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VIA EMAIL

Mr. Robert E. Latta
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
Congress of the United States
2125 Rayburn House Office Building
Washington, DC 20515

Re: Questions for the Record, “Lights, Camera, Subscriptions: State of the Video Marketplace”

Dear Chairman Latta:

I write in response to the questions for the record presented to me following my testimony in the Subcommittee on Communications and Technology hearing entitled “Lights, Camera, Subscriptions: State of the Video Marketplace” that occurred on September 13, 2023. Thank you again for the opportunity to provide testimony at that hearing as well as the opportunity to address these questions. My answers to the questions are provided below.

Question from the Honorable Randy Weber, “As a streaming provider, does FuboTV negotiate directly with broadcasters to pay retransmission fees for local content?”

As a reminder, there are two components of a local linear feed - there are national rights (NFL, college football, etc.) acquired by the Big 4 Networks/broadcasters which are distributed to the appropriate local affiliate i.e. Houston Texans/CBS/KHOU. The second component is the programming produced by the local station groups that typically includes non-primetime programming such as local news and weather, local morning shows and syndicated programming (game shows, etc.).

We negotiate with the broadcasters who serve as proxies for the local station groups. This is an extremely efficient process that allows us to blanket nearly every local market in the country. And,

at the same time, gives the local affiliates, at least in our most recent deal negotiation, a rate which is in line with what we pay the network for its owned and operated stations.

In our experience, when a local affiliate (which doesn't own sports programming - the most expensive programming) gets involved with negotiating direct licenses, their rate request is significantly higher than what the network group commands. These local affiliates are using the sports rights they do not own to hold us hostage while attempting to extract a significantly higher rate for programming such as local news, weather, local morning shows and syndicated content.

This would hurt customers in two ways - customers would be forced to pay much higher prices and they would be regularly exposed to blackouts since the largest groups, such as Nexstar, own affiliate stations across all of the network groups. We also do not have the resources to regularly negotiate direct agreements with the dozens of station groups across the country.

Question from the Honorable Randy Weber, "How do streamers like FuboTV compete against Big Tech behemoths like Google or Amazon without access to the other sources of income those companies take in?"

It is extremely difficult to compete with the Big Tech behemoths. These companies have a significant number of revenue streams in and around our space. Not only do they own streaming services but they own all the infrastructure that supports streaming (cloud services, advertising services, etc.), which allows them to creatively negotiate better deals with media companies and broadcasters. This leads to superior economics and predatory pricing. At the same time, these Big Tech companies are taxing Fubo to distribute our service on their platforms (devices).

These big tech companies have a long track record of successfully leveraging free and efficiently priced products and services to gain market share. We believe their endgame is to ultimately squeeze out smaller (competitive) players while extracting premium profits.

Question from the Honorable Randy Weber, "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 real-life examples of each?"

A broadcaster is a distributor of television content and is affiliated with stations throughout the country which are provided with content from one centralized operation. Those centralized operations are owned and operated by broadcasters such as CBS, NBC, ABC, and FOX.

A station operator, or station, is a local broadcaster, which is affiliated with the Big 4 Networks (CBS, NBC, ABC, FOX), and carries the network's primetime programming and live events, including live sporting events such as professional and college football, in a particular geographic market. Multiple stations can be owned by one operator, and Nexstar is an example of a major operator of affiliate stations across the country.

A distributor can be a traditional multichannel video programming distributor, such as DirecTV, Time Warner, or Verizon Fios, which deliver multiple television channels to their customers or subscribers through cable, fiber or satellite services utilizing specific equipment. Alternatively, a distributor can be a virtual multichannel video programming distributor, like Fubo or YouTube TV, which deliver content through online streaming rather than cable, fiber or satellite technology.

Question from the Honorable Russ Fulcher, “Considering the video marketplace is no longer dominated by broadcasters, cable providers, satellite services, or fiber-based television – including now streaming services and other digital services. How should laws like the Cable Act redefine or recategorize the competitive landscape when meeting Congressionally required criteria to ensure fair competition, consumer protections, and access to diverse programming?”

Redefinition of the Cable Act is not necessary to achieve the criteria of ensuring fair competition, consumer protections and access to diverse programming. With the rise of streaming, the video content marketplace has become increasingly diverse and competitive. Today, hundreds of local TV stations from markets across the country are carried on streaming platforms.

Conversely, due to the breadth of local content which exists, new regulations will likely result in Fubo not being able to carry all of its current local content. Among many reasons, this is because companies like Fubo could not employ the resources necessary to negotiate directly with each station. As well, each station would likely seek to impose higher rates if negotiating directly. Ultimately, the consumer would be adversely impacted and instead of ensuring fair competition, consumer protections and access to diverse programming would be reduced.

If the Cable Act were to be redefined, it would be incumbent upon Congress to ensure the wholesale pricing of entertainment, sports and news content would be accessible to all platforms including Fubo. This means all platforms should have access to all content at the same price, with the same regulations. We cannot have policies that endorse treatment of virtual MVPDs the same way as cable/satellite companies without also ensuring parity across content and wholesale pricing. Currently our pricing is extremely elevated (40%-50% higher) relative to cable companies like Comcast when coupling rates and penetration requirements. These deals not only disadvantage us but they are unfair to consumers who are looking for choice. This is even more unfair for Spanish speaking customers.

In fact, with an equitable cost structure (to cable companies like Comcast), we would be able to pass along more savings to consumers.

Question from the Honorable Russ Fulcher, “In your testimony, you expressed concern with FCC and other rules that would have online video providers and streaming platforms to negotiate with broadcasters over content the broadcaster don’t own. Can you clarify and unpack that for me?”

Rules changes would permit local stations to not just negotiate for the local news content, which they create and own, but also for content that is otherwise available on a national broadcast and is not owned by the local station. This means that companies like Fubo would have to negotiate

with local stations for Fubo's customers to have access to college and professional sports games because that content is carried on the local station, even though the content is not created or owned by the local station and would otherwise be available on the local national feed controlled by that distributor.

Question from the Honorable Kat Commack, "Have you all considered any future disruptions to the online video marketplace to meet consumer preferences and options? For example, what could the emergence and growth of Web3, or decentralized internet, have on the video marketplace, and how could that impact competition and news?"

Fubo is in large part a technology company and at the core of our offering is our proprietary technology platform, purpose built for live TV and sports viewership. Our proprietary technology stack has enabled us to regularly offer new features and functionality.

We continually evaluate new technologies to identify its potential impacts on our customer-facing and internal products and services to develop methods to create efficiencies and enhance the customer experience. Whenever possible, we leverage technological advances to bring additional content to our customers and present diverse content in innovative and accessible ways. Further, we use technology to engage our customers and bring them news - including local news - and other content from a variety of sources in ways that makes the content accessible and easy to find.

Our analysis to date has not identified disruptions in technology that will have a short-term impact on our product or our customers' ability to access Fubo. However, Fubo's focus on deploying technology to create the best experience for our customers includes the use of our people and processes to identify, evaluate and respond to disruptive forces in all forms, including those that impact the market, competition, technology, and consumer behavior. An example of this is our long-term use of artificial intelligence and leveraging it as a tool to enhance our customers' ability to consume content and not as a quick-to-market product without substantive added value.

If you have any questions, please do not hesitate to contact me. Thank you.

Yours truly,

/s/ David Gandler

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