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STELAR REVIEW: PROTECTING CONSUMERS

IN AN EVOLVING MEDIA MARKETPLACE

TUESDAY, JUNE 4, 2019

House of Representatives,

Subcommittee on Communications

and Technology,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to notice, at 10:28 a.m., in Room 2322, Rayburn House Office Building, Hon. Mike Doyle [chairman of the subcommittee] presiding.

Present: Representatives Doyle, McNerney, Clarke, Loeb sack, Veasey, McEachin, Soto, O'Halleran, Eshoo, DeGette, Butterfield, Matsui, Welch, Cardenas, Dingell, Pallone (ex officio), Latta, Shimkus, Scalise, Olson, Kinzinger, Bilirakis, Johnson, Long, Flores, Brooks, Walberg, Gianforte, and Walden (ex officio).

Staff Present: Jeff Carroll, Staff Director; Jennifer Epperson, FCC Detailee; Evan Gilbert, Deputy Press Secretary; Waverly Gordon, Deputy Chief Counsel; Alex

Hoehn-Saric, Chief Counsel, Communications and Consumer Protection; Zach Kahan, Outreach and Member Service Coordinator; Jerry Leverich, Senior Counsel; Dan Miller, Policy Analyst; Phil Murphy, Policy Coordinator; Alivia Roberts, Press Assistant; Mike Bloomquist, Minority Staff Director; S.K. Bowen, Minority Press Assistant; Robin Colwell, Minority Chief Counsel, Communications and Technology; Brannon Rains, Minority Legislative Clerk; and Michael Engel, Minority Detailee, Communications and Technology.

Mr. Doyle. The Subcommittee on Communications and Technology will now come to order. The chair now recognizes himself for 5 minutes.

Good morning. I would like to welcome everyone to the subcommittee's first hearing of the new Congress on STELAR and the involving media marketplace. I would also like to thank our witnesses for appearing before us today to discuss these important issues.

Five years ago, this committee passed the STELA Reauthorization Act. This bill extended the authorization for satellite television companies to provide broadcast content to unserved households. According to the satellite TV industry, this provision enables roughly 870,000 customers in mostly rural communities to receive over-the-air broadcast television signals.

These customers fall into a few categories. The first is households that cannot receive broadcast content using an antenna. The second is markets where a satellite provider does not offer local-to-local service, and the third is short markets, where there are no local affiliated stations with one of the networks. And finally, satellite TV subscribers that receive service to a commercial truck or an RV.

In effect, this provision enables rural customers of DISH and DIRECTV to receive content from NBC, ABC, CBS, FOX, and other broadcast stations where it isn't otherwise available. STELAR also required broadcast stations and MVPDs, cable, telco, and satellite companies like Charter, Verizon, DISH, and others that offer television service, to negotiate the carriage of broadcast television content on their systems which is known as retransmission consent, or retrans, under a good faith standard to be decided by the FCC.

This regulatory backstop was and is important because there have been allegations that these negotiations have, at times, not been carried out in good faith.

When negotiations stall or break down, broadcasters may pull their signal from an MVPD system channel lineup, resulting in a blackout of that content. In these circumstances, consumers suffer as a result of the two parties' inability to come to an agreement.

And while it is true that some customers have the ability to set up an antenna to get this content over the air when it gets pulled off their cable or satellite service, for many, this option is too complicated, or they go without this broadcast content during the disputes.

Requiring the parties engage in good faith negotiations was intended to reduce the number of blackouts and the resulting consumer harm. These were the major provisions of the bill that are now set to expire at the end of this year. Some in the broadcast industry have argued that this legislation should sunset, and that the provisions are no longer necessary.

While I agree that this law isn't a perfect solution, allowing this legislation to sunset would create a crisis that could result in nearly a million consumers losing access to important broadcast content. Allowing a lapse of the good faith standard in retransmission consent negotiation only invites bad behavior and consumer harm.

More broadly, the media landscape has changed a lot in the last 5 years, with major consolidation occurring among broadcasters and MVPDs. Ms. Boyers, in her testimony, argues that this arms race between the two sides has resulted in increased rates for smaller rural cable providers who don't have the scale to get preferential rates, and who, oftentimes, pay higher rates for the content than their larger rivals,

However, across the board, we hear from MVPDs that the rates for retransmission consent are increasing. In recent years, we have also seen the rise of over-the-top providers like Sling, HULU, and YouTube, offering live television service over the internet directly to consumers. This is a complex marketplace that consumers rely on for

information and entertainment, and Americans pay a lot every year to get access to this content.

I look forward to the testimony of our witnesses, and with that, I yield 1 minute to my friend from California, Ms. Eshoo.

Ms. Eshoo. I thank the chairman for yielding to me.

I think today's hearing is not so much about choosing sides between broadcasters and cable. I think it is really about consumers who I think are losing out in the media market in two ways: blackouts and unexpected fees. Too often, consumers are held hostage during disputes between broadcasters and cable. In 2017, there were 213 blackouts, which is more than double the number from 5 years prior. I am pleased to report that Mr. Scalise and I have agreed to champion legislation to end blackouts by overhauling outdated regulations.

Next, I think we should also deal with the hundreds of millions of dollars of misleading, below-the-line fees that consumers get stuck with every year. My bill, H.R. 2020 -- 1220, The True Fees Act, simply requires that cable, phone, and internet providers include all fees in the prices they advertise to consumers. Kind of a commonsense idea. And I think that it would ensure that the consumers would then know exactly what they are paying when they sign up for a service.

So thank you, Mr. Chairman. I look forward to a productive hearing, and thank you for yielding to me.

Mr. Doyle. I thank the gentlelady, and now the chair recognizes Mr. Latta, the ranking member of the subcommittee, for 5 minutes for his opening statement.

Mr. Latta. Well, thank you, Mr. Chairman, and thank you very much for holding today's hearing, and thank you very much to our panel of witnesses for being with us today.

Today's hearing, once again, considers the interplay between local broadcasters and direct broadcast satellite services known as STELAR. Key provisions of STELAR expire at the end of 2019, and I am pleased that the subcommittee is continuing this process on a question of reauthorization that we started last year with a broader hearing examining the current state of the video marketplace.

In the subcommittee's hearing last September, we learned about changes in consumers' viewing habits, such as the continuing rise of the over-the-top video services, and notable shifts of advertising expenditures across the various mediums. Nevertheless, while online video services flourish and deliver exciting and innovating viewing alternatives, the bedrock of our video marketplace remains local broadcast programming.

All of us rely on our local broadcasters for news, emergency updates, weather, traffic, community engagement, and local interest programming. Accordingly, this subcommittee has a duty to ensure that local broadcasters retain the ability to invest in infrastructure and programming that keeps all Americans connected to their communities.

For 30 years, Congress has also played a key role in ensuring that rural Americans who are unable to receive an over-the-air broadcast network signal are able to receive local news and content via direct broadcast satellite services. Congress accomplished this in 1988 by creating a statutory copyright license for fee, license fee, that helped the direct broadcast satellite industry take root.

But the video marketplace continues to evolve, and accordingly, every 5 years we carefully examine whether this model should be reauthorized, repealed, or revised. Through each iteration of what we now call STELAR, we ask the expert subject matter agencies to report on the effectiveness of statutory license fee model, and we hold

hearings calling upon a broad collection of the stakeholders representing both consumers and the industrial participants.

I am pleased that we have again seated a qualified panel of experts who can assist this committee to paint an accurate picture of this market. It is important that we foster a competitive video marketplace and ensure that all Americans continue to receive access to unbiased local news reports, up-to-the-minute weather updates, and critical information during emergencies.

For example, unfortunately, last week in Ohio, we had a series of tornadoes, and folks back home in my district, particularly, had to rely on the local broadcast as to what was occurring.

I look forward to working with the chairman and members of the subcommittee as we carefully examine reauthorization, and I thank our witnesses again. And at this time, I am going to yield to Mr. Long.

Mr. Long. Thank you. I thank my friend for yielding, and I would like to thank the witnesses for being here, and I am especially happy to see a fellow Missourian, Ms. Boyers, here today even though she did make the unfortunate decision to live in Jason Smith's district and not mine. But as a real estate broker for 30 years, I still have a lot of friends. If you want to move into the best of the 435 Congressional districts, we can set you up.

I think we can all agree that the media and entertainment marketplace has, and is, rapidly evolving. There is more competition than ever, and government intervention is not always the answer. It is important for us to examine the state of the video marketplace, but as we approach a potential sixth reauthorization of STELAR, we need to take a hard look at the underlying policy and its relevance today rather than assuming its passage is a necessity.

They say there is only three things in life that are certain: death, taxes, and the reauthorization of STELAR. We should ignore the inclination to rubber-stamp this legislation only because this committee has historically done so in the past, and I yield back.

Mr. Latta. And Mr. Chairman, at this time -- are there any other members wishing to claim the remainder of my time? Mr. Scalise?

Mr. Scalise. Thank you, Mr. Ranking Member and Mr. Chairman. I appreciate all of you coming to talk about STELAR, and really, not just STELAR in the context of reauthorization in that silo, but it is a time that forces us, I think, to look at the entire marketplace, the entire video marketplace, and all the laws governing it, because I actually share the expressions of some of the panelists who talk about why they think STELAR should expire.

It is not because they think it should just go away because they want more reforms, and some people might think that STELAR going away gets us reform, but it really doesn't. STELAR going away just brings us back to the fundamental 1992 Cable Act laws, the foundation which is incredibly outdated.

We have got a marketplace that has changed dramatically since 1992. I think everybody knows that. I mean, I literally can pull up content on this device right here, and it is not governed by -- primarily most of what I would pull up is not governed by the 1992 Cable Act. Some actually is governed by the 1992 Cable Act.

But if I go on the internet and pull something up, or if I am over the top, why do we have such a diverse set of rules and laws that apply to a basic industry in our country? We need to reform the entire 1992 Cable Act. It is long past time for this Congress to do it.

I applaud Congresswoman Eshoo, and I know she spoke a few minutes ago. We

have been working very closely, and hopefully, we can get to that point where we are reforming the entire marketplace that regards video.

And I appreciate the time, Mr. Chairman, and I yield back.

Mr. Doyle. The gentleman yields back. The chair now recognizes Mr. Pallone, chairman of the full committee, for 5 minutes for his opening statement.

The Chairman. Thank you, Mr. Doyle.

For nearly 70 years, television has been a unifying thread in American society. It brings people together, friends gather around to watch the big game, and coworkers share their theories about the twists and turns of the most-watched series. TV is also the place where we get our local and national news, and where we turn for emergency information during a storm or natural disaster.

The hearing today may appear to be focused on a few discrete, arcane provisions of communications and copyright law, but it is fundamentally about consumers getting access to broadcast programming, whether they are in urban or rural areas. And we should continue to focus on the timeless values that inform our media policy, and those are localism, diversity, and competition.

The STELA Reauthorization Act of 2014, or STELAR, and its predecessors, established the framework that allows satellite television providers to deliver broadcast stations inside, and sometimes outside of a subscriber's market to their customers. Some so-called unserved subscribers can't receive their local stations from an antenna, because they are too far away, or they are in a media market that doesn't have a station affiliated with one or more of the big four networks, and these consumers must be protected.

At the same time, satellite television providers are not required to carry local broadcast networks. As a result, some subscribers receive out-of-market network

programming from their satellite provider instead of local stations.

Congress also created the good faith negotiation rules that underlie the agreements that allow consumers to watch over-the-air broadcast stations as part of their cable and satellite TV packages. As media consolidation has grown, so too have the fights over these programming agreements, and unfortunately, consumers have been caught in the middle. The number of station blackouts has been increasing as have the rates consumers pay. Smaller telecommunication companies are facing a choice of whether to continue as cable operators, or simply become broadband providers.

So as we begin our examination of STELAR, it is important that we ask the ultimate question of how best to put consumers first. I expect that my colleagues on both sides of the aisle will offer a number of different solutions, large and small, tackling different issues cropping up within the media landscape.

In my opinion, we should focus our analysis on the consumers, and questions like what are the implications if STELAR is not reauthorized, and how are the over 800,000 consumers currently receiving distant signals be impacted? What is the path that gives consumers the ability to access at prices they can afford the television content they want? How do we ensure that consumers are not rendered pawns in high-stakes negotiations between video distribution companies and big broadcaster station groups?

And how can we ensure that broadcast stations remain vibrant outlets of expression and trusted sources of information for the local communities, while also promoting competition to the benefit of consumers? Also, how can we encourage the carrying of local programming at reasonable rates, and that local programming reflects a diversity of views? So this committee will closely examine these issues and work together to find a consensus approach of moving forward.

I want to thank the witnesses for being here today. I still have -- I don't know if

anybody wants my time. If not, I will yield back. Thank you. Oh, yes. I will yield to the vice chair.

Ms. Clarke. Thank you very much, Mr. Chairman, and I thank Chairman Doyle and our ranking member.

Good morning, and I want to thank you for holding this very important hearing. Providing equal television broadcast access for consumers is crucial to informing the public, and having more competition available will assist our constituents.

We are not seated here today to discuss satellite and cable operators or broadcasters for that matter. We are here today to focus on the consumers. Our constituents deserve rules that protect them. They deserve rules that protect the diversity of voices in media and access to the spectrum. It is my hope that your input as experts in the field today will give us that room and that space to do just that.

With that, Mr. Chairman, I yield back.

The Chairman. And I yield back as well, Mr. Chairman.

Mr. Doyle. The gentleman yields back. The chair now recognizes Mr. Walden, the ranking member of the full committee, for 5 minutes for his opening statement.

Mr. Walden. Good morning, Mr. Chairman, and good morning to our witnesses. We are delighted to have you here today. I want to thank you. I know your expertise is going to help us as we work on this legislation and review the media marketplace, and whether or not the Satellite Home Viewer Act, first passed when Ronald Reagan was President, works for television viewers today.

I would especially like to extend a warm welcome to my friend and fellow Oregonian, Senator Gordon Smith, who effectively served Oregon in the United States Senate for a dozen years. It is good to see you over here in the people's House, Senator.

Mr. Smith. Thank you.

Mr. Walden. 30 years ago, Congress sought to ensure that rural Americans, unable to receive an over-the-air broadcast signal, would still be able to view content via satellite services. For a large rural district like mine in Oregon, which would stretch from the Atlantic Ocean to Ohio if you laid it over to the east coast, this was critical.

Congress would go on to bless the budding satellite industry with a discounted copyright license as an alternative to individually negotiating with each copyright holder. While the license to provide local into local is now a permanent fixture, the distant network signal license is still reviewed every 5 years, along with other elements that accompany the extension.

As I emphasize when we did this 5 years ago during my time as subcommittee chair, this must be a transparent process and driven by data. I am encouraged the FCC last year commenced its quadrennial review of the media landscape. I am also appreciative of the work by the Government Accountability Office in drafting its work to Congress, directing -- describing the stakeholders' views on phasing out the statutory license. Our goal should certainly be that everyone in the country has access to local content and at a reasonable price.

You all have heard me discuss my background in radio broadcasting, and, hopefully, understand that my priority that local content is preserved. We must have a model that revolves around this concept, because although we might like watching the latest shows on Netflix or some other service, it is essential that we have access to our local news, sports, weather, and emergency information. Whether it is the wildfires and smoke warnings in the summer in Oregon, or tornadoes, traffic accidents, emergency situations elsewhere in the country, local content provides vitally important, trustworthy, and timely information to communities across America.

It is also certainly understandable in our fast-moving world to take stock of what

has changed. Technological developments, paired with changes in how Americans consume video driven, in significant part, by online video services, have led video distributors to see steep declines in subscribers as consumers cut the cord, and broadcasters have seen advertising revenues move to digital platforms.

This fact certainly impacts the distributors, but also impacts the broadcasters and their ability to serve their local communities with in-depth news programming. Local broadcasters expend tremendous resources serving their communities, and they deserve a level playing field. Through their FCC licenses, they are also trustees of the public's airways, and must serve the public's interest. That means they serve the needs and interest of their communities. We must be careful not to hamstring with them with negotiating restrictions not justified by market conditions.

Most importantly, consumers won't tolerate gaps in coverage, blackouts, and arbitrage opportunities that drive up prices, and reduce the quality of content. The bottom line is that Congress must consider whether a distant network signal license extension is a bridge or a blockade to delivering local coverage.

So I am committed to ensuring that all rural communities, both in Oregon and across the country, continue to receive robust, effective, and affordable local coverage. I am looking forward to the hearing today and hearing from our witnesses, a cross-section of industry and public interest stakeholders, as we move forward in this process and examine the role of statutory licensing in today's video marketplace.

With that, Mr. Chairman, I yield back. Thank you.

Mr. Doyle. The gentleman yields back.

The chair would like to remind members that pursuant to committee rules, all members' written opening statements will be made part of the record.

Now I would like to introduce witnesses for today's hearing. Ms. Patricia Jo

Boyers, President and Vice-Chairman of the board of BOYCOM VISION. Welcome.

Mr. Robert Thun, Senior Vice President of Content Programming, AT&T Mobility and Entertainment. Welcome, sir.

Senator Gordon Smith, President and CEO of the National Association of Broadcasters. Senator, welcome.

And Mr. John Bergmayer, Senior Counsel, Public Knowledge. Welcome, sir.

We want to thank our witnesses for joining us today. We look forward to your testimony. At this time, the chair will now recognize each witness for 5 minutes to provide their opening statement.

Before we begin, I would like to explain the lighting system. In front of you is a series of lights. The light will initially be green at the start of your opening statement. It will turn yellow when you have 1 minute left, so please start to wrap up your testimony at that point, and the light will turn red when your time expires.

Ms. Boyers, you are now recognized for 5 minutes, and please make sure your microphone is on.

STATEMENTS OF PATRICIA JO BOYERS, PRESIDENT AND VICE CHAIRMAN OF THE BOARD, BOYCOM VISION; ROBERT D. THUN, SENIOR VICE PRESIDENT OF CONTENT AND PROGRAMMING, AT&T MOBILITY AND ENTERTAINMENT; GORDON H. SMITH, PRESIDENT AND CEO, NATIONAL ASSOCIATION OF BROADCASTERS; AND JOHN BERGMAYER, SENIOR COUNSEL, PUBLIC KNOWLEDGE

STATEMENT OF PATRICIA JO BOYERS

Ms. Boyers. Thank you. Good morning. I bring you greetings from the

foothills of the great Ozark Mountains in southeast Missouri.

My husband and I started our mom and pop, BOYCOM, in 1992. This meant we had to take out a second mortgage on our home, and we used our farm as collateral. It has never been easy. Our systems are very rural. In most areas, you need a tomcat if you want kittens.

So our systems are 147 miles from our local NBC affiliate, and more than 75 miles away from our local NBC and CBS stations. Most of my subscribers can't get these signals free over the air, and none of these stations offer our local news, sports, or weather, no matter what others might tell you today.

We have a very price-sensitive population. Four of our five counties are perpetually impoverished. This simply means that the median annual household income of these counties has been below the national poverty level since the 1960 Census. Yet we survive.

All of y'all already know that the retransmission consent problems from your constituents, double-digit price hikes, blackouts before marquee events, and requirements to carry channels that no one has ever heard of. So the reality for us and other rural operators is, things have gotten worse since the last satellite television reauthorization.

First, broadcasters increasingly control multiple network affiliates within local markets. For instance, in my market, the same folks from Atlanta, Georgia, own both the local CBS and the ABC affiliates. This naturally leads to higher prices. There is no other game in town for us. And these two stations air the exact same local broadcast; same weather guy, same news guy, same words, same news. So that is one station for the price of two, and it is not even my local news, unless we beat Cape Girardeau playing football.

Secondly, broadcasters now control many more stations nationally. Years ago, I knew the owners of every broadcast station that I dealt with, all three of them. Now I deal with huge conglomerates. This means higher rates in the form of take-it-or-leave-it prices from the broadcasters who do not know where I am at, or anything about my customers.

And thirdly, broadcasters are acquiring these regional sports networks to increase their overall average in these bundling of contract renewals. This is especially egregious for us when Sinclair finally finishes their purchase of the Fox Sports Midwest, home of the Cardinals. Hell, we could drive all the way to St. Louis, buy tickets, hot dogs, popcorn, and beer for the price of what we are going to be paying Sinclair for our subscriber.

So it is no wonder why the broadcasters want this law to sunset. But what is needed is sunshine on their behavior, and the practices towards consumers and competition. Their prices are especially bad for small operators like me. The FCC reports that small cable operators now pay, on average, at least 30 percent more than large systems pay for retransmission consent. For my small system, that percentage is 47 percent. Today, the four affiliated broadcast stations make up 20 percent of my programming fees, and the rest is for the other 300 channels, and that percentage is growing at a rate of more than 200 percent every renewal cycle.

So I know that y'all care as much about your constituents as I do about my customers, who are elderly, on fixed incomes that depend on us for that video service, and who are greatly impacted by higher subscription fees. In fact, a lot of these folks can't get even satellite for DISH, not because it is not available to them, but because they can't afford it. They don't have a checking account. They don't have credit cards. They don't have credit. Well, they do have credit, but it is bad. All they can do is work with a local cable TV provider who will work with them. We can work with them. We

can even barter out sometimes.

But by turning a deaf ear to my plight today simply ensures that those who live in the hills and the hollers of southeast Missouri and the rest of rural America will be uneconomical to reach, and those who do have our service are paying through the nose for it. So the mandated regulatory advantages given to broadcasters make a free marketplace solution impossible.

Now, I hate the idea of Congress getting involved in my business, but they are already involved in my business with everything from basic tier buyouts through to channel placement rules, so I do need your help. One solution of many to help mitigate these soaring fees would be apply the good faith rules to negotiations between larger station groups and the NCTC, which is a buying group that the small cable TV operators, like myself, use. We are affiliated with the American Communications Association. We connect. So we have an affiliation with the NCTC.

Regulations and reauthorization reform are desperately needed. Together, we can put our shoulder to the plow and figure this out now. Thank you.

[The prepared statement of Ms. Boyers follows:]

***** INSERT 1-1 *****

Mr. Doyle. Thank you very much. The chair now recognizes Mr. Thun for 5 minutes.

STATEMENT OF ROBERT D. THUN

Mr. Thun. Thank you, Chairman Pallone, Ranking Member Walden, Subcommittee Chairman Doyle, Subcommittee Ranking Member Latta, and members of the committee. My name is Rob Thun, Senior Vice President of Content Programming at AT&T. In my current role, I am responsible for securing content rights for both the major networks and local broadcast station groups for the company.

AT&T has a 143-year history of innovation that includes eight Nobel prizes. We employ more than 200,000 Americans across all of the 50 States. We are deeply invested in our country, our communities, our employees, and our customers.

This hearing is aptly focused on protecting consumers in a marketplace that is undergoing revolutionary change. It is consumers, our customers, and your constituents, who are driving these changes. They are demanding high quality video content and the ability to watch it where and how they want to.

It is important for policymakers to ensure that the laws reflect a vibrant video marketplace and that all consumers benefit from it. At present, they do not, because the legal and regulatory framework for licensing broadcast television content distorts the market in favor of broadcasters. This framework is sorely in need of recalibration.

The retransmission consent regime that governs the video marketplace dates back to the 1992 Cable Act, well before today's multitude of competitive platforms and consumer options. It was first put in place to help broadcasters obtain carriage on cable

platforms that, at the time, were the only pay TV offering in most areas.

Despite the competition in the video marketplace, broadcaster fees for carrying these stations have roughly doubled over the last 5 years. Since 2008 through 2018, the retrans fees have grown from \$500 million to \$10 billion. That is a 2,000 percent increase, which is clearly unsustainable.

Why is this happening? Because under the current law, MVPDs cannot offer their subscribers alternate network programming, even temporarily, during an impasse. These laws unfairly protect local broadcasters from the changes in the video marketplace, harming innovation and consumer choice.

When MVPDs attempt to limit the increases in these fees, local broadcasters, shielded with their statutory protections, respond with blackouts. Local broadcasters have shattered records for blackouts, and as I testify in front of you today, we face blackouts across 33 stations covering 25 markets.

The cycle of increased local broadcast fees and blackouts unfairly penalizes the nearly 90 million pay TV customers that have chosen to keep their traditional TV service, which includes over 20 million of our premium customers.

Retransmission consent has become a weapon for broadcasters to use to the detriment of these consumers. It is time to modernize the law to reflect the current marketplace, and to provide distributors a more level playing field with local broadcasters.

The marketplace has seen tremendous change since Congress last renewed STELAR in 2014. There are now over 170 million over-the-top subscriptions with Netflix having more subscribers than AT&T and Comcast combined. As is done in every past renewal, Congress should view the STELAR renewal as an opportunity to fix the big problem in the video marketplace, the broken retransmission consent regime.

To be clear, AT&T strongly supports the renewal of STELAR. STELAR contains provisions that benefit consumers, including the good faith negotiations requirements and the statutory copyright license permitting satellite carriers to provide network programming to more than 870,000 satellite subscribers. Among these are hundreds of thousands of rural homes that broadcast stations fail to reach. In addition, it provides long-haul truckers, RV enthusiasts, and tailgating sports fans, the satellite delivery network TV.

Congress should take this opportunity to make permanent the satellite distant signal license that brings network service to hundreds of thousands of rural customers. STELAR's requirement that broadcasters and MVPDs negotiate in good faith serves an important backstop that places guideposts on these negotiations. We still have issues with stations refusing to negotiate fairly, or even respond to offers in certain cases. Despite this, the good faith provisions are important to helping these negotiations along. The notion that broadcasters oppose this provision is emblematic of the challenges that we face under the current law.

AT&T is grateful to the committee for holding this important hearing. We would also like to acknowledge and give thanks to the bipartisan efforts of Representatives Eshoo and Scalise to reform the broken retrans regime. We look forward to working with them and all of you to find a solution. I look forward to answering any questions you might have.

[The prepared statement of Mr. Thun follows:]

***** INSERT 1-2 *****

Mr. Doyle. I thank the gentleman.

Now, Senator Smith, you are recognized for 5 minutes.

STATEMENT OF GORDON H. SMITH

Mr. Smith. Thank you. And good morning, Chairmen Pallone and Doyle, Ranking Members Latta and Walden, and members of this distinguished subcommittee. My name is Gordon Smith. I am the president and CEO of the National Association of Broadcasters.

On behalf of the free and local broadcast television stations serving your hometowns, I appreciate the opportunity to testify on how Congress can ensure that viewers are better able to access their local news, sports, weather, emergency information by allowing the expiring provisions of STELAR to sunset this year.

Today, STELAR is not only unnecessary due to considerable advances in the media marketplace, but any reauthorization will further harm the satellite viewers that are currently denied access to their local television stations as a result of this law. For these reasons, broadcasters oppose STELAR's reauthorization. Similarly, the copyright office, the expert agency charged with administering STELAR's license, released a report yesterday calling for its expiration.

In today's competitive media landscape, local broadcast television remains the most watched source of news, emergency updates, entertainment, programming, sports, and investigative journalism, something that is in trouble in this country. And in communities across America, we are their lifeline. Our viewers turn to local stations to get weather reports, learn how to help neighbors in need, and watch trusted local news

anchors give an unbiased view of what is happening in their communities. Local broadcasting is a critical electronic thread that keeps every community together, informed, and safe.

The exceptions to the benefits afforded by this local broadcast system are those communities that continue to be served by out-of-market stations as a result of STELAR. In 1988, when the original satellite law was enacted, viewers had two predominant choices for video programming, over-the-air broadcasting, television, or subscription cable package offered by a single local provider.

That satellite legislation, a predecessor of STELAR, was hugely successful in enabling the Nation's satellite television companies to better compete with cable's monopoly, but it was never meant to be permanent, and it gave satellite operators a crutch, the ability to serve local viewers with out-of-market network programming at below-market rates, and without having to negotiate for it.

Thirty years later, today's media market is virtually unrecognizable and dramatically different, even compared to just 5 years ago at the last STELAR renewal. Those nascent satellite companies that Congress subsidized are now multi-billion dollar behemoths, and today's competition for viewers comes not from those giant pay TV providers and their cable brethren, but also by unregulated behemoth tech companies, such as Facebook, Google, and online video providers, like Netflix and Amazon.

Most importantly, no technological impediment exists today to prevent AT&T and DIRECTV and DISH from providing local broadcast channels to their subscribers across the country. Yet, STELAR's distant signal provisions incentivize those companies to serve a shrinking universe of eligible viewers with out-of-market stations because of this subsidy.

To put this in practical terms, DIRECTV subscribers in Ottumwa, Iowa, saw a news story about a garbage truck catching fire in Los Angeles. The local news they should

have seen is that of crop insurance prices rising, and its impact on farmers in their State, in the Hawkeye State.

Well, during times of emergency, the difference between what STELAR viewers see versus the local broadcast news is stark. This is a business decision that a \$200 billion AT&T DIRECTV is making in 12 rural markets across America, a choice that puts their profits ahead of service to consumers and ahead of the safety of communities.

Broadcast and viewers salute Congressman Loeb sack and other Members of Congress who have highlighted the STELAR harm. To end this consumer harm, and to modernize the video marketplace laws, Congress should allow STELAR to expire as it was originally intended. There is no policy justification or technological reason for this outdated law to be reauthorized. The time has come to stop subsidizing \$1 billion satellite companies, and to instead provide viewers with the most accurate, the most watched, the most timely source of community news, their weather, their emergency information which is their local broadcast stations.

Thank you for this opportunity.

[The prepared statement of Mr. Smith follows:]

***** INSERT 1-3 *****

Mr. Doyle. Thank you. We now recognize Mr. Bergmayer for 5 minutes.

STATEMENT OF JOHN BERGMAYER

Mr. Bergmayer. Thank you, Chairman Pallone, Chairman Doyle, Ranking Member Latta, and Ranking Member Walden and all the members of the subcommittee.

Congress must reauthorize STELAR, or even better, make it permanent. 870,000 satellite subscribers should not be a bargaining chip in the decades-long disputes between broadcasters and MVPDs. Whether it is called SHVA, SHAVIA, SHAVIRA, STELA, or STELAR, it has ensured that satellite television companies can continue to retransmit local broadcast stations to all of their customers. STELAR is an important building block of video competition, allowing viewers who live in unserved areas to continue receiving a full range of national programming.

Satellite television has been a success story. Action by Congress and the Federal Communications Commission has ensured that satellite television, once a new distribution technology, could access content and reach viewers. Public policies that ensure that new distributors can access content on fair terms benefit the public interest, and the success of satellite should be a lesson for policymakers about the importance of fostering new modes of video competition.

Congress should make STELAR permanent. There is no reason for Congress to create artificial crises every few years, jeopardizing the ability of satellite to remain a competitor. The reason why Congress enacted STELAR in the first place remain unchanged. It remains a necessary part of the current overall regulatory system, which otherwise has no clear way to deal with the problem of short markets.

However, if Congress does choose to reauthorize STELAR for only a few years, it could consider timing its expiration to the expiration of other video marketplace provisions, such as distant signal importation rules, or basic tier buy-through. This approach would better incentivize all industry players to come to the table.

But fundamentally, if we are to consider reforms in the video marketplace rules, they should benefit consumers, not one industry sector at the expense of another. For years, public knowledge has believed that this is an instance where a predominantly deregulatory approach is needed, and has a chance of bipartisan support.

In particular, we would like to recognize Representatives Anna Eshoo and Steve Scalise for their leadership on video marketplace reforms. A promising approach would be to replace the cumbersome and duplicative compulsory copyright license retransmission consent system with a regime based purely on copyright. This would better align the interests of programming creators and distributors, and eliminate duplicative negotiations. It would ensure that local broadcasters have the incentive to produce original, relevant local programming they would own the rights to, that they could then license to MVPDs and online distributors. And it would make it much easier for non-MVPD video distributors to access programming by limiting the current two-track system where online video rights are negotiated one way, and VPD rights another way, and where incumbent MVPDs have a structural advantage.

To eliminate viewer blackouts, such an approach would keep good faith requirements in place, as well as institute dispute resolution mechanisms, and a gradual phase-in would avoid industry and consumer disruption.

Additionally, it is time to eliminate network non-duplication and syndicated exclusivity protections as the elimination of the sports blackout rule has proven that such measures are unnecessary and that the video industry can manage its affairs via private

contracting alone.

Ambitious reforms of this kind are the best way to streamline the video marketplace and curb bill inflation. While public knowledge supports bold changes to the video marketplace rules, incremental reform should not be off the table if they are more feasible in the short term. The retransmission consent regime could be improved through the adoption of clear standards of good faith and through the prohibition of certain actions that should be considered bad faith, per se.

Congress should also consider protecting and promoting competitiveness by directing the FCC to end the basic tier buy-through rule, and unjustified policy intervention that makes a la carte offerings unlawful. It could also extend the successful policies that protect MVPDs from anticompetitive conduct to certain online providers.

Congress should also promote internet openness and prevent discriminatory billing practices that can hold back online video. In addition to supporting strong open internet rules under Title II of the Communications Act, Congress should examine whether discriminatory data caps can hold back online video competition.

It is time for Congress and the FCC to revamp the rules of the video industry to promote the public interest. A video marketplace that serves the public interest would give viewers more choice of providers and the ability to watch any programming wherever they want, and on the device of their choice.

At the same time, it would ensure that creators and distributors are paid a fair price. Congress can begin its video reform efforts by making STELAR permanent, or at least tying its sunset to the expiration of various other marketplace rules. Thank you.

[The statement of Mr. Bergmayer follows:]

***** INSERT 1-4 *****

Mr. Doyle. We thank all the witnesses for their testimony. That concludes opening statements. We are now going to move to member questions. Each member will have 5 minutes to ask questions of our witnesses, and I will start by recognizing myself for 5 minutes.

Mr. Thun, in your testimony, you say that roughly 870,000 satellite TV subscribers, mostly in rural areas, depend on the provisions of STELAR to receive broadcast content. What would happen if those provisions expire, and do you think any customers would lose programming that they currently receive?

Mr. Thun. If STELAR were to expire, those customers simply would not receive broadcast stations, those signals, and they would lose access to that programming.

Mr. Doyle. Senator Smith, what do you think about that?

Mr. Smith. Well, right now, there are 12 markets that AT&T does not provide local news to that it could. It chooses not to. There is no technological reason that they couldn't. The market has fundamentally changed, and renewing STELAR just simply perpetuates that harm to many communities, specifically Mr. Loeb's. That will continue.

Mr. Doyle. Ms. Boyers, let me ask you. What would be the consequences if Congress allows STELAR to expire, specifically the good faith provisions related to retransmission consent negotiations?

Ms. Boyers. Well, thank you, Congressman. It is important because the reauthorization gives Congress that ability every 5 years to reexamine the marketplace to make necessary changes that protect customers, consumers, your constituents, and competition. And less oversight by Congress in its critical role means harm to consumers and to competition because the broadcast industry, which has already shown

a willingness every year to raise their prices to consumers and increase their broadband TV or their broadcast TV blackouts will have no check and no balance whatsoever. That is not good for your constituents, my consumers, my folks that we provide service to.

It is kind of that David and Goliath thing for us. I have got 3,000 subscribers, you know. I am just 3,000 subscribers. I am really just a gnat, you know. I said that this morning. I am a gnat on the butt of life because whenever you think in terms of retransmission consent, they don't care. They don't care about me. They don't care that it costs me \$12.16 a month for my four channels. They don't care. I mean, that is more than I pay for ESPN or anything else. It is like David and Goliath, you know. David needed God to help him fight Goliath, and we need you to help us with retransmission consent. Pretty close line drawn there.

Mr. Doyle. How about you, Mr. Thun? Whether a do you think about the good faith provisions related to retransmission consent negotiations?

Mr. Thun. Will, I think they are critical, and as they sit today, they are extremely loose. They are a guidepost for negotiations, but they don't work perfectly. We are currently in a situation where we have blackouts because we put a proposal on the table 60 days ago with seven broadcasters. They refused to respond. They didn't want to do a deal independently of each other. They wanted to do them all together. Therefore, they gave us no ability to keep the signals up. They took them away. So I welcome divine intervention as well on this, because we are having an unsustainable path of pricing increases that goes straight to the consumer, and that is a bad place to be.

Mr. Doyle. Senator Smith, what do you think?

Mr. Smith. I think I have heard from those seven broadcasters, all of whom have said that they offered to keep the signal up, and AT&T has said no. If we are talking about the same ones, I don't know. But I know that if you want to go through the

lamentable catalog of bad faith, what you will find is that there have been very few uses of this good faith provision, and never have the broadcasters been found guilty of operating and negotiating in bad faith. Never in all the history of it. And we are committed to good faith.

Mr. Doyle. Ms. Boyers and Mr. Thun, I understand that there is a large number of TV markets in this country that are duopolies, triopolies, and in two cases, a single entity owns all four of the big four broadcast networks in a single market. Tell me. What impact does this consolidation have on you and your customers?

Ms. Boyers. We have one company out of Atlanta, Georgia, that owns two of my four, and it creates a much larger price, because they can come in and say, you know, little BOYCOM, we really don't want to mess with you. Here is a take it or leave it. But those good faith regulations help us to still have a seat at that table irregardless of how egregious that price is.

Mr. Doyle. Mr. Boyd, you have 17 seconds left. Mr. Thun.

Mr. Thun. It absolutely leads to price increases. Ironically, one of those markets that has -- I believe there are two markets that have quadropolies. One of those we currently do not have signals because the broadcaster has been given too much power through the consolidation of those stations in that market. I don't think that is the way the law was intended, but there are loopholes in it that allow these broadcasters to put other signals on low powered station, as well as multi-cast signals that create undue market power.

Mr. Doyle. I see my time has expired, so thank you very much to all the witnesses. And the chair now recognizes Mr. Latta, the subcommittee ranking member, for 5 minutes to ask questions.

Mr. Latta. Thank you, Mr. Chairman.

And to Senator Smith, I believe that local broadcasting is important to my constituents. It provides vital information and services to our communities. As I mentioned a little earlier, we all know that weather and traffic reports are the crowd favorites, but I appreciate the focus on local news programming and interest in building up the local area.

I also notice in my hometown of Bowling Green and the communities nearby, that broadcasters are engaged in community activities and put on local fundraisers, toy drives, and other charity events. I also held two large public forums in my district on the tragic opioid crisis that were moderated by local news anchors on their own time. It is evident that local broadcasters want to help build and maintain strong communities outside the newsroom.

With that, Senator, I am curious if people want to receive out of State rather than local broadcast programming, and does STELAR encourage programming -- sorry. Does STELAR encourage providers to offer local broadcast signals?

Mr. Smith. What STELAR enables if it were Bowling Green, Kentucky -- I don't know if there's a Bowling Green, Ohio.

Mr. Latta. That is where I am from, the Ohio part.

Mr. Smith. Well, Bowling Green, Kentucky, for example, is not served with a local signal by AT&T DIRECTV, and they are complaining about it, and it wouldn't cost AT&T, a \$200-billion company, a whole lot to negotiate with the local broadcasters.

To me, the whole point of the distant signal was just to give them some breathing space to get big enough to compete with cable, so that over time, when technology made it possible, and it does, they would then, as they promised to do long ago, provide local into local in every one of the 110 market -- 212 markets in the country. That has not happened, and it should have. There is no reason for it not to.

Mr. Latta. Let me follow up to you, Mr. Thun. From a satellite perspective, what barriers do satellite MVPDs face in providing local programming?

Mr. Thun. Well, in the 12 markets, we do serve those constituents with local broadcasting, we happen to have an over-the-air solution that is integrated in our set top box that provides a seamless experience to our customers. So we do, in fact, in those markets, do provide local programming.

The impediments to providing it are also cost. If we have to turn around -- and, by the way, of the 12 markets that we don't service, they are either, in all cases, except for one, all duopolies, double duopolies, or triopolies. And the one market that isn't is a short market.

So when you face that, going into those markets with, again, stations somehow circumventing what I think the laws were intended to have, multiple stations, that makes it even harder to enter into those markets.

Mr. Latta. Thank you.

Ms. Boyers, STELAR was intended to help rural Americans receive local news, but your testimony makes it clear that you don't believe STELAR is properly serving rural America. How can we ensure that constituents like mine in rural areas are not disproportionately impacted by either reforming or repealing STELAR?

Ms. Boyers. Well, obviously a rewrite as Mr. Scalise -- a rewrite of the Communications Act would be awesome. We also know that maybe granular level small changes are what is needed in a situation where the signal does get everywhere through satellite dishes, and through us, the ever-increasing prices. They have the same problem we have in getting that signal to our customers because of the price.

Now, if you are down in the hill in a holler at Clearwater Lake in Piedmont, Missouri, you are not getting anything. If you don't have BOYCOM, you are not getting

anything. If you are on a fixed income and your credit's bad, you can't get DISH. You can't get, you know, DIRECTV. If you don't have BOYCOM, you are not getting anything. So those are the customers that we are concerned about. That makes up the bulk of my customers are those folks that are economically impaired and don't have the ability.

So STELAR is very important for us with the good faith rules that are on the board. That is what makes a broadcaster like Raycom or Sinclair come to the table with little 'ol me and say, You know, we don't want to talk to you, we don't care about you, but the good faith rules say we have got to honor good faith.

When those go away, if they sunset in December, they could care less probably whether or not, or they could give an exclusivity to DISH or to, you know, the other satellite companies that prohibit us from having their local channels at all. So therein lies some protection for us, simply because we are small and because we are the ruralest of rurals.

Mr. Latta. Thank you very much. My time has expired.

Mr. Doyle. The gentleman yields back. The chair now recognizes Mr. McNerney for 5 minutes.

Mr. McNerney. I thank the chairman. I thank the witnesses. I appreciate you coming out here and talking to us.

Senator Gordon -- or Senator Smith. Excuse me.

Mr. Smith. It works either way.

Mr. McNerney. What percentage of the retransmission fees does the local broadcast affiliate typically receive after reverse transmission fees have been accounted for?

Ms. Smith. What is so interesting, Congressman, when you add up these claims of broadcaster gouging for the most watched, most important news and entertainment,

we represent, depending on the company, probably \$0.12 on a cable bill. I don't think we are the cause of cable inflation or satellite inflation.

And what we do appreciate is the opportunity to negotiate in a free market for the value of our content, and that is what we do, and that is what supports localism so the news is about you, sir, and not somebody at the national level and thank you for local journalism.

Mr. McNerney. Thank you for not filibustering here, Mr. Smith.

Mr. Thun, I am hearing that the retransmission fees have been going up over time. What has happened to the share that local broadcast affiliates have been getting?

Mr. Thun. Well, the ratings are down. So to directly answer your question, the share is diminishing, but we face an ever-increasing sea of pricing, and so, I am not sure where the \$0.12 comes from, but that certainty isn't the bill that we pay to any individual station. It is much higher than that. So it is a burden that we have to take on, and ultimately our consumers take on, and it is a bad policy. It is a bad place for our customers to be if their bills are continuously going to go up certainly, at the clip that broadcasting fees are going up.

Mr. McNerney. Well, between local broadcast affiliates receiving a smaller portion of the retransmission fees and the relaxation of media ownership rules over the past 2 years, I am concerned that the principle of localism, one of the core principles behind broadcast licenses being undermined, and consumers have less access to local.

Mr. Bergmayer, how does the relaxation of media ownership rules over the last 2 years affect retransmission negotiations?

Mr. Bergmayer. Yeah. I mean, I certainly share the goal of localism. I think local content is very important to viewers. I question whether the current Rube Goldberg-like regulatory scheme that we have in place is the best way to promote

localism. And one of the things that undermines localism the most is broadcaster consolidation. When you have broadcasters, they are not really local broadcasters. They are owned by a national chain that spans the country. Companies like Sinclair, Nexstar which are just as big and powerful as any of the other media companies that are more, you know, known brand names to consumers.

And I think that structure where different stations are linked together as part of single retransmission consent negotiations where the carriage of cable content is part of local signal retransmission negotiations crowds out small, independent programmers which harms the diversity of programming generally, and it is really hard to see how this system benefits localism in any significant way.

Mr. McNerney. Well, your using the word consolidation is music to my ears, Mr. Bergmayer. Thank you for saying that.

Mr. Thun, in your written testimony, you note that while in 2014, Congress prohibited local stations from jointly negotiating for retransmission consent. Broadcasters have found ways around these prohibitions. What are the ways that they are using to get around the prohibitions?

Mr. Thun. Sure. Like I said previously, they are using the multi-cast fees as a vehicle to put another big four station upon their one broadcast stream as well as they are buying low power stations and placing these big four networks upon them. So we face seemingly more and more markets that have more than one station owned by the same company. And that, ultimately, as the numbers always prove out, leads to higher prices which is a bad thing for our consumers.

Mr. McNerney. Ms. Boyers, please describe what effect blackouts have on your viewers and their relationship to your business?

Ms. Boyers. Well, in my particular neck of the woods, we don't have blackouts.

We just simply don't. There is no place where anything that we have to say or do is controversial enough for the broadcaster to cut their signal off to me. In my statement, obviously we are 75 to 147 miles away from our local affiliates.

Mr. McNerney. All right.

Thank you, Mr. Chairman. I will give you 9 seconds.

Mr. Doyle. I thank the gentleman. The chair now recognizes the ranking member of the full committee, Mr. Walden.

RPTR PANGBURN

EDTR ROSEN

[11:32 a.m.]

Mr. Walden. Thank you, Mr. Chairman. I want to thank you all for being here, and as I sit here and listen to this, I don't think there is an industry that isn't consolidating represented here. Everybody is. And so -- and Ms. Boyers, you aside there for a second, there are a lot of big players represented in this room.

Ms. Boyers. I am honored.

Mr. Walden. And so, you, too, could be a big player some day if you just keep going out in the hollows and the hills and all that. Yeah, it is tough serving rural areas. My district's enormous, and so, I care a lot about how we get affordable programming to consumers, but I also know that programming has great value, or you all wouldn't be having this discussion, so it is how you set the value.

In my opening statement, I talked about some of that and then, the copyright office just wrote to the Judiciary Committee yesterday, and they recommended that the license be allowed to sunset, due to its limited current usage, the distancing of license. I would like to ask the letter be entered into the record, Mr. Chairman. I think you have a copy of that. If not, we will --

Mr. Chairman. Without objection so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Walden. So according to the copyright office data, royalties paid under the license have plummeted since we last reauthorized this act in 2014. They are down somewhere around 85 to 87 percent nationwide. And they say this is, and I quote, "due to a dramatic decline in total subscribers which, in turn, is affected by, one, a drop in the overall number of distant network stations carried and, two, the disappearance of nonnetwork super stations such as WGN," close quote.

Senator Smith, NAB has estimated that about 500,000 households get at least one distant signal and Mr. Thun, I believe, according to your testimony, that number is somewhere around 870,000 individuals, or households. Can each of you explain what those numbers are based on, and what you think explains the discrepancy there between 500,000 households and 870,000 households. Mr. Smith?

Mr. Smith. Congressman, I think the only way they could get to an 800,000 number is to include the CW Network, which is not about localism.

Mr. Walden. Okay. Mr. Thun, is that what happens?

Mr. Thun. I am not sure of the detail behind all the subscribers that go into those numbers. All I know is that the numbers are the direct relationships that we have to customers related to distant signals and that those numbers are combined with dishes, and I assume they use the same measurement and have the same number of -- or they apply the same standard in gathering their numbers, but those are the relationships combined between the companies that we have and those customers.

Mr. Walden. And could you look into that more and provide it for us, maybe, for the record, after this?

Mr. Thun. We will have our team work with you guys.

Mr. Walden. Perfect.

Now, Ms. Boyers, I want to get back to you because, our friend at the end, talked about the importance of net neutrality somehow in this hearing, and Title 2, and I am curious as a small provider, what net neutrality Title 2 regulations on you might have meant, and might mean going forward if they were restored?

Ms. Boyers. Well, obviously, we do not favor reinstating Title 2.

Mr. Walden. Why is that?

Ms. Boyers. That classification of broadband for us and hundreds of ACA Connect's members do not support y'all enacting opening internet legislation that would apply in all jurisdictions across the country, and all firms operate in an internet ecosystem. No one should be able to block, or otherwise impair broadband internet access service subscribers from accessing lawful content, subject to reasonable network practices. And no one should be able to engage in unreasonable discrimination and paid prioritization.

We follow good-faith practices as well in our businesses, and so all providers should be required to disclose to customers key information about their service. We do all those things.

Mr. Walden. Right.

Ms. Boyers. We are a good player in that realm, and in protecting neutrality on the net is so important. I don't think it is productive to consider this issue as parts still are.

Mr. Walden. All right. All right. So Senator Smith said that broadcasters, I think you said, represent about 12 cents of the overall cable bill. Is that right? Where do you get that number and --

Mr. Smith. It is a number that is not difficult to calculate. We follow it fairly regularly as an association.

Mr. Walden. Uh-hum. And Mr. Thun, what do you say about that?

Mr. Thun. I am not sure. I wish they were that low.

Mr. Walden. Now, this is the overall cable bill, right?

Mr. Thun. Yeah. Our numbers are significantly higher than that. I don't have the exact number in front of me. I could tell you -- the number of 12 cents is dwarfed by what we pay overall for retransmission.

Mr. Walden. For retrans. All right. Ms. Boyers?

Ms. Boyers. \$12.16 a subscriber as of March 31, 2019, right off of my P&L.

Mr. Walden. And that is for retrans?

Ms. Boyers. Four stations.

Mr. Walden. Now, what do you pay for other programming services?

Ms. Boyers. \$62.12.

Mr. Walden. Okay.

Ms. Boyers. 79 percent of my retail cable programming, 79 percent is programming, and 20 percent of that 79 percent is four channels.

Mr. Walden. You know what I really like, Mr. Chairman, about a small operator, she knows her numbers.

Ms. Boyers. Hell, yes.

Mr. Walden. Hell, yes. You heard it right there.

Ms. Boyers. It is my pocket.

Mr. Walden. That is right. I knew my numbers too. I have gone way over. I appreciate all your testimonies as we work on this issue. Thank you.

Mr. Doyle. The chair now recognizes Mr. Loeb sack for 5 minutes.

Mr. Loeb sack. Thank you, Mr. Chair and ranking member, for having this hearing today and all the witnesses here. I really appreciate it. It is always enlightening to

hear from different points of view, because this is a pretty complicated topic and we have got a lot of different points of views represented. And, unfortunately, the consumer is the one who is in the middle of all this, and those are the folks, the consumers I think, that we need to be focusing on, my constituents, the constituents of all of us here, I did write a letter recently which I think was mentioned by Mr. Smith and I appreciate that to this committee, to the Judiciary Committee, last week raising an issue that is facing many of my constituents who have DIRECTV, and I do ask unanimous consent if I could submit that into the record, I would like to do that.

Mr. Doyle. Without objection, so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Loebsack. Thank you. And what I am talking about is folks who live in Ottumwa, Iowa. They subscribe to DirecTV, those folks do. They are not able to receive local broadcast unless they have an antenna. In fact, I was interviewed by one of those stations over the weekend and they asked me what I thought about all of this, I said, Well, we are having this hearing, and we will let you know more about what comes of it, but they knew about my letter, obviously.

And in many places, even an antenna, won't pick up the local broadcast and this, again, is Ottumwa, Iowa, southeast Iowa. Some of you may be aware of that.

Mr. Thun, one of the things I talked a lot about on this committee is rural broadband. In many rural areas, the business case to build out broadband is very difficult, if not impossible, because there isn't enough infrastructure there, it costs a lot of money obviously, but with satellites, it seems the business case for local and the locals shouldn't be all that hard. Again, that DIRECTV is already beaming signals into Ottumwa. So does AT&T/DIRECTV have any intention of bringing local service to my constituents in the near future?

Mr. Thun. Well, we think we do. We provide it through a local antenna. We have an integrated solutions in our set top box that takes the signals over the air, pumps it through our set top box, and subscribers can enjoy a DVR functionality, closed captioning, parental controls. So we do have that in place, and we also, for those customers, we take \$3 off their bill regardless of the package that they are in.

Mr. Loebsack. What solution is there for your customers who can't access a signal via antenna?

Mr. Thun. I think it is partially incumbent on the broadcasters as well. They could invest it in their broadcast stations and put more into putting out a broader signal.

They don't do that. They are not incented to do that because they want to rely on us to pay them hefty retransmission consent fees. So, I don't know if all of the blame should be shouldered upon us in this regard.

Mr. Loebsack. Right. Ms. Boyers, I do want to ask you and Mr. Bergmayer a question if I could. I love your perspective. Thank you so much for being here today. You clearly, I think, have unique insight when it comes to serving rural areas, and my district and I was very rural, so thank you.

And Mr. Bergmayer, I think this committee is familiar with Public Knowledge and their advocacy on behalf of consumers, so I would like to address my next question to both of you. Do you believe there is a harm for customers who don't have access to local broadcasts through available MVPDs in their area? What kind of harm are we talking about?

Ms. Boyers. Well, do you mind if I go first? Ladies first.

Mr. Doyle. Excuse me. Could the witnesses pull the microphones a little closer to you. We are having trouble hearing you on the streaming.

Ms. Boyers. I am sorry.

Mr. Doyle. Yeah. Thank you.

Ms. Boyers. On the outside, I will tell you that BOYCOM is not coming to Iowa, just to let you know. Don't wait for us. Yes, I do believe that as a general global statement, yes, I believe every customer has -- should have the opportunity to receive local broadcast, and we do every daggone thing we can to make sure that happens.

Mr. Loebsack. And what about you, Mr. Bergmayer?

Mr. Bergmayer. I would agree, all things being equal, it is better to have access to local programming. I think the only question is, how best to get there, whether it is STELAR expiring or being renewed may not even make or break the system. I think,

basically, the current regulatory system as we see at the debates today is really not serving the interests of viewers of local programming. It is really not serving the interest of people who pay bills.

So that is why in our written testimony, we have a lot of specific detailed policy proposals, and we have supported some pretty radical approaches that I think would, in fact, promote localism better than these incremental kinds of --

Mr. Loebsack. Well, my interest is asking you what counts as first priority for guaranteeing improving locals and for rural consumers should be -- can you specify a little bit?

Mr. Bergmayer. I think that the first thing is to make STELAR permanent, just so that this crisis goes away, and we can address the underlying fundamental issues with the video marketplace. I think one way is to -- we started the compulsory copyright licenses for television signals back in the 1970s. We then layered retransmission consent on top of that already existing system. Every little step made sense over the years, but I think we really need to radically rethink the ways that MVPDs and broadcasters and video distributors interact, and I think in doing that we will better align the interests of local broadcasters to produce local programming --

Mr. Loebsack. Thank you. And Mr. Chair, I am sorry. I do have questions I would like to submit for the record for Mr. Smith and Mr. Thun.

Mr. Doyle. Yes.

Mr. Loebsack. Thank you.

Mr. Doyle. Okay. The chair now recognizes Mr. Shimkus for 5 minutes.

Mr. Shimkus. Thank you, Mr. Chairman. Just some historical remembering of a committee. I think we went to the digital transition, and away from analog, and I think we lost some distance because there is a digital cliff, just kind of information for some of

my colleagues who weren't here during those battles.

So some of the rural areas, you know, had trouble getting their signal where they used to be able to. Clearly, we have a difference of opinion on reauthorization of STELAR and the question is, is this just a binary choice?

So let me ask this question: Senator Smith, good to see you. We had a chance to serve together when you were a Senator and happy to have you here. Can you briefly describe in more detail how you envision a negotiation process between broadcasters and satellite operators for local programming if STELAR expires?

Mr. Smith. Probably not unlike what occurs now through over-the-top offerings. There are market solutions to fix this, but as long as the incentive is given to not bring local into local, they have no incentive to come and talk to us.

Mr. Shimkus. Mr. Thun, same question.

Mr. Thun. I think it would be of tremendous harm to us in our negotiations at the good-faith provision with Sunset from our perspective and when we are negotiating, we feel like the minimum is being set here and it is, in certain cases, not being met.

So that would be harmful. Ultimately, if that went away, I am not sure how broadcasters would behave, presumably more aggressively than they are now, and in a regime where we have those policies in place, we have seen the increases that I talked about, 2,000 percent over 10 years.

Mr. Shimkus. I want to go back to Senator Smith to respond to that.

Mr. Smith. Well, when you start from nothing, getting to 2,000 percent isn't all that hard, particularly when what we are offering is the most important, most valued, most watched programming. We appreciate the opportunity to negotiate for its value in a free market. That isn't reflected. In other words, what they pay for our content is way below what they pay for much less watched other content that they pay for.

But I would like to speak, and I don't mean to filibuster, there has to be a way, in this expanding telecommunications market, to pay for localism and investigative journalism. We are one of the last ones standing. We have two revenue streams, the advertising model, which is being cannibalized by the big digital companies, the tech companies, every transmission consent. We don't want to be like the newspapers, but that is where we are heading if we can't negotiate for the value of our content.

Mr. Shimkus. My district's changed quite a bit over the years because of just redistricting and the like, and when I first came here, I had much of the upper Mississippi or St. Louis north, and there was a local TV station there in Quincy that was on the levy when the levy broke, so I am torn. I believe in the need of local broadcasters and local programming. I fear consolidation in purchasing power where we lose the stories of local high school teams and emergency activity and stuff.

So we want to, as much as we can, keep that localism, and sometimes consolidation helps, because it does provide more dollars to coverage. There is some consolidation in that part of the State and you get better weather coverage because of the competition. But let me turn to Ms. Boyers. The current system is challenging for you in negotiations currently, right?

Ms. Boyers. Yes, sir.

Mr. Shimkus. So you are caught between a rock and a hard place.

Ms. Boyers. Yes, sir.

Mr. Shimkus. And I would ask you to, if it is a keep it or not keep it, maybe there is a middle ground of where you think the small providers are adequately listened to versus -- again, if it is just a binary choice between one or the others, I don't see how you are served by either.

Ms. Boyers. Well, for one second, if I could defer a little bit to --

Mr. Shimkus. Well, you got 10 seconds to defer.

Ms. Boyers. We did a survey in 2018 on my broadcast channels. All of my customers, 47 percent returned on a survey on a daggone postcard. 61 percent watch our CBS affiliate, 21 percent watch our NBC affiliate. I am sorry. Reverse that. ABC. Six percent watch the affiliate that is 147 miles away, so I beg to differ that it is the most important programming.

However, in my neck of the woods, if your horse dies, you wait till it is dead before you take your saddle off. All of the things that have been happening in every revision of STELAR has incrementally helped through some retransmission consent, just little idiosyncrasies that have helped the process along for me, and to sense that this without anything to provide for that, I have no place to move my saddle.

Mr. Doyle. The gentleman's time is expired. The chair now recognizes Mr. McEachin for 5 minutes.

Mr. McEachin. Thank you, Mr. Chairman, and thank you for holding this hearing. Local broadcast television remains a vital resource for consumers to receive information about their communities, including times of severe weather and natural disasters. This role will only grow more important in time as climate change worsens, and severe weather becomes more frequent and dangerous. Local broadcasters must be able to continue to get timely information to their communities in order to help keep them safe.

Despite the important role played by local broadcast television, especially in times of danger, retransmission blackouts remain a problem. In 2017 and 2018, there were approximately 213 and 165 disruptions of service to consumers nationwide respectively.

In the 6 months of 2019, we have already had 62 blackouts across the Nation. While blackouts have fluctuated annually, these numbers in comparison to 2010 with only eight blackouts are unacceptable.

Senator Smith, first of all, thank you for being here. I am going to ask the same question of Mr. Thun in just a moment, but I would like to start with you. Why do you believe blackouts are occurring despite existing good-faith provisions, and what would be the effect on markets and consumers were the STELAR provisions to expire?

Mr. Smith. First of all, Congressman, I would make the observation that 99 percent of them are negotiated successfully without any interruption. We also point out that if people just want to keep the digital antenna that comes with their TV set, all they got to do is plug that in to the other output, hit input, and they got all the local television that you can get over the air.

I don't know where retrans is in terms of it finding its market. I leave that to business people that I represent, that he represents. At the end of the day, we don't like them but we are always on, we are always available if people want to use their antenna, and we think it is really important that we have the ability to negotiate for the value of our content.

Mr. McEachin. Mr. Thun?

Mr. Thun. We fully support localism. Our service is available to 99.58 percent of satellite reaches broadcast stations across the country that capture that. I am the business person on the other end of the stick in these negotiations, and I can tell you that absent good-faith rules, I can only predict that rates are going to go up. There is no other way to think that -- if we think that you take those away and the rates are going to somehow stabilize and blackouts are going to go down, we are fooling ourselves.

Mr. McEachin. Thank you. Mr. Bergmayer, is beefing up the good-faith requirements the solution to blackouts? Is there more Congress should consider?

Mr. Bergmayer. I think that beefing up the good-faith requirements would be an important component as well as interim carriage. We just need to make it so that

blackouts aren't used as a tactic in negotiations to kind of harm the other side and bring them to the table to pay more than they otherwise would, but for, you know, the local emergency that you have.

Mr. McEachin. Would you define interim carriage for me, please?

Mr. Bergmayer. So interim carriage would just mean that while negotiations are ongoing between two parties, and they just haven't decided to part ways, then the signal just continues being carried under the terms of the previous agreement.

Mr. McEachin. Thank you. And I thank all the witnesses. And Mr. Chairman, I yield back.

Mr. Doyle. The gentleman yields back.

The chair now recognizes Mr. Olson for 5 minutes.

Mr. Olson. I thank the chair. Senator Smith, it is good to see you again.

Mr. Smith. Thank you.

Mr. Olson. Welcome Mr. Thun and Mr. Bergmayer, and from the Shelby City of Texas 22, Missouri City, how the heck you doing, Ms. Boyers?

Ms. Boyers. I am doing wonderful, sir.

Mr. Olson. I hope my questions knowing firsthand how important local broadcast is during a disaster. Y'all recall that almost 2 years ago to the very day, April of 2017, almost my entire State, certainly my district, was hit hard by Hurricane Harvey. Parts of the district had 5 feet of water in less than 2 days. Dramatic flooding.

People turned to local news to get their weather information, road closures, where they should go, where those recovery operations. They, too, did the KPLC 2, NBC 2, CBS 11. One of them actually had the main studio flood, but the back-up studios they kept on air during the storm, which was just amazing. ABC-13, Fox 26, Independent TV 39, and also don't forget, be it the most diverse county in America, two big Spanish

language stations stayed online. Univision 45 and Telemundo 47.

And this question is for you, Mr. Smith, and you Mr. Thun, Senator Smith, your testimony you detailed the legislative history of STELAR and how Congress always let it expire at some point in the future. I know that Mr. Walden, a member of the head of our committee on our side of the aisle has said it is an open question as to whether we should reauthorize it as well.

And Senator Smith, we all know my former boss, your colleague, Phil Gramm, very well, and in this issue he would say, it is easy to kill a vampire than a bad government program. So my question is, if we decide that STELAR is a bad government program that should be killed or allowed to expire, how that impacts local TV during a time of crisis?

Mr. Smith. I would just remind the committee and thank you for the question, Congressman, broadcasters have every incentive to be viewed on as many platforms as possible. We don't want disruptions. We are there in good faith. We have never been found to be otherwise, and your question perfectly points out how vital a lifeline my members are in times when my wonderful AT&T Apple phone crashes, and the only thing you can get is your local television or radio. And so, as you tinker with the economics around here, I would just remind you of the importance of our lifeline, and the revenues that we have to support journalism and localism come from two sources. Advertising is being cannibalized, retransmission is where we go and it is very important that that not be upset if having the news about you Members of Congress and for your constituents remains important.

Mr. Olson. And one comment that as well, my family tune to 86 13 Doppler radar, we could see it real time what was out there as opposed to going to the weather channel, or some other channel that would drift in and drift out. It was very important to have those local TV stations.

Mr. Thun, how about you? Once you deal with disasters, how important is local TV during a disaster if we let STELAR expire?

Mr. Thun. Well, as I testified earlier, I certainly do not think that STELAR should expire. I think it will be bad for consumers and it will increase pricing. As it relates to getting programming during disasters, as it pertains to weather, I think in a lot of cases people are used to watching -- looking at their weather on these, actually.

I don't know many people who sit around waiting for weather on the 8s. It does happen. But more and more you are looking at your Weather Channel app, or your weather app, to see what is happening and when it is going to happen. That is not the solution necessarily. We do have other national programs that is available, but in these cases, we certainly would rather be up than down with your broadcast partners, but unfortunately that is not always the case. We have contentious relationships with them because of the prices that they seek, and the services go down during bad weather, but they also go down during times when broadcasters are being unreasonable.

Mr. Olson. One further question, Mr. Smith. I am sorry, ma'am. I am sorry about that, but I got to ask this question. Victoria, Texas, is a -- colleague there named Representative Michael Cloud. He sent a letter to judiciary leadership asking about making sure STELAR was allowed to expire. He talked about how bad it is for his town Victoria. I submit this for the record, please, Mr. Chairman, if that is all right.

Mr. Doyle. Without objection, so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Olson. Victoria is not a small town. Population of 62,592 with a Census of 2010. San Angelo, Texas, out that west is no small town either. Population 100,450, the Census modified in 2014. Both these towns have issues with TV reception because of STELAR. So Senator Smith, can you explain how STELAR is responsible for 170,000 Texans in Victoria and San Angelo for not having access to local news --

Mr. Doyle. If you can do that in five seconds, I will let him answer, but we are 45 seconds over your time.

Mr. Smith. Well, if I understand your question, Congressman, obviously we want your constituents to have our product, is to negotiate it with the satellites and cable providers and then hopefully they can put up an antenna, if all else fails, and get it for free. I am the only one up here offering everything for free if you don't want to pay a subscription paid TV thing.

Mr. Doyle. The gentleman's time is expired.

The chair now recognizes Mr. Soto.

Mr. Soto. Thank you, Mr. Chairman.

I bring greetings from Orlando, the 18th largest media market in the Nation and growing. In our area, we are really worried about diversity in programming, and increasing local content, and I worry about the modernization of programming across the Nation. There are so many great local towns across this Nation that really need to have a voice. I also worry about Spanish language in Creole stations. Every couple years, we seem to have a crisis about certain programs being blocked, either in Florida, Puerto Rico. I wanted to start with you, Mr. Thun, regarding basic diversity requirements, if we were to put some in place as a condition of reauthorization of STELAR, would that be something that you all would be supportive of?

Mr. Thun. I think we would have to see everything to know what we are considering here. We are certainly big proponents of diversity. I think our record in providing television content that is diverse is unassailable. I think, by our measure, we think we distribute more diverse programming than any other distributor. So if there is a poster child for somebody as a good actor in that space, we believe DIRECTV, AT&T would be that.

Mr. Soto. Thank you for that, and Senator Smith, if STELAR were to sunset, how would that affect diversity in programming?

Mr. Smith. I think what is really important about what we do is, if you look at the percentages of people wholly reliant upon over-the-air broadcasting that tends to be minority communities, we are very anxious to keep our content appealing to all and that is why we also have networks that are specifically targeted to some in the Hispanic community.

Mr. Soto. And how would it affect original, local content if STELAR were to sunset?

Mr. Smith. What I have noticed, Congressman, is that if one of my members is going to succeed, they succeed when they focus on local. When they do otherwise, they are less successful and they can't sell ads unless they focus on local.

Mr. Soto. Sure. Thank you.

Mr. Bergmayer, you mentioned changing the compulsory copyright license with the reform to pure copyright, can you explain in more detail, I guess, the increased profits, or payments to artists and local providers, how that would work, and what would the incentive be?

Mr. Bergmayer. So the idea is that the people who are creating content should just sell content directly to the distributors instead of through various layers of

middlemen like we have, and then, again, the thought is, if you are a local broadcaster and one of your primary revenue streams comes from creating local programming that is relevant to your community, that is relevant to the people who live there, then you have every incentive to make that programming the best you can and to make as much of it as you can, rather than the current system where, you know, the local content is there, but also, you know, a lot of the primary leverage that happens from retransmission consent is from reselling national programming.

Mr. Soto. So would this help out local broadcasters and local artists and producers?

Mr. Bergmayer. I believe the overall approach would end up certainly helping the production of local content, local artists by basically streamlining the system.

Mr. Soto. What about local sports or more diversity content?

Mr. Bergmayer. I think that there is this notion that if you got the government out of the way somehow that automatically localism would be fixed, you know. I am looking at how online video works today. I am noticing that CBS has CBS All Access that they are distributing without any local broadcasters at all. You have virtual MVPDs, like YouTube TV, DIRECTV now. A lot of them are missing the local broadcast content. I think that, you know, if we want to promote localism, it is going to require a lot. I think an important step would be streamlining the regulatory system, but I don't think it really can end there, because I think that we have seen that a lot of the online providers simply aren't providing the local programming without being caused to.

Mr. Soto. Thank you, and Ms. Boyers, other than Ozark on Netflix, which I have watched multiple episodes on, has STELAR assisted in local content for the Ozark Mountains in your region?

Ms. Boyers. Diversity -- absolutely. We offer everything that is available to us

through the NCTC.

Mr. Soto. What is some local programming that you all provide?

Ms. Boyers. We have Telemundo and B.E.T., which both come from the NCTC. We do not receive those from an off-air station.

Mr. Soto. But, like, from the Ozark Mountain areas, is there any local programming you develop for your region?

Ms. Boyers. No, sir. There is no local programming even being developed. Our closest local programmer is 75 miles away.

Mr. Soto. What would help with that?

Ms. Boyers. Funding, obviously. Money is always the bottom line. But for me, the tree transmission consent fees are -- prohibit me from -- I only have so much of a budget.

Mr. Soto. Sure.

Ms. Boyers. And where I am at, I can't raise my rates and so those folks -- I just have a certain amount of dollars I can pay for programming.

Mr. Soto. I understand.

And I yield back.

Mr. Doyle. Thank the gentleman. The chair now yields 5 minutes to Mr. Johnson.

Mr. Johnson. Thank you, Mr. Chairman, and I appreciate the panel being here. This is a really important hearing. I represent a very rural district in Appalachia. It is the longest district east of the Mississippi, and we have many technological challenges. This is one of the biggest ones. We are here today to discuss the STELAR Act, which expires at the end of this year, and I have heard many different perspectives as to whether it should be considered must pass, or whether it should be allowed to sunset.

As we all know with the increase in new technologies, the media marketplace has changed substantially, since STELAR was first passed by Congress in the late '80s. I appreciate all the perspectives that I have heard today. Let me go to some very basic questions.

Mr. Thun, in your testimony, you explain that there are a number of people that still receive broadcast channels because of STELAR. I know many of my colleagues in both the House and the Senate have asked you for the specific breakdown of the markets for those subscribers that receive out-of-market channels because of STELAR.

While this committee considers whether or not this legislation needs to be reauthorized, it would be extremely helpful to understand what benefit the expiring provisions of STELAR are providing, how they are being used, and what the consequences would be should Congress allow STELAR to sunset.

Would you be willing to work with my staff and the committee staff to supply us with the specifics of what subscribers receive -- which subscribers receive what channels and from where on DIRECTV?

Mr. Thun. Yes, we would be willing to help provide you some more information related to your question.

Mr. Johnson. Okay. All right. We will call on you for that.

Senator Smith, my district partially encompasses the Zanesville market, which I know only has one local broadcast affiliate, the NBC station.

Can you explain to me where satellite TV subscribers in Zanesville will receive their other broadcast channels from? If Congress does not reauthorize STELAR, will they still receive those stations?

Mr. Smith. I know my local broadcasters will be anxious to talk with them and make them a fair price to make sure that rural constituents can get their signal. We

have an incentive to make sure that people see what we produce and what we put over the air, and I know it is hard for you to manage the food fight up here with my friends, but the truth is, we all need each other and, ultimately, everybody has to make a buck.

And we are not trying to put anybody out of business, but we are trying to preserve localism, which is under threat.

Mr. Johnson. That is a really good point. You kind of threw me off my questions because you said everybody needs everybody up here. You are exactly right. We do. It would seem to me that common sense should prevail at some point, and rather than Congress having to mediate and solve this problem, it seems to me the industry ought to be able to come together and come up with some commonsense solutions where everybody walks away a winner.

Senator Smith, moving on. In his testimony, Mr. Thun spoke about how the number of impasses between local broadcast stations and cable and satellite television seemed to peak a couple of years ago and how that resulted in some stations going off the air. What is your response to that testimony?

Mr. Smith. I think it is a marketplace finding its level, and at the end of the day, I just remind you, we have an incentive to make sure more people see our stuff. We sell advertising off of that, and, obviously, retransmission is a piece of it, a vital piece, to keeping local television available to all these communities and to these wonderful platforms that are represented here.

Mr. Johnson. Okay. Mr. Thun, do you have anything to add to that?

Mr. Thun. I agree. We both need each other. They are an important part of our business, but finding the level ground is what we are fighting over, I think.

Mr. Johnson. Yeah.

Mr. Thun. And in any rational case, even though we did start a low place, I

should remind everybody that we were amongst the first, if not the first to start paying for retransmission, so we didn't start at the baseline that a lot of others did.

Mr. Smith. You are a great American.

Mr. Thun. But we can't sustain these kind of prices and hold that back from hitting consumers, and that is bad for all of us in here.

Ms. Boyers. Congressman, can I comment to that?

Mr. Johnson. I am coming to you, Ms. Boyers. You stated that retransmission consent fees deter broadband deployment. So, in addition to commenting on what I just said, or just asked, what do you mean when you say that video revenue support broadband deployment?

Ms. Boyers. Video revenues, however small they may be, y'all care about closing that digital divide, and every precious dollar that we could put towards deployment by them back even further into the woods is being sucked up by these ever-increasing retransmission consent fees.

Now, rural and small cable operators, independent guys like me, we are the ones that are out there already on that digital divide. We operate leaner, we operate meaner, and we are already on those front lines for the deployment of this broadband, so every stinkin' dollar that goes to retransmission consent, I could be deploying -- costs about \$25,000 a mile to build aerial, \$32,500 to build underground, if you can do it in the Ozark Mountains; however, they would rather string it on a pole between the trees or a fence post to get it back there because -- because where we are at, we only have a certain amount.

Now, I would like to speak to Mr. Smith on that 12 cents. I want that deal.

Mr. Doyle. The gentlelady's time is expired.

Mr. Johnson. I am going to have to yield back.

Mr. Doyle. As much as I love spending time with all of you here, we are going to be here for a long time if we keep going minutes over peoples' time.

Mr. Johnson. I will let you arm wrestle Ms. Boyers.

Mr. Doyle. Yeah, yeah. I know.

The chair now recognizes Ms. Eshoo for 5 minutes.

Ms. Eshoo. I thank the gentleman. Thank you to the witnesses, and I am sorry I have to bounce back and forth between Health Subcommittee hearing downstairs, and this very important one.

Senator Smith, it is wonderful to see you, a longtime friend, and someone that has served people in our country really so -- so well.

Mr. Smith. Thank you.

Ms. Eshoo. Thank you, and each one of the witnesses. What were you going to say, Ms. Boyers, when our distinguished chairman said we are going to be here all day. I will give you a little bit of my time so that you can share your thought.

Ms. Boyers. I appreciate it. I appreciate it so much. Mr. Smith spoke to everybody needs to make a buck. Let it be known right now on your record, we don't make a buck on retransmission consent. What the big guys charge me gets passed to my consumer. That \$12.16 BOYCOM does not make a buck on. Simple pass-through, 100 percent to my consumer and they know what they are paying for their broadcast channels. That being said, I don't know where the \$0.12 is coming from but I want that deal, and we shall talk after the committee meeting convenes because -- I mean, dismisses because I want that \$0.12 deal.

Ms. Eshoo. I think you are one hell of a witness, I tell you.

Ms. Boyers. Thank you, ma'am.

Ms. Eshoo. I would love to be there with you, and Senator Smith, but I think I am

going to have to go back downstairs.

Ms. Boyers. I got your back.

Ms. Eshoo. Yeah. Okay. To Mr. Thun, you have argued for regulatory overhaul, and I agree with you, and specifically, you state that retransmission consent is in dire need of reform. I have thought this for a long time. It is not any secret. Now, I understand why AT&T doesn't like the current regime. Tell us, through your experience, how it affects your customers? Is it the same whether it is a small cable operator and, you are a giant and everyone in between? This is all passed to the consumer?

Mr. Thun. I think it affects us similarly in that we are offering a video product to our consumers, and it is predicated upon what we are charged to program that, and if those prices go up, our prices correspondingly go up, and that happens for years.

What we have hit is a wall. Consumers aren't willing to pay anymore, and so the plight that we face is, this is not a win-win where money -- where our revenue is going up and their revenues are going up. This is simply margin shrinking to the point where certain businesses, especially rural cable operators, are going out of business because they can't afford the programming costs.

So this goes straight to the consumer and that is what we are here to protect.

Ms. Eshoo. And it is where we need them because the larger guys don't go out to where Ms. Boyers is.

Ms. Boyers. Yes, ma'am.

Ms. Eshoo. Senator Smith, let me ask a really obvious question, maybe it has already been asked. Every 5 years, you know, this comes up, and now we are reauthorizing, and it seems to me that there is a pattern here and that is the year or the year before reauthorization comes up, the numbers dip a little on retrans and then

afterwards, it is just jacked up all over again.

I can't imagine that this is comfortable for you, you in the broader sense of broadcasters. Have the broadcasters thought of some other kind of model? I mean, this is not sustainable, and, most frankly, and you are a very reasonable and intelligent man, it is not defensible. It is not defensible. You know, it keeps going up, up, up. The blackouts increase. People are ticked off. They are still paying. They are still paying while there is a blackout. I don't know anyone in the country that has gotten a refund when there is a blackout. So are you thinking of something else? Are you just going to hold on to this thing that is kind of a homely child?

Mr. Smith. I would just share with you, Congresswoman, the STELAR reauthorizations are not my favorite time of year, every 5 years.

Ms. Eshoo. I can imagine so.

Mr. Smith. It usually amounts to an opportunity to pound away at retransmission consent, and the point I keep making is, this is one of two ways in which we support localism. It is the way you have --

Ms. Eshoo. Yeah, but at what price, though, localism?

Mr. Smith. You can get it for free. I am the only one up here that offers everything we do for free. If they want it that way, if they can get a signal.

Mr. Doyle. The gentlelady's time is expired.

The chair now recognizes Mr. Scalise for 5 minutes.

Mr. Scalise. Thank you, Mr. Chairman. I guess I will follow-up where my colleague and dear friend, Ms. Eshoo, left off, and you are right, the signal is available for free and you are seeing more people choose that option. The reason you are seeing such a growth in people cutting the cord, which means you don't get any retransmission consent dollars is because the laws don't work for today's marketplace, and so, if you can

go one place and have a broader experience and a wider array of options than the other place that is confined by the 1992 Cable Act, you are seeing consumers walk.

And so what I have been suggesting is, when STELAR comes up, you shouldn't look at it in a negative way. I mean, it absolutely is an opportunity for us to look at the video marketplace. If we look at the video marketplace and recognize that the laws just don't work for today's world, then maybe we can also help solve the problem of why you are getting less retransmission consent dollars because people are cutting the cord. They are walking away from the entire system.

And so, if we say, Okay, maybe you want to cherry-pick and say let STELAR expire. I don't associate myself with that because I do think we shouldn't just look at STELAR, we should look at the whole thing, and maybe in 1992, they wrote a perfect law. There is no such thing, but let's say they did in 1992.

Does anybody want to come up to this table and suggest that when they wrote the law in 1992 they took into account how the world works today, how people get their video content today? Of course they didn't. You can talk to the people who wrote the law. We weren't around when it happened, but the people that were there when it happened, they recognize that the world's different today. Why hasn't the law been updated?

And so, what I would suggest is, as we talk about retransmission consent or any other, you ought to get paid for your content, that is the bottom line of it. The deal with retransmission consent, and again, when you talk to the people that created it, was that they wanted to help keep that local content that you talked about.

The problem is, I think Mr. McNerney talked about this earlier, more and more you are seeing the motherships, the national networks, take a bigger and bigger chunk of the retransmission consent. So your local stations aren't even getting that money, and

that was the deal for the free spectrum that is out there that -- again, the reason why you have to make it available for free, people can go buy a \$30 dish and get a better high definition signal off of the local stations than if they went through their local cable company.

And so, all I would ask, and I would like to ask everybody to comment on this: If you look at STELAR in a silo, regardless of where you are on expiring or being renewed, do you think the current laws, especially the foundational 1992 Cable Act, needs to be updated to reflect the world we live in today? I will start with you, Ms. Boyers?

Ms. Boyers. Thank you, Congressman. Absolutely. I would love to be part of that.

Mr. Scalise. I would love for all of you, including Mr. Smith. I know we have had some conversations. We might not always be in the same place, but I do think we want to get to a similar place, and can get to a better place, and I know Ms. Eshoo and I have worked very hard on how we can have a bipartisan approach that, hopefully, every member of the committee that wants to be a part of it as well as everybody here that wants to be a part of updating and modernizing our laws to reflect the world we live in. Mr. Thun?

Mr. Thun. Absolutely. We commend your efforts with Representative Eshoo's efforts to try to modernize these laws. They are clearly outdated, they are broken, and they need to be fixed, so --

Mr. Scalise. Thanks. Mr. Smith?

Mr. Smith. Congressman, I really appreciate your noting the, sort of, symbiotic relationship between my network members and my affiliate members. They actually really need each other. Affiliates need the networks for their sports programming and their weekly shows and they have very high ratings, and yet the networks really need the

locals to provide the tornado alerts. They need this lifeline.

Mr. Scalise. Don't sell yourself short. I want my local broadcasting brother in local sports. I want to know -- when I watch the Saints and the LSU Tiger updates, I am not going to get that from Iowa, I want to get it from my local station.

Mr. Smith. Exactly, and they are mindful --

Mr. Scalise. And the Warriors. They go up 2-1. So would you -- would you be open to working with us on reforms to the 1992 Cable Act that create some of these problems?

Mr. Smith. Of course. I am tempted to quote Reagan, there is nothing permanent --

Mr. Scalise. You are always in a good place if you quote Reagan.

Mr. Smith. With that said, we are always open to new ways to do it, but what I want to emphasize is that the earlier act created a system that is a benefit and a blessing to the American people.

Mr. Scalise. I only have 12 seconds left. I do want to get to Mr. Bergmayer.

Mr. Smith. And my concern is that somehow a reform would just focus on national and forget the local.

Mr. Scalise. We absolutely want the local content. Ms. Eshoo does -- she has talked about blackouts for that very reason. Don't sell yourself short. People want that content. I am sorry. Finally, Mr. Bergmayer.

Mr. Bergmayer. Yeah. I think you need a lot of policy measures to promote localism, address consolidation, increase diversity to programming, but absolutely, an important first step is to totally rethink the 1992 Cable Act, and we are with you on it.

Mr. Scalise. Thank you so much. Appreciate it, Mr. Chairman.

Mr. Doyle. The chair now recognizes Ms. DeGette for 5 minutes.

Ms. DeGette. Thank you, Mr. Chairman. So I hear all of my colleagues here and I completely agree that local broadcasters provide great coverage of local events, weather, disasters, as well as, Senator, you talked about holding elected officials accountable for their actions because they are invested in the community. I think that is really an important role, and one that we continue to see dissipate.

Something else we have seen in the Denver media market and I know we are seeing this around the country, is we are seeing venture capital and private equity start to buy up some of the media outlets, in particular, in the print industry, we saw with this with the Denver Post and we have seen it other places. And so, I want to start with you, Mr. Bergmayer, how do you think the incentives of venture capital and private equity, the financial incentives, align with this other incentive that I am talking about that local TV provides, which is coverage of local events, weather, in-depth coverage of politics and other issues, how do you think that the profit motive and those -- and the need to staff up and invest in the local news weigh, and how is that going to work in the long run?

Mr. Bergmayer. Absolutely, I agree. A huge problem throughout the economy, but it is particularly noticeable in media is when you have these investors who take over companies, and they just have such a short-term perspective. They are just interested in extracting as much cash in the short-term from these businesses as possible, and just walking away and forgetting that, you know, particularly with media, with newspapers, with local broadcasters, it is really about a long-term commitment to serve the community.

Ms. DeGette. How do those goals -- how do those challenges line up as we look at reauthorization of STELAR?

Mr. Bergmayer. Well, I think STELAR offers an opportunity to look at a wide range of different media and video industry policies, including media ownership rules,

and I think something like, you know, the short-term investor kind of thing, that sort of relates to the broader media ownership and consolidation points that have come out in today's hearing.

Ms. DeGette. Senator, do you have anything to add to that?

Mr. Smith. Yeah. I would just re-emphasize to those who may want to invest in broadcasting. If you invest and you not focus on local, you are not going to make any money because people are going to change the channel. And what I am telling you is that my members who are successful financially are the ones that keep a focus on local to avoid the Denver Post kind of situation.

Ms. DeGette. Well, but that is assuming that there is that competition, and that if there is no channel to change it to, then that is where you run into that trouble, and so that kind of --

Mr. Smith. We have lots of competition, I will tell you that, particularly from over-the-top now and we have got -- some of our members do and people are going right directly to the internet to get -- to get our product, and there is lots of ways to get our product. We want people to see it, but where others try to sell our product to their advantage, we are entitled to retransmission consent.

Ms. DeGette. So, I do want to talk a little bit about this consolidation issue that I kind of alluded to a minute ago. Mr. Thun, you said that some ownership groups are using loopholes to get around the FCC rules, prohibiting a single owner from controlling more than one station affiliated with a major network in some of the areas. Can you talk very briefly about that?

Mr. Thun. Yeah, and I am not sure if that ownership changes the emphasis on localism between those broadcast stations, but what I am discussing is, in the negotiations that ensue when we go into a renewal of a particular deal, if the broadcast

station owns more stations in that particular market beyond what they were initially entitled to, or what the law intended for them, it makes it more challenging.

They hold on to their positions, they hold on to their economics, and they are extremely stubborn, and it often yields blackouts.

Ms. DeGette. And I want to, of course, close with you, Mrs. Boyers, and ask you what does media consolidation do to consumers when broadcasting groups can't reach agreement of video providers?

Ms. Boyers. Well, it removes the local programming from them, because if they were to turn the signal off because we couldn't reach any kind of an agreement, but I would tell you that the broadcasters themselves, the big affiliates, and the local broadcasters, are biting their own noses off to spite their faces. They have got over-the-top competition with themselves.

I mean, you got CBS All Access, for God sake. I mean, those kind of things are competing with your own local stations, and I would tell you that if y'all are listening to the underlying current here, my esteemed friend down here with the broadcasters, he is only sitting on a stool with two legs. He has got his advertising and he has got me, and he is -- and he is utilizing the captured marketplace, which is the passively tree transmitters to send our signal down to his eyeballs that he needs to see, and so his only two revenue streams today are advertising, which is dwindling, and me.

So the only people who are cutting their cords are the ones that can. The ones who can't cut that cord is Betty Duck out there on county road 450 who doesn't have a credit card, couldn't get Dish. She has to have me and she is 90 days past due all the time. The one that brings me eggs. I am just telling you. They are utilizing me as their revenue source.

Mr. Doyle. The gentelady's time has expired. Good Lord. Okay. Where we

at?

The chair now recognizes Mr. Long.

Mr. Long. Thank you, Mr. Chairman. And Ms. Boyers, I want to remind you that the IRS does monitor these hearings.

Ms. Boyers. Yes, sir.

Mr. Long. Talking about taking eggs for payment, you might want to --

Ms. Boyers. I report all my income.

Mr. Long. You might not want to go there.

1974, George Foreman was going to fight Muhammad Ali and Muhammad Ali came up with a strategy to fight a younger George Foreman, and that is exactly right. That is the Rope-a-dope. He would cover up and back in to the ropes and let George just pummel away on him, and that is kind of like what I felt like the last few weeks with the broadcasters and AT&T, and there were people coming into my office. Everybody just wants to pummel on us and figure out, you know, how this thing is going to come out in the end.

We -- Mr. Bergmayer, what is a local broadcast station? You referenced a local broadcast station earlier, what is a local broadcast station?

Mr. Bergmayer. Well, I guess there is two ways -- any broadcaster serves a specific geographic region so it is local to that region, so I think that if you are in that region, that is your station. I think the problem is when there is -- when you are short a market where there is no affiliate for a particular broadcaster, then you just need some kind of station. I suppose it is not going to be local to your particular market, but, nevertheless, that station in its own market is still thought of as a local station.

Mr. Long. So Mrs. Boyers, I believe said that -- I am still with you, Mr. Bergmayer, Ms. Boyers said that her local affiliate Cape Girardeau is like 147 miles away.

Is that a local station?

Mr. Bergmayer. Well, I think the definition of local might get stretched a little bit in rural areas where the stations are, yes, fewer and far between, just due to geography and population density, but, you know, it is certainly closer than a station in Los Angeles or New York.

Mr. Long. When I go home on the weekends two or three days a week, whatever we get to spend at home, I sit down to watch the local news with my wife, and I will say who is that? Who is that? Who is that? I mean, all the reporters are, you know -- when I was growing up, you had the same reporters, same news people, same sports people, like, your whole life and now every time you go home, they have got new young kids out of college because apparently that is who they can afford to pay, and it is just constantly shifting.

And with that, Senator Smith, you are talking about bringing local into local, walk me through that. What does that look like, bringing local into local?

Mr. Smith. It means where there is a demographic area that is served by a television station, that the people within that area get that signal and not something from Los Angeles or New York.

Mr. Long. But if there is not, I mean, if you are Ms. Boyers in -- and it is 147 miles away, I thought you were saying there was a way to bring local broadcast into that market?

Mr. Smith. There are translators that help beam our signals to rural areas over mountains and into valleys. They are all over this country, if they don't want to have a subscription. I don't know her -- in the Ozarks, whether there are a sufficient number of transmitters to get it for free, but we offer it for free.

Mr. Long. I was a little bit confused on bringing local into local in the

fact of -- like I said, I go home and we are in a town of 160,000 people, 250,000 people, we have got ABC, CBS, NBC, local, but two of them, we fought this battle before, have gone into together, NBC and the ABC affiliate moved into the same building, they are run by the same people.

For a while, they tried to keep their news people separate and all that, but now they are all piled in there together. There is not a real way to bring a local station that would be functioning and make a profit into Ms. Boyers' area, correct?

Mr. Smith. I think what you are speaking to is just the expense of running a newsroom. Journalism is expensive. Localism is expensive.

Mr. Long. Yeah, but I mean, somebody that doesn't have a local station like Ms. Boyers doesn't. What did y'all -- moving to you, Ms. Boyers, what did you do during the tornado -- recent tornadoes in your area? I know we were hit. Does Cape Girardeau cover the tornadoes over in Poplar Bluff?

Ms. Boyers. Whenever you watch the weather, and it is the same on the CBS station as it is on KBI 5 Fox, it is the same news team once again. They -- but the only time you are going to hear Poplar Bluff is when that radar dips way off down there in the southwest part of the circle. They call themselves Tri-State area. But the local news is Cape Girardeau.

Mr. Long. One quick last question, you came by my office the other day and in your testimony today you mentioned this 47 percent. Tell me, you are paying 47 percent more than your competitors and that is because of what?

Ms. Boyers. Yes, sir, based on the FCC's report, the study they put together at the end of the year last year.

Mr. Long. But why? Because the quantity -- they have more accounts than you do or what? I am sorry.

Ms. Boyers. That is what I am offered in my negotiations with the off-air channels, 37 percent more.

RPTR MERTENS

EDTR ROSEN

[12:27 p.m.]

Mr. Doyle. The gentleman's time has expired. The chair now recognizes Mr. Flores.

Mr. Flores. Thank you, Mr. Chairman. I appreciate the hearing this morning.

Mr. Thun, I have a quick question I would like you to answer supplementally for me, if you would. AT&T and DIRECTV have made two commitments to serve all 210 DMAs with local channels. I would like -- and each -- none of those commitments have been met, so I would like to you to supplementally respond as to why those haven't been done. If you would, also, put the markets where you down convert the HD signals, and what the plans would be to remove the down conversion features moving forward.

I want to continue on to talk about the subject that Ms. Eshoo and Mr. Scalise have introduced, and that is, what should the statutory framework look like for video moving forward with the reemergence of over the air, with OTT, with the MVPD options that we have today.

And then, there are things that are gleams in people's eyes today that are going to totally transform this business space. I would like some ideas from you as to what the statutory framework would look like for the video market of 21st century, not relying on the 1992 Act, not relying on STELAR. What should the statutory framework look like? And so I will give each you about 45 seconds starting with Mr. Bergmayer.

Mr. Bergmayer. I believe it should start with copyright as the fundamental unit of negotiation, and let's build from there. Right now, we have a system where copyright, you have a compulsory license, and then on top of that, you have retransmission consent, which is negotiated in the marketplace. I think this adds too

much complication, too many layers. I think you simplify things. You start with copyright, and you see if that improves things for consumers. And you know, I just think that offers a more sound starting point, you know, for addressing the market. That is how it works everywhere else.

Mr. Flores. Thank you. Thank you for staying within 45 seconds.

Ms. Boyers.

Ms. Boyers. For us, it would be choice. Choice for the consumer, choice for us as the provider. In today's framework, we are mandated by Federal law to provide those off-air stations, first and foremost, to every one of my subscribers. If they don't want to watch them, they shouldn't have to pay for them. Choice is part of that, and just absolutely, more choice. Let the marketplace set the demands.

Mr. Flores. By the way, you have been a great witness. I appreciate you being here today.

Mr. Thun.

Mr. Thun. I think for us, we are open to any and all ideas. I mean, one of the things that has brought us here today is that retransmission consent needs to be fixed somehow. The exact measures around that, I am not sure. But I think it starts with working on the 1992 Act, starting from scratch and seeing laws that could create marketplace conditions that are not punitive to our consumers.

Mr. Flores. I don't really want to start with the 1992 Act. I want to start with a blank sheet of paper. What would that look like?

Ms. Boyers. Amen.

Mr. Flores. I mean, does anybody disagree with that approach?

Ms. Boyers. No, sir.

Mr. Flores. I mean, because the market is totally different than it was in 1992.

It is totally different than when I was a kid, and I had three channels located 80 miles from the three broadcast channels, and I would have to get up on a 45-foot tower to adjust or fix the antenna after a storm.

Ms. Boyers. If the President was on, you were screwed. You didn't get to watch anything else. You had to watch the President on all three channels.

Mr. Flores. Secretary Smith.

Mr. Smith. Congressman, you know, basically, you have two options. You can have the government manage prices and these negotiations, which I would strongly oppose.

Mr. Flores. Yeah, I am opposed to that.

Mr. Smith. Or you can allow the retransmission consent process to go on, which I think is always kind of a food fight when people are freely trying to bargain for the value of content. And my own view is that the dollars should follow the eyeballs. We have got the eyeballs.

Mr. Flores. Okay. I think retransmission consent is part of it, but at the same time, I do think it is thinking too small. There is a new technology that is going to come in, and it is going to wire around retransmission consent, and I think we need to figure out what the statutory infrastructure looks like so that we create the video marketplace of the future that puts consumers first.

And with that, Mr. Chairman, I yield back the balance of my time.

Mr. Doyle. The gentleman yields back, and the chair thanks him. The chair now recognizes Mr. Cardenas for 5 minutes.

Mr. Cardenas. Thank you, Mr. Chairman, and thank you to the ranking member for having this important hearing.

I would like to point out that earlier today, there has been testimony that no

broadcaster has been fined for violating the good faith rules. I want to point out that there was an investigation and a settlement of \$9.5 million with Sinclair. So I just wanted to state that for the record.

The way that many consumers watch video is changing, but for a lot of folks, they still receive local news, local weather, emergency alerts, and local entertainment over the air, and by way of cable and satellite. I know that this is a complicated issue for those in the video market, so I am glad to see so many stakeholders at the table so we can get this right.

Above all, we need to remember the bottom line, that consumers have access to local diverse programming. That is important to me and to millions and millions of Americans.

And my first question is to Senator Smith, the CEO of NAB. I understand that significant populations of Latinos and other communities of color depend on free local broadcasts to stay up to date on local news, disaster alerts, and other educational and entertainment programming. Can you discuss the rate of viewership amongst communities of color?

Mr. Smith. Yes, and it is one of the proudest things we have to offer as free local broadcasters is that those who exclusively rely on us tend to be minority communities and the economically disadvantaged. And we are very proud of Univision and Telemundo, members of our association. I think we are doing everything we can to make sure that there is content available to them free over the air, and those communities disproportionately rely on us.

Mr. Cardenas. Thank you for that testimony. With all of the big players in the field, it is important that we don't lose sight of the independent programmers who bring quality, local, diverse content to their communities. In a space where we see more and

more consolidation, we need to make sure that local networks can continue to operate and that there is room for new entrants into the markets.

Ms. Boyers, it we have heard from independent networks that the retransmission consent process can cut into programming budgets that could otherwise be used to create content that showcases diverse and unique voices. In your experience, is that accurate?

Ms. Boyers. Absolutely. We only have certain buckets of money for programming, and retransmission consent fees take away funds in my small business to provide compelling independent programming. We are on the same side of this issue with the independent programmers. We all have the same financial straps. We have the same, you know, too much month at the end of the money, and we have the same problems the independent programmers have. We want to do everything we can to get those folks on our station, but we only have so many dollars.

Mr. Cardenas. Well, you mentioned buckets, but I have been visited by some of the small players in the field, and it looks like they go around with a little tin cup.

Ms. Boyers. Yes, sir.

Mr. Cardenas. Hoping they will get something to rattle in there, and that is one of the things that really, really concerns me, because the smaller the player, the more likely that they are not going to be able to play, that they will just go away. And I think one of the saddest things that we could see in America is to see someone who is passionate, who is heartfelt about wanting to be that, to do that as a career and realize that there is no room on the playing field for them because it just doesn't pencil. They can't eat and do the beautiful, wonderful content that they can and are capable of producing, but if you can't eat, you do something else.

Ms. Boyers. Yes, sir. That is right.

Mr. Cardenas. That is one of things that is a big concern of mine.

Ms. Boyers. Yes, sir.

Mr. Cardenas. Mr. Thun, same question.

Mr. Thun. We, I believe, have an excellent track record carrying independent channels, hitting diverse audiences. As I testified earlier, I think we have an unassailable record. As far as I know, we distribute more diverse content than any other distributor in the marketplace, so we want to reach all the different audiences. We have national platforms so that we can touch people across the country in those different pockets, and we try to do so with providing a robust experience for them to touch different pieces of content that aren't from the same voices.

Mr. Cardenas. Okay. Thank you.

Mr. Bergmayer, do you have anything to add to this?

Mr. Bergmayer. I think the current regulatory system as well as just the market structure benefits primarily just the most major programmers. It also doesn't particularly harm, I think, the very largest MVPDs, the Comcasts, the Charters. You have a system where you have these large players fighting each other all the time in the interest of smaller diverse programmers, as well as small cable systems, just simply often get forgotten.

Mr. Cardenas. So perhaps the system's not broken-broken, but some tweaks here and there by Congress might be welcome?

Mr. Bergmayer. Well, I would favor some pretty fundamental changes to the system, but I am totally open to lots of small tweaks within the current framework, as well as addressing the consolidation issues, which I don't think help either.

Mr. Doyle. The gentleman's time has expired. The chair now recognizes Mr. Walberg for 5 minutes.

Mr. Walberg. Thank you, Mr. Chairman, and thanks to the panel. This has been one of the most interesting panels I have had the privilege of listening to with a lot of good humor, good information, and I just have to tell you. I agree with all of you. I want you all to be satisfied. Is that okay, Mr. Chairman? I am not sure if that will happen, but I have learned some great new words I can use at my town halls too. Dadgummit. I appreciate that.

Mr. Thun, one of the counties in my district, in my home county, in fact, Lenawee County in Michigan, is an orphan county. It is in the Toledo market, and as great as Mr. Latta's local broadcaster's content may be, I am sure my constituents would prefer to be watching the Michigan-Ohio State game from a local Michigan affiliate.

Mr. Latta. They would lose anyway.

Mr. Walberg. And we have such comity.

Localism will be especially appreciated during the football season, as Chairman Wheeler used to put it.

Mr. Thun, can you help me understand why DIRECTV can't just import local out-of-market signals to serve subscribers in Lenawee County, for instance, or what would it take to ensure subscribers in Lenawee are able to receive local content?

Mr. Thun. In terms of the orphan counties, I think in every instance that a broadcast station has come to us, we have complied and been able to distribute it, except in cases where it was technically not feasible. In certain cases, our spot teams don't cover a particular area, so therefore, technically, we wouldn't be able to deliver it.

In the case of your particular example, I am not exactly well-attuned to what that particular area is, or what has been spoken to us, but we are absolutely, you know, receptive to looking at that. And if a broadcaster comes to us for the distribution there, to provide you with a Michigan point of view instead of the Ohio point of view, nothing

against the Buckeyes or nothing for necessarily the Wolverines.

Mr. Walberg. You are starting out well.

Mr. Thun. We are happy. We are supportive of that.

Mr. Walberg. Senator Smith, do you have anything to add to that?

Mr. Smith. Yeah. I would just note that in the last STELAR bill reauthorization, there was a provision, an authority given total FCC to deal with orphan county issues. We supported that. We worked with them. We hope that your county, if they are orphaned, will work through that process, and we have been able to address a number of these issues for a number of orphan counties.

Mr. Walberg. Senator Smith, can you walk me through how the distant signal compulsory copyright works versus the retransmission consent process?

Mr. Smith. Well, what it means, if, for example, Mitch McConnell's Bowling Green area, for some reason, that is not served with the local stations that are there. A distant signal is brought in from New York City to them. There are 12 markets like that. These are ones that AT&T, DIRECTV has not provided local, the way outlined in STELAR. And if STELAR went away, I am sure they would work with us, and I think local stations there would be anxious to find a price that they could deliver local into local. But as long as STELAR remains, they have an easy out.

Mr. Walberg. Could I assume that that sounds something like a subsidy if they could negotiate directly?

Mr. Smith. It is a subsidy. And if you add up all the market capitalization of every broadcaster in America, it will not equal the market capitalization of AT&T. So the question becomes, do they need a subsidy?

Mr. Walberg. Mr. Thun, your thoughts?

Mr. Thun. As I testified earlier, we do serve those communities. We do have a

solution, which is an over-the-air antenna, and part of that falls, is incumbent upon the broadcaster to provide a signal that is strong enough so that other people, other folks can receive it. They are not incented to provide a very strong signal, and we come in. We actually don't get paid for delivering them beyond their footprint that they are able to do, and so, they enjoy rates from us that are very handsome and continue to go out of control.

Like I said previously as well, the 12 markets that we don't serve, 11 of them are either duopolies, double duopolies, or triopolies, and every time we go into those kind of negotiations, the prices somehow are higher. So the deauthorization of STELAR or the lack of reauthorization wouldn't ensure that we would go into those 12 markets by any stretch.

Mr. Walberg. Okay. Thank you. I yield back.

Mr. Doyle. Thank you. The chair now recognizes Mr. Butterfield for 5 minutes.

Mr. Butterfield. Thank you very much, Mr. Chairman, and let me join my colleagues in thanking the witnesses for your testimony today. I have been ping-ponging between subcommittees, and I think Gordon understands that drill and how that works, but thank you for your patience.

Let me begin by making an observation. My district, as many of you may know, is very rural. Many of my constituents in the 1st District of North Carolina rely on satellite to receive their local news, to receive their content that really matters to their families.

And so, Mr. Smith, let me ask you: How would allowing the relevant provisions of STELAR to expire promote access to local programming in rural communities? Help me with that.

Mr. Smith. Well, if Mr. Walden were still here, I would share with him and you a

similar thing. I have a place up in the Blue Mountains of Oregon. I am a good DIRECTV customer, and we get L.A. news there. So I think if STELAR continues, that will continue. And I think if it goes away, I am sure Mr. Thun and I could work out a deal that we can fix these 12 markets, but that is left to people at a higher pay grade than we are, and our companies hopefully can get that done unless there is an out that allows them to bring in a distant signal.

Mr. Butterfield. My staff has very faithfully gone through your written testimony. I have not, I acknowledge that, but I depend on them greatly. They tell me that you question whether the good faith requirements currently imposed by Congress are necessary for fair and fruitful negotiating. Without the good faith rules, what would change from the consumers' perspective?

Mr. Smith. I think that a good side of the retransmission consent process now is that both sides are incentivized to come to a deal. We want them to have our product. We appreciate the resources it brings to us. It helps support local journalism. And they want more eyeballs, too, so we actually have a community of interest, but these are not things Mr. Thun or I are involved in.

Mr. Butterfield. Hopefully, Mr. Bergmayer can help us with that.

Mr. Bergmayer. Yeah, sure. I mean, first, my read of the statute and the FCC's rules is that good faith does apply to both sides, both MVPDs and broadcasters. I would say that just saying that negotiations have to happen in good faith without really clarifying what that means doesn't really get you that far, so that is why we have advocated that, you know, we actually put some teeth behind it so that you find that certain kinds of negotiation tactics that tend to harm consumers and drive up bills be considered bad faith, per se.

Mr. Butterfield. All right. Let me go to the other side of the spectrum, no pun

intended. Mr. Thun, let me ask you: How does the distant signal license provided by the current regulatory framework benefit rural consumers?

Mr. Thun. In a lot of rural areas, consumers are not able to get an over-the-air signal. And for those pockets that they can, we are able to provide a distant signal so they can get network programming, not local, but network programming, so that they can see the various pieces of content that they enjoy.

Mr. Butterfield. Would expiration of that affect local programming for the customer?

Mr. Thun. I don't know if it would do anything for local programming, but what it would do for those customers who can't get local programming because they get it through a distant signal, that would sunset, and I am not sure what process would take place for them to get that content.

Mr. Butterfield. Let me try this one: How do increasing programming fees affect your efforts to deploy broadband in currently underserved areas?

Mr. Thun. Well, like Ms. Boyers said earlier, we have multiple revenue streams, and one of them being video, and if that revenue stream is shrinking, that affords us less money to invest in other areas of the business, one of them being broadband. So just intuitive financial principle would dictate that if you are making less money in your business, you are going to have less money to spend in other areas.

Mr. Butterfield. Now, Ms. Boyers, you are in a rural community. Is that right?

Ms. Boyers. Yes, sir.

Mr. Butterfield. How would this affect your universe?

Ms. Boyers. How would the sunsetting --

Mr. Butterfield. Yes. As an operator, how would it would affect your community?

Ms. Boyers. It would affect us dramatically. They keep talking about this no good-faith complaints as a way of saying you don't need good faith rules. Rule breaking -- rules aren't made for breaking, so I think that it is a testament that we do all come to the table together under the guise of these, you know, mandated good-faith rules. And to be able to allow even other folks to come in under the guise guys of the good-faith rules, I find groups like the NCTC, on our behalf, would help us have lower rates, possibly, for those so we could have more money to deploy. But the good-faith rules are, you know, an important hanger for us.

Mr. Butterfield. Thank you.

Mr. Doyle. The gentleman's time has expired. The chair now recognizes Mr. Gianforte for 5 minutes.

Mr. Gianforte. Thank you, Mr. Chairman, and thank you to the panel. This has been very insightful, your testimony today. I appreciate getting the sides.

Consumers should have access to their local news. Our local stations provide -- serve a critical function in our communities in keeping public informed, connecting rural communities. In Montana, they really rely on the local stations for news and weather. Some communities in our State, including our State capital, Helena, however, does not receive their local station through DIRECTV.

What local news can DIRECTV subscribers in our State capital get? Well, New York or Los Angeles. People in Helena care about their community events, local weather, the coming wildfire season, not necessarily about standstill traffic on I-5, or the subway breakdown in New York City.

As more consumers look to cut the cord, I think providing viewers with their local broadcast stations would be an effective way to keep consumers. As we look at the TV marketplace, we should consider how to lower the cost to consumers and increase

competition, all while making sure neglected markets like Helena and Glendive are covered.

First, I would like to focus on getting prices down for consumers. I see constant news stories and I hear directly from my constituents that their pay TV bills are continually on the rise. Ms. Boyers, I appreciate your testimony today. Can you help us with this? How can we get consumers relief on the prices?

Ms. Boyers. To lower them. I mean, honestly, we are being pushed into a vacuum as the passive retransmitter of broadcast signal. We are their eyeballs. In a lot of areas, that is the only eyeballs they have because they can't do an antenna. They don't offer it on broadcast. So we are being penalized for being small and for being rural, and we are subsidizing the lack of the revenue generating in their business model. Now, if they can come up with a different business model and lower my rates, then I pass it on to my customer. We don't make a buck on retransmission consent.

Mr. Gianforte. And you testified earlier that 79 percent of your total P&L expenses are related to programming, not in local?

Ms. Boyers. Yes, sir.

Mr. Gianforte. Okay. Thank you for that.

Mr. Thun, as I mentioned, there is two markets in my state, including our capital, where DIRECTV does not provide local into local. Now, you have mentioned that you have an antenna option. The challenge we have, Montana, mountains, the broadcast doesn't work. So why can you not provide local stations to our State capital?

Mr. Thun. Well, I think we can. Just to be clear, we don't bring the distant signals into the heart of Helena. It is going into the outskirts where the white areas are. So our solution, as I said previously, is the over-the-air antenna that is integrated into our set top box.

Mr. Gianforte. But those over-the-air antennas don't work when you are in the mountains. Why can those citizens not get access to local news? What is the impediment today?

Mr. Thun. The impediment is that in certain cases, the broadcaster's signal technically probably can't get to certain of those areas. There is probably areas within the DMAs that you are --

Mr. Gianforte. But what is preventing it from going over your network?

Mr. Thun. What is preventing it? We have explored looking into these 12 markets, and as I testified previously, they are rife with duopolies, dual duopolies, and triopolies. So, in the absence of putting the signal over the air, it makes it very challenging for us to come to a market when we see what kind of prices that are being extracted in the retransmission.

Mr. Gianforte. Senator Smith, would you like to provide the broadcast perspective on this?

Mr. Smith. Yeah. I think there is no technological impediment any longer to AT&T's being able to provide this. There is plenty of competition. You have got to support the local stations there in Montana. We do that. Obviously if people in Helena want our stuff directly that is supported by advertising revenue, they just put up their digital antenna, but I do think the way you make sure AT&T does not provide it over their system is to renew STELAR.

Mr. Gianforte. Well, clearly we have difference of opinions. I appreciate the transparent testimony today. I look forward to working with you all to figure this out so our constituents are better served at prices they can afford. Thank you. I yield back.

Mr. Doyle. I thank the gentleman.

Mrs. Brooks, 5 minutes.

Mrs. Brooks. Thank you. Thank you, Mr. Chairman, and I, too, apologize. I have been running between a couple of different hearings, but what has been pretty clear to me is that there is not a lot of agreement from the panel, and so, I guess, I would like to start out by asking, and because I have kind of gone in and out of this hearing.

Senator Smith, could you please share with us -- and I apologize if this has been asked. Can you explain how retransmission consent prices are actually decided, because as I have come in and out of this, that seems to be the sticking point, or one of the sticking points. So can you talk about how those prices get decided?

Mr. Smith. Obviously, I don't negotiate them, and if Mr. Thun and I did, I am sure we would come up with a deal.

Ms. Boyers. \$0.12. \$0.12.

Mr. Smith. Their business people and our business people, my members, they sit down and negotiate, and I would just make the point that they pay for their own content far more than they pay for ours which is much higher watched. And so our members try to get the dollars reflected by the eyeballs that we bring to their system and ours.

Mrs. Brooks. And is that why prices might vary based on the size of the MVPD?

Mr. Smith. Of course.

Mrs. Brooks. Okay. And any disagreement, Mr. Thun? Anyone else on that answer? I am just trying to see if there is any agreement on --

Mr. Smith. Well, I mean, I would just say I have some sympathy for Ms. Boyers, because I am from a very rural part of Oregon. I know what it is like to be rural and left out, and yet, the economics of going into those places sometimes make it very difficult.

Ms. Boyers. I emphatically disagree. It costs absolutely no more from my head end to pick up that signal once it comes from their transmitter to my receiver. It comes down into my head end, and there is where I incur the expense, by the mile, to get an

aerial air underground to that customer. What they are charging me for is what gets to my head end, and then I turn around and passively retransmit for them. So it costs -- they have no more for me to get that signal than for them to transmit it right there in Cape Girardeau itself. However, I am paying 47 percent more. I don't understand that. I was really interested in that answer that is what we were supposed to get that you just asked. I have no idea other than the fact that we have no leverage, no bargaining power when we sit down, and it is take it or leave it.

Mrs. Brooks. And going back a little bit to, and while I appreciate you aren't actually, Senator Smith, in the negotiations, in those discussions, and in, you know, good-faith discussions, what are the factors as we have to explore how to go forward with this incredibly changing landscape?

Mr. Smith. I don't know because I am not in there, but I can imagine that comparables for other programming are evaluated, viewership, and ratings. Those probably come in to bear on what a broadcaster would ask, but I am just assuming that. I have never been involved in those negotiations.

Mrs. Brooks. I have a concern about blackouts as we have all heard from various communities and what happened, particularly as it relates to public safety. And can we talk a little bit more about the public safety issues that are created when we go into blackouts? And what is the longest period of blackouts we have had, and you know, what a kind of rules should we have around this issue of blackouts as it relates to public safety? Sure. All of you. I would like to finish with each of you very briefly talking about that.

Ms. Boyers. Blackouts are happening to other ACA members as well. I represent about 700 mom-and-pop, baby companies, and blackouts are happening. It is an issue, and it seems to me that although they say that even if there is a threat of a

blackout, 99.9 percent of those contracts are made, miraculously, you know. We have a member, Liberty, in Puerto Rico threatening of a blackout before the dadgum hurricane. Now, do you think that the leverage of Liberty saying yeah, I will pay your high prices are much more able to do that because they had a hurricane coming, and they wanted to be able to watch the radar. I find it compelling that all these additional blackouts seem to hover around times of negotiations of retransmission consent.

Mrs. Brooks. My time has expired, but I would certainly be interested in any other answers in written normal on how we resolve the issue of blackouts relative to public safety.

Mr. Smith. We would be pleased to provide that.

Mr. Doyle. The gentlelady's time has expired. The enter the following documents into the record: A letter from the American Television Alliance; a letter from Consumer Reports; a letter from the National Association of Black-Owned Broadcasters; a letter from Representative Golden; a letter from Ride TV; a letter from Rural Group Coalition; a statement from the Motion Picture Association of America; a broad post from Sports Fans Coalition; and a letter from R Street. Without objection, so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Doyle. I want to thank all of the witnesses, and Ms. Boyers, you can come and testify for me any time you want.

Ms. Boyers. Just ask and I will be here.

Mr. Doyle. I want to thank you all for being here today. And I want to remind members that pursuant to committee rules, they have 10 business days to submit additional questions for the record to be answered by the witnesses who have appeared, and I ask each witness to respond promptly to any such questions you may receive. At this time, the subcommittee is adjourned.

[Whereupon, at 12:59 p.m., the subcommittee was adjourned.]