

Attachment—Additional Questions for the Record

**Subcommittee on Communications and Technology
Hearing on
“STELAR Review: Protecting Consumers in an Evolving Media Marketplace”
June 4, 2019**

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

The Honorable Anna G. Eshoo (D-CA)

- 1. You stated that that your customers pay over \$12 for broadcast programming on their bills. How does this compare to other cable operators? Please provide a range, average, and median for this statistic for ACA Connects members, if such data is available.**

Response: Because broadcasters insist on contractual conditions forbidding disclosure of rates, I am unable to speak with any specificity on precisely what other system operators must pay. But I can share two data points with you.

First, based upon numerous conversations with small operators who have purchased systems from large cable operators, we know that the disparity in size between small operators and larger programming cartels results in us paying more for retransmission consent than larger cable systems. As I explained in my testimony, broadcasters consider the financial consequences for themselves of blacking out larger cable operators that serve a significant percentage of their viewing audiences. Because my system is so small the broadcasters consider the ramifications of withholding the signal as inconsequential to them, while a lethal threat for us. So, they simply charge more.

Second, in fact, we do have some empirical data that affirms this view. In the FCC’s first consolidated Communications Marketplace Report that was released on December 26, 2018, it found that smaller systems pay at least one third more than do larger ones.

This disparity is real. But it is also true that prices are going up for all systems—small and large alike. In a survey conducted in 2018, ACA Connects members reported that they will be forced to pay corporate broadcasters an average of 88% more in retransmission consent fees by 2020. Based on ACA Connects’ calculations, members were paying \$11.00 on average per subscriber per month in 2017, which will increase to an average of \$19.00 per subscriber per month by 2020. Nearly a quarter of those surveyed will see a drastic jump of at least 100% in fee increases in the next three years, and in one case that jump is expected to be 302%. For more information, you can visit this site: <https://acaconnects.org/corporate-broadcasters-force-exorbitant-rate-increases-on-cable-customers/>

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The Honorable Billy Long (R-MO)

- 1. Ms. Boyers stated that she is paying 47% more for broadcaster content than her competitors – like DirecTV. Can you each explain to me why that is happening?**

Response: I arrived at this figure by comparing our actual retransmission consent fees paid in aggregate in 2016 with the FCC's first Communications Marketplace Report (adopted December 12, 2018) estimate of large system fees for 2016. Our fees today are much larger than then.

As for why this is happening, as I explained in my response to Rep. Eshoo's question for the record, broadcasters have even more leverage over smaller systems like mine than they do over larger ones and exercise this market power without constraint.

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The Honorable Bill Flores (R-TX)

- 1. The video marketplace is decidedly different from when the 1992 Cable Act and the first Satellite Home Viewer Act of 1988 were signed into law. As we look to the landscape of the video marketplace of tomorrow, Congress needs to evaluate the appropriate government role in the marketplace to ensure consumers benefit from innovation.**
 - a. In today’s marketplace, how much is the government involved in the retransmission consent process?**

Response: In truth, the retransmission consent process is not a true business market in any sense of the word, because the government created the “market” with all sorts of rules and is involved in the process in all sorts of ways. To begin with, the entire broadcast “marketplace” is based on a system in which the government granted free “beachfront” spectrum to broadcasters in exchange for promises of public service. Indeed, the government even goes so far as to provide special enforcement protections for network exclusivity, which compounds the distorted “market” that we operate within. Even today there is an extensive slate of rules that favor broadcasters over cable operators.

- The government forces cable operators to include all local broadcast networks in any bundle of programming sold to subscribers. Thus, cable subscribers must purchase access to all broadcast networks as a precondition of purchasing access to any other programming. While the buy through is a statutory provision, the FCC can clarify that it does not apply where there is effective competition, giving cable operators the right to legally carry higher-cost retransmission consent channels on tiers of service for those who want to pay for it and not on the basic level of service sold to all.
- The government mandates that cable operators and satellite operators offer all broadcast programming “without material degradation” and at the “same quality of signal processing and carriage” offered any other programming. Broadcasters have suggested that this rule requires carriage of the “entire bandwidth” of a signal without compression and may even prevent cable operators from converting ATSC 3.0 signals into a format cable viewers can receive. The FCC chose not to address this issue in its Order. The concept of “material degradation” is found in the statute, but here again the FCC can change its rules to clarify that it does not apply (1) to retransmission consent stations; (2) where effective competition applies; and/or (3) to prevent conversion of new technical formats to formats consumers can actually view.
- The government requires cable operators and satellite carriers to give special preferential treatment for broadcasters in channel placement.

- The government imposes “network nonduplication” and “syndicated exclusivity” rules. Those rules enable stations to enforce exclusivity (monopoly) arrangements negotiated with networks and syndicators against satellite and cable operators who are not parties to those agreements.

These rules may be necessary in the context of must-carry for non-“Big 4” network stations. They are both unnecessary and inappropriate in the context of retransmission consent, which is supposed to be a free-market negotiation for carriage.

b. What should the government’s role be in the video marketplace to encourage future innovation?

Response: As I said in my testimony, I’m not one to ask for Congress to get involved in my market. I’m generally of the view that businesses should do their best to solve their own problems, and cable operators have sought to do this. But, as discussed above, Congress is already involved in my market, and, in fact, Congress created it. And, at this point, things have gotten so bad that I’m left with no choice but to encourage Congress to examine these issues now. Every time Congress has renewed the 1988 Satellite Home Viewer Act, it has considered issues about the video marketplace more generally and has often included such proposals in its updates. I can think of no good reason why it would not do the same here.

c. Is what we have today a pure free market?

Response: As describe above, the answer is an emphatic NO.

i. If not, what policy changes would help it achieve free market status?

Response: Let me start by saying that eliminating the special benefits for broadcasters described above would come closer to creating a free market. These changes would not, however, address broadcasters’ willingness to charge smaller cable system operators more than they charge larger ones. One free-market change that would help in this regard is suggested in my testimony: adjusting the “good faith” rules so they cover negotiations between large broadcast station groups and buying groups of small cable operators. Negotiations between broadcasters and buying groups resemble a “free market” negotiation far more than do negotiations between broadcasters and small cable system operators whom they do not care about.