

**One Page Summary of Written Statement of Patricia Jo Boyers  
President and Vice Chairman of the Board of BOYCOM VISION and  
Vice Chairman of ACA Connects – America’s Communications Association  
Before the House Energy and Commerce Committee  
Subcommittee on Communications and Technology  
“STELAR Review: Protecting Consumers in an Evolving Media Marketplace”**

I helped found BOYCOM VISION, a small cable system in the Ozark Mountains, in 1992. You’re going to hear a lot today about the amazing things going on in the evolving media marketplace. But I’d like to tell you about how things look from my corner of southeast Missouri.

I’d like to focus in particular on “retransmission consent” agreements between companies like mine and television stations. If you were around the last time Congress considered satellite legislation, you heard us talk about double-digit increases, blackouts, and forced carriage of junk channels. This still happens today. And it’s a far cry from what Congress expected when it created a special rule in reliance on NAB’s promises that prices wouldn’t go up and that any fees would stay with the local station.

Recent changes in the marketplace, however, have made things far worse. First, **individual broadcasters now control multiple “top-four” network feeds** in more than a hundred local markets – and sometimes control three or even four such feeds – despite FCC rules that are supposed to prevent this kind of anti-consumer consolidation. Second, **broadcasters have gotten much bigger nationally**, with behemoths like Sinclair and Nexstar controlling more than one hundred stations across the country. Third, **broadcasters increasingly bundle other “marquee” programming networks with their signals** – raising consumer prices for both. This means that broadcasters have more market power than ever before, and certainly more than Congress expected, and cable subscribers pay the price.

So things are bad for everyone. But **they are especially bad for smaller providers like mine**. The FCC says that we pay at least one-third more for retransmission consent than do larger providers – even though the programming is the same and the cost of delivery is the same. Why? Large broadcasters simply don’t care if they aren’t carried on systems like mine, so they can charge more. How bad have things gotten? Some of the smallest providers have exited the video business entirely, and *every* small provider (including me) has considered the possibility. In the meantime, problems in the retransmission consent market have hindered us from upgrading our broadband networks and deploying in the most rural of areas, all of which contradicts constant bipartisan and bicameral calls for solving the digital divide.

I hate the idea of Congress having to get involved in my business. But at this point, something needs to be done. We have tried to employ market solutions, but large broadcasters have chosen not to deal with small cable operator buying groups, like the National Cable Television Cooperative (“NCTC”). Congress should consider approaches like the prior “Local Choice” proposal, Rep. Eshoo’s Video CHOICE Act, and Rep. Scalise’s Next Generation TV Marketplace Act. We are open to other approaches as well. **The important thing, however, is that Congress do something to protect my customers and millions of your other constituents served by companies like mine.**

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**June 4, 2019**

Chairman Doyle, Ranking Member Latta, and Members of the Subcommittee, I am Patricia Jo Boyers, founder, President, and Vice Chairman of the Board of BOYCOM VISION. Thank you for inviting me to testify today on behalf of ACA Connects – America’s Communications Association, of which I am the Vice Chairman, regarding renewal of satellite legislation. I’d like to talk to you about how the video business looks from my small corner of Missouri, and my story may sound a little different than what you are likely to hear from my esteemed co-panelists.

My husband and I started BOYCOM VISION in 1992. With our own money, we built our first system to serve our friends, family, and others living in the foothills of the Ozark Mountains of southeast Missouri. Because banks weren’t eager to lend to small rural providers and getting Rural Utilities Service loans as a cable operator was impossible, we did it on our own, which meant taking out a second mortgage on our home and our farm as collateral for our capital investment.

Over time, we invested more in our systems to ensure that our customers had access to advanced services. Today we provide broadband at speeds comparable to those in urban areas to about 3,000 residential subscribers, local businesses, and anchor institutions, including free service to our middle and elementary schools.

Our systems are *very* rural and these are the kinds of places I hear Congress talk about all the time as needing help to ensure there is broadband everywhere. Let me explain what my reality of

providing broadband service looks like in the Ozarks and why I urge you to help small operators like me to help you solve your national challenge of providing world class services everywhere.

We have a population density of 18 homes per mile passed. And all eight of our core systems are in what we in Missouri call “perpetually impoverished counties.” This means they have been below the poverty line consistently since the 1960 census. In other words, we have a *very* price-sensitive population that is expensive to reach in those “end-of-the-world-and-turn-left” places.

This morning you are going to hear about many of the wonderful things going on in the video industry. You are going to hear about how great it is to watch *Game of Thrones* on your smart phone, or to binge watch the latest drama from Netflix on your tablet, or to be able to watch the Boston Red Sox every night when you live in Los Angeles. And all these things really *are* great for many Americans. But things look a little different in communities like mine.

I’d like to talk about one area in which the video business *isn’t* great: carriage of broadcast television and the reason that problem hurts my ability to provide broadband. If you’ve observed the cable television business generally for any amount of time, you know about the problems concerning retransmission consent. That last time ACA Connects spoke to you about satellite TV legislation, we told you about price hikes of nearly 40 percent per year. We told you about the skyrocketing number of broadcast blackouts. And we told you about requirements that cable operators carry programming our subscribers don’t want, like Retro Television Network, MeTV, and Antenna TV, each of which features reruns. These problems remain, despite Congress’s efforts to address them in the Satellite Television Extension and Localism Act Reauthorization Act of 2014 (“STELAR”).

You might say that this is merely the “marketplace” that Congress intended when it wrote the rules in 1992. But you’d be wrong for three reasons. Congress wrote the retransmission consent rules with the reliance on NAB’s promises that it would *not* lead to price increases or significant

revenue for broadcasters and I cite their statements below.<sup>1</sup> Yet cable subscribers now pay as much as \$20 per month just for what they are told is “free” broadcast programming. And retransmission consent brings stations billions every year – and is now the most important revenue stream for many broadcasters. Second, Congress created this unique set of rules not simply to establish a marketplace but instead to *promote and subsidize localism*. Indeed, in seeking retransmission consent, NAB *specifically said that it had nothing to do with networks at all.*<sup>2</sup> Yet we all know that, in today’s world, most of our subscribers’ fees go to the networks in New York or to huge multi-station conglomerates, and we hear that from the smaller broadcasters who complain to us (but not to you) about the scheme that they too have to live within. And we all know that almost none of these fees goes to local news or other locally originated programming. Third, retransmission consent is merely one government rule in a complex web of regulation, most of which favors broadcasters – hardly a real “marketplace.”<sup>3</sup> The drafters of the 1992 Cable Act would be horrified to see the unintended results of their concept.

And I’m here to tell you that recent changes in the marketplace have made the situation much worse.

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<sup>1</sup> National Association of Broadcasters, “How to Respond to Cable’s Attacks on Retransmission Consent” (July 31, 1991) (“Cable claims that the retransmission consent option in S.12 would provide the broadcast industry with an additional \$3 billion in revenue. This allegedly would represent a 20% “surcharge” on the rates paid by each cable subscriber. . . . These charges are false and misleading. . . . There is no reason to assume that cable consumers would see any increase in their monthly cable bills because of retransmission consent.”).

<sup>2</sup> *Id.* (“Retransmission Consent is a network plan. . . . This is sheer nonsense. Nowhere in S.12 is there any mention of network participation whatsoever. Retransmission consent is a right granted to stations in their local areas. Networks are not involved in any negotiations.”)

<sup>3</sup> See Letter from Timothy Lee to Douglas Rathburn (May 29, 2018) (letter from the Center for Individual Freedom to the Department of Justice describing regulations distorting retransmission consent negotiations in favor of broadcasters).

**First, broadcasters increasingly control multiple “big-four” networks within local markets**

(although, fortunately, this has not yet happened in my market). Obviously, if you can black out two (or more) of the big-four networks from a cable operator, you have more leverage in negotiations, and therefore, you can charge more. FCC rules nominally prohibit such combinations. But that rule contains exceptions that broadcasters have increasingly exploited. The American Television Alliance, of which ACA Connects is a member, has identified 110 instances of such duopolies, triopolies, or quadropolies formed using these loopholes.<sup>4</sup>

**Second, broadcasters have gotten much bigger nationally.** Five years ago, you had many small to medium-sized station groups. Now, you have behemoths like Sinclair (which operates in more than 100 markets) and Gray (which operates in 93 markets).<sup>5</sup> If Nexstar is permitted to merge with Tribune (and not counting divestitures), the resulting entity will hold a combined 216 local TV stations in 118 markets across the country, covering 72 percent of the country’s population. These huge groups have more leverage in their negotiations with MVPDs and can therefore charge higher rates.<sup>6</sup>

**Third, broadcasters increasingly combine with other “marquee” programming, especially regional sports networks** (although, again, this has not yet happened to my systems). In particular, Sinclair is looking to acquire 21 regional sports networks from Disney.<sup>7</sup> Just as your leverage is

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<sup>4</sup> See Comments of the American Television Alliance, Federal Communications Commission Media Bureau Docket No. 18-349 Exh. A (filed Apr. 29, 2019).

<sup>5</sup> See Appendix A hereto.

<sup>6</sup> DISH Network Corporation has conducted two recent economic reports showing the connection between large station groups and higher fees. See Petition to Deny of DISH Network Corporation, Exhibit B: Declaration of William Zarakas and Dr. Eliana Garcés, *Tribune Media Company and Nexstar Media Group, Inc.*, Federal Communications Commission Media Bureau Docket No. 19-30 (filed Mar. 18, 2019).

<sup>7</sup> Sinclair Buys Regional Sports Networks From Disney in \$10.6 Billion Deal, *N.Y. Times* (May 3, 2019).

higher when you control two network affiliates in a market, your leverage is higher when you control one (or more) network affiliates *and* local professional baseball, basketball, or hockey games with incredibly loyal fans.

What has this all meant? **Broadcasters have even more market power than they did five years ago and charge even higher prices.** This means that cable subscribers now pay more and more each month for retransmission consent. It means that blackouts are at or near an all-time high.<sup>8</sup> It means that the market is failing, and consumers are paying the price. In terms of what these costs look like since enactment of the retransmission consent rules, consumers have seen quadruple-digit increases in retransmission consent fees and yet have less local content and less choice than before the law was enacted.

**These changes are bad for everyone. But they are especially bad for small cable operators like mine and for customers in rural areas.** We have always gotten the short end of the stick in retransmission consent negotiations. But the imbalance in negotiating leverage between me and broadcasters has increased enormously as they have grown. Broadcaster growth may not mean so much to Comcast. But it sure means a lot to me.

If you take one thing away from this hearing, it should be this: **The retransmission consent market today harms small cable system operators and their customers even more than it harms large cable system operators and their customers.** You don't have to take my word for it. Last December, the FCC released a report that contained new information about retransmission consent rates paid to broadcasters by different types of cable operators.<sup>9</sup> The report showed that small cable

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<sup>8</sup> See <https://www.americantelevisionalliance.org/wp-content/uploads/2019/05/Retrans-Blackouts-Media-Center-.pdf> (containing up-to-date list of blackouts).

<sup>9</sup> *Communications Marketplace Report*, Report, FCC No. 18-181, GN Docket No. 18-231 (rel. Dec. 26, 2018).

systems, which we know are primarily located in rural areas, pay even more for broadcast signals than do large systems, which we know are primarily located in urban and suburban areas. Small systems pay at least one-third more than large systems pay for retransmission consent. Because cable operators pass such fees along to customers, rural cable subscribers pay much more for nominally “free, over-the-air” broadcast programming than do their urban counterparts.<sup>10</sup> Small cable operators not only suffer from paying higher fees, we are also subject to more onerous terms and conditions, including bundling demands for programming we don’t want to carry. Based on my own experience, the FCC is right. Indeed, I’m positive that the *real* difference between what large broadcasters charge the largest cable operators and the very smallest ones is even larger.

This disparity has nothing to do with any real-life differences between rural and urban cable systems. The network programming is exactly the same, and the non-network programming is, if anything, of less value to rural viewers because local news tends to focus on more populated parts of the market. The costs of delivering the broadcast signal to the cable system headend are largely the same – although it certainly costs *me* a lot more to string cable and fiber to reach my rural customers than it costs a more urban cable operator serving a densely populated area. In short, this discrepancy instead has to do with simple leverage. Where a large broadcaster negotiates with Comcast or Charter, it has something to lose if it withholds retransmission consent. Where it negotiates with us, the outcome means almost nothing to its bottom line. What does this all mean for systems like mine? Well, at the risk of repeating myself, it means that my subscribers pay more for the same programming than do folks who live in St. Louis or New York City and it actually threatens my

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<sup>10</sup> For small systems that cannot receive the broadcaster’s signal over the air, the cost is significantly greater because these systems incur the cost of obtaining the signal through alternative means, like fiber, and the costs of this transport can be the same or greater than the cost they pay in retransmission consent.

ability to survive. **This is nothing but a “rural TV surcharge” or “rural subsidization of cities,” and it’s not fair, and it is not smart policy.**<sup>11</sup>

**In the longer term, these factors place the cable television business itself in jeopardy for smaller operators like mine.** Indeed, a handful of the smallest video providers have exited the video business entirely and become broadband-only providers. *Every* small to medium-sized cable system – including mine – has at least considered the possibility. And I don’t think I need to tell you how bad it would be for your constituents – especially older constituents less likely to turn to streaming services, and *especially* those living in rural areas like those my company serves – if small- and medium-sized cable operators were to conclude that they could no longer survive in the video business.

**Even worse, these increased retransmission consent fees are affecting our ability to deploy broadband.** As Craig Moffett pointed out in an earlier hearing before this subcommittee, it’s harder to deploy broadband networks relying on one stream of revenue (broadband) than it is with two streams of revenue (broadband and video). As he put it, this “means that operators have to be able to earn an acceptable return on deploying broadband absent any contribution from video.” He continued, “[a]nd almost by definition, that means higher prices for broadband (assuming that video contributed anything more than zero to profits in the past).”<sup>12</sup>

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<sup>11</sup> Consistent with this testimony, in 2010, Professor William Rogerson of Northwestern University wrote a paper on the economic effects of price discrimination in retransmission consent agreements. He concluded that, while price discrimination has desirable effects in some markets, no such rationale applies in the case of retransmission consent. He added that “the main effect of price discrimination in this case, is simply to allow broadcasters to charge higher prices to MVPDs that possess less bargaining power.” Comments of the American Cable Association, Federal Communications Commission Media Bureau Docket No. 10-71, Appendix A (filed May 18, 2010).

<sup>12</sup> House of Representatives, “State of the Media Marketplace,” Subcommittee on Communications and Technology, Committee on Energy and Commerce (Sept. 27, 2018), <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/20180927-CAT%20State%20of%20the%20Media%20Marketplace.pdf>.

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I hope you see how things look different from my small corner of southeast Missouri. If you come away from this hearing understanding that not every part of the industry is doing great, that many of your constituents – especially older and rural customers – are being harmed right now, and that things may get a great deal worse if Congress doesn't act, then I have done my job.

I should, however, spend a moment talking about solutions. 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, 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.

**One place Congress can help is with respect to buying groups.** One thing that has helped keep the smallest cable operators like mine afloat is the good work of the National Cable Television Cooperative in negotiating deals with large national programmers.<sup>13</sup> NCTC negotiates standardized master agreements with these programmers and allows its members to opt into them.<sup>14</sup> Because NCTC acts as an interface between programmers and its members, it allows the programmer to deal with a single entity for purposes of negotiating contracts, determining technical standards, billing for

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<sup>13</sup> NCTC has master agreements with the vast majority of cable networks, including at least 45 of the top 50 networks. Almost all small- and medium-sized MVPDs are members of the NCTC and purchase a substantial share of the programming they distribute through the NCTC. Letter from Barbara Esbin to Marlene Dortch, Federal Communications Commission Media Bureau Docket No. 12-68 (filed Apr. 15, 2014).

<sup>14</sup> See generally *Revision of the Commission's Program Access Rules*, 27 FCC Rcd. 12605, ¶ 85 *et seq.* (2012) (describing NCTC's and ACA Connects' advocacy with respect to how the program access rules treat buying groups).

payments, and collecting payments, along with other matters. National programmers especially benefit from working with NCTC because it reduces their transaction costs of dealing with small- and medium-sized cable operators so that they are comparable to the transaction costs of dealing with a single large provider. NCTC members benefit because they receive lower rates (sometimes significantly lower) than they would receive through direct deals.<sup>15</sup>

In recent years, as broadcast station groups have grown larger, small cable operators have encouraged the NCTC to negotiate agreements with broadcast groups. The NCTC has sought to do so, and has reached agreements with large groups like Sinclair, Quincy, and Hubbard. In those agreements, the respective broadcasters saved significant amounts on transaction costs, and NCTC members got lower prices than they could have on their own. However, even our attempts at addressing our concerns through market solutions have been thwarted because many large broadcast groups choose not to deal with NCTC, and that is not a violation of the good-faith rules.

**With respect to retransmission consent more broadly, all ideas are on the table.** One good idea is an idea called “Local Choice,” which would essentially get us out of the business of being a middleman between broadcasters and their viewers. Other good ideas can be found in Rep. Eshoo’s Video CHOICE Act and Rep. Scalise’s Next Generation Television Marketplace Act, which were introduced during the last satellite legislation reauthorization. And ACA Connects and the American Television Alliance, of which ACA Connects is a member, have many ideas to share with you as well. **The important thing, however, is that Congress must take action to make things better for my customers and for millions of your constituents in rural areas throughout the country.** I look forward to working with the Subcommittee as you do so.

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<sup>15</sup> See Comments of the American Cable Association, MB Docket No. 12-68, at 2-3 (filed Dec. 17, 2012) (noting that the rates NCTC can negotiate remain higher than those negotiated by the largest providers in the market).

Written Statement of Patricia Jo Boyers

June 4, 2019

Page 10

Thank you again for having me. It has been an honor.

## APPENDIX 1

### Top 20 Station Groups: Key Statistics

Group	Full-Power TVs	Markets	Total Coverage	FCC Coverage	Retrans Fees (millions)	Ad Rev (millions)	Total Rev (millions)
Nexstar	141	114	63%	39%	1300	2400	3660
Sinclair	106	89	39%	25%	1000	1600	2640
Tegna	58	50	37%	30%	919	1500	2390
Fox	28	17	37%	25%	829	1600	2380
CBS	27	18	38%	25%	718	1500	2230
NBCU	28	29	37%	20%	675	1400	2080
Gray	109	95	24%	17%	603	1500	2050
Scripps	48	43	31%	21%	391	1100	1450
ABC   Disney	8	8	22%	21%	456	975	1430
Univision	41	25	45%	24%	459	788	1240
Hearst	32	27	19%	13%	364	833	1190
Terrier (Apollo)	24	20	13%	7%	265	579	884
Meredith	16	12	11%	7%	225	482	707
Graham	7	6	7%	4%	127	370	497
Quincy	18	16	3%	2%	54	164	218
Sunbeam	3	2	4%	3%	34	152	186
Hubbard	7	7	3%	2%	59	112	171
Entravision	24	24	14%	7%	37	121	158
Ion	64	61	68%	34%	0	149	149
Weigel	9	9	14%	7%	9	129	138

Source: Mark K. Miller, Nexstar Is The Star Of TV Station Groups, TV NewsCheck (May 31, 2019) <https://tvnewscheck.com/article/top-news/235386/nexstar-is-the-star-of-tv-station-groups/>