

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

September 25, 2018

To: Subcommittee on Communications and Technology Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Subcommittee Hearing on “State of the Media Marketplace”

On **Thursday, September 27, 2018, at 3:00 p.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a hearing titled “State of the Media Marketplace.”

I. BACKGROUND

The way consumers enjoy media has changed significantly over the past decade, as has who produces content and how. Changes in content production, distribution, and consumption raise questions about how best to advance the traditional principles of diversity, localism, and competition.

A. Video Programming

For several decades, Americans had two traditional options for accessing video programming—broadcast television stations and multichannel video programming distributors (MVPDs) such as cable and satellite operators. MVPDs carry both broadcast and non-broadcast programming. Carriage of broadcast programming is governed by the Communications Act and Copyright Act. Generally, a broadcaster may either seek carriage of its signal without compensation (must-carry) or negotiate carriage with the MVPDs for compensation (retransmission consent).¹ Certain carriage statutory provisions expire periodically, including an exemption from retransmission consent requirements for satellite operators for the carriage of

¹ 47 U.S.C. § 325(b)(1).

distant network signals to “unserved households”² and a requirement that television broadcast stations and MVPDs negotiate retransmission in good faith.³

Nielsen estimates that as of 2017, there are approximately 119.6 million television households in the United States. According to the most recent Federal Communications Commission (FCC) Video Competition Report, the number of MVPD subscribers has been in decline since 2013, to just over 99 million customers at the end of 2015.⁴ This trend appears to be continuing, as Kagan estimates a total of 94 million MVPD subscribers in 2017.⁵ The number of households that rely exclusively on over-the-air (OTA) broadcasts is relatively small, but growing: the FCC report found that as of 2015, approximately 12.4 million households rely exclusively on over-the-air broadcasts.⁶ Data from the National Association of Broadcasters indicates that 30.6 million households use OTA service for at least one television in their home.⁷

However, while traditional distribution platforms remain the primary means by which consumers watch video, the use of online video distribution services is on the rise. Indeed, the FCC Video Competition Report found that “most significant change in the status of competition” of the delivery of video programming has been the introduction of Sling TV by DISH Network and DIRECTV NOW by AT&T.⁸ Further, according to the report, a growing number of content owners and broadcast networks launching online video delivery services (OVDs)—such as Hulu, HBO NOW, Amazon Prime, and Netflix—have increased competition in the video market.⁹ According to Pew research, among adults age 18-29, 61 percent indicate that they primarily watch video through streaming services.¹⁰ Kagan estimates that virtual MVPDs (e.g., Sling TV or DIRECTV NOW) have approximately 3.3 million subscribers.

B. Radio Broadcasting and Other Audio Content

² See 47 U.S.C. § 325(b)(2)(C) (expires December 31, 2019).

³ See 47 U.S.C. § 325(b)(3)(C) (expires January 1, 2020).

⁴ Federal Communications Commission, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, MB Docket No. 16-247, DA 17-71 (Jan. 17, 2017) (“FCC Video Competition Report”).

⁵ Adam Jacobson, *Sub Losses Slow for MVPDs in Q4*, Radio + Television Business Report (March 15, 2018).

⁶ FCC Video Competition Report.

⁷ Comments of the National Association of Broadcasters filed with the Federal Communications Commission, *Status of Competition in the Market for the Delivery of Video Programming*, MB Docket 17-214 (Oct. 10, 2017).

⁸ FCC Video Competition Report.

⁹ *Id.*

¹⁰ Pew Research Center, *About 6 in 10 Young Adults in U.S. Primarily Use Online Streaming to Watch TV* (Sept. 13, 2017).

Though radio broadcasting has also been affected by the rise of digital formats such as online radio and podcasting, traditional radio broadcasts remain very popular with Americans, as 90 percent report listening to terrestrial radio at least once a week.¹¹ The number of online radio listeners continues to increase slightly each year, while the number of Americans who listen to podcasts is also increasing.

C. User Generated Content

User generated content (UGC) ranging from videos to blog posts to podcasts to websites has thrived in recent years. The videos, images, text and posts that populate platforms such as Facebook, Twitter, YouTube, Vimeo, Reddit, Instagram, Flickr, and Wikipedia are UGC. Generally, access to such content is limited to broadband users.

II. RELEVANT FCC PROCEEDINGS¹²

A. FCC’s Proposal to Eliminate Certain Children’s Programming Rules

Congress passed the Children’s Television Act of 1990, which requires broadcasters to “serve the educational and informational needs of children” through their programming.¹³ In interpreting this requirement, the FCC has required broadcasters to air television programming to serve the educational needs of children 16 and under. The FCC has also adopted specific rules regarding how much programming is necessary and when it must be aired.

The FCC recently proposed to eliminate many of these rules.¹⁴ Most notably, a notice of proposed rulemaking (NPRM) proposes to eliminate the requirement that such educational programming be at least 30 minutes in length¹⁵ and regularly scheduled.¹⁶ The Children’s Television NPRM further proposes to allow broadcasters to fulfill its educational programming

¹¹ Pew Research Center, *Audio and Podcasting Fact Sheet* (July 12, 2018).

¹² In addition to the changes proposed by the FCC to the Children’s Television rules and the media ownership rules, the FCC is also in the process of completing a first of its kind Broadcast Incentive Auction. the FCC is charged with repacking broadcast television licensees to repurpose newly auctioned spectrum for broadband internet access and other commercial mobile services. As part of the RAY BAUM’S Act, Congress enacted the Viewer Protection Act to provide additional funding to educate consumers regarding the repack, and to expand entity eligibility for reimbursement resulting from the repack. The FCC has released a NPRM to implement the Viewer Protection Act.

¹³ Children’s Television Act of 1990, Pub. L. No. 101-437.

¹⁴ Federal Communications Commission, *Children’s Television Programming Rules*, Notice of Proposed Rulemaking, MB Docket Nos. 18-202 and 17-105, FCC 18-93 (Children’s Television NPRM).

¹⁵ *Id.*

¹⁶ *Id.*

requirements by airing programming on any of their over-the-air streams, including multicast streams.¹⁷ The comment cycle on the NPRM closes October 23, 2018.

B. Media Ownership

The FCC has significantly rolled back many media-related protections for consumers and local communities since 2017. For example, the FCC voted to reinstate the UHF discount last year, which provides a 50 percent reduction in attributable audience reach when calculating whether an entity violates the statutory 39 percent national cap set by Congress. In addition, the FCC repealed the main studio rule. That rule generally required that a broadcaster have a studio in the area surrounding its community of license. The FCC also modified the Local Television Ownership Rule to allow a single entity to own two of the top four stations in a given market, pending a case by case review. In November of last year, the FCC eliminated what were its “eight voices” test and its newspaper/broadcast and radio/television cross-ownership rules, as well as reversed its earlier decision to treat joint sales agreements as conferring attributable ownership interests.

III. WITNESSES

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¹⁷ *Id.*