

September 26, 2018

The Hon. Greg Walden
Chairman
Committee on Energy and Commerce
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

The Hon. Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

The Hon. Marsha Blackburn
Chairman
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

The Hon. Michael Doyle
Ranking Member
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
UNITED STATES HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

Re: Hearing on the Video Marketplace

Dear Chairman Walden, Ranking Member Pallone, Chairman Blackburn, and Ranking Member Doyle:

Each of our companies is an *independent* programmer. That is, we offer a wide range of innovative news, sports, and entertainment—and we do so without being affiliated with one of the conglomerates that dominate the media industry today. We each offer different programming. Yet collectively, we offer alternative perspectives to what often seems like an increasingly homogeneous culture. We believe the survival of independent programming is important not only for the sake of our individual companies, but to ensure that true alternatives remain available to the American people.

As smaller, independent programmers, we face many obvious threats to our survival. One serious threat, however, may seem less obvious: dysfunction in the retransmission consent market through which broadcast television stations obtain carriage on cable and satellite systems.

Problems in the retransmission consent market harm independent programmers in at least two separate ways. First, retransmission consent fees rise by double digits *each year*. SNL Kagan estimates that they will reach \$12.8 billion by 2023. This is a rate far higher than inflation—and, indeed, far higher than can be found in any other sector of the economy. Indeed, as one satellite operator has explained, retransmission consent fee increases over the last decade

*exceeded hyperinflation in Brazil and Argentina in the 1980s.*¹ Such fees represent by far the fastest growing component of programming costs for cable and satellite operators.

Additional funds spent on retransmission consent cannot be spent to purchase independent programming such as ours. And this is what cable and satellite operators increasingly tell us when we seek initial or renewed carriage on their systems: they simply lack the funds to carry our programming.

Retransmission consent has led to a second set of problems. Many of the largest broadcast groups—including all four of the major networks—also own cable programming. They invariably insist that cable and satellite operators carry *all* such programming as a condition of carrying their broadcast stations. For example, as some of us explained to the FCC last year, a small cable operator that wants to get the must-have programming from the largest media groups—Disney/ESPN, Fox, Comcast/NBCU, Turner, Viacom, AETN, AMC, and Scripps—must carry 65 channels at a minimum.²

Worse yet, each time they renew broadcast deals, they add new channels that cable and satellite operators have to carry—even if these new channels offer nothing more than reruns of programming already carried.³ Here again, this leaves less room for independent programming. Independent programmers have lost their place on thousands of cable and satellite systems in recent years because of retransmission consent-related bundling. If you wonder why your cable lineup seems like hundreds of channels of the same thing, retransmission consent represents a significant part of the explanation.

Retransmission consent is, of course, by no means the only problem independent programmers face. Vertically integrated distributors and the largest programmers have each

¹ Petition to Deny of DISH Network, L.L.C., MB Docket No. 17-179 at 37 (filed Aug. 7, 2017), *available at* [https://ecfsapi.fcc.gov/file/108071485102843/REDACTED--DISH%20PTD%20Combined%20Aug%20\(final\).pdf](https://ecfsapi.fcc.gov/file/108071485102843/REDACTED--DISH%20PTD%20Combined%20Aug%20(final).pdf) (comparing figures from SNL Kagan, Broadcast retransmission and Virtual Service Provider Carriage Fee Projections Through 2023 (July 2017) with Brazilian Hyperinflation, Encyclopedia of Money, <http://encyclopedia-ofmoney.blogspot.com/2010/01/brazilian-hyperinflation.html> and Hyperinflation in Argentina, Citéco <https://www.citeco.fr/10000-years-historyeconomics/contemporary-world/hyperinflation-in-argentina>).

² Joint Comments of the American Cable Association, MAVTV Motorsports Network, One America News Network and AWE, and Ride TV, MB Docket No. 16-141 at 3 (filed Jan. 26, 2017), *available at* <https://ecfsapi.fcc.gov/file/10126165331503/Joint%20Comments%20re%20Indy%20Programming%20NPRM%20--%20FINAL.pdf> (discussing carriage through the National Cable Television Cooperative buying group).

³ For example, the American Cable Association reported that its members have been forced to carry MeTV, Heroes and Icons, and Decades, each of which consists primarily of reruns. Comments of the American Cable Association, MB Docket No. 16-141 16 (filed Mar. 30, 2016), *available at* <https://ecfsapi.fcc.gov/file/60001565832.pdf>.

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engaged in a wide variety of conduct designed to shut out independent programming in order to protect their favored positions. We certainly would not want you to limit your examination of the marketplace to retransmission consent issues.

Yet if you believe, as we do, that today's media landscape needs *more* voices, you should be worried that existing regulation—including retransmission consent—can reduce the number of voices in an already concentrated market. We thus urge you to attend the upcoming hearing on the state of the video marketplace, and to ask questions about retransmission consent and independent programming. And, of course, we each stand ready to provide you with any additional information that might assist you.

Sincerely,

Michael Fletcher
Chief Executive Officer
RIDE Television Network
1025 S. Jennings Avenue
Fort Worth, TX 76104



Roma Khanna
Chief Executive Officer
REVOLT Media & TV LLC
1800 N. Highland Ave, 7th Floor
Los Angeles, CA 90028



Forrest Lucas
Chief Executive Officer
MAVTV Motorsports Network
302 N. Sheridan St.
Corona, CA 92880



Roderick M. Sherwood, III
Co-Chairman & CEO
Cinemoi
5700 Wilshire Blvd Suite 345
Los Angeles, CA 90036

