

**Before the United States House of Representatives Committee on Energy and Commerce,
Subcommittee on Communications and Technology**

Hearing: “STELAR Review: Protecting Consumers In An Evolving Media Marketplace.”

Written Statement of Rob Thun: AT&T Senior Vice President Content and Programming

Thank you Chairman Pallone, Ranking Member Walden, Subcommittee Chairman Doyle, Subcommittee Ranking Member Latta, and Members of the Committee.

I am Rob Thun, Senior Vice President of Content and Programming for AT&T. In my current role I am responsible for securing content rights from the major networks and local broadcast station groups for AT&T.

This hearing is aptly focused on “protecting consumers” in a video marketplace that is undergoing revolutionary change. After all, it is consumers (our customers) that are driving these changes, demanding high-quality video content and the ability to watch it where and how they want it. And it is important for policy makers to ensure that our laws allow all consumers to benefit from this vibrant video marketplace. As I discuss below, AT&T supports proposals that further enhance the video marketplace, but there is one aspect of the traditional pay-TV ecosystem that is in dire need of reform – the retransmission consent regime for local broadcast stations.

That regime was first put in place last century, to help small local broadcasters obtain carriage on cable platforms that were then the only pay-TV offering in most areas. Now, with consumers having a multitude of options to watch their content, those statutory protections are no longer necessary and only serve to harm consumers and competition. From 2008 to 2018, local broadcaster fees for carrying these stations have risen from about \$500 million to \$10.1 billion, a nearly 2,000% increase.¹ When MVPDs² attempt to limit the increases in these fees (much less try to lower them), local broadcasters, shielded by their special statutory protections, reflexively respond with blackouts. Indeed, these antiquated laws have unfairly penalized the nearly 90 million³ customers that have chosen to keep their traditional pay-TV service.

That is why AT&T has long supported legislative efforts to end the retransmission consent regime, and we applaud the efforts of Minority Whip Scalise⁴ and Representative Eshoo⁵ to reform the system and end broadcaster blackouts and consumer harm.

¹“Broadcasters Use Old Myths in Attempt to Keep Video Marketplace Laws Old and Unfair,” American Television Alliance, January 2019, <https://www.americantelevisionalliance.org/broadcasters-use-old-myths-in-attempt-to-keep-video-marketplace-laws-old-and-unfair/>

² Multichannel Video Programming Distributors.

³ Q4'18 multichannel video losses propel full-year drop to nearly 4 million, S&P Global Market Intelligence, March 2019, <https://www.prnewswire.com/news-releases/q418-multichannel-video-losses-propel-full-year-drop-to-nearly-4-million-300810067.html>.

⁴ Next Generation Television Marketplace Act, H.R.6465, 115th Congress (2018).

⁵ Video Choice Act, H.R. 3719, 133th Congress (2013).

We also strongly support renewal of the STELA Reauthorization Act of 2014 (P.L. 113-200) (“STELAR”), which will expire at the end of 2019. It contains provisions that continue to benefit consumers, including the statutory copyright license permitting satellite carriers to provide network programming to more than 870,000 satellite subscribers. These include hundreds of thousands of rural homes that were left behind by broadcasters and cable providers. Congress should take this opportunity to make permanent the satellite distant-signal license that brings network programming to these rural customers.

We commend the Committee for holding this important hearing and renewing a conversation about reforming the retransmission consent regime.

Changes to the Video Marketplace Since the 2014 STELAR Review

We are all aware of the enormous changes in the video marketplace since the last STELAR renewal, in 2014. Consumers are choosing to leave traditional pay TV services to obtain their programming through the growing number of over-the-top options, including both subscription services (NETFLIX, HULU, Apple TV) and free services, like YouTube. There are now 170 million⁶ over-the-top subscriptions, with NETFLIX having more subscribers than DIRECTV and Comcast combined.⁷ NETFLIX intends to spend \$15 billion⁸ on content in 2019, more than CBS.⁹ Nearly 4 million traditional pay-TV customers have discontinued their service in the last year.¹⁰

AT&T has embraced these trends, providing consumers the innovative and mobile video alternatives they desire. In 2016, we launched our live-streaming service DIRECTV NOW, providing consumers customized packages with prices below traditional pay-TV offers and allowing them to watch TV wherever they want on different devices.¹¹ Last year, we offered a low-cost streaming service called WatchTV, with rates starting at \$15 per month. And, of course, AT&T continues to provide high-quality premium video service to over 20 million customers.

⁶ “Cord-Cutting Accelerates as OTT Video Keeps Growing,” eMarketer, August 2018, <https://www.emarketer.com/content/more-than-half-of-us-consumers-watch-subscription-ott-video-2018>.

⁷ “Netflix added record number of subscribers, but warns of tougher times ahead,” CNN, April 2019, <https://www.cnn.com/2019/04/16/media/netflix-earnings-2019-first-quarter/index.html>.

⁸ “Netflix Spent \$12 Billion on Content in 2018. Analysts Expect That to Grow to \$15 Billion This Year,” Variety, January 2019, <https://variety.com/2019/digital/news/netflix-content-spending-2019-15-billion-1203112090/>.

⁹ “CBS Execs Tout \$8 Billion Content Spend, Streaming Expansion and Ad Gains,” Variety, May 2019, <https://variety.com/2019/tv/news/cbs-q1-earnings-8-billion-content-streaming-1203203681/>.

¹⁰ Q4’18 multichannel video losses propel full-year drop to nearly 4 million, S&P Global Market Intelligence, March 2019, <https://www.prnewswire.com/news-releases/q418-multichannel-video-losses-propel-full-year-drop-to-nearly-4-million-300810067.html>.

¹¹ DIRECTV Now customers can choose between two packages, our Plus offer, offering 45+ channels for \$50 per month, or our Max offer, offering 60+ channels for \$70 per month.

No doubt, consumers have unparalleled choice and competition for video content. Yet the laws that govern the video marketplace were first written in 1934, and the present legal framework dates back to the Cable Television Consumer Protection and Competition Act of 1992, which established the local broadcast retransmission consent regime. It is long past time for Congress to take a serious look at modernizing these laws.

STELAR Reauthorization Presents An Opportunity for Broader Reform

As it has since 1994, Congress must renew STELAR, which will expire at the end of 2019. There are several discrete but important provisions, such as the satellite distant signal license, that Congress must renew. However, reauthorization matters even more because it presents Congress with the opportunity to examine changes in the licensing marketplace for broadcast television and what laws are working and not working to benefit consumers. In every prior reauthorization, Congress has also enacted substantive reform *apart* from the expiring provisions. It should do the same here. To point out a few examples,

- In 1999, Congress permitted satellite local carriage for the first time.
- In 2004, Congress permitted satellite carriage of significantly viewed signals, created privacy rights for satellite subscribers, and included a “no distant, if local” provision, which prohibits satellite operators from importing distant signals into television markets where viewers can receive the signals of broadcast network affiliates over the air.
- In 2009, Congress provided the opportunity for certain low-power stations to obtain protected status and thereby avoid interference and displacement by full-service stations, and also addressed satellite carriage of PBS stations’ high-definition signals.
- In 2014, Congress prohibited local stations from jointly negotiating for retransmission consent, though broadcasters have found ways around these protections.

Expiration of STELAR, in other words, presents an *opportunity* for Congress and for consumers. Over the last five years the video marketplace has witnessed monumental changes, and thus we urge Congress to take advantage of this opportunity to fix the real problems in the video marketplace.

The Local Broadcaster Retransmission Consent Regime Is Broken

Foremost among needed changes is reform of the current local broadcaster retransmission consent regime, which is the principal cause of rapidly rising broadcast programming costs and blackouts.

Under these laws, dating back to 1992, broadcasters can choose either: (1) retransmission consent, where cable (and later all MVPDs) must pay to carry broadcast programming (which broadcasters otherwise make free over-the-air), or (2) must-carry, where cable (and later all MVPDs) are required to devote capacity to carry the station. If a local broadcaster withholds its programming, MVPDs generally cannot offer their subscribers alternative, out-of-market network affiliate programming, even temporarily. These laws 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.

As competition first came from satellite, and now from over-the-top providers, local broadcasters have relied on their special statutory protection to more effectively use the threat of blackouts to dramatically increase retransmission fees. As a result, these broadcasters have dramatically raised retransmission fees, as detailed above. As retransmission fees go up each year, which represent the fastest rising part of consumers' pay-TV bills, it leaves fewer resources for MVPDs to pay for things like innovative offers, independent programming and the expansion of broadband into rural areas. And, when MVPDs balk at local broadcasters' rate hikes, they have responded with blackouts. Local broadcasters shattered the record for the most TV blackouts in a single calendar year in 2017, intentionally taking down signals from cable and satellite customers 213 times.¹² Consumers were blacked out 165 times in 2018 and 41 times so far in 2019.¹³ Right now, AT&T has impasses with eight station groups covering more than 30 stations in more than 20 markets. Because of existing law, consumers are harmed by these unwarranted and unnecessary blackouts.

The problems with the local broadcast retransmission consent regime are exacerbated by broadcaster attempts to avoid the Federal Communications Commission's "top four prohibition" that prohibits a single entity from controlling more than one "top four rated station" in a given designated market area ("DMA"). Stations are increasingly using loopholes, such as carriage of one of the network affiliates on a multicast stream or low-power television stations, or both, to control two, three or even all four network feeds in a single DMA. The result is that local broadcasters in these areas can threaten sweeping blackouts and demand even higher fees. Giving broadcasters a pass on local ownership limits would all but guarantee more blackouts and higher prices for consumers in those DMAs.

We understand the desire to preserve local programming.¹⁴ However, local content will always have value and no longer needs to be given special protections in the law. Our WarnerMedia entertainment group navigates distribution issues without artificial protections and, instead, responds to competitive and economic forces by delivering — to consumers and

¹² "Eliminating the top-four Prohibition Rule Will Lead to Higher Consumer Prices, warns ATVA," American Television Alliance, April 2019, <https://www.americantelevisionalliance.org/eliminating-the-top-four-prohibition-rule-will-lead-to-higher-consumer-prices-warns-atva/>.

¹³ *Id.*

¹⁴ In fact, the law preventing ownership of multiple stations in a market was in part intended to prevent one entity from having too large an editorial voice in a community.

distributors — high quality products and programming. That should be the model for modern broadcasting, too. Continuing favoritism for some content over others is outdated and ultimately harmful to consumers. It is time for the law to catch up to the marketplace.

STELAR Renewal

AT&T strongly supports reauthorization of STELAR, which contains two critical provisions that expire at year's end. The first requires broadcasters and MVPDs to negotiate with one another in "good faith." This requirement serves as an important backstop that places guideposts around negotiations. We still have issues with stations refusing to negotiate or respond to an offer, and the good faith provision helps move those negotiations along. The second provides a statutory copyright license (called the "distant-signal license"), permitting satellite carriers to offer out-of-market network signals to customers who otherwise cannot obtain an over-the-air network signal.

DIRECTV and DISH rely on the distant signal license to provide high-quality satellite network TV service to more than 870,000 satellite subscribers. These subscribers include hundreds of thousands of rural locations that were left behind by broadcasters. In other words, absent the distant signal license, these subscribers would be unable to obtain a network TV signal because they cannot receive the local network affiliate's signal over-the-air via an antenna. Similarly, the distant-signal license allows us to provide customers network TV in "short markets," where one of the four national broadcast networks is not offered by any local broadcaster.

In addition, the distant signal license allows us to provide distant signals to mobile/recreational vehicles or commercial trucks, thereby allowing long-haul trucks, RV and camping enthusiasts, and tailgating sports fans access to satellite network TV service. In all cases, failure to renew STELAR would remove channels from people who legally receive them today -- many of whom have done so for years -- and who would not understand why those channels were taken away. Finally, Congress should take this opportunity to make the license permanent as it is for cable.

Preservation of these customers' TV services is why it is so important for Congress to permanently reauthorize the distant signal license. Otherwise, these largely rural subscribers will lose access to network TV programming that most Americans take for granted.

AT&T thanks the committee for holding this important hearing to examine the state of the media marketplace and we look forward to engaging with Members on both sides of the aisle with fresh and creative ideas to benefit consumers and competition.