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

The Honorable Anna G. Eshoo (D-CA)

1. **You stated that your customers are paying more than the $0.12 statistic that Senator Gordon Smith cited at the hearing. How much are your customers paying for broadcast programming? Please provide this figure as a dollar amount and percentage of customers' bills.**

    a. **If the amount fluctuates by market, please provide a median, average, and range for the statistics.**

    b. **How have these numbers changed over time?**

    c. **If you're unable to share these numbers, do contractual provisions prohibit you from disclosing these numbers?**

Response: AT&T's video customers are paying much more for their local broadcast stations than the $0.12 per month fee that Mr. Smith cited. In fact, Mr. Smith's 12-cent estimate is closer to the average a customer pays *on a daily basis* for a *single* local broadcast station We are not sure how Mr. Smith came up with his figures, but they are in no way reflective of the carriage fees of the broadcast stations that his organization represents. Based on publicly available estimates, local broadcast carriage fees are the largest and quickest growing portion of customers' bills, and even NAB concedes this represents about 16% of an average pay-TV bill.[1]

These fees have skyrocketed by an astounding 2,000% from 2008 to 2018. Local broadcasters demand these increases even though primetime audiences for their programming have fallen by more than half, according to independent analysts like Nielsen and SNL Kagan. This is not a sustainable trajectory.

As your questions anticipate, while we are happy to share industry numbers, our company-specific fee information is competitively sensitive and confidential, and our carriage agreements with local broadcasters require us to treat it as such.

[1] https://www.multichannel.com/news/aca-members-believe-retrans-fees-will-rise-88-2020-418199

2. **How are consumers impacted by good faith rules today? If Congress strengthened good faith rules, how would that impact consumers?**

Response: Existing good-faith rules help keep pay-TV prices and blackouts down by providing an important backstop to these negotiations. We still have issues with stations refusing to negotiate fairly or even respond to offers in certain cases. That broadcasters oppose reauthorizing this provision is troubling and emblematic of the challenges we face under the current law. Just last month, AT&T filed a complaint with the FCC alleging that nine station groups affiliated with Sinclair were violating the FCC's good faith rules.

Strengthening the good-faith rules could encourage broadcasters to enter into more reasonable agreements and avoid blackouts. At a minimum, we think the rules should be retained and made permanent. We also believe they should be strengthened to prohibit clearly egregious behavior.

For example, we are increasingly finding that local broadcasters enter into joint service agreements to coordinate and collaborate in negotiation tactics, including pricing and blackouts. This growing practice has caused higher fees and blackouts for reasons that are often unrelated to the local broadcaster in a given area.

In addition, many broadcasters are asking for requirements that we pay on all our subscribers regardless of whether they receive their local broadcast programming from us. So, if one of our subscribers is receiving their broadcast stations free over-the-air through an antenna, that broadcaster still wants us to pay it for that subscriber. These broadcasters are demanding that we pay for something we don't provide, and it takes away one of the few constraints on the broadcaster's prices – the ability of the customer to get the programming over-the-air for free. This essentially locks out any choice and raises prices. This negotiation practice should be prohibited.

3. **What are the average, median, and range of 'below-the-line' fees that your customers are charged on their bills?**

Response: AT&T is committed to providing its customers transparent and an easy-to-understand fee structure. As an example, a complete list of additional fees a DIRECTV customer may incur can be found at:

https://www.att.com/legal/terms.dtv_feeSchedule.html.

Customers are made aware of and agree to these fees when signing up for service. Most of the fees, like late payment charges and service call fees, are one-time, nonrecurring fees. DIRECTV's recurring, monthly fees include: (1) a monthly $7.00 fee for each receiver, and (2) depending on the customer's location and the package to which they subscribe, a regional sport network (RSN) fee to recover fees associated with carriage of RSNs. DIRECTV also assesses an annual fee (most recently, $0.69) to recover its annual regulatory fees paid to the FCC.

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The Honorable Adam Kinzinger (R-IL)

1. **It is been a long time since the first Satellite Home Viewer Act was enacted in 1988; and it's safe to say the market has changed dramatically since then.**

   Consumer demand choices and control in how they watch video, where they watch it, when they watch it, the device they watch it on, how they pay for it and what they watch.

   As we have these deliberations over STELAR, it seems equally important that we discuss what Congress need to do to ensure competition, innovation and new technologies are available for our constituents – regardless of the platform.

   a. **Having said that, Mr. Thun: How do companies like Hulu, Amazon, Sling, and others all exist in the marketplace without any help from government regulations such as "must-carry", compulsory licenses, and the like? And what lessons can traditional cable and satellite companies learn from the rise of these "over-the-top" players?**

Response: You are right that we are in a time of significant change. Consumers are driving these changes – demanding high-quality content, when they want it and where they want it. As your question notes, we are seeing ever-increasing competition and a proliferation of the over-the-top (OTT) video offerings. As a result, consumers are much more price conscious, and many are seeking out lower-priced services to satisfy their needs, which is why you have seen traditional pay TV providers lose subscribers quarter after quarter.

While you are right that these OTT offerings operate in a free market, traditional pay-TV providers are laden with old regulations that give broadcasters significant advantages that are no longer necessary, including the must-carry requirements and the statutory prohibitions on MVPD carriage of local stations, either inside or outside the local designated market area ("DMA"), to obtain network programming.

Local broadcasters have used these advantages to demand higher transmission fees. The fees local broadcasters charge distributors to carry their signals have increased by 2,000% between 2008 to 2018. Acquiescing to local broadcaster rate hike demands in this highly competitive market is simply no longer a viable option.

We are interested in discussing and debating all ideas, but Congress can look first at the rules that provide unneeded benefits to broadcasters, like must-carry, exclusivity and channel placement. Congress also should ensure that the rules in place that prevent a broadcaster from negotiating for more than one network affiliate in a market are strong and prevent evasion through loopholes.

2. **Mr. Thun: Let's say that Congress allows STELAR to expire at the end of this year and local broadcasters then call you to negotiate carriage agreements in the remaining markets in which your company does not provide local channels.**

    a. **Would you negotiate with these local broadcasters?**

Response: We are always willing to negotiate. However, local broadcasters in these DMAs have successfully evaded the FCC's "top four prohibition," which prohibits a single entity from controlling more than one "top four rated station" in a given DMA. They have done so by using loopholes, such as carrying one of the network affiliates on a multicast stream or on low-power television stations, or both, to control two or three of the four top-four network feeds in a single DMA.

In fact, in the twelve DMAs where we do not offer local-market stations through satellite service, local broadcasters own two or three stations in eleven of them. A single broadcaster owns at least two stations in six of these markets and three stations in the other five. And there are multiple duopolies in three markets, meaning only two broadcasters own all four local stations in eight of these eleven markets. The result is a guarantee of even more blackouts and higher prices for consumers in these DMAs. Given the competitive state of the market, and the plethora of consumer choices for video content, it is simply not a viable option for us to ask our customers in these markets to absorb these mounting prices and increased blackouts.

However, AT&T and DIRECTV are committed to provide customers in these twelve markets alternative technology to access their local stations. AT&T and DIRECTV customers in these twelve DMAs may receive a Local Channel Connector and over-the-air antenna. With the connector, customers can access available local broadcast stations through the antenna that connects to a customer's set-top box via a USB cable. Once installed, the station is displayed in the channel guide. The connector includes DVR features, closed captioning, a talking guide, parental controls and the ability to watch or record two channels at once.

    b. **Is this not simply something the marketplace can handle, just as it does in the OTP video space?**

Response: We could rely on the marketplace if it was a free marketplace. Traditional pay-TV providers are saddled with old regulations that give local broadcasters significant advantages that are no longer necessary. See response to question 1.

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

The Honorable Gus M. Bilirakis (R-FL)

1. **Mr. Thun – Year-over-year, the number of TV blackouts are growing, as well as the length of those blackouts.**

   To what extent is this failure to successfully negotiate facilitating consumers to move to over-the-top services, and indeed hurting both the broadcasting as well as cable industries?

Response: The retransmission consent regime is broken. Everyone, including our customers, is hurt by the failure of current law to reflect market realities. Local broadcasters' ever-increasing fees have, no doubt, hastened consumer exit from traditional pay-TV services. Last year, seven million customers "voted with their wallet" and terminated their pay-TV. The trend continues this year, with 14,000 customers leaving traditional platforms each day.[2]

Local broadcasters, of course, can and are making their programming available to customers online. CBS, for example, makes its programming available through its CBS All Access product. Yet CBS and their CBS-affiliated stations prohibit MVPDs from selling CBS All Access directly to their own MVPD subscribers.

Local broadcast retransmission fees and the current law hamstring the ability of MVPDs to offer their customers more competitive and innovative services. As competition first came from satellite, and now from over-the-top providers, local broadcasters have relied on their outdated, special statutory protections to more effectively use the threat of blackouts to dramatically increase retransmission fees. As a result, as you noted, when MVPDs balk at local broadcasters' rate hikes, local broadcasters have responded with record numbers of blackouts.

2. **Mr. Thun – TV consumers are innocent bystanders to the failures that lead to blackouts.**

   When a user is subject to a blackout, through no fault of their own, do they receive any rebate or compensation for the services that they should have rightfully received? And what options are available to entitle the consumer to be part of the process of what programming enters their home?

Response: AT&T and DIRECTV are committed to providing our customers in blacked-out markets alternative technology to provide access to their local stations. Our customers in

[2] https://bgr.com/2019/05/09/cord-cutting-statistics-2019/

these markets may receive a free new Local Channel Connector and over-the-air antenna. With the connector, customers can access available local broadcast stations through the antenna. It connects to a customer's set-top box via a USB cable. Once installed, the station is displayed in the channel guide like before. The connector includes DVR features, closed captioning, a talking guide, parental controls and the ability to watch or record two channels at once. AT&T and DIRECTV work with their customers that request credits for blackouts of their local stations, and we have provided such customers credits on a case-by-case basis. Also, AT&T is supportive of "local choice" legislation, which, if enacted, will allow consumers to decide which local stations they want (and are willing to pay for). Under this legislation, broadcasters would set the per subscriber fee and pay-TV providers collect that fee from willing customers and remit the amount to the broadcasters.

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

The Honorable Bill Johnson (R-OH)

1. **Mr. Thun, you stated that DirecTV cannot sustain the kind of price increases you are seeing in the retransmission consent regime. Can you explain what you mean by that? Are there consequences for consumers? For programming?**

Response: If we increased our rates to recover the entirety of the exorbitant fee increases local broadcasters are charging (and demanding), our rates would be over $200 per month. We are therefore absorbing a large portion of the local broadcast carriage fee increases and we are hitting a competitive wall in terms of what our customers are willing to pay. We are in an extremely competitive space, with competition not only from other traditional pay-TV providers, but now over-the-top providers. For consumers, the immediate downside of the current retransmission consent regime is higher prices and more blackouts. That hurts the 90 million customers who choose to subscribe to traditional pay-TV services, as well as those who may value the service but have left because prices are too high.

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

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: We are not privy to what Ms. Boyers' company is paying local broadcasters. However, what we know is that all MVPDs and their customers are paying too much for carriage of local broadcast channels. These fees have increased by 2,000% from 2008 to 2018. We are generally aware that smaller MVPDs have attempted to negotiate through national cooperatives, such as the National Cable Television Cooperative, though not all broadcasters are willing to negotiate with those buying cooperatives.

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

The Honorable Bill Flores (R-TX)

1. **AT&T/DirecTV made firm commitments in 2003 and again in 2008 to bring local broadcasting service to subscribers in all 210 Designated Market Areas (DMA's) in the United States. AT&T/DirecTV, however, has yet to deploy local broadcast content to 12 DMA's across the country. On the other hand, a competing satellite provider, DISH, is successfully delivering local content to all 210 DMA's in an HD format.**

   Paying subscribers' access to local content is critical to public safety and community engagement; on the other hand, access to distant market programming in lieu of local content fails to serve in the public's interest.

   a. **When will AT&T/DirecTV honor its earlier pledges to provide local content to subscribers in all 210 DMA's?**

Response: DIRECTV is meeting its commitments. As we explained during the FCC's 2008 review of News Corp's sale of its controlling stake in DIRECTV to Liberty Media, DIRECTV committed to offer "two methods" for "providing seamless, integrated local channel package[s] in all 210 Designated Market Areas." In addition to satellite, DIRECTV explained that it also provides local content by "decoding digital terrestrial broadcast signals directly at the customer's premises" via an antenna, providing "all other functions" from a customer's perspective once the signal reaches the set-top-box.[3]

DIRECTV is delivering on this commitment. In the twelve markets in which we do not carry local broadcast channels over satellite, DIRECTV provides customers an alternative, seamless antenna technology, our Local Channel Connector, to access their local stations. With the connector, customers can access available local broadcast stations through an antenna. The antenna connects to a customer's set-top box and the station is displayed in the channel guide. This technology includes DVR features, closed captioning, a talking guide, parental controls and the ability to watch or record two channels at once.

   b. **If AT&T/DirecTV intends to breach its earlier commitments in this regard, what are the reasons for that breach?**

[3] Letter from William M. Wiltshire on behalf of DIRECTV Group, Inc. to Marlene Dortch, Secretary, MD Docket No. 07-18 (filed January 30, 2008).

Response: See response to question 1.a.

c. **What are the reasons that DISH can successfully deliver local broadcasting content into all 210 DMA's, while AT&T/DirecTV will not or cannot?**

Response: DISH did not voluntarily carry local broadcast stations in all 210 DMAs. In 2006, a U.S. District court permanently enjoined DISH from delivering distant network signals under section 119 of the Copyright Act. The court determined that DISH "willfully or repeatedly" violated the terms of the license by retransmitting programming from New York and Los Angeles stations to thousands of households that were considered served by local broadcast stations. The 2009 STELA renewal restored DISH's ability to retransmit distant network station signals to unserved households with the stipulation that it provide local-into-local service to all 210 DMAs in the United States under the section 122 license.

As Mr. Thun testified at the hearing, in the twelve DMAs that DIRECTV do not carry local broadcast stations via satellite service, local broadcasters have circumvented the FCC's rules to own two or three local stations in eleven of them. And in eight of these markets, only two broadcasters own all four "top four" local stations. The result is that local broadcasters in these areas use these duopolies and triopolies to threaten sweeping blackouts and demand even higher fees. This reality all but guarantees more blackouts and higher prices for consumers in those DMAs. Given the competitive state of the market, and the plethora of consumer choices for video content, it is simply not a viable option for us to ask our customers in these markets to absorb these higher prices and risk of increased blackouts.

2. **DirecTV regularly down-converts High Definition (HD) signals to Standard Definition (SD) signals in several DMA's, even though customers are paying for HD service.**

    a. **Please list all markets and stations where AT&T/DirecTV down-converts HD signals to SD.**

Response: AT&T only "down-coverts" HD signals to SD pursuant to the terms of contracts freely negotiated by local broadcasters. We do so in order to ensure we have sufficient capacity to carry as many local channels as possible. Local broadcasters have agreed to these arrangements, with only four being "big four" channels. In those four markets, the down-converted big-four station is duplicative of another broadcast station in the market, meaning consumers have access to DIRECTV-provided HD network programming.

b. **Please lay out how and when AT&T/DirecTV plans to correct the situation and discontinue down-conversion of HD signals.**

Response: DIRECTV will honor its current contracts and will entertain any request by local broadcasters to carry their programming in HD.

3. **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: You are right that the current laws, dating back to 1992, were written to protect broadcasters at time when there was only one distributor, so cable and broadcasters were mutually dependent on each other, and customers had few options besides cable. Now, these laws stubbornly protect broadcasters from the inexorable changes occurring in the video marketplace, and thus distort and stymie innovation and consumer choice. The OTT market is innovative and giving customers more choices because it operates in a free market where distributors and their customers choose what content they desire. OTT distributors are not required to carry broadcast programming and devote capacity to carry specific stations.

If a local broadcaster withholds its programming, MVPDs generally cannot offer their subscribers alternative, out-of-market network affiliate programming, even temporarily. Instead of bringing more competition and lower prices to the traditional pay-TV world, competition has allowed local broadcasters to rely even more heavily on their decades-old special statutory protections to effectively use the threat of blackouts to dramatically increase retransmission fees.

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

Response: Minority Whip Scalise's bill from last Congress – the "Next Generation Television Marketplace Act" -- would eliminate almost all broadcast regulation, including provisions that negatively impact our customers, like must-carry, and provisions that benefit our customers, like the distant signal license. The idea of deregulation is to get rid of everything, both good and bad, and replace it with a new, free-market system. Of course, we would oppose legislation that only eliminated the few provisions that benefit our customers. Failing to reauthorize STELA will not, by itself, establish a free-market to replace today's failing retransmission consent regime. Instead, if that were to happen, we would have the same old regulatory system as today, minus the distant signal license relied on by hundreds of thousands of rural homes.

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

Response: No. See response to question 3a and 3b.

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

Response: See response to question 3b.