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1 {York Stenographic Services, Inc.}

2 RPTS ALDINGER

3 HIF254.160

4 ``INNOVATION VERSUS REGULATION IN THE VIDEO MARKETPLACE''

5 WEDNESDAY, SEPTEMBER 11, 2013

6 House of Representatives,

7 Subcommittee on Communications and Technology,

8 Committee on Energy and Commerce,

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 2:04 p.m., in
11 Room 2123 of the Rayburn House Office Building, Hon. Greg
12 Walden [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Walden, Latta, Shimkus,
14 Terry, Blackburn, Scalise, Lance, Guthrie, Gardner,
15 Kinzinger, Long, Ellmers, Barton, Eshoo, Doyle, Welch, Lujan,
16 Dingell, Pallone, and Matheson.

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17 Staff present: Gary Andres, Staff Director; Ray Baum,
18 Senior Policy Advisor/Director of Coalitions; Sean Bonyun,
19 Communications Director; Matt Bravo, Professional Staff
20 Member; Andy Duberstein, Deputy Press Secretary; Kelsey
21 Guyselman, Counsel, Telecom; Grace Koh, Counsel, Telecom;
22 Andrew Powaleny, Deputy Press Secretary; David Redl, Counsel,
23 Telecom; Charlotte Savercool, Legislative Coordinator; Tom
24 Wilbur, Digital Media Advisor; Roger Sherman, Democratic
25 Chief Counsel; Shawn Chang, Democratic Senior Counsel;
26 Margaret McCarthy, Democratic Staff; Kara van Stralen,
27 Democratic Policy Analyst; and Patrick Donovan, Democratic
28 FCC Detail.

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|
29 Mr. {Walden.} We will call the subcommittee to order in
30 just a moment if we could take our seats and close the doors.
31 They are expecting votes on the House Floor in about 10 or 15
32 minutes, so we are going to call the Subcommittee to order
33 and at least begin our opening statements so that hopefully
34 we can get through as much of that as possible so that as
35 soon as we get back from the votes, which will probably take,
36 I don't know, 45 minutes, an hour, then we can get to you
37 all, who we invited here and appreciate your attendance. It
38 is always most helpful. So I want to thank our witnesses for
39 joining us and sharing their experience on innovative in the
40 video marketplace.

41 You know, the Telecommunications Act in 1996 is old
42 enough to get a driver's license, the Cable Act is old enough
43 to drink alcohol legally, and the Communications Act of 1934
44 has been eligible for Social Security for a long time. While
45 age is an asset to a fine Willamette Valley pinot noir, in a
46 technology statute, age can portend irrelevancy. In the on-
47 demand world of the internet and mobility, the statutes that
48 govern the video marketplace are blissfully ignorant of the

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49 changes that have taken place around them.

50 Today, we will examine the legal regimes governing how
51 video content is regulated from creation through distribution
52 and finally to consumption, asking one simple question: in a
53 world where video technology is rapidly changing, are the
54 laws keeping pace and are they fostering a free market?

55 The video marketplace has changed significantly in the
56 last 40 years. From the network news era of the 1970s to the
57 dominance of cable in the '80s and the rise of the direct
58 broadcast satellite industry in the '90s, each decade has
59 seen a new video distribution competitor and a new attempt by
60 Congress to manage the market.

61 Today, as a result of competition, at least 35 percent
62 of American households have a choice of subscribing to either
63 of the two satellite DBS providers, their local cable
64 company, or the local telephone company for video services.
65 Broadband is nearly ubiquitous, allowing consumers to access
66 Netflix, Amazon, and Hulu. Tablet and smartphone apps
67 produced by content creators allow baseball enthusiasts to
68 watch live games or movie fanatics to stream the newest
69 releases. And there is more innovation coming. New entrants

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70 like Intel and Google and Sony expect not only to enter the
71 video distribution marketplace but to transform the way
72 people watch television.

73 In this diverse and evolving marketplace, one thing
74 remains true: you should be compensated for your content,
75 network investments, or intellectual property. If you lay
76 fiber, you should receive fair compensation in the
77 marketplace for your investment. If you create content--
78 movies, TV shows, or apps--you should receive fair
79 compensation in the marketplace. And if you create
80 smartphones, tablets, dongles, screens, or the software that
81 runs on them, you should receive fair compensation in the
82 marketplace.

83 Given these technological changes and the multitude of
84 options available to American consumers, our laws should
85 reflect the operation of the free market in a competitive
86 environment. Instead, we have a satellite law that finds its
87 origins in ensuring access to content for a fledgling
88 industry, a cable law that was passed when cable controlled
89 over 90 percent of the video market, and broadcast rules that
90 ignore the rise of alternatives to over-the-air reception.

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91 We can and should be engaged in a lively discussion--and
92 I think we will be based on the testimony you all have--of
93 how to unshackle the free market, how to remove the
94 government from the business of manipulating the marketplace.

95 These are complex issues, and they are of great
96 importance to consumers and to the industries, and everything
97 should be on the table for discussion. We will hear from
98 representatives of the content community, the major
99 distribution networks, and from a representative from the
100 public interest perspective to get a clearer picture of how
101 our laws impact the video distribution business, affect
102 consumers and how they could be changed to better reflect
103 marketplace realities.

104 I want to thank our witnesses for being here. We are
105 looking forward to hearing ideas on how we can improve the
106 video marketplace by getting government more out of the way.
107 This early stage of the process is a good time for us to take
108 a larger look at the video marketplace; it takes time and
109 process to develop good policy and even more to build
110 consensus. Yet the deadline for reauthorizing STELA looms
111 large, and we must continue to make progress there.

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112 With that in mind, I expect to circulate a discussion
113 draft on these issues no later than the first quarter of next
114 year. I am looking forward to continuing to engage with my
115 colleagues and the many industries represented here today on
116 these important issues.

117 [The prepared statement of Mr. Walden follows:]

118 ***** COMMITTEE INSERT *****

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119 Mr. {Walden.} And with that, I would yield to the vice
120 chair of the committee, Mr. Latta.

121 Mr. {Latta.} Well, thank you, Mr. Chairman. And I also
122 want to thank our distinguished panel of witnesses for being
123 with us to testify today. And today offers us the
124 opportunity to continue a thoughtful and productive policy
125 process by examining an important issue that affects all of
126 our constituents.

127 The video marketplace continues to evolve faster than
128 most consumers, let alone government, can keep up with.
129 However, many of the existing provisions in the
130 Communications Act either no longer apply to the existing
131 marketplace or are in need of serious updating. I look
132 forward to a thorough discussion among our subcommittee
133 members and the stakeholders as we grapple with the issues in
134 the ever-evolving video marketplace, as well as the most
135 appropriate legislative vehicles to move any proposed
136 changes.

137 I look forward to hearing from you all today, and with
138 that, Mr. Chairman, I yield back.

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139 [The prepared statement of Mr. Latta follows:]

140 ***** COMMITTEE INSERT *****

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|
141 Mr. {Walden.} I thank the gentleman. I now turn to my
142 friend and colleague from California, Ms. Eshoo, for an
143 opening statement.

144 Ms. {Eshoo.} Thank you, Mr. Chairman. And good
145 afternoon to you, all the members of our subcommittee, and
146 most especially welcome to all of our witnesses. Thank you
147 for being here today to help enlighten us along this path.

148 You know, despite the title of today's hearing,
149 innovation and regulation, I don't believe, have to be in
150 conflict. I don't think it is an either/or. I think we have
151 to have a very adult discussion about where we are today,
152 where we need to go, understanding that what was written in
153 the past served us well for a long time. But obviously, we
154 need an update.

155 A vibrant video marketplace is one with competition,
156 consumer choice, and basic protections to ensure the
157 consumers have access to a competitive set-top box
158 marketplace and aren't caught in the middle of a
159 retransmission consent dispute they have no control over.

160 Time Warner Cable and CBS reached a resolution--we all

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161 know this, thank God--earlier this month that returned
162 programming to more than 3 million consumers after 32 days of
163 blackout. I applaud both companies for reaching an
164 agreement, but unfortunately, this is not the first time such
165 a dispute has occurred and it certainly, I don't think, will
166 be the last. Since 2005, there have been 70--that is 7-0--
167 disputes involving 392 stations in 297 markets for a total of
168 3,853 days of retransmission blackouts. Now, if someone out
169 there wants to start defending this, I think it would be
170 really interesting because I just don't think that it is
171 defensible.

172 Some will say that legislating in this area is akin to
173 picking sides or interferes with a retransmission consent
174 mechanism that is working just fine. I don't think it is
175 working just fine; I think it is broken myself. The reality
176 is is that the data paints a very different picture. The
177 discussion draft I released earlier this week is not a full
178 rewrite of the law but instead represents a series of ideas
179 intended to spur constructive and actionable debate on ways
180 to improve the video marketplace for video content creators,
181 pay-TV providers, and most importantly, consumers. They are

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182 picking up the tab. They are the customers. It is in
183 everybody's interest I think.

184 Specifically, my discussion draft would give the FCC
185 explicit statutory authority to prevent broadcast television
186 blackouts; ensure greater choice in cable programming by
187 allowing consumers to decide whether or not to subscribe to
188 the broadcast stations electing retransmission consent;
189 prohibit a television broadcast station engaging in a
190 retransmission consent negotiation from making their own or
191 affiliated cable programming a condition for receiving
192 broadcast programming; instruct the FCC to determine whether
193 the blocking of a television broadcast station owned or
194 affiliated online content during a retransmission consent
195 negotiation constitutes a failure to negotiate in good faith;
196 and five, require the FCC to study the programming costs for
197 regional and national sports networks in the top 20 regional
198 sports market.

199 Now, this discussion draft doesn't purport to have all
200 the answers, but as we embark on our third STELA-related
201 hearing this year, I think we need to have a substantive
202 dialogue about potential solutions to a constantly evolving

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203 video marketplace.

204 I want to thank the witnesses in advance for the
205 testimony that you are going to give and for the feedback I
206 hope that you will give this discussion draft that I just
207 raised.

208 [The prepared statement of Ms. Eshoo follows:]

209 ***** COMMITTEE INSERT *****

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|
210 Ms. {Eshoo.} And I would also like unanimous consent,
211 Mr. Chairman, to place into the record a letter to you and to
212 myself from TiVo related to this hearing and their views on
213 some of the issues that they feel strongly about. And I
214 don't see--

215 Mr. {Walden.} Without objection.

216 [The information follows:]

217 ***** COMMITTEE INSERT *****

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|
218 Ms. {Eshoo.} I would like to place Mr. Dingell's
219 statement in the record. I ask unanimous consent.

220 Mr. {Walden.} Without objection.

221 [The prepared statement of Mr. Dingell follows:]

222 ***** COMMITTEE INSERT *****

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|
223 Ms. {Eshoo.} And I have 17 seconds left if any of my
224 colleagues would like to use it. All right. With that, I
225 will yield back the balance my time.

226 Mr. {Walden.} The gentlelady yields back. And I ask
227 unanimous consent to enter into the record a graphic and
228 statement from the Motion Picture Association of America
229 detailing the economic impact of video content and the rise
230 in online options for consumers. Without objection.

231 [The information follows:]

232 ***** COMMITTEE INSERT *****

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|
233 Mr. {Walden.} I now turn to Mrs. Blackburn, the vice
234 chair of the full committee, for 5 minutes. And we have a
235 couple other Members who would like time on that as well if
236 possible.

237 Mrs. {Blackburn.} That is correct. And I thank you,
238 Mr. Chairman. I thank all of you for being here to visit
239 with us today, and I kind of like the titling of this
240 hearing, ``Innovation Versus Regulation.''

241 And I have to tell you what I hear from so many of your
242 product consumers in Tennessee, my constituent, is they feel
243 like that innovation sometimes is harder to get to because of
244 cost and because of regulation, especially when you are
245 looking at some of the archaic video regulations that are
246 stifling them from getting the content that they would like
247 to have access to at fair market prices.

248 Innovation isn't happening as rapidly as we would like
249 because we don't always have a free marketplace if you will
250 in all of those areas. That is because the video marketplace
251 is saddled with a 20-year-old law that unfairly treats
252 competing video distributors with different rules. At the

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253 last video hearing, one member called the video marketplace a
254 ``vast web of regulations.'' That is correct. Another
255 colleagues said, ``the video market is rapidly changing.
256 Today, the government intervenes in various ways.'' That is
257 also correct. Our ranking member correctly said ``much has
258 changed since the '92 Cable Act.'' Very true. And that ``we
259 have a lot of work to do beyond STELA,'' which is also very
260 true. I think you are going to see quite a bit of an
261 agreement on these issues and I think the chairman is very
262 wise to start these hearings and to continue through this
263 process. As we look at the authorization of STELA, we are
264 not waiting until we get to the end of 5 years to begin the
265 work.

266 So thank you and we appreciate that you are here with
267 us. And at this time I yield to Mr. Barton 1 minute.

268 [The prepared statement of Mrs. Blackburn follows:]

269 ***** COMMITTEE INSERT *****

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|
270 Mr. {Barton.} I thank the gentlelady. I thought the
271 chairman's opening statement was excellent. I think Ms.
272 Eshoo and Mrs. Blackburn have enhanced it. I do think it is
273 time to do a complete review of our various
274 telecommunications laws and regulations. By definition,
275 regulation stifles innovation and I think by definition we
276 can all assume that the more innovation we have in the
277 telecommunication marketplace, the better off the country
278 will be. So I hope these hearings, Mr. Chairman, lead to
279 concrete legislative action in this Congress. I especially
280 want to take a look today on some questions about the way
281 retransmission consent has been used most recently.

282 And with that, I yield to whomever I am supposed to
283 yield to.

284 [The prepared statement of Mr. Barton follows:]

285 ***** COMMITTEE INSERT *****

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286 Mrs. {Blackburn.} You yield back to me.

287 Mr. {Barton.} I yield back to you.

288 Mrs. {Blackburn.} And I yield at this time a minute to
289 Mr. Scalise.

290 Mr. {Scalise.} I thank the gentlelady from Tennessee
291 for yielding.

292 Mr. Chairman, I want to thank you for the process-driven
293 approach to reviewing the decades-old video marketplace
294 regulations, and I am particularly pleased to hear that you
295 will soon circulate draft legislation that addresses these
296 issues. I applaud you for successfully moving this
297 subcommittee beyond an initial information-gathering and
298 educational phase on these very technical and complex issues
299 onto a strong position upon which the subcommittee can act in
300 the coming months.

301 I also want to commend Ranking Member Eshoo for recently
302 putting her own reform ideas on the table with the release of
303 the Video Choice Act. While I am not in agreement with every
304 provision of her bill and have taken a different approach, I
305 view it as thoughtful and am encouraged by her strong

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306 interest in tackling these issues.

307 I think we should all keep in mind that when these
308 current video laws were written, this was the modern-day
309 version of the smartphone, so clearly the laws are
310 tremendously outdated that deal with this important issue
311 that we are addressing today, and it is time to have this
312 modernization.

313 The only way we can act in the best interest of
314 consumers is in a way that prevents the government from
315 picking winners and losers and it is when we start getting
316 serious about a free-market solution. I am pleased that is
317 where these hearings and conversations are headed, and I will
318 look forward to continuing the close dialogue with industry
319 stakeholders and my colleagues on this subcommittee.

320 So again, Mr. Chairman, I thank you for the hearing and
321 I am looking forward to hearing our panel. And I yield back
322 to the gentlelady from Tennessee.

323 [The prepared statement of Mr. Scalise follows:]

324 ***** COMMITTEE INSERT *****

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|
325 Mrs. {Blackburn.} I thank the gentleman for yielding
326 back and I thank him for the appropriate prop that he brought
327 to the committee. And, Mr. Chairman, I yield back the
328 balance of our time.

329 Mr. {Walden.} I am just amazed that he uses that.
330 Actually, with Scalise I am not amazed. Oh, just kidding.

331 We are going to go to Mr. Welch now for 5 minutes. He
332 is going to control Mr. Waxman's time. And we have 7 minutes
333 left before the vote but 404 Members have not voted.

334 Mr. {Welch.} Well, thank you very much. A couple
335 things: one, the comments are about the fact that the
336 technology has so outpaced the regulation or the law. We all
337 know that we have to make some significant changes and ask
338 some basic questions.

339 Mr. Chairman, thank you for introducing or you are going
340 to introduce the draft discussion. And, Madam Ranking
341 Member, thank you for putting something on the table that is
342 going to get the discussion going.

343 The concern I have is one that has been identified by
344 everyone here, namely, we have got to get the law right; we

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345 have got to get the regulations right. And right means there
346 has got to be a lot of space for innovation. It means that
347 there have to be rules of the road that are discernible and
348 fair. But it also means we have to have a business model
349 where the various players--the content providers, the
350 broadcasters, distributors--can pay their bills and make a
351 reasonable return.

352 But my concern, too, is that we have got to look out for
353 the consumers. It is really getting out of hand. In the
354 past 17 years the cost of cable and satellite TV has
355 increased three times the rate of inflation. And, you know,
356 this is a big deal for all of the people we represent,
357 especially in rural areas. And, you know, the consumers need
358 their access to the content in whatever manner they get it in
359 their homes. And it is a big deal for them. And you know
360 that. But they have no power whatsoever to affect what the
361 situation is or what they are going to be charged.

362 So if there is some business model out there where
363 executives can literally pay a couple hundred million dollars
364 to somebody who can't get to first base because they can pass
365 it on to the consumers that all of us represent, that is not

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366 working. So having the basic questions here that have been
367 put on the table, I think that really makes a lot of sense.

368 The thing I hear from Vermonters, they are really
369 getting squeezed on the cost of cable and satellite. You
370 know, we are not going to have a proposal that is a panacea,
371 but what we do have to do is have some approach where, as I
372 mentioned, it is balanced because we have to have business
373 models that work. We have to have rules and regulations that
374 don't stifle innovation. But at the end of the day, we have
375 got to do something to give some reasonable, fair treatment
376 to consumers who have absolutely no ability to affect what
377 some of these big deals and big negotiations are.

378 So I commend the leadership on our committee for putting
379 these issues on the table and hope to have our committee be
380 successful in doing things that restore balance with laws
381 that are way out of date.

382 I have some time and I would be glad to yield it to
383 either of my colleagues.

384 [The prepared statement of Mr. Welch follows:]

385 ***** COMMITTEE INSERT *****

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386 Mr. {Walden.} Mr. Lujan.

387 Mr. {Lujan.} Mr. Chairman, thank you so much. And I
388 also appreciate the fact that everyone has gotten together to
389 encourage a broader conversation in this space.

390 And I think the one thing that I have been talking about
391 in my office with some of my team members, and this was a
392 result of watching Monday night football, the first channel
393 that I put it on was on standard definition, and there were a
394 lot of pixels and blocks moving around the television. And I
395 quickly realized that there was a high-definition channel
396 that we could change to, and so once I moved there,
397 everything was clear. And when I thought my eyes were going,
398 I realized that they weren't.

399 But the question that I have as we talk about
400 retransmission fees associated with standard definition or
401 low definition, weak definition, whatever we want to call it,
402 versus high-definition is the complexities associated with
403 what is required to get that feed to the home to be able to
404 use a technology, but also the rates associated with those
405 packages. And quite honestly, if we are signing up for one

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406 package or another, well, why are we getting the two channels
407 as opposed to the one?

408 And so I think that this is a question that I have just
409 from a cost perspective, from a spectrum utilization
410 perspective, from a space perspective with where we are
411 transforming and where we are going from an innovative
412 perspective. And I would just like to pursue a little bit
413 more and learn a little bit more. So I appreciate the time
414 very much and I yield back.

415 [The prepared statement of Mr. Lujan follows:]

416 ***** COMMITTEE INSERT *****

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|
417 Mr. {Welch.} I yield back. Thank you.

418 Mr. {Walden.} Everyone has yielded back. We are going
419 to go into recess now. We will return after the votes as
420 soon as possible, and then we really look forward to hearing
421 your comments, your testimony and taking our questions.

422 So with that, the committee will stand in recess.

423 [Recess.]

424 Mr. {Walden.} I call this subcommittee hearing back to
425 order. I thank you all for your patience as we had the vote
426 on the Floor.

427 And I think at this point we have been through opening
428 statements on both sides, and it is time to go to our
429 distinguished panel of witnesses.

430 And we will start with Sandra Aistars, the Executive
431 Director of the Copyright Alliance. And I would just counsel
432 you, pull that microphone pretty close, make sure the button
433 is lit on green, and you should be good to go.

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|
434 ^STATEMENTS OF SANDRA AISTARS, EXECUTIVE DIRECTOR, COPYRIGHT
435 ALLIANCE; R. STANTON DODGE, EXECUTIVE VICE PRESIDENT AND
436 GENERAL COUNSEL, DISH NETWORK, LLC; EDWARD L. MUNSON, JR.,
437 VICE PRESIDENT AND GENERAL MANAGER, KPHO-TV; DAVID ROZZELLE,
438 EXECUTIVE VICE PRESIDENT, SUDDENLINK COMMUNICATIONS; JAMES
439 CAMPBELL, VICE PRESIDENT OF REGULATORY AND LEGISLATIVE
440 AFFAIRS, MIDWEST REGION, CENTURYLINK, INC.; AND JOHN
441 BERGMAYER, SENIOR STAFF ATTORNEY, PUBLIC KNOWLEDGE

|
442 ^STATEMENT OF SANDRA AISTARS

443 } Ms. {Aistars.} Great. Thank you. Chairman Walden,
444 Ranking Member Eshoo, and members of the subcommittee, thank
445 you for the opportunity to testify today about the exciting
446 innovation that is occurring in the video marketplace.

447 Innovation and the creation and distribution of video
448 programming is happening throughout our membership and all
449 across the spectrum of creators. From major motion picture
450 companies to indie filmmakers, audiences have never had as
451 many options for watching movies, television shows, and

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452 original web-based programs as a result.

453 But creating audiovisual works with high production
454 values is an expensive proposition. The work is labor- and
455 talent-intensive and it can carry commensurately large costs.
456 Independent filmmakers, for instance, routinely spend
457 thousands, hundreds of thousands, or even millions of dollars
458 to create their works.

459 One of our members, the mother-daughter filmmaker duo of
460 Gail Mooney and Erin Kelly spent 3 years making a film about
461 individuals who are making a positive difference in the
462 world. After 6 months of preproduction work, it took 99
463 days, travel to 6 continents and 17 countries, and then 30
464 flights, 14 vaccinations, 8 visas, 2,900 gigabytes of
465 storage, 150 hours of footage, and 5,000 still image captures
466 followed by a year of postproduction and another year of
467 marketing and distribution to produce and distribute the
468 film. And this was done as a do-it-yourself project.

469 The bottom line is that all creators make big
470 investments in their works and encouraging them to keep
471 creating will require ensuring that they have flexibility in
472 how they distribute their works. Happily, because creators

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473 are embracing new modes of distribution, audiences have more
474 choices than ever before for viewing films and television
475 programs. Services such as Netflix, Hulu, VUDU, HBO GO,
476 Crackle, MUBI, Amazon, EpixHD; devices such as Apple TV and
477 Roku; and technologies such as UltraViolet enable consumers
478 to watch what they want when they want and where they want.

479 Five years ago, video streaming was still fairly rough
480 in terms of quality and reliability, but today, viewers are
481 enjoying a growing number of high-definition streaming
482 services, including scores of video-on-demand and TV-
483 everywhere models delivered by cable and satellite, and more
484 households than ever have access to this variety of
485 programming through the internet. These developments show
486 that the video marketplace is evolving daily and at an ever-
487 increasing pace to the benefit of audiences.

488 A couple of words about copyrights since I am a
489 copyright lawyer, copyright law recognizes that ensuring
490 appropriate rights to authors drives innovation and benefits
491 society. Ensuring the authors right to determine when and
492 how to license the distribution of his or her works is key to
493 these benefits. These principles have been confirmed over

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494 and over again by Supreme Court decisions, and as Justice
495 Sandra Day O'Connor eloquently wrote, ``the Framers intended
496 copyright itself to be the engine of free expression by
497 establishing a marketable right to the use of one's
498 expression. Copyright supplies the economic incentive to
499 create and to disseminate ideas.''

500 Compulsory licenses are a departure from normal
501 copyright principles. They are appropriate only in narrow
502 circumstances to address market failure and we restrict their
503 use to such cases because they abrogate the rights of
504 property owners and force them to license their works to
505 government-favored entities at rates sometimes set by the
506 government.

507 Economists and policy experts alike criticize compulsory
508 licensing on three basic grounds: first, because the supposed
509 cost savings that compulsory licenses deliver in the short-
510 term are usually more than offset by the inefficiencies that
511 they can cause over time; second, because they limit the
512 diversity of services that would ordinarily develop via
513 marketplace licensing; and third, because the rates and
514 restrictions quickly become outdated and are difficult to

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515 change so they are subject to legislative lock-in and result
516 in price stagnation.

517 Accordingly, my message to you is that, given the
518 creative and compelling works and the new and innovative
519 distribution models that exist today, there is no need to
520 impose new compulsory licenses in the video marketplace or to
521 renew STELA.

522 And as a closing note, I would just like to mention
523 positively some of the collaborative initiatives that are
524 currently happening across industry lines to ensure that
525 marketplace for use services is vibrant and safe. There are
526 numerous efforts that are ongoing with internet service
527 providers, with advertisers, with payment processors to
528 educate consumers about the diversity of programming options
529 available to them and to protect them from illegal sites and
530 activities online. These efforts are just the start. We
531 need to do more. But I would like to commend the efforts
532 like the copyright alert system as examples of how our mutual
533 goal to provide compelling legal services to consumers is
534 being advanced through cooperation, and I would urge the
535 subcommittee to take an interest in these efforts and

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536 encourage the success of these initiatives.

537 Thank you.

538 [The prepared statement of Ms. Aistars follows:]

539 ***** INSERT 1 *****

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|

540 Mr. {Walden.} We thank you for your testimony. And now
541 we will go to R. Stanton Dodge, Executive Vice President and
542 General Counsel of the DISH Network, LLC.

543 Mr. Dodge, good to have you back before our committee.

544 We look forward to your testimony.

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|
545 ^STATEMENT OF R. STANTON DODGE

546 } Mr. {Dodge.} It is nice to be here. Chairman Walden,
547 Ranking Member Eshoo, and members of the subcommittee, and
548 appreciate the opportunity to testify today.

549 My name is Stanton Dodge and I am general counsel of
550 DISH Network the Nation's third-largest paid TV provider and
551 the only to offer local television service at all 210 local
552 markets.

553 Since this is not the first hearing on the subject, I
554 would like to cut right to the chase. The retransmission
555 consent process is broken and in need of targeted reform. In
556 the past few years, we have seen an escalating number of
557 blackouts, and these blackouts are lasting longer than in the
558 past and impacting millions more subscribers. So not only
559 are takedowns occurring more frequently, they are also
560 increasing in magnitude. The recent headlines about the
561 CBS/Time Warner Cable dispute serve as a stark reminder.

562 In short, the retransmission consent problem has reached
563 a crescendo. It is perhaps the most destructive and outdated

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564 remnant of the 1992 Cable Act and does not match up with the
565 vibrant, ever-changing, competitive landscape in today's
566 video marketplace.

567 Also of increasing concern, some broadcasters are
568 coordinating their negotiations with each other and colluding
569 on the rates that they demand from video distributors like
570 DISH. The American Television Alliance, known as the ATVA,
571 whose membership encompasses cable, satellite, and Telco
572 providers, independent programmers, and public interest
573 groups and of which DISH is a member, is unified in calling
574 for targeted changes to the outdated retransmission consent
575 rules as part of the STELA reauthorization.

576 We and many other members of ATVA have voiced support
577 for proposals such as interim carriage, and this solution
578 would temporarily permit a distant signal to be imported
579 during a retransmission consent dispute. That measure would
580 alleviate the problem of service disruptions and prevent the
581 use of consumers as pawns. And the broadcaster whose signal
582 is imported will be compensated under the already-established
583 distant signal royalty rate. If the broadcaster's local
584 content is as valuable to consumers as they assert, then the

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585 imported distant network is an imperfect substitute and both
586 parties will continue to have sufficient incentives to reach
587 an agreement. The imported distant network signal simply
588 fills the void for network programming.

589 Members of the ATVA have also expressed interest in a
590 discussion of standalone broadcast station offerings, which
591 would give consumers the choice of whether to pay separately
592 to receive a particular local broadcast station. And some in
593 ATVA support the deregulatory approach embodied in
594 Congressman Scalise's legislation from the 112th Congress.
595 When he released his bill, ATVA and DISH lauded Mr. Scalise
596 for his leadership in kick-starting the much-needed retrans
597 reform debate. We continue to encourage Mr. Scalise's reform
598 efforts.

599 And today, we applaud Ranking Member Eshoo for
600 circulating the Video CHOICE Act this past Monday.
601 Critically, the discussion draft proposes concrete
602 legislative ideas to give consumers greater choice over their
603 programming, tackles the growing problem of funding cable
604 channels with network channels, and empowers the FCC with
605 significant authority to curtail blackouts.

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606 And we were pleased with Chairman Walden's announcement
607 last night that he expects to circulate a discussion draft on
608 issues impacting the video marketplace no later than the
609 first quarter of next year. We look forward to working with
610 Chairman Walden, Ranking Member Eshoo, Congressman Scalise,
611 and the entire subcommittee to ensure that meaningful
612 legislation is passed this Congress.

613 As one can see, there are many ways to address the
614 broken retransmission consent system, but without immediate
615 action from Congress, it is likely that the blackout problem
616 will continue to escalate, millions more screens will go
617 dark, prices will increase, and consumers will suffer. The
618 time to act is now.

619 Thank you and I look forward to answering your
620 questions.

621 [The prepared statement of Mr. Dodge follows:]

622 ***** INSERT 2 *****

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|

623 Mr. {Walden.} Thank you, Mr. Dodge. We appreciate your
624 comments and testimony, as always.

625 We will now go to Mr. Edward L. Munson, Jr., Vice
626 President and General Manager, KPHO Television.

627 Mr. Munson, we are delighted to have you here. We look
628 forward to your comments.

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|
629 ^STATEMENT OF EDWARD L. MUNSON, JR.

630 } Mr. {Munson.} Good afternoon. I am honored to be here,
631 sir.

632 My name is Edward Munson. I am the vice president and
633 general manager of KPHO-TV in Phoenix, Arizona. KPHO is
634 owned by the Meredith Corporation. We have 13 stations
635 across the country in places like Portland, Oregon;
636 Nashville, Tennessee; and Flint and Saginaw, Michigan. I am
637 here today representing the National Association of
638 Broadcasters.

639 The topic of this hearing, ``Innovation Versus
640 Regulation in the Video Marketplace,'' touches on two
641 concepts that are part and parcel to being a local TV
642 broadcaster. TV stations exist in a highly regulated
643 environment, more so than the other witnesses on this panel.
644 In fact, broadcasters must comply with regulations not
645 applicable to any other distribution platform.

646 For instance, TV stations must abide by decency rules
647 and children's programming requirements. We must give

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648 federal candidates reasonable access to air campaign
649 advertisements, and we must offer those spots at the lowest
650 charge to any of our commercial advertisers. We must
651 maintain main studios within certain geographic limits and
652 with specific staffing obligations, submit numerous
653 quarterly, annual, and biannual reports to the FCC, and
654 compile quarterly lists of station programming.

655 We proudly embrace many of these responsibilities but
656 some regulations place broadcasting at a competitive
657 disadvantage to the other video providers on this panel. For
658 example, decades-old ownership restrictions reflect a time
659 when broadcasting was the only game in town. It makes no
660 sense to hamstring broadcasters with outdated limitations
661 when our direct competitors are not restricted in any way.

662 Another example is the online public file regulation
663 which requires local TV stations to place sensitive pricing
664 information online when our direct competitors can see it,
665 but these direct competitors don't have that obligation.
666 These types of regulations, fundamental fairness requires
667 regulatory parity for the benefit of competition and
668 consumers.

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669 Based on our fundamental obligation to serve the public
670 interest, some in the pay TV industry are arguing that a
671 programming dispute means broadcasters are somehow not
672 serving their local communities. In the rare event that a
673 broadcaster has a dispute with one pay-TV company in a
674 market, consumers have multiple other options to get their
675 video programming. We understand that many of you are
676 concerned about the impact these disputes have had on your
677 constituents, and we share that concern. This is why it is
678 important to remind this committee that no broadcaster has
679 ever stopped broadcasting because of a dispute with a pay-TV
680 provider. We are never off the air or blacked out. Our
681 signals are always being broadcast and they are always free.

682 Over my career, I have personally been involved in many
683 successful carriage negotiations with companies like
684 CenturyLink, Suddenlink, and Mediacom. My experience, like
685 the experience of nearly the entire broadcast community, is
686 that deals get done all the time. Of course you don't hear
687 about the ones that go smoothly; you hear about the handful
688 that don't. And there is no doubt that the Time Warner/CBS
689 dispute was unfortunate. But it was predictable. The

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690 dispute seems almost orchestrated out of the D.C. lobbying
691 playbook: create a crisis; then run to Congress to fix your
692 crisis in your favor.

693 The pay TV industry will tell you carriage impasses have
694 dramatically increased, that the retrans system is broken and
695 needs to be fixed. Honestly, this is a bit disingenuous. In
696 a few instances where agreements have not been reached in the
697 last 2 years, there is the distinct and disturbing pattern:
698 89 percent of the disputes have involved only three pay-TV
699 companies: Time Warner Cable, DISH, and DIRECTV, nearly 9 out
700 of 10 disputes. That suggests to me there is not a problem
701 with the process; there is a problem with the players. And
702 we shouldn't be rewarding bad behavior.

703 It is not a coincidence that these are the very same
704 companies pressing Congress most aggressively for government
705 intervention. These pay-TV companies have ratcheted up their
706 efforts for government involvement in retransmission consent
707 negotiations because, despite having very healthy margins and
708 soaring stock prices, they are looking to Congress to help
709 control their programming costs. But pricing decisions are
710 best left to the marketplace.

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711 Similarly, the government should have no role in
712 deciding when, how, or where an owner of video content
713 distributes that content. These carriage agreements are
714 increasingly about the digital rights for our popular
715 programming. We want to make sure the consumers using new
716 and innovative platforms can access our content, which, in
717 turn, fosters more competition in the video marketplace.

718 In conclusion, television broadcasters provided the
719 most-watched media out there by a wide margin. We are not
720 running to Congress to ask for preferential treatment in our
721 negotiations or for any legislative changes to benefit our
722 side. We want to negotiate freely in the market for the
723 value of our content. We only ask that Congress not tip the
724 scales in favor of one industry.

725 Thank you and I look forward to your questions.

726 [The prepared statement of Mr. Munson follows:]

727 ***** INSERT 3 *****

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|
728 Mr. {Walden.} Mr. Munson, thank you for your testimony.

729 And we will get to those very soon.

730 We will now go to David Rozzelle, Executive Vice

731 President, Suddenlink Communications.

732 Mr. Rozzelle, thank you for being here. We look forward

733 to your testimony, sir.

734 Mr. {Rozzelle.} Thank you, Mr. Chairman.

735 Mr. {Walden.} And again, please pull the microphone

736 close and turn it on. Just push the button right there.

737 Mr. {Rozzelle.} Thank you, Mr. Chairman. Good

738 afternoon, Chairman Walden, Ranking Member Eshoo.

739 Mr. {Walden.} Is it pushed on?

740 Mr. {Rozzelle.} It is. I have a green light.

741 Mr. {Walden.} There we go. You have to be pretty close

742 to it.

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|

743 ^STATEMENT OF DAVID ROZZELLE

744 } Mr. {Rozzelle.} Okay. Thank you. My name is Dave
745 Rozzelle and I am an executive vice president with Suddenlink
746 Communications, the leading provider of cable video services
747 and broadband internet access to approximately 1.4 million
748 households in second-tier cities, small towns, and rural
749 communities. Thank you for inviting me to testify today.

750 Speaking first: Innovation. As a company, Suddenlink is
751 a prime example of innovation in the cable industry. We have
752 increased the number of HD channels we offer, we deliver
753 video content to new screens like iPads, computers, and game
754 consoles, and we have a partnership with TiVo to distribute
755 their DVRs directly to our customers. Our broadband service
756 delivers residential customer data speeds in excess of 100
757 megabits per second in many of the communities that we serve,
758 including some very small rural communities.

759 From the consumer standpoint, the state of video has
760 never been stronger. Consumers today have many sources for
761 video content. In virtually all locations they can subscribe

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762 to cable television, DIRECTV, or DISH and get 100 or more HD
763 channels and the ability to record and watch at their
764 convenience on the DVR. In some markets, they can also
765 choose service from AT&T U-verse, Verizon FiOS, CenturyLink's
766 Prism TV, or Google Fiber. They can watch online video from
767 a myriad of sources, including Netflix, Amazon, iTunes, and
768 Apple TV, to name just a few.

769 Also, consumers can access video on an increasingly
770 wider range of devices. Cable TV everywhere lets consumers
771 watch video on their laptops, tablets, and smartphones.
772 Sprint offers its cellular subscribers access to popular
773 programs from networks like Comedy Central, Style, Discovery
774 Channel, and more.

775 The path to continued growth for cable is to enhance and
776 expand its customer's use and enjoyment of our networks.
777 Cable is investing billions annually to ensure that this
778 potential can be realized, and as a result, other providers
779 of content, services, or devices in the online video
780 ecosystem can flourish. Our partnership with TiVo is an
781 example of such efforts.

782 In contrast to this dynamic growth change and innovative

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783 nature of the video marketplace I just described, our
784 Nation's communication laws have remained largely the same.
785 Video distributors are subject to a range of different
786 statutory and regulatory regimes. While some regulatory
787 differences are grounded in distinctions that warrant
788 particular treatment, others echo outdated notions of market
789 power. Twenty years ago, cable served 98 percent of all
790 multichannel video households. Today, cable serves 56
791 percent. Many of the regulations adopted in the early years
792 of cable video service linger and are no longer justified.

793 Two areas ripe for reform are retransmission consent and
794 the so-called navigation device integration ban. When the
795 retransmission consent regime was first enacted, broadcast
796 stations could only reach viewers off air or through cable
797 systems. Today, the multiple MVPD environment has
798 substantially increased the leverage that broadcasters can
799 exert in retransmission consent negotiations by playing one
800 video provider off another. Their leverage is exacerbated
801 because broadcasters still control marquee events and because
802 the network affiliation structure guarantees that in almost
803 all circumstances only one provider will be available to

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804 local viewers.

805 In retransmission consent disputes consumers bear the
806 brunt of this imbalance. The number of RTC-related shutdowns
807 increased from 12 in 2010 to 51 in 2011 to 91 in 2012.
808 Policymakers need to take a fresh look at retransmission
809 consent in today's marketplace.

810 Similarly, whatever justification there was for the
811 integration ban has long since been superseded by market
812 developments. Cable operators are required by FCC rules to
813 use a separate security module and set-top boxes they lease
814 to customers instead of being able to integrate the security
815 and channel-changing function of those boxes. This
816 integration ban, which applies only to cable, has cost
817 operators/consumers more than \$1 billion since it went into
818 effect in 2007 and wastes hundreds of millions of kilowatt
819 hours per year. It imposes a material unnecessary cost on
820 cable video services when programming costs increases have
821 stressed many household video budgets in recent years.

822 How should legislative change be affected? While the
823 targeted changes I just mentioned would improve the consumer
824 video experience, the basic framework of the Act can remain

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825 in place. Congresswoman Eshoo's draft bill is an excellent
826 example.

827 Thank you again for the opportunity to appear today and
828 I welcome any questions that you may have.

829 [The prepared statement of Mr. Rozzelle follows:]

830 ***** INSERT 4 *****

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|

831 Mr. {Walden.} And we thank you for your testimony and
832 we look forward to the questions and answers.

833 We will go now to Mr. James Campbell, Vice President of
834 Regulatory and Legislative Affairs, Midwest Region,
835 CenturyLink, Inc.

836 Mr. Campbell, thanks for being with us.

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|
837 ^STATEMENT OF JAMES CAMPBELL

838 } Mr. {Campbell.} Thank you, Chairman Walden, Ranking
839 Member Eshoo, members of the subcommittee, a special hello to
840 Representative Gardner from my home State. Thank you for
841 giving CenturyLink the opportunity to testify before you
842 today as a relatively new entrant in the video market.

843 Obviously, content is going to be a big topic today, but
844 I just want to assure you that CenturyLink does not seek to
845 avoid paying for its content but rather to create an
846 environment where we go back to true market-based
847 negotiations. And we actually have two parties that are
848 sitting at the table with some risk and giving something and
849 taking something.

850 But we have a little background. CenturyLink is the
851 third-largest telecommunications company in the United
852 States. We offer voice, video, and data to over 14 million
853 subscribers in 37 States. We offer the same service to
854 businesses in all 50 States and some select international
855 communities. And recently, with our purchase of Savvis, we

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856 are one of the largest cloud computing and data hosting
857 companies in the world combined with our cybersecurity
858 solutions that we offer to the Federal Government and
859 multiple state and local governments. So we are a true
860 global player.

861 With that, we just recently got involved in the
862 competitive video business in the last 5 years where we have
863 launched our Prism TV in multiple markets, including Colorado
864 Springs, central North Carolina, and most recently in Omaha
865 where we launched a gig service. It is a competitive service
866 and it truly brings a choice to the market.

867 Consumers benefit from this choice. They get better
868 quality service; they get more innovation, more investment,
869 and ultimately lower rates. Unfortunately, the cost to
870 broadcast content is threatening consumers' ability to
871 receive just any of those benefits.

872 So the regulatory regime we are looking at was creating
873 an environment when the federal policymakers were concerned
874 that broadcasters were going to be subject to market abuse by
875 the incumbent cable providers when they had virtually all of
876 the market. Now, today, what was the shield is now used as

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877 the sword. So as we face negotiations for retransmission
878 consent, it becomes difficult for us to negotiate, and these
879 rules are used against us in a myriad of ways, including the
880 fact that national content can be forced down our throat
881 along with the local content through tie-in arrangements. We
882 have virtually no other option to get content in these
883 markets. And the FCC's interpretation of the good faith
884 standard has rendered it meaningless, essentially giving
885 further de facto power to the broadcasters. So that the
886 scales that Mr. Munson spoke about our already in the favor
887 of one party over another, and we are simply asking that they
888 be returned to level.

889 In addition, the regulatory regime does not reflect the
890 explosive competitive nature of the video market and the
891 explosion of competitive providers over a myriad of networks
892 and methods. The current rules not only pose problems for
893 large providers but also more so for small providers like
894 CenturyLink. Every customer we obtain currently has a
895 relationship with someone else. We have to win them over.

896 And for us to sit and face these types of terms and
897 conditions from broadcasters, I know Mr. Munson said that

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898 thousands of these retransmission consent negotiations go
899 smoothly, including with CenturyLink. I doubt there was a
900 lot of horse-trading and haggling in that negotiation. We
901 essentially have to take what we get.

902 Ultimately, the fees that are being charged are
903 providing windfalls for the corporate broadcasters and not
904 the local stations. Retrans was designed to promote localism
905 and, you know, ensure that there was a safety net for local
906 stations. Now, we have to buy these local stations along
907 with multiple other channels, and we have no choice but to
908 take it because this is products and content that our
909 subscribers need. SNL Kagan projects that by 2018 \$6.1
910 billion will be gained in re-trans fees over 2.4 billion from
911 2012. That is a 250 percent increase over just two
912 retransmission cycles. And this is all at the expense of
913 consumers that live and work in your districts.

914 Congress has an opportunity with STELA to reform and
915 return this negotiation process into a true market scenario.
916 We agree with DISH that the carriage of distance signals, if
917 there is an impasse, would be one way to do that. You would
918 essentially return some leverage back to the providers so

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919 when we sit down at the table, we both want something. Right
920 now, it is not the case. The reasons Congress conferred the
921 regulatory advantage to the broadcasters no longer exist.

922 CenturyLink favors a deregulatory approach. Again,
923 distant signals can come in for two reasons: again, it
924 returns the balance of the negotiations to both sides of the
925 table equally, and more importantly, it doesn't punish
926 consumers while two providers try and work out a deal.

927 To close, at the end of the day, this is not about
928 winners and losers; it is about protecting consumers from the
929 regulatory problems that exist today.

930 Again, we thank you for the opportunity to be here. We
931 look forward to working with this committee and Congress to
932 come up with a solution that is consumer-oriented. Thank
933 you.

934 [The prepared statement of Mr. Campbell follows:]

935 ***** INSERT 5 *****

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|
936 Mr. {Walden.} Mr. Campbell, thank you for your
937 testimony. We will now go to our final witness this
938 afternoon from Public Knowledge, the Senior Staff Attorney
939 John Bergmayer.

940 Mr. Bergmayer, thank you for being here and we look
941 forward to your testimony.

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|
942 ^STATEMENT OF JOHN BERGMAYER

943 } Mr. {Bergmayer.} Good morning, Chairman Walden, Ranking
944 Member Eshoo, and members of the subcommittee. Thank you for
945 the opportunity to participate in today's hearing.

946 Today, I am going to talk about two things: First, I
947 have a few remarks on current video issues; then, I will
948 present a few ideas that will make the video marketplace more
949 competitive and affordable.

950 For years, Public Knowledge has met with both sides of
951 the aisle on video reform issues and we frequently find that
952 we agree with several proposals coming from Members of
953 Congress who come from very different political backgrounds.
954 While there are some real differences of opinion on how to
955 proceed, there is a widespread recognition that current rules
956 and the market structure they enable are not serving the
957 viewer as well as they should. We are in a window where
958 reform is possible only if members of this committee come
959 together to find common ground.

960 The month-long blackout the kept CBS programming, both

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961 broadcast and cable, from appearing on the lineups of Time
962 Warner Cable subscribers has focused the attention of some
963 policymakers. Ranking Member Eshoo's draft Video CHOICE bill
964 puts forward a number of creative ideas that could move the
965 video marketplace in a good direction. Under the provisions
966 of this discussion draft, not only would viewers be protected
967 from the effects of corporate contract disputes that blackout
968 channels, they would get more choice on what channels they
969 subscribe to and could see their monthly fees go down.

970 Another approach, the Television Consumer Freedom Act is
971 being promoted by Senators McCain and Blumenthal. This bill
972 proceeds from the observation that programmers, broadcasters,
973 and cable companies all receive a number of special
974 protections from the government. It asks that they provide
975 viewers with more choice in exchange.

976 We have also been encouraged by efforts by
977 Representative Scalise in previous Congresses to look for
978 outdated video regulations that merit elimination in order to
979 remove unnecessary protections for video incumbents.

980 We should not overlook an important part of viewer
981 choice. That is choice in the devices that people can use to

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982 access their cable programming. Cable set-top boxes often
983 have high rental fees and lack the innovation found in other
984 areas of consumer electronics. This is why Congress passed
985 Section 629 of the Communications Act. Congress and the FCC
986 should continue to enforce the current cable card
987 implementation of that statute while moving to a more modern
988 implementation that fixes some of the shortcomings.

989 Congress must reauthorize STELA. Satellite has been a
990 success story where action by Congress and the FCC insured
991 that a new distribution technology could access content and
992 reach viewers. It should be a lesson for policymakers about
993 the importance of fostering new modes of video competition.
994 The success of STELA points to the best long-term approach
995 for improving the video marketplace. That is to promote
996 competition from new providers.

997 The internet is changing the video marketplace just as
998 it changed the market for other media. However, dominant
999 players in video have control over the content online
1000 competitors need for their service and the pipes they need to
1001 reach viewers. New technology will play a large part of
1002 video delivery but the market may not reach its full

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1003 competitive potential. Consumers will still suffer from a
1004 lack of choice and independent content producers will
1005 struggle to reach viewers.

1006 But there is a solution at hand. Congress should make
1007 sure that its pro-competition video policies are technology-
1008 neutral. If it does this while protecting internet openness,
1009 it can ensure that videos have more choices.

1010 Like satellite, online video is a success story but it
1011 can be much more than it is now. It is not driving down
1012 cable prices. For most users, it is a supplement to cable,
1013 not a replacement. Congress and the FCC can help online
1014 video develop into a full competitor in three easy ways:
1015 First, they can clear away some of outdated rules that slow
1016 down the evolution of the video marketplace; second, they can
1017 extend the successful policies that protect providers from
1018 anticompetitive conduct to certain online providers; and
1019 third, they can protect internet openness and prevent
1020 discriminatory billing practices that hold back online video.
1021 This will increase competition meaning lower prices, better
1022 services, and more flexibility and control for consumers.

1023 To be sure, many of the regulations that permeate the

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1024 video marketplace can be repealed today. These rules include
1025 the Sports Blackout Rule and prohibitions on distant signal
1026 importation. Some other rules like the Compulsory Copyright
1027 License are outdated but must be reformed cautiously.
1028 Measures that are designed to mitigate the market power of
1029 certain large video providers should not be repealed until
1030 effective competition develops. Examples of these kinds of
1031 roles included the Program Access and Program Carriage Rules.

1032 In some respects, they should be extended. For example,
1033 online video providers that wish to voluntarily operate as
1034 multichannel video programming distributors should be able to
1035 do so. This would ensure that consumers had more choices for
1036 high-value content than they do today. It would eliminate
1037 the incentives that keep certain content from being licensed
1038 widely.

1039 Finally, Congress can help ensure the internet remains
1040 open to creators of all sizes by working to prevent the anti-
1041 competitive use of data caps and other open internet
1042 violations.

1043 My brief oral testimony can only touch on a few issues.
1044 My written testimony contains more detailed analysis and

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1045 recommendations.

1046 Thank you for inviting me to speak and I look forward to

1047 your questions.

1048 [The statement of Mr. Bergmayer follows:]

1049 ***** INSERT 6 *****

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1050 Mr. {Walden.} Mr. Bergmayer, thank you for your
1051 testimony.

1052 I want to thank all the witnesses for your testimony.
1053 We will now move into the questions.

1054 And I want to pick up on some things you said, Mr.
1055 Bergmayer. And I have had some people say in the course of
1056 this dispute between CBS and Time Warner Cable when you talk
1057 in terms of the customers, do the customers deserve a refund
1058 in any portion from your perspective if they didn't get the
1059 programming that originally was there and all that?

1060 Mr. {Bergmayer.} Yes, sure.

1061 Mr. {Walden.} What's your view on that?

1062 Mr. {Bergmayer.} I think it goes without saying that
1063 consumers should receive compensation if they don't receive
1064 the services that they pay for. And the details of what
1065 caused the dispute, that is not any of their concern or
1066 business.

1067 Mr. {Walden.} Right.

1068 Mr. {Bergmayer.} However, I don't think that will
1069 actually solve any of the underlying issues that lead to the

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1070 blackouts to begin with.

1071 Mr. {Walden.} I understand that. Yes, but it is just
1072 something people have talked about, you know, because this
1073 one went so long.

1074 Mr. {Bergmayer.} Yes, there is dispute.

1075 Mr. {Walden.} And let me ask about because we are all
1076 having this discussion about these rules and you heard my
1077 opening statement. I am qualified for Social Security so I
1078 mean, you know, old enough to get a drink legally. And so I
1079 want to talk about the ownership caps a bit because it
1080 strikes me and I would be curious to get your comments or any
1081 of you because broadcasters clearly have an ownership cap
1082 limitation of, what, 39 percent or something or TV does,
1083 overall audience. Satellite, you don't have any limitation
1084 on markets you serve if I understand it, the two satellite
1085 providers. Are ownership caps something that have outlived
1086 their usefulness? Cable doesn't really have that, right, so
1087 what are your views on that?

1088 Mr. {Bergmayer.} Public Knowledge definitely thinks
1089 that the media ownership rules serve an important purpose in
1090 ensuring that people have a diversity--

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1091 Mr. {Walden.} So broadcasters should have an ownership
1092 cap but the others shouldn't?

1093 Mr. {Bergmayer.} I think, you know, the rules might
1094 need to be revisited to be more technology-neutral
1095 absolutely. When you are singling out a particular industry,
1096 that might be problematic. But in general, media ownership
1097 serves a purpose.

1098 And I have to point out that the issue that affects
1099 retransmission consent in particular are ownership problems
1100 that don't really trigger the rules because they are about
1101 stations that are in different markets that still jointly
1102 negotiate retransmission consent with large MVPDs. And I am
1103 sure some of the cable companies can address that issue
1104 better than I can.

1105 Mr. {Walden.} They are not necessarily negotiating at
1106 all times with mom-and-pop cable operators anymore either,
1107 are they?

1108 Mr. {Bergmayer.} There are many small cable operators
1109 throughout the country--

1110 Mr. {Walden.} Yes--

1111 Mr. {Bergmayer.} --and rural areas that have

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1112 retransmission consent--

1113 Mr. {Walden.} We have sort of gotten to the point where
1114 we have got big organizations on both sides in many cases,
1115 right?

1116 Mr. {Bergmayer.} Well, there are big organizations on
1117 both sides, and unfortunately, sometimes there are still
1118 little guys on both sides--

1119 Mr. {Walden.} I don't dispute that.

1120 Mr. {Bergmayer.} --that get forgotten in this.

1121 Mr. {Walden.} Yes. So, Mr. Campbell, Mr. Dodge, and
1122 Mr. Rozzelle, from what I understand, the MVPDs generally
1123 object to the bundling of broadcast channels with cable
1124 networks during retransmission consent negotiations. And at
1125 the same time, each MVPD before us no doubt offers bundled
1126 packages of channels to their customers. They also likely
1127 offer bundled video and voice and data service or want to
1128 offer data. Everybody is kind of getting into that. What is
1129 the difference from your perspective between the bundles
1130 offered by the programmers and the bundles that the MVPDs
1131 themselves offer?

1132 Mr. Dodge, you look like you want to leadoff. Have at

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1133 it.

1134 Mr. {Dodge.} Sure. Well, you know, DISH, I think, it
1135 has been very, very innovative in the bundles it offers--

1136 Mr. {Walden.} Um-hum.

1137 Mr. {Dodge.} --in the market creating family-friendly-
1138 only packages that are smaller and more affordable for
1139 families, and actually, the bundles offered by the
1140 programmers and the bundles offered by the distributors
1141 largely are the same thing. We wish we had more flexibility
1142 in how we could actually package, but as the bundles are
1143 offered to us, they also include restrictions on how we can
1144 actually create packages.

1145 Mr. {Walden.} All right. Mr. Campbell?

1146 Mr. {Campbell.} One of the differences in the bundles
1147 we offer to our subscribers if they don't like them or want
1148 to go somewhere else, they can call a competitor. In these
1149 retransmission negotiations, the bundles are forced on us and
1150 if we agree to the terms and conditions, we carry the
1151 programming. If not, then we have nowhere else to get it.

1152 So, yes, to echo Mr. Dodge, we are very creative with
1153 our bundling package as well in trying to make it as

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1154 competitive as possible. I think the real issue on the
1155 retrans side is the one-sided negotiations of it.

1156 Mr. {Walden.} All right. Mr. Rozzelle?

1157 Mr. {Rozzelle.} The packages that we offer our
1158 customers are structured as flexibly as we can given the
1159 program contracts that we have with the distributors,
1160 including the broadcasters under RTC. And that restricts us
1161 from doing a lot of things that we would do were we left on
1162 our own in terms of offering flexible packages. We are very
1163 mindful of the impact of video cost on the affordability of
1164 video services. In many of our small markets it is a big
1165 issue, and we wish we had more flexibility, Mr. Chairman.

1166 Mr. {Walden.} All right. Mr. Munson, did you want to
1167 comment on that?

1168 Mr. {Munson.} I do not work for a company that owns
1169 multiple--

1170 Mr. {Walden.} Um-hum.

1171 Mr. {Munson.} --cable networks, but if you look at it
1172 as holistically, there are over 1,200 television stations in
1173 America. The networks themselves, let's say ABC, Disney I
1174 think actually owns only 8 of those 1,200. So the effective

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1175 bundling of cable channels with broadcast stations is really
1176 a small part of the regular negotiation.

1177 Mr. {Walden.} All right. My time is expired.

1178 I turn now to the gentlelady from California, Ms. Eshoo,
1179 for 5 minutes.

1180 Ms. {Eshoo.} Thank you, Mr. Chairman. And thank you to
1181 each one of the witnesses. I think you all gave really very
1182 fine testimony obviously, with, you know, your own best
1183 wishes of what you think is excellent for everyone. But that
1184 is the way it is.

1185 Let me start with Mr. Dodge. Although DISH wasn't part
1186 of last month's dispute between Time Warner Cable and CBS, I
1187 understand many of your customers were still impacted. Why
1188 were they impacted?

1189 Mr. {Dodge.} That is true because CBS ultimately
1190 blocked anyone who had Time Warner broadband service from
1191 receiving their online content regardless of whether they
1192 actually received a video from--

1193 Ms. {Eshoo.} So internet service was blocked as well?

1194 Mr. {Dodge.} Correct. Regardless of whether you were--

1195 Ms. {Eshoo.} Well, I think that is something for all of

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1196 my colleagues to keep under their hat as we consider this. I
1197 mean, you know, it is metastasizing. I mean this isn't just
1198 one area where people are affected. There is a multiplicity
1199 of impacts. Thank you for that.

1200 I would like to go to Mr. Munson. In Mr. Campbell's
1201 testimony he points out that the FCC rules prohibit cable
1202 providers from taking down broadcast signals during a Nielsen
1203 ratings sweeps week. My discussion draft includes a similar
1204 provision during a retransmission consent negotiation
1205 impasse. Why is it unlawful for a pay-TV provider to pull
1206 your signal during sweeps weeks but it is okay for a
1207 broadcaster to pull their signal during a retrans dispute
1208 often time to occur actually on the eve of a big sporting
1209 event?

1210 Mr. {Munson.} First of all, I maybe answer the last
1211 question first. And again, I wasn't involved in the CBS/Time
1212 Warner dispute but--

1213 Ms. {Eshoo.} No, but you are here representing the
1214 broadcasters so that is why I am asking the broad question,
1215 excuse the expression.

1216 Mr. {Munson.} As I understand, that retransmission

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1217 consent contract ended sometime in June or July. There were
1218 extensions to it and the dispute ended up with CBS coming off
1219 the cable system in August. And really the month of August
1220 we are kind of in the doldrums of summer and we are in
1221 reruns.

1222 Ms. {Eshoo.} So you don't find any disparity even on
1223 the face of this? You don't see anything that is wrong with
1224 it?

1225 Mr. {Munson.} Well, there is always--

1226 Ms. {Eshoo.} Are you defending it?

1227 Mr. {Munson.} --marquee events that are going on--

1228 Ms. {Eshoo.} But I mean are you defending it?

1229 Mr. {Munson.} I am not sure I understand the question.

1230 Ms. {Eshoo.} Well, you know, the whole issue. I
1231 already gave you my question and, you know, maybe it is
1232 difficult for you to answer it and I understand why. Maybe
1233 that is the real answer. So thank you.

1234 I would like to go to Mr. Bergmayer. Thank you for what
1235 you said about the discussion draft. We appreciate it and we
1236 want to work with everyone. We have to have a very good,
1237 sensible, bipartisan approach on this thing. So we

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1238 appreciate what you said in your testimony.

1239 Now, you stated that policymakers should reject attempts
1240 whether at the SEC or in Congress to weaken the cable card
1241 system or to make it more difficult for the FCC to implement
1242 its successor. Can you explain why ending the integration
1243 ban before adopting a successor technology would disrupt
1244 innovation and harm consumer choice in the set-top box
1245 marketplace? Now, this is an issue that I go way back on,
1246 way back on, and I can't believe that that many years have
1247 gone by since we did the legislation on it, but I obviously
1248 have a keen interest in what that policy produced. So can
1249 you address it?

1250 Mr. {Bergmayer.} Yes, absolutely. I mean people are
1251 relying on cable card today and new devices from companies
1252 like Samsung and TiVo.

1253 Ms. {Eshoo.} Maybe just use one sentence to describe to
1254 set it up for the Members. What does today's set-top box do
1255 and then go to answering the question?

1256 Mr. {Bergmayer.} Yes, I mean the set-top box is what
1257 allows people to access their cable content. It might be the
1258 DVR. It might have some other functions. And most people

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1259 still are renting their boxes from their cable company. You
1260 know, you don't go into the store and buy a device like you
1261 do in a lot of other markets.

1262 Ms. {Eshoo.} Um-hum.

1263 Mr. {Bergmayer.} And the Section 629 of the
1264 Communications Act was intended to address that and make it a
1265 more competitive market that is much more similar to other
1266 markets. And cable card, years ago, was the technology that
1267 the FCC and the cable industry and a lot of stakeholders came
1268 up with to implement 629. And it is still being used today.
1269 And as I was saying, you know, there are new devices coming
1270 onto the market that are using cable card not just from TiVo,
1271 which everyone knows, but also from Samsung entering the
1272 cable card market.

1273 Ms. {Eshoo.} Um-hum.

1274 Mr. {Bergmayer.} So it remains an important platform
1275 for innovation.

1276 And the integration ban issue, I mean the integration
1277 ban tries to assure that these third parties get the same
1278 level of support as operator-supplied devices so that the
1279 first party operator-supplied box can't do something that a

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1280 TiVo or Samsung can't also do.

1281 Cable card isn't perfect and for years Public Knowledge
1282 has been calling for the FCC to implement a more technology-
1283 neutral, a better solution that we think solves a lot of the
1284 problems that I think Members have identified with the cable
1285 card system. But if the system is weakened now without a
1286 successor technology in place, I think that essentially
1287 spells the death knell for Section 629. It will still be on
1288 the books but the FCC won't be able to implement it and it
1289 becomes less likely that it will ever move forward. And the
1290 biggest problem with set-top box is still the high cost of
1291 people renting them every month.

1292 Ms. {Eshoo.} Right. Thank you very much.

1293 Thank you, Mr. Chairman.

1294 Mr. {Walden.} Thank you.

1295 The chair now recognizes the gentlelady from Tennessee,
1296 Mrs. Blackburn.

1297 Mrs. {Blackburn.} And thank you, sir.

1298 Mr. Munson, I would like to begin with you. At our last
1299 hearing on video reform that was in June and I asked a
1300 question of Marci Burdick, who was here on behalf of the NAB.

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1301 And I asked her whether she thought the position the
1302 broadcasters took on the radio side where they refused to
1303 recognize a performance right for sound recording undermines
1304 their position for retransmission. And we got kind of a
1305 convoluted response on that one. I imagine you may have
1306 heard about that in preparation for the hearing today, and it
1307 was something about there has been a symbiotic relationship
1308 between radio and artist but nothing really clear.

1309 And the reason I bring it up again is because I am sure
1310 that you saw this ad in yesterday's POLITICO, and it quotes a
1311 broadcast executive who said, ``the idea that we have to pay
1312 them to put up their music on our radio stations is absurd.''
1313 So, Mr. Chairman, I would like to enter that into the record.

1314 Mr. {Walden.} Without objection.

1315 [The information follows:]

1316 ***** COMMITTEE INSERT *****

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|
1317 Mrs. {Blackburn.} Thank you, sir. And so I am coming
1318 to you now, and my question for you, sir, is can you square
1319 that up for us and explain why the broadcast industry
1320 supports compensating content owners in the TV market but not
1321 in the radio market?

1322 Mr. {Munson.} Thank you, Congressman. If you take a
1323 look at it, in essence there are two different business
1324 propositions. On the radio side--well, let's start with the
1325 TV side. On the TV side we are creating content that
1326 multichannel video providers want to buy and then resell to
1327 the consumer. So we enter into negotiation, and by the way,
1328 they mark that up so that they can make a profit on it. Then
1329 we enter into negotiation whereby they buy the programming
1330 and then resell it. At the same time, at all times, we are
1331 over the air free and we provide that service for no fee if
1332 you want to put an antenna up and watch it.

1333 On the radio side that is a direct relationship between
1334 the radio station who plays the music of the artist, the
1335 artist then increases their--

1336 Mrs. {Blackburn.} Sir, it is all still content. Your

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1337 answer doesn't square up so you might want to go back and
1338 listen to that.

1339 Mr. Dodge, have you got any thought on that?

1340 Mr. {Dodge.} I don't see any difference.

1341 Mrs. {Blackburn.} Thank you. Anybody else want to
1342 weigh in on that?

1343 Mr. {Bergmayer.} Public Knowledge has supported that
1344 radio broadcasters should pay performance royalties, yes.

1345 Mrs. {Blackburn.} Yes. Okay. Thank you.

1346 Mr. Campbell, I would like to come to you for just a
1347 second. I am always amazed and I think you are probably
1348 hearing this a lot, people talk about retransmission taking
1349 place in a free market. And I look at some of what goes on
1350 and I am thinking, you know, you look at the mandates,
1351 retransmission consent, compulsory copyright, basic tier
1352 placement, required tier buy-through, et cetera, et cetera.
1353 The list goes on. And those are not necessarily what we
1354 would call free market terms. So if you can, just give me
1355 kind of a thumbnail sketch when you look at this and we want
1356 these negotiations to take place in a free market. That may
1357 not be the case, and if not, what rules do you suggest that

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1358 Congress examine so that we come to a level playing field?

1359 You know, in your perfect world what would we be looking at?

1360 Mr. {Campbell.} Representative Blackburn, thank you.

1361 You are correct. I think in any free market negotiation both

1362 sides come to the table with some risk and some benefit. And

1363 speaking as a new entrant, it is completely skewed in favor

1364 of the broadcasters, and that is largely as a result of the

1365 regulations in place today. That is why I think the

1366 discussion that Representative Scalise started last year is a

1367 great way and I think that is probably what I heard today.

1368 And again, I commend Ranking Member Eshoo for her draft this

1369 week. I think people are realizing there is a problem.

1370 Our proposal of a distant carriage, we think, brings the

1371 scales up to a level playing field, and here is why: We need

1372 to get local news to our consumers and the broadcasters want

1373 to tie that together with national content. They probably

1374 want to have all this tied together and us pay a premium

1375 price, 200, 300 percent increases.

1376 I think if we are carrying another signal in an adjacent

1377 market even though our consumers don't get the local news,

1378 the broadcasters are incented to come to the table, get a

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1379 deal, and we are incented to come to the table to get a deal
1380 because we both now have something that we want to offer our
1381 consumers that is not there at that time. But just saying
1382 take it or leave it or you will go black or there is nowhere
1383 for us to turn is not a free market negotiation.

1384 Mrs. {Blackburn.} I yield back.

1385 Mr. {Walden.} I will now go to Mr. Doyle, I believe.

1386 Mr. {Doyle.} Thank you, Mr. Chairman.

1387 Mr. {Walden.} Mr. Doyle for 5 minutes.

1388 Mr. {Doyle.} Heavy on the Mister. Thank you, Mr.
1389 Chairman.

1390 Well, I want to start out by reiterating something my
1391 friend and colleague Ms. Eshoo said. And I am very concerned
1392 about the blocking of online content in retransmission
1393 consent disputes. This is new ground that is being broken
1394 here that we have not seen before in any retransmission
1395 negotiations. And the most recent one where the broadcast
1396 blackouts affected 3 million people, the online subscribers
1397 to CBS.com, we are talking about 11 million people that were
1398 affected by that outside the area that was being negotiated,
1399 and I hope this doesn't become the new normal for our

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1400 retransmission disputes.

1401 Mr. Campbell and Mr. Rozzelle, you represent companies
1402 that provide video and broadband services to consumers. What
1403 do you think the reaction would be if your company blocked
1404 access to internet content as part of a retransmission
1405 dispute?

1406 Mr. {Rozzelle.} Congressman Doyle, I think it is very
1407 clear to us what would happen. It would be argued that we
1408 violated the 'net neutrality principles and that we were
1409 engaging in if not unlawful conduct, immoral conduct.

1410 I will tell you that I was--perhaps I am naïve here--but
1411 I was very surprised in a way that the FCC didn't say to CBS
1412 in this case you are a broadcaster operating as a public
1413 trustee in the public interest. The programming involved
1414 here was created as a result primarily of the licenses that
1415 you hold from us, and now, you have withheld that programming
1416 in another venue, but nevertheless, withheld that programming
1417 from members of the public and we don't find that to be in
1418 the public interest. And I am sorry they didn't do that. I
1419 think it would have been appropriate.

1420 Mr. {Doyle.} Mr. Campbell?

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1421 Mr. {Campbell.} Representative Doyle, I really don't
1422 have anything to add. I think Mr. Rozzelle answered it quite
1423 well.

1424 The only other thing I would point out is that, to go
1425 back to Representative Blackburn's suggestion if it is truly
1426 a free market, then the broadcasters maybe should return some
1427 of the free spectrum they got to offer that and bid on it.
1428 But I would have nothing to add to the online blockage other
1429 than Mr. Rozzelle.

1430 Mr. {Doyle.} Let me ask a question to again Mr.
1431 Rozzelle, Mr. Campbell, and Mr. Dodge. There seems to be an
1432 increase in the number of agreements between local
1433 broadcasters to co-own and operate equipment and facilities,
1434 and I want to say I believe in the value of local news and
1435 local programming and I believe that broadcasters need to
1436 find innovative solutions to the advances of technology in
1437 the marketplace.

1438 However, both DISH and Suddenlink and Public Knowledge
1439 mentioned in their testimony instances where joint agreements
1440 have resulted in separately owned stations in a single market
1441 jointly negotiating for retransmission consent. How have you

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1442 seen this trend develop and what do you think the
1443 consequences have been?

1444 Mr. {Dodge.} Well, the American Cable Association, or
1445 the ACA, did a study that showed in those scenarios where
1446 separately owned stations joined together in those so-called
1447 local marketing arrangements that the resulting cost to the
1448 distributors and ultimately consumers increased anywhere
1449 between 22 and 160 percent. And it is also my understanding
1450 that the Department of Justice starts to get interested in
1451 such things at about the 5 percent mark. So I think the
1452 numbers are pretty telling.

1453 Mr. {Doyle.} Mr. Rozzelle?

1454 Mr. {Rozzelle.} We have run into circumstances where in
1455 one market that we serve the ABC affiliate and the Fox
1456 affiliate, two of the big four, came to us together and it
1457 was a very, very difficult negotiation for us as a result.

1458 I would say to you, sir, that if we step back and take a
1459 look at the result of the increasing retransmission consent
1460 fees and try to correlate those increases with increases in
1461 local programming as a result, which was the reason that this
1462 whole system was put in place to begin with, as I understand

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1463 it, I don't think that correlation exists, not positive.

1464 And so I think that this is a very difficult issue. I
1465 think Ranking Member Eshoo's bill is therefore more valuable
1466 today than it has ever been and we look forward to
1467 participating in that process.

1468 Mr. {Doyle.} Mr. Campbell?

1469 Mr. {Campbell.} Representative Doyle, as a new entrant,
1470 we are not in a lot of markets yet where we would probably be
1471 subject to these sort of arrangements, but obviously, we have
1472 heard about them. And, you know, as we grow, obviously if
1473 any of this happens, then we will be sure and provide that
1474 data.

1475 Mr. {Doyle.} Mr. Munson, I saw that you wanted to
1476 comment.

1477 Mr. {Munson.} Yes, thank you. If I could make a few
1478 comments, Congressman.

1479 Mr. {Doyle.} Sure.

1480 Mr. {Munson.} First of all, there is nothing illegal
1481 about these arrangements between television stations. If
1482 there was, the FCC wouldn't allow it. But the fact is that
1483 in my experience of doing retransmission contracts of this

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1484 sort, there is never an option that is not given where a
1485 multichannel video provider could pick up just one of the
1486 stations. They always offer that. But there is a lot of
1487 exchange that goes back-and-forth between the cable company
1488 and the television station.

1489 Mr. {Doyle.} Mr. Chairman, I see my time is up and I
1490 thank you for your generosity.

1491 Mr. {Walden.} We will now go to Mr. Barton for 5
1492 minutes.

1493 Mr. {Barton.} Thank you, Mr. Chairman. I have got just
1494 one or two basic questions, maybe three.

1495 The first thing I want each of the panelists to tell me
1496 who you think the primary stakeholder that you are
1497 representing is. And I will start with Ms. Aistars.

1498 Ms. {Aistars.} So I represent the Copyright Alliance
1499 and we are a coalition of 40 institutional members who are
1500 copyright owners, creators of all varieties. So I am
1501 speaking for the creative community.

1502 Mr. {Barton.} Okay.

1503 Mr. {Dodge.} Consumers.

1504 Mr. {Barton.} Just consumers?

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1505 Mr. {Dodge.} Yes.

1506 Mr. {Barton.} I hear chuckles at that but that is okay.

1507 Mr. {Munson.} The National Association of Broadcasters

1508 and KPHO television and Meredith Corporation.

1509 Mr. {Barton.} Where is KPHO?

1510 Mr. {Dodge.} We are in Phoenix.

1511 Mr. {Barton.} Phoenix, Arizona. Okay.

1512 Mr. {Rozzelle.} Mr. Dodge stole my response,

1513 Congressman, but I am here representing Suddenlink

1514 Communications.

1515 Mr. {Barton.} Representing who?

1516 Mr. {Rozzelle.} Suddenlink Communications.

1517 Mr. {Barton.} What is Suddenlink Communications?

1518 Mr. {Rozzelle.} Suddenlink Communications is a cable

1519 operator. It serves about 1.4 million customers throughout

1520 the United States. And we are a member of the NCTA but I am

1521 here representing the company.

1522 Mr. {Barton.} Okay.

1523 Mr. {Campbell.} Representative, Mr. Dodge once again

1524 stole my thunder.

1525 We are representing our subscribers who are trying to

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1526 bring a competitive choice in the marketplace against the
1527 incumbent providers and other video providers.

1528 Mr. {Barton.} So you are a cable company?

1529 Mr. {Campbell.} We are a telecommunications company.

1530 We offer video services over an IP TV network. We currently
1531 negotiate cable franchises in some cities where we operate
1532 under statewide franchising. But yes, it is a wire-lined
1533 facilities-based that currently passes over 1.5 million
1534 homes.

1535 Mr. {Barton.} Okay.

1536 Mr. {Bergmayer.} And Public Knowledge is here to
1537 represent the interest of TV viewers.

1538 Mr. {Barton.} TV viewers.

1539 Mr. {Bergmayer.} Yes, sir.

1540 Mr. {Barton.} Do people subscribe to Public Knowledge?
1541 I mean is this kind of like Heritage Foundation or Common
1542 Cause?

1543 Mr. {Bergmayer.} We are not quite at that scale but we
1544 are a nonprofit public interest group.

1545 Mr. {Barton.} Okay. Well, you know, I asked the
1546 question because the old days, you know, I knew who the

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1547 broadcasters were and I knew who Comcast was and I knew who
1548 AT&T was, you know, and I knew who the local affiliate
1549 station was in my district. But you could put a gun to my
1550 head and I wouldn't be able to tell you without you telling
1551 me who you folks represent because the marketplace is totally
1552 different, totally different.

1553 Now, I have at various times been a customer, which
1554 means I pay money for services of Time Warner Cable, Comcast
1555 Cable, Charter Cable. Currently, I am a paying customer for
1556 DIRECTV. I just switched from Comcast to Verizon FiOS, and I
1557 am in the process of switching from Charter to AT&T U-verse.
1558 Okay. Both Verizon FiOS and AT&T U-verse are bundled
1559 services, which I get telephone service keeping my old
1560 telephone number, internet high-speed so-called service, and
1561 what I would call cable or television service. Okay. And I
1562 pay a flat monthly rate, which is lower than the old separate
1563 rates.

1564 Who can tell me what body is the dominant regulator of
1565 the bundled services that I now am receiving through Verizon
1566 FiOS and AT&T U-verse? Is it the FCC? Is it the cable? I
1567 mean who is it?

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1568 Mr. {Campbell.} Representative, I think the answer is
1569 yes. In our case we offer the bundled telecommunications,
1570 video, and data. From a telecommunications perspective, the
1571 FCC and the State Public Utilities Commissions regulate that
1572 portion of the service.

1573 From the video perspective, local governments and the
1574 FCC has some oversight but not as much as they used to--
1575 regulate the provision of cable service. And then the
1576 broadband is kind of out there in its own little world.

1577 Mr. {Barton.} Well, my time is about to expire, but the
1578 point of the first question and the point of the second
1579 question is the laws that are on the books had no conceptual
1580 ability to foresee what is now happening in the marketplace.
1581 And again, when AT&T was a phone company, we kind of
1582 understood the law regulating telephone service. And when
1583 Charter was a pure cable company, we understood the law of
1584 regulating cable television. Well, Charter has bundled
1585 services. All these groups have bundled services. And I
1586 don't think even you folks, as smart as you are, really can
1587 delineate who the dominant regulator is or even how to
1588 regulate if you need to regulate.

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1589 So, Mr. Chairman, my time is expired but that is why
1590 your hearings are so important and I really hope we can come
1591 up with a way to bring the regulatory scheme if we need one
1592 into the 21st century.

1593 Mr. {Walden.} I thank the gentleman.

1594 And I am just going to exercise the chairman's
1595 prerogative for just a minute because I think it is important
1596 we have a little fun and frivolity in these hearings, but
1597 when asked who you represent here, unless you are co-ops, you
1598 are probably also representing your investors and
1599 shareholders through a fiduciary responsibility. I recognize
1600 you are always representing your customers, but
1601 fundamentally, is anybody here not representing your owners?

1602 Mr. {Dodge.} Yes, fair enough, Mr. Chairman. I wasn't
1603 sure where the question was going, but of course, I represent
1604 DISH Network.

1605 Mr. {Walden.} That is what I thought you meant but I
1606 thought everybody might want to qualify that unless you are a
1607 co-op, right? Anybody disagree with that?

1608 Mr. {Bergmayer.} Not at all, no.

1609 Mr. {Walden.} There you go. All right. Now, we go to,

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1610 I believe, Mr. Latta.

1611 Mr. {Latta.} Thank you, Mr. Chairman. And thank you
1612 again to all of our witnesses today. I really appreciate
1613 hearing your testimony.

1614 And if I could start with Mr. Rozzelle, in your
1615 testimony you state that whatever justification there was for
1616 the integration ban has long since been superseded by
1617 marketplace developments, and then you go on to state that
1618 consumers and operators, this has cost them more than \$1
1619 billion since it went into effect in 2007. I was wondering,
1620 could you expand and elaborate on what you gave us in your
1621 testimony about the integration ban?

1622 Mr. {Rozzelle.} Thank you for the opportunity,
1623 Congressman Latta. The figure, \$1 billion, comes from a
1624 rough calculation that the cost of adding a cable card to the
1625 boxes that we distribute directly to our customers costs
1626 about \$50 a box. It also adds significantly increased
1627 electrical cost associated with the operating of the box.

1628 There are roughly 40 million cable cards out. The
1629 program has been successful. It was passed in 2007 and the
1630 country is full of cable cards. The relationship that we

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1631 have with TiVo, which uses cable cards, is an example of the
1632 success of that program. And it is one of the big reasons
1633 why that experience that we have had and our continued
1634 operating premise, which is that any video customer that
1635 comes to us with a device from wherever it came will be
1636 supported by us if it wants to take our cable television
1637 services. Video services are so highly competitive that if
1638 we do not support them, they will go someplace else.

1639 Mr. {Latta.} Let me ask real quick when you say that
1640 you will support anything that is brought to you, does that
1641 put a technological strain on you or on your tech crews?

1642 Mr. {Rozzelle.} You know, I am no engineer, sir, so it
1643 is possible, I suppose, someone could show up on our
1644 doorsteps with something that simply wouldn't work, but if it
1645 is a device that was designed to work on our network, I can
1646 tell you that we would do everything that we reasonably could
1647 to make certain that we kept that customer happy.

1648 Mr. {Latta.} Thank you. And kind of following up if I
1649 could maybe ask everybody this question what Mr. Barton had
1650 brought up, you know, really where the laws are out there
1651 today. For each of you sitting out there today, you know,

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1652 and we pretty much have heard from everyone that, you know,
1653 the laws are either outdated or we have problems. If each of
1654 you could just kind of briefly say if you had the
1655 opportunity, what law on the books would you want to get rid
1656 of or change today? And I will start ladies first.

1657 Ms. {Aistars.} I think as I said in my testimony, the
1658 Copyright Alliance represents largely copyright owners, and
1659 from a copyright perspective, statutory licenses are
1660 disfavored, and I think to a greater or lesser extent most of
1661 my members would agree that the existing licenses are an
1662 anachronism, but we also recognize that there are business
1663 practices that have grown up around them and so to unwind
1664 them we would have to, you know, give some further thought as
1665 to how to do that in a way that is not disruptive.

1666 Mr. {Latta.} Okay. Mr. Dodge?

1667 Mr. {Dodge.} So if the choice was completely getting
1668 rid of something versus targeted reform, then we would say
1669 get rid of the retransmission consent scheme to the core
1670 along the lines of what Mr. Scalise has proposed.

1671 Mr. {Latta.} Mr. Munson?

1672 Mr. {Munson.} I guess I would say the ownership caps

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1673 would be the first thing, but if I could mention one other
1674 thing.

1675 Mr. {Latta.} Oh, sure.

1676 Mr. {Munson.} Thank you. And that is that there has
1677 been a lot of talk about whether the retransmission consent
1678 is broken or not, but I don't know if I am the only one on
1679 this panel--I think I am--that actually has negotiated a
1680 retransmission consent contract, and I find that it works.
1681 It ends up going down to the wire, as many negotiations with
1682 businesses do, but what is not broken here even though we
1683 have brick cell phones and everything else, but what is not
1684 broken here is when two companies get together, one company
1685 wants what the other one has and they get together and
1686 negotiate a deal, and then only 1/2 of 1 percent of the deals
1687 go public and end up with an impasse.

1688 Mr. {Latta.} I am running out of time here. Mr.
1689 Rozzelle?

1690 Mr. {Rozzelle.} Congressman Latta, I have also
1691 negotiated retransmission consent contracts and I would tell
1692 you that in the case of Suddenlink, they were almost always
1693 successfully negotiated because we simply didn't have any

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1694 power at the table to do anything other than accept the deal
1695 we were given.

1696 If I was going to affect a set of laws, I would affect
1697 the broadcast carriage laws that impact retransmission
1698 consent.

1699 Mr. {Latta.} Mr. Campbell? I would echo Mr. Dodge and
1700 Mr. Rozzelle said. And I, too, have negotiated
1701 retransmission consent. Obviously, over the years the
1702 leverage has been swayed in favor of one side, and at some
1703 point this is accelerating upward, and the model breaks with
1704 these types of increases.

1705 Mr. {Latta.} Mr. Bergmayer?

1706 Mr. {Bergmayer.} Well, it is hard to pick just one but
1707 for these purposes basic tier buy-through, and our testimony
1708 has a number of provisions that should be sunsetted, listed.

1709 Mr. {Latta.} Thank you. Mr. Chairman, my time is
1710 expired and I yield back.

1711 Mr. {Walden.} The gentleman yields back.

1712 I will now go to Mr. Scalise for 5 minutes.

1713 Mr. {Scalise.} Thank you, Mr. Chairman.

1714 When we talk about the different challenges that each of

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1715 you face, you each have different groups that you answer to,
1716 corporations, boards, customers. Ultimately, you are all
1717 trying to provide services and represent those people that
1718 create the great content that we all enjoy. And so when we
1719 have this conversation, the reason I appreciate the
1720 chairman's focus and the ranking member's interest in this is
1721 that I think we all want to make sure that the policy is
1722 smart and reflective of the world that we live in today.

1723 And I bring the phone not just to point out that it
1724 cannot text the chairman or give him the LSU/Oregon score on
1725 this phone, but this was the modern device at the time these
1726 laws were written. And if you look at what you can do with
1727 this device today and you compare it to what you can do with
1728 this device, and when people realize that the laws that are
1729 on the books today that all of you have to deal with were
1730 written for this, not for this and haven't been changed since
1731 this device was the modern device, it shows you how outdated
1732 the laws are but it shows you how complicated it makes your
1733 jobs and your daily lives.

1734 And government needs to go and get with the times and
1735 figure out that you are living in a different world. You

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1736 have to go in negotiations every single day dealing with the
1737 realities of modern technology. You couldn't even text
1738 somebody but you surely couldn't download video, audio.

1739 The things you can do today have complicated the
1740 marketplace because now the laws are written in a way where
1741 you literally had one broadcaster sitting in a room with one
1742 cable operator. You had a monopoly negotiating against a
1743 monopoly. And maybe that worked back in that day but we are
1744 not in that day anymore.

1745 Every consumer benefits from the fact that they have got
1746 multiple options. If they want to turn on the TV, they can
1747 get that through a cable wire, they can get it through a
1748 fiber, they can get it through a satellite, they can get it
1749 from so many sources but they can also go on their mobile
1750 device and just download it onto their iPhone or iPad or
1751 Galaxy or whatever device you have got. And yet, the rules
1752 are so rigid that it forces in some cases government picking
1753 winners and losers. In some cases you have complications you
1754 have got to go to the FCC to get a ruling. And the
1755 innovation that is lost is really what hurts the consumer.
1756 And that is really why we are here today.

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1757 I want to ask you, Mr. Campbell, because you all just
1758 recently rolled out Prism. It is a fairly new product, you
1759 know, that you are into this marketplace and video, and you
1760 have had to go through some of those growing pains in
1761 establishing these relationships and negotiations. And the
1762 negotiations are different depending on what kind of cable
1763 service or what kind of product you are trying to provide.
1764 Because if you are going to a broadcaster, it is a different
1765 negotiation than, for example, you know, you all are based in
1766 Monroe, Louisiana. We are proud to have you as a Fortune 500
1767 company in Louisiana, but you are in Monroe. And a lot of
1768 people now know about Monroe because of Duck Dynasty, number
1769 one show in the country. We are very proud of that. They
1770 are from West Monroe they would tell you, not just Monroe.

1771 But, you know, the reason 11 million people or so last
1772 week wanted to watch that show was because it is really good
1773 entertainment. But that is not a broadcast network. The
1774 number one show in the country is not a broadcast network or
1775 it is not CBS or ABC or NBC or Fox. It is A&E. So you are
1776 in negotiation with them to get that program that everybody
1777 wants is a lot different under the law than a negotiation

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1778 with CBS or ABC or one of those broadcast stations, is that
1779 correct?

1780 Mr. {Campbell.} That is correct.

1781 Mr. {Scalise.} And so all you're asking for is a free
1782 marketplace where you want to pay people for their copyright.
1783 You know, our copyright artists, Ms. Aistars' clients, they
1784 provided content; they ought to get paid for it. But
1785 shouldn't that negotiation happen for A&E the same way as CBS
1786 because you are a consumer. You are just flipping through
1787 the channels. You want to watch a show. You know, why
1788 should one negotiation be ruled by the government in a
1789 different way than the other channel when the consumer, it is
1790 a seamless operation?

1791 Mr. {Campbell.} Representative Scalise, I have spent a
1792 lot of money at the Duck Dynasty shop for my children, by the
1793 way. But you are exactly right. A&E was created and there
1794 is no sort of scales that are tipped in their favor under the
1795 law that would give them an advantage over us in a
1796 negotiation. They have cleared their copyrights. Sometimes
1797 the broadcasters that we deal with, they don't want to clear
1798 all of those, which is part of the compulsory license issue.

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1799 But you are absolutely right. They are under no
1800 regulatory regimes so we sit down with them on one channel,
1801 we negotiate carriage, we come up with agreement, and we put
1802 them on.

1803 Mr. {Scalise.} And clearly, we want everybody to be
1804 treated fairly. We want you to have to go and whether it is
1805 CBS or A&E or any other channel, you know, go have a
1806 negotiation. If you come to an agreement, great; if not, you
1807 know, obviously, you go somewhere else. You look for other
1808 means to provide the service. But the broadcasters ought to
1809 be paid for their content, the artist who created the content
1810 ought to be paid, but it should be done in a free market.
1811 You shouldn't have must carry here and then you have got a
1812 buy-through, you have got free transmission consent, you have
1813 got compulsory copyright. There are all these things stacked
1814 on top of each other.

1815 Broadcasters have limitations under current law. They
1816 can't even own multiple media outlets, yet if you are
1817 operating on the internet, you don't have any of those
1818 limitations. And yet you are competing against each other
1819 but one guy has got one set of rules he is playing by and

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1820 somebody else has a different set of rules. And so all we
1821 are trying to do here is start this conversation to say,
1822 look, it might have worked in 1992. Things are dramatically
1823 different in a great way for us in terms of innovation but
1824 don't have these laws hold us back on the innovation for
1825 today. And that is why the conversation not only needs to
1826 start but ultimately we need to get to the point where we can
1827 actually get to text, get to a position where we can update
1828 and modernize these laws to reflect what is happening in the
1829 world we are in today.

1830 And I appreciate all of you for what you do to provide
1831 great services because customers love it, but we ought to
1832 make sure it is being done in a free and open marketplace
1833 that reflects today's technology.

1834 Mr. {Campbell.} Thank you, Representative.

1835 Mr. {Scalise.} Thank you, Mr. Chairman. I yield back
1836 the balance of my time.

1837 Mr. {Walden.} Thank you, Mr. Scalise, for your work.

1838 We will turn out to Mr. Lujan for 5 minutes.

1839 Mr. {Lujan.} Mr. Chairman, thank you very much and to
1840 you and to the ranking member for the work you have been

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1841 doing in this space.

1842 The conversation that we are having today, as complex as
1843 it is, but a reality that hits everyone across this country
1844 as we look not only for information for valuable content and
1845 entertainment as well. So thanks to everyone for being here.

1846 I want to recognize as well the important work that the
1847 broadcasters do in making sure that during times of emergency
1848 we are able to get that local news. There is actually flash
1849 flood warnings taking place in my district as we speak.

1850 There was a tornado that was spotted early this morning that
1851 warnings went out to the community that we are able to depend
1852 on that.

1853 But on the same note, as we talk about that, when these
1854 conversations are taking place with the breakdown that took
1855 place between CBS and Time Warner and content is shut off,
1856 that valuable asset, if consumers don't have redundancy, my
1857 rabbit ears are now, I guess, the digital form of those in
1858 the home, and our form of redundancy at least for me is my
1859 smartphone, which I think would be redundant. But if
1860 internet content was even cut off and now that I couldn't see
1861 it on my television, I couldn't go to my device and try to

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1862 pull it up because I still have internet conductivity whether
1863 it is through whatever my phone is receiving or through the
1864 internet signal that I still have in the home, that concerns
1865 me.

1866 And I think that in the same vein that I talk about the
1867 importance of the critical service that is provided, it
1868 concerns me that this shutout can take place from a blanket
1869 perspective.

1870 And I don't know if, Mr. Munson, we can talk about that
1871 a little bit to see what we can do to prevent that from
1872 happening when, at the very least, this is occurring. And I
1873 say that because the broadcasters know I still have a lot of
1874 concerns about orphan counties. And, at least in New Mexico,
1875 we still haven't solved this problem. And we need to because
1876 there are still places in New Mexico that those that are
1877 subscribers or that live in rural areas--and I invite anyone
1878 to drive out with me to New Mexico. It takes 8-1/2 hours to
1879 cross my district alone, rural in nature. And there is a lot
1880 of people living in these rural towns that count on receiving
1881 local information, but now, because of the way that some of
1882 these lines are drawn they don't get local news; they get

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1883 news from the neighboring State but maybe not some of the
1884 warnings that they would like to hear as well. So, you know,
1885 that is a whole other issue.

1886 But in regards to where sometimes the conversations
1887 break down and it is the consumer that was left out or that
1888 warning, can you talk about that a little bit, Mr. Munson?

1889 Mr. {Munson.} Yes, thank you, Congressman.

1890 First of all, I want to reiterate something I said in my
1891 opening statement, and that is that we never went dark. CBS
1892 never went dark in those markets. Their transmitters were
1893 on. They were broadcasting at full power during the entire
1894 time. People can receive our signals. We have spent a lot
1895 of money on a very robust system. As you know, in the
1896 southwest, we count on translators in many cases to repeat
1897 that signal through large areas of land to reach as many
1898 people as we can possibly reach with the over-the-air signal.

1899 Mr. {Lujan.} Well, Mr. Munson, I don't want to
1900 interrupt, sir, but then it goes back to redundancy. And my
1901 question is if I am going to make an investment in my home to
1902 put a digital receiver so that I can receive the broadcast
1903 feed off of that, then should I be open to what is being

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1904 suggested by the chairman and the ranking member to say that
1905 I have made the investment to receive that digital signal, so
1906 I get my local affiliates for free. So then why am I paying
1907 for them on my DISH feed or my cable feed?

1908 Mr. {Munson.} Primarily--

1909 Mr. {Lujan.} And I think we need to be careful when we
1910 say that it is constantly being said because then, as a
1911 consumer, where am I? If I am going to invest in what I
1912 believe is redundant again to my smartphone and through what
1913 I perceive to be able to get information over the 'net but
1914 even that was chopped off, then my redundancy is the
1915 investment with what I need to do, especially in a rural
1916 area. And so, you know, a feed in New York City is different
1917 than a feed in New Mexico.

1918 Mr. {Rozzelle.} Congressman, if I might, one of the
1919 redundant features that exists is your local cable television
1920 operator because he has an emergency alert system. And that
1921 is triggered by, as you know, various stages from the Federal
1922 Government all the way down to the local entity. And that
1923 includes weather alerts as well. I thought I would point it
1924 out.

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1925 Mr. {Lujan.} Well, I think that is fair but in a day
1926 that--and, Mr. Chairman, I see my time has run out--we are
1927 highlighting the importance of a broadcast feed never going
1928 down and always being fed. I guess that is where I am caught
1929 a little bit now as I am looking at this closer when trying
1930 to understand what that means.

1931 So if I am watching my local channel, CBS goes out, that
1932 is the channel that I watch. I know that when I turn it on,
1933 it is blank; it says talk to your cable subscriber or talk to
1934 whatever it is so we can try to get this figured out, is that
1935 emergency broadcast still going to run on that channel or my
1936 going to have to flip the channel in hopes--because probably
1937 I am going to turn it off and then I am going to go to my
1938 smartphone if I know that something is happening.

1939 Mr. {Munson.} It does run on our television station,
1940 yes.

1941 Mr. {Lujan.} So even with that signal, even with that
1942 little note up there, I would still get the message?

1943 Mr. {Munson.} In the particular case you have
1944 described, if it were to happen to have an impasse between a
1945 cable company and a broadcaster, nothing is passed through

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1946 because there had been an expiration of that particular
1947 contract.

1948 I want to also mention again that we are talking about
1949 1-1/2 percent or a half of 1 percent of the times we enter
1950 into these negotiations as broadcasters it ended up in an
1951 impasse. It is unfortunate and it is particularly outlined,
1952 as we talked about in the CBS/Time Warner, it was very public
1953 and 30 days long. But that is a rare occurrence in these
1954 negotiations. There are probably people negotiating as we
1955 are sitting here in new retransmission deals that we don't
1956 know about.

1957 Mr. {Lujan.} I appreciate it. Thank you, Chairman.

1958 Mr. {Walden.} And I think your point is it is still
1959 over-the-air broadcast so it is not a complete blackout. If
1960 you have an antenna, you still get CBS? It is just not
1961 available on a cable or satellite provider, depending on who
1962 is having the blackout.

1963 Mr. {Munson.} That is correct, Chairman. Yes, sir.

1964 Mr. {Lujan.} Thank you. Thank you, Mr. Munson. I
1965 appreciate that.

1966 Mr. {Munson.} Thank you.

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1967 Mr. {Walden.} We will now go to the gentleman from
1968 Colorado, Mr. Gardner.

1969 Mr. {Gardner.} Well, thank you, Mr. Chairman. And I
1970 had hoped that Mr. Scalise would still be here because for
1971 the record he still brings his 8-track player.

1972 But thank you very much, all of you, for being here. I
1973 particularly welcome Mr. Campbell and Mr. Dodge for your
1974 representation today. Both of you are responsible for
1975 creating thousands of jobs in my district and across the
1976 State of Colorado, so I thank you so much to both of you for
1977 being here.

1978 Now, with regards to the topic of today's hearing, there
1979 are two primary concerns that I have. One is a consumer's
1980 ability to get what they want at a reasonable price and the
1981 free market mechanisms that allow that to happen. But it
1982 seems like we are more and more facing impasses as we try to
1983 achieve those 2 goals of the free market and giving the
1984 consumer what it is that they want at a reasonable price.

1985 Broadcasters come before the committee and our office
1986 and say that everything is working the way it should, but
1987 others say that it is not working the way that it should.

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1988 And I will tell you in Congress when we get accused of things
1989 working or not working, we end up with negotiations,
1990 concessions, those kinds of words that pop up, compromise.
1991 Each side has to give a little, a bit for the sake of the
1992 people who are affected to try to meet the two concerns I
1993 addressed of the consumer.

1994 And so I don't purport to have an answer and I don't
1995 know that anybody here on this committee has purported to
1996 have all of the answers or to say that there is one proposal
1997 that will fix this situation. But the fact is that there are
1998 still blackouts and that consumers are paying the price both
1999 figuratively and literally. But in my mind one blackout is
2000 one too many, especially when it is one that affects so many
2001 millions of people. And I think we can all agree on that.
2002 And sadly, it isn't just one and it hasn't been just one.
2003 The rising cost of programming and the number of
2004 retransmission consent disputes and impasses leads me to
2005 believe that we do have a problem.

2006 So with that, I have a few questions for our witnesses.
2007 To Mr. Dodge, could you please explain a little bit more
2008 about your plan? Would you pay broadcasters in the adjacent

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2009 market if you were to import their signal? And what would
2010 this do to help the problem that we all see?

2011 Mr. {Dodge.} Yes, we would. The imported signal if you
2012 will would be compensated under the current distant network
2013 signal royalty scheme, which is negotiated with each
2014 reauthorization of STELA, SHVERA, whatever flavor it is with
2015 the copyright holders and represents a fair market rate. And
2016 the idea would that when a local signal is down we could
2017 import an adjacent market signal, which, as I noted in my
2018 opening remarks, is quite an imperfect substitute. It allows
2019 people to continue to have access to the core network
2020 programming but there would be no local content, so there
2021 would still be an incentive for both parties to negotiate and
2022 reach a fair deal to retrans at the local station.

2023 Mr. {Gardner.} You spoke about it earlier in your
2024 opening statement in terms of this being a permanent
2025 solution. This is not a permanent solution because I mean if
2026 you want to watch the Denver Broncos, you are not going to be
2027 thrilled if you have to watch the Cleveland Browns. Of
2028 course--

2029 Mr. {Dodge.} Many would say that.

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2030 Mr. {Gardner.} --in this case it is worked out very
2031 well for us.

2032 But will this process though help you get a solution
2033 though for consumers, a settlement so to speak?

2034 Mr. {Dodge.} We think it will because it will somewhat
2035 level the playing field which today we think is quite out of
2036 skew. And there is sort of two goalposts, which I think are
2037 represented by Representative Scalise's bill and Ranking
2038 Member Eshoo's bill, which is one you can do a complete
2039 deregulatory approach or you can try and level the playing
2040 field a little bit so there are fair negotiations.

2041 Mr. {Gardner.} And to Mr. Munson, during the last
2042 hearing, I asked each panel member if they believed the
2043 current system was a free market system and why. And I had
2044 one broadcaster respond by stating that it was in fact a free
2045 market. And that I will quote from the hearing: ``In terms
2046 of retransmission consent, we view that as a mechanism of
2047 actually entering into negotiation, and I think one of the
2048 tenants of our businesses we spent a lot of money in creating
2049 content and we want to be able to, you know, get an
2050 appropriate return on that content.''

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2051 And so my question to you, with regard to the proposal
2052 that is outlined in the testimony today to import distant
2053 signals even if a cable company is willing to pay you for
2054 importing a distant signal, you are still opposed to that
2055 idea? And you are opposed even if it is over a short period
2056 of time? And why is that?

2057 Mr. {Munson.} My experience is, Congressman, that it
2058 would prolong the dispute, not shorten it. By bringing
2059 another CBS affiliate in in this particular case, first of
2060 all, it violates the long-held contract that I have with the
2061 television network for the exclusivity for the CBS product,
2062 in this case Phoenix. You can't import ESPN from another
2063 market if you have a dispute with ESPN. You can't say, well,
2064 I want to bring the ESPN signal from Tucson into the ESPN
2065 market into Phoenix. Why would it be any different to import
2066 the CBS signal, which violates our contract?

2067 It really goes to the core of localism. As you have
2068 already mentioned, it destroys the localism. Bringing a
2069 distant signal in with television commercials, with programs,
2070 news programs, traffic, weather that doesn't reflect that
2071 particular community destroys the whole idea behind localism,

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2072 which was the foundation of over-the-air broadcasting.

2073 Mr. {Gardner.} So I mean do you think that what we have
2074 today is a free market system, a system that works in the
2075 free market?

2076 Mr. {Munson.} I do. I think that having the deadline--
2077 I mentioned this earlier--having a deadline, while gut-
2078 wrenching for the parties at some times, it generally brings
2079 the parties together. But by prolonging it, by bringing
2080 another station in, it artificially kicks the can down the
2081 road with the deadline, and therefore, the parties don't
2082 negotiate and get a deal done.

2083 Mr. {Gardner.} Mr. Chairman, I yield back.

2084 Mr. {Walden.} The gentleman yields back. Looks like we
2085 go now to gentleman from Missouri, Mr. Long.

2086 Mr. {Long.} Thank you, Mr. Chairman, and thank you all
2087 for being here today for your testimony. It looks like maybe
2088 I am the cleanup hitter today.

2089 So, Mr. Dodge, let me start with a question for you. Do
2090 you think that DISH and others involved in efforts to change
2091 these retransmission consent laws, do you think that you and
2092 others are working hard enough out in the marketplace as it

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2093 exists today to reach successful deals?

2094 Mr. {Dodge.} We do.

2095 Mr. {Long.} I am sorry?

2096 Mr. {Dodge.} Yes, we do.

2097 Mr. {Long.} You do? Okay. Earlier, you said in your

2098 testimony when it was your turn at the microphone there you

2099 said that blackouts are occurring with more frequency and

2100 last longer. So if that is the case, if they are happening

2101 with more frequency and they are for a longer period of time,

2102 just ballpark, but how many disputes has your company been

2103 involved in over, say, the last 5 or 6 years?

2104 Mr. {Dodge.} Actually, I don't have a number of the top

2105 of my head.

2106 Mr. {Long.} Can you get it for me?

2107 Mr. {Dodge.} Of course.

2108 Mr. {Long.} Okay. Because I would kind of like to know

2109 what--because if we are doing everything we can out there in

2110 the marketplace to, you know, prevent these and then they are

2111 happening more and more with more frequency and lasting

2112 longer, I would kind of like to--if you can get me an answer

2113 to that, I would appreciate it.

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2114 Mr. {Dodge.} Of course.

2115 Mr. {Long.} Okay. Thank you. And is it Aistars?

2116 Ms. {Aistars.} Aistars, yes.

2117 Mr. {Long.} Ms. Aistars, okay. The satellite
2118 compulsory licenses were created, as we saw--I don't know if
2119 it was Joe Barton's phone that Scalise held up there or what,
2120 but they were created a quarter of a century ago and for very
2121 specific reasons of course at that time, as you are well
2122 aware of.

2123 So looking at the satellite compulsory licenses 25 years
2124 or better, are those reasons still relevant today with what
2125 we have heard today and all of the new technology and
2126 everything?

2127 Ms. {Aistars.} Thank you for the question.

2128 As I said when I introduced myself, I am a copyright
2129 lawyer rather than a Communications Act lawyer, and so I
2130 think some of the justifications for the creation of those
2131 licenses were more steeped in communications law than
2132 copyright law, although they reside in Title 17.

2133 But I guess I would just say that the marketplace is
2134 vibrant with a variety of new services, as you have pointed

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2135 out. You can do more today with the devices you have in your
2136 pocket than ever before. There is more creative content
2137 available to consumers through a variety of new services.
2138 And so I am enthusiastic about video marketplaces as we see
2139 it today, and I don't see that it is in need of any new
2140 regulation.

2141 Mr. {Long.} Okay. Okay.

2142 And with that, Mr. Chairman, I yield back.

2143 Mr. {Walden.} Does the gentleman yield?

2144 Mr. {Long.} I already yielded back, yes. Do you want
2145 me to yield to somebody?

2146 Mr. {Walden.} Yes, he was asking.

2147 Mr. {Long.} Oh, I am sorry.

2148 Mr. {Walden.} Mr. Lujan.

2149 Mr. {Long.} Now, you don't have a Vermont accent.

2150 Mr. {Lujan.} No, sir. I have got this one over here
2151 but--

2152 Mr. {Long.} That is not what it says on the TV monitor.

2153 Mr. {Walden.} And is that really a Missouri accent?

2154 That is what I want to know. No one knows.

2155 Mr. {Lujan.} I thank the gentleman for yielding. I

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2156 guess just a few follow-ups with what was said.

2157 Mr. Munson, I really appreciate the response to Mr.

2158 Gardner associated with where these territories and markets

2159 were drawn and they give you your competitive advantage for

2160 the space that you operate in, but it also impacts a dilemma

2161 that I am trying to solve in my State in my district with

2162 orphaned counties. The consumers are not given the choices

2163 with what content they want delivered to them because someone

2164 drew an arbitrary line based on a population center, based on

2165 a market penetration of where the epicenter is for

2166 advertising. They get whatever content is going to be thrown

2167 at them.

2168 In this day and age I think with DISH through my

2169 Slingbox I can get the content recorded and then I can watch

2170 it digitally anywhere that I have access to the internet that

2171 there is enough bandwidth for the video stream capacity. So

2172 I get my local content from New Mexico when I am here that

2173 way. But in a day and age where I am able to subscribe to a

2174 suite of information, there should be no reason that, based

2175 on some lines that were drawn that leave my consumers out if

2176 they want information.

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2177 But as I have described before in this committee, if
2178 they are savvy enough as far as a DISH Network or DIRECTV
2179 subscriber and they go get a Post Office Box in an area that
2180 gets local programming, no matter where they are, I could do
2181 it here. I could have a DISH Network or DIRECTV network
2182 here. I could get billed to my New Mexico address and set
2183 the thing up here and I could get all the local programming
2184 that I want from New Mexico.

2185 It seems that something is broken in a way that I today
2186 based on a law that is preventing consumer choice should be
2187 able to get whatever programming from Arizona, California,
2188 Colorado, or New Mexico that I so desire as well.

2189 And so I just wanted a little bit of time to explain
2190 that that is a concern that I have with where these lines
2191 were drawn with how it is hurting my consumers when they want
2192 local news and they can't even get that.

2193 Thank you, Chairman. And I yield back.

2194 Mr. {Walden.} The gentleman yields back. And I think
2195 that wraps up what I think has been a traffic hearing. We
2196 really appreciate all the testimony, your answers to our
2197 questions. And, as you know, we don't have to tell you this

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2198 is a complicated issue that we are trying to work our way
2199 through.

2200 We also know STELA has a timeline and a clock on it. We
2201 also know there are a lot of people who want to hang every
2202 caboose and main car and everything else onto STELA if they
2203 can. So we are going to be having further discussions about
2204 the video marketplace as we go forward.

2205 And with that, the committee stands adjourned.

2206 [Whereupon, at 4:43 p.m., the Subcommittee was
2207 adjourned.]