ConsumersUnion®

THE ADVOCACY DIVISION OF CONSUMER REPORTS

September 26, 2018

The Honorable Marsha Blackburn
Chairman, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Michael Doyle
Ranking Member, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2322A Rayburn House Office Building
Washington, D.C. 20515

Re: September 27, 2018 "State of the Media Marketplace" Subcommittee on Communications and Technology Hearing (House Energy and Commerce Committee)

Dear Chairman Blackburn and Ranking Member Doyle:

Consumers Union, the advocacy division of Consumer Reports,[1] appreciates the Subcommittee's consideration of the evolving media marketplace and looks forward to the hearing on September 27, 2018. In advance of that hearing, we urge you to consider how changes in the media marketplace are affecting consumers, and to also examine the impact of laws and regulations upon the business practices of companies—practices that ultimately influence the prices consumer pay and the variety of choices they have to choose from to obtain media content.

The 1992 Cable Act established the means by which cable operators receive programming from broadcasters, either through a retransmission consent negotiation or a must-carry election. Today, most broadcasters opt for retransmission consent whereby they receive fees—the gross value of which was more than $9 billion in 2017—in exchange for permitting cable operators to carry their programming.[2] In less than a decade, retransmission consent fees have risen exponentially: the gross revenue for these fees was a little more than $750 million in 2009 and is estimated to top $10 billion in 2018.[3] What's worse is when broadcasters and cable operators cannot agree to a new deal to continue carriage, leading to station blackouts that result in the loss of broadcast programming for millions of consumers.

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[1] Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and empowers consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumers Reports has over six million subscribers to its magazine, website, and other publications.

[2] Mary Collins, *Forecasting The Future For Retrans Revenue*, TVNewsCheck (May 11, 2018), *at* https://tvnewscheck.com/article/113507/forecasting-the-future-for-retrans-revenue/.

[3] *Id.*

In both cases, consumers lose when increased costs are passed onto them or when they miss days or weeks of programming that they have paid for and expect to receive. More than 25 years later, the retransmission consent regime is neither serving consumers well nor protecting their interests. Though broadcasters and cable operators point fingers at one another and cast blame, it is consumers who are ultimately left holding the bag of higher costs. The retransmission system is broken and in need of repair.

A direct consequence of the rise of retransmission consent fees is the presence and increase of new company-imposed fees, like the "broadcast TV surcharge" or "fee" charged by many cable operators today. More than seven years ago, Charter Communications began charging a "broadcast TV surcharge," purportedly to recoup the rising costs of retransmission consent fees discussed above. Other large MVPDs (multi-channel video program distributors)—e.g., Comcast, and Time Warner Cable (since purchased by Charter)—followed suit with their own "broadcast fee" in addition to other new charges, such as a "regional sports fee" for sports channels that some consumers never even watch. Some providers even add another "HD technology" fee. These fees are in addition to set-top box fees that MVPDs have been charging consumers for years.

All of these add-on fees are tacked on top of the rates advertised to consumers and are typically shown on the monthly bill near or with government-imposed taxes and fees, misleadingly suggesting that they are also required by law. Company-imposed fees cause consumer confusion, and more importantly, add up. What used to be a dollar or two "broadcast TV fee" just a few years ago is now more than seven or eight dollars in some instances. Taken in total, add-on fees can result in an additional 25 percent or more of extra costs piled onto the advertised package rate.[4] And with retransmission consent fees expected to keep increasing, we imagine consumers can expect to endure even higher company-imposed fees in the future.

To counter the rise of fees in the media marketplace among others, Consumer Reports—along with Consumers Union—launched the What The Fee?! (WTF?!) campaign earlier this year to cast a light on the rise of fees that have consumers feeling ripped off. We began the campaign by asking consumers to sign an online petition calling on cable operators to price services that include the full cost of service without hiding fees in the fine print. To date, more than 114,000 consumers have signed this petition.

[4] A sample cable bill from December 2016 lists the bundled services rate of $119.99 for video programming and broadband internet. Additional fees, not including taxes or other government fees, include an "AnyRoom DVR" fee of $10, an "HD Technology Fee" of $9.95, a "Broadcast TV Fee" of $5, and a "Regional Sports Fee" of $3. The total of these company-imposed fees amounts to almost $28 added onto the advertised rate of $119.99—nearly a 25 percent surcharge above the advertised base rate. In 2018, the "Broadcast TV Fee" increased to $8 and the "Regional Sports Fee" to $6.50 charged by this provider (and according to its website) in the Washington, D.C. market.

The dysfunctional retransmission consent system coupled with anti-consumer add-on fees in cable bills are only two of many of the challenges facing the media marketplace. For example, continued consolidation poses a threat to consumer choice and competition in this market. Consumers Union remains skeptical that the AT&T-TimeWarner merger will deliver the many promised benefits to consumers, especially since the merged company is not bound by any behavioral conditions that may have protected consumers. Similarly, Comcast-NBC is no longer bound by the conditions of its merger since those measures expired within the last year.

Finally, the current absence of net neutrality rules—repealed by the Federal Communications Commission late last year—may lead to anti-competitive behavior whereby a large MVPD owns and controls the broadband service vital to competing services that stream live content online (e.g., Playstation Vue, Sling TV, and others). Will these new entrants succeed if their primary competitor, the incumbent cable company, decides to block, throttle, or charge prohibitive access charges to use its broadband network necessary to its competitor's survival? We fear such behavior would eliminate consumer choice and lead to even higher prices in the absence of competition.

We appreciate the Subcommittee for holding this important hearing reviewing the media marketplace, and would hope that the views of consumers are taken into account moving forward. Consumers benefit from dynamic markets that foster more choices and lower prices. To be sure, adopting the right policy choices is even more essential in a marketplace dominated by decades-old monopoly incumbents. We stand ready to work with you, your fellow Members on the Communications and Technology Subcommittee, and other stakeholders to address the issues we identified to help ensure all consumers have reliable access to affordable products and services and are empowered to participate fully in the modern media marketplace.

Respectfully submitted,

Jonathan Schwantes
Senior Policy Counsel

cc. Members of the U.S. House Subcommittee on Communications and Technology, Committee on Energy and Commerce