Hearing on
"The State of the Television and Video Marketplace"

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Statement of Gordon H. Smith
President and CEO

National Association of Broadcasters

Introduction

Good morning Chairman Wicker, Ranking Member Cantwell and members of the committee. My name is Gordon Smith and I am the president and CEO of the National Association of Broadcasters. On behalf of more than 1,300 full-power, free and local broadcast television stations serving your hometowns, I appreciate the opportunity to testify on our unique and indispensable role in today's video marketplace.My testimony will focus on how Congress can ensure that viewers are better able to access their local news, sports, weather and emergency information by allowing the expiring provisions of the Satellite Television Extension and Localism Act Reauthorization (STELAR) to sunset this year. STELAR is not only unnecessary today due to considerable advances in the media marketplace, but any reauthorization will further harm the satellite viewers currently being denied access to their local television stations. For these reasons, broadcasters oppose STELAR's reauthorization.

Local Broadcasting: The Electronic Thread That Keeps Every Community Together

In today's hyper-competitive media landscape, local broadcast television remains the most-watched source of news, entertainment programming, sports and investigative journalism in communities across America. Our viewers turn to local stations to get the weather report, learn how to help neighbors in need, and watch trusted local news anchors deliver an unbiased report of what is happening in their hometowns. Local broadcasting is the critical electronic thread that keeps every community together, informed and safe.

One outstanding example is WLBT, the Gray Television-owned NBC affiliate in Jackson, Mississippi. WLBT has a long history of providing in-depth reporting and was one of the first local television stations to devote dedicated airtime and personnel to investigative journalism. Their work recently exposed a number of doctors accused of sexual misconduct, and late last year examined a local housing program that trapped low income residents in a cycle of evictions.

Of course, it is broadcasters' unique community connection and role as a trusted lifeline during times of emergency that sets us apart from other mediums. In April, as the state of Mississippi was experiencing a record 44 tornadoes over a 24-hour period, WLBT was on the air giving their viewers real-time updates on the tornadoes' locations and directing viewers when and where to seek shelter. Just as importantly, they continued their coverage in the days and weeks after the storms when the national press had departed, providing viewers with critical information such as where they could go for food, water and shelter.

Whether it is a blizzard in Seattle or Sioux Falls, or a false missile alert on a sunny day in Hawaii, Americans' first choice during emergencies is to turn to their local broadcast stations to get the information they need to stay safe and informed. Local stations prepare viewers for the coming storm, help them access needed supplies and shelter during the disaster, and help towns and cities rebuild in the aftermath.

Broadcasters invest heavily in their newsrooms and infrastructure to ensure we remain on the air in times of disaster. Because of the resiliency of the broadcast infrastructure and the power of the airwaves, local broadcast stations are often the only available communications medium during disasters, especially when cellular wireless networks fail. Local television stations are part of the communities we serve, and broadcasters do not hesitate to put themselves in harm's way to bring critical information to their neighbors.

Viewers Rely On Local Broadcasters In a Rapidly Evolving Video Marketplace

In 1988, when the original Satellite Home Viewer Act (SHVA) was enacted, viewers had two predominant choices for video programming: over-the-air broadcast television or a subscription cable package offered by a single local provider. As Congress intended, SHVA injected much needed competition into the pay-TV market from the nascent satellite industry – now AT&T-DIRECTV and DISH – and those companies flourished to the benefit of consumers.

As a result, today's media marketplace is virtually unrecognizable compared to 1988, and is even dramatically different from the one that was the subject of discussion during STELAR's passage five years ago. Today's competition for viewers comes not only from giant pay-TV providers such as AT&T-DIRECTV and Charter, but also unregulated tech companies such as Facebook and Google, and online video providers like Netflix and Amazon.

This competition benefits consumers in the form of more choice and lower prices. But for broadcasters, the competition for viewers and the advertising dollars that fuel our locally-focused programming and investigative journalism has never been more intense. As of last summer, more than 200 over-the-top video services were available in the U.S., and about 70 percent of American households subscribed to Netflix, Amazon Prime and/or Hulu.

This shift in viewership has naturally led to a shift in ad spending. In 2019, BIA Advisory Services (BIA) estimates that "pure play" digital ad platforms (online, mobile, email and internet yellow pages) will receive 31.5 percent of total ad spending across all 210 television markets combined, far outpacing the 12.4 percent of all local ad spending that TV stations will receive. BIA also estimates that Google's total local advertising revenues in 2019 will roughly equal the total over-the-air ad revenues for all TV stations in the U.S. and will soon exceed them. Meanwhile, Borrell Associates reports that Facebook has become the most popular marketing vehicle for local advertisers.

To compete in this rapidly evolving media and entertainment landscape, television broadcasters now deliver our high-quality entertainment programming, sports, local news and weather whenever and wherever viewers want to access it. Broadcasters are investing in apps, digital and new distribution platforms to fit the needs of all viewers. Moreover, broadcasters are transitioning our free over-the-air broadcasts to a Next Generation Television standard, also known as ATSC 3.0.

Next Gen TV will enable local broadcast stations to deliver their programming over-the-air not only to televisions, but also to next-gen enabled tablets and cell phones, giving consumers the ability to watch their favorite broadcast shows and local news on the go without using precious wireless data. That's in addition to enhancements like ultra high-definition video, immersive theater-like sound, interactive applications, and enhanced interactive hyper-local emergency and weather alerts.

There are significant public policy benefits to ensuring that consumers continue to enjoy our sought-after entertainment, sports programming and lifeline local information even in this fragmented media landscape. Yet, amidst this fierce competition, broadcasters are not before you today to ask for new regulations to give us a leg up in this video marketplace. Instead, we are asking this committee to preserve policies that enable investment in local programming and to not extend outdated and asymmetrical regulations that disadvantage broadcasters – and only broadcasters – against our competition. Congress can achieve these goals and update its laws simply by allowing STELAR to expire at the end of this year.

STELAR's Harm to Local Viewers Must Be Stopped

Thirty years ago, nascent satellite television companies were temporarily given a significantly discounted copyright license that allowed them to better compete with big cable monopolies at a time when there were millions of Americans who could not receive their local broadcast stations over the air, from cable or from satellite. On a temporary basis, Congress allowed the satellite companies to serve those households with a broadcast station operating outside of the local community, typically from a major city, so viewers could receive their favorite network programming. This policy was the foundation for STELAR and all of its predecessors dating back to SHVA in 1988.

Congress has succeeded in SHVA's policy goal of injecting significant competition in the video distribution marketplace that is now flourishing. Yet, those nascent satellite companies that Congress subsidized are now media behemoths: AT&T-DIRECTV is a $235 billion company, and DISH is a $17 billion company. There are no technological impediments to providing satellite viewers with their local broadcast stations rather than out-of-market substitutes. In fact, DISH is providing this service in all 210 local markets today and has been for nearly a decade.

Today, AT&T-DIRECTV and DISH provide local broadcast channels to the vast majority of their subscribers across the country (only AT&T-DIRECTV does not serve all 210 television markets). The number of households being denied their local network channels is shrinking. Although only AT&T-DIRECTV and DISH have access to the precise numbers, it is estimated that around 500,000 households that subscribed to satellite TV service in 2017 were denied their local ABC, CBS, FOX or NBC broadcast channels and instead received an imported signal from another market, primarily from New York City or Los Angeles, under the expiring STELAR distant signal provisions.

The STELAR distant signal license allows the billion-dollar satellite companies to import out-of-market TV channels for those 500,000 households instead of providing these viewers their local broadcast stations. Royalties under this outdated license are discounted substantially below the carriage fees for these stations negotiated in the market by other pay-TV providers. This below-market subsidy incentivizes the satellite companies to deny viewers local news, weather and lifesaving emergency information, while still charging their subscribers hefty fees each month for an out-of-market station.

Viewers will benefit from eliminating this outdated law, ensuring they receive the local content most relevant to them. In rare instances where a local broadcast channel is not available, private business arrangements between satellite TV providers and broadcasters can resolve these issues.

Additionally, in an earlier reauthorization of the compulsory copyright license, Congress added a requirement that broadcasters and pay-TV providers negotiate in good faith for carriage of local TV stations. In the nearly 20 years since Congress passed this provision, the Federal Communications Commission has decided only seven good faith complaints – and has found a violation of the requirement on only one occasion. Not surprisingly, the one violation was committed by a pay-TV company.

While well intended, the expiring good faith requirements have provided no quantifiable benefit to either broadcasters or pay-TV providers. This is in large part because both parties have every incentive to reach a deal and serve consumers without a regulatory requirement. Moreover, the provision has the unintended consequence of diverting time and attention from the parties' negotiations in favor of posturing in front of government officials. The countless other program carriage agreements successfully completed outside this broadcast-only framework reveal that this regulatory structure simply does not justify STELAR's reauthorization.

Conclusion

Congress should allow STELAR to expire as it originally intended. There is no policy justification or technological reason for this outdated law to be reauthorized. The time has come to stop subsidizing billion-dollar satellite TV companies and to instead provide viewers with the most accurate and timely source of community news, weather and emergency information – their local TV broadcast stations.

Thank you again for the opportunity to discuss this issue critical to America's broadcasters and the communities we serve. I look forward to your questions.