

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**

Mr. Gordon H. Smith, President and CEO, National Association of Broadcasters

The Honorable Anna G. Eshoo (D-CA)

- 1. You stated that broadcast programming represents just \$0.12 on an average cable bill. Please provide details on how you calculated this number, what’s included in this calculation, and what’s excluded from it. You also stated that the Association follows this number closely. Please also provide how this number has changed over time and include the equivalent statistic for each of the last ten years.**

Response: According to data obtained from SNL Kagan, a media and communications research firm, broadcast retransmission consent fees constituted 12.77 cents of every programming dollar on an average cable/satellite bill in 2016. This is the data on which my response before the Subcommittee relied. The total programming costs from which that percentage is derived include the fees paid to basic cable channels, regional sports networks, premium cable channels and broadcast channels. (Note: The figure is 13.89 cents of every programming dollar when calculated according to SNL Kagan’s most current data.)

The fees paid for broadcast programming as a percentage of the overall cable bill dollar – as referenced in your question - would be substantially lower. An average cable bill includes rental fees for set top boxes, installation costs, taxes, and significant profit margins, all of which diminish the proportion of the bill attributable to retransmission consent fees. These costs were excluded from the 12.77 cents figure that I provided the committee.

Historically, broadcast industry retransmission consent revenues have increased over the last decade, however NAB itself does not track this number. That growth needs to be viewed in context. For more than 10 years after passage of the 1992 Cable Act, broadcasters received no monetary compensation for retransmission of our signals, even while less popular channels with far lower ratings were paid handsomely. So while, broadcaster retransmission consent fees have grown over the past decade, they were starting at a significant below market level. Even today, broadcasters are undercompensated for our programming relative to our pay-TV competitors on a per-viewer basis. Further, there is no correlation in the growth of retransmission consent fees relative to a consumer cable bill. Over the past 25 years, annual cable bill increases have exceeded the rate of inflation nearly three-fold, and those annual increases have remained consistent irrespective of any changes in broadcast retransmission consent fees.

Retransmission consent revenues are vital to broadcasters' investment in locally-focused news, journalism, weather and emergency programming coupled with network entertainment and sports that remains the most watched. In today's hyper-competitive media environment, where consumers have more choices of what to watch and how to watch it, broadcasters compete with an increasing number of cable programmers and online video providers for the best content and talent, all of which drive up the cost to produce high quality programming. In spite of this competition, 95 of the top 100 shows aired on broadcast television in 2018.

2. What is the average, median, and range amount that broadcast networks charge their local broadcast affiliates (i.e., reverse retransmission consent fees)?

Response: NAB does not have visibility into the specific terms of these individually-negotiated private contractual agreements. The relationship between affiliate broadcast stations and their network partners is the bedrock of U.S. broadcast television and the envy of other countries. It is an effective and efficient delivery system for both national and local programming that hundreds of millions of Americans rely on for local news, weather, sports and entertainment programming. Like franchise agreements in other industries, the symbiotic relationship between national and local broadcast partners has led to a thriving local broadcast industry which continues to serve and inform viewers, even at a time when the pay-TV marketplace is undergoing massive change.

3. NAB is advocating for the expiration of good faith rules instituted in the *STELA Reauthorization Act of 2014*. How would consumers benefit from the expiration of good faith rules?

Response: In the nearly 20 years since Congress passed these provisions, the FCC has decided only seven good faith complaints – and has found a violation of the requirement on only one occasion. Though the same cannot be said of pay-TV, no broadcaster has ever been found to be in violation of these rules. While well intended, the expiring good faith requirements have provided no quantifiable benefit to either broadcasters or pay-TV providers. This is in large part because both parties have every incentive to reach a deal and serve consumers without a regulatory requirement.

This little used regulatory framework simply does not justify STELAR's reauthorization, which at its core harms local viewers by dis-incentivizing carriage of local broadcast stations in certain markets. STELAR's subsidy to billion dollar satellite providers – AT&T/DirecTV and DISH – through its distant signal license incentivizes carriage of out-of-market stations with no technological justification cannot be justified and should be sunset as Congress intended.

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The Honorable Robert E. Latta (R-OH)

- 1. How can we ensure that constituents like mine, in rural areas, are not disproportionately impacted by either reforming or repealing STELAR?”**

Response: STELAR currently enables satellite providers to deny viewers in 12 mainly rural markets access to the local broadcast channels in their communities. Instead, AT&T/ DirecTV imports broadcast stations from New York City or Los Angeles because it can do so at a below-market rate pursuant to STELAR’s distant signal license. Extending this legislation by another five years, or even another five days, means that many rural viewers that are being neglected by the satellite companies will continue to be harmed. When the distant signal license expires, the marketplace will work to ensure that these viewers – as with every other market in the country – will continue to receive network programming, and that the programming is delivered through a local rather than out-of-market broadcaster.

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Mr. Gordon H. Smith, President and CEO, National Association of Broadcasters

The Honorable Adam Kinzinger (R-IL)

- 1. Senator Smith: Five years ago, when Congress passed STELAR, broadcasters did not oppose that effort.**
 - a. What about the video marketplace has changed in the last five years that makes you confident now that STELAR is no longer necessary and Congress can let it sunset?**

Response: Today, there are no technological barriers to the satellite companies carrying local stations in all local markets or competitive reasons to subsidize the mature satellite industry. Further, developments in the flourishing Over-The-Top (OTT) marketplace over the last five years demonstrate a successful mechanism for negotiating the carriage of broadcast (and many other types of) programming. All of this is done without STELAR-like compulsory copyright licenses that now unfairly benefit one type of service over others, while serving as an incentive for AT&T/ DirecTV to continue to harm viewers where it refuses to carry the local broadcast stations. The U.S. Copyright Office has recommended that STELAR should expire and broadcasters agree.

- 2. Senator Smith: Currently, companies such as DirecTV-Now and Sling TV have the ability to enter into agreements with local broadcasters for carriage agreements.**
 - a. Can you explain the differences between the current laws governing those carriage agreements and what the legal and business landscape would be like if STELAR were to expire?**

Response: If STELAR were to expire, the satellite companies would be incentivized to negotiate carriage of local broadcast channels. This is a clear win for consumers. In cases where they still desire to offer an out-of-market station, there would be no difference between the way the two satellite companies themselves contract for the carriage of broadcast programming on their OTT platforms. In each case, the marketplace would govern these carriage agreements and broadcasters have every incentive to be on as many platforms as possible, to reach our audiences, whenever, wherever they are watching.

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The Honorable Gus M. Bilirakis (R-FL)

- 1. Senator Smith – local broadcast stations play a critical role in my district, when it comes to keeping our communities safe and informed, particularly during Hurricane season.**

This is particularly true for our seniors, who may not use other technologies for information gathering.

STELAR enables satellite companies to import out-of-market broadcast programming rather than carrying the local stations.

How does this impact viewers ability to receive relevant information during times of emergency?

Response: STELAR incentivizes the satellite operators to import the distant signal of a New York City or Los Angeles broadcast television station to subscribers in markets like Bowling Green, Kentucky and Glendive, Montana rather than their local broadcast stations. As a result, subscribers in those markets are deprived the local news and emergency weather coverage on which they would otherwise rely.

At the law's outset, the technology simply did not exist for the nascent satellite industry to provide viewers their local broadcast stations. Fortunately, that is no longer the case and there is no technological justification for the multi-billion dollar satellite industry to avail themselves of this congressional subsidy instead of investing in the local carriage that will better serve their viewers.

STELAR is an outdated law whose main function now is to deprive local viewers in small, rural markets from receiving what is in some cases life-saving emergency and weather alerts, among a host of other valuable information and services that local broadcast stations offer their communities. For the benefit of viewer safety during a natural disaster or other emergency situation, especially vulnerable populations like seniors who rely on broadcast programming, Congress should allow STELAR to sunset at the end of this year as scheduled.

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Mr. Gordon H. Smith, President and CEO, National Association of Broadcasters

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 sympathize with Ms. Boyer's frustration. Just as there are large and small cable operators, I represent both large and small broadcasters. As a result, I hear similar concerns from small market broadcasters who are negotiating with titans such as AT&T and Charter. Yet rightfully the rates and terms that a local broadcaster and an MVPD agree on reflect the market for the content and signal of the broadcaster to the MVPD and its subscribers.

Regardless of the geographic market or size of the cable system, broadcasters remain the most-watched and most-relied upon video content available today. Unlike cable channels, which in some cases have been charging carriage fees to MVPDs for their channels since the early 1980's, the first broadcaster did not start receiving monetary considerations for the carriage of a local channel until 2003, and they were not a standard part of retransmission consent negotiations for the broadcast industry overall until years later. As a result, this marketplace is still evolving and the nature of these negotiations reflect it. But the bottom line is that broadcasters are incentivized to have our content watched by as many people as possible in whatever ways viewers find most convenient to receive our channels including through cable and satellite providers.

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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: There is rightfully limited government involvement in the marketplace negotiations for retransmission consent of broadcast programming. One exception is the authority of the statutory requirement that broadcasters and MVPDs negotiate for carriage in good faith. These provisions, set to expire at the end of this year as part of STELAR, apply only to the carriage of broadcast programming (not the other hundreds of non-broadcast stations on your cable dial) and are scarcely used. In the nearly 20 years since Congress passed these provisions, the FCC has decided only seven good faith complaints – and has found a violation of the requirement on only one occasion. Though the same cannot be said of pay-TV, no broadcaster has ever been found to be in violation of these rules.

While well intended, the expiring good faith requirements have provided no quantifiable benefit to either broadcasters or pay-TV providers. This is in large part because both parties have every incentive to reach a deal and serve consumers without a regulatory requirement. However, the ability of either party to appeal to the government for regulatory intervention has created the potential unintended consequence of diverting time and attention from resolving the negotiation in a timely fashion in favor of posturing.

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

Response: The government can encourage future innovation by deregulating the video marketplace in the form of allowing STELAR to expire. This three decades old law was originally created to prop up a nascent satellite video industry (via government mandated terms and conditions for access to broadcast programming) and enable it to better compete with cable monopolies. Today, AT&T/ DirecTV and DISH are two of the largest pay-TV providers in the nation, yet continue to abuse the distant signal license in STELAR and deny many subscribers access to local broadcast programming on their systems. Allowing STELAR to expire would remove the below-market subsidy given to these satellite companies and require them to

negotiate for carriage of broadcast programming in the marketplace, just as their cable and OTT competitors do.

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

Response: Although retransmission consent rights themselves are negotiated freely between two private parties in marketplace, compulsory copyright licenses and exclusivity protections do exist to ensure that viewers are incentivized to receive their local broadcast television stations rather than an out-of-market substitute. The exception to this locally-focused regime is STELAR's distant signal license which distorts the free market while also discouraging local carriage.

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

Response: Congress should allow the expiring provisions of STELAR to sunset as scheduled at the end of this year. Elimination of the distant signal satellite license and good faith regulations would move the system closer to free market status.