



MEMORANDUM

May 31, 2019

To: Subcommittee on Communications and Technology Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “STELAR Review: Protecting Consumers in an Evolving Media Marketplace.”

On **Tuesday, June 4, 2019, at 10:30 a.m. in room 2322 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a hearing entitled “STELAR Review: Protecting Consumers in an Evolving Media Marketplace.”

I. BACKGROUND

There are approximately 119.9 million households in the United States that watch television.¹ Most of these households receive broadcast television programming in one of two ways: either over-the-air (OTA) broadcasts accessed through the use of an antenna, or by subscribing to a multichannel video programming distributor (MVPD) service. MVPDs are entities, including cable and satellite companies, that make available for purchase multiple channels of video programming.

According to the most recent Federal Communications Commission (FCC) Marketplace Report, the number of MVPD subscribers has been in decline since 2013. At the end of 2017, there were nearly 94 million MVPD customers.² The number of households that rely exclusively on OTA broadcasts is comparably smaller, but growing: the FCC report found that as of 2018, approximately 16.6 million households rely exclusively on OTA broadcasts.³ Finally, analysts estimated that at the end of 2018, virtual MVPDs—companies offering linear television programming online—had approximately 7.7 million subscribers.⁴

¹ Nielsen, *Nielsen Estimates 119.9 Million T.V. Homes in the U.S. For The 2018-2019 Television Season* (Sept. 7, 2018).

² Federal Communications Commission, *Consolidated Communications Marketplace Report*, Report, GN Docket No. 18-231, FCC 18-181 (Dec. 26, 2017) (“FCC Marketplace Report”).

³ *Id.*

⁴ Multichannel News, *Virtual MVPDs Account for Nearly 10% of Pay TV Subscriptions: BTIG* (Feb. 20, 2019).

II. DELIVERY OF BROADCAST TELEVISION PROGRAMMING

The FCC grants licenses to broadcast stations to use spectrum for “the public interest, convenience, and necessity.”⁵ Broadcast frequencies are allocated among geographic areas across the country to ensure that local communities have information relevant to their community. Local broadcast news remains the most popular way Americans receive local news.⁶

Currently, there are 210 Designated Market Areas (DMAs); television stations are assigned to a DMA based on its community of license.⁷ Television stations broadcast content to households within their local markets. Generally, a station’s transmission stays within a single DMA, but at times its signal may reach households in multiple DMAs.

Beginning in the 1970’s, Congress established a regulatory framework for the carriage of broadcast programming by MVPDs, though the law on certain issues differs depending on whether the MVPD provider is a cable company or a satellite company. Local television broadcast stations may require a cable MVPD that serves the same market as the broadcaster to carry its signal while receiving no compensation. Such a demand for carriage is called “must-carry.” Alternatively, the broadcaster may seek compensation from a local cable MVPD for carriage, which is referred to as “retransmission consent.” If a broadcaster and a cable MVPD cannot reach an agreement over retransmission consent negotiations, the cable MVPD cannot retransmit the broadcast signal to its subscribers, resulting in a channel “blackout” for those consumers until the MVPD and the broadcaster can reach an agreement.⁸

Satellite MVPD providers are allowed, but not required, to retransmit local stations to their subscribers; however, if they choose to offer any local station, they must offer all of the full-power stations within a DMA (referred to as “local-into-local” service).⁹ DISH Network provides local-into-local service in all 210 DMAs, while DIRECTV offers local-into-local service in 198 DMAs.¹⁰

In some situations, satellite MVPDs may also transmit distant signals—stations outside of a subscriber’s DMA—without having to negotiate a retransmission agreement. Primarily, this applies to subscribers who are deemed “unserved.” The FCC defines an “unserved household”

⁵ 47 U.S.C. § 310 (d).

⁶ Business Insider, *Shrinking TV Viewership is Incentivizing Cable Operators to Play Hardball With TV Networks* (Jan. 4, 2019).

⁷ Congressional Research Service, *Cable and Satellite Television Issues in the 116th Congress*, IF11053 (Dec. 20, 2018).

⁸ 47 U.S.C. § 325 (b) (1).

⁹ 47 U.S.C. § 338 (a) (1).

¹⁰ Broadcasting and Cable, *Senators Press AT&T/DirecTV for Small-Market, Remote Area TV Signals* (March 14, 2019).

as a household that (1) cannot receive, using an OTA antenna, a local station affiliated with a network (ABC, CBS, NBC, or Fox), and (2) to whom a satellite MVPD does not offer the household a local station affiliated with each network through their service.¹¹ This includes “short” markets, or those DMAs where there is no local station affiliated with one of the networks. In that case, the Communications Act currently allows satellite MVPDs to import distant signals outside of the DMA to ensure that subscribers in these markets have access to programming from all of the networks. Satellite subscribers who receive service from an antenna permanently attached to a recreational vehicle or commercial truck also may receive distant signals. As of October 2018, satellite MVPDs reported that 870,000 subscribers receive at least one distant broadcast signal.¹²

There are three statutory licenses, codified outside of the Communications Act, which permit MVPDs to retransmit copyrighted programming content without first having to negotiate royalties with each copyright owner. These three licenses are generally referred to as the “cable statutory license,”¹³ the “local satellite statutory license,”¹⁴ and the “distant signal statutory license.”¹⁵ To take advantage of these licenses, MVPDs must adhere to the retransmission consent laws and pay royalties to the Copyright Royalty Board at rates established by the Board.

III. EXPIRING PROVISIONS OF STELAR

Congress set expiration dates on certain provisions of the retransmission consent framework. The most recent extension of these provisions came in the STELA Reauthorization of 2014 (STELAR).¹⁶ Specifically, they are:

- Section 325(b)(2)(C) of the Communications Act, which allows satellite operators to import distant signal licenses to unserved households without retransmission consent from the stations. This provision expires December 31, 2019. If this provision expires, satellite MVPDs will be required to negotiate retransmission consent agreements to provide broadcast stations to unserved households.
- Sections 325(b)(3)(C)(ii) and (iii), which places an obligation on MVPDs and broadcasters to negotiate retransmission consent agreements “in good faith.” Broadcasters are also prohibited from engaging in exclusive contracts for carriage. These requirements expire on January 1, 2020. Currently, FCC regulations implementing these

¹¹ 47 C.F.R. § 76.64 (c) (3).

¹² Broadcasting & Cable, *SCBA Pushes Permanent STELAR Renewal* (Oct. 17, 2018).

¹³ 17 U.S.C. Sec. 111.

¹⁴ 17 U.S.C. Sec. 122.

¹⁵ 17 U.S.C. Sec. 119.

¹⁶ STELA Reauthorization Act of 2014, Pub. L. No. 113-200.

provisions set forth several standards that violate this obligation.¹⁷ The FCC can receive and adjudicate complaints, if a MVPD or broadcaster believes these standards are being violated.¹⁸

- The satellite distant signal statutory license in 17 U.S.C. § 119, which expires December 31, 2019. If this provision expires, satellite MVPD providers would be required to negotiate a license to use the broadcast content in order to transmit distant signals as opposed to using the existing statutory license and making payments to the Copyright Royalty Board.

IV. WITNESSES

The following witnesses have been invited to testify:

Gordon H. Smith
President and CEO
National Association of Broadcasters

Robert D. Thun
Senior Vice President of Content and Programming
AT&T Mobility and Entertainment

Patricia Jo Boyers
President and Vice Chairman of the Board
BOYCOM Vision

John Bergmayer
Senior Counsel
Public Knowledge

¹⁷ See 47 C.F.R. § 76.65 (b).

¹⁸ 47 C.F.R. § 76.65 (c).