



**Hearing on
“Innovation Versus Regulation in
the Video Marketplace”**

**United States House of Representatives
Committee on Energy & Commerce**

***Subcommittee on
Communications and Technology***

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Statement of Edward L. Munson, Jr.

**On behalf of the
National Association of Broadcasters**

Good morning Chairman Walden, Ranking Member Eshoo and members of the Subcommittee. My name is Ed Munson and I am the Vice President and General Manager of KPHO-TV in Phoenix, Arizona. KPHO is owned by the Meredith Corporation, which owns 13 television stations in 10 markets. I am testifying today on behalf of the National Association of Broadcasters.

The title of this hearing, “Innovation Versus Regulation in the Video Marketplace,” touches on two concepts that are part and parcel to being a local broadcaster.

Broadcasting is a heavily regulated industry. It is, in fact, by far the most regulated industry on this panel. These regulations stem from what some have characterized as a “social contract” between the government and the broadcasting industry: broadcasters use licensed spectrum to serve the public interest and offer their service free to American consumers. Broadcasting is also an innovative industry. We helped drive the digital video revolution, are building mobile platforms and are pushing our content out wherever we can, but to maintain service, our content must be protected.

In my comments here today, I want to talk about both of those concepts – regulation and innovation – and how they shape the broadcast industry. But I’d like to start with where we should start – how broadcasters have served and continue to serve the public interest. What does serving the public interest mean?

Serving the public interest means investing in the weather detection systems and providing around the clock updates as natural disasters threaten communities. This is what broadcasters in Oklahoma did last May during that state’s destructive tornados. Broadcasters in helicopters tracked the tornadoes up and down city streets so residents would know to take cover. And broadcasters all across the West have informed

communities of the real time threats to homes and communities by the devastating wildfires that can change direction in an instant and destroy lives and property.

Broadcasters in the Midwest are there when rivers flood, and broadcasters along the eastern seaboard are there to help people find safe ground when hurricanes are threatening.

And while informing and serving the public is what differentiates us from other entities that provide video programming, what also differentiates us are the regulatory burdens under which we operate. While we gladly and proudly embrace many of these responsibilities, some regulations can place broadcasting at a competitive disadvantage with respect to the other video providers on this panel. In fact, broadcasters must comply with many regulations that are not applicable to any other distribution platform.

For example, only broadcasters are subject to potential fine for airing arguably “indecent” material. This regulatory imbalance and the potential fines, which can be very significant, have the effect of chilling broadcast speech (including coverage of live news events) and even limiting content options. Some in the creative community develop programming only for less regulated outlets, such as pay television.

In addition, ownership limitations clearly can put broadcasting at a competitive disadvantage. Decades-old ownership restrictions reflect a time when broadcasting was the only game in town. This hearing and my fellow witnesses are testimony to the fact that times have changed dramatically. It is irrational to hamstring broadcasters with outdated limitations when our direct competitors are not restricted in the same way. In this regard, it is notable that even though Congress required the FCC to adopt horizontal and vertical ownership limits on cable operators, there are in fact no such

limits. We also observe that the top ten pay-TV providers control 91.5 percent of the multichannel video programming distribution market, up from 67.4 percent in 2002, and are even further concentrated regionally and locally as well.

Other rules – like the new online public file requirement – suggest regulators still see broadcasters in isolation of their competition. That rule, among other things, requires local broadcast television stations to place sensitive pricing information online when our direct competitors, including local cable system operators, are not so required. Again, there is no reason why local broadcasters alone should be burdened with these requirements. For structural or administrative regulations like these, fundamental fairness requires regulatory parity. Otherwise, the government is artificially altering the marketplace to the detriment of competition and, ultimately, all consumers.

Local broadcasters, like Meredith accept, of course, that we are part of a special service. Certain programming requirements show how we differ from our competition. For example, every full-power television broadcaster is required to air three hours of core children’s educational programming each week per channel (i.e., including multicast channels). Broadcasters are also required to give candidates for federal office “reasonable access” to air advertisements on their channels during campaigns. And they are required to offer those spots at the lowest rate – not the average rate – they charge their commercial advertisers. In comparison, while cable and satellite operators may have some obligations, non-broadcast networks and over-the-top video providers, like Netflix, have no similar programming requirements.

The list of mandated obligations is lengthy. For example, broadcasters must maintain main studios within certain geographic limits and with specific staffing

obligations; submit numerous quarterly, annual and biennial reports to the FCC; and compile quarterly lists of stations' programs providing the most significant treatment of issues of importance to their communities. But, I am not here to identify all these requirements. While many broadcasters and NAB have argued that some of these regulations in their current form are outdated or unnecessarily burdensome compared to their public benefit, as a general matter, we embrace the fact that broadcasting is a different kind of service than the others represented on this panel.

Broadcasting is still the fundamental foundation of video distribution in the United States. Cable operators built their businesses on the backs of broadcasters and for years have raised their subscription prices well beyond the rate of inflation. And at the end of the day, for families that would rather pay for food than CNN, local broadcast stations provide a high-quality news and entertainment alternative at the ultimate bargain price -- free. It is remarkable in our hyper-competitive market that anyone can still access the best NFL games, local news and the Tonight Show every week for free just by putting a metal stick on your roof. In fact, consumers can now receive more free channels than ever before. Broadcasters' investment in multicasting has allowed a proliferation of channels, including those providing foreign language programming and new networks focused on serving African-American viewers, such as Bounce TV. Many of these newer multicast channels are not even carried on pay services. This is what broadcasting provides, and will continue to provide for many years to come.

While our core mission has not changed, broadcasters know that they must evolve their service to meet the changing demands of the marketplace. As the most efficient delivery mechanism for video programming, broadcasters are intent on using

the airwaves in a multitude of ways to give viewers the programming they want both now and into the future. To meet the demand for mobile video, for example, broadcasters continue to roll out Mobile DTV, which delivers local full-motion digital broadcasts on multiple mobile devices without using additional spectrum. And because Mobile DTV relies on the existing broadcast infrastructure, we can offer this service without running up consumer cell phone bills or exhausting the data caps that wireless companies are imposing on their customers.

To help deliver mobile television to the masses, Meredith is part of a joint venture known as Mobile Content Venture (MCV), which also includes Fox, NBC, ION and Pearl Mobile DTV. In addition to Meredith, the Pearl member companies include: Belo Corporation, Cox Media Group, E.W. Scripps General, Inc., Gannett Broadcasting, Hearst, Media General, Post-Newsweek Stations, Inc. and Raycom Media. MCV and its participants provide content to portable devices using broadcast spectrum including live local and national news, sports and entertainment programming.

In addition to Mobile DTV, NAB member companies are working to deliver broadcast programming in new and innovative ways. Meredith's local broadcast stations' websites deliver news to the tune of 58 million page views and nearly 5 million unique visitors every month. ABC recently launched a Watch ABC application that will enable broadcasters to deliver local ABC-owned stations on mobile and Wi-Fi networks. NAB and CBS have invested in a company called SyncBack whose technology allows broadcasters to stream local channels to viewers based upon a viewer's geographic location. Broadcasters are also creating new relationships with over-the-top video providers like Netflix, Amazon Prime and Roku to give consumers even more options for

consuming our content. And we are exploring and investing in technological innovations such as 3D, 4K and Ultra High Definition transmissions. As the FCC initiates the incentive auction process and the subsequent repacking of broadcast stations, it is imperative that the Commission do nothing that will jeopardize the one industry on this panel that brings these innovative and essential services to consumers – free of charge.

Broadcasters recognize that consumers want the flexibility to use any device to watch video programming, and we want our programming to be everywhere the consumer wants it. To achieve this goal, content producers need assurances that their programming will only be used with their consent. Regardless of whether broadcasters are providing content to cable and satellite companies or to new over-the-top competitors, the retransmission consent regime appropriately allows broadcasters to negotiate in the free market for the value of the broadcast signal. As Congress noted in 1992, “broadcasters must be allowed to control the use of their signals by anyone engaged in retransmission by whatever means.”

While we have recently seen a high profile negotiation that took a month to resolve, I want to reinforce that by no means does this suggest the retransmission consent system needs revision. To the contrary, thousands of deals have been completed over the last two years with no programming interruption. However, some of those calling for Congressional intervention in retransmission consent are correct on one point - a clear and disturbing pattern is emerging. In the last two years, three pay-TV companies have been involved in nearly nine out of every 10 retransmission dispute. Those companies are Time Warner Cable, DISH and DirecTV. It is not a coincidence that these are the companies pressing Congress and the FCC most aggressively to tip

the marketplace for broadcast signals in their favor. Their tactics are straight out of the “How to Win in Washington” playbook – create a “crisis,” yell loudly about the crisis and then ask Congress to fix the crisis in your favor.

Congress should resist this cynical ploy by cable and satellite companies and refuse to intervene in a free marketplace. These pay-TV companies have ratcheted up their efforts for government involvement in retransmission consent negotiations because, despite having very healthy margins and soaring stock prices, they are looking to Congress to reduce their costs (and thereby increase their revenues). The government should have no role in setting prices or telling a content owner how to distribute their content. Yet that is precisely what many in the pay-TV industry are asking Congress to do from proposed standstill requirements to allowing the importation of distant signals. Those companies that invest billions of dollars in the creation of quality, popular content should hold the ultimate decision as to how, when and where that content is distributed. Broadcasters strongly believe that matters of price and value are best left to the marketplace – especially when viewers would not benefit from government interference in retransmission consent compensation negotiations. After all, if government interference reduced the fees that cable and satellite providers pay to local stations, there is no assurance – absent binding requirements such as regulation of the rates that pay-TV operators charge to consumers – that any savings would be passed on to viewers.

There is no doubt that disputes with pay television providers, rare as they are, are unfortunate and have an impact on all parties involved. Broadcasters lose advertising revenue, cable and satellite companies lose viewers, and most importantly,

viewers subscribing to a pay-TV service lose access to the most popular shows on television. We understand that many of you are concerned about the impact these disputes can have on your constituents. We share that concern, and want to remind this Committee that no broadcaster has ever stopped broadcasting because of a dispute with a pay television provider. Our signals are always on, always there and always free. If the concern is to protect pay TV subscribers, the remedy is to allow those subscribers to have ready choice by, for example, limiting pay TV operators' early termination fees or allowing for consumer refunds in the rare event that disputes arise.

Broadcast television remains the most popular programming in the country and it is a fundamental part of the future video ecosystem. Broadcasters take seriously the responsibility we have to inform, alert and entertain our viewers. We intend to continue delivering our programming in each and every way any viewer might want to access that programming.