

Before the United States Senate Committee on Commerce, Science, and Transportation

Hearing: “The Reauthorization of STELAR”

**Written Statement of Rob Thun: AT&T Senior Vice President –
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Thank you, Chairman Wicker, Ranking Member Cantwell, and Members of the Committee.

I am Rob Thun, Senior Vice President of Content and Programming for AT&T. In my current role, I am responsible for securing content rights from the major networks and local broadcast station groups for AT&T. AT&T has invested \$130 billion¹ in the United States over the last five years, more than any other public company. We employ 200,000 Americans, representing all 50 states. Without doubt, we are deeply invested in our country, our communities, our employees and our customers.

The Need to Renew the Satellite Television Extension and Localism Reauthorization Act (STELAR)

I am testifying in this hearing to protect our customers, your constituents, and join a growing list of consumer and industry groups supporting renewal of STELAR. These groups include Free Press, Public Knowledge, Common Cause, CWA, Consumer Action, Consumer Federation of America, Consumer Reports, Open Technology Institute at New America, the Hispanic Technology and Telecommunications Partnership, and a number of RV associations, among others.

These groups support STELAR because they know that it protects consumers. In particular, without STELAR’s distant-signal-license, 870,000 satellite subscribers, your constituents, would lose access to the network television programming they have relied on for years.

In all cases, failure to renew STELAR would remove channels from people who legally receive them today -- many of whom have done so for years -- and who would not understand why those channels were taken away. While the number of customers receiving service through the distant signal license has declined over time, that does not mean that those 870,000 subscribers that continue to receive high-quality satellite network programming because of the license should now be left behind. For the same reasons it has for decades, Congress should continue to protect those subscribers’ access to network programming.

These include hundreds of thousands of your constituents, mainly in rural areas, that cannot obtain a free over-the-air signal from a local network broadcaster. That point bears repeating: we are able to offer distant signals to hundreds of thousands of your constituents because the broadcasters have failed to provide these constituents with their local signal over-the-air.

¹ Includes capital investment and acquisitions of spectrum and wireless operations.

Nothing prevents local broadcasters from investing in their local communities, extending the reach of their signals, and providing these customers free, over-the-air-signals. Indeed, the government provided local broadcasters access to free spectrum with the hope that they would do just that. Instead of doing so, local broadcasters choose to blame Congress, and take the easier (and certainly cheaper) path of opposing renewal of STELAR, thereby putting satellite subscribers at risk.

Local broadcasters cannot have it both ways. They cannot, on the one hand, fail to provide consumers access to free, over-the-air local network programming, while at the same time asking Congress to deny these same consumers access to network programming via the distant-signal-license. Congress rightly avoided this consumer “double whammy” when it adopted the satellite and cable distant signal license decades ago and its logic in doing so remains just as sound today.

STELAR also allows us to provide distant signals to mobile/recreational vehicles or commercial trucks, allowing long-haul trucks, RV and camping enthusiasts, and tailgating sports fans access to satellite network TV. These are a unique set of subscribers that Congress chose to protect, and there is no reason for Congress to abandon them now. A host of RV trade associations have come out in favor of renewing STELAR, including the RV Industry Association, National Association of RV Parks and Campgrounds, Escapees RV Club, RV Dealers Association, and the Family Motor Coach Association.

Renewal of STELAR is also important to keep satellite providers on equal competitive footing with their cable competitors. Cable providers, our competitors, have a permanent distant-signal-license. It makes no sense for Congress to provide cable operators a such a statutory competitive advantage over satellite providers. Congress should take this opportunity to make the satellite distant-signal-license permanent, as it is for cable.

AT&T also strongly supports the provisions in STELAR that require broadcasters and MVPDs to negotiate with one another in “good faith.” This requirement serves as an important backstop that places guideposts around negotiations. We still have issues with stations refusing to negotiate or respond to an offer, and the good faith provision helps move those negotiations along. Without the protections the “good faith” rules offer, there would likely be even greater increases in prices and blackouts. As with the satellite distant-signal-license, Congress should make this provision permanent in STELAR.

The Need For Retransmission Consent Reform.

While the good faith rules continue to be necessary to help bring broadcasters to the table, the retransmission consent regime is in dire need of reform. In every prior reauthorization, Congress has also enacted substantive reform apart from the expiring provisions. It should do the same here to fix the broken retransmission consent regime.

That regime was first put in place last century, to help small local broadcasters obtain carriage on cable platforms that were then the only pay-TV offering in most areas. Now, with consumers having a multitude of options to watch their content, those statutory protections are no longer necessary and only serve to harm consumers and competition. Since 2006, retrans fees have gone from about \$215 million to \$11.7 billion in 2019, an increase of 5,359 percent.² Local broadcasters, shielded by their special statutory protections, have a disproportionate bargaining position and reflexively respond to reasonable offers with blackouts. Indeed, these antiquated laws have unfairly penalized the nearly 90 million customers³ that have chosen to keep their traditional pay-TV service.

That is why AT&T has long supported legislative efforts to end the retransmission consent regime, and we applaud the efforts of Representatives Anna Eshoo and Steve Scalise to reform the system and end local broadcaster blackouts and consumer harm through the bipartisan Modern Television Act of 2019.⁴

We are all aware of the enormous changes in the video marketplace since the last STELAR renewal, in 2014. Consumers are choosing to leave traditional pay TV services to obtain their programming through the growing number of direct-to-consumer options, including both subscription services (Netflix, Hulu, Amazon) and free services, like YouTube. There are now more than 180 million over-the-top subscriptions,⁵ with Netflix having more subscribers⁶ than DIRECTV and Comcast combined.⁷ Major pay-TV providers lost more than 1.5 million subscribers in 2Q 2019 – more than in any previous quarter.⁸

AT&T has embraced these trends, providing consumers the innovative and mobile video alternatives they desire. In 2016, we launched our live-streaming service AT&T TV NOW, providing consumers customized packages – allowing them to watch TV wherever they want on different devices. And, of course, AT&T continues to provide high-quality premium video service to over 20 million customers.

² “Broadcasters Try to Kill STELAR and Victimize 870,000 Viewers with Deceptive Political Ads,” American Television Alliance, October 2019, <https://www.americantelevisionalliance.org/broadcasters-try-to-kill-stelar-and-victimize-870000-viewers-with-deceptive-political-ads/>

³ “Major Pay-TV Providers Lost About 1,530,000 Subscribers in 2Q 2019,” Leichtman Research Group, Inc., August 2019, <https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-1530000-subscribers-in-2q-2019/>

⁴ Modern Television Act of 2019, H.R.3994, 116th Congress (2019).

⁵ “Hulu and Amazon Prime Video Are Gaining on Netflix in the Streaming Wars,” AdWeek, August 2019, <https://www.adweek.com/tv-video/hulu-and-amazon-prime-video-are-gaining-on-netflix-in-the-streaming-wars/>

⁶ Netflix 3Q 2019 Earnings, https://s22.q4cdn.com/959853165/files/doc_financials/quarterly_reports/2019/q3/FINAL-Q3-19-S Shareholder-Letter.pdf

⁷ “Major Pay-TV Providers Lost About 1,530,000 Subscribers in 2Q 2019,” Leichtman Research Group, Inc., August 2019, <https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-1530000-subscribers-in-2q-2019/>

⁸ “Major Pay-TV Providers Lost About 1,530,000 Subscribers in 2Q 2019,” Leichtman Research Group, Inc., August 2019, <https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-1530000-subscribers-in-2q-2019/>

No doubt, consumers have unparalleled choice and competition for video content. Yet the laws that govern the video marketplace were first written in 1934, and the present legal framework dates back to 1992. Under these current laws, broadcasters can choose either: (1) retransmission consent, where cable (and later all MVPDs) must pay to carry broadcast programming (which broadcasters otherwise make free over-the-air), or (2) must-carry, where cable (and later all MVPDs) are required to devote capacity to carry the station. If a local broadcaster withholds its programming, MVPDs generally cannot offer their subscribers alternative, out-of-market network affiliate programming, even temporarily. These laws were written to protect local broadcasters at time when there was only one distributor, so cable and broadcasters were mutually dependent on each other, and customers had few options besides cable. Now, these laws stubbornly protect local broadcasters from the inexorable changes occurring in the video marketplace, and thus distort and stymie innovation and consumer choice.

As competition first came from satellite, and now from over-the-top providers, local broadcasters have relied on their special statutory protection to more effectively use the threat of blackouts to dramatically increase retransmission fees for stations also available for free, over-the-air. As a result, these broadcasters have dramatically raised retransmission fees, as detailed above. And, when MVPDs balk at local broadcasters' rate hikes, they have responded with blackouts. Local broadcasters shattered the record for the most TV blackouts in a single calendar year already in 2019, intentionally taking down signals from cable and satellite customers 276 times.⁹ Because of existing law, consumers are harmed by these unwarranted and unnecessary blackouts.

We understand the desire to preserve local programming.¹⁰ However, local content will always have value and no longer needs to be given special protections in the law. Scores of cable networks, including those operated by our WarnerMedia group, respond to competitive and economic forces by delivering — to consumers and distributors — high quality products and programming. An approach in which the overall effect would be “market-based” should be the model for modern local broadcasting, too. Continuing favoritism for some content over others is outdated and ultimately harmful to consumers. It is time for the law to catch up to the marketplace.

AT&T/DIRECTV Service in all 210 DMAs

I would like to take this opportunity to clear up some confusion over DIRECTV's service in all 210 DMAs. Today, DIRECTV serves 198 markets through our satellites and in 12 markets we offer local broadcast signals through an antenna. We then integrate that signal with our other offerings so that it looks exactly the same to the customer; the channel appears in the programming guide like all other channels, can be recorded with a DVR, and can be managed with our parental controls. And in the 12 markets where we harness the broadcaster's free, over-the-air signal, we offer consumers a \$3 discount off of all DIRECTV packages. In addition to a

⁹ “Broadcasters Try to Kill STELAR and Victimize 870,000 Viewers with Deceptive Political Ads,” American Television Alliance, October 2019, <https://www.americantelevisionalliance.org/broadcasters-try-to-kill-stelar-and-victimize-870000-viewers-with-deceptive-political-ads/>

¹⁰ In fact, the law preventing ownership of multiple stations in a market was in part intended to prevent one entity from having too large an editorial voice in a community.

lower price, consumers in those markets have never endured a local broadcaster blackout because local broadcasters cannot withhold their over the air signal. So in those markets – and this is the key point – if the local broadcast signal reaches you, you can get it on DIRECTV already. And if you cannot, it is due to the broadcaster’s failure to provide that signal.

Moreover, the local broadcasters in these 12 DMAs have successfully evaded the FCC’s “top four prohibition,” which prohibits a single entity from controlling more than one “top four rated station” in a given DMA. In fact, in these DMAs, local broadcasters own two or three affiliates in eleven of them. A single broadcaster owns at least two network affiliates in six of these markets and three in the other five. They have accomplished this by using loopholes, such as carrying one of the network affiliates on a multicast stream or on low-power television stations, or both, to control multiple network feeds in a single DMA. These tactics only serve to exacerbate the problems with the retransmission consent regime. Giving broadcasters a pass on local ownership limits would all but guarantee more blackouts and higher prices for consumers in those DMAs. Given the competitive state of the market, and the plethora of consumer choices for video content, it is simply not a viable option for us to ask consumers in these markets to absorb these mounting prices and increased blackouts.

Finally, I want to stress that providing local satellite service in these 12 markets would not protect the 870,000 subscribers who are at risk of losing their network signals if STELAR were allowed to expire. We can provide distant signals to those consumers that cannot receive a local station’s over-the-air signal. Where broadcasters in these 12 markets are providing their signal with the free spectrum they have received from the government, we are offering our customers a distant signal. Simply put, contrary to the deliberate confusion that broadcasters are trying to create, satellite local service is not a replacement for a distant signal. And, in fact, it actually puts these consumers at more risk of losing their signal through a broadcaster blackout. Put simply, broadcasters want Congress to pull distant-network signals from viewers that its member companies have chosen not to serve.

AT&T thanks the Committee for holding this important hearing we look forward to engaging with Members on both sides of the aisle to renew STELAR and reform the badly broken retransmission consent regime to benefit consumers and competition.