TESTIMONY OF DAVE ROZZELLE

EXECUTIVE VICE PRESIDENT
SUDDENLINK COMMUNICATIONS

on

INNOVATION IN THE VIDEO MARKETPLACE

before the

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Energy and Commerce Committee

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Good morning Mr. Chairman and Members of the Subcommittee. My name is Dave Rozzelle, and I am an Executive Vice President with Suddenlink Communications. Thank you for inviting me today to testify on innovation in the video marketplace. We welcome this important hearing.

Suddenlink is a leading provider of cable video services, broadband Internet access, wireless home networking, wireline phone, online video, and home security services to approximately 1.4 million households in second tier cities, small towns and rural communities primarily located in Texas, West Virginia, Louisiana, Arkansas, North Carolina, Oklahoma, Missouri and Arizona. Suddenlink is purely a distributor of video services to its customers; it does not produce video programming.

Cable Always Has Been an Innovative Force in Video

From its beginning, cable has driven innovation and transformation in the video business. Cable was founded to make broadcasting better – extending broadcast television reception to suburban and rural areas outside the reach of over-the-air signals. Later, we made programming better – breaking the lock of the three-channel universe by investing billions in original content that appeals to specialized audiences as well as the mass market, and building award-winning iconic brands like ESPN, HBO, CNBC, C-SPAN, History and Discovery. We were first to unshackle consumers from "appointment TV" with video on demand and the wide deployment of DVRs.

Suddenlink has expanded the video services it provides to its customers in a number of ways. The number of channels we deliver is far greater than the number we delivered just a couple of years ago. The number of high definition (HD) channels we deliver has grown even faster. We deliver some of our video content to new screens, like iPads, computers and game consoles. We offer a wide variety of set top devices and we have partnered with TiVo to distribute their DVRs directly to our customers. Some of our customers use their TiVo devices to access Internet video.

When the cable industry turned to areas other than video, the results were similarly innovative. In 1996, Congress wanted telephone competition and cable delivered it. Today, one in three households that have wireline phone service receive it from a cable operator.

And then there is broadband. Where high-speed data service was once the purview only of businesses, cable operators brought broadband Internet service to residential subscribers. To do this, the industry borrowed heavily and took enormous risk by ripping out its one-way analog network and replacing it with a higher capacity, two-way digital platform that made broadband possible. Cable broadband speeds have increased at a 50 percent annual rate[1/] since being introduced in 1996 and are projected to continue on that arc for the foreseeable future. In the case of Suddenlink, we deliver residential customers data speeds in excess of 100 Mbps in many of our service areas, including some very small rural communities. Our business class service is also incredibly robust and more importantly, scalable, which allows us to provide gigabit speeds and beyond at the business customer's request.

Today's Golden Age of Video

From the consumer's standpoint, the state of video has never been stronger. Consumers today enjoy (1) more content; (2) higher quality programs; (3) more variety and diversity in video content; (4) more sources for video content; (5) a greatly enhanced capacity to select, manipulate and record video content; and (6) the ability to access video on an increasingly wider range of devices.

[1/] *ARRIS Group Inc. 2012 Investor & Analyst Conference,* Aug. 8, 2012, slide 29, *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDc2MTUwfENoaWxkSUQ9NTA4NTk3fFR5cGU9MQ==&t=1.

Public policy always has been concerned about diversity of viewpoints and niche programs for smaller yet passionate audiences. The cable model brought that ambition to fruition. The cable dial runs the gamut – from compelling scripted dramas, situation comedies, educational content and kids programming to sports, cooking shows, and news and public affairs.

If you are itching to watch video, the number of sources you can turn to has grown exponentially as different providers compete for your business. You may subscribe to cable television and get 100 or more HD channels, the latest premium content and live events, video on demand and the ability to record and watch at your convenience on a DVR. You can get a very similar experience from DIRECTV and Dish. In many markets, you can also choose service from AT&T U-verse, Verizon FiOS, or CenturyLink's Prism TV. And Google Fiber is expanding to more cities.

Cable also is working to bring better video experiences to consumers wherever and whenever they want, offering, for example, applications that allow subscribers to watch their cable service on their iPads. Cable's "TV Everywhere" initiative makes it possible for cable customers to watch video content they have already paid for on their laptops, tablets, smartphones and other portable devices – no matter where they are. And many cable networks allow viewers to access their programming outside the viewers' multichannel video programming distributor ("MVPD") subscription. Sprint, for example, offers its mobile subscribers access to a wide variety of popular full-length video programs from networks like MTV, Nickelodeon, Comedy Central, Style, Discovery Channel and many more.

If that were not exciting enough, Internet-delivered video has ushered in an even greater explosion of choice. By one estimate, real-time video streaming represents 65.2 percent of downstream Internet traffic in North America during prime time evening hours.[2/] The U.S. online video market attracts an average of 75 million viewers every day and streams nearly 40 billion videos per month.[3/] Revenue from video content delivered over the Internet to televisions "is expected to grow from $2 billion in 2009 to over $17 billion in 2014."[4/] The largest subscription video provider in the country today is Netflix — not Comcast, Time Warner Cable, DIRECTV or any other MVPD.

If market failure is characterized by a lack of new entry, there is clearly no failure in the video marketplace. Companies that stream content are proliferating: Netflix, Hulu, Amazon, iTunes, CinemaNow, network websites, HBOGo, Apple TV, and user-generated or special interest sites like YouTube, Vimeo, and TED.com are a few. In fact, YouTube recently announced a subscription video service.[5/] Some of these services offer multichannel programming like an MVPD; others specialize in entertainment programming, movies, or on-demand content. And many more offerings are anticipated from the likes of Intel and Sony.

Moreover, web video is not limited to a PC screen any more. Analysis of data from Nielsen suggests that 65 percent of Netflix streaming is viewed on television sets.[6/] Computers can connect to big screen televisions; content can be beamed to sets using functions like Apple Airplay; box companies like Roku, TiVo and Boxee can deliver web video to the TV set; and manufacturers like Samsung are making the flat panel TV web-enabled, with apps incorporated for accessing video content. One study estimates that at least 44 percent of U.S. households have

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2/ *Global Internet Phenomena Spotlight 2H 2012 North America, Fixed Access*, SANDVINE INCORPORATED, Nov. 6, 2012.

3/ *US Digital Future in Focus*, COMSCORE (Feb. 2012).

4/ U.S. Dep't of Justice, Competitive Impact Statement, *United States v. Comcast Corp.*, No. 1:11-cv-00106 (D.D.C. Jan. 18, 2011), *available at* http://www.justice.gov/atr/cases/f266100/266158.htm.

5/ *New Ways to Support Great Content on YouTube*, YOUTUBE (May 9, 2013), http://youtube-global.blogspot.com/.

6/ NCTA analysis of data from *The Cross-Platform Report*, Quarter 2, 2012-US, NIELSEN (Nov 2012).

a television set connected to the Internet, through an Internet-ready TV, game console, standalone Blu-Ray player or smart set-top box connected to their home network.[7/] Smartphones and iPads have proliferated as compelling devices for consuming video content and enjoying second-screen experiences. Of note, when measured together, the share of all hours spent watching streaming video on tablets and mobile phones increased 100 percent in 2012.[8/]

For some consumers, online video offerings are good enough to cut or shave the cord. According to one report, "3.74 million (3.7%) US TV subscribers cut their TV subscriptions between 2008-12 to rely solely on" online video and over-the-air for their video entertainment.[9/] For many consumers, online video has developed as a supplement to their broadly diverse MVPD service. It enables them to add even more of a particular type of video content – whether it be movies or music – to the live events and new programming available from the MVPD. There are still millions of new customers subscribing to cable service for the first time – or returning to it – because of the HD, on-demand, multi-screen and other advanced video offerings our industry makes available.

As always, the cable industry is responding to changes in technology and in the marketplace in order to stay ahead of the curve and provide leading-edge services to its subscribers. The opportunities presented by broadband are great. While there are some challenges, we continue to see great potential in our networks. As an industry, we are investing billions annually to ensure that this potential can be realized by keeping pace with the dynamic marketplace and consumers' changing needs and interests. As a company, Suddenlink just

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7/ Over Half of Adults Watch Video on Non-TV Devices Weekly, LEICHTMAN RESEARCH GROUP, INC. (May 2, 2013), *available at* http://www.leichtmanresearch.com/press/050213release.html.

8/ *Global Video Index, 2012 Year in Review*, OOYLA, *available at* http://go.ooyala.com/rs/OOYALA/images/Ooyala-Global-Video-Index-Q4-2012.pdf.

9/ *The Battle for the AmericanCouch Potato: Online &Traditional TV and Movie Distribution*, The Convergence Consulting Group Ltd. (Apr. 2013), *available at* http://convergenceonline.com/downloads/USNewContent2013.pdf.

completed a $350 million upgrade of our network, over and above the normal capital expenditures we make to keep our network running smoothly and reliably.

Cable's business incentives in today's marketplace are fully aligned with the interests of consumers. The path to continued growth for cable is to enhance and expand its customers' use and enjoyment of the broadband platform we offer. If consumers want to access video content via their laptop, their Xbox, their iPad, or their mobile device, it's our job to make that possible for them. If they want to obtain video content from Netflix, Amazon, Hulu, YouTube, Apple or any other online provider, it's our business to make that possible as well and we are. Given the robust nature of its networks, cable stands to benefit from the increasing demand for Internet video. Suddenlink believes it will remain the Internet access service of choice for the residential homes we pass for the same reason. So while cable operators are developing new services and features that enable their subscribers to access video online and on-the-go, they are also ensuring that other providers of content, services or devices in the online video ecosystem can flourish. Our partnership with TiVo is an example of such efforts.

Differences in Video Regulation

As innovative sources for video content and distribution have emerged and developed, our nation's communications laws have remained largely the same. As a result, participants in the video marketplace are subject to a range of different statutory and regulatory regimes depending on the distribution technology they use. What requirements attach to delivery of the very same program depends on whether it is offered by a broadcaster, cable operator, other MVPD, or online video distributor. Indecency rules also vary depending on whether a program is being shown on a broadcast channel, basic cable, or pay-per-view.

Some of the regulatory differences are grounded in distinctions that warrant particular treatment. Broadcasters, for example, receive free and exclusive use of the public airwaves, and in return must use this public resource to serve the public interest. Cable operators, as users of communities' local rights-of-way, have obligations to ensure that installation and operation of their facilities does not cause property owners uncompensated damages.

Other regulatory disparities, however, echo outdated notions of market power. Twenty years ago, cable was effectively the sole provider of multichannel video programming service in the country, serving 98 percent of all multichannel households. Today, incumbent cable's share of the multichannel marketplace stands at 56 percent and 4 of the 8 largest MVPDs in the country are non-cable.

And twenty years ago, of course, there was no Internet and no broadband connections capable of delivering high definition video to America's households.

Despite the array of new competition, choice and service offerings for consumers, cable operators continue to be subject to requirements that are based on aging snapshots of the video marketplace. There are rate regulation rules designed to serve as a proxy for market-based pricing, even though most American households have a choice of at least three MVPDs and millions may opt to forego multichannel subscriptions altogether in favor of Internet-delivered video.

There are program access rules designed to nurture facilities-based competition to cable. But cable's main MVPD competitors – DirecTV, DISH Network, AT&T and Verizon – are all some of the largest communications services providers in the nation. These companies hardly need the government's help to remain viable competitors to cable.

There are also content carriage obligations, such as leased access, the usefulness of which has been obviated by the Internet.

In light of the fundamental changes that have occurred in the marketplace over the last 20 years, we applaud Chairman Walden and this Subcommittee for starting the dialog on the appropriate regulatory framework for video services.

What is the Role for Policymakers?

A natural question for this Committee is what type of regulatory framework will best promote consumer choice. There are clearly many provisions in today's communication laws that are outdated and unnecessary. Two areas ripe for reform are retransmission consent and the so-called navigation device "integration ban" that applies to cable operators alone among video competitors. When the retransmission consent regime was first enacted, for example, broadcast stations could reach viewers only through cable systems or over-the-air broadcasting, and it was feared that absent a fair retransmission consent system, over-the-air broadcasters could be forced into extinction. Changes in the video marketplace since 1992 also have skewed retransmission consent negotiations. While those changes have included the development of programming sources that compete with broadcasters, broadcasters still control marquee events. The combination of those events and the availability of DBS and telcos as alternatives to cable has substantially increased the leverage that broadcasters can exert over MVPDs in retransmission consent negotiations. Consumers bear the brunt of this imbalance: the number of retransmission consent-related shutdowns increased from 12 in 2010 to 51 in 2011 to 91 in 2012. And we are at 80 in 2013 – and still counting.

Clearly there is something amiss, and policymakers need to take a fresh look at retransmission consent in today's marketplace. As a starting point, the cable industry has urged the FCC to bar two or more broadcasters in a local market from using Local Marketing Agreements ("LMAs") or other arrangements to jointly negotiate retransmission consent agreements with cable operators and other MVPDs. The FCC's network nonduplication rules give the local network affiliate a monopoly on the delivery of network service in its area, and often prevent a cable system from reaching agreement with another network affiliate to replace programming lost in a retransmission consent "blackout." Another step would be the repeal of the "must-buy" requirement in the Cable Act, which requires cable operators to include retransmission consent stations on the basic tier that all customers must purchase.

Similarly, whatever justification there was for the "integration ban" has long since been superseded by marketplace developments. Cable operators are required to provide security modules to consumers who buy set top boxes at retail so they can connect and use those boxes to receive cable service – but on top of their obligation to support retail devices, operators are also required by FCC rule to use a separate security module in the boxes they lease, instead of being able to integrate the security and channel changing functions in those boxes. This integration ban – which applies only to cable operators – has cost operators and consumers more than $1 billion since it went into effect in 2007 and wastes hundreds of millions of kilowatt hours per year. As mentioned earlier, Suddenlink's partnership with TiVo is a stand-alone success and is evidence that third party deployment of set top devices is not dependent upon whether Suddenlink deploys traditional cable set top devices without CableCARDs.

There is no doubt that the transformation underway in the video marketplace will not be problem-free. It will be chaotic at times as consumer expectations and demands outpace changes in the underlying marketplace. As market participants seek to realign their business strategies with the new reality, many questions of law and policy may arise. In this dynamic market, it is difficult to know what type of statutory or regulatory changes will promote rather than hinder competition and investment. Indeed, the breadth of the challenge could present high hurdles to consensus and to prudent lawmaking. For these reasons, it is better to exercise caution rather than rush to rewrite laws that will, in any event, be obsolete almost as soon as they are enacted.

As the new marketplace evolves, there may be limited, targeted changes to the Act that are appropriate to address specific issues that arise – and the FCC should have the tools it needs to adjust its rules as the market changes – but the basic framework of the Act can remain in place throughout this transition period, without causing any delay or hindrance to the exciting changes that are occurring in the video marketplace. The time may come when adjustments to the current law can no longer suffice, but that time is not now.

Thank you again for the opportunity to appear today. Suddenlink and the cable industry are proud of the products and services we offer customers today and we are excited about the dynamic future before us. We look forward to being a key player in this vibrant marketplace.