One Page Summary of Written Statement of Grant Spellmeyer
President and CEO of ACA Connects – America's Communications Association
Before the House Energy and Commerce Committee
Subcommittee on Communications and Technology
"Lights, Camera, Subscriptions: The State of the Video Marketplace"

ACA Connects welcomes the opportunity to comment on the state of the video marketplace. Our association was formed in 1993 to give smaller cable operators a seat at the table in Washington. Since then, we have been part of every major legislative and regulatory decision affecting the video market, working hand-in-hand with legislators on both sides of the aisle. Our Members' deep experience and unique perspective inform this testimony on how the marketplace has evolved, where it is headed, and the role Congress can play in fostering a vibrant video ecosystem that meets consumer needs.

As the marketplace continues to evolve, we believe there are three main issues the Committee should keep front of mind.

- First, the video landscape is changing in ways that could be highly disruptive, yet highly beneficial for consumers. While small and mid-sized cable operators may be thinking of exiting the cable business—and some already have—they are building robust, reliable broadband networks over which consumers can access directly a vast array of video content. We should "do no harm" and be careful not to stifle market innovations that give consumers greater "agency."

- Second, market size and power have tremendous influence over innovation and pricing. Rules and policies should be calibrated to prevent any player in the video ecosystem from exerting undue leverage and harming consumers.

- Third, retransmission consent is a broken system that only gets worse. Cable TV customers continue to suffer under a regime of inflated pricing, blackouts, and lack of flexibility to choose packages that meet their needs. This failed model should not be extended to the online world.

  Appended to this testimony is "The Broken Retransmission Consent Model – Two Charts That Tell the Story."

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September 13, 2023

I want to thank Subcommittee Chairman Latta, Ranking Member Matsui and all the members of the subcommittee for the opportunity to testify today on the evolution of America's video marketplace. I do not believe anyone could have predicted the vast changes we have seen in this marketplace in the past 30 years, ever since Congress enacted the 1992 Cable Act, and I believe this dynamism will continue. Certainly, Congress did not foresee the disproportionate leverage that programmers would gain over smaller cable providers and their subscribers, and it is critical that you keep this in mind as you consider new policy proposals.

Thirty years ago, cable television was our Members' core business. By 2019, that was no longer true. The marketplace had evolved so dramatically that we changed our name – from the American Cable Association to America's Communications Association – ACA Connects – to emphasize our members' growing interest in the broadband business and other forms of connectivity.

That said, ACA Connects and our Members are optimistic about the future of video. Never before have consumers had access to more video content of their choosing and more ways to access it. What's more, ACA Connects Members and their industry peers are giving consumers access to this content over world-class, robust and reliable network infrastructure that they have constructed and continue to expand and improve with billions of dollars of investment each year.

- Over the past 20 years, broadband providers have invested in their networks some $1.5 trillion, while the government has spent about $100 billion to support connectivity in more economically challenging areas. As a result, fixed broadband speeds have increased from one meg to one gig. All ACA Connects Members today provide at least 100/20 Mbps service, and they are moving toward providing 1 Gbps symmetric service in a few years.

Congress can further expedite the deployment of advanced broadband infrastructure to support the video ecosystem by taking the following constructive steps:

- First, preserve a dynamic and competitive marketplace by not regulating (or even threatening to regulate) broadband prices. The competitive environment for fixed broadband service has kept prices reasonable, and with providers continuing to invest tens of billions of dollars annually, there is every reason to expect this will continue. Accordingly, there is no reason to regulate prices—and there are great reasons not to. Rate regulation would reduce the incentive to invest in network upgrades and expansion, especially by new entrants, thereby creating a far less dynamic and responsive industry. We killed off "Ma Bell" some 40 years ago for good reason, seeking to rely on entry and competition, and today we are reaping the success of that policy. Reversing course would be a grave error.

- Next, spend limited government support efficiently and effectively. With the federal government providing historic funding to close the broadband availability gap through the Broadband Equity, Access and Deployment (BEAD) program and other initiatives, we have within our reach universal reliable, high-performance broadband service. To achieve that aim, we need to prioritize using government support for future-proof fiber builds, except in the most economically challenging areas. Also, we must not use this funding to subsidize deployments where locations are already served. Not only would this be a waste, but spending government money to build to already-served locations will be counter-productive, driving out the private investment that supports the vast majority of deployments in the U.S. In other words, there must be no government-funded overbuilding.

- Finally, remove barriers to deployment. Any deployer of broadband facilities will agree that it is critical to gain access to rights-of-way, poles, and other infrastructure promptly and at reasonable cost. They will also agree that virtually every project runs into barriers to obtain such access from government agencies, pole owners, railroads, and others who control private rights-of-way, which can either delay a build or stop it entirely. Congress and the FCC have made headway in addressing these problems, but far too often they persist. It is time for a national "permitting" law to address these concerns.

We must also ensure that the video marketplace operates fairly and rationally – without any participant exerting undue leverage. Sadly, this has not always been the case. As we discuss in detail below with regard to retransmission consent, ACA Connects Members know firsthand how an unbalanced regulatory environment can create dysfunction that ultimately leaves video consumers worse off. Indeed, our membership has often been the "canary in the coal mine" when it comes to many of the issues that this subcommittee has tackled. We recognize that by virtue of being small and rural operators we are at a disadvantage when dealing with extremely large and often multinational companies. But government actions should not make our uphill climb steeper by adopting policies that diminish our bargaining power or otherwise tip the scales in the wrong direction or by failing to address anticompetitive behavior. Unfortunately, that has happened too frequently and is a lesson we should not repeat.

We are eager to continue assisting the subcommittee as it moves forward in examining the future video marketplace. As we see it, there are three main issues that are worth your attention as this marketplace continues to evolve.

First, just as we have seen the disruption to local newspapers and other media due to changing habits and technologies, the current video business is bound to change as well. Again, we are the canary in the coalmine here. I can tell you that some of my Members have essentially exited the video business—and *all* of them are considering the possibility. For example, earlier this year, WOW! – a mid-sized operator with over 500,000 subscribers – retired its cable video service. Some smaller operators have done the same, including 3 Rivers Communications and Mid-Rivers Communications in Montana. In addition, many smaller cable operators have sold their businesses or closed shop after cable video had become unprofitable.

Since traditional pay-TV has largely financed the video sector over the years, this is certain to significantly change the industry, including broadcasters. Yet, at the same time, because our Members and other broadband providers have invested billions to build robust, reliable broadband networks – and continue to do so – consumers can now directly access more video content than ever and do so on their own terms. More than anything policy makers should "do no harm" by adopting regulations that stymie or otherwise inhibit this investment and access.

- Most importantly, for policymakers interested in adopting net neutrality or rate regulation for broadband services, the data points to a competitive and dynamic market where broadband providers are giving their subscribers the ability to reach any upstream content of their choosing. If anything, just as we have seen in the video market, policymakers need to look out for smaller broadband providers, who have no leverage to demand payments or other concessions from the big online providers to carry their traffic.

Second, a constant theme since 1992 is that in any marketplace, market size and power cast a massive influence over innovation and pricing. We encourage you to continue to look at any existing programs, rules, and laws with an eye towards trying to make sure that no player can exert undue leverage and harm consumers.

Third, while the transition to internet delivered services and content is well underway, many consumers today are still impacted by existing business models such as the rates, terms and conditions for linear programming. The antiquated retransmission consent framework continues to leave customers suffering under a regime of inflated pricing, blackouts, and without an ability to choose content packages that best suit their needs. We should not "double down" on this broken system by expanding it to the online world.

The appendix to this testimony presents two simple charts that tell the story. Fed up with skyrocketing rate increases year after year, an ACA Connects Member began compiling data on its retransmission consent fee payments and the impact of programming rate increases on customer bills. The numbers are staggering. As recently as 2009, the Member company paid $1.30 per customer per month in retransmission consent fees. By 2022, that amount had risen to $27.25 – *a twenty-fold increase*. As these fees have continued to dramatically rise, so too have customer bills. While this Member company's operational expenses have held relatively steady over the past twenty years, its programming costs have climbed steeply – and the rates charged to customers have risen in parallel. These charts leave no doubt that programming costs are driving the massive increases in cable bills.

Sadly, there is every reason to believe that this Member company's story is the norm rather than the exception. By virtually every metric, retransmission consent is a broken system.

- <u>Out-of-Control Fee Increases</u>. Retransmission consent fees have risen from $200 million in 2006 to $11.7 billion in 2019, an astounding *5,359 percent increase*. To put these increases in perspective: a loaf of bread would cost over 20 dollars, and a gallon of milk over *50 dollars*, if the prices of these household staples had increased at the same rate as retransmission consent fee payments since 2010.

- <u>Small Operators and Their Customers are Hit Hardest</u>. The FCC has reported that, while large cable operators paid an average of $1.90 per subscriber per station per month in retransmission consent fees, small operators paid an average of $2.94 – *more than 1.5 times as much*. The total amounts paid annually by small cable operators are equally staggering – more than $231 per year per subscriber, according to the Commission's data.[1]

- <u>Increasing Use of Blackouts to Extort Payments</u>. When a cable or satellite TV provider refuses to pay the exorbitant amounts a broadcaster demands, the broadcaster often retaliates by pulling its signal. "Going dark" has become a favored tactic of broadcasters over the past decade. While there were only 8 blackouts in 2010, there were 342 in 2020—*a 4,175 percent increase*.

- <u>Customers Pay Twice</u>. Finally, it is worth remembering that cable and satellite TV providers pay more than a quarter billion dollars in copyright royalty fees each year for the programming content carried by these broadcast stations. Retransmission consent fees are charged *in addition to* these payments, meaning consumers are essentially being charged twice to watch the same content.

While retransmission consent is clearly a broken model, we can at least mitigate its harms by strictly enforcing rules on the books that limit broadcast industry consolidation and market

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[1] *See* Communications Marketplace Report, GN Docket No. 22-203, 2022, Communications Marketplace Report at Appx. E ("Report on Cable Industry Practices"), Fig. 11 ("2022 CMR"). The data on retransmission consent fees reported in the 2022 CMR is from 2021.

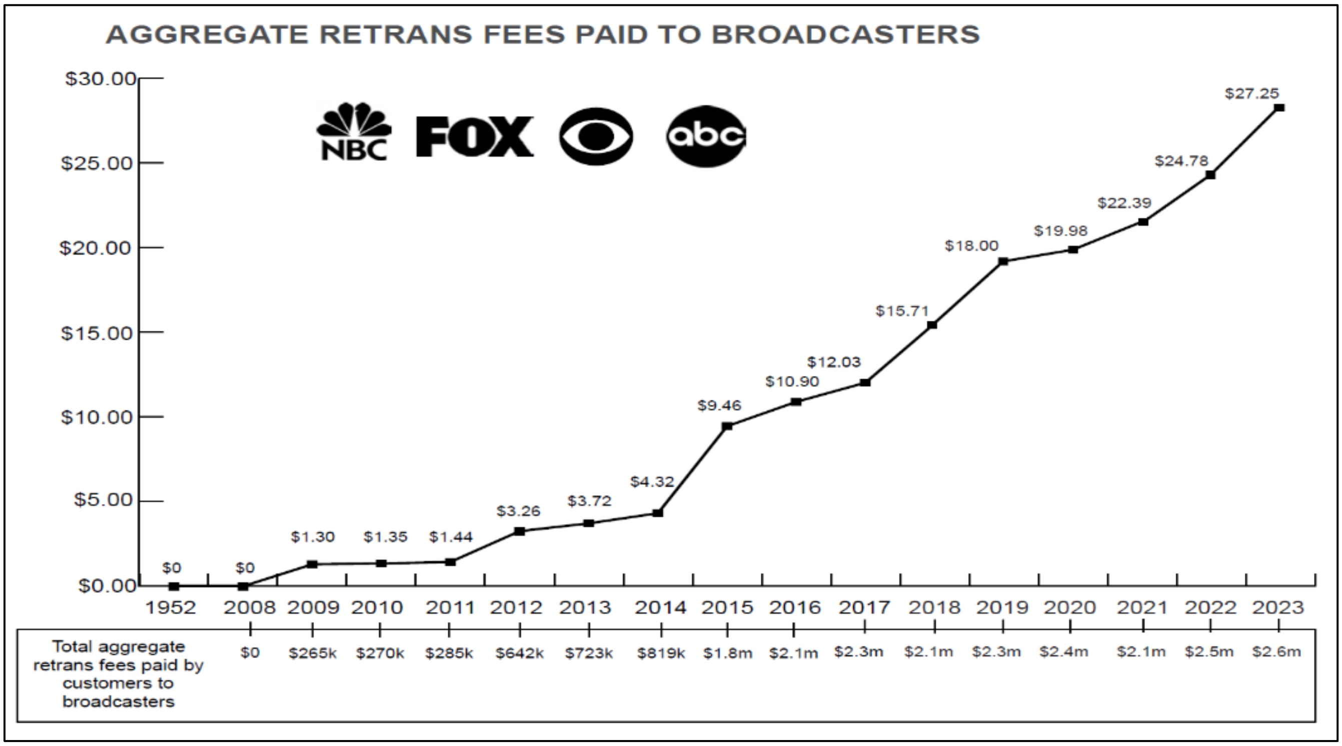
power. For instance, while broadcasters are generally prohibited from owning two or more "Top Four" stations in a local market, there are over 100 instances where broadcasters have exploited various loopholes to acquire ownership of two, three or even four Top Four stations in the same market. We must close these loopholes. In addition, robust antitrust enforcement is critical to protect consumers from anti-competitive practices.

We hope that you will keep these macro dynamics and policy lessons in mind as you address a range of issues while my Members continue to strive to provide premium quality video and robust, reliable broadband service to your constituents.

The Broken Retransmission Consent Model: Two Charts That Tell the Story

The following charts were created by an ACA Connects Member to track the outrageous fees it pays for retransmission consent and the impact on customer bills.

Retransmission consent fees continue to skyrocket…



… driving massive increases in cable TV bills.