1. What are the technical or legal limitations that prevent video providers in the United States from offering DVR services that automatically record live events from beginning to end regardless of whether the event is extended due to delays or overtime?
2. During the NHL playoffs, games went into single, double, and triple overtime. Viewers that time shifted these games largely had to guess when they would end. I understand video providers in Europe receive real-time flagging information from content providers that alert DVR systems to the start and end of programming, what impediments prevent a similar system from being widely deployed in the United States?
3. What can Congress or the FCC do to help enable this functionality?

Combined response to questions 1-3:

While I am neither an attorney nor an engineer, it is my understanding that there are no legal impediments preventing DVR services in the United States from automatically extending the recording of live television events and that deploying this functionality is technically feasible, although it likely would add to the cost that consumers pay for service.

Specifically, a recently published article (available at http://www.slate.com/articles/arts/culturebox/2013/06/accurate_recording_the_one_amazing_feature_that_makes_european_dvrs_so_much.html) indicates that television programmers in a number of other countries encode their signals with program-specific “flags” that inform the DVR when a particular program has ended and another program has begun. While it appears that some DVRs in the United States are capable of reading such “flags,” I have not seen any research indicating how many devices have the capability of reading signaling “flags” if they were included by the programmer. BendBroadband’s technical team believes most, if not all, of our DVR’s have the capability but we have not been able to test it.

In addition, deploying a system such as that used in other countries to ensure complete recording of live events would require the cooperation of the programmers and, as the article indicates, programmers have an inherent interest in encouraging viewers to watch television on a live, rather than recorded, basis so that advertising is not skipped over. So, in addition to any equipment-related costs, the cost of deploying a system that automatically ensured complete recording of live events probably would include increased demands for compensation from the programmers to offset any advertising losses that might occur or other costs associated with inserting the “flags” in the programming stream.

As a practical matter, we rarely receive complaints from our DVR customers about this issue. Given the costs that would be associated with the deployment of an extended recording system, I think that the government should look to the marketplace, rather than regulation, to address this matter.

The Honorable Jim Matheson

1. You mentioned in your testimony that retransmission consent fees have increased the last few years. Roughly, what percentage of an average customer's cable bill is spent on video programming costs?
2. What percentage of those programming costs are attributable to broadcast programming?

Combined response to questions 1 and 2:

The contents of a cable system's video service offerings (including which channels are offered and how they are packaged) varies from one distributor to the next. Indeed, as the FCC recognized in its recently released *Fifteenth Annual Video Competition Report*, “[e]ven where the number of channels [in a package] is similar, each package contains a different mix of channels.” Because there is “no standard video package for making direct price comparisons,” it is not possible to calculate the portion of an “average customer’s” bill attributable to video programming costs.

However, what is clear is that annual increases in video programming costs are outpacing increases in revenues for video service. A 2012 report by SNL Kagan looked at several major cable operators’ results for the previous year and determined that the percentage increase in programming costs was as much as three times the percentage increase in average monthly revenue per unit (ARPU) from video service and that, even in absolute dollar terms, most operators—including BendBroadband-- are seeing their per subscriber programming costs rise by a greater amount than their per subscriber video revenues.

Programming costs include not only retransmission consent fees, but fees for non-broadcast cable networks. As I mentioned in my testimony, from 2006 to 2012, retransmission consent fees grew from \$215 million to \$2.4 *billion* – an increase of over 1000 percent. Moreover, retransmission consent fees are expected to more than double from their current level by 2018. Retransmission consent fees undoubtedly play a significant role in the spiraling cost of programming. It is important to note that the major broadcast networks own 60 percent of the non-broadcast cable networks. Onerous terms and conditions, such as tying and bundling, packaging requirements, forced launches of new channels and aggressive fee increases are standard fare—all of this adds up to higher prices and less choice for customers.