# TESTIMONY OF MELINDA WITMER
# EXECUTIVE VICE PRESIDENT & CHIEF VIDEO AND CONTENT OFFICER
# TIME WARNER CABLE

## THE CABLE ACT AT 20

**before the**

**COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**
**UNITED STATES SENATE**

**WASHINGTON, DC**

**JULY 24, 2012**

Good afternoon Mr. Chairman, Ranking Member Hutchison, and Members of the Committee. My name is Melinda Witmer, and I am Executive Vice President & Chief Video and Content Officer of Time Warner Cable. Time Warner Cable is the nation's second largest operator of cable television systems and the fourth largest multichannel video programming distributor ("MVPD"), serving more than 12 million subscribers in 29 states. I want to thank you for inviting me to appear before you today to share Time Warner Cable's perspective on the 1992 Cable Act and its role in the television marketplace of the Twenty-first Century.

As the title of this hearing indicates, the 1992 Cable Act is turning twenty years old this year. This legislation, enacted over a presidential veto, has defined the role of government in the regulation of the video marketplace for two decades.[1] During that time, vast changes have occurred in the competitive and technological landscape. Thus, it is both necessary and appropriate for Congress to take a fresh look at whether the provisions of the 1992 Act have met their goals and whether they continue to serve the public interest.

The principal goal of the 1992 Act was to protect consumers and promote innovation while fostering the development of competitive alternatives to cable services, which at the time constituted the only pay television option for most consumers. Congress's objective was for competition eventually to take the place of regulation. This was made clear in the Act's Statement of Policy, where Congress expressed its preference "to rely on the marketplace" rather than regulation wherever feasible.[2] Consistent with this policy, several of the Act's provisions were expressly designed to be temporary, such as the rate regulation measures and certain provisions governing competitors' access to vertically-integrated programming.

[1] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385 (1992).

[2] *Id*. at Section (2)(b)(2).

A separate, but related goal of the 1992 Cable Act was to address the concern that competition from non-broadcast cable networks, particularly those that were owned by cable operators, was diverting viewers and advertisers from local broadcast stations and thus threatening the future of "free" over-the-air local television.[3] Among other things, Congress created a new regulatory right, called retransmission consent, which broadcasters could elect to invoke when it served their interests. Retransmission consent is one of a number of special privileges given to broadcasters by the government as part of a thicket of outdated regulations. These special privileges, which also include must carry rights, territorial exclusivity protection, a guaranteed right to basic tier carriage and, of course, the broadcasters' free use of the public airwaves, were supposed to safeguard the public's access to broadcast programming. Unfortunately, given the dramatic changes over the last twenty years, that is not the case today.

Over the past twenty years, many of the 1992 Act's objectives have been accomplished in the marketplace. In particular, cable operators face effective competition in virtually every community that they serve from three or more MVPDs (including two national direct broadcast satellite services that are now the nation's second and third largest MVPDs and, in many instances, a well-funded telco-video provider like Verizon FiOS or AT&T U-Verse, who are among the ten largest MVPDs). As a result of this competition, traditional cable operators have seen their share of the multichannel video business decline from 95 percent in 1992 to about 58 percent today.[4] Cable systems also face growing competition from new platforms that were not even imaginable in 1992, such as online video delivery. Moreover, Congress's hope that cable operators would "continue to expand, where economically justified, their capacity and the

---

[3] S. Rep. No. 102-92 (1991) at 1168 ("Senate Report"). See also 138 Cong. Rec. S14615-16 (Sep. 22, 1992) (Statement of Sen. Lautenberg) ("if a broadcaster is seeking to force a cable operator to pay an exorbitant fee for retransmission rights, the cable operators will have an opportunity to seek relief at the FCC.").

[4] *See In the Matter of Revision of the Commission's Program Access Rules* , MV Docket No. 12-68, Comments of the National Cable & Telecommunications Association (filed June 22, 2012) at 9.

programs offered"[5] has been fulfilled as the industry, responding to competitive marketplace pressures, invested billions of dollars to provide consumers with an unparalleled array of innovative services, including high definition and 3D television, video-on-demand, digital video recording and other time-shifting capabilities, high speed Internet, and digital telephone.

In light of these marketplace changes, several of the provisions of the 1992 Act clearly are no longer needed and, in fact, may be working counter to Congress's intentions. In my testimony, I will focus on how the retransmission consent framework, originally intended to advance the public interest, is now harming consumers.

The first point I would like to make is that, Congress established retransmission consent to "ensure the universal availability of local broadcast signals" to consumers.[6] Today, however, this regulatory regime is having the opposite effect. Retransmission consent negotiations are characterized by the broadcasters' demands for massive fee increases backed by blackout threats, and the incidence of actual blackouts has spiked as broadcasters increasingly have demonstrated their willingness to withdraw retransmission consent to increase their bargaining leverage. Retransmission consent disputes have increased dramatically in recent years from 12 in 2010 to 51 in 2011. So far this year there have already been 69 blackouts. And these numbers do not capture the fact that every retransmission consent negotiation is resulting in dramatically increasing fees ultimately borne by consumers.

This is not what Congress intended or expected when it gave broadcasters retransmission consent rights. Retransmission consent is a regulatory construct that provides broadcasters an opportunity to obtain value for their "signal" not for the content contained within that signal. This value was intended to subsidize local stations to ensure the continued viability of local

---

[5] *Id*. at Section (2)(b)(3).

[6] 138 Cong. Rec. S643 (Jan. 30, 1992) (Statement of Sen. Inouye).

broadcasting. Given the market structure in 1992 with essentially one local broadcaster negotiating against one cable operator in each local market, Congress expected that the rough balance of power between the parties would serve as a check on unreasonable behavior.[7]

Moreover, even with the expectation that the grant of retransmission consent rights to broadcasters did not pose an undue threat of harm to consumers either in the form of increased rates or service disruptions, Congress acknowledged, and took steps to address, these risks. For example, Congress included in the 1992 Act a provision directing the FCC to adopt rules to ensure retransmission consent would not adversely impact the rates that consumers paid for multichannel television service.[8] In addition, Members of Congress, including Senator Inouye, the floor manager of the legislation in the Senate, made clear that the FCC had (and was expected to exercise) its "existing" authority to resolve retransmission consent impasses if and when they resulted in an interruption of service to consumers.[9]

Unfortunately, the FCC has adopted a narrower interpretation of its role in overseeing the retransmission consent process and the agency's inaction, combined with broadcasters' ability to play competing MVPDs against each other, has been a key cause of the brinkmanship tactics (or

[7] The legislative history indicates that Congress expected demands for retransmission consent compensation would be modest because "broadcasters also benefit from being carried on cable systems." Senate Report at 1168. *See also* 138 Cong. Rec. S643 (Jan. 30, 1992) (Statement of Sen. Inouye) ("It is of course in their mutual interests of these parties to reach an agreement: the broadcaster will want access to the audience served by the cable system, and the cable operator will want the attractive programming that is carried on the broadcast signal. I believe that the instances in which the parties will be unable to reach an agreement will be extremely rare**."); ***Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965 (1993) at ¶ 115 (expressing the FCC's belief that "there are incentives for both parties to come to mutually beneficial arrangements" in retransmission consent negotiations).

[8] 47 U.S.C. §325(b)(3)(A).

[9] 138 Cong. Rec. S643 (Jan. 30, 1992)(Statement of Sen. Inouye) ("I am confident, as I believe other cosponsors of the bill are, that the FCC has the authority under the Communications Act and under the provisions of this bill to address what would be the rare instances in which such carriage agreements are not reached. I believe that the FCC should exercise this authority, when necessary, to help ensure that local broadcast signals are available to all the cable subscribers.").

take-it-or leave it demands) that now characterize the broadcasters' approach to retransmission consent negotiations.

Ironically, the marketplace-driven increase in competition among MVPDs that has occurred since 1992 enables broadcasters to play one MVPD against another while each MVPD still only has one broadcaster from which it can obtain programming, giving broadcasters a lopsided advantage in retransmission consent negotiations. Additionally, territorial exclusivity and the requirement that cable operators place broadcast stations on the basic tier of service further exacerbate the harm to consumers by preventing MVPDs from obtaining broadcast programming from alternative sources and consumers from opting not to purchase the broadcast channels. As a result, broadcasters – who continue to enjoy their government-created and -supported monopolies – now threaten to withhold consent to the carriage of their stations with the confidence that neither MVPDs nor their subscribers have any recourse. Making matters worse, the Big Four broadcast networks have begun demanding a cut of the retransmission consent fees obtained by affiliated local stations, creating even more pressure for rate increases.

As a result of these dynamics, consumers lose, or face the threat of losing, access to season premieres of popular programming, major events like the Super Bowl and the Olympics, and even emergency weather information. Two of the better-known examples of retransmission consent-related service disruptions occurred when FOX denied Cablevision subscribers in New York access to World Series games and Disney/ABC denied those same subscribers access to a portion of the Academy Awards. Earlier this month, over two million of our subscribers lost access to broadcast signals when we would not cave in to Hearst Broadcasting's demands for huge fee increases. While our dispute with Hearst has been settled, the fact remains that our customers are being asked to shoulder ever-increasing rates resulting from each and every retransmission consent negotiation, even those that do not result in a public dispute. It is also

worth underscoring that broadcasters are making much of their marquee programming, such as the Olympics and the Super Bowl – not to mention much of their entertainment programming, available for free on the Internet. The perverse result is that MVPD subscribers are literally paying billions of dollars to subsidize content that the broadcasters make available for free both over-the-air and via the Internet. While MVPDs recognize that broadcasting has always had an alternative distribution system, it is not economically rational to pay the premium the broadcasters are demanding and that ultimately consumers are being asked to bear.

Nor is there any indication that the situation is going to resolve itself. In 2009, it was estimated that retransmission consent fees would reach $1.6 billion in 2015.[10] But according to data compiled by SNL Kagan, retransmission consent payments grew from $215 million in 2006 to nearly $1.5 billion last year and are now projected to top $2.0 billion this year – a compounded growth rate of 45 percent over that period.[11] SNL Kagan estimates that by 2015, retransmission consent payments will reach almost $4.0 billion, more than double what the 2009 study predicted. While the broadcasters like to claim that this rapid escalation in retransmission consent fees is part of a "market adjustment," the fact is that there is no sign that retransmission consent costs will level off in the future. Indeed, SNL Kagan forecasts that in the next five years retransmission consent fees will double again, reaching just under $5.0 billion.[12] This dramatic uptick in retransmission consent fees is not surprising given statements by broadcast executives like CBS's CEO Les Moonves, who boasted that when it comes to retransmission consent fees, "the sky's the limit" and by Sinclair Broadcasting Group's CEO David Smith, who has

---

[10] Michael Katz, Jonathan Orszag, and Theresa Sullivan, *An Economic Analysis of Consumer Harm from the Current Retransmission Consent Regime*, at 32 (Nov. 12, 2009), filed as an attachment to the Comments of the National Cable & Telecommunications Association in MB Docket No. 07-269 (Dec. 16, 2009).

[11] *See* Appendix 1.

[12] *Id.*

acknowledged that, in order to meet reverse compensation demands from the networks, local broadcasters will need "to keep upping" their retransmission consent fees "forever."[13]

These demands for dramatically escalating fees inevitably impact consumers in the pocketbook. In fact, according to the Katz/Orszag/Sullivan study, more than a million households "likely [will] forego the benefits of MVPD services because of the higher subscription fees they face as a result of retransmission consent fees."[14] The broadcasters' unreasonable demands also will lead to more blackouts as MVPDs do what they can to hold the line. Yet, given the disconnect between a 20-year old law and today's marketplace, it is unclear what will prevent the rising tide of retransmission consent demands. As Mr. Moonves explained, the retransmission consent right that Congress created gives broadcasters the "ultimate leverage" in retransmission consent negotiations.[15]

Incredibly, having the "ultimate leverage" is not enough for some broadcasters. Local broadcast station owners have managed to skirt the FCC's ownership rules and now conduct retransmission consent negotiations on behalf of multiple stations in the same local market. The advent of multicasting has exacerbated this trend. In 2010, a study commissioned by the American Cable Association found that there were at least 57 instances in which one station exercised common control of multiple Big Four network stations in its local market through some form of contractual arrangement.[16] And a review conducted last year by BIA/Kelsey on behalf of Time Warner Cable indicated that there are more than 40 examples of "virtual

---

[13] *See* CableFAX Daily, June 3, 2011, at 2; Communications Daily, May 5, 2011 at page 5.

[14] *See* note 5 *supra* at 37. Given that the Katz/Orszag/Sullivan study underestimated how high retransmission consent fees would climb, it is likely that the number of households opting out of MVPD services will be even higher than they projected.

[15] CableFAX Daily, June 3, 2011, at 2

[16] *See In the Matter of 2010 Quadrennial Regulatory Review; Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 02-182, Comments of the American Cable Association (filed July 12, 2010). Given the difficulty of tracking SSAs in particular, TWC believes that the ACA data may well understate the number of instances in which a station licensee has entered into a control-sharing arrangement with another network affiliated station in the same market.

duopolies" in which one station uses its multicast capacity to operate as the market affiliate of two Big Four networks and nearly 150 instances in which one station's multicast capacity allows it to serve both as an affiliate of a Big Four network and as an affiliate of either CW or MyNetwork. It is likely that this is not the complete picture of coordination and consolidation by local stations because there currently is no requirement for broadcasters to disclose these arrangements.

As you can imagine, being able to deny a cable operator access to the programming of not just one, but of two or three broadcast signals in the same local market gives a broadcaster an almost insurmountable advantage in retransmission consent negotiations. It also explains why the record in the FCC's retransmission consent reform proceeding indicates that retransmission consent fees for Big Four affiliates are more than 20 percent higher where a single station is negotiating on behalf of more than one affiliate in a market.[17]

Not only are broadcasters demanding that consumers bear these exorbitant cost increases and deal with threatened and actual blackouts, many are reducing their commitment to local programming in order to cut costs. While Congress intended for the 1992 Act to subsidize and preserve local broadcasting, the trend in the broadcast industry in recent years has been away from localism. As Senator Inouye said during the debate on the Act, the intent of retransmission consent was to "permit local stations, not national networks … to control the use of their signals."[18] NAB expressed a similar view, writing to members of Congress that retransmission

---

[17] *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Comments of the American Cable Association (filed May 27, 2011). *See also* William P. Rogerson, *Joint Control or Ownership of Multiple Big 4 Broadcasters in the Same Market and Its Effect on Retransmission Consent Fees* (May 18, 2010) (attached to ACA's comments in MB Docket No. 10-71).

[18] 138 Cong. Rec. S562-63 (Jan. 29, 1992). Other members of Congress echoed Senator Inouye's statement. *See, e.g.*, 138 Cong. Rec. H6491 (July 23, 1992) (Statement of Rep. Callahan) ("The right to retransmission consent …is a local right. This is not, as some allege, a network bailout for Dan Rather or Jay Leno. Networks are not a party to these negotiations, except in those few instances where they own local stations themselves.") (emphasis supplied); 138 Cong. Rec. H6493 (statement of Rep. Chandler) ("The intent of the [retransmission consent] amendment was to

consent was "not a 'network TV' issue" and that "[t]he television networks will not play a role in negotiations between local stations and local cable systems."[19] Indeed, NAB not only proclaimed that the networks would have no right to participate in retransmission consent negotiations, it also declared that the networks would have "no right to dictate their terms, or to demand any part of the benefits which the local station might obtain from a cable system."[20]

Today, however, retransmission consent has become exactly what it was never intended to be: a subsidy for the national broadcast networks and their affiliated cable channels rather than a source of support for local broadcasting. The national networks increasingly dictate to their affiliates whether and on what terms those affiliates may grant retransmission consent. In addition, the national broadcast networks have begun demanding "reverse compensation" from their affiliates, completely supplanting the structure that existed in 1992, when networks paid compensation to local stations for carriage.[21] We turn again to CBS' Mr. Moonves, who has made clear that the national networks believe that they are the ones that should be receiving the bulk of the retransmission consent fees collected by their local affiliates, stating that "[i]f a

---

give bargaining power to local broadcasters when negotiating the terms of cable carriage – not to serve as a subsidy for major networks.") (emphasis supplied).

[19] *See, e.g.*, Letter from Edward O. Fritts, President & CEO, NAB, to Jack Valenti, President, MPAA, dated October 7, 1991 ("NAB Oct. 7, 1991 Letter"); *see also* Letter from Edward O. Fritts, President & CEO, NAB, to Rep. Christopher H. Smith, dated August 9, 1991 (stating, in attachment, that characterizations of retransmission consent as a "network plan" are "sheer nonsense" and that "Networks are not involved in any negotiations."). Copies of the documents referred to in footnotes 19-21 can be found as an attachment to the Joint Comments of Mediacom Communications Corporation, Cequel Communications LLC d/b/a Suddenlink Communications, and Insight Communications Company, Inc. filed in the FCC's retransmission consent reform proceeding, MB Docket No. 10-71, on May 27, 2011.

[20] *See* NAB Oct. 7, 1991 Letter (emphasis supplied).

[21] For example, in May 2011 it was reported that NBC had entered into an arrangement with its affiliates by which NBC would hold its affiliates' proxies and negotiate retransmission consent deals on their behalf, with NBC pocketing as much as 50 percent of the revenues. *See* Harry A. Jessell, *NBC's Affiliate Retrans Plan is 50-50 Split,* TVNewsCheck, May 18, 2011 (available at http://www.tvnewscheck.com/article/2011/05/18/51322/nbcs-affiliate-retrans-plan-is-5050-split).

station is looking at what's really bringing in the money, it's the NFL, it's 'American Idol,' it's 'CSI,' it's the primetime strength. It's not the local news…."[22]

Faced with the need to satisfy the networks' demands for compensation, the local affiliates are trying to cut expenses while simultaneously increasing the amounts they require MVPDs to pay to carry their signals. One of the principal ways in which the stations are cutting costs is by entering into agreements that allow multiple stations to share resources. While some sharing of costs may be beneficial for the stations and their viewers, the growing use of "shared services" and other similar arrangements has precipitated a significant decline in original, diverse local news and public affairs programming as broadcasters combine studio facilities and eliminate separate newscasts, lay off employees, and reduce their production of local news and other community-oriented programming.[23]

The broadcasters would have policymakers believe that if the retransmission consent rules are changed, they will be unable to provide local programming content that they, and they alone, are capable of producing. But not only are broadcasters already cutting back on their local content, cable and other sources (including the Internet) are rushing to fill the void. For example, Time Warner Cable now has nineteen channels that offer full-time coverage of local

[22] *See Les Moonves Insists That Retrans Cash Is Network Driven*, Radio & Television Business Report, June 3, 2011, *available at* http://www.rbr.com/tv-cable/les-moonves-insists-that-retrans-cash-is-network-driven.html (emphasis supplied). The admission by the broadcasters that retransmission consent is all about the value of the broadcast content is, of course, directly contrary to the assertion, made by some of those same broadcasters and their supporters, that retransmission consent is not an intellectual property right and "has no bearing on the relative value" of the programming embodied in a broadcaster's signal. *See* Testimony of NAB President David Rehr, Hearing on Copyright Licensing in a Digital Age, House Committee on the Judiciary, February 25, 2009 ("Retransmission consent rights under the Communications Act are distinct from copyright rights in broadcast programming. Retransmission consent agreements relate to the value of creating and disseminating the broadcast signal.").

[23] *See, e.g.*, Philip M. Napoli, *Retransmission Consent and Broadcaster Commitment to Localism* at 18-25 (Nov. 2011), *available at* http://fordham.academia.edu/PhilipNapoli/Papers/1163518/Retransmission_Consent_and_Broadcaster_Committmet_to_Localism. *See also* Danilo Yanich, Local TV News & Service Agreements: A Critical Look (Oct. 2011), *available at* http://www.ccrs.udel.edu/sites/ccrs.udel.edu/files/DYanich%20.Local%20TV%20News%20%_26%20Service%20Agreements-A%20Critical%20Look.pdf.

news, politics, sports and weather. In fact, Time Warner Cable produces three daily local newscasts that are aired by an ABC affiliate owned by Sinclair in Greensboro, NC.

In sum, while Congress expected retransmission consent to sustain and improve the quality of local broadcasting without causing an unreasonable increase in consumer prices or disruptions to consumers' access to local stations, the opposite has occurred. Prices for retransmission consent are soaring while the quality of local broadcast programming continues to erode. In addition, consumers face a growing level of disruption in their access to local broadcast programming as stations more frequently deny MVPDs' retransmission consent in order to enforce their demands for unreasonable compensation.

Next, I would like to address the bundling practices that are engaged in by programmers, particularly the Big Four broadcast networks, which are another unanticipated consequence of the 1992 Act. When MVPDs sit down with the broadcast networks to negotiate for the carriage of their owned and operated affiliates, they often are met with demands that the MVPD agree to carry and pay for not only the Big Four broadcast stations, but an array of non-Big Four stations and non-broadcast channels as well.[24] These bundling agreements also typically require the distributor to offer all or most of these channels on preferred tier locations. The effect is to force distributors and their subscribers to take and pay for an array of services that often includes channels for which there is limited (if any) subscriber interest.

The broadcasters' ability to engage in these bundling practices is an unfortunate byproduct of the 1992 Act and, in particular, of the Act's retransmission consent provisions. In 1992, Congress was concerned about vertical integration – the fact that more than 53 percent of the national cable networks available at the time were owned by cable operators. Ironically,

---

[24] Similar bundling takes place at the local level when a group station owner refuses to grant retransmission consent unless the MVPD also agrees to pay for carriage of non-network affiliates, including low value multicast stations.

retransmission consent actually fostered a dramatic increase in vertical integration between cable networks and broadcasters.

Today, broadcast networks and their affiliates are the dominant providers of cable networks. In fact, sixty percent of the top 50 basic cable networks are owned by broadcasting companies and their affiliates.[25] This is due in large part to the way retransmission consent developed in its early days, where broadcasters sought retransmission consent compensation in the form of carriage of, and payment for, new cable networks.

Now that the number of linear cable channels is reaching a saturation point, and with the ever-growing competition among distributors, broadcasters have shifted their demands to payment in cash, not just for carriage of the local television station, but also for carriage of bundles of cable channels. Because of the broadcasters' retransmission consent leverage, there is no check on the amount that they can demand for these bundles of broadcast and non-broadcast channels or on the size of those bundles. Thus, bundling is a major impediment both to controlling the price of service and to giving consumers other benefits (including more flexible packaging of services) that they should be enjoying as a result of the robust competition that now characterizes the multichannel video distribution marketplace.

It is ironic that the 1992 Act, which sought to protect free, over-the-air television from supposedly "unfair" competition from non-broadcast cable networks has led to a regime in which the national broadcast networks take retransmission consent revenues obtained either directly from MVPDs (in the case of network-owned affiliates) or indirectly (in the form of reverse compensation payments from their independently owned affiliates) and use them to support the many non-broadcast channels that they now operate and not local broadcasting. Furthermore,

[25] *See* Appendix 2 for a chart showing examples of the Big Four broadcast networks ownership of non-broadcast cable networks. This chart is illustrative in nature and is not intended to reflect the full extent of the Big Four's cable network interests.

these cable channels now feature major programming events – such as Monday Night Football and college bowl games – that used to be available on over-the-air broadcast channels.

It also is worth remembering that, during the debate over the 1992 Act, the Act's proponents dismissed concerns that retransmission consent would drive up consumer prices by suggesting that cable operators would simply shift a portion of their programming budget away from the non-broadcast cable networks and towards local broadcasters. As Representative Markey (the chairman of the House Commerce Committee's Subcommittee on Telecommunications and the sponsor of the Cable Act in the House) stated,

> If [cable operators] have to pay Nashville a little bit less, to pay the sci-fi channel a little bit less, to pay some of these other channels a little less in order to get revenues over to Channel 4, 5, 7, and 9 so that the local children's programming, the local news and public programming that the rest of watch on free television, fine. It is meant to be within the same existing pool of money; no additional moneys are going to the cable industry or to the broadcasters; it is the same pool of money."[26]

The assumption that retransmission consent would have no impact on a cable operator's programming costs was questionable in 1992. But even if it was valid, MVPDs today do not have the choice of "paying a little less" for non-broadcast programming to cover their growing retransmission consent expenses. The very broadcasters that are demanding increased retransmission consent fees own the non-broadcast cable channels and are not about to lower the amounts that they are paid for those.

My final point flows directly from my first two points: despite, or possibly because of the 1992 Act, the broadcast model on which Congress relied in adopting retransmission consent is broken. That broadcast model assumed the broadcasters' acceptance of the social compact under which local stations are given free use of the public airwaves and certain related privileges

[26] 138 Cong. Rec. H8652 (Sep. 17, 1992) (Statement of Cong. Markey).

in return for a commitment to serve the public interest – to put the needs of the communities that they are licensed to serve ahead of all other considerations.[27]

Today, however, the Big Four networks are looking to increase the profits of their cable channels and the affiliates are looking to cut costs by entering into sharing agreements and reducing local programming in order to be able to pay reverse compensation to the networks. Furthermore, broadcasters are often arguing to reduce or avoid their public interest obligations often citing some of the same changes in the competitive and technological landscape that we believe justify revising the 1992 Act. Yet, when it comes to preserving the special privileges that have been accorded local television stations – from free spectrum to black out rights – the broadcast industry claims that nothing has changed over the past twenty years that warrants revisiting those privileges. For example, the broadcasters not only oppose suggestions that they be limited in their ability to engage in joint retransmission consent negotiations, they even oppose efforts to make them simply report the details of those sharing arrangements online where they would be more readily accessible to public and regulatory scrutiny.

The broadcast industry is sitting on spectrum worth tens of billions of dollars. It is not surprising that they would use their position as custodians of the public interest when it is to their benefit. But the broadcasters should not have it both ways. They cannot claim that without special treatment they will no longer be able to provide consumers with local news and information, and at the same time, reduce their spending on localism and deny cable and other pay TV customers access to their signals during disputes. Nor should they be allowed to have the benefit of special protections such as mandatory basic tier carriage and territorial exclusivity protection – privileges that were premised on broadcasters fulfilling their public interest obligations.

[27] *See* Thomas W. Hazlett, *If a TV Station Broadcasts in the Forest: An Essay on 21st Century Video Distribution* (May 19, 2011), filed in MB Docket No. 10-71 (May 24, 2011).

In conclusion, two years ago, Time Warner Cable's CEO, Glenn Britt, testified before this Committee and stated that Time Warner Cable agrees with the principle, embedded in the 1992 Act, that free markets are preferable to regulated markets wherever feasible. We stand by that position today. Contrary to broadcaster assertions, retransmission consent is not now and has never been a free market. Rather, it is a government-created regulatory regime established to address vastly different conditions than those that exist today. That regulatory regime was intended to safeguard the public's access to local broadcast programming. But today, the law is having the opposite effect. It is resulting in consumers losing access to local broadcast stations and bearing the costs of increased fees as vertically integrated broadcast networks are permitted to siphon support away from local broadcasters to increase their profits and those of their non-broadcast cable networks. No one could have foreseen how broken this regulatory regime ultimately would become.

We applaud the leadership shown by Chairman Rockefeller, Ranking Member Hutchison, Senator Kerry, Senator DeMint and other Members of the Committee and their recognition that the *status quo* is not sustainable. We are particularly appreciative of Senator DeMint's efforts to begin the dialogue on the role that government should play in the television marketplace by proposing to replace the outdated regulatory regime embodied in the 1992 Cable Act with a genuine free market approach. We also have made clear that, as long as the regulatory regime established by the 1992 Act remains in effect, the FCC should make targeted changes to protect consumers from the broadcasters' abusive retransmission consent practices. We look forward to working with all of the Members of the Committee as it undertakes the essential task of updating the 1992 Act.

Thank you again for the opportunity to testify before the Committee today. I would be happy to answer any questions you might have.