

[REDACTED]

From: Ryan, Gina [REDACTED]
Sent: Friday, January 23, 2015 4:47 PM
To: CommActUpdate
Subject: Honorable Fred Upton and Greg Walden PEG Access is very important

I am a Director of Hardin County Educational and Community Television in Elizabethtown, KY. HCEC TV is an educational and government access channel broadcasting to cable subscribers in five counties south of Jefferson County, Kentucky with a cable subscribership of 110,000 people. This channel provides government content that is not edited or filtered, along with educational programs for our community population.

It is imperative that PEG access remain as a vital service for all cable based companies that enter into franchise agreements with county and city governments. HCEC TV provides 35 hours of original weekly programs for the community and many are still cable subscribers. Please when working on new regulations and requirements, keep PEG access available.

HCEC TV annually covers local and state candidates for office, providing viewers with information that is not available on satellite or alternative delivery services. The public will not have a strong voice without having access being required. Please keep PEG access as part of any cable or telecommunications franchise agreements with all communities.

Thank you, Gina Ryan



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January 23, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Saint Paul Neighborhood Network (SPNN) submits the following comments:

SPNN is the Community Media Center and Public/Educational Access Channels for St. Paul, MN. SPNN's mission is to empower people to use media and communications to better lives, use authentic voice and build common understanding. In operation since 1984, SPNN has become a staple institution for the city and surrounding communities. Training thousands of individuals a year, SPNN's educational programs are truly unique to the community.

Through SPNN's Public Access facilities, community members receive low cost professional media production education, which no other organization offers. Currently, the Access Center has 284 active members telling the stories of the community not being told by the commercial media operators. Further, SPNN's specialized programs assist with job training and career exploration. *Doc U*, an intensive documentary mentorship program, works with low income adults to help them learn how to change their community through the art of storytelling. *Making Media, Making Change*, a semester long college credited course through the Higher Education Consortium for Urban Affairs, gives students a deep understanding of media creation and technologies as well as how the media landscape influences our culture, economy and democracy. All of the content created by community members are distributed through two Public Access channels.

SPNN's nationally recognized youth programs, in operation for 15 years, serve over 300 youth throughout the City of St. Paul. The vast majority of youth served are from low income and New American communities and are those greatest effected by the digital divide. The various programs, taught in SPNN's

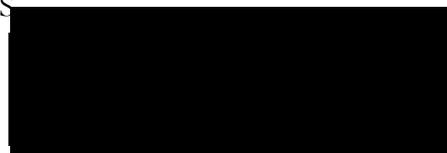
facility and held in local libraries and recreation centers, provide young people the opportunity to develop leadership skills and explore potential careers in technology and media production. All of the content produced by youth are distributed through our Educational Access channel, alongside content produced by the public school system.

Our Community Production department captures the most significant cultural, political and timely events throughout the city. Local media outlets largely ignore local political forums, community discussions or cultural events. SPNN Community Productions seeks to capture and distribute the events and discussions that impact the health of our city and neighborhoods. Community Productions also produces a state legislative program, which is distributed statewide introducing Minnesotans to the politicians and issues that affect their lives. Community Productions captures, produces and distributes a minimum of 200 hours of content a year.

Lastly, SPNN operates an AmeriCorps program, the Community Technology Empowerment Project (CTEP), which specifically works with low income and New American populations throughout the Twin Cities. This program aims to bridge the digital divide through basic technology education with the goal of getting these populations gainfully employed. In 2014, SPNN helped 640 community members become employed because of their training.

Community Media Centers and PEG Access stations serve a more critically important role in communities, even more so in the era of the Internet. These centers are positioned in our communities as trusted sources to give people the access and training to new technologies. These centers are TV distribution centers of vital content but also training and resource centers like no other. As the technological tools and platforms increase, the need for education and access becomes greater. In order to participate in any civic, economic or cultural arena, citizens need the education, literacy and tools. PEG Access and Community Media Centers have been doing this for decades and are more relevant than ever.

S



Chad A. Johnston – Executive Director
Saint Paul Neighborhood Network



GLOBAL INTERNET PHENOMENA REPORT

2H 2014

Executive Summary

The Global Internet Phenomena Report: 2H 2014 shines a light on fixed and mobile data networks around the world, identifying facts, fads, and the future trends that will shape the Internet's future. In this report, we present a mix of high-level observations, regional-focused analysis, deep-dives into specific subjects, and educational tidbits. Communications service providers (CSPs) in particular are in the position to act on this information, but we believe that the findings will be of interest to a wide range of readers.

As with all reports in recent years, Real-Time Entertainment (comprised of streaming video and audio) continues to be the largest traffic category on virtually every network we examined, and we expect its continued growth to lead to the emergence of longer form video on mobile networks globally into 2015.

In North America, the dominance of Real-Time Entertainment is due in large part to the continued market leadership of Netflix which saw its share (34.9%) remain relatively consistent with the previous report. Amazon Video Instant Video at 2.6% of peak downstream traffic has established itself as the second leading paid OTT video service in North America, without yet having a presence in Canada. In 2015, it will be interesting to observe how the OTT video market changes as HBOGO opens up their Internet offering to those who aren't subscribers to their cable or satellite products.

The popularity of Netflix is not limited to the locations it is currently offered as it was observed on a fixed network in Australasia that Netflix was a top-10 application on the network. Amazingly, approximately 2.5% of subscribers are accessing the service and it comprises as much as 4% of peak downstream traffic and the service isn't yet available in the region.

Thanks to significant customer wins in the region, Sandvine is able to once again shine a light on mobile usage in Africa. Usage on the continent is drastically different than what is observed in other regions, with Real-Time Entertainment accounting for less than 6% of total traffic and Viber overtaking Skype as the VoIP app of choice on some mobile networks.

In addition to detailed analysis of global networks, this report includes focused spotlights that examine a particular emerging trend or observation. Interspersed among regional summaries, readers will find sections that tackle numerous topics including:

- An examination of the impact Facebook autoplay has had on fixed and mobile networks
- An exploration of the impact the launch of iOS 8 had on networks around the globe
- An overview of what impact the World Cup had on networks in Latin America



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North America

Fixed Access

For 2H 2014, mean usage was 57.4 GB, which represents a 13GB increase from the 44.5 GB observed in our 2H 2013 report. Over the same period, median monthly usage also saw a similar increase moving from 17.6 GB to 22.5 GB. This growth continues to fall broadly in line with the 30-40% growth rate that many of our ISP customers forecasted for 2014 and are expecting to continue into 2015. It is important however to understand there is more to network use than monthly usage. As some operators continue to explore usage based billing, particularly in the United States, it is important to note that there are both a large percentage of users who greatly exceed our published mean usage figures, and also many subscribers who use far less than our published figures each month.

Monthly Consumption - North America, Fixed Access		
	Median	Mean
Upstream	1.8 GB	8.5 GB
Downstream	20.4 GB	48.9 GB
Aggregate	22.5 GB	57.4 GB



Table 1 - Monthly Consumption Figures - North America, Fixed Access

As with previous reports, Real-Time Entertainment maintains its status as the dominant traffic category in the region and likely the key driver of network growth. Real-Time Entertainment is responsible for over 67% of downstream bytes during peak period, a small increase over the 64% we reported in our 1H 2014 report.

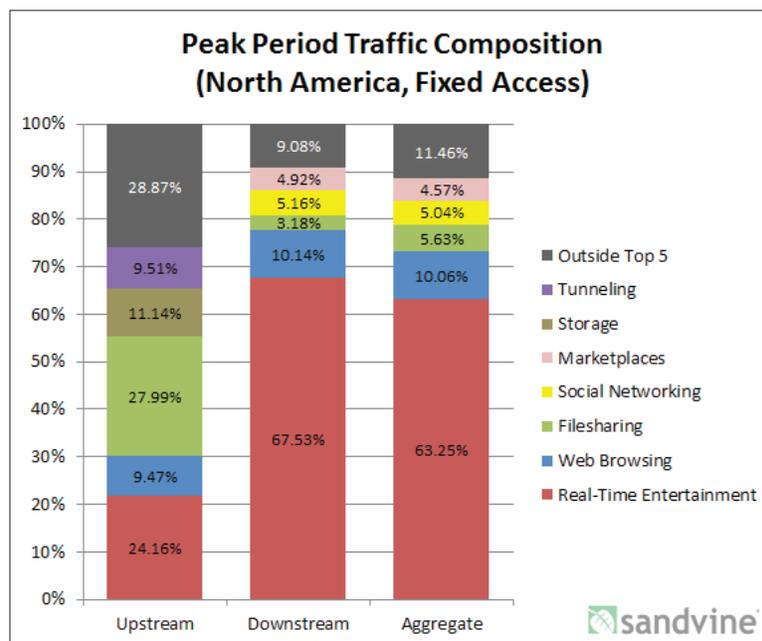


Figure 1 - Peak Period Aggregate Traffic Composition - North America, Fixed Access

Netflix continues to be the leader in peak period traffic, accounting for 34.9% of downstream traffic during that time. This is a modest increase over the figures published in 1H 2014 report. It is however a significant increase from the 31.6% measured in 2H 2013, an increase we previously observed to be driven by the availability of high bitrate Super HD content for all subscribers.

Rank	Upstream		Downstream		Aggregate	
	Application	Share	Application	Share	Application	Share
1	BitTorrent	25.49%	Netflix	34.89%	Netflix	32.39%
2	Netflix	9.48%	YouTube	14.04%	YouTube	13.25%
3	HTTP	7.18%	HTTP	8.62%	HTTP	8.47%
4	SSL	7.05%	Facebook	2.98%	BitTorrent	5.03%
5	YouTube	6.14%	BitTorrent	2.80%	Facebook	2.94%
6	iCloud	4.41%	iTunes	2.77%	SSL	2.63%
7	Skype	2.77%	MPEG - OTHER	2.66%	iTunes	2.55%
8	Facebook	2.60%	Amazon Video	2.58%	MPEG - OTHER	2.44%
9	FaceTime	2.38%	SSL	2.14%	Amazon Video	2.37%
10	Dropbox	1.48%	Hulu	1.41%	Hulu	1.20%
		68.98%		74.89%		73.28%



Table 2 - Top 10 Peak Period Applications - North America, Fixed Access

As observed in previous reports, BitTorrent continues to lose share and now accounts for just 5% of traffic during peak period. In our last report, we revealed that Filesharing as a whole accounted for less than 9% of total daily traffic, and that trend continues with Filesharing now responsible for just 7% of daily network traffic. This demonstrates a sharp decline in share from the 31% of total traffic we had revealed in our 2008 report.

While Amazon Instant Video still holds only a fraction of the bandwidth share when compared to Netflix, in the past year it has seen significant gains. At 2.6% of peak downstream traffic, Amazon Video Instant Video has established itself as the number two paid OTT video service in North America, without the service being made available in Canada.

With HBO's recent announcement¹ to offer HBOGO as a standalone service, the OTT video market could change significantly in the next year. Currently HBOGO accounts for 1% of traffic during peak period, so we expect this figure to serve as an interesting benchmark to measure adoption of the service without the need for a cable or satellite subscription.

1. <http://recode.net/2014/10/15/hbo-says-its-going-to-start-selling-on-the-web-next-year/>

Mobile Access

Much like our examination of fixed access networks in North America, mobile networks have also seen only minor shifts in traffic composition in the past six months. Since our last report, mean monthly usage has made an 18% jump, increasing from 465 MB to 522 MB. This increase is partially due to organic growth on the network, as well as the continued rollout of LTE by some participants in the study. Median usage, a figure we feel is more indicative of a “typical user”, grew at a similar pace from 102 MB to 118 MB. This significant increase in mean and median usage is a phenomenon we have been tracking over the past several years and believe the rate at which it is increasing is no longer tied to first-time adoption of smartphones by subscribers. Instead, we suspect it is driven by increasing individual usage, in particular driven by growing use of streaming audio and video applications.

Monthly Consumption - North America, Mobile Access		
	Median	Mean
Upstream	19.7 MB	75.4 MB
Downstream	99.1 MB	506.5 MB
Aggregate	118.4 MB	521.9 MB



Table 3 - Monthly Consumption Figures - North America, Mobile Access

During peak period, Real-Time Entertainment traffic is by far the most dominant traffic category, accounting for 40% of the downstream bytes on the network. As observed in past reports, Social Networking applications continue to be very well represented on the mobile network. This speaks to their popularity with subscribers as these social applications typically generate far less traffic than those that stream audio and video.

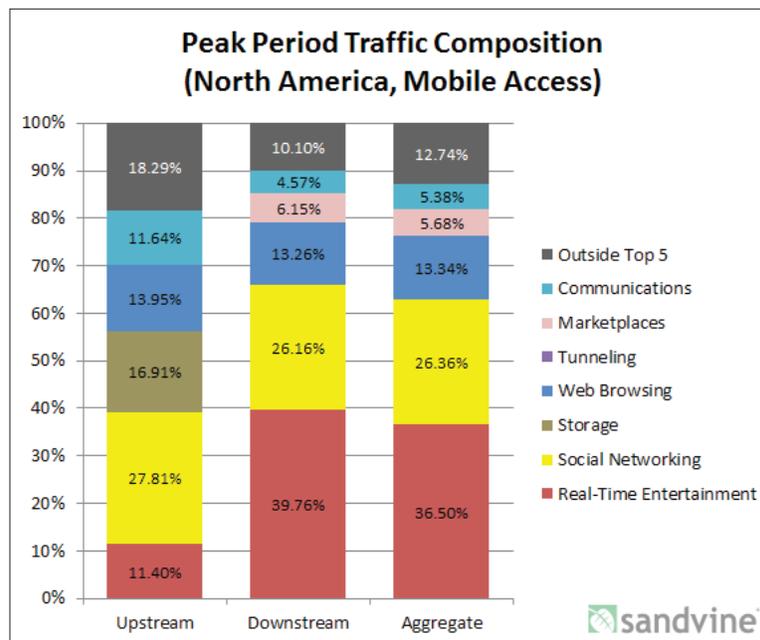


Figure 2 - Peak Period Aggregate Traffic Composition - North America, Mobile Access

In our 2H 2013 study, YouTube accounted for 17.7% of peak downstream traffic and for 2H 2014 that figure saw a light increase to 19.8%. While not typically associated with video, Facebook saw a notable increase in its traffic share. This growth we believe is directly attributable to the addition of the video autoplay feature, which automatically plays videos in your Facebook feed. On one network, autoplay caused an average of 60% more Facebook consumption per user.

Rank	Upstream		Downstream		Aggregate	
	Application	Share	Application	Share	Application	Share
1	Facebook	22.36%	YouTube	19.75%	Facebook	19.43%
2	Google Cloud	11.97%	Facebook	19.05%	YouTube	18.02%
3	HTTP	9.85%	HTTP	11.44%	HTTP	11.26%
4	SSL	9.22%	MPEG - OTHER	6.32%	MPEG - OTHER	5.72%
5	YouTube	4.56%	Netflix	4.51%	SSL	4.63%
6	Instagram	2.55%	Instagram	4.49%	Instagram	4.27%
7	Snapchat	1.94%	SSL	4.03%	Netflix	4.10%
8	BitTorrent	1.88%	iTunes	3.20%	Google Cloud	4.09%
9	FaceTime	1.59%	Google Cloud	3.07%	iTunes	2.96%
10	Skype	1.53%	Pandora Radio	2.72%	Pandora Radio	2.53%
		67.44%		78.57%		77.02%



Table 4 - Top 10 Peak Period Applications - North America, Mobile Access

As for streaming audio, in our 2H 2013 report Pandora Radio was the leading music application during peak hours. In our 2H 2014 report, that figure drops somewhat for a number of reasons including, greater competition and the inclusion of data from countries where the service is not currently available.

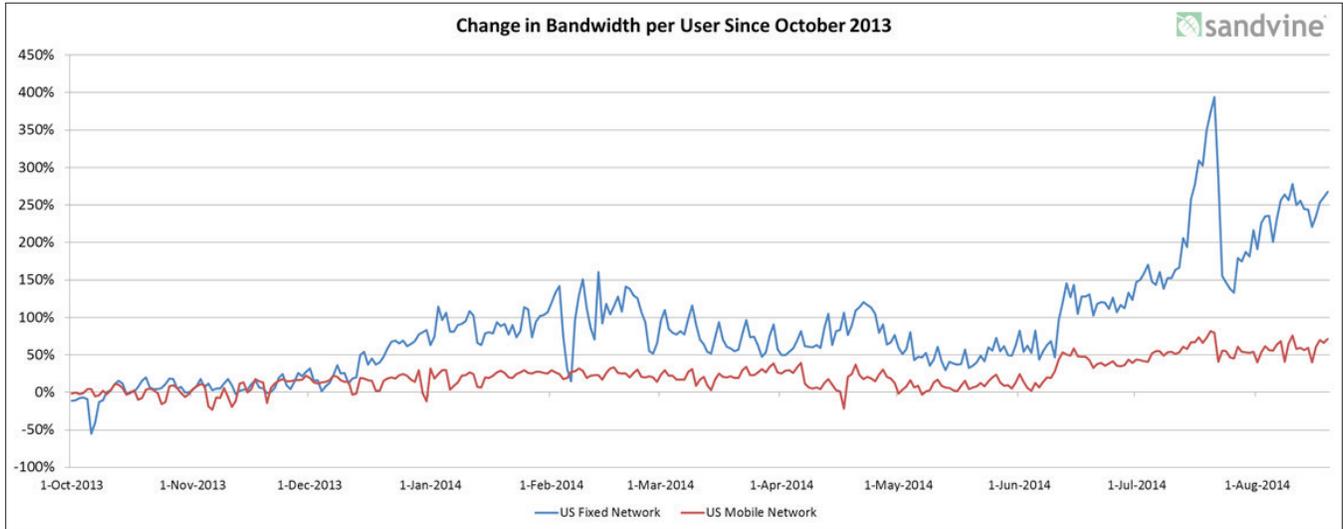
As first reported in our 1H 2014 report, Snapchat continues to be the leading third-party messaging service by volume, generating more traffic each day than competing services such as WhatsApp.

Making an appearance for the first time is the Google Cloud which is a combination of the various services used by Google's Android operating system to keep devices constantly in sync. Because cloud syncing requires both upstream and downstream communication, it is a significant contributor of bandwidth in both the upstream and downstream direction.

Facebook Autoplay

Video autoplay is a feature Facebook began rolling out in the US last September for videos, and in December for video ads. A more international expansion of autoplaying video ads took place in May of this year with Australia, Brazil, Canada, France, Germany, Japan and the United Kingdom all receiving this feature.

So what impact does autoplay have on networks? Below, we show a chart normalized for bandwidth consumption at the end of September 2013, for both a US mobile operator and a US fixed operator, showing the change in average bandwidth per user over the previous 10 months.



In the past year, Facebook traffic (depending on the day) increased by 60% on the mobile network, and by over 200% on the fixed network, driven (we believe) mainly by the addition of autoplay videos to the Facebook feed.

That may sound shocking, but if you think back to the time pre-autoplay, your Facebook page would have been mainly text and images. Add in video, which is essentially 24-30 photos being displayed in your feed each second, and you can see how the data quickly adds up.

Sharp rises in usage caused by video isn't actually a new Phenomenon. When Instagram added video to their service in June of last year we observed a significant increase in bandwidth on networks across the globe.

The above data is taken from just two networks, and Facebook is famous for running multiple trials and in one famous anecdote, they claim to have up to 1,000 different versions of the site for testing purposes at any one time. At this point it is unclear how fast or how slow the rollout of autoplay is taking place around the world. Are they rolling it out to a small percentage of users at a time? Are they rolling it out at different rates to desktop users and mobile users? These are questions that are difficult to answer at this time.

Europe

Fixed Access

Europe presents a mix of mature and emerging markets, with cultural, economic, technological, and linguistic diversities that combine to create traffic patterns that can prove to be interesting to roll-up. Regional analysis is intricate, as different applications can vary in penetration and availability depending on the country.

Europe’s mean monthly usage of 28.2 GB and median monthly usage of 10.1 GB is significantly lower than that observed in North America. Sandvine first reported monthly usage figures in 2013, so the comparison of Europe’s growth rate to other regions around the world, will be interesting to analyze in future reports.

Monthly Consumption - Europe, Fixed Access		
	Median	Mean
Upstream	1.5 GB	5.1 GB
Downstream	8.7 GB	23.1 GB
Aggregate	10.1 GB	28.2 GB



Table 5 - Monthly Consumption Figures - Europe, Fixed Access

In Europe, Real-Time Entertainment is once again the top traffic category, responsible for 42.3% of peak downstream traffic, a figure that is essentially unchanged from our study six months ago. Depending on the specific country however, this percentage ranges anywhere from 20% to 67% of downstream traffic. This fluctuation in share is due in large part to the availability of OTT video services in varying countries as well as the speed of service made available to subscribers. Based on our observations in this and previous reports, countries with access to paid services like Netflix or BBC iPlayer typically had a higher share of Real-Time Entertainment traffic on their network.

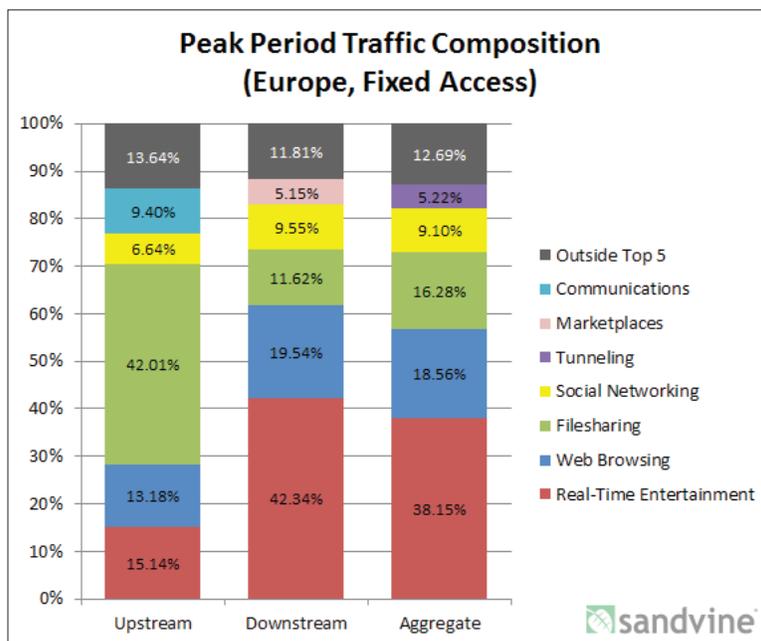


Figure 3 - Peak Period Aggregate Traffic Composition - Europe, Fixed Access

European networks have a consistent set of dominant applications and services that are available in each region, which account for 80-85% of all traffic. A set of localized websites and region-restricted applications make up the remainder of traffic. This can be seen in the list of top 10 applications for the region, all of which have global availability. One application that is noteworthy however is Netflix whose appearance accounts for 3.44% of peak downstream traffic. In recent months Netflix has expanded to several new countries, such as Germany and Luxembourg. Unfortunately our collection period for this report was just outside the launch date in these countries, so it is our hope to provide figures for those countries in a future report.

		Upstream		Downstream		Aggregate	
Rank	Application	Share	Application	Share	Application	Share	
1	BitTorrent	36.56%	YouTube	22.38%	YouTube	19.85%	
2	HTTP	10.60%	HTTP	17.27%	HTTP	16.25%	
3	Skype	6.38%	BitTorrent	10.39%	BitTorrent	14.40%	
4	YouTube	5.92%	Facebook	7.84%	Facebook	7.48%	
5	Facebook	5.48%	SSL	4.56%	SSL	4.67%	
6	SSL	5.27%	MPEG - OTHER	3.57%	MPEG - OTHER	3.23%	
7	eDonkey	2.46%	Netflix	3.44%	Netflix	2.97%	
8	Dropbox	1.42%	RTMP	2.31%	Skype	2.27%	
9	MPEG - OTHER	1.27%	Flash Video	1.90%	RTMP	2.08%	
10	Flash Video	1.08%	PC: Valve's Steam Service	1.73%	Flash Video	1.74%	
		76.44%		75.38%		74.95%	



Table 6 - Top 10 Peak Period Applications - Europe, Fixed Access

Mobile Access

As discussed earlier, examining mobile networks in Europe provides the same set of challenges for regional analysis as fixed networks due to the diversity in each country's culture, economy, languages, and deployed network technologies.

One metric that may not be impacted too significantly by some of these factors is monthly subscriber consumption. It's not unreasonable to expect that subscribers will use their devices in a similar way; the only difference is that they will simply substitute the services that are most popular or only available in their country. In our analysis, mean monthly usage for Europe was observed to be 449.5 MB, an increase of over 13% from 394.4 MB observed six months ago.

Monthly Consumption - Europe, Mobile Access		
	Median	Mean
Upstream	15.1 MB	69.5 MB
Downstream	108.8 MB	380.3 MB
Aggregate	122.1 MB	449.5 MB



Table 7 - Monthly Consumption Figures - Europe, Mobile Access

Much like other mobile networks during peak period, Real-Time Entertainment traffic is the clear traffic category leader account for 38% of downstream traffic during peak period. Web Browsing and Social Networking, as seen commonly in other regions, round out the second- and third-most popular traffic categories.

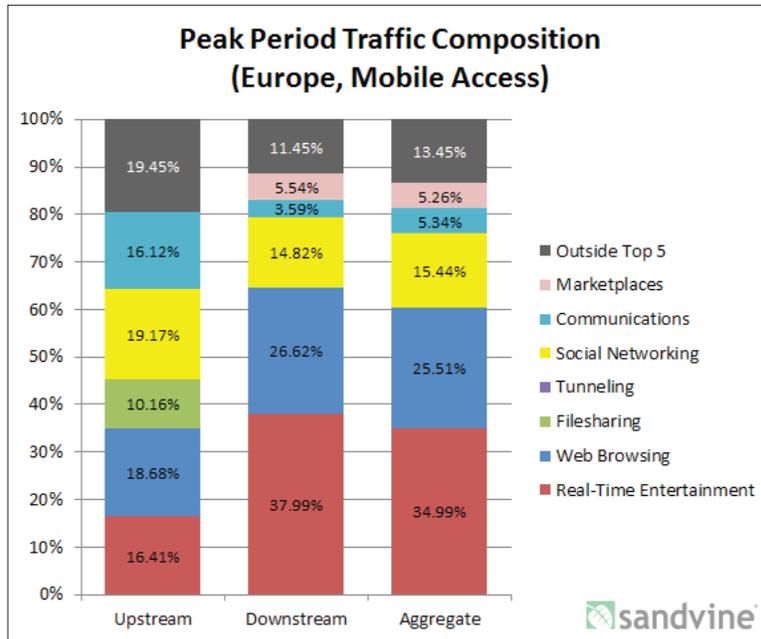


Figure 4 - Peak Period Aggregate Traffic Composition - Europe, Mobile Access

Skype is the application that continues to drive the majority of communications traffic, now accounting for almost half of that category’s traffic in the region. The remaining top applications vary from country to country, but we have observed continued growth of OTT messaging applications in many European countries with WhatsApp and now Snapchat being the dominant third-party players.

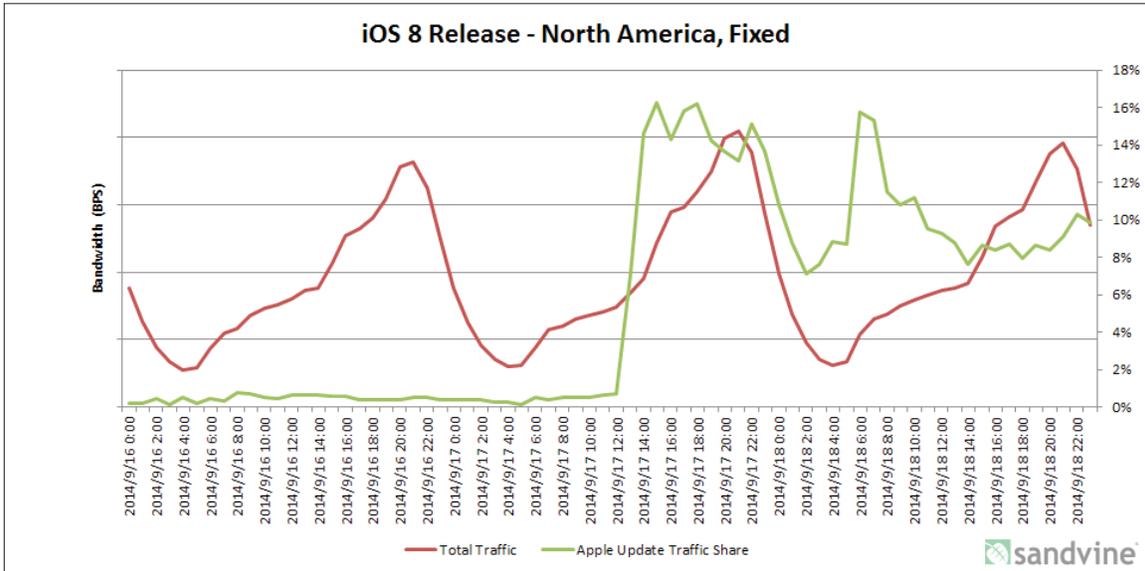
Rank	Upstream		Downstream		Aggregate	
	Application	Share	Application	Share	Application	Share
1	HTTP	15.38%	HTTP	24.60%	HTTP	23.31%
2	Facebook	14.76%	YouTube	20.89%	YouTube	19.04%
3	BitTorrent	8.99%	Facebook	12.16%	Facebook	12.54%
4	Skype	8.33%	MPEG - OTHER	3.77%	BitTorrent	3.82%
5	YouTube	7.41%	SSL	3.06%	MPEG - OTHER	3.44%
6	SSL	5.70%	Flash Video	3.03%	SSL	3.42%
7	Google Cloud	3.39%	BitTorrent	3.01%	Flash Video	2.66%
8	iTunes	1.88%	Google Cloud	1.90%	Skype	2.43%
9	Instagram	1.76%	Google Market	1.67%	Google Cloud	2.10%
10	Apple iMessage	1.47%	iTunes	1.61%	iTunes	1.64%
		69.05%		75.70%		74.43%

Table 8 - Top 10 Peak Period Applications - Europe, Mobile Access

HTTP is the application that generates the most bandwidth both in peak period and the entire day, slightly edging out YouTube which is often the top ranked application on the mobile networks we study. In the past six months however YouTube has made gains and has seen its share increase from 16.5% to 20.9% of downstream traffic in the peak evening hours. The appearance of BitTorrent on the list indicates that the use of aircards or dongles remains popular practice in Europe, although in the past year it has declined from 5.7% to 3.8% of total traffic during peak period.

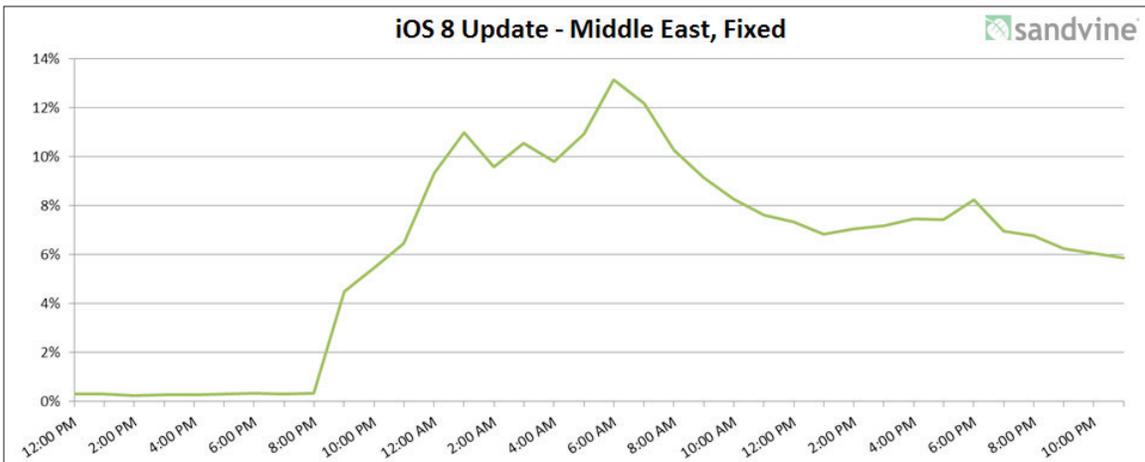
iOS 8 Launch

Below is a report from a North American fixed access operator, showing both the bandwidth and traffic share that Apple Updates accounted for in the days leading up to the public availability of iOS 8. Upon release at 1PM ET, Apple Updates immediately became almost 16% of total network traffic, and continued to stay above 13% of total traffic into the evening peak hours.



Most interesting is the fact that the launch once again increased the total volume of traffic during peak hours. This presents a unique challenge for operators, since they must engineer their networks for peak demand, and Apple product launches and software updates are infrequent in nature.

For this report we were also able to obtain data from a middle eastern fixed access operator, which because of the time difference, felt the impact of impact of the software update in the middle of peak evening hours. As was observed in North America, the update immediately consumed a significant portion of network traffic.



Latin America

Fixed Access

Latin America is a market where mobile networks represent subscribers' primary way of accessing the Internet. As a result, an examination of fixed access networks in the region reveals interesting findings.

One of the first findings is that monthly fixed-access usage in Latin America is significantly lower than what has been observed in other regions around the globe. Mean monthly usage is 15.2 GB, and median monthly usage is 6.6 GB, figures that show approximate 40% increase over those we published in 2H 2013. Subscribers on Latin America's fixed access networks continue to use approximately a quarter of the data per month compared to those in North America, which has the leading consumption around the globe.

Monthly Consumption - Latin America, Fixed Access		
	Median	Mean
Upstream	889 MB	1.9 GB
Downstream	5.9 GB	12.3 GB
Aggregate	6.6 GB	15.2 GB



Table 9 - Monthly Consumption Figures - Latin America, Fixed Access

While usage may be lower, the consumption habits of subscribers in the region are very similar to that observed in other regions around the globe. Unsurprisingly, Real-Time Entertainment is the leading source of traffic; continuing to account for essentially 45% of downstream bytes during peak period, while Web Browsing and Filesharing round out the top three traffic categories on the aggregate.

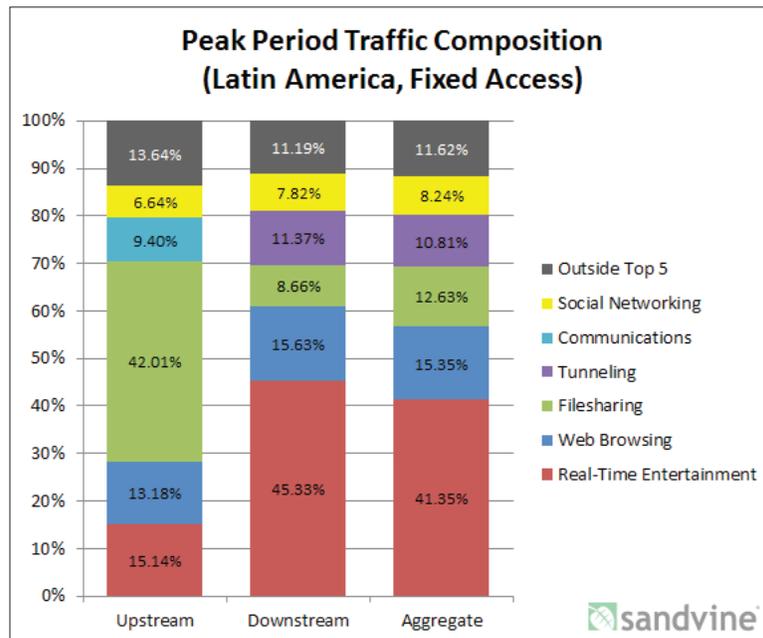


Figure 5 - Peak Period Aggregate Traffic Composition - Latin America, Fixed Access

Looking at the top applications, YouTube at 31.7% of peak downstream traffic is the clear leader in traffic share, more than doubling the second ranked application (HTTP). Making an appearance in our top 10 applications once again is Netflix, which accounts for 5.09% of peak downstream traffic. In 2H 2013, Netflix accounted for only 2.2% of peak downstream traffic which means in just 12 months the services share has more than doubled. While not yet at the levels observed on North American networks, Netflix continues to be the clear bandwidth share leader in paid-streaming video services in Latin America.

Rank	Upstream		Downstream		Aggregate	
	Application	Share	Application	Share	Application	Share
1	BitTorrent	23.87%	YouTube	31.66%	YouTube	29.43%
2	YouTube	13.40%	HTTP	13.68%	HTTP	13.24%
3	HTTP	11.16%	SSL	8.65%	SSL	9.44%
4	Facebook	8.04%	BitTorrent	7.42%	BitTorrent	10.27%
5	SSL	7.18%	Facebook	5.50%	Facebook	5.94%
6	Ares	3.88%	Netflix	5.50%	Netflix	4.76%
7	Skype	2.46%	MPEG - OTHER	2.66%	MPEG - OTHER	2.53%
8	MPEG - OTHER	1.93%	Flash Video	2.04%	Flash Video	1.88%
9	Netflix	1.90%	RTMP	1.91%	RTMP	1.74%
10	Flash Video	1.28%	Google Market	1.79%	Google Market	1.59%
		75.08%		80.82%		80.82%



Table 10 - Top 10 Peak Period Applications - Latin America, Fixed Access

Mobile Access

Latin America is a region that has great variation in the types of mobile networks, and because of this usage varies greatly from country to country. Some networks in the region are 2G/3G networks, however with the rollout of LTE in recent years, mobile networks have begun to offer an experience that is equivalent and in some cases even better than that of fixed access networks in the region.

For this report, we observed a mean monthly usage of 390.3 MB, a slight increase over the 355.4MB we observed six months ago.

Monthly Consumption - Latin America, Mobile Access		
	Median	Mean
Upstream	15.4 MB	47.2 MB
Downstream	82.1 MB	343.1 MB
Aggregate	94.1 MB	390.3 MB



Table 11 - Monthly Consumption Figures - Latin America, Mobile Access

Because fixed access network penetration is not as widespread as Europe or North America, mobile networks in Latin America offer a mix of personal handsets and air cards that serve as a household's primary Internet connection. This mix results in interesting traffic profiles. Applications and traffic categories that are usually most prominent are those that are typically popular on both mobile devices and PCs.

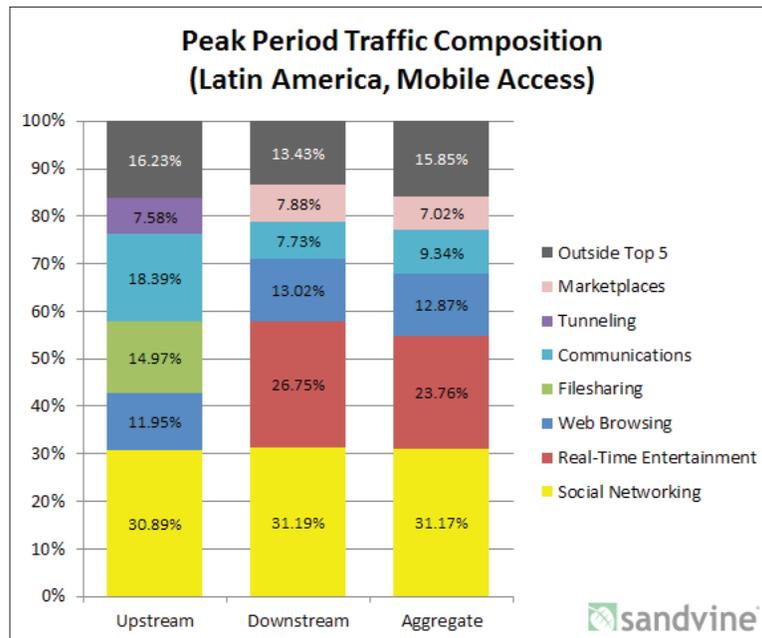


Figure 6 - Peak Period Aggregate Traffic Composition - Latin America, Mobile Access

Rank	Upstream		Downstream		Aggregate	
	Application	Share	Application	Share	Application	Share
1	Facebook	26.73%	Facebook	25.20%	Facebook	25.45%
2	Google Cloud	10.40%	YouTube	18.55%	YouTube	16.41%
3	WhatsApp	10.00%	HTTP	10.77%	HTTP	10.26%
4	HTTP	7.25%	SSL	6.55%	SSL	6.57%
5	SSL	6.73%	Google Market	4.53%	WhatsApp	5.10%
6	YouTube	4.20%	WhatsApp	4.23%	Google Cloud	4.80%
7	Skype	2.84%	Google Cloud	3.83%	Google Market	4.00%
8	Instagram	2.15%	Instagram	3.66%	Instagram	3.41%
9	iCloud	1.94%	MPEG - OTHER	3.56%	MPEG - OTHER	3.09%
10	Dropbox	1.79%	iTunes	1.68%	iTunes	1.52%
		74.03%		82.56%		80.60%

Table 12 - Top 10 Peak Period Applications - Latin America, Mobile Access

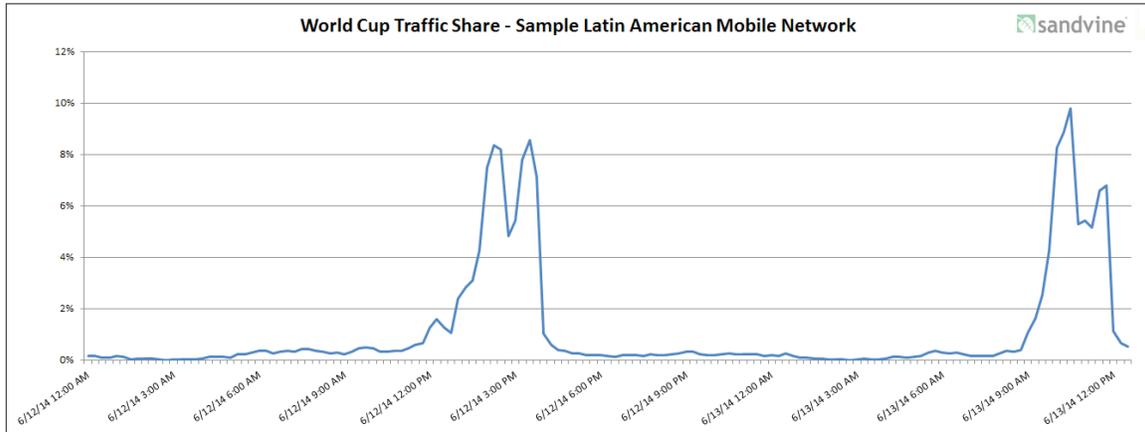
In Latin America, Social Networking is the largest driver of mobile usage, accounting for 31.2% of peak downstream traffic. One reason for its high share is the popularity of low-cost, all-you-can use social networking plans Sandvine has helped operators in the region to implement. In terms of streaming content, YouTube continues to be the largest source of video traffic, now accounting for almost 19% of downstream traffic in the peak evening hours.

World Cup Lessons

Sandvine counts some of the largest operators groups in Latin America as customers, and we are fortunate enough to have helped them gain tremendous insight about how the World Cup will impacted their network.

Below is a chart from one Latin American mobile network that shows that streaming of the first two matches of the World Cup caused a significant spike in HTTP live streaming traffic which is the internet protocol used to deliver the stream in this country.

One neat thing you may notice is that soccer matches have a distinct horseshoe traffic pattern, as subscribers take a break from streaming during half-time.



When actually crunching the numbers, World Cup streaming accounted for between 8-10% of total traffic when the first two matches were being played. These levels failed to reach our prediction that matches would consume as much as 40% of the network.

It appears as if the reality is that big sporting events are still best viewed on the largest screen available to a subscriber, and that screen is typically a television set. While there is still demand for live sports, especially appointment viewing events, the mobile device may simply serve as a backup for those stuck on the bus or at work.

Asia-Pacific

Fixed Access

For 2H 2014, mean usage in the region was 45.1 GB and median usage was 20.8 GB. Because of the amount of Filesharing and Peercasting traffic on networks in the region, subscribers in the region generate some of the largest amounts of upstream traffic in the world.

Monthly Consumption - Asia-Pacific, Fixed Access		
	Median	Mean
Upstream	2.9 GB	13.4 GB
Downstream	17.9 GB	31.7 GB
Aggregate	20.8 GB	45.1 GB



Table 13 - Monthly Consumption Figures - Asia-Pacific, Fixed Access

As observed in other regions across the globe, consumption in Asia-Pacific is driven by the use of Real-Time Entertainment, which accounts for 47.5% of total downstream traffic during peak period. On the upstream however, Filesharing still represents the majority of traffic, and is the only region in this report that can lay claim to that fact.

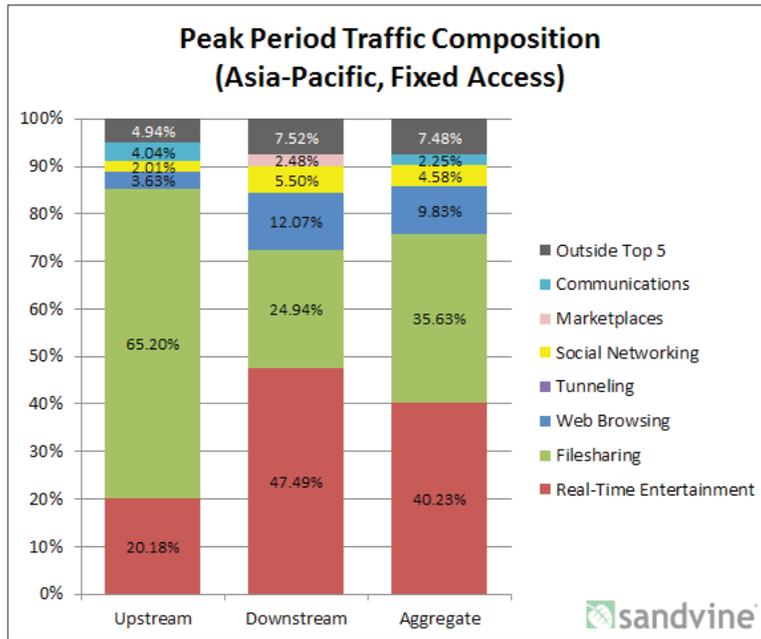


Figure 7 - Peak Period Aggregate Traffic Composition - Asia-Pacific, Fixed Access

As covered in previous reports, a unique characteristic of the Asia-Pacific region is the popularity of peercasting applications, particularly QVoD and PPStream. These applications allow users to stream live events while simultaneously helping to distribute the stream to other viewers, which drives large volumes of upstream traffic. BitTorrent is now the second ranked downstream application during peak and while its decline in share has been somewhat less drastic than in North America we believe the rate of decline may accelerate as more over-the-top Real-Time Entertainment sources are made available to subscribers in the region.

Rank	Upstream		Downstream		Aggregate	
	Application	Share	Application	Share	Application	Share
1	BitTorrent	55.91%	YouTube	23.70%	BitTorrent	31.58%
2	QVoD	7.03%	BitTorrent	22.78%	YouTube	18.67%
3	YouTube	4.80%	HTTP	10.94%	HTTP	8.80%
4	RTSP	3.17%	RTSP	7.43%	RTSP	6.29%
5	Thunder	3.01%	Facebook	3.22%	QVoD	3.20%
6	HTTP	2.86%	MPEG - OTHER	2.93%	Facebook	2.74%
7	Skype	2.26%	QVoD	1.83%	MPEG - OTHER	2.25%
8	Facebook	1.43%	Flash Video	1.82%	SSL	1.59%
9	SSL	1.16%	SSL	1.75%	RTMP	1.40%
10	PPStream	0.64%	RTMP	1.74%	Flash Video	1.39%
		82.26%		78.14%		77.92%



Table 14 - Top 10 Peak Period Applications - Asia-Pacific, Fixed Access

One interesting observation on a fixed network in Australasia was the appearance of Netflix as a top-10 application on their network. While the service is not available in the region, approximately 2.5% of subscribers are accessing the service and it comprises as much as 4% of peak downstream traffic. To gain access to these services a subscriber would have had to find a way to get credentials to the service and then use a location-spoofing service to bypass geolocation restrictions. If that Netflix usage is representative across all of Australia and New Zealand’s broadband subscribers, there could easily be an excess of 100,000 households using Netflix in the region.

Mobile Access

Asia-Pacific mobile subscribers have traditionally shown the highest consumption numbers among users in the Global Internet Phenomena Report and that is unchanged in this edition. Asia-Pacific was the first region to exceed 1GB a month on average and while the figures for this report are nearly the same as previous, we expect Asia-Pacific’s consumption leadership to continue in future reports for the foreseeable future. In future reports it is our goal to further break out regional usage data for large, diverse regions like Asia-Pacific, as usage in emerging markets differs greatly from emerged markets.

Monthly Consumption - Asia-Pacific, Mobile Access		
	Median	Mean
Upstream	261.7 MB	143.1 MB
Downstream	298.1 MB	1.0 GB
Aggregate	339.2 MB	1.1 GB



Table 15 - Monthly Consumption Figures - Asia-pacific, Mobile Access

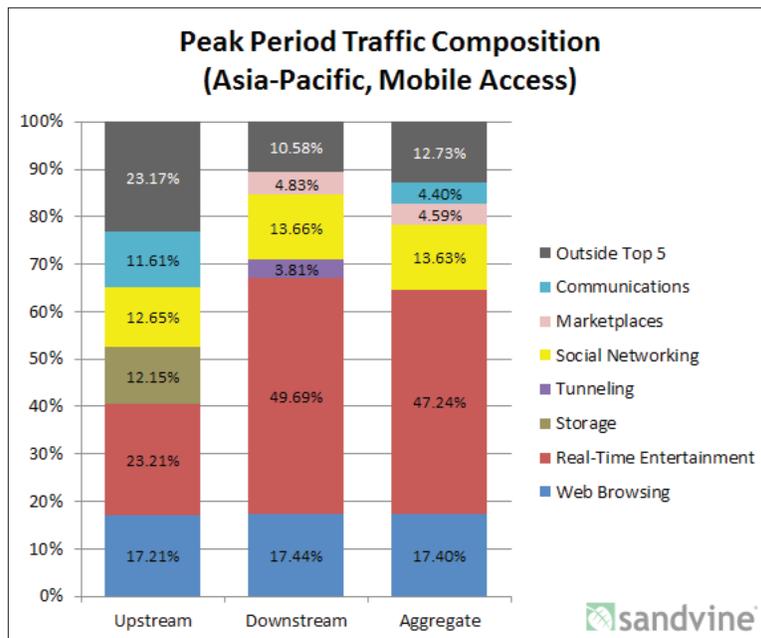


Figure 8 - Peak Period Aggregate Traffic Composition - Asia-Pacific, Mobile Access

Other than the appearance of multiple applications accounting for the high Real-Time Entertainment share, Asia-Pacific’s traffic is for the most part similar in composition to that of leading networks in Europe and North America. The one difference that may be present is the popularity of marketplaces in the region which accounts for 4.8% of downstream traffic. When combining the traffic share of iTunes and Google Play, subscribers in Asia-Pacific are the highest consumers of app and game downloads in the world.

Rank	Upstream		Downstream		Aggregate	
	Application	Share	Application	Share	Application	Share
1	HTTP	14.40%	YouTube	17.46%	YouTube	16.24%
2	Facebook	9.68%	HTTP	15.59%	HTTP	15.46%
3	SSL	7.99%	Facebook	9.48%	Facebook	9.54%
4	Google Cloud	7.95%	MPEG - OTHER	7.12%	MPEG - OTHER	7.16%
5	YouTube	7.68%	SSL	5.37%	SSL	4.99%
6	KakaoTalk	4.17%	Google Market	3.56%	Google Market	3.93%
7	BitTorrent	3.43%	Dailymotion	2.59%	Dailymotion	2.42%
8	MPEG - OTHER	1.77%	Instagram	1.82%	Google Cloud	1.97%
9	Instagram	1.37%	iTunes	1.54%	Instagram	1.77%
10	Dropbox	1.13%	Google Cloud	1.47%	BitTorrent	1.55%
		59.57%		66.00%		65.02%

Table 16 - Top 10 Peak Period Applications - Asia-Pacific, Mobile Access

Africa

Fixed Access

As a market where mobile networks are many subscribers' primary way of accessing the Internet, an examination of fixed access networks in Africa reveals some interesting findings.

Unsurprisingly, Real-Time Entertainment is one of the leading sources of traffic; but it accounts for only just over a quarter of peak downstream traffic, which is a far cry from regions who see streaming audio and video account for the majority of peak traffic.

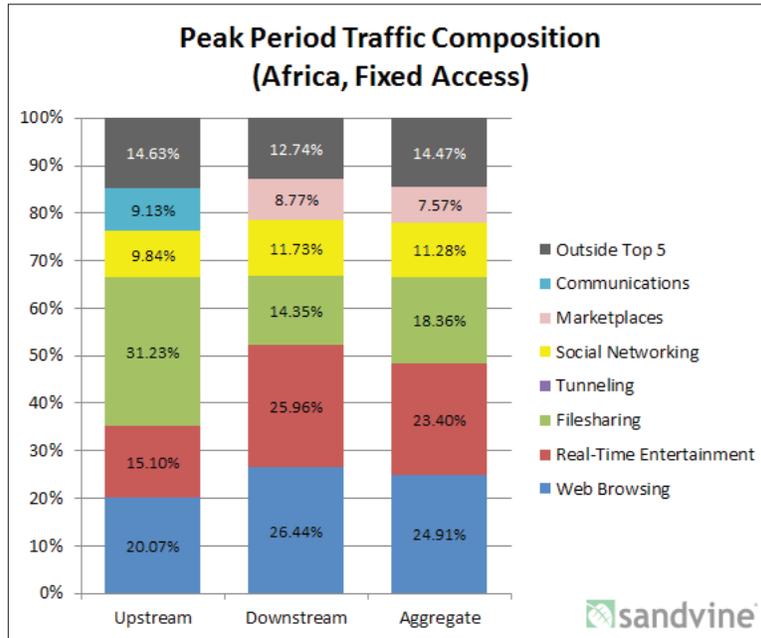


Figure 9 - Peak Period Aggregate Traffic Composition - Africa, Fixed Access

Looking at the top applications, HTTP at 22.9% of peak downstream traffic is the clear leader in share, well ahead of YouTube (12.3%) which is typically the top source of traffic on many networks. The reason for video accounting for a lower share could have to do with fixed networks in the region providing slower speeds than what is seen in parts of Europe or North America. The slower speed could also play a role in explaining why BitTorrent is the second ranked application on the aggregate, since downloading and watching content later may prove to offer a superior experience to the on-demand video options available in the region.

Rank	Upstream		Downstream		Aggregate	
	Application	Share	Application	Share	Application	Share
1	BitTorrent	28.21%	HTTP	22.93%	HTTP	21.43%
2	HTTP	16.67%	BitTorrent	13.29%	BitTorrent	16.84%
3	Facebook	8.33%	YouTube	12.29%	YouTube	11.22%
4	YouTube	7.77%	Facebook	9.44%	Facebook	9.18%
5	Skype	4.71%	SSL	4.30%	SSL	4.39%
6	SSL	4.69%	MPEG - OTHER	4.25%	MPEG - OTHER	3.65%
7	MPEG - OTHER	1.69%	Windows Update	2.82%	Skype	2.92%
8	Dropbox	1.49%	Flash Video	2.73%	Windows Update	2.41%
9	Flash Video	1.17%	Skype	2.41%	Flash Video	2.36%
10	Windows Update	1.08%	iTunes	2.30%	iTunes	1.97%
		75.80%		76.77%		76.37%

Table 17 - Top 10 Peak Period Applications - Africa, Mobile Access

Mobile Access

Africa is a region with tremendous potential for growth, .but few understand traffic composition in the region.. At Sandvine, we believe that to understand Africa, you must be in Africa, and thanks to now being deployed in over 20 networks in the region, Sandvine is able to publish mobile usage statistics for a second straight year.

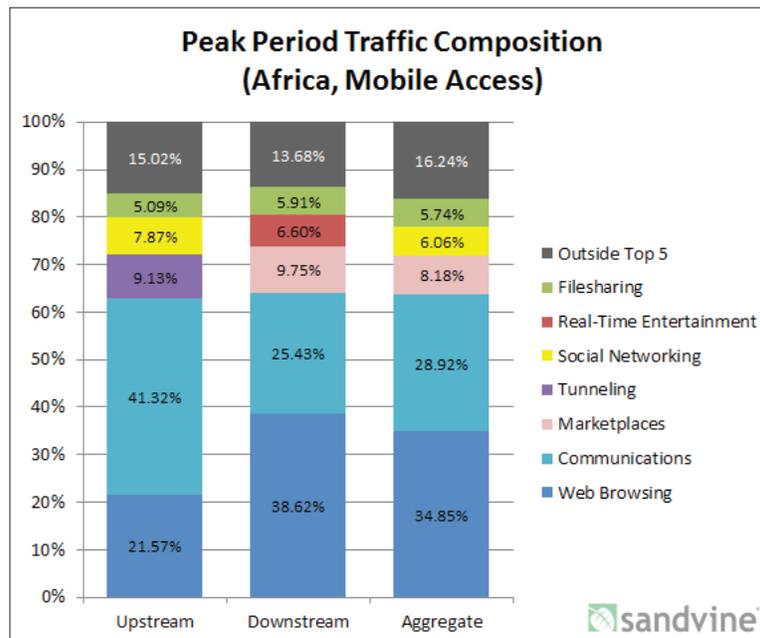


Figure 10 - Peak Period Aggregate Traffic Composition - Africa, Mobile Access

In most regions, Real-Time Entertainment is the traffic category that is the most dominant. This is not the case in Africa however. During peak period, Real-Time Entertainment accounts for only 6.6% of peak downstream traffic, which crowns Web Browsing as the dominant downstream traffic category, accounting for over 38.6% of traffic. Communications applications continue to also prove popular in Africa, the mix of VoIP and messaging applications now being the second largest traffic category in the region.

Rank	Upstream		Downstream		Aggregate	
	Application	Share	Application	Share	Application	Share
1	BlackBerry	15.26%	HTTP	27.22%	HTTP	23.80%
2	HTTP	11.81%	BlackBerry	12.62%	BlackBerry	13.17%
3	WhatsApp	8.98%	WhatsApp	6.37%	WhatsApp	6.98%
4	SSL	6.29%	BitTorrent	4.88%	BitTorrent	4.60%
5	Facebook	4.52%	Google Market	4.56%	SSL	4.21%
6	BitTorrent	3.59%	Opera Mini	3.84%	Google Market	3.71%
7	WAP v2	1.80%	SSL	3.63%	Opera Mini	3.38%
8	Opera Mini	1.78%	WAP v2	3.58%	Facebook	3.27%
9	Viber	1.32%	YouTube	3.47%	WAP v2	3.20%
10	Yahoo! Mail	1.23%	Facebook	2.92%	YouTube	2.87%
		56.58%		73.09%		69.19%

Table 18 - Top 10 Peak Period Applications - Africa, Mobile Access

In most regions, YouTube is the application responsible for generating the most bandwidth, but in Africa it accounts for just 3.5% of traffic. HTTP traffic is the leading source of traffic at 27.2% and WAP browsing (typically web browsing on a feature phone) is also a contributor at 3.6%. WAP actually saw significant decline year over year, likely caused by increased adoption of smartphones in the region. Africa is also the only region where Opera Mini, a web browser focused on data efficiency, is among the top 10 applications.

Explanation of Traffic Categories

The table below describes each of the traffic categories used in the Global Internet Phenomena Report: 2H 2014

Traffic Category	Description	Examples
Storage	Large data transfers using the File Transfer Protocol or its derivatives. Services that provide file-hosting, network back-up, and one-click downloads	FTP, Rapidshare, Mozy, zShare, Carbonite, Dropbox
Gaming	Console and PC gaming, console download traffic, game updates	Nintendo Wii, Xbox Live, Playstation 2, Playstation 3, PC games
Marketplaces	Marketplaces where subscribers can purchase and download media including applications, music, movies, books, and software updates	Google Android Marketplace, Apple iTunes, Windows Update
Administration	Applications and services used to administer the network	DNS, ICMP, NTP, SNMP
Filesharing	Filesharing applications that use a peer-to-peer or Newsgroups as a distribution models	BitTorrent, eDonkey, Gnutella, Ares, Newsgroups
Communications	Applications, services and protocols that allow email, chat, voice, and video communications; information sharing (photos, status, etc) between users	Skype, WhatsApp, iMessage, FaceTime
Real-Time Entertainment	Applications and protocols that allow “on-demand” entertainment that is consumed (viewed or heard) as it arrives	Streamed or buffered audio and video (RTSP, RTP, RTMP, Flash, MPEG), peercasting (PPStream, Octoshape), specific streaming sites and services (Netflix, Hulu, YouTube, Spotify,)
Social Networking	Websites and services focused on enabling interaction (chat, communication) and information sharing (photos, status, etc) between users	Facebook, Twitter, LinkedIn, Instagram
Tunneling	Protocols and services that allow remote access to network resources or mask application identity.	Remote Desktop, VNC, PC Anywhere, SSL, SSH,
Web Browsing	Web protocols and specific websites	HTTP, WAP browsing

Study Details

Sandvine's Global Internet Phenomena Reports examine a representative cross-section of the world's leading fixed and mobile communications service providers (CSPs) and are made possible by the voluntary participation of our customers. Collectively, Sandvine's customers provide Internet and data service to hundreds of millions of subscribers worldwide.

In the Global Internet Phenomena Report: 2H 2014, we examined five regions:

- Africa
- Asia-Pacific
- Europe
- Latin America
- North America

The data gathered for these reports was collected in September 2014 and is completely subscriber-anonymous. No information regarding specific content or personally-identifiable information (including, but not limited to, IP or MAC addresses and subscriber IDs) was collected during this study.

This study reflects the traffic profiles of real service providers, including the impact of any network management (for instance, congestion management and traffic optimization) policies that may be in place.

The data collected includes the bandwidth per second per protocol and the number of active hosts per protocol on the network at each hour. Data also includes the total transmitted (upstream) and received (downstream) bytes, from the subscriber's perspective, attributable to each subscriber for a period of 30 days.

The datasets were used to create a 24-hour profile of each network, normalized by the number of active subscribers at each hour in the day. These profiles were then aggregated hierarchically for each region with weightings based on subscriber counts and access technology market share.

The transmitted and received bytes per subscriber data sets were used to create ordinal rankings of all subscribers on a network based on a combination of data direction (upstream, downstream, aggregate) and data period (day, week, month), for a total of nine ranked lists ordered by total byte usage. These lists enabled consumption analysis based on percentile ranking and cast light on the widely varying data needs of individual subscribers.

In parts of the report we reference industry publications, analyst studies, media articles and other sources. As such, we are indebted to the collective work and wisdom of a large number of individuals and organizations and have endeavored to correctly cite all sources and to identify the original creator of referenced material.

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SANDVINE REPORT: NETFLIX DOMINATES (STILL), AMAZON INSTANT VIDEO GROWING

Facebook video autoplay causing major increase in average usage on fixed and mobile networks

Waterloo, ON; November 19, 2014 – Sandvine, (TSX:SVC) a leading provider of intelligent broadband network solutions for fixed and mobile operators, today released its latest bi-annual Internet traffic trends report, entitled “[Global Internet Phenomena Report 2 H2014](#)”. The report is based on data from a selection of Sandvine’s 250-plus communications service provider (CSP) customers spanning North America, Europe, Middle East and Africa, Caribbean and Latin America and Asia-Pacific.

“With both Netflix and Amazon Instant Video gaining bandwidth share in North America during 2014, it will be fascinating to see how a standalone HBOGO streaming option will impact networks when it launches in 2015,” said Dave Caputo, President and CEO, Sandvine. “The dynamic streaming video market underscores how important it is that operators around the globe have the business intelligence and big data solutions in place to understand the ever-changing behavior of their subscribers.”

Sandvine’s [Global Internet Phenomena Report 2H 2014](#) contains findings from fixed and mobile networks around the world, including:

Video Streaming Services

- Netflix continues to dominate **North American** networks, accounting for 34.9% of downstream traffic in the peak evening hours
- Amazon Instant Video has established itself as the second largest paid streaming video service in North America. While still only accounting for 2.6% of downstream traffic, its share has more than doubled in the past 18 months
- In advance of plans to start offering a standalone streaming subscriptions in the US, HBOGO accounts for just 1% of downstream traffic in the region
- On a fixed network in **Australasia**, where Netflix isn’t even available yet, approximately 2.5% of subscribers are accessing the service and it comprises as much as 4% of peak downstream traffic

Other Applications

- Facebook’s introduction of video autoplay saw average subscriber usage increase by as much as 60% on mobile networks and over 200% on fixed networks in the past year
- As a percentage of traffic, Filesharing traffic continues to decline globally in almost all regions except **Asia-Pacific**, where it still accounts for more than 33% of total traffic
- In **Latin America**, contrary to our own predictions, World Cup streaming on some mobile networks accounted for just 10-12% of traffic. Apparently, consumers still prefer to view major sporting events on television, with mobile devices as a backup
- Apple’s iOS 8 launch in September saw the software update account for over 10% of peak period traffic on one **Middle Eastern** fixed access network

Check out Sandvine's [Internet Phenomena blog](#) on a regular basis for the latest trends, predictions and phenomena impacting Internet usage around the world.

-30-

GLOBAL INTERNET PHENOMENA REPORT METHODOLOGY

Sandvine's Global Internet Phenomena Reports are based on a representative cross-section of Sandvine's data from a selection of Sandvine's 250-plus customers spanning North America, Europe, Middle East and Africa, Caribbean and Latin America and Asia-Pacific. Data is gathered over a one-month period and is completely subscriber-anonymous. No identifiable information of any kind, including IP addresses are collected during the study. Sandvine's network equipment analyzes data from an application utilization level and is not content aware.

ABOUT SANDVINE

Sandvine's network policy control solutions add intelligence to fixed, mobile and converged communications service provider networks to enable services that can increase revenue and reduce network costs. Powered by Sandvine's Policy Engine and SandScript policy language, Sandvine's networking equipment performs end-to-end policy control functions including traffic classification, and policy decision and enforcement across the data, control and business planes. Sandvine's products provide actionable business insight, the ability to deploy new subscriber services and tools to optimize traffic while enhancing subscriber Internet quality of experience.

Sandvine's network policy control solutions are deployed in more than 250 networks in over 90 countries, serving hundreds of millions of data subscribers worldwide, www.sandvine.com.

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FORWARD-LOOKING STATEMENTS

Certain statements in this release which are not historical facts constitute forward-looking statements or forward-looking information within the meaning of applicable securities laws ("forward-looking statements") and are made pursuant to the "safe harbour" provisions of such laws. Statements related to potential benefits of, and demand for, Sandvine's products are forward looking statements which are subject to certain assumptions, risks and uncertainties that may cause the actual results, performance or achievements of Sandvine to differ materially from the results, performance, achievements or developments expressed or implied by such forward-looking statements. Readers are cautioned not to place undue reliance on such statements. [Such forward-looking statements involve both known and unknown risks and uncertainties that may cause the actual results, performance or achievements of Sandvine to differ materially from the results, performance, achievements or developments expressed or implied by such forward-looking statements. These risks and uncertainties include, without limitation, changes in internal](#)

deployment strategies or plans by specific customers; the growth of broadband internet usage and levels of capital spending on broadband network management systems; the timing of orders and manufacturing lead times; changes in customer order patterns or customer mix; insufficient, excess or obsolete inventory; increased competition in the broadband network equipment industry; dependence on the timely development and market acceptance of new product offerings and standards; rapid technological and market change; manufacturing and sourcing risks including dependence on key suppliers and key technologies; dependence upon indirect channel sales and resellers; factors such as business and economic conditions and growth trends in the broadband network equipment industry and in various geographic regions; global economic conditions and uncertainties in the geopolitical environment including the impact of regulation related to the internet and the delivery of internet services. Forward-looking statements are based on management's current plans, estimates, projections, beliefs and opinions, and Sandvine does not undertake any obligation to update forward-looking statements should assumptions related to these plans, estimates, projections, beliefs and opinions change, except to the extent required by applicable law.

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

“Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6”

Dear Sir(s):

I am writing to ask for your continued support for Public, Educational, and Government (PEG) Access Programs. This type of programming is in the public's interest and is essential for our local communities. PEGs benefit local residents of a community by providing an outlet for free speech, disseminating local information and opinions, and emergency communications. PEGs are very convenient places for seniors to find out what is going on in their communities. It is to everyone's benefit to continue to support and encourage PEG programming.

Sincerely,

Fumi Santos-Perillo



Somerville Community Access Television

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, D.C. 20515

January 21, 2015

Dear Mr. Upton:

I am the Director of Somerville Community Access Television, the public access station in Somerville, MA. I would like to comment on the importance of PEG channels to communities all across the United States. Provisions in the Federal Communications Act specify that cable systems must provide access to their distribution platform in a variety of ways, including PEG channels. The need for PEG channels is still vitally important despite the rise of Internet programming. There are important differences between free speech on the Internet and on cable TV. Cable TV remains a mass media venue, whereas Internet programming by non-professionals is a very narrow-cast model. Cable TV is still the only way for citizens to reach a broad cross-section of their community without having to pay for access.

The hardworking and essential non-profit organizations in our town use our services a great deal to help them further their missions. We provide free coverage of their events, post their event notices on our electronic bulletin board, produce promotional spots for them that they can also use on their websites, and help them create talk shows in the studio that explore issues that are important to their clients. Our media center also serves as a community meeting space for local organizations.

Broadcasting un-edited political speech is an important function of our channel. Candidates are welcome to speak to their constituents without being cut-off or edited, and without having to use campaign funds. During election season we give all local candidates equal time to present their ideas. We produce half-hour talk shows for many state-wide races, as well as topical political forums during election season. Public access TV is one important way candidates can reach a diverse audience without paying for channel time. This is extremely important in the era of Citizens United.

We are a training facility for adults seeking media skills for a job search, and for college students seeking hands-on experience at a TV station. In 2014 we trained 24 college interns in TV production and broadcast journalism.

Hyper local news is impossible to find on broadcast television. Our bi-weekly news program, Somerville Neighborhood News, presents investigative reporting on issues within our small city. The show covers topics such as urban development and gentrification, immigrant issues in the community, and environmental problems such as flooding and river contamination. The City government pays attention to our newscasts as we keep the needs of low-income residents, youth, workers, and immigrants in the public eye. There is no other news outlet in the Greater Boston Area that allocates funding to do this kind of reporting.

As your Committee considers changes to the Communications Act, please keep in mind that PEG services cannot be replicated elsewhere, and provide extremely valuable service to our local communities.

Thank You.

Sincerely,

Wendy Blom, Executive Director

[REDACTED]

From: Bodette, Dan [REDACTED]
Sent: Friday, January 16, 2015 11:54 AM
To: CommActUpdate; tgarrison@cityofeagan.com
Subject: Re: Regulation of the Market for Video Content and Distribution Response to White Paper #6.



School of Environmental Studies



Dan Bodette, Principal

January 16, 2015

Dear Members of the House Energy and Commerce Committee:

Please continue to require cable companies to provide public access channels or make PEG fee payments to support public, educational or governmental programming. This is vitally important to our school and community for many reasons.

Our school relies on Eagan Television to record and display our graduation ceremony to a much larger audience than we are capable of hosting. The know-how and technology resources fit well within Eagan Television's expertise. A number of other school related events in our district have been recorded and displayed on Eagan Television. Our family members are very thankful to have electronic access all over the United States to these events.

Eagan Television is a wonderful resource that enhances our school program and promotes the good attributes of our school programming that we share with our students and family members. It is my hope that appropriate government funding will continue to support Eagan Television and the good work they do in our community. They fill a niche that is important to our school and community.

Sincerely,

Dan Bodette, Principal

[REDACTED]

From: Michael Vandow [REDACTED]
Sent: Friday, January 16, 2015 11:29 AM
To: CommActUpdate
Subject: response to White Paper #6

MICHAEL VANDOW, PRESIDENT
BOARD OF DIRECTORS
SCHOPEG ACCESS, INC.
[REDACTED]

January 15, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

Dear Congressmen Upton and Walden:

As President of the Board of Schopeg Access, Inc., a not-for-profit corporation providing Public, Educational and Governmental Access programming to fifteen municipalities in Schenectady and Schoharie Counties of New York State, I am writing to urge you to retain the requirement that cable television companies provide access to their distribution platform in a variety of ways, including program access, leased access channels and PEG channels. I contend that these provisions, particularly in regard to PEG channels in rural regions, are still warranted in the era of the Internet.

Without the franchise fees and capital grants negotiated in our cable television contracts our small rural municipalities would not be able to pay for the personnel and video equipment necessary to produce programming. By pooling our resources, we have been able to cablecast County Board meetings, Town and Village Board meetings, and Boards of Education meetings. We have been able to create Public Access programming of value to our citizens as well as produce a community bulletin board to announce important local events.

Because of the access mandate, we have also gained the possibility of educating the students in our central school districts in techniques of video production for better communication on school and local matters. Our access corporation having trained faculty and equipped each school with the best equipment available has made this possible. Such training and equipment would have been well beyond the means of our small rural school districts.

As a result of these programming opportunities, our otherwise disparate towns and villages have developed a greater sense of community, learning about problems that each municipality may face and finding common solutions to these problems. Such a sense of community would not seem possible if each citizen had to rely on individual initiative required to access the internet.

Just as the telephone was only spread to rural communities by mandate, for a network of communication, these communities need PEG channels for the same reasons. Thus, I once again urge you and your committee to keep the requirement of PEG channels in any revision of the Federal Communications Act.

Respectfully,

Michael Vandow, President
Schopeg Access, Inc.



January 23, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Dear Honorable Congressmen:

PEG access are still necessary and warranted today. In some communities, particularly rural ones, PEG channels are the ONLY source of local programming other than the local broadcast news with 30-second soundbites on local topics. Additionally, many of our communities are still without internet service. In Redding, we have three channels – a government channel, tourism channel and an educational channel. We operate these in cooperation with the City of Redding in rural Northern California.

Recently, we were the ONLY local TV channel to digitally capture and play back (in its entirety) a meeting focused on public safety where 700 people attended and another 400 were outside the school auditorium. We also were asked by the League of Women Voters to capture a candidates forum for City Council and the Congressional debates – also both played in their entirety in morning and evening slots to accommodate a variety of folks. Many of our senior citizens rely upon our channel for local, in-depth coverage of elections, city council meetings and more. We cablecast three local city meetings and work with local nonprofits like the Women's Fund to capture and cablecast special workshops for women or special programming for teens.

SCAC TV is gearing up to provide digital media arts training for at-risk youth. The loss of cable access would be detrimental to the continued vitality of our PEG operations and a net loss to the local community and nonprofit service realm. Our build-out plan includes "studio" concepts on high school campuses to allow for original content to be both cablecast and webcast (where available). This allows for students (already submerged in a digital world) to learn the art of storytelling and to become familiar with the idea of community. Student teams will cover everything from the ballet and the opening of an art gallery to Friday night basketball or the League of Women Voters candidates' forum. This type of interaction allows for a deeper understanding of community and the ability of the community to embrace these disenfranchised youth. It truly is a win-win situation.

Never before have PEG fees been more leveraged. Digital storytelling is essential in our local communities. Training in this vocation provides community members as well as youth with valuable job skills. PEG supports localism in ways that other media cannot. For instance, every day, without fanfare, local nonprofits work hard to fulfill their missions, from celebrating the arts, sciences and Redding's heritage, to meeting the needs of our area's underserved. But getting the word out to those who need their services, or who want to visit, donate or volunteer, is a constant challenge. Our PEG channel helps with this process, working with nonprofits to get out the word.



1313 Market Street • Redding, CA 96001-0611

530.241.7320 • www.shastaartscouncil.org • shastart@shastaartscouncil.org

Funded in part by the California Arts Council, a state agency; The National Endowment for the Arts, a federal agency; and the City of Redding.



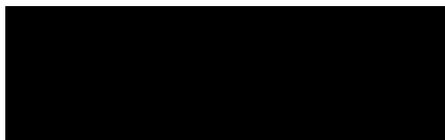
On our channel, you will see what Redding-area non-profits are doing, watch a short video about each, hear the stories of those who interact with galleries, soup kitchens, homeless shelters, educational institutions, children's services and more. SCAC's goal is to find innovative ways to help non-profits expand their outreach in challenging economic times. Community support comes with interaction and understanding. We currently have nearly 3,000 people on our email list and have been doing regional events and community service work for more than a 30 years as an California Arts Council. We were the first arts council in California to operate a public access TV station. It has been an excellent fit as our nonprofit structure provided stability to the operations and has provided continual content for the channels. Our deep reach into the local community is constantly an inspiration for new and meaningful programming. We are specialists in storytelling and can do so in compelling ways - both socially and traditionally.

This PEG channel system is an excellent way to fund a training ground of community volunteers and students. We are part of a grant given by Pacific Gas & Electric to an economic development nonprofit for vocational training. Our particular channel is part of a network of public access and community radio partners in the North State. We are really the ONLY local voices left - run by volunteer programmers and an occasional paid support technician. Our sustainability plan is to partner with like-minded groups - like Arts Councils - to propel this important work forward.

We appreciate your attention to this matter and hope you will hear the voice of the people - those who are not corporate citizens but just plain citizens.

Thank you for your time. Please feel free to call if you have questions or would like more information on our innovative PEG programming and vocational concepts. Every job matters today and PEG channels are providing career training and hard-to-attain jobs in rural areas.

Sincerely,



Debra Lucero
Executive Director
Shasta Community Access Channel

Cc: Honorable Congressman Doug LaMalfa



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Funded in part by the California Arts Council, a state agency; The National Endowment for the Arts, a federal agency; and the City of Redding.

[REDACTED]

From: John Shondel [REDACTED]
Sent: Thursday, January 22, 2015 3:17 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Importance of ALCTV & PEG Access

Dear Sir or Madam:

I am writing today to register my support, as City Council's Representative to the Cable Advisory Commission, for the continuation of access to PEG channels for my community, Avon Lake, Ohio. We are community of approximately 22,500 residents occupying over 9,000 residences of which probably 8,500 have television set which have access to Government, Public and Educational channels.

Each and every weekly City Council meeting is broadcast live and is available as well on video on demand through PEG Central. The community has a separate regional water and sewer utility, Avon Lake Regional Water, that meets twice a month that is also available live and on-demand to all residents with television sets or the internet.

We, ALCTV, also broadcast a weekly Catholic Mass and two Protestant Sunday worship services along with numerous Government and Public Information Spots. ALCTV is the city's primary method of communication with our residents as well as providing total transparency of government operation. I am regularly reminded of that when I hear, "I saw you on television Monday night" or "Your explanation of this or that was so helpful" or "it is so easy to keep up with what Council is doing". Ease of access and transparency are the hallmark of good local government and ALCTV provides that for Avon Lake.

I know I speak for the Mayor as well as my Council Colleagues when I say, "Don't let the big communications corporations convince you otherwise. We need ALCTV just the way it is - please!"

John S.

John Shondel
Council at Large
Avon Lake, Ohio

[REDACTED]
Chairman, Environmental Committee
Chairman, Public Utilities Committee
Member, Human Resources Committee
Member, Sewer Committee
Member, Cable Advisory Commission

Shrewsbury Media Connection

15 Parker Road

Shrewsbury, MA 01545

January 23, 2015

The Honorable Fred Upton

2183 Rayburn House Office Building

Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

Dear Sirs,

I am writing on behalf of Shrewsbury Media Connection in Shrewsbury, MA.

With the advent of the internet many, including myself, feared that the need for PEG Access would go away, but I can assure you that is far from what has occurred. The use of our local access center has grown exponentially in the past decade.

For many of our residents the PEG Access channels are the only source for local information, news, sports and government.

From our local churches and non-profit organizations, to our local government and educational institutions, our PEG Access stations bring an irreplaceable connection to their citizens. We provide media literacy education to hundreds of youths and teach computing skills to our senior citizens while also strengthening civic participation through the televising and streaming of local government meetings and debates.

Whether our communities watch their PEG stations on their televisions, or stream it to their devices, viewership is up, and participation in the production of local programming is constantly increasing.

The consolidation of mainstream media and the failure of the local for profit media model has left a huge void in coverage of local events and news that our PEG stations are filling.

The question should not be, “are the need for PEG Channels still warranted?” but rather, “how can we ensure that PEG channels and public access to all media platforms be grown and supported?”

Sincerely,

William R. Nay, Community Programming Manager-SMC

SBG

SINCLAIR BROADCAST GROUP

January 23, 2015

Honorable Fred Upton
Chairman
Committee on Energy & Commerce
U.S. House of Representatives
2123 Rayburn HOB
Washington, D.C. 20515

Honorable Greg Walden
Chairman
Subcommittee on Telecommunications
Committee on Energy & Commerce
2123 Rayburn HOB
Washington, D.C. 20515

Dear Chairmen Upton and Walden:

Sinclair Broadcast Group welcomes the opportunity to respond to the #CommActUpdate white paper, “Regulation of the Market for Video Content and Distribution.” We look forward to working with the Committee as it identifies and develops the core principles that should underpin 21st century telecom governance, as well as the detailed implementation of those principles. We believe the Committee should view the information and communication ecosystem as an integrated whole, and not look at broadcasting in isolation of that whole. The 21st century news and entertainment landscape is a diverse and interdependent ecosystem that offers numerous consumer choices at a variety of prices points, which rightly includes a self-sustaining, free service, intended to enfranchise underprivileged Americans. Modern policies should allow each element of this interdependent system to thrive at what it does best, enjoy room to evolve technologically, and have regulatory certainty that fair business rules will enable them to be financially viable for the long term.

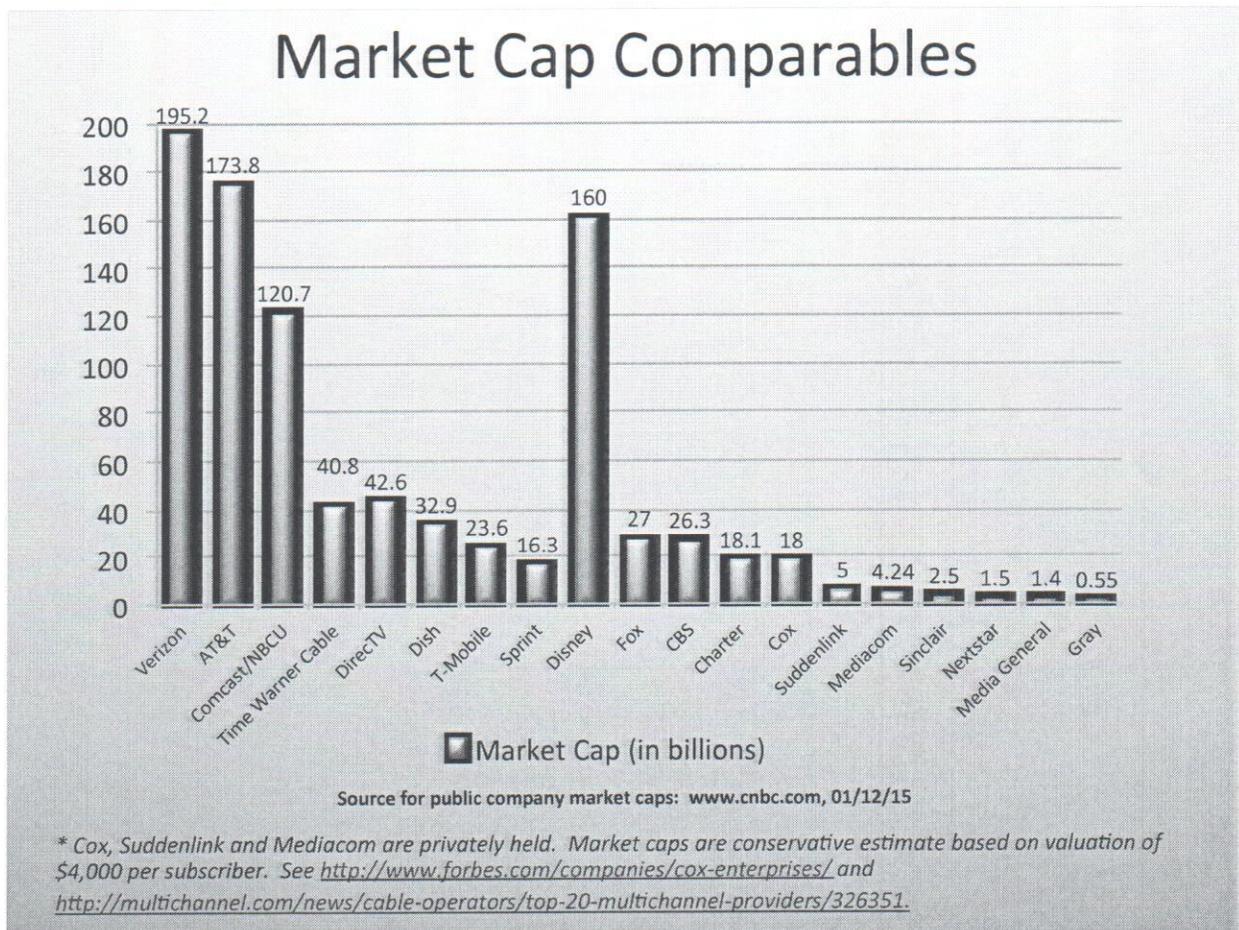
Rationalizing the rules that govern disparate video delivery platforms so that competing systems are treated equitably and consistently should be a core value in updating the Communications Act. Following are key regulations that are most in need of reevaluation:

OWNERSHIP LIMITS. We agree with the Committee’s observation in the video white paper, that “...media ownership limits present a significant barrier for existing broadcasters seeking to enter a new market or expand operations within a particular market.” The white paper points out that these rules originated in order to ensure localism, diversity of voices and competition in each market. Given the indisputable proliferation of localism, diversity of voices and competition that

has been created by new Internet, cable, satellite, and wireless services, we believe that these television ownership limits are outdated. We believe that the core values of localism, diversity of voices and competition will thrive absent television ownership limits as a result of longstanding best practices in service to our diverse viewing audiences.

We also believe that regulatory parity should be a core value in updating the Communications Act. This is particularly important in light of the disparate treatment of other video delivery platforms. In reconsidering ownership limits and other regulatory imbalances, it may be helpful for the Committee to understand the relative size of other video service providers, against whom broadcasters compete.

For illustration purposes, below is a chart showing the market caps of companies in the communications sector, including local broadcasters:



These size disparities in market value highlight the need for regulatory reevaluation, as broadcasters bear the focus of regulatory burdens, despite the fact that viewers increasingly avail themselves to unregulated services. For example, today local broadcast generates approximately 7% of the total US ad spend, 7% of total programming fees (compared to 93% for cable), and roughly 35% of traditional local television viewership (with cable networks generating the other

65%). Yet broadcasting is regulated as though it still controlled 100% of viewership and related revenue streams. Legacy regulations imposed uniquely on broadcasters are outdated and indeed harm competition, localism, diversity, and innovation.

THE NATIONAL CAP. FCC regulations continue to limit broadcast station ownership to 39% of the US population. This artificial constraint on growth is no longer necessary in today's highly competitive environment for video distribution platforms. Other information and entertainment services are allowed to reach 100% of the country. Consider the inequitable treatment of various platforms:

- (a) Broadcast television networks can reach 100% of the US population through affiliations with television stations. Station owners cannot.
- (b) Cable channels like ESPN, CNN, and Fox News can reach 100% of the US population through cable and satellite systems. Station owners cannot.
- (c) News and entertainment websites (including those of national newspapers), and other over-the-top services can reach 100% of the country through the Internet. Station owners cannot.
- (d) Wireless phone companies' mobile video services can reach 100% of the country. Station owners cannot.

It is noteworthy that, due to the "UHF discount", which discounts by 50% the population count of stations operating in UHF spectrum, several station groups currently reach more than 39% of the US population, *with no reported harm to consumers or other reported complaints*. This fact alone should persuade the Committee to question the cap's purpose and relevance. Indeed, there are compelling reasons for eliminating this cap, including the benefits of scale for the broadcast industry. Artificial constraints on growth deprive broadcasters the ability to scale their businesses and streamline their operating costs, to the detriment of the financial sustainability required for broadcasters to continue to serve their audiences and satisfy their public interest obligations.

THE DUOPOLY RULE. The prevailing rationale for decades has been that removing current limits on station ownership in a market will deprive viewers of choice by reducing the number of independent media "voices" in a market, and will reduce competition in a market. However, there has been a proliferation of independent media voices with the growth of cable, Internet and new wireless services. Additionally, it is in each broadcaster's interest to attract the widest audience possible in each of its markets, making diversity of "voices" an essential business strategy for an owner to expanding operations within a particular market. This approach to

content also attracts a wider variety of advertisers. Thus, we believe that the core values of localism, diversity and competition can be naturally achieved organically through dynamic business practices.

In fact, there is clear evidence that duopoly holdings do not cause the theoretical harms feared by proponents of ownership restrictions. In many markets, legacy duopolies (including two “Big 4” network stations) exist through grandfathered arrangements, *with no reported harm to viewers or advertisers*. Similarly, in many smaller markets, some stations air two Big 4 networks over their one station’s 6 megahertz of spectrum, *with no reported harm to viewers or advertisers*. It is illogical that the rules allow one broadcaster to *air* two Big 4 networks, but not *own* two Big 4 stations. More importantly, these grandfathered arrangements provide living proof that there is no consumer or commercial harm resulting from such common ownership.

It is important to remember that, in the absence of these ownership limits, the broadcast industry will continue to be governed by antitrust law, as enforced by the Justice Department. The Justice Department recognizes that variations in market size may result in variations in competitive analysis, and rightly reviews transactions involving common ownership on a market-by-market basis. We believe this approach is more reasonable than a bright line prohibition against multiple station ownership, as it is driven by data and factual analysis relevant to unique market circumstances. This safeguard against anti-competitive combination would stay in place following the elimination of any ownership restrictions to which the broadcast industry has been subject.

Similarly, in its June 2014 report on agreements to share certain services between broadcasters in a market, which some believe replicates the same alleged harms as common in-market ownership, the Government Accounting Office notably came to the following conclusions:

“FCC has stated that it is unable to determine the extent to which broadcaster agreements affect its media ownership rules and policy goals of competition, localism, and diversity;”

“FCC has not collected data or completed a review to understand how broadcaster agreements are being used and the potential impacts with respect to its media ownership rules and the corresponding policy goals of competition, localism, and diversity;”

“The lack of comprehensive data and the long delays in completing FCC’s review makes it difficult to objectively determine the effect of the agreements on FCC’s policy goals of competition, localism, [and] diversity;” and

“...without conducting a fact-based analysis of how agreements are being used, FCC cannot ensure its current and future policies on broadcaster agreements serve the public interest.”¹

We believe that the Committee should take into account these findings as part of its review of the duopoly rule.

FOSTERING BROADCAST IN THE 21ST CENTURY. The Committee has asked for input on how an updated Communications Act can foster broadcasting in the future. We believe that broadcasters need a more level playing field to compete with cable, wireless and Internet offerings in a video marketplace in which consumers can no longer tell (and may no longer care) over which transmission medium particular video content is being delivered. For example, the same content could be run over broadcast, cable, satellite, wireless, and Internet services, yet broadcasters face an array of regulations (and therefore costs) that those other distribution media don't, such as:

- Who can own our stations;
- The programming we choose to broadcast;
- The amount of that programming that is geared toward children;
- The advertising inventory we choose to sell;
- Who can sell our commercials;
- The amount of advertising we can broadcast;
- Labeling requirements;
- How we promote our services;
- The price we can charge for that inventory to certain buyers;
- The audio volume of our advertising and programming;
- Emergency alerts we must run;
- Closed captions we must offer;
- The personnel we choose to hire;
- The location of our antennas and stations;
- How we must negotiate for programming; and
- The information about our operations that we make public.

Our point here is not to complain about any particular item on this list, but rather to illustrate the imbalance of this collective burden in light of the fact that many cable systems, wireless services, and Internet providers, for example, serve just as many viewers as we do, yet are not subject to the same level of cumulative regulatory burden. If the purpose of these regulations is somehow to protect the public, why would they not also equally apply to other popular video distribution media? Alternatively, if other popular video distribution media are not subject to the same

¹ GAO 14-558, Report to the Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, entitled “Media Ownership: FCC Should Review the Effects of Broadcaster Agreements on Its media Policy Goals”, pages 27 – 28.

regulations, which of these regulations are still necessary for any media at all? The CommActUpdate provides a timely opportunity to address these questions.

COMPETITION WITH SUBSCRIPTION VIDEO SERVICES. The Committee has asked for input into how broadcast regulations could help broadcasters compete with pay video services. There is a variety of business arrangements that allow subscription video services to benefit from economies of scale that broadcasters have recently been prohibited from pursuing. For example, the FCC ruled last year that a station that sells more than 15% of another station's ad inventory must attribute that station to its ownership for purposes of the FCC ownership limitations. Yet, cable companies routinely pool and sell the advertising inventory of cable, telecom, satellite, Internet, and television programming in the same market. The record in the FCC's Joint Sales Agreement rulemaking revealed *no evidence of harm* to consumers or advertisers, and *no evidence of influence* on the programming of JSA partner stations. These findings were also substantiated by the aforementioned GAO report.

NEXT GENERATION BROADCAST SERVICES. Technological innovation has been a cornerstone of communications policy for the past many years. The US is hailed as a global leader in telecom innovation with the development of LTE in the wireless space. The US app economy is also the envy of the world and a driver of jobs. Advances in cable technology have served that industry well. Yet one of the core pillars of the communications ecosystem, broadcasting, faces unique institutional, market, and regulatory challenges in innovating. The broadcast industry is making strides on developing a new broadcast technology that is more spectrally efficient, allows for mobile reception, and opens new business opportunities for those that might want to explore them. However, without support on the regulatory front, those efforts will be in vain.

As Americans consume increasing amounts of video over mobile devices, we believe that they should be able to receive the vital information that local broadcasters report in breaking news, weather, terror and other emergency alerts. The technology exists today for broadcast signals to be received by mobile devices directly from the broadcast tower, without burdening wireless broadband networks. What is needed now is a political commitment to implementing this new technology. The Committee has before it a leadership opportunity to complete the migration of all relevant video content to the mobile environment by spurring the adoption of a mobile-friendly broadcast standard. In the area of weather and emergencies alone, Congress could create a new safety information service capable of protecting the populace in times of emergency, regardless of where they are, simply by facilitating free, over-the-air broadcast signals to reach mobile devices. Broadcast television plays a key role with first responders, crisis management, natural disaster management and other responses to events that threaten civic welfare, but that role will be unnecessarily constrained until broadcast signals can reach mobile devices directly. Once broadcast signals become mobile, new paths to innovative services could be open to broadcasters, app developers, and the next round of mobile content entrepreneurs.

From its earliest efforts to regulate communication services in 1912, Congress has been challenged to find the appropriate balance of competing interests of content providers, distributors and the public. This task has become substantially more complex with the myriad of content owners, new forms of distribution and changing needs of consumers of information, entertainment and other valuable services. In revising to the Communications Act in an era where it cannot simply begin on a blank slate and must take into account existing multi-billion dollar industries, Congress is especially challenged. Basic principles of equitable treatment of all players are an essential place to begin.

Sincerely,



Rebecca Hanson
Senior Vice President, Strategy and Policy
Sinclair Broadcast Group
1100 Wilson Blvd, Suite 600
Arlington, VA 22209

cc: Hon. Frank Pallone, Ranking Member
Hon. Anna Eshoo, Ranking Member

January 22, 2015

Representatives Fred Upton and Greg Walden
Energy and Commerce Committee
United States House of Representatives

Dear Chairman Upton and Chairman Walden:

Thank you for the opportunity to respond to the Committee's December 2014 questions on video regulation. The Technology Policy Program of the Mercatus Center at George Mason University is dedicated to advancing knowledge about the effects of regulation on society. As part of its mission, the program conducts careful and independent analyses that employ economic and legal scholarship to assess legislation and regulation from the perspective of the public interest. Therefore, this response does not represent the views of any particular affected party but is designed to assist Congress as it explores these issues.

Please find attached a research paper by technology scholar Adam Thierer and me about the history of television regulation. This is an age of content abundance and competitive distribution, and we recommend paring down existing video regulations. While the paper was published a few months before the committee's request for comment, it is responsive to the questions posed about industry developments and possible reforms. We show that the labyrinthine communications and copyright laws governing video distribution are now distorting the market and therefore should be made rational. Congress should avoid favoring some distributors at the expense of free competition. Instead, policy should encourage new entrants and consumer choice.

The focus of the committee's white paper on how to "foster" various television distributors, while understandable, was nonetheless misguided. Such an inquiry will likely lead to harmful rules that favor some companies and programmers over others, based on political whims. Congress and the FCC should get out of "fostering" the video distribution markets completely. A light-touch regulatory approach will prevent the damaging effects of lobbying for privilege and will ensure the primacy of consumer choice.

Some of the white paper's questions may actually lead policy astray. Question 4, for instance, asks how we should "balance consumer welfare and the rights of content creators" in video markets. Congress should not pursue this line of inquiry too far. Just consider an analogous question: how do we balance consumer welfare and the interests of content creators in literature and written content? The answer is plain: we don't. It's bizarre to even contemplate.

Congress does not currently regulate the distribution markets of literature and written news and entertainment. Congress simply gives content producers copyright protection, which is generally applicable. The content gets aggregated and distributed on various platforms through private ordering via contract. Congress does not, as in video, attempt to keep competitive parity between competing distributors of written material: the Internet, paperback publishers, magazine

publishers, books on tape, newsstands, and the like. Likewise, Congress should forego any attempt at “balancing” in video content markets. Instead, eliminate top-down communications laws in favor of generally applicable copyright laws, antitrust laws, and consumer protection laws.

As our paper shows, the video distribution marketplace has changed drastically. From the 1950s to the 1990s, cable was essentially consumers’ only option for pay TV. Those days are long gone, and consumers now have several television distributors and substitutes to choose from. From close to 100 percent market share of the pay TV market in the early 1990s, cable now has about 50 percent of the market. Consumers can choose popular alternatives like satellite- and telco-provided television as well as smaller players like wireless carriers, online video distributors (such as Netflix and Sling), wireless Internet service providers (WISPs), and multichannel video and data distribution service (MVDDS or “wireless cable”). As many consumers find Internet over-the-top television adequate, and pay TV an unnecessary expense, “free” broadcast television is also finding new life as a distributor.

The *New York Times* reported this month that “[t]elevision executives said they could not remember a time when the competition for breakthrough concepts and creative talent was fiercer” (“Aiming to Break Out in a Crowded TV Landscape,” January 11, 2015). As media critics will attest, we are living in the golden age of television. Content is abundant and Congress should quietly exit the “fostering competition” game. Whether this competition in television markets came about because of FCC policy or in spite of it (likely both), the future of television looks bright, and the old classifications no longer apply. In fact, the old “silo” classifications stand in the way of new business models and consumer choice.

Therefore, Congress should (1) merge the FCC’s responsibilities with the Federal Trade Commission or (2) abolish the FCC’s authority over video markets entirely and rely on antitrust agencies and consumer protection laws in television markets. New Zealand, the Netherlands, Denmark, and other countries have merged competition and telecommunications regulators. Agency merger streamlines competition analyses and prevents duplicative oversight.

Finally, instead of fostering favored distribution channels, Congress’ efforts are better spent on reforms that make it easier for new entrants to build distribution infrastructure. Such reforms increase jobs, increase competition, expand consumer choice, and lower consumer prices.

Thank you for initiating the discussion about updating the Communications Act. Reform can give America’s innovative telecommunications and mass-media sectors a predictable and technology-neutral legal framework. When Congress replaces industrial planning in video with market forces, consumers will be the primary beneficiaries.

Sincerely,

Brent Skorup
Research Fellow, Technology Policy Program
Mercatus Center at George Mason University

MERCATUS
RESEARCH

VIDEO MARKETPLACE REGULATION
A Primer on the History of Television Regulation
and Current Legislative Proposals

Adam Thierer and Brent Skorup



MERCATUS CENTER
George Mason University

Bridging the gap between academic ideas and real-world problems

ABOUT THE MERCATUS CENTER AT GEORGE MASON UNIVERSITY

THE MERCATUS CENTER at George Mason University is the world's premier university source for market-oriented ideas—bridging the gap between academic ideas and real-world problems.

A university-based research center, Mercatus advances knowledge about how markets work to improve people's lives by training graduate students, conducting research, and applying economics to offer solutions to society's most pressing problems.

Our mission is to generate knowledge and understanding of the institutions that affect the freedom to prosper and to find sustainable solutions that overcome the barriers preventing individuals from living free, prosperous, and peaceful lives.

Founded in 1980, the Mercatus Center is located on George Mason University's Arlington campus.

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Release date: April 29, 2014

ABOUT THE AUTHORS

ADAM THIERER is a senior research fellow with the Technology Policy Program at the Mercatus Center at George Mason University. He specializes in technology, media, Internet, and free-speech policies, with a particular focus on online safety and digital privacy. His writings have appeared in the *Wall Street Journal*, the *Economist*, the *Washington Post*, the *Atlantic*, and *Forbes*, and he has appeared on national television and radio. Thierer is a frequent guest lecturer and has testified numerous times on Capitol Hill. He has authored or edited eight books on topics ranging from media regulation and child safety issues to the role of federalism in high-technology markets. His latest book is *Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom* (2014).

BRENT SKORUP is a research fellow in the Technology Policy Program at the Mercatus Center. His research topics include radio spectrum rights, antitrust policy, new media regulation, and telecommunications. He has provided expert commentary for outlets like C-SPAN and the *Washington Post*. His work has appeared in several law reviews, *Wired*, *RealClearMarkets*, *The Hill*, and elsewhere. He also contributes to the *Technology Liberation Front*, a leading technology policy blog. Skorup has a BA in economics from Wheaton College and a JD from the George Mason University School of Law. He was formerly the director of operations and research at George Mason University School of Law's Information Economy Project, a research center in Arlington, Virginia, that applies law and economics to telecommunications policy.

ABSTRACT

THE TELEVISION DISTRIBUTION marketplace has been substantially regulated since the advent of broadcast television in the 1940s and 1950s. The Federal Communications Commission and Congress have relied on several justifications for the regulatory protection of the system of local broadcasters envisioned post-World War II, namely, (1) universal service, (2) localism, (3) free television, and (4) competition. These policy goals are at odds with one another and can only be supported simultaneously through far-reaching regulations like compulsory copyright licenses, network nonduplication rules, retransmission consent regulations, and industry concentration prohibitions. We describe the history of these and other regulations. We argue that regulatory repeal would improve distorted television markets and improve consumer welfare. Finally, we describe pending video legislation and explain how various pending bills would affect the current regulatory system.

JEL codes: L510, L520

Keywords: television, FCC, policy, telecommunications, retransmission consent, cable, broadcast, satellite, compulsory license, copyright

What distinguishes TV programs from other mass media content . . . is the extreme eagerness of Washington to engage in efforts to prevent markets from working freely, often in response to interest group pressures and opportunities for political advantage and with almost complete indifference to the welfare of consumers.¹

—Bruce Owen

IN A FREE market in video services, television distributors and creators would be able to contract freely and sell any variety of bundles of content to subscribers on any distribution platform they prefer.² Competition and consumer protection law, not *ex ante* distribution mandates, would guide business decisions.

Alas, that is not possible today. Indeed, the United States never had anything resembling a truly free market in the provision of television content and services. The video marketplace has been substantially regulated since the advent of broadcast television in the 1940s and 1950s.³ These regulations have been enforced by the Federal Communications Commission (FCC), an agency regularly captured by the interests it regulates.⁴ Because broadcasters used free government-provided

1. Bruce M. Owen, “Consumer Welfare and TV Program Regulation” (working paper, Mercatus Center at George Mason University, Arlington, VA, 2012), 5, <http://mercatus.org/publication/consumer-welfare-and-tv-program-regulation>.

2. “One major difference between markets for telecommunications goods and markets for other goods is that governmental regulation plays a very large role in determining what kinds and quality of telecommunications services may be offered at what costs. The central issue in telecommunications law is why telecommunications goods and markets are not treated like most other goods and markets.” Thomas G. Krattenmaker and Lucas A. Powe Jr., *Regulating Broadcast Programming* (Washington, DC: AEI Press, 1994), 49.

3. See, e.g., Thomas W. Hazlett, “If a TV Station Broadcasts in the Forest . . . : An Essay on 21st Century Video Distribution” (paper commissioned by the American Television Alliance, 2011), <http://www.americantelevisionalliance.org/wp-content/uploads/2011/05/TV-Future-TWH-5-19-111.pdf>.

4. Adam Thierer and Brent Skorup, “A History of Cronyism and Capture in the Information Technology Sector,” *Journal of Technology Law & Policy* 18, no. 2 (forthcoming 2014).

airwaves,⁵ the government withheld full First Amendment protections and imposed a variety of obligations on broadcasters, ostensibly in the public interest.⁶

When competing television technologies like cable and satellite arrived and threatened the government-created broadcast markets, the FCC and Congress imposed obligations in an ill-conceived attempt to maintain government-managed competition.⁷ “There are few alleyways of the administrative state more obscure or more littered with obstacles to efficient markets and improvements in consumer welfare than the interventions regulating ownership and licensing of TV stations and programs,” summarizes media economist Bruce Owen.⁸

Despite this regulatory morass, the video marketplace has undergone a remarkable metamorphosis over the past two decades. This development is not due to the evolution of policy but rather to the rapid evolution of technology.⁹ New video technologies and business models have, in essence, evolved around regulatory encumbrances. Cable and satellite companies have invested in their networks and vastly expanded their channel capacity and, therefore, consumer choice. Further, the rise of Netflix, Amazon, YouTube, Apple iTunes, video game platforms, and countless other online video sites and services have made it easier than ever for consumers to find the content they demand. In other cases, companies like Aereo have relied on regulatory arbitrage to create new businesses. Aereo captures free over-the-air broadcasts on small antennas in one location and then leases the antennas to customers in the local area. Customers can watch these broadcasts via a broadband connection.

These technological developments have severely strained the adequacy of existing video laws, which had their last major updates in the 1992 Cable Act¹⁰ and the 1996 Telecommunications Act.¹¹ Since that time, Congress has only tinkered around

5. Most current broadcast station owners have paid substantial sums for their broadcast networks and spectrum, but the original grants were assigned to broadcasters for free. See Jeffrey A. Eisenach, “The Equities and Economics of Property Interests in TV Spectrum Licenses” (working paper, 2014), http://www.nab.org/documents/newsRoom/pdfs/011614_Navigant_spectrum_study.pdf.

6. “In view of the scarcity of broadcast frequencies, the Government’s role in allocating those frequencies, and the legitimate claims of those unable without governmental assistance to gain access to those frequencies for expressions of their views, we hold the regulations and ruling at issue here both authorized by statute and constitutional.” *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 400–1 (1969); see also Krattenmaker and Powe, *Regulating Broadcast Programming*, 229–36, 297–331.

7. See discussion above regarding must-carry, retransmission consent, nonduplication, and other regulatory obligations.

8. Owen, “Consumer Welfare and TV Program Regulation.”

9. See Adam Thierer and Grant Eskelsen, *Media Metrics: The True State of the Modern Media Marketplace* (PFF Special Report, Summer 2008), Progress & Freedom Foundation website, www.pff.org/mediametrics; Adam Thierer, president, Progress & Freedom Foundation, Video Competition in a Digital Age, Testimony before the House Subcommittee on Communications, Technology and the Internet (October 22, 2009), www.pff.org/issues-pubs/testimony/2009/10-22-09-thierer-testimony-video-competition-digital-age.pdf.

10. Pub. L. No. 102-385.

11. Pub. L. No. 104-104.

the margins of this complex regulatory regime. Most notably, satellite legislation, which was most recently authorized via the Satellite Television Extension and Localism Act of 2010 (STELA),¹² extended many cable regulations to include satellite video. And, as noted below, recent efforts to reform media ownership rules resulted in few changes.

With the likely congressional reauthorization of STELA in 2014, Congress, the FCC, and industry players have turned their attention to arcane video laws. This paper, beyond simply describing what terms like “retransmission consent” and “network nonduplication” mean,¹³ also analyzes video reform proposals and makes the case for comprehensive deregulation.

Americans currently enjoy what media critics call the Golden Age of Television; programming quality is arguably the best it has ever been.¹⁴ However, consumers also see high cable and satellite bills, in part because of the regulatory mandates that distort market negotiations and limit competition. With the required reauthorization of STELA in 2014, public fights over rising retransmission consent fees, and the possible disruption to existing broadcast markets posed by Aereo, there is a sense that the industry and members of Congress have an appetite for video reform. Several bills pending in the second session of the 113th Congress are summarized below. Portions of those bills may be attached to the STELA reauthorization or considered in future video law reforms. Most of these bills increase video regulation. Only one bill subject to our analysis moves television law in a significantly free-market direction. To provide context for these bills, we first discuss some of the history that led to the current calls for reform of video regulations.

HOW THE LEGAL THICKET GREW

IT IS IMPOSSIBLE to make sense of the pending video bills without understanding the history of existing communications laws. The history of television, therefore, will be briefly explored here.

Broadcasters, beginning in the 1940s and 1950s with their original grant of free spectrum, have long enjoyed favoritism from the FCC and Congress. Cable was

12. Pub. L. No. 111-175.

13. Researchers at the Congressional Research Service and Government Accountability Office provide excellent background for policymakers. See, e.g., Charles B. Goldfarb, *A Condensed Review of Retransmission Consent and Other Federal Rules Affecting Programmer-Distributor Negotiations* (CRS Report for Congress, July 9, 2007).

14. “The vast wasteland of television has been replaced by an excess of excellence.” David Carr, “Barely Keeping Up in TV’s New Golden Age,” *New York Times*, March 9, 2014, http://www.nytimes.com/2014/03/10/business/media/fenced-in-by-televisions-excess-of-excellence.html?_r=0; see also Lee Cowan, “Welcome to TV’s second ‘Golden Age’” (October 1, 2013), CBS News website, <http://www.cbsnews.com/news/welcome-to-tvs-second-golden-age/>; Adam Thierer, “We Are Living in the Golden Age of Children’s Programming” (Progress Snapshot, July 2009), Progress & Freedom Foundation website, <http://www.pff.org/issues-pubs/ps/2009/ps5.6-childrens-television-golden-age.html>.

regulated in the 1960s “because, in the FCC’s judgment, it posed a threat—if unregulated—to ‘free television.’”¹⁵ As the Copyright Office said in a 2008 report, today there is a “thicket of communications law requirements aimed at protecting and supporting the broadcast industry.”¹⁶ Television regulations attempt to further several public policy goals and, as the Congressional Research Service has said, the furtherance of some objectives impedes other objectives.¹⁷ Those FCC and congressional objectives include the following:

1. *Localism*. Broadcasts should emphasize diverse content of local interest and importance.
2. *Universal service*. Every media market, no matter the size or population density, should be served by several broadcasters.
3. *Free television*. Broadcasts should be free to any person with a broadcast antenna. Subscription service is essentially prohibited.
4. *Competition*. Broadcast as a distribution method should remain viable to compete with pay-television (cable, satellite, and IPTV) distributors.

These objectives cannot be accomplished simultaneously without substantial ongoing regulatory interventions. At times, these goals may even contradict each other. For example, the push by policymakers to ensure “localism” in broadcasting has, at times, undermined the development of greater national competition.¹⁸ Further, “free”—that is, advertiser-supported—television contradicts universal service because remote parts of the country cannot command the advertising dollars needed.¹⁹

Many related federal rules therefore continue to tip the regulatory scales toward local broadcasters and content creators. Examples include the requirement that video distributors carry broadcast signals even if customers don’t demand the channels (must-carry); rules that prohibit distributors from striking deals with broadcasters outside their local communities (network nonduplication and syndicated

15. Charles O. Verrill Jr., “CATV’s Emerging Role: Cablecaster or Common Carrier?,” *Law and Contemporary Problems* 34 (1969): 593. See also Glen O. Robinson, “Regulating Communications: Stories from the First Hundred Years,” *Green Bag Journal* 13 (2010): 309; Krattenmaker and Powe, “Regulating Broadcast Programming,” 225.

16. US Copyright Office, *Satellite Home Viewer Extension and Reauthorization (SHVERA) Report § 109* (2008), 65, <http://www.copyright.gov/reports/section109-final-report.pdf> (hereafter cited as SHVERA Report).

17. Goldfarb, *Condensed Review of Retransmission Consent*.

18. David Weinstein, *The Forgotten Network: Dumont on the Birth of American Television* (Philadelphia: Temple University Press, 2004). Further, as an early television scholar said, “If local programming and control are to be encouraged, it might be more efficient to subsidize local stations directly than to restrict their competitors.” Franklin M. Fisher, “Community Antenna Television Systems and the Regulation of Television Broadcasting,” *American Economic Review* 56 (1966): 329.

19. Megan Mullen, *Television in the Multichannel Age: A Brief History of Cable Television* (Malden, MA: Blackwell Publishing, 2008), 85.

exclusivity); regulations specifying where broadcast channels appear on the cable channel lineup; rules covering how video distributors carry signals from local TV broadcasters (retransmission consent); and prohibitions against carrying some sporting events (sports blackout).

It's tempting to try to fix just one part of video laws—like retransmission consent, which is the subject of the most intense debates today—but that may only result in more market distortions.²⁰ Comprehensive video reform requires that *all* of the following regulatory obligations be addressed.²¹

Network Nonduplication and Syndicated Exclusivity

Broadcasters had a relatively stable, competitive environment in the 1950s, with the same three national networks—NBC, ABC, and CBS—and a few local independents broadcasting mostly via local affiliates in FCC-created local geographic zones.²² In these early years of broadcast television, the FCC made a conscious choice to pursue localism; rather than permit many broadcasters to compete regionally or nationally, the FCC opted to have a few broadcasters in each small market.²³ But in the mid-1950s, “cable” companies began setting up broadcast receivers and connecting receivers to households that could not receive adequate broadcast signals because buildings or geography interfered with their broadcast signal reception.

At first, broadcasters tolerated or welcomed these cable upstarts—more households receiving broadcast signals meant more advertising revenue.²⁴ However, within a few years, cable companies were capturing broadcast signals from far-away transmitters and importing those signals via microwave and wire into their local city.²⁵ A rural California cable company, for instance, might capture and transmit popular Los Angeles stations, which had previously been inaccessible to rural households.²⁶ Producers of local broadcast content, particularly independents not affiliated with the major networks, couldn't compete with the imported signals

20. Adam Thierer, “Video Marketplace Deregulation: The Battle over Spectrum Policy and Retransmission Consent Reform” (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, June 19, 2012), <http://mercatus.org/publication/video-marketplace-deregulation-battle-over-spectrum-policy-and-retransmission-consent>.

21. Adam Thierer, “Toward a True Free Market in Television Programming,” *Forbes*, February 19, 2012, <http://www.forbes.com/sites/adamthierer/2012/02/19/toward-a-true-free-market-in-television-programming>.

22. Hazlett, “If a TV Station Broadcasts in the Forest,” 6. DuMont was a fourth national network, but it folded in 1955.

23. *Ibid.*

24. “In its early form CATV was not viewed as competitive with ‘local’ and ‘free’ television broadcasting; in fact, it was arguably a positive factor to those stations whose signal was made available in theretofore unserved areas.” Verrill, “CATV’s Emerging Role.”

25. Fisher, “Community Antenna Television Systems.”

26. Hazlett, “If a TV Station Broadcasts in the Forest,” 33.

from cities.²⁷ The FCC soon realized that “distant signal importation” threatened the viability of many small-market broadcasters and the FCC’s localism vision.²⁸

To protect local broadcasters from competition, the FCC crafted rules in 1966—like network nonduplication and syndicated exclusivity—that kept localism intact.²⁹ Network nonduplication and syndicated exclusivity require a cable operator to black out certain programs from nonlocal broadcast stations if the local broadcaster has an exclusive arrangement with a network to carry that programming.³⁰ Today, when broadcasters and multichannel video program distributors (MVPDs)—the largest of which are cable and satellite operators—are at an impasse over carriage payment, the MVPD cannot negotiate with other broadcasters to provide customers content in the interim.³¹ If a Washington, DC, cable company, for instance, cannot reach a deal with the DC NBC affiliate over retransmission consent (explained below), the cable company cannot negotiate with Baltimore’s NBC affiliate to provide NBC content to DC customers in the interim because of network nonduplication rules. Until the impasse is resolved, customers generally lose the ability to watch certain channels.

Must-Carry

Must-carry is a requirement from a 1966 FCC proceeding,³² codified in the 1992 Cable Act, that a local cable distributor carry every local broadcast station that requests carriage.³³ As a mandated part of cable’s bundle of channels, it is a policy clearly at odds with a free market. Must-carry ensures that local broadcasters are not dropped by distributors, which would result in the loss of needed advertising dollars. Today, must-carry is mostly utilized by low-value or niche broadcast channels, like home shopping programming, since there is not sufficient consumer demand for carriage of those channels on MVPDs. For non-broadcast networks that

27. Mullen, *Television in the Multichannel Age*, 65–66.

28. *Ibid.*, 65.

29. Federal Communications Commission, In the Matter of Amendment of Subpart L, Part 91, to Adopt Rules and Regulations to Govern the Grant of Authorizations in the Business Radio Service for Microwave Stations to Relay Television Signals to Community Antenna Systems, 2 FCC 2d 725, 746 (1966).

30. Mullen, *Television in the Multichannel Age*, 66–67.

31. “FCC rules that limit ‘distant signals’ resemble cartel enforcement devices, limiting cross-market competition among stations for viewers. While premised on the idea of copyright protection, they actually achieved something quite distinct: protection of local broadcast stations.” Hazlett, “If a TV Station Broadcasts in the Forest,” 34.

32. The FCC’s must-carry rules were overturned in 1985. See *Quincy Cable TV, Inc. v. FCC*, 768 F.2d 1434 (DC Cir. 1985).

33. Federal Communications Commission, In the Matter of Amendment of Subpart L, Part 91, to Adopt Rules and Regulations to Govern the Grant of Authorizations in the Business Radio Service for Microwave Stations to Relay Television Signals to Community Antenna Systems, 2 FCC 2d 725, 746 (1966); 47 U.S.C. § 534.

cannot take advantage of must-carry, programmers pair unprofitable niche channels—like VH1 Classic—with popular ones—like MTV—to gain cable carriage. As stand-alone broadcast channels, however, there is generally not enough customer demand to include certain channels. In contrast, popular broadcast networks—like NBC, ABC, Fox, and CBS—and their affiliate broadcasters do not elect must-carry. Instead, they have leverage to withhold their signals from cable and satellite companies and request payment via retransmission consent agreements (discussed below).

Compulsory Licenses

Gaining copyright permissions was difficult in the early years of cable because of the numerous parties involved in the production of programming. Television programmers had license agreements with local broadcasters but not with cable companies, which were small and geographically disbursed. Therefore, programmers in the 1960s complained to courts that cable companies were violating their copyright protections, since cable companies were not paying to transmit the programs. In 1968, the Supreme Court resolved the dispute by declaring cable systems mere “extended antennas” for broadcast signals, thus not engaging in public performances of copyrighted material.³⁴ Congress responded a few years later with the 1976 Copyright Act that granted cable operators a compulsory license to transmit programs airing in distant (nonlocal) TV markets in return for a fee established by the Library of Congress.³⁵

Compulsory licenses essentially place a “duty to deal” upon content owners. Compulsory licensing is an attempt to lower the transaction costs to cable companies and programmers. Rather than conducting cumbersome negotiations with all nonlocal broadcasters and networks, cable operators can receive the copyright licenses simply by paying royalties into a government-administered fund that pays out to the programmers. Section 111 of the Copyright Act provides for the compulsory licensing of nonlocal content to cable companies; section 119, added in 1988, extends the royalty-and-licensing scheme to satellite television providers.

Retransmission Consent

Retransmission fees—which MVPDs pay to local broadcasters—might be the most controversial part of today’s video marketplace because they have increased in the past few years beyond most expectations. The contractual disputes over the price of broadcast signals are disruptive to consumers, since television viewers lose popular channels while negotiations drag on.

34. *Fortnightly Corp. v. United Artists*, 392 U.S. 390 (1968); *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968).

35. 17 U.S.C. § 111(c).

The retransmission consent regulatory regime was created in the 1992 Cable Act at the behest of the broadcasters, who had unsuccessfully sought the rule since the late 1950s.³⁶ Cable companies, in the 1970s and 1980s, ate into broadcast television's market share as consumers mothballed their rabbit-ear antennas in favor of cable subscriptions. Cable gained its competitive advantage because operators had begun offering cable channels like HBO and ESPN in addition to broadcast channels. In the 1980s, broadcasters anxiously noted that cable companies had two sources of income: from advertisers on new cable programs and from cable subscribers. Local broadcasters, however, had only one source of income—advertising support—because broadcast licensees were essentially prohibited from offering subscription services since their inception.

To gain a second stream of income, broadcasters lobbied Congress for the creation of a brand-new property right, known as the retransmission right. In the 1992 Cable Act, Congress created retransmission rights for broadcasters. While cable carriage of nonlocal signals is covered by the compulsory license, broadcasters of local signals elect either must-carry or retransmission consent every three years.³⁷ MVPDs today must pay broadcasters who elect retransmission consent for the right to retransmit local broadcast signals, the most valuable of which is programming from the broadcast networks ABC, NBC, Fox, and CBS.

Market dynamics have changed substantially since 1992. The 1980s and early 1990s were a relatively stable negotiation environment because cable providers had a local franchise or de facto monopoly for pay television and broadcasters had exclusive rights to network programming. Broadcasters and cable had near parity in bargaining power since each needed the other. Therefore, money rarely changed hands. Cable systems lost bargaining power in the late 1990s, however, as cable was deregulated and satellite companies began competing away cable customers.³⁸ If a cable company didn't pay adequate retransmission fees for a broadcast channel, it risked losing customers to satellite companies, which had the same channels and nationwide coverage. With competition among MVPDs intensifying, broadcasters gained the upper hand and could extract retransmission payment as the only sellers of network shows and sporting events.

Further weakening MVPDs' position was network nonduplication and syndicated exclusivity regulations (described previously). The weakened position of pay-TV distributors meant payments to broadcasters rose quickly. Total retransmission

36. Patrick R. Parsons, *Blue Skies: A History of Cable Television* (Philadelphia: Temple University Press, 2008), 157.

37. 47 U.S.C. § 325(b)(3).

38. "As a result [of MVPD competition], programmers have more options available to them to reach audiences and are able to negotiate with distributors from a position of strength." Goldfarb, "A Condensed Review of Retransmission Consent."

fees were negligible in the 1990s, but they rose to \$11 million in 2001³⁹ and then ballooned to around \$3.3 billion in 2013.⁴⁰

It is important to note that most television programming deals today operate outside the retransmission system since retransmission does not cover nonbroadcast programming like MTV, ESPN, Bravo, and hundreds of other channels. “Today, more than 500 non-broadcast television channels are distributed by MVPDs nationwide without any need for government compulsory licensing,” observes Preston Padden, a former Disney and News Corp. executive.⁴¹ As Padden noted in congressional testimony,

The success of the marketplace “rights aggregator” model in facilitating the distribution of the programs on non-broadcast channels demonstrates that there is no longer any need for government Compulsory Licensing of broadcast programming. Just like the non-broadcast channels, broadcast stations easily could aggregate the rights in the programs on their schedule and then negotiate with MVPDs.⁴²

There are occasional disputes and blackouts that occur when a content company cannot strike a deal with a cable or satellite operator. This is what occurred in 2012 in carriage spats between AMC and Dish⁴³ as well as Viacom and DirecTV.⁴⁴ There are no special rules that either side could rely on in those instances. But in both cases, these contractual disputes were resolved in fairly short order and programming continued. This is what would occur for broadcast programming in a free marketplace. Contractual carriage disputes and even occasional blackouts

39. Katerina Eva Matsa, “Time Warner vs. CBS: The High Stakes of Their Fight over Fees” (August 21, 2013), Pew Research Center website, <http://www.pewresearch.org/fact-tank/2013/08/21/time-warner-vs-cbs-the-high-stakes-of-their-fight-over-fees/>.

40. SNL Kagan, “SNL Kagan Releases Updated Industry Retransmission Fee Projections,” press release, November 22, 2013, <http://www.snl.com/InTheMedia.aspx>. Further, retransmission’s ostensible purpose—to provide revenue to local broadcasters—largely isn’t even accomplished today, since the national broadcast networks require “reverse retransmission,” where local broadcasters remit a portion of their retransmission payments to the network. Richard Greenfield, “The Disequilibrium of Power: How Retransmission Consent Went So Wrong and How to Fix It” (August 27, 2013), AllThingsD website, <http://allthingsd.com/20130827/the-disequilibrium-of-power-how-retransmission-consent-went-so-wrong-and-how-to-fix-it>.

41. *Testimony of Preston Padden, Senior Fellow, Silicon Flatirons Center, Colorado Law, University of Colorado, Before the Committee on Commerce, Science and Transportation, United States Senate, 112th Cong.* 4 (July 24, 2012), <http://siliconflatirons.com/documents/publications/policy/PaddenTestimony.pdf>.

42. *Ibid.*

43. William Launder and Suzanne Vranica, “The Plot Thickens for AMC as Blackout Crimps Growth,” *Wall Street Journal*, Aug. 20, 2012, <http://online.wsj.com/news/articles/SB10000872396390444233104577595771359471812>.

44. Brian Stelter, “DirecTV and Viacom Settle Dispute over Fees, Restoring Service,” *New York Times*, July 20, 2012, http://mediadecoder.blogs.nytimes.com/2012/07/20/directv-and-viacom-settle-dispute-over-fees-restoring-service/?_php=true&_type=blogs&_r=0.

will continue but will be resolved.⁴⁵ There is no reason to apply special carriage rules to some content companies simply because some of their properties are broadcast stations.

Media Ownership

The regulatory landscape is further complicated by a complex web of media ownership restrictions that artificially limit transactions and the contours of media markets. Even though media combinations are already covered by antitrust laws,⁴⁶ media properties—particularly broadcasters—were singled out for special regulation by both Congress and the FCC. These rules include the following:⁴⁷

- *National TV Ownership Rule (TV Audience Cap)*. Networks' ownership of affiliated broadcast stations was first capped by the FCC in 1941, set at three broadcast stations.⁴⁸ Over the years, the FCC's cap permitted ownership of more than three stations.⁴⁹ In the 1996 Telecommunications Act Congress permitted networks to own TV stations that reached a combined national audience of 35 percent.⁵⁰ In 2004, Congress raised the cap to 39 percent.⁵¹
- *Dual Television Network Rule*. Adopted in 1946 and modified at the direction of Congress in the 1996 Telecom Act, this rule prohibits any of the top four traditional TV networks (CBS, NBC, ABC, and Fox) from affiliating with or acquiring each other.⁵²
- *Local TV Multiple Ownership Rule*. Adopted in 1964, this complex rule prevents a firm from owning more than two TV stations in a designated market.

45. Adam Thierer, "CBS, Time Warner Cable & TV Blackouts: What Should Washington Do?" (August 12, 2013), Technology Liberation Front website, <http://techliberation.com/2013/08/12/cbs-time-warner-cable-tv-blackouts-what-should-washington-do>.

46. "The prohibitions of the Sherman Act apply to broadcasting." *United States v. RCA*, 358 U.S. 334 (1959). See also *NBC v. United States*, 319 U.S. 190, 223 (1943).

47. Federal Communications Commission, "Review of the Broadcast Ownership Rules," accessed April 28, 2014, <http://www.fcc.gov/guides/review-broadcast-ownership-rules>; Federal Communications Commission, "Rules Adopted in the Quadrennial Review Order," last modified Sept. 10, 2008, <http://transition.fcc.gov/ownership/rules.html>.

48. Broadcast Services Other than Standard Broadcast, 6 Fed. Reg. 2282, 2284–85 (May 6, 1941).

49. Stuart Minor Benjamin, "Evaluating the Federal Communications Commission's National Television Ownership Cap: What's Bad for Broadcasting Is Good for the Country," *William & Mary Law Review* 46 (2004): 446.

50. Pub. L. No. 104-104, 110 Stat. 56.

51. Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99–100 (2004) (amending section 202(c) of the 1996 Telecommunications Act).

52. 47 C.F.R. 73.658(g). See also Federal Communications Commission, In the Matter of Amendment of Section 73.658(g) of the Commission's Rules—The Dual Network Rule, MM Dkt. No. 00-108, 16 FCC Rcd 11114, 11115–16 (2001).

Further, a firm can't own two stations if the commonly owned stations are two of the top four stations in the market or the combination would leave fewer than eight independently owned stations.⁵³

- *TV-Radio Cross-Ownership Ban.* Adopted in 1970, this rule limits the number of radio stations that can be owned by a TV station owner in the same market, using a sliding scale based on the number of broadcast stations in the market.⁵⁴
- *Broadcast-Newspaper Cross-Ownership Ban.* Adopted in 1975, this rule prohibits a newspaper owner from also owning a television or radio station in the same local market.⁵⁵
- *Cable Ownership and Affiliated Channel Caps.* The Cable Act of 1992 directed the FCC to create rules limiting the number of customers reached by a cable system and limiting the number of affiliated channels carried by a cable provider.⁵⁶ The FCC tried imposing a 30 percent cap on the market share of a cable operator, but that cap was struck down by the courts.⁵⁷ The vertical rule places a cap of 40 percent on the amount of affiliated programming cable operators could put on their own systems.⁵⁸

A decade ago, the FCC made an attempt to pare back many of these rules during the tenure of Chairman Michael Powell.⁵⁹ The effort was met with vociferous opposition by some media access organizations mounting major grassroots efforts.⁶⁰ As a result, few of the rules were reformed and subsequent efforts to reform even individual rules have gone nowhere.⁶¹ Meanwhile, each new proposed

53. 47 C.F.R. 73.3555(b).

54. 47 C.F.R. 73.3555(c).

55. 47 C.F.R. 73.3555(d).

56. 47 U.S.C. 533(f). When a cable operator has an "attributable interest" in a network, the FCC imposes carriage restrictions. For example, Comcast merged with NBC Universal in 2011 and now has attributable interests in MSNBC, CNBC, Bravo, and other NBC programming.

57. *Comcast Corp. v. FCC*, 579 F.3d 1 (DC Circuit 2009).

58. 47 C.F.R. 76.504.

59. Federal Communications Commission, *In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, FCC 03-127 (June 2, 2003), 4, http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-127A1.pdf.

60. Adam Thierer, *Media Myths: Making Sense of the Debate over Media Ownership* (Washington, DC: Progress & Freedom Foundation, 2005), 1–9, <http://www.scribd.com/doc/2887203/Media-Myths-Making-Sense-of-the-Debate-over-Media-Ownership-ThiererPFF>.

61. Gautham Nagesh, "FCC Withdraws Proposal to Relax Media-Ownership Rules," *Wall Street Journal*, December 16, 2013, <http://online.wsj.com/news/articles/SB10001424052702303949504579262803786617112>.

media combination has met with a similar backlash,⁶² and these rules are invoked as a means of stopping the evolution of media markets.

LEGISLATIVE REFORM PROPOSALS IN THE 113TH CONGRESS

THE FOLLOWING BILLS have been introduced in the current session of Congress to address the rapidly changing video marketplace. Some take a more comprehensive approach to video reform, but most only narrowly address one part of the complex web of rules. (Bill sponsors are noted in parentheses.)

H.R. 3720: Next Generation Television Marketplace Act (Scalise-Gardner)

Of all of the pending video bills, only the one introduced by Reps. Steve Scalise and Cory Gardner attempts comprehensive reform by peeling away the decades' worth of regulatory detritus. The bill asks all sides to give a little through the repeal of several sections of the Copyright Act and the amended 1934 Communications Act.

Under the bill, broadcasters and broadcast networks would give up retransmission and must-carry rules, but they would gain the elimination of the compulsory licensing requirements of the Copyright Act of 1976, which essentially forced a "duty to deal" upon them. They would have to let cable operators and other video distributors retransmit local stations, but the bill allows them to get full compensation for their content through marketplace bargaining.

The Next Generation Television Marketplace Act repeals seven sections of the Communications Act and eliminates various FCC regulations that distort the television market, including regulations about channel positioning, network nonduplication, syndicated exclusivity, and sports blackouts. The bill also eliminates FCC restrictions on the number of stations a person can own in the same market, the radio-television cross-ownership prohibitions, and the limitations newspaper owners face when controlling a television station.

The measure repeals must-carry requirements, which force MVPDs to carry even low-value local broadcast signals.⁶³ It also repeals the requirement that MVPDs pay broadcasters for retransmission rights.⁶⁴ The bill frees cable companies from section 532 of the Communications Act, which requires cable operators to set aside 10 percent or more of their channel capacity for unaffiliated programmers or affiliated minority programmers. That section also gave the FCC authority to decide what

62. Adam Thierer, "A Brief History of Media Merger Hysteria: From AOL-Time Warner to Comcast-NBC," *Progress on Point* 16, no. 25 (December 2, 2009), Progress & Freedom Foundation website, <http://www.pff.org/issues-pubs/pops/2009/pop16.25-comcast-NBC-merger-madness.pdf>; Adam Thierer, "A Media Morality Play," *Forbes*, December 15, 2009, <http://www.forbes.com/2009/12/14/media-merger-antitrust-opinions-contributors-adam-thierer.html>.

63. 47 U.S.C. § 534.

64. 47 U.S.C. § 325.

are reasonable rates and terms between programmers and cable operators. The bill prohibits all federal and state franchising authorities from regulating MVPDs' rates and the retransmission of broadcast signals.

The Copyright Office reported in its 2008 SHVERA Report that “fundamental shifts” in television viewing “call into question the appropriateness of the [compulsory] licensing systems.”⁶⁵ The report went on to say that “the current distant signal licenses have served their purpose but are no longer necessary, and that Sections 111 and 119 of the [Copyright] Act have outlived their original purposes.”⁶⁶ The Copyright Office’s “principal recommendation is that Congress should abandon Sections 111 and 119 of the [Copyright] Act.”⁶⁷ In 2010, Congress directed the Copyright Office to explore ways to phase out these compulsory licenses.⁶⁸ The Scalise-Gardner bill does just that: it repeals section 119 and amends section 111 so that market transactions can take place between MVPDs and distant broadcast networks. It also repeals section 122, which permits satellite carriers to retransmit local broadcast signals on a royalty-free basis and without authorization from the copyright holders.

5. 1680: Consumer Choice in Online Video Act (Rockefeller)

Senator Jay Rockefeller’s bill, released in late 2013, proposes to “promot[e] the development of online video distribution platforms and fair competition” among all television distributors through increased oversight by the FCC. Unfortunately, the act carries over many television regulations into the nascent Internet video industry and gives the FCC substantial abilities to shape online video competition. Significantly, the bill designates a new class of businesses called online video distributors (OVDs)—like Netflix and Redbox Instant—and essentially repurposes the networks of Internet service providers (ISPs) for OVDs’ benefit.

The bill lays out principles for competition and gives the FCC generous discretion to enforce those principles. For example, it is “unlawful . . . [for a designated distributor or an ISP] to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which are to hinder significantly or prevent an [OVD] from providing video programming to consumers” including over the Internet or any device. The bill delegates rulemaking to the FCC to determine what “unfair methods” are, what “hinders significantly,” and what is “deceptive.”

Further, the bill instructs the FCC to prevent a distributor from “unduly or improperly influencing the decision of any other entity to make a television set or other [customer-premises equipment (CPE)] incompatible with the services provided by any

65. SHVERA Report, 19.

66. *Ibid.*, 56.

67. *Ibid.*, 85.

68. Satellite Television Extension and Localism Act of 2010, § 302.

[OVD]”; “unduly or improperly using its own [CPE] to discriminate against or otherwise favor its own services” over any OVD; “unduly or improperly influencing the decision of any other entity to sell, or the prices, terms, and conditions of sale of, video programming to any [OVD]”; and “providing an incentive to any entity in an attempt to deny video programming to an [OVD].” All the operative words in these sections are left to the discretion of the FCC. An aggressive FCC could use these provisions to radically shape commercial contracts and television competition.

The bill provides the FCC with a process to review any contract between MVPDs, programmers, and OVDs. Ironically, all these contracting costs would only encourage vertical mergers (subject to existing media ownership restrictions). Mergers between traditional distributors, online distributors, and programmers would substantially lower transaction costs that this bill imposes. Absent a merger, most firms would face severe regulatory risks since the FCC is injected into nearly every agreement between content producers and distributors.

Broadcasters would be penalized in this bill because they would be required to negotiate with OVDs under rules a future FCC would issue. Broadcasters also would not be allowed to place any restriction on an OVD’s distribution to subscribers. The bill blesses the existence of antenna rental services, like Aereo, as long as they only serve local broadcasts to the respective local area, and it exempts those services from paying retransmission fees.

The bill essentially implements net neutrality on Internet service providers when they deal with OVDs. ISPs could not block, degrade, or unreasonably discriminate against OVDs; nor could they provide transmission benefits to affiliated OVDs. ISPs would also be prohibited from usage-based billing that deters competition from unaffiliated OVDs. During disputes in this new television market, the FCC would be able to establish prices, terms, and conditions of sale of programming to OVDs.

In addition to cable and satellite companies, the bill introduces another regulatory silo: a non-facilities-based MVPD (NFB MVPD). If an OVD provides programming reasonably equivalent to an MVPD, the OVD could elect to be treated as a non-facilities-based MVPD. This election would bring many of the existing television regulations onto this new market participant, but it would exempt the NFB MVPD from others. The FCC could decide what MVPD regulations should apply to NFB MVPDs, guided by its public interest standard. There are some requirements, though.

NFB MVPDs would have to allow a reasonable amount of time for candidates for federal office and, if one allows a candidate to use its facilities, it would have to allow all eligible candidates to use its facilities. NFB MVPDs would be exempt from complying with “basic tier and tier buy-through” requirements. They could also carry nonlocal broadcasts. They would be exempt from network nonduplication, syndicated exclusivity, and sports blackout rules. They would also be exempt from any franchising authority. They could not be required to carry local broadcasts as a condition of carrying nonlocal broadcasts. NFB MVPDs that carry local

signals would have to carry, upon request, noncommercial educational broadcast signals in the same local area. They would have channel reservation requirements. They would have to reserve between 3.5 and 7 percent of channel capacity for educational and informational programming. They would also have to make channel capacity available to each national educational programmer at reasonable prices and terms. Finally, NFB MVPDs carrying any broadcast signal would be considered a “cable system” and thus subject to compulsory licensing requirements and royalty payments. Oddly, NFB MVPD–subscribing households could not be considered in the FCC’s determination of whether a traditional cable system would be subject to effective competition in that franchise area.

H.R. 3719: The Video Choice Act (Eshoo)

Rep. Anna Eshoo’s bill limits itself mostly to retransmission disputes, which are disruptive for consumers. In a retransmission negotiation impasse, the bill allows the FCC to permit the MVPD’s interim carriage of the broadcast station pending conclusion of the impasse.

The bill also contains an anti-tying—or an à la carte—provision. A broadcaster that grants retransmission could not enter into an agreement with an MVPD that in any way conditions carriage of popular retransmission programming on carriage of other, less popular programming. Cable operators would have to offer subscribers a separate tier (called the retransmission consent tier) consisting only of broadcast signals. This tier would be subject to rate regulation, the same as the basic cable service tier. A cable operator could not require purchase of any tier, other than the basic cable service tier, to receive the retransmission consent tier. In telecom-speak, this is a buy-through prohibition.

The Video Choice Act focuses on important consumer issues—the disruptiveness of retransmission disputes and the relatively high cost of cable packages. However, the bill attempts to remedy the symptoms of flawed video markets, not the causes. At this time, retransmission fights are complicated by the fact that network nonduplication and syndicated exclusivity rules prevent cable companies from contracting with other broadcasters at impasse. And cable packages are expensive bundles in part because the FCC and Congress have mandated the carriage of broadcast content; public, educational, and governmental (PEG) channels; and nonaffiliated content in every cable package. This bill only adds more complexity—including price controls of the retransmission consent tier—to television markets.

S. 1721: Furthering Access and Networks for Sports (FANS) Act (Blumenthal-McCain)

In November 2013, Sens. Richard Blumenthal and John McCain introduced the Furthering Access and Networks for Sports Act. In short, the act eliminates the

FCC's sports blackout rules. Sports leagues currently have a limited antitrust exemption under the Sports Broadcasting Act, in place since 1961.⁶⁹ This bill would once again extend antitrust laws to leagues and distributors that prohibit distribution in the home territory of the home team.

For leagues to enjoy the current antitrust exemptions of the Sports Broadcasting Act, the league would have to prohibit any television licensee from deliberately removing sports games from a cable or satellite distributor during distribution contract negotiations. A league would also have to make a game available, for a fee or otherwise, over the Internet when a game is not available via television through broadcasters or pay TV.

Removing the sports blackout rules would be beneficial as the rules prevent bargaining between pay-TV operators and major sports leagues. Removing the limited antitrust exemption that sports leagues currently enjoy is also commended since the exemption is a special-interest concession.⁷⁰ Conditioning the exemption on the leagues' efforts to make games available to MVPDs during retransmission negotiations, however, would only threaten the leagues with an ill-conceived antitrust exemption.

S. 1912: The Television Consumer Freedom Act (McCain)

Sen. John McCain for years has attempted to bring some a la carte channels to the television market. This act withholds some regulatory benefits if a distributor does not make its content available a la carte. The bill rescinds the benefit of the statutory compulsory license fees for MVPDs if they do not offer retransmitted channels to consumers on an a la carte basis. Again, this piecemeal legislation has the potential to distort television markets further. A simpler solution might be to remove the requirement that MVPDs carry retransmitted broadcasts on their basic tiers.

To further promote a la carte programming, the bill also rescinds regulatory benefits to broadcasters. The bill provides that a broadcaster may not elect retransmission fees or avail itself of network nonduplication and syndicated exclusivity rules if the station is not made available to MVPDs on an a la carte basis. Finally, program vendors—like Viacom and Time Warner—could only offer program bundles to distributors if they also offer programming on an a la carte basis. Bundling programs is generally economically efficient⁷¹ so a requirement to unbundle is counterproductive.

69. 15 U.S.C. 1291.

70. We would, however, predict little impact from removing the exemption because antitrust law has changed considerably since the time the exemption was granted. It is unlikely the antitrust agencies could support a lawsuit against the leagues under current economic theories of harm.

71. David S. Evans and Michael Salinger, "Why Do Firms Bundle and Tie? Evidence from Competitive Markets and Implications for Tying Law," *Yale Journal on Regulation* 22, no. 1 (2005): 37–89.

CONCLUSION

REGULATORY REFORM IS needed to clear out the regulatory detritus of the past half century because current regulations limit market opportunities for existing media providers. If the current rules are maintained or extended, future content creators and distributors will be stymied. It is discouraging that most of the bills that Congress is contemplating offer only marginal improvements or actually burden the marketplace with more regulations. What is needed is more comprehensive reform. Such a legislative solution would declutter the modern legal landscape for media and give media innovators the freedom to experiment. It would be counterproductive to expand regulation of the video marketplace and set back needed liberalization efforts.

Repealing outdated video marketplace regulations from the analog era will lead to even more experimentation with new business models, technologies, and methods of content creation and delivery. We already see much innovation in this marketplace despite all the red tape.⁷² As noted earlier, many alternative video delivery platforms exist today. Broadcast and cable giants have made strides in recent years, too. CBS is a good model for how to repurpose online content in creative ways on a firm's own digital platform. Likewise, Walt Disney has effectively utilized the combination of its ABC and ESPN properties to offer consumers a seamless sports experience across broadcast, cable, and Internet platforms. Meanwhile, cable companies like Time Warner Cable are adapting to consumers' demand that video be delivered to multiple devices. Finally, innovation from online platforms—such as Internet giants Amazon, Apple, Google, and Microsoft, among others—continues at a healthy clip.

A deregulated market is not a nirvana, of course. Some regulatory activists seemingly expect that media content can be delivered effortlessly and cheaply, but it is complicated to get that content financed and distributed in the first place. Great content and great delivery platforms do not just happen by magic or through the good intentions of activists or policymakers. That content and those platforms come about because new markets and monetization mechanisms develop to facilitate them. Comprehensive liberalization of America's video marketplace can help ensure that more media content is developed and distributed going forward.

72. Adam Thierer, "Television: From Vast Wasteland to Vast Wonders," *Forbes*, May 16, 2011, <http://www.forbes.com/sites/adamthierer/2011/05/16/television-from-vast-wasteland-to-vast-wonders>.

[REDACTED]

From: Catherine L. Stewart [REDACTED]
Sent: Thursday, January 22, 2015 2:36 PM
To: CommActUpdate
Cc: Tammie Reilly
Subject: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

The Honorable Fred Upton
2183 Rayburn House Office Building Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building Washington, DC 20515

Dear Members of the House Energy and Commerce Committee,

Our PEG Access center, *GNAT*, openly and equitably serves all the residents, schools, municipalities and nonprofits in our region. Your Committee has questioned whether PEG channels is a community service that still serves any need now that the Internet is so widespread, and our answer to that is a very strong “yes.”

We are one of 25 PEG Access Centers in Vermont, the most rural of all the states. Because the few broadcast TV channels we have can’t cover the state as well as we can, folks here rely on us to provide hyper-local coverage of town and school meetings, community and student events, lectures, performances and a whole host of other types of programming. *We offer: State of the Art Media Technologies and Studio Facilities; Training Programs; Youth Programs; Community Bulletins & Video Announcements; Online Video-on-Demand; Media Transfer Services. Based on our involvement in our community—and thanks to volunteers from our community—we recently won the Alliance for Community Media 2014 National Overall Excellence Award.*

We strongly encourage your Committee to help PEG Access, our channels and our funding survive and thrive by incorporating PEG into Internet broadband legislation, as it has been allowed to do under the Cable Communications Act of 1984.

Since 1995, we have been not only meeting our primary obligation to cable television subscribers with 24/7 programming on our 5 cable TV channels, but also serving everyone in our region by making available the free non-commercial use of our studio facilities, free and low-cost training, equipment lending, and distribution of local, original video productions on the Internet.

Most importantly, anyone in our region, in Vermont or even around the world who has Internet access can see our programs through links on our website: <http://www.gnat-tv.org>. We invite you to go there to see the quality and breadth of our community service.

We have already embraced the Internet as an essential partner in serving our community, but increasingly we will need to rely on it more to replace the funding we’ll be losing from the cable operator’s TV revenues as more and more people watch their video on the Internet and drop their cable TV subscriptions. Please maintain PEG Access funding and distribution on the Internet and all commercial video service providers.

Sincerely,

Catherine L. Stewart, Secretary
GNAT TV Board of Directors
GNAT-TV
PO Box 2168
Manchester Center, VT 05255

cc: The Honorable Peter Welch via his website.

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Catherine L. Stewart



W: owlsing.com

[REDACTED]

From: Wallace S. Stuart <w[REDACTED]>
Sent: Friday, January 23, 2015 10:08 PM
To: CommActUpdate
Subject: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Ladies and Gentlemen of Subcommittee on Communications and Technology:

In your search to update the Communications Act, I want to tell how important the federal requirement is for cable TV systems to provide access and support to local communities willing to produce their own video programming. While the internet has been a transformative technology empowering local communities, its benefits are not replacing the values that come from a cable TV organization that springs from local people's desire to better use video technology for community purposes. In a world of morphing and consolidating telecommunications technologies and businesses, such local cable TV organizations (PEG access channels) are even more fragile, vulnerable, and need of federal protection than ever before.

How do I come to a view that cable systems should continue with the burden of supporting those communities that want PEG access? In the Town of Plymouth, New Hampshire, the movement for community TV started approximately 25 years ago. I was there from the start and had the privilege of working with like minded residents to build local support to implement the provisions of the Communications Act, as implemented in our state, to what is today a intra-community video communication center for the town and the surrounding area. Here is the link to the site for Pemi Baker TV: <http://www.plymouth-nh.org/announcements/pemi-baker-tv> Please check it out.

Thanks to the internet, local people can now easily read the programming line up of PEG channels, watch local government meetings streamed live (as well as on cable TV), and find out how to produce their own programming. Video programming submissions by producers can now be uploaded to servers and downloaded to PEG channel centers. However, **none of this community communication via video would likely occur without the provisions of the existing Communications Act to require cable systems to provide communities access their traditional distribution platform — cable TV.** The Act's provision for the local franchising for cable TV with the local option for funding by TV subscriber fees has been pivotal to all this.

Despite the values of YouTube and Facebook that I cherish, the internet has been not yet been able to build local community in the same way PEG access TV has.

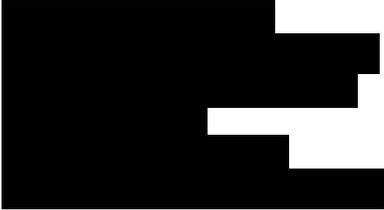
If anything, I urge you to broaden the requirement in the Communications Act to require deliverers of video over cable to allow local municipalities to add franchise fee payments by cable modem subscribers for support of local PEG access programming. To me, it is unfair for cable TV subscribers to alone carry the cost of local PEG programming that is more and more carried over wire-line broadband.

Sincerely yours,



Wallace Stuart

Wallace S Stuart



ps: In July 2014, I moved from Plymouth, NH, to Stratham, NH. Sadly for me, Stratham has not implemented the Communications Act to add in their franchise with Comcast a provision for PEG access channels. However, in the wisdom of the Act and this municipality, this local option is possible. Also sadly, Comcast in their corporate wisdom is probably relieved to not have the burden of providing Stratham access to their distribution platform. w

[REDACTED]

From: Arbeiter <[REDACTED]>
Sent: Friday, January 23, 2015 7:35 PM
To: CommActUpdate
Cc: mwassenaar@allcommunitymedia.org; judy@onlocationtv.org; Ted Arbeiter
Subject: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

January 23, 2015

The Honorable Fred Upton 2183 Rayburn House Office Building Washington, DC 20515
The Honorable Greg Walden 2185 Rayburn House Office Building Washington, DC 20515

VIA EMAIL

Re: Regulation of the Market for Video Content and Distribution - Response to the House Energy & Commerce Committee White Paper #6

Dear Representative Upton and Representative Walden,

Thank you very much for providing this opportunity to talk about how communications policy can continue to serve the public interest in a changing media marketplace.

Suburban Community Channels is a community media organization serving twelve municipalities in the northeast suburbs of St. Paul, Minnesota.

Suburban Community Channels and the SCC Community Media Center exists today because of provisions in federal law that require cable systems to set aside access channels and collect fees from subscribers to pay for local programming (PEG fees) and for using city rights-of-way (franchise fees) if local communities request these things. Today, many communities in Minnesota have an access channel and collects a franchise fee for the use of rights-of-way.

It is very important to note that brick and mortar community media centers embedded in our communities:

- Bring people together from diverse backgrounds to create programs that appeal to a variety of social, political, and religious local communities.
- Provide open access to local and state government through professional coverage of meetings, candidate forums, and issues discussions.
- Provide coverage of community events and activities that are not televised by commercial broadcasters or individual video creators.
- Produce quality video programming for local municipal governments as well as non-profit organizations that would otherwise not have the resources to effectively use this highly popular medium.
- Train residents to produce video content and use social media to promote their programming. These free and low-cost training opportunities are available to all members of the public, including kids and seniors.

Cable television systems are the funding source for equipment and staff needed to produce local programs that are “pushed” out to broad community audiences on cable television. Some programs may also be distributed on the Internet where users search and “pull” specific content, many times short form video. Programs may also appear on other video platforms mentioned in your white paper, such as HuluPlus.

Future telecommunication policy should ensure that funding is set aside to produce local public interest programming for distribution on all video platforms. "Public access" should not be the responsibility of only one type of video provider and funding should not be derived from only one type of video platform. All video platforms should contribute to a fund and provide space to public interest programming.

Suburban Community Channels and I ask the House Energy & Commerce Committee to support legislation that would strengthen PEG access on multi-channel video systems. In particular, local programming would be strengthened by requiring systems to:

1. *Assess a PEG fee if a local community wants it.* Assess a PEG fee to enable a local franchising authority to fund operating costs which is crucial to operate the platform for open public discourse.
2. *Include PEG program listings on the Electronic Program Guide.* EPG informs viewers about what's on PEG channels and enables viewers to use time-shifting technology like DVRs. Suburban Community Channels is not one of the few Minnesota access channels listed on the Electronic Program Guide.
3. *Carry PEG programming on channel numbers closer to the location of broadcast channels.* In Charter communities, access channels are carried in the 980s and 990s where few viewers venture. AT&T systems don't really carry the access channels on the line-up at all. Viewers must navigate through a series of web pages to get to and reverse out of viewing access channels.
4. *Assess funding for PEG fees and franchise fees on all wireline services both "cable" and information services (broadband Internet).* Both services carry video on the pipe running through city rights-of-way.
5. *Support media centers that invest in HD equipment by providing them with the bandwidth needed to cablecast in HD.* Suburban Community Channels would like to see Charter, Time Warner, and Comcast provide the necessary equipment and infrastructure to enable the transmission of locally produced HD content on PEG channels.

Community media centers provide an important public service by producing quality video programming about local people, government, businesses, issues, and events. We also provide training to local residents to do the same creation of video programming. From a marketplace standpoint, these programs do not "make money" but they are important platforms that enable vital community conversations. Community media centers occupy a niche that serves the public far beyond the cable systems that support them.

Suburban Community Channels and I believe the role of federal communications policy should be to ensure that these brick and mortar community media centers thrive and feed the many alternative distribution systems now available with vital public interest programming.

Thank you for your time.

Sincerely,

Ted Arbeiter
Director of Operations
Suburban Community Channels



[REDACTED]

From: Mark Taylor <[REDACTED]>
Sent: Friday, January 23, 2015 9:17 PM
To: CommActUpdate
Cc: [REDACTED]
Subject: Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

For the attention of:

The Honorable Fred Upton

2183 Rayburn House Office Building

Washington, DC 20515

The Honorable Greg Walden

2185 Rayburn House Office Building

Washington, DC 20515

Congressmen,

There are some concerning questions in the whitepaper. Specifically the comment about the need for program access, leased channels and PEG channels.

“Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?”

There are two questions that must be asked. By using the public infrastructure do these companies have a responsibility to provide these services? The second question is what benefit do these services provide to our community that would disappear if the requirements were eliminated?

To the first question. Just as every citizen and business must not prevent the use of public land and facilities by the rest of the community the same should be said for the infrastructure. By using the cables the companies are restricting access to others who would otherwise had much more bandwidth. There is an unknown as to what the bandwidth could be used for if the cable companies didn't exist, but they are using it and that does prevent others from using it.

The second question may be of more significance than you realize. At KMVT 15 in Mountain View the station provides resources that would not otherwise be available to the local community, schools and cities. This includes educational programs, local news, equipment and much more. KMVT15 provides local election coverage that is never covered by the large news stations. By recording and airing the City Council, School Board and other local offices, many more people are able to vote confidently. The educational programs offered by KMVT15 span a whole range of groups from computer literacy to after school programs. One of the biggest advantages of PEG facilities is that they provide access to professional level resources when they want to express their opinion. This includes cameras, microphones, lights, studio space and post production facilities. As a professional media editor I am very impressed with what people can accomplish with cell phones and iMovie, however it is not a substitute for the professional equipment, it is a beginning. Those without the financial ability to buy \$10,000 worth of equipment and software can choose to use the facilities of KMVT15 instead. The PEG fees are what make this possible.

PEG channels fill a critical gap that if removed would not be filled by the anyone else. They provide a centralized location for local community news, education and events. Please visit your local station. It is the least you can do to inform yourself about this decision.

Mark Taylor

January 23, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

Sent via Email to: commactupdate@mail.house.gov

Re: **Regulation of the Market for Video Content and Distribution – Response to White Paper #6**

Dear Representative Walden:

I am writing to ask you, during the process of updating the Telecommunications Act, to ensure the continuation of federal franchising provisions that require our cable/video service providers to carry and support local Public, Educational, and Governmental (PEG) channel access, and consider improved support for the valuable local and diverse programming provided by PEG access channels, which are as necessary and important today as they have ever been.

Here at, the Telecommunications Board of Northern Kentucky (TBNK,) our PEG television studio has been producing public service television for Northern Kentucky since 1998, and **televises a wealth of programming focused on our Northern Kentucky communities, which have largely been ignored by Broadcasters in our Cincinnati, Ohio based market for decades.** Now in our second decade, the TBNK has produced a wide array of programming that has been an asset to the entire Northern Kentucky community.

The PEG channels, production facilities and programming at the TBNK democratize our most powerful media platform – Television, which has otherwise been exclusively the domain of the privileged few, and the rich and the large media corporations, who decide what can and what cannot be aired on their networks. **PEG Access Television makes the television medium available to even small organizations and everyday individuals, and provides truly local coverage for our communities that won't otherwise happen – especially as cable TV operators and the networks continue to evolve into larger and more national business and programming entities.**

We provide free hands-on training to residents and local organizations, along with free equipment and studio use, as well as free air-time for those who wish to make their own programs. Northern Kentucky residents and community organizations use the TBNK studio facilities and the Northern Kentucky Community TV channel to get their message out to the public and to produce their own programming, which provides a window through which viewers can experience the diversity of culture and entertainment, recreational activities, community events, faith based programming and artistic endeavors in their local community...creating television for the people and by the people.

Today the TBNK offers truly Public Service Television to our community through a grass roots television studio. By partnering with many volunteers and community organizations we provide truly local television programming.

From its inception, a lot of the promise of cable TV was that it could provide a much better variety of programs and alternatives to the big national networks – including the promise of local programming that would serve local communities. And yet, while the proliferation of the many channels on cable TV caused the decline of the golden age of broadcasters and the resultant elimination of most

local programming on local broadcast stations, the cable companies continually seek to go back on their promises for local programming, and to erode the last remaining source of any local programming, which is PEG Access Television.

Today, even with the development of the internet, don't let the cable operators tell you that the possibilities for individuals to stream video on the internet can, in any way, replace the impact of local channels on the cable system. While the internet is indeed a distribution method that can augment mass media channels, the internet does not have the same mass media impact or perceived authority as television, which is still the most persuasive medium we have. The internet also does not gather viewers in the same way as the mass media broadcast and cable channels. Many people indeed find out about websites by the advertising and promotions they see on the broadcast channels and hear on the radio.

If the internet was a good replacement for TV Channels then ESPN, Disney, USA and all the other national cable networks would have abandoned their cable channels and distributed their programming solely on the internet years ago.

Except for the well-funded and heavily advertised large media websites, people don't channel surf across websites and accidentally find programming from their local community on the internet as they can with a cable remote. They have to actively seek a specific type of content and search for it like a needle in the haystack on search engines or in the forest of videos on YouTube from across the globe. And our older population is often lost on the internet or not participating at all, where as they can find such local programming on cable TV.

Internet video streaming is simply not a replacement for local cable TV channels. That's like saying, C-SPAN should only be on the internet, or since the public is so well connected on social media, that we should all be able to vote for legislation through Facebook, and that all legislators should be limited exclusively to communicating with the public on the internet (including all campaign advertising,) or even that therefore we could somehow replace congress by governing ourselves through the internet. The internet is just a part of the media landscape and does not replace the impact of television.

Furthermore, while in the older analog cable systems each PEG channel required the usage of 6MHz of bandwidth, in today's digital cable systems, it is common for cable operators to compress anywhere from 6 to 12 channels in one 6 MHz section of their bandwidth. So PEG channels now take up a small fraction of what they did before. Even considering HD channels for PEG, you can still fit multiple channels in one 6 MHz section. And where PEG channels in the past may have taken up several channels out of about 80 channels, or so, on a typical 750Mhz system; now that same system holds 100's of channels, as well as phone and internet services, and can likely fit PEG channels on one or two 6 MHz channels. So the space that cable operators are asked to provide for PEG channels is very minimal.

In today's information based world, PEG Access TV is just as important as ever. The messages of our civic groups and schools, governments and non-profit agencies, individuals and churches can be sent to mass audiences through a medium that would be financially prohibitive to them without our PEG TV Center and channels. This is particularly important today, in light of the increasing consolidation of the media into fewer and fewer large corporations. It's important for our community to have its own local channel. Media Consolidation has left us with only corporate media and almost no local programming anymore.

The Telecommunications Board of Northern Kentucky (TBNK) is the cable television regulatory authority created by 16 Local Governmental entities (1 county and 15 cities) in **Kenton County, Kentucky**. The TBNK is responsible for franchise negotiation, administration and regulation of all matters respecting cable television franchising, as well as the provision, supervision and operation of

public and educational and government (PEG) access television programming and related services, including PEG facilities, training and channels for and on behalf of the Local Governments and our citizens.

The TBNK Government Channel provides gavel to gavel coverage of over 20 government meetings every month, including the Kenton County Fiscal Court and most of the cities in Kenton County. Most air LIVE over the Institutional Network with additional replays. We also cover meetings of the Transit Authority of Northern Kentucky and the Northern Kentucky Area Planning Commission, contributing to open and transparent government, and keeping citizens informed about the actions taken by local elected officials.

TBNK helps educate voters, by providing the only significant television coverage of election campaigns in Northern Kentucky, including the award winning “Northern Kentucky Votes”, the only Northern Kentucky focused election night television program, and numerous election forums and debates every election season leading up to election night for city, county, state, and national races.

The TBNK helps provide important information from local governments, promote community services and economic development, and produce numerous public affairs talk shows with officials from member cities and counties, programs with the county libraries, county parks and NKY solid waste management, Northern Kentucky Chamber of Commerce events, Covington Business Council Luncheons, and our Discover Northern Kentucky programs, showcasing local landmarks and historical and cultural areas of interest in Northern Kentucky, as well as numerous informational programs about initiatives such as the U.S. Census, and Link-GIS.

We also air programs throughout the year from our local area schools on Educable Channel 20. Programming includes graduations, school events and information, academic competitions, science fairs, talent shows, performances, awards ceremonies, sports competitions, and highlights about successful programs, teachers and students.

The added issue in our area is that our communities are suburbs of Cincinnati, Ohio, but are located across the state border in Northern Kentucky. As such, the Cincinnati media pays little attention to our Northern Kentucky communities, and provides little coverage. Since this first franchise in 1980, our community leaders have consistently made it a priority to provide Northern Kentucky coverage and programs on the cable system.

The TBNK Main Event Channel provides a vast amount of Northern Kentucky sports and community event coverage, including over 25 high school basketball games and 15 high school football games each season, as well as many Thomas More College football and basketball games, and local swimming, diving and cross country meets, as well as numerous community fairs, festivals and events.

Our PEG Channels offer the kind of programming that may not be commercially profitable, but which is still important to our local communities. PEG channels provide a needed local voice for area community organizations, schools, churches, citizens, and government agencies – and in our case virtually the only meaningful media coverage for Northern Kentucky. PEG Channels are one of the last surviving sources for local programming across the country.

Today, throughout the country, thousands of local residents and non-profit organizations use television to inform and entertain their local communities – to provide a local voice for the public on the most popular and influential medium in our society: television. They have access to production studios. They have access to training, where they learn lighting, camera work, editing, directing and how to create

local shows. And they have access to free air-time - all through PEG Access TV Centers. This is TV For Our Community; By Our Community. It's Public Service TV.

Unfortunately, this kind of local public service programming has already faced severe cut backs in many communities across the country. Locally, in recent years, the effects of federal and state legislation has slashed our PEG Support funding and restricted its use to capital needs only. The state of Kentucky also prohibited franchise fees and replaced them with a telecommunications tax, while promising a hold harmless amount to be paid back to our local communities to replace the franchise fees. This hold harmless amount however falls short by about 17 percent – further lessening our funding.

These problems have severely slowed any growth in new services and programs, and caused cutbacks in the amount of existing services and shows produced for our communities. We have been forced to steadily reduce our staff from nine full-time employees to three full-time employees. We have had to cut back on services to our schools with whom we have been partnering for educational programming (including video training, technical consultation and troubleshooting). We have had to entirely discontinue several regularly produced community informational and talk shows and reduce the number of sports and community events we can cover, as well as cut back on the amount of classes and services to public access producers.

A big cause of the recent decreases in funding for local PEG television in many communities across the country is heavily financed lobbying by the cable industry, which has been pleading how poor they are, when they continue to provide very healthy profits margins for their stock holders. It is not too much to expect that the for profit entities who use the communities' property to string their cables provide a few channels and production support for local community programs in exchange for the ROW use that allows them to transmit hundreds of channels and operate very lucrative businesses. You wouldn't expect a city to provide space for a restaurant to operate in city hall without paying rent. That is simply not good stewardship of public resources – everyone would want free use of the space.

So why has proper payment for use of the ROW space been so heavily attacked? Why are huge media conglomerates, which continue to consolidate cable companies across the country, and continue to raise cable rates every year, seen as some sort of struggling mom and pop shop that needs more and more concessions at every turn? We desperately need our policy makers to re-focus on maintaining a priority for the local communities' interests – and the interest of local viewers - and not allow our local PEG programming to be thrown under the bus driven by big business.

We have worked hard to find every way to be as cost efficient as possible (cutting staff, increasing volunteers and interns and looking for more partnerships and more ways to combine, streamline and automate work flows, etc.) while trying to maintain as much programming and services as we can; but we need PEG funding restored and **mandated** to be provided by the cable companies. States should not be allowed to pre-empt the federally permissible PEG Support Fees and Franchise Fees, and we need PEG fees to be allowed to be used for any legitimate PEG costs – both operating AND capital - including staffing. It does no good to be able to buy cameras but not be able to hire someone to run them.

When you consider the update of the Telecommunications Act, please incorporate into your rewrite such provisions that would ensure the continuation of federal franchising regulations that mandate our cable/video service providers to carry and support local Public, Educational, and Governmental (PEG) access channels, as well as improved support for the valuable local and diverse programming provided by PEG access channels include the following.

- **Cable Operators should be required to commit to providing PEG funding for any local franchise authority at the higher of either two percent (2%) of the cable operators' gross**

revenues in the local franchise authority's area or levels that existed before any of the states enacted legislation which adversely affected cable franchise related funding (whether this legislation was a state franchise law or state laws that replaced franchise fees and PEG support with a telecommunications tax, such as the state telecommunications tax enacted by Kentucky, which short changed local governments across the state, when it did not hold cities and counties whole as had been promised.)

- The conditions of the transaction should also provide for either a change to the 1996 Telecommunication Act that would **allow all PEG Fees to be used for any legitimate PEG expense**, instead of restricting PEG fees to capital expenses only (– making those funds much more efficient and useful,) **or the new Act should mandate that cable operators provide such funds as operating grants for local programming.**
- Cable operators should be required to commit to providing **at least the same number of local PEG Access channels in any franchise area as had existed in any local franchise area before the new Act;** and in any are where there had been no PEG Access channels, the cable operators should be required to provide up to three (3) PEG Access Channels, if requested to do so by the local franchise authority.
- Cable operators should be required to commit to **provide the local PEG Access channels on BOTH the basic programming tier and near the majority of the local broadcast channels (at the same quality as the surrounding local channels – whether standard definition of high definition,) and ALSO simultaneously to provide the same PEG channels in High Definition, on the High Definition programming tier, at the discretion of the local franchise authority.**
- In addition, given that the Telecommunications Act of 1996 prescribes that, when evaluating the potential approval of a transfer of a cable franchise, the three main criteria that may be considered by local franchise authorities are whether the new owner would be 1) legally, 2) financially and 3) technically capable of operating a cable system; and given that it would be hard to argue that these rather large and sophisticated companies that own and operate the majority of cable systems in the country are not legally and financially capable; if the FCC is truly concerned about protecting the interests of the consumer, item 3) – technical capability should be looked at closely. We would ask that the FCC, (while it is obvious that these large and sophisticated companies have much technical resources and technical know-how,) consider that despite all of their assumed technical capability, that their technical expertise and resources alone are not enough to ensure that any company with such a large foot print is really capable of consistently delivering cable TV signals and internet and phone services to subscribers in a manner expected by any reasonable consumer across such a large footprint without proper and constant focus on and commitment to quality of service. We have all heard the typical horror stories of bad service provided by the cable operators despite their resources and sophistication, so in considering this important issue of customer service, we would ask Congress to establish some requirements on any future franchise transfers designed to better ensure proper technical and customer service for consumers.
- We would also ask Congress to develop administrative rules that would allow local franchise authorities to include the issue of the cable operator's track record in the local franchise area regarding consistent delivery of services to subscribers and proper customer service as part of the evaluation of this third point (technical capability) in future cable franchise renewals, and in ongoing franchise compliance related to customer service standards.

(In relation to these suggestions, it should be noted: These requests will result in **NO additional cost to the federal budget**, since community media does not receive a federal appropriation from Congress, as does public broadcasting, but relies on **local fees** paid by cable companies through franchise agreements,

in exchange for use of the Rights of Ways and/or telecommunications taxes at the state level. Furthermore, **PEG Channels are not a part of the PBS system or the Corporation for Public Broadcasting**; and do NOT receive any funding from those organizations.)

Respectfully Submitted

Tim Broering
Executive Director
Telecommunications Board of Northern Kentucky
3414 Decoursey Avenue
Covington, KY 41015
859-261-1300
www.tbnk.org

Appendix A

Typical Programming Produced by TBNK

- **Approx. 25 Local Government Meetings per month**, including: NKAPC and TANK
- **NKY High School Sports Game of the Week**, Full Season Coverage of High School Football and Basketball for Kenton County Teams since 2001, and selected coverage of Baseball, Volleyball, Swimming & Diving, Cross Country
- **NKY Election Night Coverage**
- **NKY Election Debates and Forums**
- **Discover NKY** – Showcase of Historical and Cultural Areas
- **Northern Kentucky Sports Hall of Fame Talk Show** – Talk Show Series with Charlie Coleman and Joe Brennan interviewing NKY Sports legends
- **Government Forums** - from the NKY Legislative Caucus and the NKY Chamber – Featuring Many State and National Legislators.
- **What You Need To Know** – Discussion Forum and Lecture Series with County Attorney Garry Edmondson
- **Kenton County Fair** – annual coverage
- **RoeblingFest**
- **NKY Chamber of Commerce Eggs-n-Issues Breakfast Meetings**
- **NKY Chamber Annual Dinner**
- **Covington Business Council Luncheon Meetings**
- **Local 9-11 Memorial Ceremonies**
- **Hobby Corner**
- **Holiday Parades** (Ludlow Christmas Parade, Villa Hills Haunted Trail, Independence 4th of July fireworks)
- **County Connection** - 3 County-wide NKY Talk Series with County Officials.
- **City Talk** - Discussion Forum Series with Local Mayors and City Officials, Covering City Issues.
- **The Bowman Show** – Talk Show with Covington Mayor Denny Bowman
- **Wild Wednesday's** - series w Kenton County Parks
- **Waste Watch and Trash TV** – Magazine and Interview Shows with NKY Solid Waste Management
- **Programming from Tri-ed, including State of NKY Economy**

- **NKY Sports Hall of Fame Inductions**
- **Between The Pages** - Kenton County Library Seminar Series
- **Story Tellers Fest** - produced with Kenton County Library
- **Education Matters** – Academic Interview Show with Covington Schools
- **Get-Out-The-Vote Public Service Announcements**
- **Numerous Public Service Announcements for Community Service Organizations**
- **Proceedings of the Kentucky State Legislature**
- **Academic Competitions**
- **Great Inland Seafood Festival**
- **(GIS) Geographic Information Systems Documentary with NKAPC**



January 22, 2015

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications &
Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Anna G. Eshoo
Ranking Member
Subcommittee on Communications &
Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Upton and Walden, Ranking Members Pallone and Eshoo, and
Members of the House Energy & Commerce Committee:

Over 59.7 million Americans rely on free, over-the-air broadcast television with 51 percent living in homes where Spanish is the language of choice. For that reason, The Hispanic Institute is closely watching the Congressional debate concerning the future of the video marketplace and the impact it will have on Latino consumers.

The rise in Hispanic television viewership is due to demographic changes and the quick response by local stations in creating Spanish content and executing robust community programs and outreach reflective of the communities they were serving. This engagement goes one step further in Latino communities, particularly in Spanish-speaking households where television anchors become trusted sources of information and personal advocates for issues important to Latinos such as immigration reform.

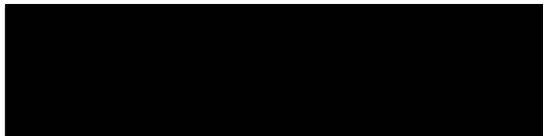
In order for Hispanic households to be able to access this highly-valued broadcast television programming – including Spanish-language networks – it must remain affordable. Currently, rules protecting the “basic tier” of service guarantee that lower-income families can access local and national broadcast channels as a part of less expensive, “basic” pay-TV service packages. Cable and satellite lobbyists are pushing to remove the “basic tier” provision in an update to the Communications Act: which would only benefit pay-TV providers at the expense of lower-income television consumers.

Access and affordability are key issues to Latinos. Over-the-air programming with a focus on local content meets these two needs. We ask that Congress keep local content on public airwaves while ensuring that broadcasters continue to invest in this programming well into the future.

This means protecting content creators and their ability to be compensated so that there is a source of revenue for public service activities. We also support current exclusivity rules that give local stations the right to determine where programming can be distributed and level the playing field among the growing number of video marketplace providers. The current system has fostered the strong spirit of localism and diversity in programming that has served the Latino community well. Many civil rights advocates, myself included, would argue that we need more of this diversity in media; not less. Taking this option away would create an anti-competitive playing field for local television stations and create a cookie-cutter approach in programming with no real value to local communities, particularly among Latinos.

Thank you for the opportunity to provide these comments, and we look forward to continued dialogue with the Committee.

Sincerely,



Gus West, President
The Hispanic Institute



January 22, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

Dear Congressman Upton and Congressman Walden:

The House Energy & Commerce Committee is considering rewriting telecommunications law. The committee has asked:

"Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?"

Where PEG channels are concerned, I answer with a resounding YES! Public, educational and governmental cable access channels are often the only local television service seen in small and medium sized towns and cities.

For nearly 30 years, my organization, Thurston Community Television (TCTV), has managed the PEG access channels serving greater Thurston County, Washington, including the capital city, Olympia. We are a state capital city without a broadcast service. Broadcast channels seen in Thurston County originate in Seattle, some 60 miles away. The 'local' programming they air has little to nothing to do with life in our community. TCTV is the **only** local television service for a population of approximately 230,000 people.

Programming on the four cable channels we manage includes gavel-to-gavel coverage of three City councils, County commission and Port Commission meetings. We air monthly business forums from two Chambers of Commerce and informational programs featuring the Superintendents from our eleven school districts. Every year, more than 100 hours of candidate forums and local election information is produced in conjunction with local groups like the League of Women Voters.

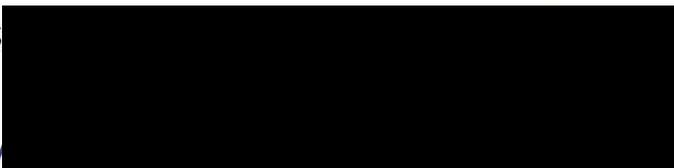
Community members create hundreds of hours of programming that showcase local performing groups, identifies and discusses community issues and concerns, teaches new skills, engages senior citizens and empowers youth. In 2014, more than 20,000 hours of programming relevant to our community was seen on our channels. In addition, we trained more than 400 local residents in media production and provided access to production facilities and equipment for them to use to create their programs.

The services we provide would not be possible without the requirement that our cable operator pay franchise fees and provide community channels in exchange for access to our public right-of-way in which to string their cable to sell their services. It is a fair exchange.

As a media center, we work hard to keep up with the light-speed changes in technology and distribution. We recognize that as multi-channel distribution methods evolve, so must we. However, we also firmly believe that as long as multi-channel providers are using our public right-of-way to sell their commercial services, space on that platform and other resources necessary should be required to make it possible for local noncommercial media to be created and distributed in the public interest.

Thank you for your consideration,

S



Deborah S. Vinsel, CEO
Thurston Community Television
440 Yauger Way SW, Suite C
Olympia WA 98502
dvinsel@tctv.net

cc: Hon. Denny Heck

T-MOBILE USA, INC. RESPONSE TO HOUSE WHITE PAPER ON VIDEO CONTENT AND DISTRIBUTION

T-Mobile USA, Inc. (“T-Mobile”)^{1/} submits the following response to the White Paper released by the House Committee on Energy and Commerce (“Committee”) on December 10, 2014, seeking comment on regulation of the market for video content and distribution, as a part of the Committee’s ongoing efforts to reform the Communications Act of 1934, as amended (the “Act”).^{2/}

I. INTRODUCTION

As the fourth largest wireless carrier in the United States, T-Mobile, including the MetroPCS brand, offers nationwide wireless voice, text, and data services to 55 million subscribers, including 8.3 million customers added in 2014.^{3/} As of the end of the year, T-Mobile covers 265 million Americans with the fastest nationwide 4G LTE network^{4/} and is planning to further expand this network to cover 300 million people by the end of 2015.^{5/} We also continue to lead the industry in innovation with our “Un-Carrier” offerings, such as the recently launched “Wi-Fi Unleashed” that makes voice and texting available worldwide over any Wi-Fi connection, making T-Mobile the first U.S. carrier to adopt Wi-Fi calling across all of its

^{1/} T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

^{2/} See House Committee on Energy and Commerce, *Regulation of the Market for Video Content and Distribution* (Dec. 10, 2014) (“White Paper”), available at <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/20141210WhitePaper-Video.pdf>; see also 47 U.S.C. § 151 *et seq.*

^{3/} See T-Mobile News Release, *Un-Carrier Momentum Continues as Customers Continue to Choose T-Mobile Over the Competition* (Jan. 7, 2015), available at <http://newsroom.t-mobile.com/news/uncarrier-momentum.htm>.

^{4/} *Id.*

^{5/} See T-Mobile News Release, *T-Mobile US Reports Third Quarter 2014 Results* (Oct. 27, 2014), available at <http://newsroom.t-mobile.com/news/t-mobile-us-reports-third-quarter-2014-results.htm>.

new smartphones.^{6/} We also recently launched our “Data Stash™” plan, which allows eligible customers, at no extra charge, to rollover their unused data.^{7/} This program was the first of its kind from a nationwide wireless service provider,^{8/} and our initiative has forced other carriers to make similar offers.^{9/}

T-Mobile supports the Committee in its ongoing efforts to update the Act and has been an active participant throughout this process.^{10/} As we noted in earlier responses to the Committee, the “trend in intermodal competition is only expected to grow, continuing to blur the lines between different services.” This is particularly true in the context of how consumers watch video programming. Consumers increasingly access video programming over broadband services, both wireline and mobile, from a variety of new sources and providers – not just over

^{6/} *Id.*

^{7/} See T-Mobile News Release, *T-Mobile Unveils Data Stash – Now Your Unused Data Rolls Forward* (Dec. 16, 2014), available at <http://newsroom.t-mobile.com/news/uncarrier-8.htm>.

^{8/} See *id.*

^{9/} See, e.g., AT&T, Roll Over Data (last visited Jan. 9, 2014), <http://www.att.com/shop/wireless/rollover-data.html#fbid=WMPbD2c4mkf>; see also Don Reisinger, *AT&T Brings Back the Rollover – But This Time, It’s All About Data*, CNET (Jan. 7, 2015), available at <http://www.cnet.com/news/at-t-brings-back-rollover-but-this-time-its-all-about-data/> (suggesting that AT&T’s new offer should increase pressure on Verizon to offer a similar deal); Williams Pelegrin, *AT&T’s Rollover Data Is Like T-Mobile’s Data Stash, But Much Worse*, DIGITAL TRENDS (Jan. 8, 2015), available at <http://www.digitaltrends.com/mobile/att-now-lets-rollover-data-much-worse-t-mobiles-version/>.

^{10/} See, e.g., T-Mobile USA, Inc. Response to House White Paper on Modernizing the Communications Act (filed Jan. 31, 2014) (“T-Mobile White Paper #1 Comments”), available at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/WP1_Responses_91-100.pdf; T-Mobile USA, Inc. Response to House White Paper on Modernizing U.S. Spectrum Policy (filed Apr. 25, 2014) (“T-Mobile White Paper #2 Comments”), available at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/WP2_Responses_43-58.pdf; T-Mobile USA, Inc. Response to House White Paper on Competition Policy and Role of the FCC (filed June 13, 2014) (“T-Mobile White Paper #3 Comments”), available at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/WP3_Responses_64-84.pdf; T-Mobile USA, Inc. Response to House White Paper on Network Interconnection (filed Aug. 8, 2014) (“T-Mobile White Paper #4 Comments”), available at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/WP4_Responses_32-43.pdf.

broadcast spectrum or even cable and direct broadcast satellite (“DBS”) offerings. T-Mobile’s experience in particular shows that consumers are increasingly relying on mobile platforms to watch video programming; mobile data use has increased more than 700 percent since 2010.^{11/} In fact, for many T-Mobile customers, their mobile broadband connection is increasingly their sole source of broadband access. Meeting this demand for video over mobile broadband will stimulate all parts of the economy.^{12/} Yet, the regulations that dictate how service providers – broadcast, cable, telephone, and satellite – can offer programming to consumers, how programming must be packaged and sold, and what content must be included in a consumer offering are entirely opaque to consumers and are relics of a long-past video programming marketplace. To best encourage the economic stimulus that video over mobile broadband will provide, it is critical that the law allow for creativity, innovation, and the development of video alternatives not available in the marketplace today that will drive greater consumer interest.

Throughout this white paper process, T-Mobile has urged Congress to take a light touch to continue to encourage innovation and creative service offerings.^{13/} This same philosophy – which in the wireless context has produced a vibrant retail marketplace -- should also apply to video content and distribution. The highly competitive marketplace in video will drive the creation of a wide variety of consumer-oriented offerings. The Internet will continue to grow as a platform for video delivery and wireless broadband will continue to grow as a medium to deliver Internet content. The best means of achieving a diverse video marketplace is for the

^{11/} CTIA – The Wireless Association, *Mobile: It All Comes Back to Spectrum*, Sept. 25, 2014, <http://blog.ctia.org/2014/09/25/mobile-it-all-comes-back-to-spectrum/> (last visited Jan. 7, 2015).

^{12/} *See, e.g.*, Comments of CTIA – The Wireless Association, WT Docket No. 13-135, at 55-60 (June 17, 2013).

^{13/} *See, e.g.*, T-Mobile White Paper #1 Comments at 4; T-Mobile White Paper #3 Comments at 3.

government to impose the most minimal regulation possible on the Internet marketplace to allow for the development of compelling online service offerings from a wide variety of providers.

II. THE ACT NEED NOT PROMOTE BROADCASTING OVER OTHER VIDEO PROGRAMMING PROVIDERS

The White Paper suggests that one goal of an updated Communications Act should be to “foster broadcasting in the 21st century.”^{14/} But such an approach falls into the same trap highlighted in the Committee’s White Paper on Competition Policy; it focuses anachronistically on a particular transmission technology, rather than consumers’ interest in the service provided – video distribution.^{15/} As T-Mobile wrote in response, the intermodal competitive landscape must be viewed from the perspective of the consumer.^{16/} Consumers today view broadcasters as just another source of video programming, indistinguishable from cable programming networks, and there is no longer any reason to accord broadcasters special status.

Broadcasters’ status as a public trustee – which resulted in broadcasters receiving a significant amount of spectrum for free in exchange for providing what was for some time the only widely available source of video programming and the best source of community-specific news and information – is outdated. Congress’ concern that broadcasters were the primary source for consumers to receive news and information about their local communities, thus necessitating the continuation and support of the local broadcast industry,^{17/} is now satisfied nearly completely by consumers’ ability to access that information over the Internet, including

^{14/} White Paper at 5.

^{15/} House Committee on Energy and Commerce, *Competition Policy and the Role of the Federal Communications Commission* (May 19, 2014) (“Competition White Paper”) at 2.

^{16/} See T-Mobile White Paper #3 Comments at 8.

^{17/} Cable Television Consumer Protection and Competition Act, Sect. 2 (10), (11).

on their mobile devices, or from multiple local programming networks offered with MVPD services.

Moreover, Internet distribution of video programming, including by wireless broadband providers, provides opportunities for more varied business models and niche audiences than broadcasting ever could, maintaining and even enhancing local programming options and the overall diversity of video programming. As the Commission recognized in its 2011 report on the Information Needs of Communities, “[t]he traditional mass-media model often left content providers struggling to lend expertise to a broad range of niche topics” but thanks to broadband, “[u]nlimited space and lower barriers to entry have led to a greater diversity of voices and more choices for consumers.”^{18/}

Now that more options for accessing local information and other programming are available, Americans are decreasingly reliant on broadcast stations. Less than six percent of Americans rely exclusively on programming transmitted over the air, and that number is shrinking. Supporting the entire system of broadcasting based on the notion that over the air broadcasters are needed to keep Americans connected is no longer tenable.^{19/} In this environment, there is no need for “changes in law [to] promote a market in which broadcasting can compete with subscription video services”^{20/} or other nonsubscription-based video services. Rather, localism and public interest programming can and should be made available through the distribution channels viewers already use to watch video content.

^{18/} STEVE WALDMAN AND THE WORKING GROUP ON INFORMATION NEEDS OF COMMUNITIES, FEDERAL COMMUNICATIONS COMMISSION, THE INFORMATION NEEDS OF COMMUNITIES: THE CHANGING MEDIA LANDSCAPE IN A BROADBAND AGE, 122, 132 (2011) *available at* <http://www.fcc.gov/info-needs-communities>.

^{19/} *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, Docket No. 12-268, FCC 12-118, ¶ 14 (rel. Oct. 2, 2012).

^{20/} White Paper at 5 (Question 1(c)).

Because of this, Congress must consider whether providing spectrum to broadcasters for free remains sound public policy. It may be time for broadcasters to simply transmit their programming using means other than over-the-air like other video content providers, giving up their free public spectrum, in which case it would be appropriate to reconsider their public interest obligations. Even without such a decision, however, broadcasters today have that option: to the extent that broadcasters no longer wish to act as public trustees and want to escape the “significant corporate undertaking” of compliance with broadcast regulation, because they believe doing so will enable them to compete more effectively, they can do so by releasing broadcast spectrum for the more efficient and innovative uses that consumers demand – such as mobile broadband – and transmitting their programming to distributors by another means.^{21/} Moreover, to the extent that broadcasters have not pursued this option in the past because they do not want to give up valuable spectrum rights, they have a new upcoming opportunity in the incentive auction to receive compensation in exchange for any spectrum they voluntarily relinquish.

Broadcasters who fail to pursue any of these opportunities should receive no further windfall. Congress should be promoting a video market in which all providers of video content can compete on a level playing field, not seeking to change the law to “foster broadcasting in the 21st century.”

^{21/} In such a case, broadcasters cannot simply hold the spectrum for another use. Rather, Congress should ensure that the FCC continues to have authority to recapture and auction broadcast spectrum that will no longer be used for traditional broadcasting operations.

III. THE ONLINE VIDEO MARKETPLACE SHOULD NOT BE SADDLED WITH LEGACY PROVISIONS GRANTING BROADCASTERS A PREFERRED STATUS

With regard to the relationship between content and distributors, the White Paper asks about changes to existing rules that would “reflect the modern market for content.”^{22/} Today, there are hundreds of diverse programming choices for consumers in the market.^{23/} Yet some content – and broadcast content in particular – receives a preferred or guaranteed carriage status on many distribution platforms. These laws have no place in today’s market, and should not be extended to the online video marketplace.

A. Broadcasters’ Preferred Status Is Antiquated and Does Not Reflect Modern Technology or Consumer Preferences.

For years, Congress and the FCC have perpetuated broadcasters’ elevated status among all other sources of content through a series of government-granted privileges. Through the must-carry and retransmission consent regimes,^{24/} Congress has ensured that local broadcasters receive guaranteed carriage on cable and DBS systems – whether by demanding it when unwanted or by creating a situation in which MVPDs cannot afford to decline to carry broadcasters even when faced with unreasonable demands for compensation.

Congress’s intent in creating the retransmission consent provisions was to achieve a competitive balance between the cable and broadcast industries.^{25/} It believed that under this system, the retransmission consent negotiation process would provide incentives for both parties

^{22/} White Paper at 6 (Question 4(a)).

^{23/} For example, the average U.S. home receives 189 television channels. NIELSEN, ADVERTISING & AUDIENCES: STATE OF THE MEDIA, at 14 (May 2014).

^{24/} 47 U.S.C. §§ 325, 534.

^{25/} 1992 Cable Act, §2(19); S. Rep. No. 102-92, 102d Cong., 1st Sess. (June 28, 1991) at 35; *id.* at 55 (noting intent to “promote a competitive balance between a cable [operator] and over-the-air television as distribution systems”).

to come to mutually beneficial arrangements because each depended on the other. But as the video distribution market has become more competitive, distributors are just as dependent on “must have” broadcasters to attract and retain subscribers, but broadcasters are far less dependent on any particular distributor to reach their audience.

By perpetuating broadcasters’ right to withhold their signals from MVPDs and the public absent a negotiated agreement for retransmission consent, Congress has given commercial broadcasters undue leverage over distributors to threaten to withhold their programming unless the distributor agrees to the broadcaster’s terms and fee demands, no matter how expensive. Moreover, some MVPD consumers cannot opt out of these costs; local broadcast stations often must be included in the most basic tier of cable service offered and all cable subscribers are obligated by law to buy this tier (the “must buy” requirement) as a condition of receiving any other tier of programming or to purchase any other programming service.^{26/} And because broadcasters are the only content providers that can offer guaranteed access to every subscriber on some MVPD platforms, they continue to win the content rights to the most valuable content (*e.g.*, the Super Bowl), creating a cycle in which broadcasters always remain a “must have” status, giving them leverage to increase their compensation demands.

Yet in return for this preferred status, broadcasters have failed to serve the public interest. To the contrary, they have extracted increasingly broad and unreasonable compensation for carriage of their programming, including unreasonably high fees for retransmission consent, bundling of retransmission consent with carriage of multiple programming channels, and other

^{26/} 47 U.S.C. § 543(b)(7)(A).

unreasonable practices far in excess of the consideration Congress originally contemplated.^{27/}

Their “must have” status has also been used as a cudgel in their anticompetitive withholding of programming through customer blackouts and cutting broadband customers off from online access to broadcaster websites during carriage disputes over video offerings, even if those broadband customers are not video customers.^{28/}

Less than one month into 2015, broadcast blackouts have viewers in more than a dozen markets without access to a major local broadcast station. Cordillera Communications has withheld broadcast stations from DIRECTV viewers in at least 10 markets, while Sinclair Broadcast, as of this writing, is withholding ABC affiliate KTUL from CableOne viewers in Tulsa, OK, and Cox subscribers are left without access to Gray Television’s Big 4 affiliates in three Midwestern markets.^{29/} Throughout 2014, 144 “public trustee” broadcast stations blocked MVPD subscribers’ access to their signals, often for weeks at a time. For example, DIRECTV subscribers in Columbia, MO could not view their local NBC or CW affiliates for 74 days (almost 11 weeks), while the Sinclair Broadcast Group withheld Toledo’s NBC affiliate from Buckeye Cable subscribers for seven months, and a dispute between DISH and Bangor, ME’s CBS and CW stations (owned by Diversified Communications) has been ongoing since July of 2014.^{30/} Even more egregiously, broadcasters in television carriage disputes with MVPDs have

^{27/} See, e.g., Mediacom Communications Corporation, *Petition for Rulemaking to Amend the Commission’s Rules Governing Practices of Video Programming Vendors*, RM 11728, 7-13 (filed Oct. 15, 2014).

^{28/} See Comments of Verizon at 11, *Petition for Rulemaking to Amend the Commission’s Rules Governing Practices of Video Programming Vendors*, RM 11728 (Sep. 29, 2014).

^{29/} American Television Alliance, Media Center, Blackout List 2010-2015, available at <http://www.americantelevisionalliance.org/media-center/>.

^{30/} *Id.*

blocked those MVPD's broadband subscribers from accessing their websites, even though the dispute does not involve broadband service at all.^{31/}

Broadcasters charged with serving the “public interest” should be held to that responsibility. If they would prefer to be a programmer without such responsibilities, there is an easy means available to them, and they can even recover value via the incentive auction. But there is no reason to continue to give broadcasters free spectrum while relieving them of their side of the bargain.

B. Congress Should Ensure That Broadcasters' Anticompetitive Behavior Does Not Extend To The Online Video Marketplace.

Congress should curb broadcasters' ability to engage in unreasonable and anticompetitive behavior, particularly in the online video marketplace. As consumers increasingly turn to mobile broadband as their primary means of accessing online content, it is imperative that the flexibility and accessibility of the over-the-top ecosystem be maintained. To protect against anticompetitive broadcaster practices in the online space and to create an environment in which distributors can create the most compelling offerings possible to attract consumers and drive broadband adoption and deployment, Congress should:

- **Ensure Access to Broadcast Content.** The law should be amended to allow online video distributors to take advantage of the copyright compulsory license and to require broadcasters and OVDs to negotiate the terms of retransmission consent in good faith, so that they can carry the content of broadcasters if they choose. As discussed further below, amending the law would be more effective and better at promoting broadband deployment and adoption than trying to force online video

^{31/} See, e.g., Todd Spangler, *CBS Blocks Time Warner Cable Internet Users from Full Episodes Online*, Variety (Aug. 2, 2013), available at <http://variety.com/2013/digital/news/cbs-blocks-time-warner-cable-internet-users-from-fullepisodes-online-1200573080/#>.

distributors into an outdated MVPD regulatory scheme designed for landline providers.

- **Eliminate Must-Carry.** In the online context, a broadcaster should obtain carriage only when subscribers want to watch it and the distributor wants to carry it, rather than the broadcaster having the ability to force itself, unwanted, onto a subscription platform. A broadcaster not carried can easily make its programming available over the Internet itself; it need not depend on any particular online distributor as a means of reaching its potential audience.

In the MVPD context, too many channels have been occupied by unwatched broadcasters, devaluing their offering and making subscription less attractive to consumers. Moreover, must-carry broadcasters have had less incentive to improve their programming, since they know that cable and DBS operators will be forced to carry them to all subscribers regardless of their popularity. In the new online world, distributors should have the ability to design their offerings with the greatest possible flexibility, to drive consumer interest and so drive broadband adoption and deployment.^{32/}

- **Abolish Basic Tier and Must-Buy Obligations in the Online Content.** Consumers will flock to online offerings, driving broadband adoption and deployment, only if all distributors, including cable operators, are free to create the most persuasive online

^{32/} For the same reason, it makes no sense to require any distributor to carry PEG or leased access offerings as part of an online offering. Local governments can – and do – establish their own websites if they wish to reach their constituents, and the pure explosion of online video through YouTube, Netflix and others demonstrates that content providers have myriad ways to reach a potential audience other than through leased access. No new online video distributor, nor any cable operator that creates an online offering in addition to its traditional MVPD service, should not be forced to carry PEG and leased access channels as part of an online offering.

offerings possible. When all distributors are competing to design an offering that is different from others in the marketplace, every consumer will be able to find a choice best tailored to his or her needs and interests. There is no reason that any distributor should be forced to offer broadcasters they don't choose, or that subscribers to any particular distributor should be blocked from purchasing programming without first purchasing broadcast channels.

- **Curb Broadcaster Retransmission Consent Demands.** Online video distributors cannot afford the extreme costs of unreasonable demands for consent that have characterized the MVPD marketplace. They will have difficulty launching if they are forced to spend excessive amounts of valuable start-up capital to carry broadcast programming. If broadcasters are to retain a favored status on any distribution platform, preventing consumers from being able to opt out of purchasing them if the price is unreasonable, then Congress must put reasonable limits on the compensation demands broadcasters can make.

Further, many online video distributors may not wish to replicate the MVPD offerings in the marketplace, but rather to create smaller niche offerings comprised of broadcasters plus a few targeted channels (e.g., a sports offering, children's programming offering, movie offering, etc.). They should not be forced to buy and carry multiple broadcast-affiliated channels that may or may not relate to their business plan and that occupy limited programming budgets. If broadcasters are allowed to continue occupying public spectrum, they must be required to offer their local broadcast programming on a standalone basis.

Finally, broadcasters should not be able to block access to their public websites for subscribers of MVPDs with whom they have a television carriage dispute. Broadband customers reasonably expect to be able to use their service to access any public website, and should not be singled out for disparate treatment because the broadcaster has an unrelated carriage dispute with their chosen distributor. Allowing broadcasters to discriminate in this manner hampers broadband adoption by devaluing broadband offerings and making customers wary of the value and reliability of broadband service.

* * *

It is long past the time for broadcasters to compete in the market on an equal footing with all other content providers. If broadcasters are forced, at least in the online context, to compete for consumers, they will create compelling offerings at reasonable prices – and the entire online video ecosystem will benefit.

IV. CONGRESS SHOULD PROMOTE OVER-THE-TOP CONTENT OFFERINGS BY ENSURING DISTRIBUTORS ARE NOT BURDENED WITH LEGACY REGULATION

The White Paper’s final question asks how the Act should treat over-the-top video services.^{33/} The answer, as T-Mobile has written in previous responses to the Committee, is with a light regulatory touch.^{34/} The important goals of broadband adoption, use and development will be driven by online video distributors and broadband providers creating new and innovative video services and offerings. As the FCC has explained, “innovative streaming video applications and independent sources of video content have spurred end-user demand, which, in

^{33/} White Paper at 6 (Question 4).

^{34/} *See, e.g.*, T-Mobile White Paper #1 Comments at 4; T-Mobile White Paper #3 Comments at 3.

turn, has led to network investments and increased broadband deployment.^{35/} Further, the FCC and Congress have recognized the importance of maximizing end-user choice and control.^{36/} Over-the-top video and mobile broadband offerings must be given the greatest regulatory flexibility possible.

In the largely unregulated online video marketplace, options are exploding. DISH announced in early December that it will offer a smaller and more focused over-the-top video service that includes live TV programming such as ESPN and HGTV.^{37/} Meanwhile, some programmers, such as HBO and CBS, are beginning to offer *a la carte* online direct-to-consumer services that bypass the traditional MVPD distribution model altogether.^{38/}

DISH, HBO and others are able to experiment with these offerings because of the lighter touch that the online marketplace currently enjoys^{39/} – and because DISH is free of the legacy obligations that the FCC applies to cable operators, who are forced to grapple with whether or not the FCC’s tiering rules apply to any online service they offer.^{40/} As discussed above, those tiering rules – along with a host of rules appointing broadcasters with government-granted advantages – do not make sense in the online environment. But more generally, Congress should

^{35/} *Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, GN Docket No. 14-28, FCC 14-61, ¶ 26 (rel. May 15, 2014).

^{36/} *See, e.g., Preserving the Open Internet*, Report and Order, 25 FCC Rcd. 17905, ¶ 71 (2010).

^{37/} Press Release, DISH Network Corporation, Sling TV to Launch Live, Over-the-Top Service for \$20 Per Month; Watch on TVs, Tablets, Computers, Smartphones, Game Consoles (Jan. 5, 2015).

^{38/} *See* Sam Frizell, *HBO Will Finally Start Selling Web-Only Subscriptions Next Year*, TIME MAGAZINE (Oct. 14, 2014), <http://time.com/3510262/hbo-web-streaming/#3510262/hbo-web-streaming/>; Lauren Moraski, *CBS Launches Expansive Digital Subscription Service*, CBS NEWS (Oct. 14, 2014), <http://www.cbsnews.com/news/cbs-launches-digital-subscription-service-cbs-all-access/>.

^{39/} T-Mobile itself has experimented with new and innovative broadband offerings, such as its Music Freedom program, which is likewise possible because of the lighter touch that is given to mobile broadband due to the substantial competitive nature of the mobile broadband market.

^{40/} *See* 47 CFR 76.901, subpart N.

avoid applying *any* legacy rules to over-the-top distributors that would limit their ability to take risks with new and innovative distribution services.

Defining over-the-top distributors as MVPDs, which would apply a host of legacy obligations on over-the-top distributors as the FCC has proposed,⁴¹ would be a step backward and discourage the development of new video programming choices for consumers. Nor would it benefit broadband adoption and deployment to apply legacy MVPD rules to some online video offerings and not others. In the online environment, everyone should be free to innovate and compete on a level playing field, so that as many consumers as possible benefit and so drive broadband deployment.

Rather than try to fit new online businesses into an outdated scheme meant for landline distributors, Congress instead can help promote this marketplace by creating a very limited set of rules that apply to online video offerings. In particular, online video distributor *obligations* should be limited to basic customer-centric obligations such as accessibility, protections for children, and protecting subscriber privacy.^{42/} There should be a paramount focus on allowing providers to distinguish themselves; as obligations grow, offerings become more similar, and consumers lose the benefit of innovation. Netflix and YouTube have enjoyed such success because of their ability to offer something different in the marketplace, and the law should encourage such distinction. Moreover, heavy-handed regulations are simply unnecessary when the customer can easily turn to a variety of other offerings in the marketplace if their needs are

^{41/} *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, MB Docket No. 14-261, FCC 14-210, ¶ 17 (rel. Dec. 19, 2014).

^{42/} There may also be a need in the future for regulations ensuring that online video providers transmit their data in the most efficient way possible. As the online video market grows, it could be especially challenging for mobile broadband providers to meet consumer demand for watching online video. Congress could help avoid this problem, however, by allocating more spectrum for mobile broadband uses.

not met. By allowing all distributors the flexibility to innovate in the online environment, customers will receive greater choice and higher value.

Online video distributor *rights* should be similarly limited. While legislators' first impulse might be to guarantee new distributors extensive regulatory protections, there is substantial benefit to avoiding any replication of the complicated FCC regulatory scheme applicable to the provision of video today, which has resulted in largely homogenized video offerings. Instead, the law should ensure reasonable access to content – perhaps a basic obligation for content providers to negotiate for carriage in good faith with *bona fide* online video distributors – but reject the complicated rate regulation schemes of today's program access and program carriage regimes, which are ill-suited to the online video marketplace, and should be replaced by good faith market negotiations. Moreover, any obligation of content providers to sell to online video distributors should extend to all programming networks, not only those affiliated with cable operators.

V. CONCLUSION

T-Mobile supports a revision of the Communications Act to support and encourage new and innovative means of packaging and distributing video content that reflect consumer preferences. This includes supporting mobile broadband through increased access to spectrum and supporting new distribution models by creating a light touch regulatory scheme for online video distributors that promotes innovative and diverse offerings for consumers.

January 23, 2015



**Town of Londonderry
Cable Department
281 Mammoth Road
Londonderry, NH 03053
Phone: (603) 432-1147 ext.179**

January 21st, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Gentlemen:

I would like to respond to the House Energy & Commerce Committee's question regarding cable systems requirement to provide access to their distribution platform through PEG channels. Although it may appear the provisions are not warranted in the era of the internet, I believe the provisions are especially needed now more than ever.

PEG access provides news and information to their communities that local broadcast stations and newspapers will often overlook. It is a responsibility PEG access takes seriously, particularly in the area of government transparency through government access. In the community I represent, there were over 150 government meetings cablecast or streamed live in 2014. That number is increasing every year as the public demands that more commissions, boards and task forces meetings be held accountable live through electronic media in place of attending or reading minutes. Our senior citizens, the largest demographic less likely to embrace the internet, is dependent on access to cablecasts of town government meetings. Even the press has become more reliant on live cablecasts and streams than actually attending meetings.

All of our meeting coverages are made possible through our franchise agreement with our cable provider, Comcast. As communities are continually tightening their budgets through a stubborn economy, it becomes more important that the provisions required in the communications act for cable systems to provide access to their distribution platforms continue. I believe this agreement also benefits Comcast through good public relations in the communities they serve, many of which Comcast enjoys a monopoly in.

It is important to note that as more content is being distributed through the internet every day, the public is seeing a fundamental change in this platform. The U.S. appeals court in January 2014 threw out federal rules requiring broadband providers to treat all internet traffic equally. This raises the prospect that the bandwidth needed to provide quality video could come at a higher cost. If municipalities relied solely on the internet to distribute access to government meetings, there is no guarantee that the end user could view the meeting smoothly. This frankly, would discourage the public's participation in local government.

I encourage you to preserve a municipality's access to cable television provider's distribution platform through program access, leased access and PEG channels.

Sincerely,

Drew Caron
Director of Cable and Technical Operations
Town of Londonderry
281 Mammoth Road
Londonderry, NH

[REDACTED]

From: Brian Mahony [REDACTED]
Sent: Wednesday, January 14, 2015 9:18 PM
To: CommActUpdate
Subject: my input on potential new regulations

I would like to provide my input about the trade-offs of new regulation of the Internet specific to video-- what we have come to call "Over the Top" video services such as Netflix.

As an analyst, I have been covering this market for 7 years, and spent much of the past 15 years helping to define various IP video related services and equipment. I have also worked with companies large and small to help them define their strategies.

My recent blog highlights how I think: <http://www.trenderresearch.com/profiles/blogs/will-ott-be-assimilated-into-existing-pay-tv-business-models-or-d>

In short, true innovation can only happen if: 1) MVDPs cannot have monopoly power over broadband pricing; 2) unless mobile video services are a true alternative; or 3) Internet video companies continue to morph into alternative content companies and can use their content supplier power to level the playing field (e.g. Netflix and Amazon shows recently awarded Golden Globes). My bias is that less regulation is probably better, since the law of unintended consequence usually rules the day and the market has already been working nicely to drive the market forward.

Thank you for your consideration of my input.

Brian Mahony
CEO and Chief Trender
Trender Research, Inc.

[REDACTED]
www.TrenderResearch.com

Tri-Valley Cities

DANVILLE • DUBLIN • LIVERMORE • PLEASANTON • SAN RAMON

February 2, 2015

The Honorable Fred Upton
US House of Representatives
Washington, DC 20515

The Honorable Frank Pallone, Jr.
US House of Representatives
Washington, DC 20515

VIA E-mail: commactupdate@mail.house.gov

Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

Dear Chairman Upton and Ranking Member Pallone:

On behalf of the Tri-Valley Cities, we are writing to urge you to protect Public, Educational, and Governmental (PEG) channels, which provide a vital medium for our communities that would not otherwise be met. Unfortunately, the existence of this programming is currently being threatened.

PEG channels provide local access that connects citizens to their communities, and to local government, educational, and cultural information, that would not otherwise be provided. Over 50 PEG access centers in California, which provide community groups and individuals access to video production facilities and equipment, training, and programming time, have closed since 2005. These community television stations have closed since the California State Legislature passed the “Digital Infrastructure and Video Competition Act of 2006 (DIVCA)”, which restricted PEG fee usage to language existing in the federal Communications Act, namely capital purchases only, and not for operating PEG access facilities throughout California. More stations will likely close due to the unnecessary restrictions in PEG funds. Many states across the country have passed similar legislation, which has also forced the closing of many community television stations. The Communications Act must be clarified so that PEG funding can be used for both capital and operating purchases, in order to ensure the viability of community television stations in California and throughout the country.

Our own local community television station, Tri-Valley Community Television (TV30), provides locally focused programming which includes educational and informational lifestyle shows highlighting the community and public meetings such as city council and school board meetings, current events and local sports. Since 2010, the Cities of Dublin, Livermore and Pleasanton have provided funding out of their general funds to operate TV30, in order to keep community television programming in existence. Using our general funds to keep local programming in existence is unsustainable. The irony is that our cities have almost \$1.2 million in PEG funds that have accumulated and cannot be used, since the funds are restricted by the Communications Act and can only be used for capital purposes, such as buying equipment. These restrictions are inefficient and wasteful. There is of course only so much equipment that a community television station needs. Funding is needed to hire personnel to run the station, yet we can’t access the \$1.2 Million in PEG funds that we have on hand to do so. We know our needs as to how best to use the PEG funds. This is a local control issue that should not be determined by a state or federal government.



Setting aside channel capacity for PEG use and allowing flexibility so these funds can be used for both facilities and personnel for those channels is instrumental in preserving PEG channels and their operations. As your Committee reviews the Communications Act in the coming year, it is vital to add operational expenses as eligible PEG funds uses, thereby, providing protection for PEG channels, in order to allow communities across the country to continue providing important local programming services.

Sincerely,



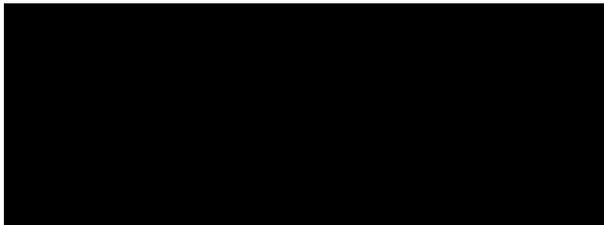
Mike Doyle
Mayor of Danville



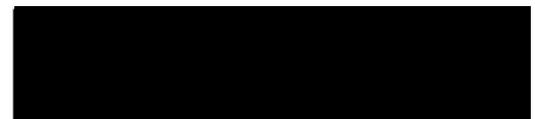
David Haubert
Mayor of Dublin



John Marchand
Mayor of Livermore



Jerry Thorne
Mayor of Pleasanton



Bill Clarkson
Mayor of San Ramon

January 22, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

The provisions related to Public, Educational and Government (PEG) Channels included in current regulation of the market for video content and distribution are as relevant and warranted today as they were when they were adopted. The market for video content and distribution has increasingly become more consolidated. Today a few corporations control both content creation and the networks for content distribution. In many communities, PEG Channels and their respective Community Media Centers are the only source for locally produced content. In other communities with more local broadcast affiliates, PEG Channels remain the only source for locally produced content that is not commercially viable and that provides opportunities for all people to have an equal voice on a multichannel video distribution platform.

The airing of programming on PEG Channels is only one benefit of the current regulations. The current provisions also provide for valuable funding mechanisms for community access to the technology and tools to create programming for distribution on these platforms. Without these funding provisions and PEG Channel distribution, people outside of the commercial broadcast industry would not have the ability to use professional production studios and equipment to help share their stories, increase civic engagement, and share local media that matters to their community.

The 2011 FCC Report, “The Information Needs of Communities: The Changing Media Landscape in a Broadband Age”, notes “In a 2004 survey, 79 percent of the public television licensees indicated, ‘the amount of local programming they currently produce is not sufficient to meet local community needs.’” The report further states that, in terms of local TV news, “Topics like education, health care, and government get minimal coverage. In a 2010 study of Los Angeles TV news by the Annenberg School of Communications, such topics took up just a little over *one minute* of the 30 minute broadcast.....In another study – of local broadcasters in 175 cities – coverage of city government was found to be about one-third as common as crime stories. Other studies have discovered the same pattern.”

There is only one local broadcast television station providing the majority of coverage of Southern Santa Barbara County in California. Out of the four local broadcast affiliates in this Demographic Market Area, three have shared management of their local news operation. The local broadcast affiliates are not meeting the information needs of our community. The local cable television operator produces minimal programming for their leased access channels, with a significant portion of their local programming being paid advertisements.

The Public, Education and Government Access Channels in Southern Santa Barbara County are playing a vital role in the provision of local programming and meeting the information needs of our community. The City of Carpinteria, the city of Santa Barbara, and the County of Santa Barbara operate and program government access channels which provide live and replayed coverage of local government meetings and commissions. This coverage increases local government transparency and accountability. The local governments further provide programming which includes coverage of local events and festivals, speakers, and educational topics such as drought-tolerant landscaping and critical ways to conserve water.

TV Santa Barbara, the nonprofit media arts center, is working to empower people to make media that matters. We do this by providing community members with the knowledge, resources and tools to create and distribute their own original programming content. Our public access channel, TVSB Voice, aired more than 380 hours of locally produced programming in 2014. Our educational access channel, TVSB Culture, aired more than 130 hours of locally produced programming in 2014. In total, these two channels distributed more than 1,400 episodes of noncommercial programming that was important to our community.

The TVSB Media Arts Center provided more than \$745,000 worth of media production equipment to the community for their use in producing local programming in 2014. More than 125 people participated in over 400 hours of training on how to use media to share their stories and their message in the same year.

The programming on local PEG Channels is diverse, eclectic, and representative of a cross-section of our community. TVSB Voice is the only source of local Spanish language programming in Southern Santa Barbara County. Community member Silvia Uribe and her team of volunteers produces a live program “Las Noticias en Confianza” to bring information and encourage discussion on topics of importance to the Hispanic Community. A local church produces “Los Amiguitos de Jesus” to engage with their Hispanic community.

Programming on TVSB Voice and Culture includes interview programs with candidates for local office, candidate debates, and discussions on community issues. When Gang Injunctions were being debated in the City of Santa Barbara, local Hispanic organizers were able to appear on programming carried on public access to share their viewpoints and discuss their opposition to the injunctions. Outside of a one-sentence quote or 15-second sound bite, these organizers had no other local media platform to discuss and share their viewpoints and perspectives with the larger community.

Here is a snapshot of the variety of locally-produced programs being distributed on our public and educational access channels:

The 805 Focus
Cirone on Schools
The Creative Community
Global Dialogue
Innovations in Education
Local Leaders
Santa Barbara Maritime Museum
Lecture Series

Schools of Thought
South Coast Spotlight
Talking with Teachers
Teen News Network
University of California – Santa Barbara
Lecture Series
MIT Enterprise Forum of the Central
Coast Presentations

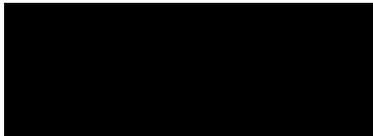
*Local Event Coverage like the Girls Inc of
Santa Barbara Luncheon, Alpha
Resource Center Performance, Musical
Adventures of the Magical Velvet Frog,
and more
A Better Tomorrow with Christ
Bob's TV Show
Compassionate Connection
Ernie Salomon Live!
Evolution Revolution
Fresh Frames
Fun. Sparkle. Drama.
Get Conscious Now
Ken Boxer Live!*

*Las Noticias en Confianza
Let Us Connect
Literary Gumbo
Los Amiguitos de Jesus
Meet Your Money
The Oliver Hamilton Show
The Evening Show with Ben Ferguson
Our View
Party Time with Scott Topper
Qi Gong SB
Reel World Conservation
Third World News Review
Worthen One on One*

The local Public, Education, and Government access channels provide curated channels for people to engage with and watch locally-produced programming. The 2009 Knight Commission on the Information Needs of Communities in a Democracy Report "Informing Communities: Sustaining Democracy in the Digital Age" states "Information is essential to community vitality.....Local information systems should support widespread knowledge of and participation in the community's day to day life by all segments of the community. To achieve the promise of democracy, it is necessary that the creation, organization, analysis, and transmission of information include the whole community". PEG Channels remain a vital component of meeting the information needs of our communities and democracy.

In order to provide their service and operate their business models, cable communications companies rely upon the access to the public right-of-way. Without the ability to use the public right-of-way, these companies could not operate. The public interest provision of PEG Channels is a minor cost for the ability of these companies to conduct business through use of the public right-of-way. Public Access Channels are the only means for anyone and everyone in our communities to have an equal voice and ability to participate in the creation and transmission of information over multi-channel video distribution systems.

Sincerely,



Matthew Schuster
Executive Director, TV Santa Barbara

cc: The Honorable Lois Capps

From: Robert Kenny [REDACTED]
Sent: Friday, January 23, 2015 7:05 PM
To: CommActUpdate
Cc: Redl, David
Subject: TVfreedom.org Letter in Response to Committee's White Paper on Video Content & Distribution

Importance: High

We respectfully submit following letter on behalf of TVfreedom.org for your review and consideration in response to the Committee's formal white paper on video content and distribution. We look forward to working with your Committee in a positive, constructive manner as you accelerate the legislative activity related to a comprehensive update of the Communications Act. Thank you.

To view the letter online, please visit [here](#).



January 23, 2015

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and
Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Anna G. Eshoo
Ranking Member
Subcommittee on Communications and
Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Upton and Walden, Ranking Members Pallone and Eshoo, and Members of the House Energy & Commerce Committee:

On behalf of TVfreedom.org, we respectfully submit these comments in response to the Committee's white paper on video content and distribution. We appreciate the opportunity to provide input as you move forward with legislative efforts to update the Communications Act.

During the past several years, the advent of multiple online video platforms available on high-speed broadband networks has helped spur competition, investment and innovation in the video marketplace. The emergence of online video has created additional competitive choices for consumers on various digital platforms, yet many Americans are still unable to take full advantage of these services due to the lack of accessibility and/or affordability.

The power, reach and reliability of **free and local broadcast TV** remains the one true equalizer in the video marketplace, particularly since the nation's television viewers can rely on local broadcasters being on the air during emergencies. TV broadcasters remain a vital lifeline in times of crisis and help stimulate local commerce in communities across America. In efforts to modernize the Communications Act, Congress must take into consideration the pivotal role of free and local TV broadcasting as the lifeblood of our nation's communications ecosystem.

Central Question

Any legislative reform effort should address a core issue central to the future of the video marketplace: How does Congress create an environment that enables local broadcast TV stations to compete against giant national pay-TV interests in an increasingly competitive market?

With pay-TV cord-cutting increasing and niche multicast broadcast networks expanding, a growing number of U.S. households are turning to free over-the-air broadcast TV on multiple digital platforms to access the most popular general entertainment and live sports events, local news and programming, severe weather updates, and emergency alerts and warnings.

Broadcast TV's Future Role

New entrants should have an opportunity to effectively compete in the nation's communications landscape, and especially in the rapid and cost-efficient delivery of video content to the American consumer over a variety of wireless and wireline platforms. Today, companies like [TabletTV](#) provide consumers with greater choices for video service with next-generation broadcast-centric services that will soon dramatically alter the face of the U.S. communications ecosystem. Yet, the overwhelming consumer preference for popular local broadcast TV programming could be denied if local TV stations are not afforded an opportunity to advance and expand their business model and serve their local communities under a future policy framework.

Suite of Local Market Rules Needed

The unique benefits of localism could be lost if Congress fails to enact and promote laws and policies that protect the ability of broadcasters to distribute their content in the marketplace. Any new framework should focus on creating a suite of local market rules that support free-market retransmission consent negotiations and broadcast exclusivity rules.

Retransmission Consent -- Concerns expressed over TV blackouts resulting from stalled negotiations in programming disputes between pay-TV service providers and TV broadcasters are greatly exaggerated. In 2014, there were [11 TV blackouts](#) caused by retransmission consent disputes, the majority of which were settled within a few days. In contrast, hundreds of retransmission consent deals are negotiated each year without programming disruptions to America's pay-TV subscribers -- the current system ensures that broadcasters receive fair compensation from pay-TV companies for providing the nation's most-watched programming.

The argument that retransmission consent fees drive up consumer monthly bills presents a red herring. The total complement of broadcast TV channels on a consumer's monthly cable and satellite TV bill costs approximately \$3.50. For comparison sake, consumers now pay three times that price in monthly fees to rent just one DVR.

In addition, cable network content and regional sports network fees account for approximately [90 percent](#) of all programming costs on pay-TV customers' monthly bills. In the effort to update the Communications Act, Congress has a unique opportunity to further examine the true underlying cause for pay-TV customers' [annual price increases](#) that consistently outpace the rate of inflation.

Broadcast Exclusivity -- Content, and the right to protect it, is inherent to the value of local broadcasting. Local TV stations that contract for exclusive rights to network programming better position themselves in a free-market environment to generate the very revenue streams that they need to produce the local news and programming that their viewers appreciate, value and have come to expect.

The FCC's broadcast exclusivity rules do not grant broadcasters anything contractually, they simply provide broadcasters with effective tools to enforce the agreements they've established with other companies regarding programming rights and distribution. These rules enhance market efficiency by enabling TV stations that have negotiated exclusive programming rights in local markets to notify pay-TV providers of their contractual rights and to enforce those rights at the FCC.

A modern regulatory regime should recognize the tremendous benefits that localism provides to America's television viewers and implement laws and policies that maintain these important enforcement tools and provide local TV stations with the support they need to continue producing and delivering high quality local content to the communities they serve.

Closing

Legislation designed to support and advance free and local broadcast TV for the benefit of consumers and local markets is critical to the future of the U.S. video marketplace. We look forward to working with your Committee in a positive, constructive manner as you accelerate the legislative activity related to a comprehensive update of the Communications Act.

Sincerely,



Robert C. Kenny
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Director of Public Affairs



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