AMERICAN
TELEVISION
ALLIANCE

June 3, 2019

The Hon. Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

The Hon. Greg Walden
Republican Leader
Committee on Energy and Commerce
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

The Hon. Michael Doyle
Chairman
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

The Hon. Bob Latta
Republican Leader
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

Re: STELAR Review: Protecting Consumers in an Evolving Media Marketplace

Dear Chairman Pallone, Republican Leader Walden, Chairman Doyle, and Republican Leader Latta:

I write on behalf of the American Television Alliance[1] to provide our perspective in advance of your hearing on "A STELAR Review - Protecting Consumers in an Evolving Media Marketplace."

At this hearing, you will hear a lot about the evolution—if not the *revolution*—in the media marketplace. The advances really are amazing. Those of us old enough to remember when you had "appointment television" to catch your favorite show can't help but be amazed to see our younger colleagues on their smartphones (and tweeting or snapping about it to the world at large). I'm happy to say that ATVA members are justifiably proud of their roles in this revolution. From offering innovative video streaming services that allow consumers to watch programming when and where they want it to building the blazing fast broadband networks that

---

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

make those services possible, ATVA members can claim as important a role in the video marketplace revolution as anybody.

Yet there remains one sector of the media marketplace where the news is far less good—retransmission consent remains governed by rules Congress enacted in 1992, before anybody had heard of the Internet. Whatever Congress intended almost thirty years ago, this is what the retransmission consent marketplace looks like today:

Skyrocketing prices for lower-rated programming. Broadcast prices go up by double digits every year. Last month, Nexstar reported a 14% rise in retransmission consent revenue to $314 million,[2] Gray reported an increase of 26% to $204 million,[3] Sinclair reported an increase of 12% to $352 million,[4] compared to $314 million in the first quarter of 2018, while Fox reported a 29% jump in retransmission consent revenue.[5] These increases are far higher than inflation—and, indeed, far higher than can be found in any other sector of the economy. Indeed, as one of our members explained, retransmission consent fee increases over the last decade exceeded hyperinflation in Brazil and Argentina in the 1980s.[6] Yet these increases are not for better or more popular programming. To the contrary, broadcast ratings overall are far lower than they were ten years ago.[7] Indeed, the broadcasters themselves cite these lower ratings as a reason why they should all receive a "discount" off the FCC's national ownership cap.[8]

---

2 Mike Farrell, "Retrans Helps Drive Record Q1 for Broadcaster Nexstar," Multichannel News (May 8, 2019), https://www.multichannel.com/news/retrans-helps-drive-record-q1-for-broadcaster-nexstar.

3 Thomson Reuters, "Edited Transcript of GTN earnings conference call or presentation 9-May-19 3:30pm GMT," Yahoo Finance (May 8, 2019), https://finance.yahoo.com/news/edited-transcript-gtn-earnings-conference-233214931.html.

4 Mike Farrell, "Revenue Up, Profits Down in Q1 at Sinclair," Multichannel News (May 8, 2019), https://www.multichannel.com/news/revenue-up-profits-down-in-q1-at-sinclair.

5 Dade Hayes, "Fox Tops Wall Street Forecasts In First Quarterly Report As Stand-Alone Company," Yahoo Finance, (May 8, 2019), https://finance.yahoo.com/news/fox-tops-wall-street-forecasts-203152097.html.

6 Petition to Deny of DISH Network L.L.C., MB Docket No. 17-179 at 37 (filed Aug. 7, 2017)(comparing figures from SNL Kagan, a media research group within the TMT offering of S&P Global Market Intelligence, "Broadcast retransmission and Virtual Service Provider Carriage Fee Projections Through 2023" (July 2017) with "Brazilian Hyperinflation," Encyclopedia of Money (*last accessed*: May 31, 2019), http://encyclopedia-of-money.blogspot.com/2010/01/brazilian-hyperinflation.html and "Hyperinflation in Argentina," Citéco (*last accessed*: May 31, 2019), https://www.citeco.fr/10000-years-history-economics/contemporary-world/hyperinflation-in-argentina).

7 Rick Porter, "TV Long View: The Bar for Rating Success Has Come Way Down — or Has It?" Hollywood Reporter (May 11, 2019), https://www.hollywoodreporter.com/live-feed/bar-ratings-success-has-come-way-down-has-it-1209741.

8 *See* Comments of the National Association of Broadcasters, MB Docket No. 17-318 at 23-25 (filed Mar. 19, 2018).

MVPDs have three choices in the face of such price increases. They can refuse to carry the programming, which is bad for subscribers and may cause them to look elsewhere because they have other ways to watch broadcast programming. They can accede to the outrageous demands and "eat" the cost increases themselves, though no business can swallow increased input costs forever without increasing retail prices. Or, as is almost always the case, they can try to pass these increases along to your constituents in the form of higher prices while hoping that the latest broadcaster-induced increase does not prompt subscribers to discontinue their pay-TV subscriptions.

Broadcast consolidation within local television markets. These retransmission price increases result, in part, from local consolidation among broadcasters. FCC rules nominally prohibit a single broadcaster from controlling, say, the CBS and ABC affiliates in any given television market. But broadcasters have increasingly used loopholes, like airing the second affiliate on a multicast channel or a low power station, to get around this restriction—and the FCC may soon loosen this restriction further. As the *Sinclair-Tribune* transaction demonstrated, moreover, broadcasters can also use "sidecar" agreements to violate this and other FCC restrictions. The result? "Duopolies" in more than a hundred local markets. Indeed, a single entity controls *all four* major network feeds in two markets, with a third possibly coming soon. Obviously, an MVPD negotiating with a combined CBS/ABC (much less a combined CBS/ABC/NBC or CBS/ABC/NBC/FOX) will pay more than an MVPD negotiating with four individually owned network affiliates.

Broadcast consolidation raises another issue: the threat to diverse voices in local markets. Regardless of one's political persuasion, we should all be wary of any one entity controlling the commentary, comments and political activity that is available in the market. Without belaboring the point, members on both sides of the aisle can easily imagine scenarios in which their perspectives—or those of groups they support—could be suppressed by a broadcaster offering the only game in town.

Blackouts. Most of you probably know about "blackouts," which is the term for when a broadcaster pulls its signal from an MVPD. By our count, broadcasters have blacked out your constituents more than *one thousand times* since 2010. If indeed broadcasters are an irreplaceable source of local news and information—as they say they are—this figure should be entirely unacceptable.

It gets worse. If you follow the industry closely, you probably also know that most blackouts take place at a particular time of the year—late December and early January. This isn't because of the holidays, or the first snow of the year, or even the end of the calendar year. It's because of football. College bowl games and the NFL Playoffs are among the most important programming in the viewing year. So, it's no surprise that broadcasters like to have their contracts expire immediately prior to such events. This is when they have the greatest ability to charge the highest prices. Of course, football isn't the only important programming on television, and so New Year's isn't the only time broadcasters try to black out programming. Some broadcasters like to black out before the Oscars or the World Series. Some broadcasters have even blacked out MVPDs as hurricanes approached.[9] When such deliberately timed blackouts actually occur, your constituents are harmed. When they are even *threatened*, your constituents pay higher bills.

"Phantom subscribers." Historically, stations charge MVPDs per subscriber, per month—meaning that the MVPD pays a certain amount each month, for all of the subscribers who get that station via the MVPD. Recently, however, broadcasters have sought to charge MVPDs for subscribers who do not even receive the broadcaster's signals from the MVPD. So, in the end, consumers have to pay a higher price for programming. For example, a broadcaster might charge a satellite carrier for subscribers who have elected *not* to receive local stations from that satellite carrier and instead get their "free" broadcast signals over the air. Alternatively, a broadcaster might charge a cable operator for subscribers who only receive their broadband service from that operator and have chosen not to buy the video product. Or a broadcaster might require a "penetration rate" of 95 percent and charge the MVPD based on that rate, even if fewer subscribers actually receive the stations. In each case, your constituents pay for service that is not being "retransmitted" by the MVPD and therefore they do not even receive. Again, this artificially raises prices.

Forced bundling with broadcast stations. A retransmission consent agreement is supposed to be simple: it is a commercial contract permitting MVPDs to retransmit the signals of television stations so that customers can view the network programming they want. And yet, there is nothing simple about these agreements, and their complexity level only continues to grow. Many broadcasters—especially the largest ones—insist on "bundling" other programming as a condition of negotiating retransmission consent agreements. This leads to higher prices for consumers and carriage of undesirable stations that aren't supported by market forces and diverts capacity that could be used to provide broadband services or new innovative video products.

* * *

This is clearly not a competitive marketplace. Indeed, it stands in stark contrast to all of the other parts of the video marketplace that you will be discussing at your hearing—in which innovation has led to lower prices and more choice.

What, then, should Congress do? Most important is that it does *something*. By no means should Congress miss the opportunity presented by this STELAR reauthorization to examine the *entire* video marketplace and consider updates to rules that no longer work. (We assume, of course, that Congress has no intention of accepting the broadcasters' self-serving invitation to

---

[9] Press Release, "ACA President & CEO Matthew M. Polka Condemns LIN TVs Retrans Blackout Threat As Hurricane Irene Bears Down On Eastern Seaboard," ACA Connects (Aug. 26, 2011), https://www.americancable.org/aca-president-ceo-matthew-m-polka-condemns-lin-tvs-retrans-blackout-threat-as-hurricane-irene-bears-down-on-eastern-seaboard/; Press Release, "ACA Launches 'TV Ransom' To Highlight Broadcasters' Abusive Behavior With Retransmission Consent Resulting In Consumer Harm," ACA Connects (Oct. 4, 2017), https://www.americancable.org/aca-launches-tv-ransom-to-highlight-broadcasters-abusive-behavior-with-retransmission-consent-resulting-in-consumer-harm/.

ignore STELAR entirely and thereby strip almost 900,000 satellite customers of programming they have grown to rely upon.)

We also continue to support an approach based on an idea presented during the last reauthorization in which each TV station could set whatever price it wanted, pay-TV subscribers would be free to take or leave it, and MVPDs would collect fees and remit them to the broadcast station. Broadcasters and viewers, in other words, would participate in the purest of marketplaces—transparent prices, empowered consumers, and choice. And MVPDs would give up the role of local-TV middleman once and for all. You would never see another broadcast blackout again.

Yet we are not limited to the above approach in solving the retransmission consent problem. There are plenty of other ideas that range in their level of disruptiveness to the current regime. We stand ready to provide any information we can in support of your work on these issues and thank you again for holding this important hearing today.

Sincerely,

/s/
Mike Chappell
Chairman
American Television Alliance