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1 {York Stenographic Services, Inc.}

2 RPTS BURKETT

3 HIF163.160

4 ``THE SATELLITE TELEVISION LAW: REPEAL, REAUTHORIZE, OR

5 REVISE?''

6 WEDNESDAY, JUNE 12, 2013

7 House of Representatives,

8 Subcommittee on Communications and Technology

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:35 a.m.,
12 in Room 2123 of the Rayburn House Office Building, Hon. Greg
13 Walden [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Walden, Latta,
15 Blackburn, Scalise, Gardner, Barton, Eshoo, Doyle, Welch,
16 Lujan, Dingell, Matheson, and Waxman (ex officio).

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17 Staff present: Gary Andres, Staff Director; Ray Baum,
18 Senior Policy Advisor/Director of Coalitions; Sean Bonyun,
19 Communications Director; Andy Duberstein, Deputy Press
20 Secretary; Neil Fried, Chief Counsel, Communications and
21 Technology; Kelsey Guyselman, Counsel, Telecom; David Redl,
22 Counsel, Telecom; Charlotte Savercool, Executive Assistant,
23 Legislative Clerk; Shawn Chang, Democratic Senior Counsel;
24 Patrick Donovan, Democratic FCC Detail; Margaret McCarthy,
25 Democratic Staff; Roger Sherman, Democratic Chief Counsel;
26 and Kara Van Stralen, Democratic Policy Analyst.

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|
27 Mr. {Walden.} Good morning to everyone. I want to call
28 to order the Subcommittee on Communications and Technology
29 for ``The Satellite Television Law: Repeal, Reauthorize, or
30 Revise?'' hearing. This is our second hearing on this issue,
31 and I want to welcome our witnesses today and thank you all
32 for agreeing to come and share your knowledge and opinions
33 with us. I want to especially welcome Amy Tykeson, who is
34 the CEO of Bend Broadband, a constituent of mine, and to
35 congratulate her on her award last night. She was inducted
36 into the Cable Industry Hall of Fame. Congratulations, Amy,
37 to you. She is a dynamic leader in the cable industry and in
38 the Central Oregon community, and we are delighted she made
39 the trip out here and is willing to testify.

40 The hearing will examine today whether the law
41 authorizing satellite television providers to redistribute
42 broadcast programming still serves an important function, or
43 is out of step with today's video marketplace. The law is
44 now 25 years old, and aspects of it sunset on December 31,
45 2014. So the question is, should Congress repeal the law,
46 reauthorize it as it is, or revise it, possibly even tackling

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47 non-satellite specific video issues.

48 Congress passed the original law in 1988 to give the
49 then-nascent satellite industry a leg up in providing distant
50 broadcast signals to viewers out of range of local over-the-
51 air signals. Today, however, DIRECTV and Dish control 1/3 of
52 the pay-television market and are the second and third
53 largest pay-tv providers behind Comcast. And by some
54 estimates only 1 to 1.5 million of the 115.9 million U.S.
55 television households still receive distant signals. That is
56 about 1 percent. DISH also now carries the local signals of
57 broadcasters in all 210 markets and DIRECTV carries them in
58 197 markets.

59 On the other hand, a million viewers still represent a
60 lot of potentially angry letters and calls reminding those of
61 us in Congress about that, as I say, that clause in the
62 Constitution that gives Americans the right to watch whatever
63 they want, whenever they want, wherever and however they want
64 on whatever device they have.

65 Some stakeholders argue we should use the
66 reauthorization to revisit retransmission consent. They also
67 argue we should take another look at cable regulations, such

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68 as the must-carry, basic-tier, buy through, program carriage,
69 program access, and set-top box rules. Those regulations
70 date to 1992 and '96, when cable had 98 and 89 percent of the
71 pay-television market. As of 2010, cable television's share
72 had dropped to 59.3 percent of pay-tv households and 51.6
73 percent of all TV households.

74 So I am open to debate on a whole host of these issues
75 and all options remain on the table. I believe in good
76 process, and one of our responsibilities is to make sure we
77 operate publicly and transparently, giving the American
78 people and stakeholders an opportunity to see what is
79 happening and to contribute to this dialogue. The video
80 market is changing rapidly. Phone companies are in the video
81 business now, both over wires and wireless. Netflix is
82 offering original programming over the Internet. And Aereo,
83 for better or for worse, could turn everything upside down.

84 Ultimately, the question is can we better ensure viewers
85 have access to the programming they want while respecting the
86 investments of the networks that create it and the
87 broadcasters and pay-tv companies that deliver it? Today the
88 government intervenes in various ways in that relationship

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89 between viewers, broadcast affiliates, network programmers
90 and pay-tv distributors. Sometime it does so to the benefit
91 of one; other times to the benefit of another. Should it be
92 intervening at all in the current marketplace? And if the
93 answer is yes in some cases but not others, what is the
94 justification?

95 [The prepared statement of Mr. Walden follows:]

96 ***** COMMITTEE INSERT *****

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|
97 Mr. {Walden.} With that, I yield the balance of my time
98 to the vice chair of the subcommittee, the gentleman from
99 Ohio, Mr. Latta.

100 Mr. {Latta.} Thank you, Mr. Chairman, and I appreciate
101 you holding this hearing today, and I also thank all of our
102 witnesses for their testimony that they are going to be
103 giving, and the expertise that they have as this committee--
104 subcommittee considers the satellite television law.

105 I am glad, Mr. Chairman, that we have started the
106 process of examining STELA early on in this Congress. We all
107 know that December, 2014, will be here before we know it. It
108 is important to have the opportunity to have a robust
109 discussion about the satellite TV marketplace and determining
110 if the law needs to be reauthorized, revised, or repealed.

111 I believe it is extremely worthwhile that Congress has
112 the obligation every 5 years to review this law. As we all
113 know, the communications and video marketplace has changed
114 dramatically and is constantly evolving, and I hope that this
115 hearing and others are the continuation of a thoughtful
116 public debate surrounding the video marketplace. I look

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117 forward to hearing from our witnesses today, Mr. Chairman,
118 and I yield back.

119 [The prepared statement of Mr. Latta follows:]

120 ***** COMMITTEE INSERT *****

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|
121 Mr. {Walden.} Gentleman yields back the balance of his
122 time--balance of my time, and with that, I will yield back
123 the balance of my time and recognize the ranking member from
124 California, Ms. Eshoo, for 5 minutes.

125 Ms. {Eshoo.} Thank you, Mr. Chairman, for holding this
126 hearing, and welcome to our witnesses and many distinguished
127 representatives from the many sectors that are in the
128 audience this morning.

129 Today begins, obviously, the second in the
130 subcommittee's series of hearings on the Satellite Television
131 Extension and Localism Act, STELA, a law allowing consumers
132 across our country who subscribe to satellite TV to receive
133 local broadcast programming. Following today's hearing, we
134 will have had and heard from a total of 11 witnesses in the
135 first 6 months of this Congress, plus countless others who
136 have individually visited our offices to provide their
137 perspective on STELA. These voices include representatives
138 of the satellite, broadcast, cable, and motion picture
139 industries, but I think that we need to now look forward to
140 taking action.

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141 Mr. Chairman, I think that following today's hearing, we
142 should instruct our respective staffs to work expeditiously
143 on drafting legislative text so we can pass a bill long
144 before the December 31, 2014, deadline. We have both stated
145 publically that we want a clean bill. We know that Judiciary
146 has some jurisdiction in this, so it will take some time for
147 them to do their work. So I think that we need to get going
148 with this.

149 So much has changed since the 1992 Cable Act, the
150 process by which broadcasters and pay-tv providers negotiated
151 or how they negotiate retrans, the proliferation of
152 blackouts, and now the emerging online video marketplace, and
153 I think that we need to be examining all of these aspects.
154 So we have a lot of work to do beyond STELA. I am struck--on
155 the broader video market, I am struck by the rapid
156 transformation underway. In particular, three statistics
157 highlight how consumer behavior is changing. By 2017, which
158 is not that far away, 58 billion hours of TV and video is
159 expected to be viewed on tablets per year. That is a
160 remarkable statistic. Online video will account for 69
161 percent of consumer Internet traffic by 2017, up from 57

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162 percent in 2012. The number of web-enabled TVs in consumers'
163 homes will grow from close to 180 million in 2012 to 827
164 million in 2017.

165 So what do all of these statistics mean for our work
166 here at the subcommittee? In addition to freeing up more
167 spectrum and expanding the deployment of high speed broadband
168 to all Americans, we need to recognize that a shift is
169 occurring where the primary means of video distribution might
170 be radically different than the options available to
171 consumers today. Consumers, as the chairman said, want
172 greater choice in programming and how they receive it, and I
173 think this subcommittee should not ever be viewed as a
174 barrier to exciting innovation. So a video marketplace with
175 vibrant competition among the services consumers most desire
176 is really a very, very healthy one.

177 So again, I welcome each one of the witnesses.
178 Congratulations to you, Ms. Tykeson, for the wonderful award
179 that you have received from the cable industry. Thank you
180 all for being here and for how instructive your testimony
181 will be to us.

182 I would be happy to yield the remainder of my time to

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183 anyone. Anyone? Any takers on my side? No? With that, I
184 will yield back. Thank you.

185 [The prepared statement of Ms. Eshoo follows:]

186 ***** COMMITTEE INSERT *****

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|
187 Mr. {Walden.} Gentlelady yields back. Chairman now
188 recognizes the vice chair of the full committee, Ms.
189 Blackburn.

190 Mrs. {Blackburn.} Thank you, Mr. Chairman. Welcome to
191 all of our witnesses. We thank you for your time and for
192 being here. This is an important opportunity for us to learn
193 how we can continue to give TV consumers the best value, the
194 very best value in terms of price, content, quality, and
195 delivery. In this subcommittee last June, members of both
196 parties acknowledged that the 20-year-old video regulations
197 on the books are obsolete. I don't think there is any
198 disagreement on that point at all. Technology has changed
199 dramatically, but the law hasn't kept up. Today's cable,
200 satellite, broadcast, telecom, and online video providers
201 offer competing delivery services and packages, and they are
202 governed by different rules.

203 The question before us is how can we fix a really
204 complex web of regulations that is limiting consumer
205 benefits, restricting content choices, leading to blackouts,
206 and contributing to rising prices? How do we rationalize old

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207 rules for the dynamic innovation that is happening before us?
208 Are disruptive technologies ones that can provide broadcast
209 content without paying a performance right? Everybody knows
210 that is one of my issues, a byproduct of this outdated video
211 framework.

212 We should have a vibrant debate and welcome input from
213 everyone as we review STELA, but most importantly, we need to
214 look at what the proper role of government is and refocus on
215 the best interests of our constituents, who are the consumers
216 of video content. They do expect a level playing field.

217 Mr. Chairman, I thank you and I yield back.

218 [The prepared statement of Mrs. Blackburn follows:]

219 ***** COMMITTEE INSERT *****

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|
220 Mr. {Walden.} The chair now recognizes the gentleman
221 from Louisiana, Mr. Scalise.

222 Mr. {Scalise.} Thank you, Mr. Chairman. Thank you for
223 holding this hearing. I want to thank our panelists. I look
224 forward to hearing from you all as well.

225 When we look at the title of the hearing today, ``The
226 Satellite Television Law: Repeal, Reauthorize, or Revise?'' I
227 would think the subcommittee would be wise to revise and
228 expand the STELA debate by addressing the other intertwined
229 video issues. Many of these issues are government-created
230 imbalances that have arisen over the past 2 decades as the
231 marketplace underwent dramatic transformation. As the
232 gentlelady from Tennessee just mentioned, we take for granted
233 that as we are having this hearing today, many of us have
234 handheld devices that can actually pull video and do so many
235 other things that make our life very convenient, but when
236 these laws were written, the device of the day was more like
237 this device. And so when you think that we are currently
238 governed by laws that were written based on the technology of
239 this device, it shows us, I think, that when we think of the

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240 new technologies that we have the ability to have access to,
241 the laws dramatically need revision and updating. And for
242 anyone who seeks further evidence of the marketplace
243 transformation, look no further than the ongoing Aereo court
244 case that is moving through the courts right now, just to
245 show you where the imbalance can occur.

246 Instead of allowing vast web of government regulations
247 to influence the carriage of programming, we should trust the
248 consumer demand that it is strong enough a tool to ensure
249 that quality programming is carried by pay-tv providers at a
250 rate that both willing buyers and willing sellers can agree
251 upon, without the government thumbing the scale for one
252 industry or another. That is all I am after in this debate,
253 which I believe we can accomplish by reverting back to the
254 basic tenets of property rights and consumer demand to guide
255 the video marketplace forward.

256 I encourage my colleagues to join me in this pursuit,
257 and again, I look forward to the testimony and the
258 questioning from our witnesses, and I thank the chairman and
259 I yield back the balance of my time.

260 [The prepared statement of Mr. Scalise follows:]

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261 ***** COMMITTEE INSERT *****

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|
262 Mr. {Walden.} Is there anyone else on the Republican
263 side that wants the remaining minute? If not, we will yield
264 back the time and I now recognize the former chairman of the
265 committee, the gentleman from California, Mr. Waxman, for 5
266 minutes.

267 Mr. {Waxman.} Thank you very much, Mr. Chairman.

268 Today's hearing is the second time this year that this
269 subcommittee has convened to examine issues surrounding the
270 upcoming expiration of the Satellite Television Extension and
271 Localism Act of 2010, or what we call STELA. The
272 reauthorization of STELA involves interlocking communications
273 and copyright law provisions that must be jointly addressed
274 by our committee and the Judiciary Committee, and as I stated
275 at our hearing in February, because of the complexity of this
276 task, I start from the presumption that we should pursue a
277 clean reauthorization. Congress must complete its work
278 before the law expires so consumers do not inadvertently lose
279 access to programming. At the same time, I believe that
280 reauthorization provides us an opportunity for members to
281 learn more about today's video marketplace and assess whether

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282 laws and regulations are keeping pace.

283 As we begin this conversation, we need to consider how
284 we can continue to ensure diversity, localism, and
285 competition, which are the principles that undergird our
286 Nation's media policy. Congress has recognized the need to
287 protect many of these values, especially when the market
288 might not. New avenues for online video distribution are
289 creating exciting new opportunities for consumers and content
290 creators alike, but to realize these opportunities,
291 competitors may need access to must-have content and
292 independent creators may need the opportunity for their
293 program to reach audiences far and wide.

294 I represent many interested parties in today's debate in
295 my congressional district. Many of my constituents are the
296 artists, writers, producers, and directors whose creativity
297 drives consumer demand for video and deserve to be
298 compensated fairly. Many of my constituents work at the
299 studios and media companies like Disney that make desirable
300 content available to consumers. I also represent companies
301 like Santa Monica-based Tennis Channel. The Tennis Channel
302 is an independent cable channel that offers consumers unique

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303 tennis and tennis-related programming. Congress sought to
304 protect the diversity offered by independent channels like
305 the Tennis Channel in the 1992 Cable Act by adopting
306 provisions to guard against discrimination by vertically
307 integrated distributors. The CEO of the Tennis Channel, Ken
308 Solomon, sent the committee a letter today outlining his
309 perspective on the effectiveness of the FCC's so-called
310 program carriage rules, and Mr. Chairman, I ask unanimous
311 consent that Mr. Solomon's letter be entered into the record.

312 Mr. {Walden.} Without objection.

313 [The information follows:]

314 ***** COMMITTEE INSERT *****

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|
315 Mr. {Waxman.} I hope our discussion today will include
316 consideration of whether today's video marketplace is making
317 diverse and independent content available to all Americans.
318 I am proud that my congressional district also includes the
319 headquarters of DIRECTV, the second largest TV--the second
320 largest video distributor in the United States, now serving
321 over 20 million subscribers. Not only does DIRECTV have
322 approximately 3,000 employees based in El Segundo,
323 California, the company operates 100 percent California-made
324 satellites, some of which were also produced in my
325 congressional district. As one of the satellite providers
326 that this legislation was originally designed to assist,
327 DIRECTV can educate the subcommittee about why it believes
328 the Act should be reauthorized, what aspects of STELA are
329 working well, what parts of the law might need to be
330 modified. And I want to extend a special welcome to our
331 witness from DIRECTV, Mr. Palkovic.

332 Thank you to all the panel members who are here today.
333 We look forward to your testimony, your continued engagement
334 as we move forward with this reauthorization.

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335 Mr. Chairman, since I have 35 seconds, I will be pleased
336 to offer it, although there didn't seem to be takers when
337 other time was available, but anybody that wants it can have
338 it. If not, I will yield it back.

339 [The prepared statement of Mr. Waxman follows:]

340 ***** COMMITTEE INSERT *****

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|
341 Mr. {Walden.} Gentleman yields back the balance of his
342 time, and that takes care of our opening statements, and we
343 will move on now to the testimony from our distinguished
344 panel of witnesses.

345 We will start first with Mr. Mike Palkovic, who is the
346 Executive Vice President for Services and Operations at
347 DIRECTV. Thank you for being here this morning. Again, pull
348 those microphones up close, turn them on, and the time is
349 yours, sir. You have to turn it on. This is not a retrans
350 issue.

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|
351 ^STATEMENTS OF MIKE PALKOVIC, EXECUTIVE VICE PRESIDENT,
352 SERVICES AND OPERATIONS, DIRECTV; MARCI BURDICK, SENIOR VICE
353 PRESIDENT OF BROADCASTING, SCHURZ COMMUNICATIONS, INC.; BEN
354 PYNE, PRESIDENT, GLOBAL DISTRIBUTION, DISNEY MEDIA NETWORKS;
355 AMY TYKESON, CEO, BENDBROADBAND; HAL SINGER, MANAGING
356 DIRECTOR, NAVIGANT ECONOMICS; AND GEOFFREY MANNE, SENIOR
357 FELLOW, TECH FREEDOM

|
358 ^STATEMENT OF MIKE PALKOVIC

359 } Mr. {Palkovic.} Sorry about that.

360 Mr. {Walden.} There you go.

361 Mr. {Palkovic.} Okay. Chairman Walden, Ranking Member
362 Eshoo, and members of the committee, thank you for inviting
363 DIRECTV to discuss reauthorizing the Satellite Television
364 Extension and Localism Act, STELA.

365 As we speak, millions of Americans are leaving for
366 vacation. Packing lists include grills, sunblock, and summer
367 reading. Increasingly, they also include television. The
368 very idea that someone could take TV to the beach would have

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369 been unimaginable when Congress passed the 1992 Cable Act.
370 Viewers today expect the content they want, when they want
371 it, where they want it, on the device of their choosing, and
372 at prices they can afford. And for the most part, they get
373 it, but there is one exception to this good news: broadcast
374 television.

375 Unlike other forms of television, broadcasting remains
376 governed by antiquated laws designed to favor the broadcaster
377 over the viewing public. We hear more complaints about
378 broadcast-related issues than almost anything else. Our
379 subscribers complain about high prices, lack of choice, and
380 blackouts. Much of this results from the outdated
381 retransmission consent regime created in the '92 Cable Act.

382 There are three major problems with this broken system.
383 First, retransmission consent raises prices. Between 2010
384 and 2015, DIRECTV's retrans costs will increase 600 percent
385 per subscriber. These cash payments are on top of the
386 enormous fees we already pay the broadcasters for cable
387 channels that were tied to the retrans negotiations,
388 otherwise referred to as bundling.

389 Second, retransmission consent limits choice. The

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390 retrans regime has led to the consolidation and bundling of
391 cable channels by broadcast owned media conglomerates. In
392 1992, the broadcasters owned four cable channels. Today,
393 they own over 104 cable channels, a 2,500 percent ownership
394 increase. For example, in 1992 NBC owned one channel, CNBC.
395 Today, Comcast NBC Universal owns 22 cable channels, plus 11
396 regional sports networks. These corporations use the retrans
397 process to force our customers to take and pay for all of
398 their channels, regardless of whether they watch them or not.

399 The third major problem and the most frustrating for
400 consumers is retrans related blackouts. Broadcasters use
401 blackouts to drive price increases and deny consumers access
402 to what was once free programming. Last year alone,
403 broadcasters pulled the plug in 91 markets.

404 We see two paths ahead as Congress considers STELA
405 reauthorization. One path is to eliminate these laws
406 entirely. Representative Scalise's bill, the Next Generation
407 Television Marketplace Act, does this. We believe this
408 approach is better than today's hodgepodge of aging
409 regulation.

410 The other possibility would be to make existing laws

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411 smarter. To do so, we strongly believe Congress should
412 address blackouts. First, in light of the fact that
413 broadcasters use the public spectrum, an outright ban on
414 local blackouts should be considered. Alternatively,
415 Congress could allow us to provide our customers with distant
416 network signals during a blackout. If the broadcaster's
417 local content is as important to consumers as they claim,
418 then distant networks would be a poor substitute, and then we
419 would have every incentive to negotiate a carriage deal.
420 Finally, Congress could allow broadcasters to negotiate
421 directly with consumers. Broadcasters would simply set their
422 rates, publish them, and we in turn would charge customers
423 the price the broadcaster set. A consumer could, for
424 example, choose ABC and NBC but opt out of CBS and FOX, as
425 they do today with HBO and Showtime. This would end
426 blackouts, allow for consumer choice, and allow the networks
427 to charge as much as they think their content is worth.

428 Let me also address Senator McCain's ala carte
429 legislation. This bill demonstrates the growing frustration
430 over the rising cost of content and the inability of
431 consumers to make programming choices. Over the years, we

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432 have tried in vain to negotiate more choice and packaging
433 flexibility for our customers. The broadcast corporations
434 either outright refuse or make offers that could best be
435 described as hollow. The result, though, is always the same.
436 Higher prices for consumers and forced bundles of channels
437 they don't want or can't afford. We believe the marketplace
438 is best suited to resolve this conflict. Ideally, we would
439 like to work with the broadcast companies to give consumers
440 what they want, more choice over their programming. However,
441 if these media companies continue to reject calls for
442 packaging flexibility, they leave us no option but to support
443 government intervention.

444 In closing, I cannot emphasize enough that the status
445 quo no longer works for the American viewing public. We
446 speak with over 300,000 of our subscribers every day, and
447 they tell us they want change. While DIRECTV is not wedded
448 to any particular approach, we do believe congressional
449 action is needed. We stand ready to work with you to explore
450 all proposals. Thank you, and I look forward to your
451 questions.

452 [The prepared statement of Mr. Palkovic follows:]

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453 ***** INSERT 1 *****

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|
454 Mr. {Walden.} Appreciate your testimony, sir. Thank
455 you for being here.

456 Now we will turn to Marci Burdick, who is the Senior
457 Vice President of Broadcasting for Schurz Communications,
458 Incorporated. We welcome you back to the committee and we
459 look forward to your testimony.

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|
460 ^STATEMENT OF MARCI BURDICK

461 } Ms. {Burdick.} Thank you. Thank you, Chairman Walden,
462 and good morning. Ranking Member Eshoo, good morning.
463 Members of the subcommittee, hello. My name is Marci
464 Burdick. I am Senior Vice President, as you heard, of Schurz
465 Communications, where I oversee eight television stations,
466 three cable companies, and thirteen radio stations. I am
467 also the television board chair for the NAB, on whose behalf
468 I testify today.

469 Local broadcast television remains unique because it is
470 free, it is local, and it is always on, even when other forms
471 of communication fail. Television is the most watched media
472 for high quality entertainment, sports, local news, emergency
473 weather warnings, and disaster coverage. Schurz has
474 television stations in tornado-prone places like Wichita,
475 Kansas and Springfield, Missouri, and I can tell you from my
476 own personal experience our viewers rely on us to stay
477 informed during times of whether emergencies, not unlike the
478 terrible storms we have seen this year.

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479 With that backdrop, thank you for the opportunity to be
480 here today to discuss reauthorization of the Satellite
481 Television Extension and Localism Act, or STELA.

482 As broadcasters, we approach this debate asking a simple
483 question: is satellite's distant signal compulsory license
484 still in the public interest? We know the universe of
485 distant signals is shrinking, and more and more viewers are
486 receiving their local programming through satellite. Today,
487 DISH provides local into local service in all 210 television
488 markets and DIRECTV in 196. To justify the extension of this
489 law, however, we need more specific information. For
490 instance, how many subscribers rely on the distant signal?
491 How many subscribers are grandfathered, but also receive
492 local into local service? And what is the number of
493 subscribers that receive the distant signal only for use in
494 an RV or a boat? Unfortunately, this information resides
495 only in the hands of DISH and DIRECTV. By digging into these
496 facts, we can have an honest debate about whether the law is
497 still needed.

498 At a minimum, NAB asks this committee to embrace a clean
499 reauthorization that does not include unrelated and highly

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500 controversial provisions that undermine the ability of
501 broadcasters to provide high quality and locally focused
502 content. For example, some would like to use STELA's
503 reauthorization to make drastic changes in a free marketplace
504 negotiation called retransmission consent. I believe such
505 changes would harm consumers.

506 I have been with Schurz Communications for 25 years, and
507 I come to this hearing with a very unique perspective on the
508 video marketplace. My company is a member of both NAB and
509 ACA. We are a broadcaster and we are a small cable operator.
510 I can tell you from our vantage point as a small company that
511 has been on both sides of the negotiating table, the current
512 system works. So I ask the subcommittee, if the system isn't
513 broken, why fix it? The retransmission consent system in
514 place today has a success rate of 99 percent. Only in
515 Washington, D.C., could something that works 99 percent of
516 the time, providing for thousands of deals every year, be
517 called broken. This success rate trumps the effectiveness of
518 the best medicines, the free throw percentage of the most
519 accurate basketball player, and the approval ratings of the
520 Dali Llama and the Pope, yet no one would doubt whether they

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521 are effective.

522 The false fixes being suggested by my friends in the
523 cable and satellite industry would not only harm consumers,
524 but would do nothing to improve on the system that we have
525 today. In fact, just the opposite would be true. One
526 proposal would allow the importation of distant, out of
527 market signals in the event of a contractual impasse. In the
528 real world, that means that Congress would negate existing
529 contracts between broadcast networks like ABC and their local
530 affiliates like KOHD in Bend, Oregon, or KGO in the Bay area.
531 If Congress were to allow distant signals to come into local
532 markets, will have gutted my affiliation contract while
533 leaving viewers in Bend or in the Bay area to receive,
534 perhaps, Los Angeles or Denver news and sports.
535 Additionally, by allowing distant signal importation Congress
536 would be placing its thumb on the bargaining scale by
537 fundamentally skewing the negotiating leverage of the
538 parties. The resulting effect would be more contractual
539 impasses, not less. With fewer viewers and less advertising
540 dollars, the localism that TV broadcasters provide would be
541 compromised. This would ultimately leave your viewers with

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542 less local community programming, your local businesses with
543 fewer places to reach local customers through TV advertising,
544 and politicians with no effective medium to reach their
545 constituents. None of this is good for the consumer.

546 In conclusion, as television broadcasters, we aren't
547 coming to Congress asking for a leg up in our negotiation or
548 for changes to a law to benefit one side or the other. We
549 will fight our own fights, we will make our own deals, and we
550 only ask that Congress not tip the scales in favor of any one
551 industry.

552 I thank you for inviting me here today, and I look
553 forward to your questions.

554 [The prepared statement of Ms. Burdick follows:]

555 ***** INSERT 2 *****

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|
556 Mr. {Walden.} Ms. Burdick, thank you very much for your
557 testimony. We appreciate your comments.

558 We will now turn to the President for Global
559 Distribution of the Disney Media Networks, Mr. Ben Pyne. We
560 are delighted to have you here, sir, and please go ahead.

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|
561 ^STATEMENT OF BEN PYNE

562 } Mr. {Pyne.} Thank you, Chairman Walden and Ranking
563 Member Eshoo, and other members of this subcommittee--

564 Mr. {Walden.} I am not sure your microphone is on,
565 maybe. There you go.

566 Mr. {Pyne.} Thank you, Chairman Walden, Ranking Member
567 Eshoo, and other members of this subcommittee. I had the
568 opportunity to appear before you 6 years ago at a hearing
569 entitled ``The Future of Video.'' At that hearing, I
570 promised we, the Walt Disney Company, will continue to find
571 ways to get our content to any screen consumers use:
572 computers, PDAs, mobile phones, iPods, and of course, TV
573 sets. You may have noticed that I did not use the word iPad
574 in 2007. Of course, it was introduced 3 years after that
575 hearing.

576 What I am proud to tell you today is that we continue
577 our commitment to developing and using new technology to
578 improve the consumer experience. In cooperation with MVPDs,
579 that is cable, satellite and telco distributors, we now make

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580 live streaming of many of our channels available to
581 subscribers under tablets and smartphones. ESPN's Watch ESPN
582 app, downloaded more than 18 million times, was the first
583 application to provide live streaming of a cable channel.
584 Likewise, our line of Watch Disney apps, downloaded now 15
585 million times since last year, offers the same convenience to
586 subscribers of Disney Channel, Disney XD, and Disney Junior.
587 In fact, just last month we were the first broadcaster to
588 launch a streaming service. Our Watch ABC service allows
589 users to watch their local ABC stations online and on smart
590 devices in their hometowns. We hope the service will soon be
591 available in markets across the country.

592 In addition to our Watch services, Disney has recognized
593 the value of using online video distributors to reach
594 consumers who want to enjoy our content in many other ways.
595 We are a part owner of Hulu, and we have negotiated
596 agreements to distribute our content on a host of other
597 online platforms, including Netflix, Amazon, Streampix, and
598 even X-Box.

599 While all of these new forms of distribution are
600 critical to our future, we continue to place a very high

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601 value on distributing content through MVPDs. We believe that
602 monthly video subscriptions purchased by the overwhelming
603 majority of American households continue to be of a
604 tremendous value. We remain committed to delivering
605 outstanding programming to these viewers at all times. As
606 evidence of that, in the last few years we have reached long-
607 term deals with many of the largest MVPDs.

608 The common thread that runs through our use of all these
609 technologies, old and new, is that each allows us to provide
610 additional value to consumers and customers, while achieving
611 a return on our investment in quality programming. Quality
612 content is expensive to produce. Last year, we spent
613 approximately \$3 billion producing programming for ABC and
614 our own stations. As a policy matter, given the significant
615 risk and expense inherent in producing great content, it is
616 critical that we continue to be permitted to negotiate freely
617 for compensation of the distribution of our content.

618 In this context, we believe the current regime requiring
619 MVPDs to negotiate for the right to carry a broadcast signal,
620 the process known as retransmission consent, is working well.
621 Ultimately, this is a process that ensures that MVPDs

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622 compensate broadcasters for the value inherent in the
623 carriage of that signal. Thousands of privately negotiated
624 agreements for retransmission consent have been reached with
625 few interruptions of service.

626 The model of compensating local broadcasters for
627 carriage is working for American consumers. The lion's share
628 of the most watched programs on television are consistently
629 found on broadcast TV. Local stations are able to provide
630 outstanding local news and coverage for emergency events.
631 With the launch of our Watch ABC services, we will be working
632 with our broadcast affiliates to offer even more value for
633 MVPDs to make available to their customers.

634 I recognize that this committee has heard pleas for
635 changes to retransmission consent. We believe the current
636 system provides the appropriate incentives to reach
637 agreements. We want our local and network programming
638 carried by MVPDs. They want to carry our programming because
639 their customers want to watch it. These mutual incentives
640 encourage the successful resolution of negotiations.
641 Additional government action is not necessary.

642 Finally, I would like to turn to satellite legislation.

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643 The original law adopted by Congress 25 years ago eased the
644 way for the technology available at that time to be used to
645 distribute distant network programming to many households,
646 especially in rural areas, that would otherwise not be able
647 to receive the network programming at all. To their great
648 credit, the satellite companies have made significant
649 investments in their technology and today, they are able to
650 deliver local broadcast stations to more households than
651 ever. As a result, the necessity of the satellite
652 legislation to ensure the availability of network programming
653 is simply not as great as it once was. In fact, we believe
654 Congress could give serious consideration to letting the
655 legislation sunset. We realize, however, that you may be
656 concerned by uncertainty regarding what would happen to rural
657 viewers if the legislation was not reauthorized. In the face
658 of that uncertainty, we understand if you choose to extend
659 it, but would ask that you do so simply by extending the
660 current expiration date.

661 Thank you very much.

662 [The prepared statement of Mr. Pyne follows:]

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663 ***** INSERT 3 *****

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|
664 Mr. {Walden.} Thank you, Mr. Pyne. We appreciate your
665 testimony.

666 I would now turn to Amy Tykeson, who is the CEO of
667 BendBroadband. We appreciate your being here, as I said
668 earlier, and welcome your comments.

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|
669 ^STATEMENT OF AMY TYKESON

670 } Ms. {Tykeson.} Thank you. Good morning, Chairman
671 Walden and Congresswoman Eshoo, and members of the
672 subcommittee. I am Amy Tykeson, President and CEO of
673 BendBroadband, a family-owned independent operator--cable
674 operator that serves about 50,000 residential and commercial
675 customers in Central Oregon. Thank you for inviting me here
676 to testify this morning.

677 My goal is to highlight the challenges facing cable
678 operators, particularly smaller operators like BendBroadband.
679 It is time for Congress to update the law to meet consumers'
680 needs and interests.

681 Let me tell you a little bit more about my company. Our
682 tag line says it all: ``We are the local dog. We better be
683 good.'' We have invested about \$100 million to upgrade our
684 network and bring people in Bend the best services available.
685 We employ 270 associates, and we are the 14th largest
686 employer in Central Oregon. We are a first mover, and we are
687 recognized as an industry leader.

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688 I want to discuss three examples of how the outdated
689 video rules are hurting my customers and should be addressed
690 in STELA.

691 First, I can't create the programming packages my
692 customers want. Second, the retransmission consent process
693 is broken, and third, technology mandates for set top boxes
694 should be repealed.

695 First, let me tell you why I can't give my customers the
696 packages they want. The major programmers each control a
697 dozen or more channels. When I negotiate with them, they
698 tell me I have to take all of those channels and that I have
699 to package them the way the programmers want, not the way my
700 customers want. These bundling arrangements are resulting in
701 significant fee increases for my customers. Program bundling
702 is particularly harmful to smaller operators like
703 BendBroadband, who are often presented with a take it or
704 leave it offer.

705 Second, my customers are being hurt by the broken
706 retransmission consent process. I have been through a
707 retransmission consent blackout, and my customers don't want
708 it to happen again. But I fear it will, unless the rules are

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709 updated. For example, Congress intended for retransmission
710 consent to support local stations, not to subsidize the
711 operations of big national broadcast networks. But the
712 networks are demanding an increasing share of their
713 affiliates' retransmission consent fees. This harms localism
714 by diverting revenues from the local stations. It also
715 drives up the cost of retransmission consent and makes the
716 negotiations more contentious. For the MVPDs, the cost of
717 retransmission consent has grown from about \$216 million to
718 nearly \$2.4 billion in just 6 years, and fees are estimated
719 to top \$6 billion by 2018. In my market alone,
720 retransmission consent demands have nearly tripled over the
721 last 3-year negotiating cycle.

722 My final example concerns Section 629 of the
723 Communications Act. That rule resulted in technology
724 mandates for set top boxes that have cost the industry more
725 than \$1 billion and have not benefitted customers. Today,
726 consumers watch programming on a plethora of devices, some of
727 which we have talked about this morning. This rule should be
728 repealed.

729 These three examples illustrate how a regulated

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730 marketplace can be detrimental to consumers when government
731 does not routinely review and update applicable laws. The
732 time has come for a comprehensive review of the existing
733 video framework. At a minimum, I would urge Congress to
734 amend STELA to address issues like the ones I have identified
735 today, to yield more choice, lower prices, and a healthy
736 marketplace to benefit consumers.

737 Finally, I want to acknowledge Representative Scalise
738 and other members of this subcommittee who have advanced the
739 debate on video reform. I look forward to working with you
740 to examine these important issues and welcome your questions.
741 Thank you.

742 [The prepared statement of Ms. Tykeson follows:]

743 ***** INSERT 4 *****

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|

744 Mr. {Walden.} Thank you, Ms. Tykeson. We appreciate
745 your comments and testimony. We look forward to continuing
746 the dialog.

747 We will turn now to the managing director of Navigant
748 Economics, Mr. Hal Singer, for your comments, sir. Thank you
749 for joining us, and please go ahead.

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|

750 ^STATEMENT OF HAL SINGER

751 } Mr. {Singer.} Thank you for having me. I have served
752 as an economic expert in several program carriage complaints,
753 including as an expert for the NFL Network, Tennis Channel,
754 and Masson. The focus of my testimony is the proper
755 regulatory oversight of vertically integrated cable
756 operators, and the role of the FCC in that oversight process.

757 To design the proper regulatory framework, one must
758 first understand the nature of the potential harm presented
759 by vertical integration in the cable industry, namely a
760 reduction in innovation among independent content providers.

761 Why do we care about that potential harm? Because some
762 of the best content has sprung and will likely continue to
763 spring from independents who are free from the strictures of
764 a clumsy conglomerate when creating artistic expressions.
765 Without any protection against discrimination, independents
766 would be forced to surrender equity in exchange for carriage,
767 and thus would be less willing to take risks, which would
768 result in fewer programming choices and less programming

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769 diversity.

770 There are two schools of thought on how best to deal
771 with this problem of vertical integration. The first,
772 advocated by Professor Tim Wu of Columbia Law School, in his
773 best-selling book ``The Master Switch'', is to ban vertical
774 integration entirely. The second, which was embraced by
775 Congress in the 1992 Cable Act, is to permit vertical
776 integration but to police discriminatory acts on a case-by-
777 case basis. The downside of an outright ban is that it
778 sacrifices potential efficiencies related to vertical
779 integration. The downside of a case-by-case approach is that
780 if relief from discrimination does not come swiftly, or if
781 the evidentiary burden imposed on an independent cannot be
782 satisfied under any fact pattern, then after-the-fact
783 adjudication affords no protection at all.

784 Assuming that case-by-case review is the best solution
785 to the problem of vertical integration, the policy question
786 turns to which legal framework is best suited for the task.
787 Should the FCC adjudicate these disputes under its public
788 interest standard, or should complaints of discrimination by
789 a vertically integrated cable operator be addressed under the

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790 antitrust laws? The problem with the latter approach is that
791 a reduction in innovation by independents may not be
792 cognizable under the antitrust laws, which were designed
793 primarily to prevent the exercise of pricing power. Because
794 discrimination in program carriage often does not produce
795 price effects, antitrust is the wrong framework to address
796 discrimination by a vertically integrated cable operator.

797 The lack of price effects in these cases is also why it
798 makes no sense to interpret the non-discrimination
799 protections of the Cable Act in an antitrust context, even if
800 Congress used the word ``unreasonably' ' in the statute. By
801 seeking to identify harm to an independent programmer rather
802 than harm to competition, Congress meant to fill a gap in
803 antitrust laws, namely, the preservation of diversity in the
804 video-programming marketplace. How do we know this? At the
805 time the Cable Act was passed, the largest cable operator in
806 the country, TCI, controlled less than 20 percent of national
807 video subscribers. If Congress meant to import antitrust
808 concepts into the Cable Act, as some now argue, then Congress
809 also intended to immunize all vertically integrated cable
810 operators, including TCI, from the non-discrimination

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811 protections of the Act, as none would have sufficiently high
812 market shares to constitute monopoly power under the
813 antitrust laws. The absurdity of this conclusion, that
814 Congress passed redundant antitrust regulation that was
815 applicable to no one, proves that the Cable Act has nothing
816 to do with antitrust enforcement.

817 Finally, I would like to speak briefly about the
818 appropriate evidentiary burden on complainants under the FCC-
819 administered approach. The purpose of the non-discrimination
820 protections in the Cable Act is to ensure that a vertically
821 integrated cable operator does not consider the benefit to an
822 upstream programming affiliate when deciding whether to carry
823 a similarly situated independent network. There are two
824 primary ways to establish evidence of this kind of ``biased''
825 decision-making. Complainants could show direct evidence
826 that benefits to an upstream network were inappropriately
827 considered. In the absence of such direct evidence,
828 complainants could in theory establish that the downstream
829 cable division incurred a loss by carrying the independent
830 network narrowly. This finding would create a presumption
831 that there was an offsetting benefit to the affiliated

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832 upstream network. However, with the exception of a handful
833 of networks such as ESPN, most independent networks lack
834 ``must-have'' status and thus would be hard-pressed to
835 demonstrate any forgone benefit from broader carriage. Cable
836 operators generally create value for their customers by
837 offering a buffet of choices, rather than granting access to
838 any particular network. Requiring an independent to estimate
839 forgone benefits with precision would be tantamount to asking
840 a leading columnist for the New York Times to estimate what
841 fraction of subscribers would switch to another newspaper if
842 the editorial page excluded that columnist. That the answer
843 might be none, due to the costs of switching newspapers or
844 due to customer loyalty attributable to the Times in general,
845 does not imply that that columnist adds no value to the
846 Times. Accordingly, complainants should not be required to
847 estimate forgone benefits from broader carriage to prevail in
848 a program-carriage complaint, as the current law now demands.

849 Thank you.

850 [The prepared statement of Mr. Singer follows:]

851 ***** INSERT 5 *****

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|
852 Mr. {Walden.} We appreciate your testimony. Thank you.

853 And now we will go to our final witness, a senior fellow

854 at Tech Freedom, Mr. Jeffrey Manne. Thank you for being

855 here, and we look forward to your testimony.

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|
856 ^STATEMENT OF GEOFFREY MANNE

857 } Mr. {Manne.} Thank you, Mr. Chairman, Ranking Member,
858 members of the subcommittee. In addition to being senior
859 fellow at Tech Freedom, I am also Executive Director of the
860 International Center for Law and Economics, and a lecturer in
861 law at Lewis and Clark Law School in Portland.

862 If you remember three words from my testimony today,
863 remember these: House of Cards. Netflix's hit show
864 encapsulates how fundamentally the video marketplace has
865 changed since Congress enacted the special regulations that
866 now govern that market. It represents the work of a new
867 distribution--a new form of distribution, a new source of
868 content creation. It is based on new technology. It is
869 rapidly innovating. Those regulations are themselves a house
870 of cards as well.

871 In the face of technological change, shifting consumer
872 preferences, and evolving policy aims, the complex fragile
873 structure that shapes conduct by consumers, content owners,
874 distribution networks, and regulators is bound to fall down.

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875 Its purpose is frustrated, unintended consequences its
876 legacy.

877 To start, STELA should be allowed to sunset the
878 compulsory license limit on copyright protection for video
879 content repealed. Congress should also repeal the related
880 provisions of the Cable Act, retransmission consent, program
881 access and carriage, must carry, among others, and Congress
882 shouldn't extend this regime to--regulatory regime online.
883 This isn't deregulation; this is smarter regulation. Because
884 behind all of these special outdated regulations are laws of
885 general application that govern the rest of the economy,
886 antitrust and copyright. These are better, more resilient
887 rules. They are simple rules for a complex world. They will
888 stand up better as video technology evolves, and they don't
889 need to be sunsetted.

890 The FCC's numbers say that video prices went up 20
891 percent--cable prices went up 20 percent between 2006 and
892 2010, but adjusting for inflation, they went up only 10
893 percent. Meanwhile, the number of channels increased 42
894 percent. Spending on programming went up 30 percent.
895 Americans spent 20 percent more time watching video, and then

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896 there is an endless range of quality improvements that went
897 along with it. To say that the current market is in any way
898 constrained, anti-competitive, or crabbed, seems very
899 difficult to sustain.

900 In short, consumers are getting more for their money,
901 more content, more choices, and higher quality.

902 If Netflix were regulated like a cable network, it is
903 not likely that the law would allow it offer exclusive
904 programs like House of Cards. Why invest \$100 million in a
905 franchise if it doesn't offer you a leg up on your rivals?
906 Exclusive programming helps drive competition.

907 The key to promoting competition in both video and
908 broadband isn't restricting programming innovation, if we are
909 looking for rules to change, it is removing local regulatory
910 impediments to competitive infrastructure, like franchise
911 licensing and access to rights of way. Allowing more towers
912 to be built would mean faster 4G wireless service, making 4G
913 wireless yet another established competitor to legacy cable
914 and satellite.

915 An intense competition in some markets can benefit
916 consumers everywhere. I would just point out when we are

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917 looking at potential problems of the absence of localized
918 competition, it turns out, of course, that these are all
919 networks. Competition from Verizon's FIOS in New York City,
920 for example, has driven Cablevision to enter into peering
921 agreement with Netflix's CDN. That means better Netflix
922 streaming for customers outside New York as well.
923 Competition need not be local to have local benefits.

924 So what should Congress do? Again, let STELA sunset. A
925 clean reauthorization of STELA isn't clean at all. STELA is
926 a mess. We need rules that minimize error costs but affects
927 policy goals in a fashion that is least likely to outlaw by
928 default that which we actually want to encourage, only
929 haven't discovered yet; that is, regulatory mistakes
930 discovered only in retrospect, and mistakes have been made.
931 Aereo exploits imprecise language in the definition of
932 copyrights performance right to navigate around the overly
933 complex effort to use compulsory licensing, must carry, et
934 cetera, aimed at bolstering cable's competitiveness and
935 promoting localism. But arguably, a simple copyright rule of
936 general applicability, full performance right protection
937 retained and enforced by the copyright holder, would have

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938 avoided the problem entirely.

939 While the interest of the dwindling percentage of
940 Americans who view television programming on-the-air
941 shouldn't be--only on-the-air shouldn't be ignored, we really
942 have to take seriously the possibility that serving this
943 segment under the current regulatory regime carries with it
944 enormous costs that outweigh the benefits. These cost
945 include, most significantly, retransmission fees passed on to
946 MVPD viewers, technological and business model constraints,
947 and most importantly, the enormous opportunity costs, perhaps
948 as much as \$1 trillion of more efficiently deploying spectrum
949 currently used for broadcasting.

950 I want to address quickly also the program access and
951 program carriage rules. These rules eschew antitrust rules
952 to promote program diversity and competition among providers.
953 By focusing on the program carriage and program access rules
954 as they are constructed, we have shifted the terms of the
955 analysis to a starting point that sort of assumes that all
956 content should be available everywhere, but that not all
957 content is available from all distribution channels is not
958 proof of market failure. Similarly, equating diversity with

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959 independence is inappropriate. If independence means not
960 affiliated with the distribution network, this amounts to a
961 preference for ABC's The Bachelor over NBC's The Biggest
962 Loser. Program carriage rules, in contrast to antitrust,
963 problematically prescribe an undesirable effect--not an
964 undesirable effect, but a particular business model, and it
965 is a mistake to try to prescribe a particular business model
966 when we don't know in the future what the optimal business
967 model will look like.

968 Ending the current regulations won't leave consumers
969 unprotected. There is a role for the law here, but the role
970 for the right law, which is antitrust and copyright.

971 Thank you.

972 [The prepared statement of Mr. Manne follows:]

973 ***** INSERT 6 *****

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|
974 Mr. {Walden.} Thank you very much for your testimony.
975 We thank all the witnesses for your testimony, and will now
976 go into our question phase.

977 Mr. Palkovic, in deciding whether to repeal,
978 reauthorize, or revise the current satellite law, it is
979 important, I think, that we understand what the impact of
980 each of these decisions really would be on the current
981 satellite television subscribers. How many viewers today
982 actually receive a distant signal, because that was one of
983 the underlying reasons for this Act--how many of those
984 viewers would receive a local signal from their satellite
985 provider, and how many would have no way of receiving
986 broadcast programming over the air, over satellite, or from
987 any other source without distant signal? So who is in that
988 pool today?

989 Mr. {Palkovic.} I think the entire pool between us and
990 DISH is roughly a million and a half customers who are
991 receiving that. I do not have the breakdown of how many
992 people are grandfathered. I think it is a fraction of that,
993 maybe a couple hundred thousand, and I think those are

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994 largely on the DIRECTV side. So it is in that range. It is
995 a small piece of the million and a half, but if we were to
996 lose that right through this process, you would basically be
997 taking broadcast programming not only away from the million
998 and a half customers, but there would be absolutely no
999 substitute for it. Because honestly, if they had a
1000 substitute, they wouldn't be paying us to get the distant
1001 signals, they would be getting it a different way.

1002 Mr. {Walden.} Okay. If we could work with you a little
1003 bit going forward just so we get an understanding what that
1004 pool looks like in terms of grandfathering, that would be
1005 terrific.

1006 Ms. Burdick and Mr. Pyne, I am interested in helping,
1007 obviously, constituents get the programming they consider
1008 truly local. How can we ensure that getting programming from
1009 their State, not out of State programming, merely because
1010 they fall in a DMA assigned to another State? We obviously
1011 have that situation--

1012 Ms. {Burdick.} I am a living example of that, Mr.
1013 Chairman. I actually live in Niles, Michigan. My front yard
1014 is in Michigan and my back yard is Indiana, and I am part of

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1015 the South Bend DMA, but I vote in Chairman Upton's district.

1016 Mr. {Walden.} And you are, what, in five time zones,
1017 too? That used to be an issue.

1018 Ms. {Burdick.} We changed that a couple years ago,
1019 although my lawn mower did used to change when I go around
1020 the lawn--my cell phone would change when I go around the
1021 lawn.

1022 At any rate, I happen to receive Comcast's Michigan
1023 signal from its Michigan head end, and what Comcast does in
1024 that case is they reserve Channel 3 for--I am a CBS affiliate
1025 in South Bend and I have network non-dup and syndicated
1026 exclusivity protections across the market, but Comcast
1027 reserves Channel 3 for the local broadcast of the CBS station
1028 in Grand Rapids, so its programming, local news, and
1029 information can be broadcast in that area.

1030 My point of telling you that is there are ways to
1031 resolve those situations and we have resolved them in the
1032 market today.

1033 Mr. {Walden.} I know we have that problem in Umatilla
1034 County. There is a certain former senator that is really
1035 aware of that, and anyway, it is an issue elsewhere in my

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1036 district.

1037 Ms. Tykeson, when Congress passed the '92 Cable Act and
1038 the '96 Telecom Act, cable had 98 percent and 89 percent of
1039 the pay-tv market respectively. As of 2010, cable's share
1040 dropped to 59.3 percent as I mentioned in my opening
1041 statement of the pay-tv households, and 51.6 percent of all
1042 TV households. Is there still a justification for imposing
1043 on the cable industry regulations such as must carry, basic
1044 tier, buy through, program carriage, program access, and set
1045 top box requirements?

1046 Ms. {Tykeson.} Chairman Walden--

1047 Mr. {Walden.} Go ahead and push that microphone, yeah.

1048 Ms. {Tykeson.} Thank you for the question. I think
1049 when we described earlier the shift in how things have
1050 changed and unfolded since 1992, it is a completely different
1051 marketplace today than it was then. Many of the rules that
1052 you have just mentioned are outdated and they need to be
1053 repealed. So my suggestion would be to consider sunseting
1054 the '92 Act and potentially some of the other requirements in
1055 the '96 Act so there is a way to go back and revisit some of
1056 those rules. In the STELA bill, there is an opportunity for

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1057 reexamination because of the sunset clause. We don't have
1058 that in the '92 Act and as a result, we are stuck with a lot
1059 of outdated rules that are harming consumers.

1060 Mr. {Walden.} All right. Mr. Pyne, do you have any
1061 comment on that issue of these rules that are put on the
1062 cable industry? Should they stay or go?

1063 Mr. {Pyne.} In terms of STELA?

1064 Mr. {Walden.} Well no, in terms of the must carry, the
1065 basic tier, the buy through program, carriage program access,
1066 set top box programs from your perspective. We are just
1067 trying to get different perspectives here.

1068 Mr. {Pyne.} In terms of the broadcast basic buy
1069 through, I think the marketplace in essence has spoken in
1070 terms of the value of local broadcast. For instance, one of
1071 the reasons satellite has shown tremendous growth over the
1072 past 12 years especially is because of their investment in
1073 satellite space to drive local into local, and it is a huge
1074 investment on their part. But clearly, it is because of the
1075 value of the local--each local broadcast community or each
1076 community in this country that has allowed their investment.
1077 So in essence, even though they did have the option to just

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1078 have national programming, they actually decided as a matter
1079 of course to deliver local programming.

1080 Ms. {Tykeson.} If I may just add one quick point,
1081 though.

1082 Mr. {Walden.} Sure.

1083 Ms. {Tykeson.} I think the problem now is that we have
1084 competitors in markets like Mike's company, and say,
1085 BendBroadband, that have different rules, and so the playing
1086 field isn't level. So I think we need to--for example, on
1087 the must buy, that has got to go.

1088 Mr. {Walden.} Yes, Marci, go ahead.

1089 Ms. {Burdick.} Mr. Chairman, could I speak about must
1090 carry for just a second? I think many members of this
1091 committee have rightly been concerned about diversity. One
1092 of the values of must carry is that these are stations in a
1093 local community that are sprung up by service to that local
1094 community. Of the stations that are must carry stations
1095 today, 69 percent of them carry some religious broadcasting.
1096 Thirty-nine percent of them carry some directed ethnic
1097 program to those communities they serve, and must carry--as a
1098 result of must carry today, networks like--channels like FOX,

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1099 Univision, and others like that began as must carry stations,
1100 got traction, and then developed a business model of their
1101 own, but they are extremely important today in localism.

1102 Mr. {Walden.} Thank you. I actually have gone like a
1103 minute 41 over my time and the committee has been indulgent,
1104 so I will now defer to the ranking member of the
1105 subcommittee, Ms. Eshoo, for 5 minutes.

1106 Ms. {Eshoo.} Thank you, Mr. Chairman. I never mind
1107 listening to you, so that is fine. Thank you.

1108 Well, the title of today's hearing is ``The Satellite
1109 Television Law: Repeal, Reauthorize, or Revise?'' and in some
1110 way, shape, or form each one of you have taken up one of
1111 those words, so it really fits with what the title of the
1112 hearing is. I am also mindful that, you know, as you make
1113 your recommendations to us, that these are really some huge
1114 rewrites of business plans, and those are gigantic lobbies,
1115 most frankly, around here but we are going to do our best to
1116 come up with the best, and I thank you, because we really
1117 have a mix of views which is very healthy here today.

1118 The questions that I want to ask, and I am going to have
1119 to submit some for the record for you to respond to because I

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1120 won't have enough time to ask all of them, are a little
1121 beyond, I think, what--you know, just STELA, but since you
1122 are here, I still want to ask them.

1123 Mr. Palkovic, I now understand why it is called DIRECTV,
1124 because you are very direct in your approach. In Ms.
1125 Burdick's testimony, she stated that the retransmission
1126 consent system under which local broadcast stations negotiate
1127 with pay television providers for the retransmission of their
1128 signal is working just as Congress intended. Do you agree
1129 with the assertion, and if not, what would you propose
1130 changing? Try to be as brief as possible.

1131 Mr. {Palkovic.} Yeah, I will make a quick distinction
1132 is working as intended versus working well, because I think
1133 from the broadcaster's standpoint it is working fantastic,
1134 because they have all the protection and the rights of the
1135 laws that were in place in the '92 Cable Act. What I don't
1136 think was intended is that they would go from four cable
1137 channels to 104 with regional sports networks and use the
1138 retrans process to leverage us paying exorbitant amounts on
1139 the cable channels because we risk them blacking out channels
1140 as part of the renegotiation.

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1141 So what we want to address here is the unintended part
1142 of the combination of those laws, okay, and that is what is
1143 different today than was there in 1992 was we were in a
1144 situation where we were dealing directly with broadcasters.
1145 Now we are dealing with huge conglomerates that own both
1146 sides of the equation, including cable MSOs that if they
1147 raise the rates exorbitantly, a lot of cases they are just
1148 paying themselves.

1149 Ms. {Eshoo.} Great, thank you.

1150 Mr. Pyne, welcome. Nice to have you here. Should Aereo
1151 prevail in court, some network executives have been quoted as
1152 saying there would be a radical shift away from the free
1153 over-the-air broadcast signal that consumers have enjoyed for
1154 more than half a century. If broadcasters began offering
1155 programming on a subscription only basis, do you think they
1156 would still be in compliance with the public interest terms
1157 of their FCC licenses?

1158 Mr. {Pyne.} As it relates to the Aereo case, I mean, I
1159 know there are other network executives who have said certain
1160 things. Our company's position is that--and as I think is
1161 evident, we are in pending litigation with Aereo. We will

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1162 always do everything we can to protect our content and the
1163 copyright and the illegal appropriation of our content.

1164 Ms. {Eshoo.} Very carefully crafted response. Very
1165 good.

1166 Mr. {Pyne.} Our focus is on the prevailing litigation.

1167 Ms. {Eshoo.} I understand. Thank you.

1168 To Mr. Singer, do you think our current law is
1169 sufficient in ensuring the availability of diverse
1170 independent programming like Ovation, Hallmark, and the
1171 Tennis Channel, and if not, why do you think the Cable Act is
1172 failing to accomplish its intended goal? Should we modernize
1173 the program access in the carriage laws, and if so, how? Now
1174 many if so, how, is too--and I don't have very much time, but
1175 you have 36 seconds for a big question.

1176 Mr. {Singer.} I think that the laws as written with
1177 respect to program carriage, program access are fine. The
1178 problem is in the details of the implementation, and I
1179 actually think that the FCC has done a nice job here in
1180 implementing the rules, but of course, once they come to a
1181 decision, their decisions can be--well, the judge's decision
1182 can be overturned by the FCC and then there is a period again

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1183 where the decision by the FCC can be overturned by the
1184 district court--D.C. Court of Appeals. And I think the
1185 problem now, very shortly, is that they have--the court has
1186 layered on certain burdens that will make it all but
1187 impossible for complainants to prevail. And so I do fear
1188 that at the current moment, we are in a position where there
1189 might not be any future program carriage complaints brought,
1190 and that would be certainly inconsistent with the interests
1191 of Congress.

1192 Ms. {Eshoo.} Thank you very much.

1193 Mr. Chairman, I am going to submit my other questions to
1194 the witnesses, and I am especially interested in the whole
1195 issue of copyrighted material deserving competition--I mean,
1196 compensation. I think it is a very important area for us to
1197 explore, especially when it comes to radio fairly
1198 compensating artists for their copyrighted materials.

1199 So with that, I yield back.

1200 Mr. {Walden.} Thank the gentlelady, and we will now go
1201 to the vice chair of the full committee, the gentlewoman from
1202 Tennessee, Ms. Blackburn, for 5 minutes.

1203 Mrs. {Blackburn.} Thank you, Mr. Chairman, and Ms.

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1204 Eshoo and I, I think, have some of the same questions. I am
1205 going to go right to the copyright issue.

1206 Ms. Burdick, let me come to you. I appreciate your
1207 comments, and how you express for property rights and I am
1208 quoting, ``recognizing local broadcaster's property interest
1209 in their over-the-air signal, permitting them seek
1210 compensation'', and I agree. Content deserves to be paid for
1211 and incentivized, but I am curious if you think the position
1212 the broadcasters have taken on the radio side, refusing to
1213 recognize a performance right for sound recordings, if that
1214 undermines your position before us as we look at the video
1215 framework and the retransmission rights, because as you know,
1216 radio broadcasters say that they shouldn't have to pay
1217 performance royalties, because they help distribute an
1218 artist's music. So square that up for me. Where is the
1219 contradiction in that?

1220 Ms. {Burdick.} Sure. Just by way of background, our
1221 company has been in the radio business for 90 years, 18
1222 months after the first commercial station was launched. We
1223 have been at it for a long time.

1224 Mrs. {Blackburn.} That is fine. Quickly.

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1225 Ms. {Burdick.} There has been a symbiotic relationship
1226 between radio and artists--I think I am on--radio and artists
1227 during that period of time, and the substantive difference is
1228 that when my radio stations play the artist's music, the
1229 listeners are getting it for free. In this case, we are
1230 talking about providers who are taking the local television
1231 broadcast signal, repackaging it, and selling it to
1232 consumers, and in that case, I am saying, in the latter case,
1233 if you are charging for it I should be compensated, but on
1234 the radio side--and I recognize this is a healthy debate in
1235 the industry--we are providing that as broadcasters for free.

1236 Mrs. {Blackburn.} Okay, but you know, you can look at
1237 it and say that they are helping to distribute your signal
1238 which helps to increase your ad revenues, and so maybe
1239 broadcasters--radio broadcasters should be distributing or
1240 should be paying that performance right for those
1241 entertainers.

1242 Mr. Manne, you had a little bit to say about this. Do
1243 you want to weigh in on this side?

1244 Mr. {Manne.} Just briefly, I would just say I think the
1245 distinction is a distinction without a difference. I don't

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1246 think that you can really square the rejection of the
1247 compulsory right in one case and not in the other, except
1248 other than to recognize that the broadcasters are net
1249 beneficiaries in one regime and they are net payers in the
1250 other, and so it makes perfect sense that they would prefer
1251 one over the other, but I don't think that squares with the
1252 public interest.

1253 Mrs. {Blackburn.} Okay, thank you for that.

1254 I think that this is one of those points that we will
1255 continue to look at, because content does deserve to be
1256 compensated and the creator and the holder of that content
1257 deserves to be compensated.

1258 Ms. Tykeson, given how government granted retransmission
1259 consent fees have grown from \$216 million in '06 to what will
1260 be over \$3 billion this year, who is benefitting and what is
1261 driving that growth?

1262 Ms. {Tykeson.} Congresswoman, thank you for the
1263 question. There are two groups that are benefitting from the
1264 retransmission consent fees. Originally those fees were
1265 designed to allow--to help level the playing field between
1266 the local broadcaster and the cable company, and of course,

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1267 back in 1992 it was a very different circumstance than it is
1268 today. What is happening now is the national broadcasters
1269 are requiring fees be paid through the local affiliates, and
1270 that is increasing the fees at huge rates, as you mentioned.
1271 So that all those fees are going to--they are accruing to the
1272 large conglomerate broadcast companies that control 60
1273 percent of the top 50 networks to on the backs of my
1274 customers.

1275 Mrs. {Blackburn.} Okay. You also stated in your
1276 testimony that there exist barriers to creating programming
1277 packages that are responsive to consumer need, so what has
1278 led to your business's hands being tied in meeting the needs
1279 of your consumers?

1280 Ms. {Tykeson.} Congresswoman, there are three things
1281 that are happening that affect my customers in Bend, Oregon.
1282 The first is the size of the increases that we are asked to
1283 pay by all of these programming channels on an annual basis,
1284 which range between 8 and 10 percent, roughly, for every
1285 channel. In addition, with these large bundles of
1286 programming there is always a must-have channel in there, but
1287 there are a lot of other channels that maybe my customers

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1288 wouldn't want, and what is happening is the large programming
1289 companies are forcing those channels into certain packages.
1290 I used to be able to have a special sports package that could
1291 meet the needs of customers that wanted sports, but now in
1292 many cases those expensive channels are being pushed down
1293 into the more popular packages that is increasing the prices
1294 for my customers.

1295 Mrs. {Blackburn.} Okay, my time is expired. Mr.
1296 Chairman, I have got a question I will submit to all
1297 witnesses and ask for their response in writing, and I yield
1298 back.

1299 Mr. {Walden.} Thank the gentlelady from Tennessee, the
1300 vice chair of the committee. We will now go to the former
1301 chairman of the committee, the gentleman from Michigan, Mr.
1302 Dingell, for 5 minutes.

1303 Mr. {Dingell.} Thank you, Mr. Chairman, and I commend
1304 you for this hearing. I appreciate your kindness and
1305 courtesy to me.

1306 To the surprise of all, I probably won't be asking
1307 questions today, but I have got some brief cautionary
1308 remarks.

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1309 I am somewhat alarmed by the prevalence of comments in
1310 the testimony of our witnesses today that are extraneous to
1311 the basic issue that we seek to address. Successive
1312 iterations of the 1988 Satellite Home Viewer Act, SHVA, were
1313 enacted by Congress in order to extend the principle of
1314 localism to the greatest degree possible to unserved viewers.
1315 I note that thanks to SHVA and with subsequent
1316 reauthorization, DIRECTV and DISH are now the second and
1317 third largest pay television providers in the country and are
1318 able to compete on a more level footing with the
1319 traditionally dominant cable companies. These facts tell me
1320 that SHVA and its successor legislation have well nigh
1321 fulfilled their intended effect.

1322 Now the committee last considered the satellite
1323 television reauthorization legislation in October of 2009.
1324 That bill was comprised of nine titles, but it had only 30
1325 pages or thereabouts. Its main provisions extended Section
1326 325(b) of the Communications Act with respect to distant
1327 signal carriage and good faith negotiations, as well as
1328 addressed problems related to significantly viewed stations,
1329 and the after effects of the transition to digital

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1330 television. Now to put this in simple terms, the committee's
1331 work on satellite television legislation has been predicated
1332 on the simple principle of localism, and it should continue
1333 to do so.

1334 In closing, I recognize the landscape for video has
1335 changed significantly in the past 25 years. If the Cable Act
1336 or other laws related to the video marketplace are to be
1337 amended, they should be amended on the sound basis of a
1338 thorough record established by the committee's diligent
1339 record--diligent efforts to achieve such record. At present,
1340 the committee has not established such record, and I have to
1341 confess that I don't think that most of my colleagues,
1342 including me, understand full well what the situation is or
1343 what it is we should do about these matters. And so without
1344 those kinds of things and without a record to define what are
1345 efforts should be, I think we would be well served to confine
1346 our efforts here to a clean reauthorization of the Satellite
1347 Television Extension and Localism Act. I would observe that
1348 to fail to do this is probably going to project the committee
1349 into one of the doggonest donnybrooks in recent history and I
1350 would hope that for the benefit of all of us and for the need

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1351 to do other things that we would keep that thought in mind.

1352 With that, Mr. Chairman, I return with my thanks and
1353 gratitude a minute and 44 seconds, and I appreciate your
1354 courtesy toward me. Thank you.

1355 Ms. {Eshoo.} Would the gentleman yield?

1356 Mr. {Dingell.} If I have some time, of course.

1357 Mr. {Walden.} Gentleman yields.

1358 Ms. {Eshoo.} Thank you, Mr. Dingell.

1359 I can't help but jump in here, given what the gentleman
1360 from Michigan has said. I think everyone here knows, and if
1361 you don't, you are going to be reading about it, that Mr.
1362 Dingell is now the single longest serving member of the
1363 United States Congress in the history of our Nation, and he
1364 has spoken again very, very wisely and prudently today. So
1365 we not only congratulate him and celebrate the work that he
1366 has done at this committee. Every major law that we can
1367 point to has his imprimatur on it. So thank you, Mr.
1368 Dingell, and thank you for what you said today, and bravo.

1369 Mr. {Dingell.} Mr. Chairman, I want to express my
1370 respect for the gentlewoman from California, and my thanks to
1371 her for those kind words. My old daddy used to say to me,

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1372 son, he would say, it ain't how long you took, but how well
1373 you did and how hard you tried. I have tried to concentrate
1374 on the second part of that comment. Thank you very much, Ms.
1375 Eshoo, and Mr. Chairman, I thank you for your courtesy again.

1376 Mr. {Latta.} [Presiding] The chairman emeritus yields
1377 back, and at this time, the chairman recognizes himself for 5
1378 minutes. Again, I want to thank all of the panelists for
1379 appearing before us today, and it is a very important hearing
1380 and where we are going to be going in the next year and a
1381 half with the reauthorization.

1382 If I could start with Ms. Tykeson, if I could start with
1383 you and ask you a couple questions. First, again,
1384 congratulations on your award. I represent a very
1385 interesting area, one that is south of Mr. Dingell's area in
1386 Ohio, and it goes from an urban area to a very rural area.
1387 And so it is served by very many smaller operators like
1388 BendBroadband. I want to ask you about set top boxes, if I
1389 could. You have called on Congress to repeal the band on
1390 integrated security on these set top boxes, but you note in
1391 your written testimony that your company was granted a waiver
1392 of that rule. Why is this rule relevant in today's role,

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1393 given all the devices that folks out there are able to get
1394 video programming from? And do we still need the 629 rule as
1395 a follow up?

1396 Ms. {Tykeson.} Thank you for your question,
1397 Congressman.

1398 We were successful in receiving a waiver from the
1399 separable security ban back in 2008, so we were able to go
1400 all digital. We were the first company in a traditional
1401 cable company to go all digital and reclaim all of our analog
1402 spectrum. What has changed even since then is the plethora
1403 of devices that are available and so determining how people
1404 receive their signals using hardware in today's world where
1405 applications or software can do the job is a much more
1406 efficient way to do that. A lot of companies can't do--put
1407 together a waiver because they are too small, and having this
1408 rule on the books that is outdated and no longer relevant is
1409 costing billions of dollars and preventing technology from
1410 moving forward. Thank you.

1411 Mr. {Latta.} Let me just follow up. You just said some
1412 of the companies out there can't do it because they are too
1413 small. How small is too small?

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1414 Ms. {Tykeson.} Well, I am a member of the ACA, which
1415 represents small operators, and there are companies out there
1416 with a couple of hundred cable customers.

1417 Mr. {Latta.} Okay. Let me follow up with you on that.
1418 I understand that the FCC has admitted that their cable card
1419 rules have not been successful at ensuring a retail market
1420 for set top boxes as Section 629 of the '96 Act intended.
1421 However, the FCC has been encouraged to adopt all bid rules
1422 that apply to all pay-tv providers to remedy this situation.
1423 What is your position on that?

1424 Ms. {Tykeson.} Well, I think the problem with the rules
1425 that--with regards to the--excuse me, I am a little bit
1426 nervous.

1427 Mr. {Latta.} Go right ahead.

1428 Ms. {Tykeson.} Some of these rules are only applying to
1429 cable companies, and they are only applying in the United
1430 States. And so we are artificially impacting the cost of
1431 hardware, and I am not in favor of trying to regulate who
1432 should be doing what with technology that is changing fast
1433 and rules like we have in the '92 Act become outdated and
1434 they are impacting the marketplace and how it unfolds.

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1435 Mr. {Latta.} Thank you very much.

1436 Mr. Pyne, if I could ask you just a couple questions. I
1437 find it kind of interesting in your testimony you stated that
1438 in cooperation with our MVPDs, for example, cable, satellite,
1439 and telco distributors, you now have--you make live streaming
1440 of many of our channels available to subscribers on their
1441 tablets and smartphones, and having heard, you know, through
1442 the testimony today and we hear all the time is how things
1443 are really changing out there, how people from, you know,
1444 across the country are getting their information.

1445 I am just kind of curious, when you talk about, you
1446 know, making that live streaming available, you know, on all
1447 these different channels of subscribers, do you have any
1448 breakdown of like the ages of individuals or the regions? Is
1449 it particular or is this across the Nation on the age groups,
1450 just out of curiosity, for one?

1451 Mr. {Pyne.} On the specific--with our Watch services, I
1452 don't have the breakdown. We can certainly look into that.
1453 Just to be clear, part of the reason we call this TV
1454 Everywhere, the industry calls it TV Everywhere, and it is
1455 really--it is part of the industry's effort to continue to

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1456 find ways to provide an incredible value package to
1457 consumers. Just quickly, this week, Michael Powell, who is
1458 the head of the NCTA, said on stage, you know, the average
1459 cost per hour of viewing entertainment content is 23 cents.
1460 So 23 cents is the average cost of viewing, which in terms of
1461 entertainment options, he was saying is a very great bargain.
1462 I mean, I commend companies like Bend, DIRECTV, and others
1463 for the great job that they have done in creating that value.

1464 I will tell you that ABC.com, you know, in 2004 when we
1465 had such great hits as Lost, Desperate Housewives, and Grey's
1466 Anatomy, we found that 15 minutes they were off the air, they
1467 were pirated around the world, so we created a service called
1468 ABC.com, which is live streaming at that point, and the
1469 statistics we found in that is that the average age of a
1470 linear television was in the earlier 40s, but the average age
1471 of someone who watched ABC.com was in his or her early 30s.
1472 So I think that that may give you some indication.

1473 Mr. {Latta.} Well thank you very much, and my time has
1474 expired. At this time, I recognize the gentleman from
1475 Pennsylvania, Mr. Doyle, for 5 minutes.

1476 Mr. {Doyle.} Thank you, Mr. Chairman.

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1477 Ms. Burdick and Ms. Tykeson, both of your companies deal
1478 with retransmission consent as small cable providers, yet you
1479 seem to have a disagreement on the effectiveness of the
1480 regime. Why do you think that is?

1481 Ms. {Burdick.} Well as I said, I am the small
1482 broadcaster, small cable company at either side of the table.
1483 There have been some remarks today about consolidation of
1484 broadcasters. We are small fries compared to the
1485 consolidation of video provider world. The top four video
1486 providers control 62 percent of the market. The top 10
1487 control 91 percent, so in my negotiations as a broadcaster, I
1488 will start with a major MVPD with millions of subscribers
1489 that says you cover in your six markets 1.8 percent of the
1490 country. I can afford that churn. So it is a tough business
1491 negotiation either way. If I spoke as a cable operator,
1492 which I am not today, I am speaking on behalf of NAB, but the
1493 negotiation is equally as tough on that side of the table and
1494 I think what it proves is that the marketplace works. There
1495 are thousands--

1496 Mr. {Doyle.} So as a small cable operator, though, you
1497 think it works?

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1498 Ms. {Burdick.} Yeah, we made it work.

1499 Mr. {Doyle.} Ms. Tykeson, you have a different view?

1500 Ms. {Tykeson.} I don't think it works because it is not
1501 a free market, so I have a choice of one affiliate in my
1502 market, you know, and in some cases it is a great affiliate
1503 because they provide local news. But if we have an impasse,
1504 for example, I am given a price I have to pay, I don't have
1505 any recourse. I can maybe negotiate a little bit, but at the
1506 end of the day, that broadcaster can take the channel off of
1507 my system. So my customers either have to pay the price or
1508 we go--have to go black with the channel. We can't bring in
1509 another signal during that interim period.

1510 The other point I wanted to make, in some markets, about
1511 48 markets around the country, there are broadcasters working
1512 together to negotiate with the MVPD or the local operator,
1513 and that collusion is driving up prices by about 20 percent
1514 and making it very challenging to negotiate. I don't think
1515 there is any other industry where competitors could work
1516 together to collude to come up with a solution. I know Ms.
1517 Burdick in her testimony said that in her market she is not
1518 doing that, but my smaller cable constituents around the

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1519 country have had those circumstances that are very disruptive
1520 to their customers.

1521 Mr. {Doyle.} Thank you.

1522 Mr. Pyne, has Disney ever commissioned the purchase of
1523 your most popular channels on the purchase of your least
1524 popular channels?

1525 Mr. {Pyne.} No, we have not. In fact, I have signed
1526 three affidavits attesting to that fact that we do not employ
1527 what is commonly known as tying.

1528 Mr. {Doyle.} So has anyone ever requested price quotes
1529 from you for just your most popular channels only?

1530 Mr. {Pyne.} Excuse me?

1531 Mr. {Doyle.} Has anyone ever requested price quotes
1532 from you for just your most popular channels?

1533 Mr. {Pyne.} Yes, they have, and in fact, ESPN and ESPN-
1534 2, which are two of our most popular channels, 15 percent of
1535 our cable systems out there only carry ESPN and ESPN-2.

1536 Mr. {Doyle.} Very good, thank you.

1537 Ms. Tykeson and Mr. Palkovic, how does channel bundling
1538 affect the types of packages that your companies can offer,
1539 and how does it affect the prices you charge your consumers?

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1540 Mr. {Palkovic.} Well, with DIRECTV, it is simple. We
1541 are offered a price for all of the channels with a particular
1542 program, including retrans. Any offers that would break that
1543 down into individual pieces are just economic. I think that
1544 is intended, so that usually doesn't go anywhere, and you
1545 know, you end up with situations where even if we could
1546 create a package for consumers that was affordable that only
1547 had in that package enough programming to support a price
1548 point that they would want, will run afoul of penetration
1549 obligations in those agreements. So you can do it, but you
1550 end up either having to stop selling that package or you have
1551 to pay through the nose to the programmers for violating
1552 those terms. So it is not just a tie-in involving channels,
1553 there are penetration obligations on the more popular
1554 channels that accrue to the rest of the suite of services.
1555 So it is a tough situation today to deal with.

1556 Mr. {Doyle.} Thank you. Ms. Tykeson?

1557 Ms. {Tykeson.} So what that means is if we wanted to
1558 have a channel down in a lower level--well, usually we don't,
1559 but if say, for example, with the basic cable, limited cable,
1560 we would be prevented from moving those channels to a higher

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1561 tier if they are too expensive. So we are forcing our
1562 customers through--unfortunately, the programmers are--to put
1563 these channel in tiers where customers don't want them, and
1564 if we pierce the floor, and I think that is what Mike is
1565 saying, now we are in breach of contract. So I have to put
1566 these channels in these wide penetrated tiers and customers
1567 don't want them. My packages are becoming way too expensive,
1568 and it is just not fair for my customers.

1569 Mr. {Doyle.} Thank you, Mr. Chairman. I see my time is
1570 up so I will submit the rest of my questions for the record.

1571 Mr. {Latta.} Thank you very much. The gentleman yields
1572 back, and the chair now recognizes the chairman emeritus, Mr.
1573 Barton from Texas, for 5 minutes.

1574 Mr. {Barton.} Thank you, Mr. Chairman.

1575 Before I go into my questions, I have a commercial.
1576 Tomorrow night at I think 7 o'clock, Mr. Doyle's behemoth of
1577 a team, the Ragtag Republicans, and I am scrounging a team
1578 together this afternoon to make sure that we can get nine
1579 folks to show up, but the game is at 7 o'clock and there are
1580 a lot of Energy and Commerce members. Mr. Doyle is the
1581 manager on the Democrats and I am the manager on the

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1582 Republicans. Mr. Scalise here is our second baseman, so we
1583 are hoping--

1584 Mr. {Doyle.} We will be gentle, Mr. Chairman.

1585 Mr. {Barton.} You what?

1586 Mr. {Doyle.} I said we will be gentle.

1587 Mr. {Barton.} Yeah, well we want you to be very gentle.

1588 Now if you will start the clock I will get into my comments.

1589 I have three homes, which is unusual, two in Texas and

1590 one up here. One of them is covered by DIRECTV, one is

1591 covered by Comcast, and one is covered by Charter

1592 Communications. The two that are covered by cable, you know,

1593 also includes an internet package. DIRECTV is just TV. All

1594 of those I am paying in the neighborhood of \$200 a month

1595 each. I am really looking at going back to the old free TV.

1596 I mean, I think it is illustrative when you are having

1597 commercials show up on cable television that you can get an

1598 antenna and the government requires free over-the-air

1599 broadcast. You know, we have got a whole generation

1600 Americans who don't realize that they can get free over-the-

1601 air TV. It is like it is a new product, and I am about to

1602 rejoin going back to the future, because of the cost.

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1603 Now the last time we did major cable bill, there was a
1604 Republican Congressman named Nathan Deal, and he was hot to
1605 trot on ala carte pricing. And I discouraged him and--but
1606 anyway, we got him--we let him have a vote on his amendment.
1607 I think he got two or three votes. Well he is now Governor
1608 of Georgia, but if he were still a member of this committee,
1609 I think he would get a lot more votes. I am not real happy--
1610 I understand that I can get 1,000 channels, but I only watch
1611 two or three, and my friends at DIRECTV--I know it is not
1612 fair to pick on you, but one of the channels that I really,
1613 really like to watch is FOX Southwest. It is the regional
1614 sports channel in Texas. In order to get it, I had to pay
1615 about 70 bucks for a package, a tiered package of which all
1616 of those the really only one I want to watch is FOX
1617 Southwest.

1618 So I am not sure--I haven't talked to Mr. Walden or Mr.
1619 Upton. I don't know what their personal views are on
1620 reauthorization, whether they want to reopen it or they just
1621 want a so-called clean bill. But if they want to go beyond a
1622 clean reauthorization, I am very willing to look at the basic
1623 tenets and revisit it, because to the average American

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1624 family, 200 bucks a month is a significant amount of money
1625 and it is--that is about--in three locations. Now that does,
1626 in two of the three, includes an internet package. It
1627 doesn't in the TV package for DIRECTV. So that is just
1628 something as an observation.

1629 My question I am going to go to Mr. Singer here, because
1630 he seems to be the economist neutral man here.

1631 Retransmission consent was meant to be a level playing
1632 negotiation between a local broadcaster and a local cable
1633 operator. And in many cases, the local cable operator was a
1634 national cable operator. It wasn't somebody like Mrs.
1635 Tykeson, who has a local system. But apparently now,
1636 retransmission is becoming a national negotiation between a
1637 broadcast network where the local affiliate yields to the
1638 national network, who then gets a fair amount of the
1639 retransmission package if there is compensation. That was
1640 not the intent of the Congress, at least, that is not my
1641 recollection. So I would like Mr. Singer's comments on this,
1642 how retransmission has evolved and if he has a solution, if
1643 he thinks it needs to be changed, what would he go to?

1644 Mr. {Singer.} Sure. Thanks for putting that to me, and

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1645 I will try to be fairer than them all. But the point is that
1646 economics or the way that economists think about things, is
1647 there a market problem? Is there, say, vertical integration
1648 that can distort incentives relative to an independent in
1649 this situation? When I look at this problem, I see two
1650 behemoths on both sides of the bargaining table. And in this
1651 situation, you will get some failures in a sense that deals
1652 won't be struck. But there isn't a very solid basis, at
1653 least in economics, for regulatory intervention in those
1654 circumstances. It seems to me that--and this is an important
1655 caveat--so long as the copyright is protected on the
1656 broadcaster's side, we should just let those guys basically
1657 beat each other over the heads until they come to the right
1658 price.

1659 Mr. {Barton.} So you don't see a problem with the
1660 current law?

1661 Mr. {Singer.} I think that there is--again, what I have
1662 seen put on the table, I think, in Mr. Manne's testimony is
1663 that if we fix the copyright issue we can repeal the law and
1664 let market forces dictate the outcomes.

1665 I do see problems, I just want to say, in terms of the

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1666 size of the package that you mentioned before and I am
1667 sympathetic to that, but on this issue of whether or not
1668 government should lean in and put their hand on the scale of
1669 a negotiation between two large players on both sides of the
1670 equation, that doesn't have a very strong basis in economics.

1671 Mr. {Barton.} Okay. Thank you, Mr. Chairman.

1672 Mr. {Latta.} Thank you very much. The gentleman yields
1673 back, and at this time the chair recognizes the gentleman
1674 from New Mexico, Mr. Lujan, for 5 minutes.

1675 Mr. {Lujan.} Thank you very much, Mr. Chairman.

1676 Mr. Barton, I almost want to yield you more time to get
1677 to some of those questions as well, sharing some of those
1678 concerns, especially with the rural district that I
1679 represent.

1680 I guess a question to Mr. Palkovic, Mr. Pyne, and Ms.
1681 Tykeson, along the same lines, last year the FCC released its
1682 annual survey of cable industry rates and found that prices
1683 from 1995 to 2011 time period increased by an annual rate of
1684 6.1 percent, compared to only 2.4 percent increases in the
1685 overall consumer price index. To what factors do you
1686 attribute those causes, especially as we talk about the

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1687 impact of programming to many of our consumers?

1688 Mr. {Palkovic.} Sure. I think DIRECTV in recent years
1689 has been going up annually about 4 percent with our customers
1690 all in, and just to kind of put it in some context, over 40
1691 percent of our costs are costs paid directly to the
1692 programmers, to the content holders, and their prices have
1693 gone up double digit, so you know, when 40 percent of your
1694 costs are going up 10 percent and we can only get 4 percent
1695 from our consumers, because we still have to operate in a
1696 competitive environment, we are not making any money on this.
1697 So all the other operating costs we have for satellite and
1698 broadcast centers and overhead and customer service--and we
1699 are a huge believer in providing, you know, the best customer
1700 experience, we are eating those costs because all the money
1701 that we are getting annually is going directly to the content
1702 holders. So if people think that we are, you know, out there
1703 making money on these increases, we are not.

1704 Mr. {Pyne.} I think--

1705 Mr. {Tykeson.} So in our case, programming is the
1706 number one cost for my company. Our expenses for programming
1707 are going up twice as fast as our revenue from video product.

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1708 I wanted to also just comment on Congressman Barton's point,
1709 because what we have now is this shifting in the power. We
1710 are negotiating--MVPDs like Mike's company and my company are
1711 negotiating with a single broadcaster in a market, so this is
1712 the only example I can think of where you have more
1713 competition and higher prices, and it is because I don't have
1714 any place to go besides to those broadcasters or programmers
1715 to get that particular content.

1716 Mr. {Lujan.} Mr. Pyne?

1717 Mr. {Pyne.} If I may just say something on programming
1718 costs. First of all, I want to make one point clear is that
1719 at the Walt Disney Company, we only own eight television
1720 stations so when we negotiate retransmission consent, we only
1721 negotiate for those eight stations. It sounds like there is
1722 a belief that all the local broadcasters are puppets in some
1723 way. Believe me, there is a great exchange of dialog between
1724 local broadcasters who are affiliates and us in terms of
1725 whatever the appropriate exchange of value, but you know,
1726 they are the ones that drive that local decision and that
1727 local negotiation.

1728 You know, we at the Walt Disney Company spend billions

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1729 of dollars every year in creating great content. I said
1730 earlier that, you know, for ABC alone it is \$3 billion a
1731 year, but we always--whatever the service, we always are
1732 looking to make our networks must-have. I wish it were as
1733 easy to call down to the local store and say here, I would
1734 like to order two hits, but the investment and the risk in
1735 developing that content is huge for us, and ultimately, we
1736 are looking, in terms of our negotiations, to find, you know,
1737 a fair way of reaching terms with whomever our distributor
1738 is.

1739 You know, one of the advantages that small rural cable
1740 systems have is something called the National Cable
1741 Television Cooperative, or NCTC, and in that case for all of
1742 our cable networks, ESPN, Disney Channel, ABC Family, we
1743 negotiate--and BendBroadband is a member, you may be a
1744 member, too--we negotiate as if they are the fifth--eight
1745 million subs, they represent eight million subscribers, and
1746 we negotiate as if they are the fifth largest MVPD.

1747 Mr. {Lujan.} Mr. Pyne, I am sorry, I am going to have
1748 to just jump in here because I am going to lose all my time
1749 here.

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1750 Mr. {Pyne.} Sorry.

1751 Mr. {Lujan.} But I would love to get that maybe in a
1752 written way and we will get that resubmitted.

1753 Ms. Burdick, I am sympathetic to a comment that you made
1754 in your prepared testimony that you are concerned that local
1755 communities could lose access to local programming. I think
1756 that we would both agree that access to local news, local
1757 programming is critically important. But I want to talk to
1758 you about something that is broken. I represent a district
1759 where many of my constituents can't receive local programming
1760 because of the DMA that they are in, and I would like your
1761 opinion on what we can do to make sure that we are including
1762 orphan counties to get this done, because if not, I want to
1763 work with my colleagues to find a way to fix this. Since I
1764 have been in Congress I have been asking for help in this
1765 area and I have not found anyone willing to help me out to
1766 get this fixed.

1767 Ms. {Burdick.} Well, I can tell you the head of the
1768 NAB, former Senator Smith, was successful on the Senate side
1769 in finding some fixes there, and we will be glad to work with
1770 you. Broadcasters want local citizens to have local

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1771 programming, and we would be glad to work with you.

1772 May I take just a minute to address a couple of the
1773 comments here? I think you raised something that was really
1774 important where you quoted cable rates from 1995 on. The
1775 fact of the matter is broadcast retransmission consent has
1776 only existed since 1992, and from a practical basis, it was
1777 really not until the late '90s or 2000 that most broadcasters
1778 began successfully negotiating for pennies of every
1779 programming dollar to support local news and information.
1780 The cable rates have been going up in a larger percentage
1781 long before broadcasters were being paid for the most popular
1782 content on cable systems.

1783 Mr. {Lujan.} Mr. Chairman, I know my time is right now,
1784 but as I look for some assistance to get this done, some of
1785 my savvy consumers, all they do is they go and get a post
1786 office box out of a metropolitan area in the middle part of
1787 the State, the largest city of Albuquerque and then once they
1788 send that bill to their satellite provider, then I will be
1789 darned, they get local programming. You know, if it is not
1790 against the law, we need to make this work somehow. This is
1791 just ridiculous. These are farmers and ranchers that are in

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1792 isolated areas that want local programming, want to know what
1793 is happening in the State that they are proud to belong to,
1794 and we got to get this thing fixed.

1795 Thank you very much, Mr. Chairman.

1796 Mr. {Latta.} The gentleman yields back his time, and at
1797 this time the chair recognizes the gentleman from Louisiana,
1798 Mr. Scalise, for 5 minutes.

1799 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
1800 that and enjoy the testimony.

1801 I want to start with Mr. Palkovic. In your testimony
1802 you had stated that competition normally drives down prices,
1803 but here the Congressional Research Service recently put it
1804 that ``Ironically the market consequence of greater
1805 competition in the distribution of video programming appears
1806 to be greater negotiating leverage for the programmers with
1807 popular and especially must-have programming, resulting in
1808 higher programming prices that MVPDs tend to pass through at
1809 least partially to subscribers.'' How do you believe
1810 government regulation has contributed, if at all, to the
1811 findings that we saw from the Congressional Research Service?

1812 Mr. {Palkovic.} Well, I think it gets back to the tying

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1813 and bundling of the retransmission consent rights that
1814 broadcasters have that are tied to the 1992 Cable Act,
1815 coupled with the consolidation of programming that has taken
1816 place since that time. Right now, there are six major
1817 companies that control the majority of programming. They are
1818 not all broadcasters, but four of them are broadcasters, and
1819 they behave somewhat differently depending on who they are.
1820 But when they bundle all of their content together, even the
1821 content that is less desirable that people should be allowed
1822 to choose in more niche packages, in exchange for a very much
1823 high in demand programming, they really just point the gun at
1824 your head and say you got to take it or leave it. What makes
1825 it even worse is when they throw blackouts on top of that, so
1826 it sounds like it is a free market situation, but underlying
1827 that are all the protections they have for the local
1828 broadcast channels. And it may not be the smaller mom and
1829 pops, that may be a more direct kind of traditionally fair
1830 discussion, but these large conglomerates are basically using
1831 all the rights they have with the Cable Act and leveraging
1832 that against distributors and driving the prices up.

1833 Mr. {Scalise.} Let me ask Mr. Pyne, I know when you

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1834 talk about the different services that your company provides,
1835 you know, my kids would probably have a revolt if the Disney
1836 Channel or Disney Junior went off the air. I would probably
1837 have a revolt if ESPN went off the air. If there was a
1838 repeal of retransmission consent, but also tied in with the
1839 repeal of compulsory copyright license, which I know
1840 legislation I brought forward would do--and usually the
1841 compulsory copyright components are often left out of the
1842 conversation. Wouldn't you just revert back to a normal, as
1843 Mr. Manne described it, a normal copyright negotiation where
1844 you would have two parties that would still be sitting at a
1845 table negotiating, but in this case the consumer demand would
1846 be driving a negotiation that would still be based on a
1847 mutually agreed upon price?

1848 Mr. {Pyne.} You know, I think--you know, we don't
1849 support the repeal of both the retrans and compulsory
1850 copyright. Clearly in that discussion there are some things
1851 of interest to us in terms of the economic discussion, but we
1852 don't support the repeal of retransmission consent for the
1853 reasons I cited. I think in full candor, one of the reasons
1854 is the potential uncertainty we view that could take place in

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1855 the marketplace. You know, from our perspective and
1856 certainly from other broadcast perspective, we believe the
1857 system is working in terms of the negotiations. Yes, there
1858 are disruptions. There are not officially blackouts because
1859 broadcasters are still broadcasting their signal, and as in
1860 any negotiation in the current system--I have personally been
1861 involved in two. One is when Time Warner dropped ABC in
1862 2000, and then in 2010 when we dropped Cablevision. In the
1863 first case it was resolved in 36 hours, in the latter--and
1864 that was just ABC, by the way, it was not other networks--and
1865 the latter resulted in 20 hours of ABC being off the air and
1866 we reached a resolution.

1867 Mr. {Scalise.} Thanks. You know, one of the earlier--
1868 when I did my opening, the reason I held up the brick phone,
1869 you know, you can find these on the Internet still, which we
1870 were able to do--it doesn't work. I can't get it to work.
1871 But the laws that were written during the time when this was
1872 the technology--and I brought up the Aereo case earlier and I
1873 appreciate that there is ongoing litigation, you can't talk
1874 about it here. But if you look just a few weeks ago, the
1875 head of CBS actually did chime in on his and indicated that

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1876 they are right now in talks with pulling CBS down and going
1877 to a cable format. Now, probably unlikely that it gets to
1878 that, but the fact that CBS, one of the major broadcasters,
1879 is right now talking about the possibility that if this court
1880 case goes a different way, that they could pull down their
1881 local broadcast signals and just go to a pure cable format
1882 tells you the marketplace has changed dramatically because of
1883 technology, and yet the laws don't cover that. So I want to
1884 finish with a question to Mr. Manne, how do you view this
1885 marketplace as it is evolving in the context of laws that
1886 were written in 1992 that really haven't been updated, though
1887 the technology has changed dramatically?

1888 Mr. {Manne.} We had amazing progress in this market,
1889 despite the fact, as I pointed out in my testimony, but
1890 clearly suboptimal rules here. I think in particular when I
1891 hear all this discussion about high prices for must-have
1892 content and all the talk about bundles, I think Hal and I
1893 seem to substantially disagree about this. What I hear is
1894 that there are pieces of the existing regime--we have talked
1895 about them, starting as you and I both agree with the
1896 compulsory license, but going through all of the many we have

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1897 mentioned today, that do dramatically, I think, impair the
1898 free contracting among the various parties here and probably
1899 do affect price, but it is also really important that at the
1900 end of the day, you do have to pay a price for things like
1901 things that you must have. If you really want something, you
1902 usually have to pay more for it, and especially when it comes
1903 to the availability of content, and that means both the
1904 production of the content and the distribution of it, you
1905 know, I see this incredibly vibrant market with more content
1906 than we have ever had, more avenues of distribution than are
1907 imaginable, and the fact that the particular business model
1908 by which they are distributed, in some cases, for example,
1909 bundled, that doesn't foreclose access to all of this
1910 wonderful content. That is not how it works. And because it
1911 doesn't work that way, I see it as a valid business decision
1912 that these content owners and the distributors that they
1913 negotiate with have made to actually maximize the production
1914 of that content. That may cost a little bit more--seem like
1915 it costs more, because you have to pay more, for example, the
1916 bundle, but that has generated such a proliferation of
1917 content and again, distribution mechanisms for it that we

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1918 have this really remarkable market that could be even better,
1919 because there are such easily identifiable problems with the
1920 regulation of it that we could dispense with it.

1921 Mr. {Scalise.} Thank you. Appreciate it, Mr. Chairman,
1922 and I yield back the balance of my time.

1923 Mr. {Latta.} Thank you very much. The gentleman yields
1924 back. At this time now, the chair recognizes the gentleman
1925 from Utah, Mr. Matheson, for 5 minutes.

1926 Mr. {Matheson.} Thanks, Mr. Chairman, and I do
1927 appreciate the panel today. I find this to be a rather
1928 thoughtful and informative hearing, which I wish that was
1929 always the case, but this is a really good one today. So I
1930 appreciate all of your input.

1931 I had a couple of questions. There are so many issues
1932 out there, but Ms. Burdick, I wanted to ask you, there is a
1933 suggestion that has been put out by some folks that there is
1934 a situation where out-of-market programming could be allowed
1935 during retransmission consent disputes. If that happened,
1936 could you tell me what the impact would be on your company if
1937 that happened during a retransmission dispute?

1938 Ms. {Burdick.} Sure. I will give you one line and then

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1939 I will elaborate. Imagine what it would have been like in
1940 Moore, Oklahoma, had distant signals been broadcast the day
1941 of the tornadoes. Imagine what it would have been like.

1942 We as local broadcasters are providing local news,
1943 weather, and sports services that are not duplicated by
1944 anyone else, and the fact of the matter, as the panelists
1945 have alluded to us is must-have programming because it is
1946 watched more on their cable systems or satellite systems than
1947 any of the channels that they provide. You have to go to a
1948 CW, a My Network station, over-the-air that even gets close
1949 to the top-rated cable network, so we are providing important
1950 content. If a local signal--if a distant signal was allowed
1951 to be imported, a couple things would happen. There will be
1952 more disputes, not less, that will last longer because there
1953 is no incentive for the cable or satellite operator to solve
1954 that dispute. They are bringing in a signal they are not
1955 paying for, so why would you reach a resolution with a local
1956 content provider to pay for that content, number one. At the
1957 second time, they would be shrinking my market area. I would
1958 be losing eyeballs. When I lose eyeballs, I lose
1959 advertisers. When I lose advertisers, I lose dollars. The

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1960 only place, as Ms. Tykeson rightly refers to, cable's highest
1961 programming cost--cable's highest cost is programming. Mine,
1962 as a local broadcaster, is people doing news and local
1963 information. When I lose revenue, that is the only place I
1964 have to go to control my cost, and that would be the impact.
1965 Less news, less local information.

1966 Mr. {Matheson.} Thank you.

1967 Ms. Tykeson, you talked about in your testimony how your
1968 costs for your consent fees have gone up over the last few
1969 years. Roughly how much of your--what is your breakdown of
1970 how much your programming dollar breaks down between what is
1971 broadcast and what is not?

1972 Ms. {Tykeson.} So the--I would say--

1973 Mr. {Matheson.} Sorry, could you turn your mike on?

1974 Ms. {Tykeson.} Sorry.

1975 Mr. {Matheson.} Thank you.

1976 Ms. {Tykeson.} The prices for retransmission consent
1977 are growing at a faster rate than the costs for my other
1978 kinds of programming, but both are going up by significant
1979 amounts. I would say with these recent rounds of
1980 retransmission consent negotiation, probably doubling and

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1981 tripling each cycle. And then in addition, with the large
1982 bundles of programming that I am required to offer because
1983 there is not a system that allows me to offer smaller
1984 packages to my customers, each time those negotiations come
1985 around, my costs are going up, in some cases, by 20 to 30 or
1986 even more, depending on what is being required of me in terms
1987 of moving some of those channels down, offering more
1988 channels, and then also taking the double or triple the cost
1989 of inflation increases on each one of those channels that we
1990 provide to our customers, and we have to, in accordance with
1991 those agreements.

1992 Mr. {Pyne.} Can I make one clarification, please, and I
1993 have heard this several times. I think I stated earlier that
1994 we don't employ tying. Like other businesses, we do offer
1995 packages of programming, but I guess I will say three things.
1996 Number one, clearly we spend an inordinate amount of time,
1997 energy and money in developing must-have programming, and
1998 that is from the very top of our company, creative
1999 excellence. Two is, you know, when a channel doesn't do very
2000 well, we, in fact, change it, so recently Soapnet, great
2001 channel in the 2000s, its popularity has waned, so we could

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2002 have just tacked on another channel and added more, but in
2003 fact, we are switching out Soapnet and launching Disney
2004 Junior, which has incredible programming, and third, if I may
2005 finish, you know, we would love all of our channels to be 100
2006 percent penetrated. We have a portfolio. We love them. But
2007 in fact, even on BendBroadband, our ESPN news channel is only
2008 penetrated 18 percent, Disney Junior 49 percent, and on
2009 DIRECTV, ESPN deportes is only penetrated 6 percent. And
2010 finally, we have--and we understand that. That was a
2011 negotiated deal through fair market terms. And finally, you
2012 know, we have done as a company over the last little over 2-
2013 1/2 years seven of the top ten deals with major companies,
2014 with smaller companies, ranging from Cox Communications to
2015 Cablevision, to AT&T, and certainly Comcast. We have done
2016 deals that after 30 years of negotiating in the marketplace--
2017 and I have been doing this for 21 years--I think we have
2018 established standard rates and standard terms.

2019 Ms. {Tykeson.} If I may just add, because my neighbor
2020 here mentioned the National Co-op, which is an opportunity
2021 for companies like BendBroadband to participate, but some of
2022 the problems with the rules that we currently are operating

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2023 under is the co-op is not really treated truly like a large
2024 distributor, so the prices that are offered to the co-op
2025 members, and terms in particular, are different and in most
2026 cases, it costs more or there is more stipulations and terms
2027 that are not attractive or as attractive as a large
2028 distributor might be able to get. Thank you.

2029 Mr. {Matheson.} Thank you. I appreciate everyone's
2030 comments. Mr. Chairman, I yield back.

2031 Mr. {Latta.} Thank you very much. The gentleman yields
2032 back, and the chair now recognizes the gentleman from
2033 Vermont, Mr. Welch, for 5 minutes.

2034 Mr. {Welch.} Thank you very much, Mr. Chairman. This
2035 is a great hearing. I was on the committee two Congresses
2036 ago and then I was off last committee, and I am back. And
2037 things are pretty confusing for consumers, anyway. You know,
2038 I find this to be a very excellent hearing and really
2039 appreciated your testimony, and Mr. Chairman and ranking
2040 member, it is fabulous to be here.

2041 But you know, the work that everyone is doing is so
2042 important, and how you do it and what the market requirements
2043 are in order to have the revenue stream in order to do it

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2044 obviously is essential, and we are talking about this in the
2045 context of satellite reauthorization, which Congress has
2046 successfully done. But the kind of elephant in the room that
2047 has been alluded to, but not directly addressed, is the Cable
2048 Act of 1992. I mean, the world is totally different. The
2049 revenue models are totally different. The consumer needs and
2050 opportunities are completely different, and you know, it is
2051 raising the question in my mind as to whether or not, in
2052 fact, there needs to be a serious revisit of the Cable Act of
2053 1992.

2054 In my office, I have had many of you or people in your
2055 sectors of the very challenging industry come in and talk
2056 about what they perceive as problems with the status quo,
2057 some people saying the status quo is the right way to go, but
2058 that is very much in contention, and we are even hearing that
2059 amongst you. And the bottom line--and I don't have any
2060 answers--is that somehow, some way we have to figure this out
2061 and do it in a coherent approach where there is an
2062 acknowledgment that there are new tensions. I mean, just
2063 think about the things we have heard tonight--this afternoon.
2064 Mr. Lujan talking about the orphan counties and not being

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2065 able to make any progress. What I hear about a lot is from
2066 my consumers and the cost of this, and Mr. Latta, I really
2067 appreciate your leadership. We started a rural caucus to try
2068 to figure out how we can help folks in rural America
2069 basically get a fair shake on this. The dilemma here from my
2070 perspective is that the consumers just don't have any power
2071 to affect the outcome, but they are feeling the pressure of
2072 these high bills. They need the services you provide. They
2073 benefit from the content that you create. They certainly
2074 benefit from local broadcasting. We had Tropical Storm
2075 Irene, and the lifeline for us was local radio and local
2076 television. But on the other hand, they have no control over
2077 what that bill is. They get all these channels that they
2078 never watch, you know. They kind of wonder why these
2079 baseball players are getting \$230 million contracts and they
2080 can't swing a bat anymore. And you have got a revenue model
2081 where basically there is no liability for the general manager
2082 who makes the deal, because they can just pass it on to the
2083 cable subscribers. People are getting kind of fed up with
2084 that, right?

2085 So you know, Mr. Chairman and ranking member, I just

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2086 wonder whether it is time for us to not only look at the
2087 satellite STELA, but to look at the Cable Act of 1992 and
2088 understand that it has got to come out in a way where the
2089 competing interests and needs require a solid and stable
2090 revenue stream in order to provide the benefits to consumers,
2091 but the consumer has to be part of the equation.

2092 So I am just going to go down the line and ask whether a
2093 revisit of the Cable Act, in your view, makes some sense,
2094 aside from the fact that everyone always fears that whatever
2095 can go wrong will go wrong if Congress starts trying to
2096 change anything. So I get that part, all right, but let's
2097 start with you, Mr. Palkovic.

2098 Mr. {Palkovic.} Sure. Obviously we came here to
2099 address, you know, the topic of STELA, but I think it is safe
2100 to say that the common theme here is that the rules are old,
2101 they need to be revisited. It can be a little bit
2102 overwhelming to think about how difficult that would be. We
2103 tried to come up with solutions that were anywhere from, you
2104 know, the total deregulation approach where everybody gives
2105 up all their rights, and quite honestly, including us, we put
2106 the good and bad on the table and start over. Two more

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2107 targeted approaches to take care of the things you pointed
2108 out that are directly evasive to the consumer, because that
2109 is really the problem we have is when you use the consumer
2110 with blackouts and other tactics like that to deal with your
2111 free marketplace negotiations, that is where we think they
2112 have kind of gone over the line. But yeah, I don't think
2113 there is any question of revisiting--

2114 Mr. {Welch.} My time is about up, but I just would be
2115 interested in a short reaction to whether revisiting the
2116 Cable Act makes some sense. Go ahead.

2117 Mr. {Palkovic.} Pardon me?

2118 Ms. {Burdick.} Do you want us to continue or respond
2119 later?

2120 Mr. {Welch.} Well you can respond later, but a yes or
2121 no might be helpful now, because I am out of time. We have
2122 got a very generous chairman here, but I don't want to wear
2123 out his patience and good will.

2124 Mr. {Latta.} Well, if you just want to go down the line
2125 and answer a yes or no question, go right ahead.

2126 Mr. {Welch.} Just yes or no.

2127 Ms. {Burdick.} I can't answer it yes or no.

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2128 Mr. {Pyne.} Me as well.

2129 Ms. {Tykeson.} I would say yes, and also provide a
2130 written response, but that will take time, so I would go for
2131 some additional fixes now, some of which I have mentioned.
2132 Thank you.

2133 Mr. {Singer.} I think that there is still a valid need
2134 for the program access and program carriage protections in
2135 the Cable Act, but aside from those, I think it would be
2136 worthwhile revisiting the larger picture.

2137 Mr. {Manne.} I think absolutely. In fact, I don't
2138 think you can really address STELA without addressing those
2139 other parts. I would just say that when you do, the most
2140 important thing is--I disagree, of course, with Hal about
2141 program access and program carriage, but the most important
2142 thing is to understand how your regulations can avoid
2143 enshrining, you know, the particular contractual arrangements
2144 we may have today as though those are the only possible
2145 revenue models or anything else. I think that is what has
2146 happened and really fundamentally--

2147 Mr. {Welch.} Okay, thank you very much, and Mr.
2148 Chairman, thank you.

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2149 Mr. {Latta.} Thank you very much. The gentleman yields
2150 back and the chair now recognizes the gentleman from
2151 Colorado, Mr. Gardner, for 5 minutes.

2152 Mr. {Gardner.} Thank you, Mr. Chairman, and thank you
2153 to the witnesses for your testimony today. Listening to the
2154 opening comments, listening to the questions, I think there
2155 is no doubt from the members here, the witnesses here today
2156 that the rules governing today's video marketplace were
2157 crafted 21 years ago, a very long time ago. In fact, none of
2158 the rules currently apply to some of the latest Internet
2159 competitors in the video space. So with these dramatic
2160 changes that have occurred in the video marketplace, I think
2161 we have got a great opportunity before us to examine what has
2162 changed and how current laws can help or hinder advancement
2163 of the free market and market innovation. I know the
2164 broadcast industry believes the system is working, and many
2165 others disagree. The rise in programming costs and
2166 retransmission consent disputes indicates that there are
2167 issues that we need to look at.

2168 So to DIRECTV, I would ask this question. Mr. Palkovic,
2169 is that right?

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2170 Mr. {Palkovic.} Palkovic, yes.

2171 Mr. {Gardner.} Palkovic. Why do you think STELA is the
2172 right vehicle to move forward with the discussion of how to
2173 change regulations in the video industry?

2174 Mr. {Palkovic.} Well, I think STELA has proven to be a
2175 very, very important and appropriate piece of legislation for
2176 us. We obviously have a number of things that benefit
2177 consumers in that Act. We certainly wouldn't want any of
2178 that to change, particularly taking away programming from a
2179 million and a half customers without really--I don't see any
2180 benefit to the broadcasters of doing that, other than
2181 potentially hurting the satellite industry, but it will
2182 disenfranchise those customers. So since we are in the
2183 process of reauthorizing that to the extent we can have any
2184 even minor changes like the blackout issue addressed, and we
2185 thought it was appropriate.

2186 Mr. {Gardner.} Ms. Burdick or Mr. Pyne, why do you
2187 think STELA is not the right vehicle to move forward with the
2188 discussion of how to change regulations in the video
2189 industry, and could you address Ms. Burdick's question--
2190 testimony that notes that TV stations are underpaid in terms

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2191 of retransmission consent dollars?

2192 Ms. {Burdick.} Well, I thin that was evidenced again
2193 today when Representative Matheson asked the question
2194 specifically how much of a cable programming dollar goes to
2195 local stations? It wasn't answered. We continually get this
2196 percentage on retransmission consent, and math was never my
2197 strong suit, but when you start from zero--

2198 Mr. {Gardner.} Don't work for the IRS.

2199 Ms. {Burdick.} --it always looked pretty big. The fact
2200 is that broadcast programming is the single highest viewed
2201 programming on any satellite or cable system, yet the
2202 compensation we receive for producing that program is
2203 miniscule compared to some of the other providers.

2204 I haven't said anything as the term blackout has
2205 continued to be used today, and I would just like to
2206 underscore one issue. These are contractual negotiations and
2207 relationships, and when we reach an impasse, we are still on
2208 television. We never go away. I hope Representative Barton
2209 does take a look at what is available now free over-the-air
2210 since he last looked. It may be 20 or 30 stations, free
2211 over-the-air, different kinds. Cable is not asking you today

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2212 with STELA that if they reach an impasse with HBO or AMC to
2213 be able to import that from another cable system, so why
2214 should it--why should they be allowed to import a
2215 broadcaster?

2216 Mr. {Gardner.} Mr. Pyne, do you have anything to add to
2217 that?

2218 Mr. {Pyne.} The only thing I would add is in terms of
2219 why we are comfortable with sunseting STELA is that we
2220 believe the fraction of affected Americans--and we are trying
2221 to understand the exact number--but it is small enough that
2222 through private contract or private negotiations we could
2223 actually find to solve with the satellite companies.

2224 Mr. {Gardner.} Thank you. Broadcasters referred to
2225 retransmission consent negotiations as a free market and
2226 asked the government to refrain from intervening, yet many on
2227 the panel have argued today in some questions today that
2228 there are a number of government mandates that prevent the
2229 market from being free, such as retransmission consent,
2230 compulsory copyright, basic tier placement, required tier buy
2231 through for cable, network non-duplication, and syndicated
2232 exclusivity. They further argue that broadcasters can decide

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2233 which MVPDs carry their content, but MVPDs can't choose which
2234 market to get their programming from. And so if I could just
2235 start down the panel at the end--and I am going to run out of
2236 time quickly and I have some other questions here, but please
2237 explain why you think the regime is or is not a free market.

2238 Mr. {Palkovic.} Well, I think to be concise here, I
2239 think the broadcasters are combining their rights to carriage
2240 in a local market and they are leveraging those rights with
2241 all the other cable content that they have acquired over
2242 time, and they know that at the end of the day, using tactics
2243 like blackouts, bring the consumer into play and put the onus
2244 on the distributors to deal with the consumers, because they
2245 don't deal with the consumers, we do.

2246 Ms. {Burdick.} I will let Mr. Pyne answer one of the
2247 other issues. I will take a small chunk of that, and that is
2248 in all of the regulation, whether it was copyright or the
2249 Cable Act, what Congress wisely recognized is the value of
2250 localism and protecting local markets in a marketplace that
2251 supports local news and information. That still has to be
2252 recognized, because if local broadcasters aren't providing
2253 those lifeline services and local news, weather, and sports,

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2254 who else will do it?

2255 Mr. {Pyne.} In terms of retransmission consent, we view
2256 that as a mechanism of actually entering into negotiation,
2257 and I think one of the tenets of our business is we spend a
2258 lot of money in creating content, and we want to be able to,
2259 you know, get an appropriate return on that content.
2260 Remember, when you do retransmission consent you only--you
2261 enter into negotiation and you can either reach an agreement
2262 or not.

2263 And just to be clear--and I have said this before--and I
2264 know we are--ABC is one of the big four broadcasters, but
2265 when we negotiate retransmission consent, we are not
2266 negotiating for the country, we are negotiating for our eight
2267 owned stations and those local markets only. I just wanted
2268 to be clear about that.

2269 Ms. {Tykeson.} Although those markets represent a huge
2270 percentage of the United States.

2271 Mr. {Pyne.} It is actually--to be clear, it is only 23
2272 percent of the United States, which is smaller than any of
2273 the other broadcast groups.

2274 Ms. {Tykeson.} So I would--to answer your question, I

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2275 would say that it is not a free market. In Bend, Oregon, I
2276 have one broadcaster to negotiate with. That is it. If we
2277 can't come to an agreement on the price--and by the way, we
2278 have paid in other ways over the years in terms of launching
2279 additional channels and meeting other demands. So while it
2280 is true that retransmission consent fees have started
2281 recently, there were lots of other demands before that. So
2282 we don't have a free market. I don't consider \$6 billion to
2283 be miniscule in terms of what consumers are paying for this
2284 programming. If we come to an impasse, really I have two
2285 choices. One is to take--to pay the price and pass that
2286 along to my customers, or the channel is blacked out.

2287 Mr. {Pyne.} Can I just address very quickly--

2288 Mr. {Gardner.} If I could interrupt. Mr. Chairman, I
2289 don't know--I am out of time so I don't know. It is up to
2290 you if you want the--

2291 Mr. {Latta.} If you can finish up in about 30 seconds.

2292 Mr. {Gardner.} Yes, so if I could just ask quickly to
2293 run through the rest of the panel members, and Mr. Pyne, we
2294 can catch up after this, but let's finish with the rest, Mr.
2295 Singer and Mr. Manne, if you don't mind quickly? Thank you.

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2296 Mr. {Singer.} Sure. I don't think allowing
2297 broadcasters to be compensated for the signals is what is
2298 driving higher prices of the cable packages. I think it is
2299 bundling, and you put your finger on that. One of the things
2300 that you really haven't put your finger on yet that I just
2301 want to draw your attention to is vertical integration. I
2302 just released a study on the review of network economics
2303 showing that when a regional sports network, an RSN, is owned
2304 by a cable operator it charges more than independents, and
2305 the premium increases with the downstream market share of the
2306 vertically affiliated cable operator. So I just think it is
2307 important to focus everyone's attention on what is driving
2308 the prices higher, and the fact that broadcasters are allowed
2309 to seek compensation for their signals is not one of them.

2310 Mr. {Gardner.} Mr. Manne?

2311 Mr. {Manne.} It is not vertical integration, either.
2312 Vertical integration has been decreasing over the relevant
2313 time period, and with all due respect to Hal, we have a
2314 pretty substantial disagreement over how much vertical
2315 integration can really impact the prices like that. And I
2316 don't think it is nearly as substantial as he thinks. I

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2317 think if there were really a free market, all of these
2318 supposed--and very real, actually, benefits from local
2319 broadcasters wouldn't need to be mandated by law. The
2320 customers and distributors would willingly purchase them, but
2321 that may not happen without a particular mandate suggests
2322 that it is not, indeed, a free market.

2323 Mr. {Gardner.} Mr. Chairman, thank you for your
2324 indulgence.

2325 Mr. {Latta.} Thank you very much. The gentleman's time
2326 has expired, and I just want to thank on behalf of Chairman
2327 Walden and also Ranking Member Eshoo and myself for all of
2328 your testimony today, and your answers. We really appreciate
2329 it. It is very, very informative, and on behalf of the
2330 committee, I just again say thank you. Seeing no other
2331 questions to come before the committee, this committee stands
2332 adjourned.

2333 [Whereupon, at 12:48 p.m., the Subcommittee was
2334 adjourned.]