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Reply Comments Pursuant to “State of the Video Marketplace” Hearing on September 27, 2018

The Honorable John Shimkus

We regularly debate and renew the Satellite Home Viewer Act, yet while the issues are frequently debated, the 1992 Cable Act or the 1996 Telecom Act have never been reauthorized? In your view-as someone who observes market place trends-how often do you believe the laws governing the video marketplace should be reviewed and potentially reauthorized?

> I’m afraid I don’t have a clear answer. But I believe the two Acts are somewhat different. Much of the 1992 Act, in my view, is obsolete and now mostly unnecessary, as the Act largely pertains to video markets that would be judged highly competitive by almost any observer (excepting in circumstances where monopolies have been established or protected by the Act itself, as is the case for broadcasters and Retransmission Consent).
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> By contrast, the 1996 Act still has many critically important elements that relate to less robustly competitive infrastructure markets. Here, it is the particulars of the Act that are outdated and/or cry out for regulatory certainty, hence where regulatory action would be more productive. Unfortunately, there seems little appetite for a comprehensive rewrite of the 96 Act. My suspicion is that the issues here have become so large and so intertwined – it is almost impossible to treat issues like net neutrality and peering/interconnection, for example, without also dealing with privacy, antitrust, cybersecurity, cyber health, patents and intellectual property protections, etc. – that a re-write of the 1996 Act would come to encompass something like a third of the U.S. economy… and therefore would have almost no shot at getting done. My conclusion is that smaller, more targeted, legislative actions will be more valuable.

What would be the impact of more frequent reauthorizations of laws and regulations be with regard to current to marketplace changes, technology changes and consumer demands?

> What would be most valuable at this point is regulatory certainty and stability, and that’s obviously difficult in a period of rapid technological change. Greater *frequency* of revisiting these issues would therefore probably be counter-productive. On the other hand, there are issues – perhaps most notably, digital privacy – that require clarity.

The Honorable Adam Kinzinger

It was noted in our hearing how the media market is changing, especially with the emergence of the new Over-the-Top options. I do not want to prop up any industry, but I think it is safe to say we all prefer to avoid marketplace participants leaving the market, which would yield even fewer choices for our constituents - especially those in rural areas like my district in Illinois.

How do we strive to keep traditional multichannel video programming distributors competitive in the market so consumers have multiple choices?

Do you believe changes in the video marketplace are affecting rural broadband deployment? Please provide examples.

I believe your two questions are quite interrelated, so let me try to offer some thoughts on both at once.

I'm not sure it is either necessary to assume that the current group of multichannel video providers have to stay in the video business in order to ensure choice for rural consumers. Choice will increasingly come from OTT providers, not linear MVPDs. As such, maintaining video choice in the future will mean ensuring that rural consumers have a broadband connection. That, to me, is the more critical issue, as your second question implies.

I think the most important change we've seen for smaller MVPDs in recent years is that video no longer generates much, if any, incremental profit for most small, rural, cable operators. As a result, their broadband businesses are increasingly their *only* businesses. That isn't necessarily a problem, but it does affect deployment economics. It means that operators have to be able to earn an acceptable return on deploying broadband absent any contribution from video. And almost by definition, that means higher prices for broadband (assuming that video contributed anything more than zero to profits in the past,). If consumers can save money on video by getting it from OTT providers instead of their local MVPD, and today they clearly can, but pay more for broadband to ensure that the infrastructure can be economically viable, then their net welfare may still be well served. There is a danger, however, in attempting to suppress broadband pricing, since doing so will ultimately suppress broadband availability, and, in doing so, will effectively also suppress video choice.

The Honorable Frank Pallone

The GOP Tax Reform Act created big windfalls for large corporations, including many of the major media and internet access companies. According to Securities and Exchange Commission filings, the largest internet service providers (ISPs) recognized tens of billions of dollars in tax benefits. Have the companies you cover used the majority of their tax savings from the Tax Reform Act to invest in infrastructure or other capital investments?

Unfortunately, the data is very difficult to interpret. Capital programs in the telecommunications industry tend to be quite long, and include large components (like, say, acquiring wireless handsets for wireless operators, or set top boxes for cable and satellite operators) that have little or nothing to do with "infrastructure" per se. In the first year post tax reform, capital spending fell. But I don't believe it is possible to attribute that in any way to tax reform. This year, it is expected to rise, in part to support 5G. Again, I don't believe there is any way to attribute that to tax reform.

In theory, lower tax rates will mean that more projects will appear sufficiently profitable, on an after-tax basis, to be worth funding, and more projects will therefore get funded. But as a result, more capacity will be produced, and returns will therefore fall back to where they were before. So, in theory, it should create a short-term bump in spending, but over the long term, it shouldn't impact how much capital gets spent.

Over the years, we've heard the major ISPs that deliver much of the media content assert that the 2015 Open Internet Order would depress network infrastructure investment. Have you observed a significant cause and effect relationship between network infrastructure investment and the adoption of those 2015 open internet protections? For example, did you observe an increase in infrastructure investment because of the repeal of the 2015 rules? Or conversely, did you observe that the adoption of the 2015 Open Internet Order caused a decrease in infrastructure investment?

The same caveats apply here as in the case of tax reform. These are long-term projects, and, especially over the short term, the portion which is truly infrastructure (and would therefore be expected to be affected by the Open Internet Order) can easily be masked by additions or subtractions to capital spending from areas that are not infrastructure at all.

No, we have not seen any discernible impact on spending as a result of either the passage of, or the repeal of, the Open Internet Rules. But per the caveats above, I wouldn't necessarily have expected to, at least over the kinds of one and two year time frames we're working with here. These kinds of changes would take a decade or more to play in out ways that were clearly discernible.

The Honorable Yvette Clarke

Previous Members mentioned the challenges of the retransmission consent negotiations and stated how the leverage is all on one side of the equation.

How does this effect the market? Does it increase consumer costs?

Yes, the current Retransmission Consent regime unquestionably leads to higher consumer prices for video. Retransmission consent costs for broadcast programming have inarguably been the single largest source of rising video costs to consumers for the past decade or more.

If so, what can be done to restore some balance to these negotiations?

The simplest solution would be to eliminate the network non-duplication rules; that is, to allow cable MSOs to negotiate with alternative suppliers (from alternative, perhaps adjacent) markets for broadcast programming from the same network (NBC, for example, or CBS).

The *only* credible argument against doing so is that it would compromise the availability of local broadcast programming, both directly (since a signal could be substituted by one that is less immediately "local") and indirectly (since retransmission consent prices would fall, potentially leading to lower spending on local news).

I would like to follow-up on my question related to the diversity of voices in the media. Does the retransmission consent regime effect the diversity of voices in the market? We have heard from some independent programmers that it has a detrimental effect.

Do you agree with that view? And if so, why?

Per my previous answer, the current retransmission consent regime theoretically supports local news, but at the expense of consumer prices. If one believes that local broadcasters are the best, or only, source of local news, then perhaps that is a worthwhile trade-off. If one believes there are other credible sources of local news, then perhaps one would see the trade-off differently.

The broadcast TV sector is clearly consolidating. I'm not focused, here, on ownership limitations. Instead, I'm interested to hear from you what effect broadcast TV consolidation is having on the retransmission consent fees that consumers ultimately have to pay. Do larger group owners typically extract higher fees?

Our work over the years on this topic has clearly shown that scale drives negotiating leverage. That being the case, yes, broadcaster consolidation unquestionably leads to higher consumer prices, through the mechanism of their ability to demand higher retransmission consent fees from distributors.