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October 16, 2023

Noah Jackson  
Legislative Clerk  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Jackson:

I was honored to appear before the Subcommittee on Communications and Technology on September 13, 2023, to testify at the hearing, "Lights, Camera, Subscriptions: The State of the Video Marketplace." Please find enclosed my responses to questions for the record that were transmitted on October 3.

Please do not hesitate to contact me with any questions or if I can supply any additional material that would be of assistance to the Committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'Grant B. Spellmeyer', written in a cursive style.

Grant B. Spellmeyer

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**Responses to Questions for the Record**  
**Grant Spellmeyer**  
**ACA Connects**

**The Honorable Randy Weber**

1. Between the different stakeholders of vMVPDs, MVPDs, broadcasters, content creators, and consumers, who in your opinion would be the winners and losers of a policy that completely removes the retransmission consent regime and replaces it with something more similar to private copyright negotiations?
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To answer this question, it is worth observing that retransmission consent itself can be described as sort of a quasi-copyright regime (in the sense that distributors such as our members negotiate with television stations to carry copyrighted programming). Retransmission consent differs from copyright, however, in that the government *forces* us to negotiate with television stations to carry programming. That is what “retransmission consent” means. This policy has been a disaster for consumers, whose bills keep going up and who increasingly suffer programming blackouts. This dysfunction has led some ACA Connects members to exit the video business, while many others are seriously considering this step.

In a pure copyright regime, by contrast, it all depends on how the various copyright holders and their licenses choose to proceed with distributors. Our members could negotiate with stations, to be sure, if networks grant stations licenses to negotiate with them. But they might instead find themselves negotiating with networks. Or even upstream programmers like sports leagues and movie studios.

A copyright regime, in other words, is more flexible than the status quo. This flexibility, in turn, may provide parties with additional tools to deal with market failures such as that evident in the retransmission consent regime. That said, there may be policy approaches other than a pure copyright regime that would address these failures. We would welcome the opportunity to discuss these matters further with you and your staff.

2. Could you explain, briefly, the differences between the terms “broadcaster,” “station operator,” and “video distributor” and put them in context to the rest of the industry and give a real-life example of each?
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Here’s how I would define the terms, using everyday language rather than precise technical or regulatory language.

- A “broadcaster” is a radio or television station, or somebody who owns radio or television stations. WUSA-9, the Washington CBS affiliate, is a “broadcaster,” as is TEGNA, its owner.
- A “station operator” is somebody who owns or operates television or radio stations. TEGNA is a “station operator.”

- A “video distributor” could mean lots of things. I, however, would use the term to describe either a traditional cable or satellite pay-TV provider (or “multichannel video programming distributor, to use the Communications Act’s definition) or an online streaming service such as Netflix, AppleTV+ or Hulu. Again, however, this is not a universally accepted definition.

### **The Honorable Kat Cammack**

1. Have you all considered any future disruptions to the online video marketplace to meet consumer preferences and options? For example, what impact could the emergence and growth of Web3, or a decentralized internet, have on the video marketplace, and how could that impact competition and news?
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I want to answer this question about technological disruption in a more general sense. Every single ACA Connects member has leadership and staff that spend most of their time thinking about future disruptions. ACA Connects itself spends a great deal of time doing so. Indeed our name reflects as much—our members used to be “cable television” providers; today, they are primarily broadband providers.

I would add two things, however. One is that our smaller and mid-size members can be more nimble in addressing technological disruption than our larger rivals. At the same time, our members sometimes lack the tremendous resources that our larger rivals have. Comcast, for example, doesn’t really have to worry about making wrong choices in the face of disruption—it has the money to spend to fix mistakes. Our members do not.

2. How has the emergence of original content from vMVPDs and streaming platforms influenced your members' content acquisition and programming decisions?
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This question identifies perhaps the central dilemma facing traditional pay-TV operators today: How do we compete in an ecosystem where online providers have exclusive access to key programming? Our members, naturally, have a variety of views on the subject. At some point, however, a competitive video service will need access to this kind of programming if it wants to stay competitive.

## The Honorable Russ Fulcher

1. When it comes to cable and public access providers, what would be the impact on choice and competition if we eliminated regulations around rates charged, services (linear and non-linear content) provided to consumers? Would this make cable providers more competitive with MVPDs, helping to increase competition overall?
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With respect to *video* service, few regulations remain on what our members charge. This is because nearly every cable operator is subject to “effective competition.” There are, however, what might be thought of as “adjacent” regulations, such as the requirement to offer a basic service tier to every subscriber *before* such subscriber can choose any other programming. Regulations such as these, naturally, make cable video service more expensive and less competitive than they otherwise might be.

I’d like to expand my answer, however. The FCC is now considering “net neutrality” and Title II regulation of broadband providers such as our small- and mid-size members. The FCC *says* this will not lead to rate regulation. But anybody who has ever followed the administrative state knows that, where an agency *can* regulate rates, it soon *will* regulate rates. I can think of nothing that would do more to limit choice, innovation, and universal service than FCC oversight over the free Internet.

2. On Monday, Disney and Charter reached a deal that ended a major blackout just hours before the kickoff of Monday Night Football. As a part of this deal, Charter will be able to offer subscribers to its most popular video package, Spectrum TV Select, access to the ad-supported version of the Disney+ service at no additional cost, one of its key demands in negotiations. Mr. Spellmeyer, is this the direction that your industry is heading in? And will small cable companies have enough leverage to pull off a deal similar to this one?
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Let me answer the last part of your question first. Our members have nowhere near the leverage over big programmers that Charter possesses. This, indeed, is why Congress permitted buying groups (such as NCTC) to negotiate retransmission consent with large broadcasters—for which I once again thank you.

So it may be that Charter’s deal with Disney reflects the general direction in which the industry writ large is heading. I have real concerns, however, that smaller operators will be left behind. We would welcome the opportunity to discuss this further with you and your colleagues in the coming months.